

**Maules Creek Community Council Inc**  
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**Carolyn McNally**  
**Secretary**  
**Department of Planning and Environment**  
**carolyn.mcnally@planning.nsw.gov.au**

**Re: Maules Creek coal mine Project Application Number: 10\_0138 Mod 4**

**Dear Ms McNally;**

The Maules Creek Community Council objects to the Mod 4 Environmental Assessment from Whitehaven Coal to remove a specific requirement for continuous environmental noise improvement by maintaining or reducing mining equipment sound power.

Five years on from the original determination the proponent has returned to the planning system to water down its noise conditions based on the dubious assertion that it has a strong record of compliance. Nothing could be further from the truth on noise.

The proponent provides no evidence of why they should be allowed to remove this requirement by the Planning Assessment Commission (PAC) to enforce continuous environmental noise performance improvement by maintaining or reducing sound power.

The other coal mines operating in the area carry the same conditions in their approvals due to the commitment of the government at the time to have consistent regulation in the Maules Creek area. We see no reason to alter that position.

In general, the planning approval has failed to protect vulnerable families from the impacts of noise in the district. Farmers inside the zone of affectation are stranded, dealing with a belligerent and powerful company, while those outside the zone have uncovered a pattern of non-compliance.

The topography of the surrounding Nandewar range, inversion layers and remote location far from the eye of compliance staff has left families at Maules Creek vulnerable to a secretive proponent who games the system at every turn.

We believe that this proposal in Mod 4 to remove noise conditions has a negative flow on for the cumulative noise from mining in our area and for planning integrity across the state. We strongly recommend that Mod 4 is rejected.

Kind Regards

Maules Creek Community Council Inc

# Maules Creek coal mine

Project Application Number: 10\_0138

Mod 4

**Submission by the Maules Creek Community Council**

**Oct 2017**

# Introduction

Maules Creek sits between the Leard State Forest and the Nandewar Range. According to the proponent in its original Environmental Assessment (EA), inversion layers are very common in the Maules Creek valley, 41%<sup>1</sup> of the time generally and 69%<sup>2</sup> of the time in winter.

The affect is to concentrate dust and noise in the lower atmosphere against the Nandewar Range which traps cool morning air blowing from the south until a stronger breeze disrupts and lifts the cool air in the lower atmosphere.

These natural attributes and the approval of a number of large coal mines in the area have seen a marked increase in the level of noise leading to concern and conflict over mine noise. Now the nearby mine proponents, Whitehaven Coal, are seeking to remove a section from Condition 12a, Schedule 3 from Planning Approval 10\_0138 regarding the Maules Creek coal mine.

***“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;”***

The proponent has not consulted with the community to explain why it is seeking to change the rules and it has provided no evidence why it needs to remove the section in Condition 12a which is vital to ensure the effectiveness of a condition designed to enforce continuous improvement of environmental noise performance over the life of the mine.

This was the intention of the PAC in 2012 when it put in place Condition 12a. Without the expressed requirement to deliver sound power on equipment equal to or below that modelled in the EA, the community is left with a condition that contains the weakest discretionary language and the lowest common denominator - “where reasonable and feasible”.

The short, 15 page Mod 4 EA has no additional noise studies or any data that justifies why the section in Condition 12a for continuous improvement to sound powers should be removed. The proponent’s justification appears to be its claim that the proponent has a “strong record of compliance”. Nothing could be further from the truth and the case that any environmental noise performance has improved has not been made.

The Mod 4 EA is silent regarding the attended noise monitoring undertaken by the community that uncovered systemic breaches since the Maules Creek Community Noise Pilot Study began in August 2015. Similarly Mod 4 is silent or downplays official sanctions by the Department of Planning and Environment, and the EPA. These sanctions include:

1. A mandatory noise audit in Feb 2016 after the EPA recorded 100 noise breaches by the mine
2. A formal noise warning by the Dept of Planning in August 2016
3. A re-rating of the environmental compliance risk rating in Sept 2017 by the EPA to the maximum rating of 3. One of only 3 mines in the state.

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1 PAE Holmes July 2011. Air Quality Impacts Assessment. Appendix F - Maules Creek Coal Environmental Assessment.  
2 Bridges Acoustics July 2011. Acoustic Impact Assessment. Appendix G - Creek Coal Environmental Assessment.

This is evidence that the proponent does not have a strong record of compliance which was confirmed when the EPA advised that it raised the risk level to maximum due to;

1. Non-compliance of environmental management and
2. The company failing to supply to records

## Recommendation

**The MCCC strong recommendation to the consent authority is that the Mod 4 proposal to remove a specific requirement to maintain or reduce equipment sound powers in order to continuously improve the projects environmental performance should be rejected.**

## History

### 1. Company gets dodgy approval, community loses merit appeal rights

The highly contentious Maules Creek coal mine EA was put on exhibition in August 2011. At the time few industry insiders thought the mine would be approved in such an ecologically sensitive area.

A system of undeclared donations to the National Party<sup>3</sup> from related entities and key staff of the original proponent were uncovered before, during and after the mine planning period. The projects proponents and NSW Mining Minister were swept up into ICAC investigation “Spicer”<sup>4</sup>. Secret lobby meetings with related parties of the proponent by various former government ministers (allegedly to solicit donations in exchange for political favours) were also uncovered<sup>5</sup>.

Amidst this sustained legal and illegal campaign by the mining company and some of its related entities, and despite calls from the community, the former Minister for Planning extinguished the community’s merits appeal rights by ordering the Planning Assessment Commission (PAC) to hold a Public Hearing into the Maules Creek coal mine at the Boggabri Golf Club.

Expert submissions from Vipac Engineers and Scientists provided to the Dept of Planning and the PAC by the Maules Creek Community Council (MCCC) regarding the the Noise Impact Assessment (NIA) said<sup>6</sup>

1. *Noise source definitions lack detail of important parameters*
2. *Noise sound powers generally seem lower than might be expected of standard equipment. This is especially the case of the crushing plant.*
3. ***Exceedance of the noise criteria is predicted yet no solution is presented.***

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3 SMH, Billionaire faces inquiry over donations to Nationals, Jan 2012

4 ABC, ICAC: Associates of Nathan Tinkler giving evidence about Buildev, May 2014

5 Crikey, The Murky world of Tinkler’s Maules Creek approval revealed, Aug 2014  
<https://www.crikey.com.au/2014/08/28/the-murky-world-of-tinklers-maules-creek-approval-revealed/>

6 Vipac, Maules Creek coal mine Peer Review of AS Noise Impact Assessment, Oct 2011.  
<https://www.maulescreek.org/wp-content/uploads/2017/10/Appendix-15-Peer-Review-Noise-Assessment.pdf>

Despite this, the Planning Department recommended the approval of the mine in August 2012.

The PAC approved the mine subject to “strict” conditions in October 2012.

The concerns identified in the MCCC submission to the original project that the proponent was able to get a planning approval through the combination of (a) providing understated noise inputs in its noise modelling and (b) the Minister removing the community’s merits appeal rights became apparent even before the mine reached full production.

Extensive noise breaches were uncovered by the EPA and referred to in the variation of the Environmental Protection Licence 20221 that required the Mandatory Noise Audit on the 25<sup>th</sup> of Feb 2016.

- H. The EPA has reviewed and analysed the data collected by the Ngara brand noise loggers installed at 329 Ellerslie Road, Maules Creek for the months of February, March, April, May, July and August 2015.
- I. The EPA’s review and analysis of the noise logger data has recorded noise at levels exceeding the limits set out in condition L3.1 of the licence. Specifically, mine noise was recorded between 6pm and 8am at levels greater than LAeq (15 minute) 35 dBA in March, April, May, July and August 2015. Seventeen such exceedances were recorded in March 2015, twenty-eight exceedances were recorded in April 2015, four in exceedances were recorded in May 2015, twelve exceedances were recorded in July 2015 and twenty nine exceedances were recorded in August 2015.
- J. Additionally, the licensee’s own noise monitoring results identifies a number of other occasions when noise at private residences exceeded the noise limits set out in condition L3.1 of the licence.

## 2. Community Undertakes Attended Noise Monitoring / Timeline

The approval decision in 2012 has cost an enormous amount of the community’s time and energy to enforce the noise approval conditions. Here is a timeline of events;

1. Mine construction began in 2014 based on an approval that was difficult to comply with due to suspect soundpower inputs in the NIA
2. Almost immediately the district became very noisy. Large “Daymaker” lights that were not identified in the noise modelling inputs, and which were placed on the top of large heaps of spoil, roared across the night sky
3. Meetings with the EPA and Planning Department by local farmers went round and round in circles with no clear outcomes, action items or escalation path<sup>7</sup>
4. After one meeting at the Maules Creek Hall when government officials said they had insufficient resources, the community resolved to carry out its own attended monitoring
5. In August 2015 the Leard Forest Research Node conducted the Maules Creek Noise Pilot Study. The Study found over one quarter of the readings exceeded the approved noise limits, and that the 35 dBA 15 min contour line currently at Harparary Rd was wrong by several kilometres.<sup>8</sup>

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7 Australian Story, Maules Creek Farmer left in the lurch by NSW Governments mine deal <http://www.abc.net.au/news/2016-06-27/maules-creek-farmer-left-in-limbo-by-nsw-mine-deal/7544518>

6. On the 25<sup>th</sup> of Feb 2016 after conducting it's own investigations, the EPA required the mine to undertake a Mandatory Noise Audit under it Protection of the Environment Licence 20221 after recording 100 noise limit breaches
7. Interviews were conducted by the independent noise monitoring company EMM in May 2016 and residents reported that the mine was quiet during the mandatory noise audit, effectively gaming the system. Interviewees said that the mine "has been quiet for the last 3 weeks. It is a complete change"
8. In August 2016 the company was issued with an official warning re noise management from the Department
9. In March 2017 the EPA reported that it had completed a mandatory noise audit that found that practices were appropriate and were consistent with good practice, yet left many unexplained questions<sup>9</sup>
10. In Sept 2017 the Maules Creek coal mine was promoted to environmental compliance risk rating 3. The maximum.
11. On 28<sup>th</sup> of Sept 2017 the proponent began exhibition under Part 3A of its Mod 4 EA for 14 days (that included a long weekend) to change the rules and remove a section of condition 12a

## Planning System Integrity

### 1. Consistency of Approval Conditions near Maules Creek

When the mine proposals in the region were initially put forward in 2011 a deliberate decision was made by government to provide consistency of regulation across the Maules Creek area. The PAC was the decision maker in each of the three mines that were seeking approval over that period.

The PAC developed a consistent series of conditions in relation to the Attenuation of Plant Sound Power clause to ensure each mine was specifically required to maintain or improve their soundpowers in order to get gradual improvement of environmental noise performance.

The Maules Creek Schedule 3 section in 12a;

*"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;"*

Boggabri Coal Schedule 3 section 9a

*"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 that correspond to best practice or the application of best available technology economically achievable;"*

Tarrawonga Condition Schedule 3 section 9a

*"all equipment and noise control measures deliver sound power levels that are equal to, or less than, the sound power levels identified in the EA, and correspond to best practice, or the application of best available economically achievable technology;"*

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8 Leard Forest Research Node, Maules Creek Community Noise Pilot Study FULL REPORT Sept 2015 [https://www.dropbox.com/sh/gqx3guagp0an2uy/AADpYYUfZPnf4l\\_fcF55EqQka/Maules %20Creek%20Noise%20Pilot%20Study%20FINAL%2024%20Sept%202015.pdf?dl=0](https://www.dropbox.com/sh/gqx3guagp0an2uy/AADpYYUfZPnf4l_fcF55EqQka/Maules%20Creek%20Noise%20Pilot%20Study%20FINAL%2024%20Sept%202015.pdf?dl=0)

9 Ibid

It is inappropriate in the view of the MCCC for a consent authority to wind back the original intention of government to provide regulatory consistency across the region in response to one company who has a poor track in regard to noise exceedences and environmental performance.

Moreover removal of this section of condition 12a for the Maules Creek mine would likely see moves by the other mines to keep their conditions in step to ensure they would not have a competitive disadvantage. The end result is a race to the bottom with no cumulative environmental noise improvement over time.

## 2. Habitual Approval Creep

The question has to be asked when is an approval an approval?

In 2017 alone the community has witnessed campaigns from the company to reduce its approval conditions. These campaigns include:

1. Approved - Changes to its traffic management (Mod 3) that has seen an increase in traffic
2. Approved – Changes to Schedule 2 Administrative Conditions
3. Rejected - Seeking to clear the Travelling Stock Route outside the clearing window
4. Under Department of Planning Consideration - Seeking to remove class G inversion layers from noise conditions, against the wishes of the community
5. Current - Seeking to wind back noise controls on sound power levels (Mod 4)

The Mod 3 approval where the company sought to modify its planning approval after it was shown that the company had been in breach of its traffic conditions for months if not years. Surprisingly, instead of enforcing the conditions of the mine, the Department allowed the company to submit a modification to its planning approval to remove traffic controls.

From the practical community perspective Mod 3 has externalised its costs, shifting costs from the project to local residents and local councils, leading to thousands of traffic movements on the Manilla – Boggabri Road to the extent that the road has become dangerous<sup>10</sup>.

At the time that Mod 3 was on exhibition, Peter Watson from the MCCC in his submission<sup>11</sup> said;

*“The approval for the mine was provided based on the mining company’s response to the Director Generals Requirements (DGRs) and also on submissions given by the public to the then Department of Planning and the Planning Assessment Commission. Many of the approval conditions placed on the Mine, such as in this case the requirement for 90% of staff to travel to the mine by bus, is the result of those community submissions and presentations, to recognise and respect the values of the area and the community.”*

***“What the Consultant report highlights is that the MCCC has been in breach of their Approval Conditions and have not seriously approached the problem of attempting to achieve compliance.”***

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10 Namoi Valley Independent, Boggabri Manilla Road in Focus for Election,  
<http://www.nvi.com.au/story/2940676/boggabri-manilla-road-in-focus-for-election/>

11 MCCC, Objection Submission, Mod 3,  
[https://majorprojects.accelo.com/public/f2c83c762b9074e2e902b4065fee3970/Maules%20Creek%20MOD3\\_PG.pdf](https://majorprojects.accelo.com/public/f2c83c762b9074e2e902b4065fee3970/Maules%20Creek%20MOD3_PG.pdf)

Unlike the compliance failures identified in the above Mod 3 submission, noise compliance failures were clearly predicted prior to the original Maules Creek coal mine project determination. Peer reviewer Vipac, identified that the proponents own noise modelling during the project exhibition showed noise exceedences but presented no clear solution.

Now the proponent is revisiting its proven strategy, attempting to “Get out of Jail Free”, to change the rules after failing to meet its conditions.

It is entirely *inappropriate* for the consent authority to reward the proponent by removing conditions after the strong and consistent concerns about noise expressed by the community and confirmed by the regulatory bodies over the last 5 years.

### **3. Statewide Implications – Regulatory Capture**

The NSW Department of Planning’s own compliance policy (see Appendix 1) is to enforce conditions of consent and to expect that industry will comply with their conditions of consent with a goal of achieving compliance *and striving for environmental improvement*.<sup>12</sup>

By accepting Mod 4 for assessment, the Department seems to be acting completely opposite to the stated objectives of “enforcing compliance”. One wonders how the two sections of the Department, Compliance and Assessment can work together to get outcomes for the community, if the Assessment section moves the goal posts when conditions are not being met by proponents. This behaviour seems to be a text book example of regulatory capture.

Moreover, Mod 3 and Mod 4 are confirmation that the merits of the original Maules Creek coal mine project were suspect and that planning processes in NSW do not stand up to community scrutiny. Natural justice has been circumvented via the extinguishment of merit appeal rights and any consent authority would do well to understand the impact that this has on the social licence to operate of mining companies in this state.

The precedent set by Mod 3 is a serious risk to any community or industry in NSW that requires certainty. The “approval creep” implicit in both Mod 3 and Mod 4 are a clarion warning to every community and industry in NSW that “strict” planning conditions are anything but strict, particularly when questionable projects are approved to politically connected proponents.

### **4. Gaming the System - No Data**

It is the concern of the MCCC that the proponent provides information where it supports its case to decision makers in private and makes a strategic assessment whether to keep that information from the public and away from peer review. This is another indicator of regulatory capture.

The Mod 4 EA presented no data to substantiate the proponents claims of strong environmental performance. Indeed despite collecting noise data since the project began construction, there are no real time data sets available from the unattended noise monitors in the Mod 4 EA or on the proponents website.

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12 NSW Department of Planning, NSW Mining, Health, Safety, Environment and Community, August 2015  
[http://www.nswmining.com.au/NSWMining/media/NSW-Mining/Events/2015%20HSEC%20Conference/Speaker%20Presentations/Tues\\_Session1\\_Oliver-Holm.pdf](http://www.nswmining.com.au/NSWMining/media/NSW-Mining/Events/2015%20HSEC%20Conference/Speaker%20Presentations/Tues_Session1_Oliver-Holm.pdf)



The tendency by the proponent has been to do the absolute minimum reporting as required by the project approval and to use language that seeks to deny or downplay any exceedances. This tendency extends to noise monitoring.

The secrecy around noise monitoring data means that the community and the consent authority must take the companies assertions of “strong compliance” on trust.

Given the project history and as evidenced by the current level of environmental compliance risk of the proponent, trust is in short supply. It is incumbent on the decision maker to require full transparency and to carry out due diligence on the proponents claims.

The community would be particularly interested in the noise trends, before, during and after visits by the EPA, Planning Department compliance staff and the mandatory noise audit officers from EMM. For example, the community is highly suspicious of sudden outbreaks of silence around the time of the mandatory noise audit which gave contradictory findings to the lived experience on the ground.

This suspicion that the mining company is gaming the system is well founded as community members report that noise levels at the mine are regularly an order of magnitude higher on weekends, particularly Saturday morning, when it is less likely EPA and other compliance staff are monitoring.

## **5. Changes to Noise Monitoring/Acquisition Rights**

The proponent has provided no assessment of what the proposed changes to section 12a would mean for the effectiveness of the rest of the existing approval and for parties who have rights under the existing approval.

The MCCC has already identified the impact the proposed changes to section 12a contained in Mod 4 would have on the entire communities right for environmental noise performance to improve over time. However other directly affected persons who have rights under the approval may also be impacted.

The MCCC notes that variations to sound power levels may lead to changes in the 35 dBa contour, particularly to the north and north west of the project. This may require unattended noise monitoring at additional locations should this be the case.

The proponent disclosed in the Mod 4 EA that new modelling by Global Acoustics was commissioned and provides assertions that predicted noise levels do not exceed at privately owned residences identified in Schedule 3, Condition 7. The MCCC understands that this non peer reviewed modelling has been shown to the Department and the EPA.

Again we have only the proponents assertions in the Mod 4 EA that the noise levels will not exceed 35 dBa at privately owned residences identified in Schedule 3 Condition 7, and we have no information whether the 35 dBa contour has moved out and that more families residences (which are unidentified by Condition 7) are inside the noise impacted zone. Likewise we have no information if the 40 dBa contour has moved out and whether there are landholders with more than 25% of their properties inside the noise impacted zone.

Evidence from the Maules Creek Community Pilot Noise Study showed that the actual 35dBa noise contour was several kilometres beyond the originally modelled contour and it is quite possible new residents and land is inside the noise affected zone.

The MCCC think that it is incumbent on the proponent to provide all the data and information that it has at its disposal, including the new modelling developed by Global Acoustics for peer review.

However given the degree of regulatory capture and the implications for persons with existing acquisition rights, this new modelling should be made available.

The PAC provided a detailed discussion in relation to the acquisition rights of impacted families in its Maules Creek coal mine Determination Report in 2012. It said:

*“The Department has also acknowledged informally that the differential between the real background level and the acquisition criterion will have significant impacts on rural residences and that complaint patterns in mining precincts appear to bear this out.*

***The Commission remains concerned at the Department’s approach to noise impacts at rural residences.”***

## Discussion – Policy Gaps

### 1. Noise Management Plan – Objectives

The Noise Management Plan (NMP) has failed if the company is seeking changes to conditions of approval such as the proposed changes in Mod 4, which are being carried in the approval of every other mine in the area. This mine is no different and should be treated consistently with the others.

The NMP stated objectives do not even reference as an objective “reasonable and feasible” improvement of environmental performance of the project or the communities and DoPE Compliance Sections expectations that noise levels should improve<sup>13</sup>.

IE. *“The objectives of this management plan are to:*

- *ensure that construction noise, operational noise and vibration from MCC are minimised;*
- *maintain compliance with conditions of the development approval, environmental protection licence and legislation relating to noise;*
- *provide a protocol for monitoring and evaluation of noise impacts on surrounding private residences and sensitive receivers;*
- *manage project specific and cumulative noise impacts associated with the MCC mining operations; and*
- *communicate with the local community and regulators regarding MCC activities.*

*All of the noise related approval requirements are addressed in this document, as detailed in Section 2.0.”*

This fundamental omission could be responsible for the confusion that has led to the lodgement of Mod 4.

The MCCC suggests that the coal mine operator adopt the following text as an additional objective to help give focus to improving the mines environmental noise performance. IE.

<sup>13</sup> Ibid

- **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**

## **2. Regional Strategies / Community Consultation Committees**

By incorporating a system of management plans and regional strategies in approval 10\_0138, the government has setup a sense of entitlement and expectation in this proponent that it can continuously campaign to remove, reduce and modify approval conditions that it doesn't like or can't meet.

This is not the expectation of the local community.

The expectation of the community was set by Gabrielle Kibble when the first Review PAC report into a State Significant Development (Boggabri Coal) in the area was prepared;

*“.. the Commission recommends that a number of regional strategies need to be prepared. This regional strategy framework approach is particularly recommended to deal with biodiversity and air quality issues, but also has relevance for noise (including rail noise), water, the form of the post mining landscape and the longer term prospects for employment and sustainable agriculture. Preparation of these strategies should not delay the decisions on these mining applications, but they are considered to be crucial for the management of cumulative impacts from the mines.*

*The Commission considers that strong community engagement will be of paramount importance to ensuring that both mining and agricultural land uses can coexist and prosper in the region. In this regard, the Commission has recommended that the community needs to be involved in the development of regional strategies for mining. The establishment of strong Community Consultative Committees and transparent monitoring and reporting of each mine's operational performance will also be critical to ensuring that viable communities can prosper along side the mines.”*

The original intention of the Regional Strategies, Flexible Management Plans and “strong community engagement” has been turned on its head.

Flexible Management Plans such as the Noise Management Plan offer no opportunity for the community to trigger reviews of the plans, have input to draft changes to the plan, have early access to drafts to provide feedback or to obtain access to expert knowledge for peer review prior to acceptance of the plan by the Department.

For example the current moves to water down the inversion layer conditions before the Department of Planning have not been disclosed to the community in the CCC. Proposals to change inversion layer conditions should have been explained to the CCC as it will have a material impact on the lives of the people at Maules Creek.

This means the flexibility is all one way – for the proponent. If all stakeholders had a role in improving environmental performance, forums such as the CCC would become less confrontational and provide stronger outcomes.

### **3. Merit Appeal Rights**

The removal of merit appeal rights for the Maules Creek coal project was at the sole discretion of the Minister for Planning.

The countless hours spent by the community and government departments exposing, documenting, managing and regulating systemic noise exceedences - culminating in this attempt by the company to shirk its noise conditions could have been circumvented if merits appeal had not been extinguished.

Early evidence identified noise problems and this evidence should have been considered by a court. Natural Justice has been denied and this Mod 4 seeks to perpetuate that.

Families in Maules Creek have become the collateral damage of the decision to build the mine and approval creep or mine expansion puts the viability of the community is at risk.

### **4. Final Voids**

Like it or not, coal mining, particularly for thermal coal is in terminal decline.

Worlds best practice is to close mine voids. Indeed the US has been enforcing the closure of mine voids for more than two decades. But this is not the case in NSW due to the absence of a mine void policy.

It is quite possible that the operators of the Maules Creek and Tarrawonga coal mines who have approval to leave a void, will operate their mines to the point where they are no longer economically viable. It is possible that each mine will be placed into a care and maintenance mode in a similar fashion to the "Sunnyside" mine before relinquishing them to the state.

Now is the time to develop a void closure policy and to plan for the closure of the Maules Creek and Tarrawonga mine voids, and signal to the operators the intention of the government to adopt worlds best practice and close the voids while the companies still have a positive cash flow.

## **Conclusion**

The proponent assertions that it has a "strong record of compliance" with its noise conditions on page 6 of their Mod 4 EA is ridiculous and patently wrong.

The Mod 4 EA document provided by the proponent is designed to deceive the Department and the community as it does not mention the attended noise monitoring undertaken by the community that uncovered systemic breaches over the last few years. Breaches that led to an unprecedented mandatory noise audit.

The proponent makes no mention of the countless unpaid hours the community has spent, monitoring, reporting and meeting with the CCC, EPA and other officials due to their noise exceedences. No apology to community members for the disruption to sleep patterns, stress levels

or impacts to property values. No recognition of the burden that their failure and their lodgement of this Mod 4 has had on regulators.

Mod 4 is an attempt by the proponent to airbrush the record of systemic noise failure. It is a warning to every community in NSW that “strict” Planning Conditions are a complete fabrication designed to give plausible deniability when questionable projects are approved to politically connected proponents.

Even now, the Department of Planning, by accepting this proposal to water down noise provisions is denying the Maules Creek Community natural justice. Instead of exhibiting this Mod 4 EA, the Department should be permanently stationing compliance personnel on the mine site to enforce the original “strict” conditions.

## Other Recommendations

### 1. Noise Monitoring improvements

1. Mandatory Noise Auditors, EPA Inspectors, Department of Planning Compliance Staff to refrain from notifying the proponent or their security contractors when investigating noise levels in the field
2. Mandatory Noise Auditors, EPA Inspectors, Department of Planning Compliance Staff advise to the CCC after attended noise monitoring is complete and report their findings
3. The proponent to provide historic and real time unattended noise data-sets on its website with weather condition data-sets that were prevailing at the time
4. The proponent to provide funds for independent community noise monitoring to allow the community to do spot checks instead of having security roaming the district
5. The proponent to replace any equipment that needs “calibration”
6. The proponent adopt the below text as an additional objective to its NMP to help give focus to improving the mines environmental noise performance. IE.
  - *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*

# Appendix 1 - Department of Planning – Update on Assessment Reforms

## Oliver Holm

Executive Director Resource Assessments and Compliance | NSW Department of Planning and Environment



## What is 'compliance'?

- We ensure that development is carried out in accordance with the conditions of approval or consent and supporting documentation
- Supporting documents include:
  - ✓ Environmental Assessments or Impact Statements
  - ✓ Statement of commitments
  - ✓ Management plans
- ***Accepting the benefit of the approval with the responsibility of the conditions***





## What do we expect of industry?

- Compliance with:
  - ✓ conditions of consent
  - ✓ Environmental Impact Statements
  - ✓ approved Management Plans
  - ✓ statements of commitment
  - ✓ corrective actions resulting from audits, annual reports, inspections and breaches
- Genuine engagement with the community and other stakeholders
- Openness: be open with us about any issues or problems – contact DPE sooner rather than later

• ***Achieve compliance and strive for environmental improvement***

NSW MINING HEALTH, SAFETY, ENVIRONMENT & COMMUNITY



## What can industry and the community expect from us?

- **Industry**
  - Consistent risk-based approach
  - Fairness
  - Transparency
  - Professionalism
  - Coordinated approach with other agencies
- **Community**
  - Enforce conditions of consent
  - Follow up and respond to complaints
  - Transparency
  - Professionalism

NSW MINING HEALTH, SAFETY, ENVIRONMENT & COMMUNITY