

# **Environmental History of Wollongong Coal vis a vis Russell Vale (EPBC Ref: 2020/8702)**

February 2021

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# Introduction

This document is submitted in relation to Wollongong Coal's 'environmental history' assessment for the purposes of the EPBC Act.

Wollongong Coal owns two coal mines in the Illawarra, NSW at Russell Vale and Wongawilli. On 8 December 2020 Wollongong Coal received [approval from the NSW IPC](#) to extract up to 3.7-million tonnes of coal over five years using bord-and-pillar mining at the Russell Vale Underground Expansion Project. Wollongong Coal is also [currently seeking approval](#) to extend the life of its Wongawilli mine until 31 December 2025 (approval for this mine lapsed on 31 December 2020).<sup>1</sup> Wollongong Coal has been majority owned by Jindal Steel and Power since late 2013.

Lock the Gate Alliance and Illawarra Residents for Responsible Mining (IRRM) have written this submission to assist the Department and the Minister to assess Wollongong Coal's 'environmental history' for the purpose of making a decision about EPBC Ref: 2020/8702 under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). In particular we would like to advise on Wollongong Coal's non-compliance with specific legislation, a trust deficit on part of the Illawarra community, and breaches of planning conditions and community expectations.

Under subsection 136(4) of the EPBC Act, the Minister may have regard to a person's environmental history when considering whether to grant an approval to that person for the taking of an action and/or attach conditions to that approval.

## Wollongong Coal being probed on whether it is 'fit and proper' a first, say Environmental Defenders Office, Department of Industry

Ben Langford  
2 Sep 2016, 5 p.m.



ILLAWARRA  
**MERCURY**



Investigation: Environmental Defenders Office lawyer Sue Higginson says the Wollongong Coal probe by the Resources Regulator could break new ground in NSW.

<sup>1</sup> Wongawilli Colliery, <https://emm.mysocialpinpoint.com/colliery>

# Summary

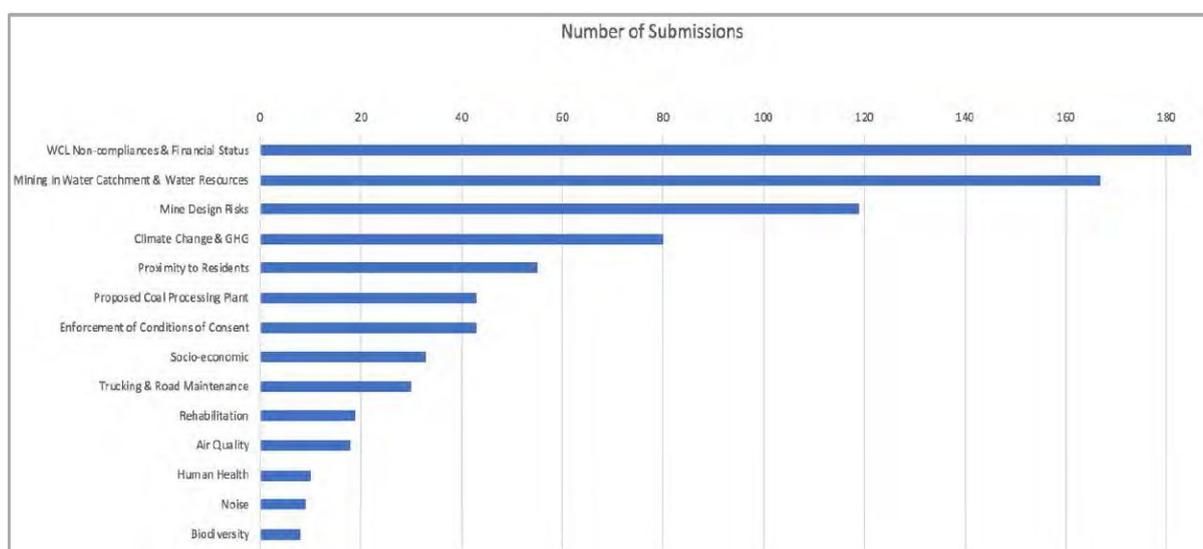
The following advice concludes that upon the whole of the material with which this advice is based, there is a prima facie case that Wollongong Coal's conduct, as a miner of coal in the Illawarra NSW, and the holder and applicant of relevant authorisations under NSW and federal law, is of sufficient significance and relevance to enable the decision maker to come to the reasonable conclusion that Wollongong Coal is not a *suitable person to be granted an approval, having regard to their history in relation to environmental matters* under the EPBC Act. In summary, Wollongong Coal does not have a satisfactory record of responsible environmental management and compliance with environmental laws as required by regulation 5.03A(1)(e) of the EPBC Regulations.

The whole of the material evidences substantial non-compliant conduct on part of Wollongong Coal ranging back to 2016, which is significant in substance and presents as being on an increasing trajectory rather than one of improvement. Further, that the integrity of Wollongong Coal suffers by way of a lack of trust from the community within which it operates, as described by a motion passed by Wollongong City Council in 2020 (see pages 8 and 9 of this advice for an overview of Council's position and Appendix 3 for more detail).

The NSW DPIE's final assessment report for the Russell Vale Expansion found that during the EIS public consultation, comments asserting that Wollongong Coal is not a fit and proper operator were the most commonly raised concerns about this development:

***The key issues raised in public submissions objecting to the project are summarised in Figure 7 below. The primary concerns related to:***

- *whether WCL is a fit and proper operator, including the history of non-compliances and concerns about the financial status of the company;*
- *mining in a water catchment area and impacts to water resources; and*
- *climate change and greenhouse gases.<sup>2</sup>*



**Figure 7** | Issues raised in community and special interest group submissions objecting to the project

<sup>2</sup> Russell Vale Revised Underground Expansion Project (MP09\_0013) | Secretary's Final Assessment Report, Sept 2020, pg 26

The NSW Independent Planning Commissions acknowledged community concerns on this issue in their Statement of Reasons for approving the Russell Vale Expansion:

*The Commission received public submissions regarding the Applicants regulatory compliance history and suggesting that the Applicant was not a fit and proper person in respect of the Project. The Commission notes that there is no fit and proper person test in respect of development consents and that matters such as the identity of an applicant or past planning law breaches have been found to be irrelevant considerations for consent authorities such as the Commission. The planning law is concerned with land use, not the user. The Commission also acknowledges that the EP&A ACT contains open standing provisions regarding the enforcement of that Act such that any person may take proceedings seeking to remedy or restrain a breach.<sup>3</sup>*

Whether Wollongong Coal is a suitable person, requires the decision maker to form such an opinion themselves. In NSW, the Independent NSW Resources Regulator is responsible for investigating any such claim that a miner is not a fit and proper person as the holder of mining rights to which the test applies. This submission encourages the Department of Agriculture, Water and the Environment to seek independent advice from the NSW Resources Regulator on this issue, as they have been examining the conduct of this company over many years.

There are two reasons why history in relation to environmental matters under the EPBC Act is particularly important in the case of Russell Vale: firstly, the proposed mining will take place around and up to the shores of the Cataract Reservoir in the Schedule 1 Special Areas of Sydney Water Catchment, a water supply upon which 5.5 million people of Greater Sydney rely; and secondly, Russell Vale is one of the closest collieries to a residential area anywhere in Australia.

As a company with a very poor record of compliance and environmental management, Russell Vale has a profoundly negative impact on the local community. Particulate and noise pollution is an ongoing issue. As Mr Michael McCarthy, a paramedic who lives close to the mine with his wife and two young children said at the Russell Vale IPC hearing, “*the damage to the environment and people’s lives is permanent.... it’s sad and it’s disappointing and it’s scary and it’s going to affect us, ..personally, every single day.*”<sup>4</sup> Furthermore, the miner’s failure to carry out required flood mitigation works on Bellambi Gully Creek put at risk more than wetlands and wildlife; water-borne coal flooding down from the colliery was a factor contributing to the devastation of Wollongong’s 1998 floods, which resulted in widespread destruction of property<sup>5</sup>.

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<sup>3</sup> NSW Independent Planning Commission, SoR, Russell Vale Expansion project, pg 16

<sup>4</sup> Russell Vale Underground Expansion Project IPC Public Hearing, Day 2 Transcript of Proceedings, p.3  
<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/transcripts-and-material/2020/russell-vale-uep/201020-public-hearing-transcript-day-2.pdf>

<sup>5</sup> The August 1998 Wollongong Storm, Steve Cliffe, Rescue Training Officer, Wollongong City SES Unit, John Young, Training Officer, NSW SES State Headquarters.  
<https://wollongong.ses.nsw.gov.au/aug98-storm.html>

# Proponent's Declaration to Department of AWE

At Section 6 - 'Environmental record of the person proposing to take the action' of the EPBC Act referral for '2020/8702 - Russell Vale Colliery Revised Underground Expansion Project', WCL provided the information below.

Prima facie, it appears that Wollongong Coal have provided false or misleading information. Under [SECT 489 of the EPBC Act](#) it is an offence to provide false or misleading information to obtain approval. On 27/07/20, WCL's representative claimed that the company had never been the subject of "any past or present proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources".<sup>6</sup> In their most recent PER however (December 2020), WCL confess to a catalogue of prosecutions and proceedings against them.<sup>7</sup>

In question 6.1 below Wollongong Coal failed to provide any information about their *record* of environmental management, stating instead that they believe they currently have "management structures in place to ensure environmental compliance".

## **6.1 Does the person taking the action have a satisfactory record of responsible environmental management? Explain in further detail**

WCL advise: "WCL is a public listed company on the ASX governed by a Board of Directors. "WCL led by an experienced CEO that is supported by a Senior management committee and has management structures in place to ensure environmental compliance, including a monthly safety, health and environment compliance meeting and review."

## **6.2 Provide details of any past or present proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against either (a) the person proposing to take the action or, (b) if a permit has been applied for in relation to the action – the person making the application.**

WCL advise: Nil

Furthermore, in the Draft Public Environment Report, Russell Vale Colliery Revised Underground Expansion Project (EPBC 2020/8702) FINAL December 2020, the proponent has included a Table entitled "Wollongong Coal NSW Compliance Matters" at Appendix O that does not fully represent the compliance history of Wollongong Coal Ltd.

The following matters are *missing* from the Table:

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<sup>6</sup> EPBC Act Referral, 2020/8702 - Russell Vale Colliery Revised Underground Expansion Project, <http://epbcnotices.environment.gov.au/entity/annotation/4655e290-03d6-ea11-a87e-005056842ad1/a71d58ad-4cba-48b6-8da-b-f3091fc31cd5?t=1608271622383>

<sup>7</sup> Russell Vale Revised Underground Expansion Project - Public Environment Report EPBC 2020/8702, <https://wollongongcoal.com.au/approvals-r/>

- [5 penalty notices](#) issued by Resources Regulator for failure to pay rents and levies related to Russell Vale mine, October 2016
- [2 penalty notices](#) issued by Resources Regulator for failure to pay rents and levies related to Wongawilli mine, October 2016
- [Investigation by NSW Resources Regulator](#) into whether the Company is fit and proper to hold mining licenses, May 2017 and still ongoing
- [Investigation into “catastrophic failure”](#) of diesel engine at Wongawilli and the lack of appropriate maintenance, testing and inspection that led to the failure, November 2017
- [Prohibition notice issued by Resources Regulator](#) for Wongawilli due to unsafe working conditions, April 2018
- [Resource Regulator issues stop work order](#) for Wongawilli over serious safety concerns, March 2019, and [launches investigation](#), April 2019
- [ASIC placed restrictions on Wollongong Coal](#) over concern regarding overvaluation, March 2019
- [Resources Regulator commences investigation](#) over whether Wollongong Coal Ltd has the financial capacity to comply with obligations under Mining Act, April 2019
- [Criminal charges brought against Naveen Jindal and four other officials of Jindal Steel and Power Ltd \(JSPL\)](#) in the Indian Courts. JSPL is the parent company of Wollongong Coal Ltd.

The following matters are ***incorrectly represented***:

- The Compliance matters table states that the July 2020 fine for failing to comply with a Development Control Order was \$3,000, when in fact [it was twice that amount](#).

## Wollongong Coal’s conduct

### A summary of non-compliance

This report contains a schedule of non-compliance conduct pertaining to Wollongong Coal’s activities. The schedule is provided at the end of this advice at Appendix 1. The schedule of non-compliance relates to the activities and conduct of Wollongong Coal at two of its coal mining developments in the Illawarra, NSW, namely, Russell Vale and Wongawilli.

In summary the schedule of non-compliance provides that Wollongong Coal has been issued with at least 18 different penalty notices, fined a total of \$95,750 and has been taken to court at least once by the NSW EPA and once by the Department of Planning and Environment. In addition, the NSW Department of Industry and Investment (DII) has conducted an investigation for the purposes of section 380A of the Mining Act 1992 to determine if Wollongong Coal is fit and proper to hold mining licenses. WCL has been the subject of multiple investigations, issued with Development Control Orders, Prohibition Notices, Enforceable Undertakings, stop work orders and has been found in breach of specific, relevant legislation on multiple occasions.<sup>8</sup> The company has also had a conviction

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<sup>8</sup> This includes conditions of project approvals which if breached constitutes a breach of the relevant Act see s9.44 Environmental Planning and Assessment Act 1979; and conditions of an Environment Protection Licence which if breached constitutes a breach of the relevant Act see s64 Protection of the Environment Operations Act 1997

recorded in the Downing Centre Local Court. The non-compliance relates to the requirements imposed upon mining operators to protect the community, the environment and mine workers. These include:

- a. failure to maintain and operate pollution control equipment leading to pollution of Bellambi Gully
- b. illegal storage of waste
- c. repeat breaches of mine procedures leading to shut down of the Wongawilli mine over serious safety issues in accordance with section 51 of the Work Health and Safety (Mines and Petroleum Sites) Act 2013
- d. failure to pay rents and levies
- e. failure to undertake works in accordance with the conditions of approval
- f. failure to hold community consultative committee meetings
- g. failure to comply with a Development Control Order (DCO) issued by the NSW Planning Minister at the Russell Vale Coal Mine.

Not only does Wollongong Coal have a record of serial non-compliance, some of the breaches have dragged on for years. For example, Wollongong Coal was first penalised in October 2016 for failing to carry out the Bellambi Gully Creek flood mitigation works, which are intended to protect businesses, residents and ecosystems downstream of the colliery in the event of excessive rainfall. They were again penalised in July 2020. The required works have *still* not been completed.

### **Significant concerns have been formally raised by Wollongong City Council**

Relevantly, Wollongong Coal currently has an application before the Commonwealth Government seeking approval for the Russell Vale Expansion Project. Wollongong City Council objects to Wollongong Coal expanding its coal mine in its municipality. A local government authority is a significant stakeholder in matters such as mining in its municipality as it is a body with expertise in planning, environment, social and economic matters, is bound by a code of conduct and it is representative of its community. On 27 October 2020, Wollongong City Council wrote to the NSW Independent Planning Commission to formally object to the Russell Vale Expansion Project due in part to Council's assessment that the company has a "poor track record" on compliance:

*Council at its Ordinary Meeting of 26 October 2020 resolved to write to the Independent Planning Commission to object to the Russell Vale Underground Expansion Project on the basis of community concerns of increased heavy vehicle traffic, dust, noise, threat to the drinking water catchment, Aboriginal heritage sites and greenhouse gas emissions, as well as Wollongong Coal's poor track record on workplace safety, debt servicing and operating compliance.<sup>9</sup>*

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<sup>9</sup> Greg Doyle, General Manager, Wollongong City Council, 26 October 2020, letter to the NSW IPC, [https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/08/russell-vale-underground-extension-project/public-submissions/201027-greg-doyle\\_wollongong-city-council.pdf](https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/08/russell-vale-underground-extension-project/public-submissions/201027-greg-doyle_wollongong-city-council.pdf)

The letter was an outcome from a unanimous motion carried at a general Council meeting on 26 October 2020<sup>10</sup> which resolved to:

1. *Write to the Independent Planning Commission to object to the Russell Vale Underground Expansion Project on the basis of community concerns of increased heavy vehicle traffic, dust, noise, threat to the drinking water catchment, Aboriginal heritage sites and greenhouse gas emissions, as well as Wollongong Coal's poor track record on workplace safety, debt servicing and operating compliance. Council also requests that if the project is approved then the conditions should require:*
  - a. *the completion of infrastructure at Russell Vale Colliery to protect residents from particulate and noise pollution before any coal is extracted*
  - b. *the fulfilment of outstanding consent conditions of the 1989 and 1990 development approvals for Russell Vale mine operators, including the payment of security bond to Wollongong Council, the remediation of the Russell Vale Emplacement Area to an agreed final landform and the dedication of the parcel of golf course land to Council.*
  
2. *Write to the Planning Minister to seek reform of the Environmental Planning and Assessment Act to enable a Fit and Proper test of a proponent to be encompassed in the assessment process for state significant developments.*

It should be noted that Council's objection was the first and only objection it has ever made to a coal mining expansion in the Local Government Area, despite a long history of mining in the area.

### **WCL's track record, 'environmental history' and a loss of community confidence**

The right to mine coal in NSW is a 'special privilege' which our community expects both state and federal governments to regulate access to, in order to prevent harm to the community, other industries and the environment. An EPBC Act approval should only be granted to companies that can and will respect this 'special privilege'.

The proponent, Wollongong Coal, has a history of non-compliance when it comes to the conditions of consent. Wollongong Coal has been fined and issued with orders by multiple agencies, regulators and courts for offences including polluting Bellambi Gully Creek, "poor maintenance and operation" of infrastructure, failing to publicly disclose water monitoring data, failing to hold community consultative meetings and for stockpiling 200,000 tonnes of waste coal on Council land in breach of its development consent at Russell Vale. On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of Wollongong Coal to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. In March 2018, the NSW EPA stated that "in recent years"

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<sup>10</sup> Wollongong City Council, Minutes, 26 October 2020, ITEM 22 - NOTICE OF MOTION - COUNCILLOR CATH BLAKEY - MINE EXPANSION IN THE CATARACT DRINKING WATER CATCHMENT, [https://wollongong.nsw.gov.au/\\_data/assets/pdf\\_file/0013/119011/Council-Minutes-26-October-2020.pdf](https://wollongong.nsw.gov.au/_data/assets/pdf_file/0013/119011/Council-Minutes-26-October-2020.pdf)

Wollongong Coal “has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site”.

In March 2018 the NSW Resources Regulator shut down the proponent’s Wongawilli operation due to a serious roof collapse leading to a determination that workplace safety issues were too serious for underground work to continue. The proponent also has a poor reputation with staff and Councillors at Wollongong City Council (see Appendix 3 below), relating to land dedication of the Russell Vale Golf Course, security bonds, remediation of a coal emplacement area and creek realignment.

Wollongong Coal currently has debts which exceed its current assets by more than a billion dollars (AUD\$1,089,243,000). Current auditors UHY Haines Norton noted in March 2020 that “a material uncertainty exists that may cast significant doubt on the Group’s ability to continue as a going concern and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business.” In August 2020 Wollongong Coal delisted from the Australian Stock Exchange. Wollongong Coal was first suspended from trade on the Australian Stock Exchange in 2017 when it failed to lodge its half-yearly report. Wollongong Coal estimates rehabilitation of its Russell Vale mine would cost \$215 million. The NSW Government holds a bond of just \$12.4 million for the mine site. Since 2013 Wollongong Coal has paid \$0 corporate tax.

In India, the courts have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal. In July 2019, Naveen Jindal and four other JSPL officials were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. All have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd. Then Minister for Resources, the Honourable Don Harwin, described JSPL’s problems in India in response to a question in the NSW Parliament on 1 June 2017: “On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India’s Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage.”

The NSW Resources Regulator commenced investigation in mid-2016 into whether Wollongong Coal is a “fit and proper person” to hold a mining licence. The NSW Resources Regulator - under the NSW Mining Act - may choose to escalate action against Wollongong Coal in the event that convictions are recorded in India against significant individuals within JSPL.

### **Financial capacity to meet obligations**

Since the current majority-owner JSPL took over the company in 2013, Wollongong Coal has failed to make a profit and has not paid any corporate tax. The company’s auditors routinely warn that the company may not continue as a ‘going concern’. In a June 2018 enforceable undertaking between the NSW DPE and Wollongong Coal it was revealed that the NSW DPE Secretary was “considering whether to suspend operations at WCL and WCPL given

its concerns about the financial viability of WCL and WCPL.”<sup>11</sup> The financial position of Wollongong Coal does not appear to have improved since that time.

***Wollongong Coal has lost money every year since 2013 when JSPL acquired a majority stake in the company.***

**Table 1: Wollongong Coal - a loss-making business**

<b>Wollongong Coal has never made a profit since JSPL acquired a majority stake in 2013</b>		
<b>Financial Year</b>	<b>Profit / loss</b>	<b>Company tax paid</b>
2014	(\$91,797,000)	-
2015	(\$195,567,000)	-
2016	(\$181,934,000)	-
2017	(\$5,511,000)	-
2018	(\$73,883,000)	-
2019	(\$379,230,600)	-
2020	(\$111,990,000)	-
<b>Total losses over last 7 years</b>	<b>(\$1,039,912,600)</b>	
<b>Total company tax paid over last 7 years</b>		<b>\$0.00</b>

Source: Annual Report data 2014 - 2020

***Auditors routinely warn that the company may not continue as a ‘going concern’***

For every year since JSPL acquired a majority stake in the Wollongong Coal, auditors have warned that the company may not continue as a ‘going concern’. In March 2020 liabilities exceed current assets by \$1,089,243,000.

In its half-year financial report covering the period until September 2014, WCL auditors Ernst and Young stated: “there is significant uncertainty whether the company will continue as a going concern 12 months from the date of this report”.<sup>12</sup> The report also stated Wollongong Coal’s net current liabilities of \$493 million far exceeded its market capitalisation of about \$48 million (as at 8 April, 2015).<sup>13</sup>

In 2020, the financial situation for WCL has significantly deteriorated. Current auditors UHY Haines Norton noted in March 2020 that WCL’s “current liabilities exceeded its current assets by \$1,089,243,000”. UHY Haines Norton’s assessment is that “a material uncertainty exists that may cast significant doubt on the Group’s ability to continue as a going concern

<sup>11</sup>

[https://www.resourcesregulator.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018\\_Redacted.pdf](https://www.resourcesregulator.nsw.gov.au/__data/assets/pdf_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018_Redacted.pdf)

<sup>12</sup> Reference #2 - Risky Business

<sup>13</sup> Reference #3 - Risky Business

and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business.”<sup>14</sup>

### **Ongoing debt problem**

WCL advised the ASX in their March 2020 Annual Report that net current liabilities were \$1,089,243,000. With neither of their coal mines operational at this stage, the company has advised that “the expected principal repayment due on borrowings for the year ending 31 March 2021 is \$64,232,215”.<sup>15</sup>

### **NSW Planning Secretary considered suspension of operations**

In a June 2018 enforceable undertaking between the NSW DPE and Wollongong Coal it was revealed that the Secretary was “considering whether to suspend operations at WCL and WCPL given its concerns about the financial viability of WCL and WCPL.”<sup>16</sup>

The joint undertaking proposes to:

- Conduct independent reviews of systems and financial capacity at both companies, including a report to the Regulator on the findings of the reviews
- Pay all 2018 fees and levies within one month of the acceptance of the undertaking
- Pay all fees and levies for 2019 to 2022, one year in advance
- Provide \$300,000 in bank guarantees to ensure future payments
- Pay two annual donations of \$5,000 to a local charity or community group until 1 January 2023
- Lease Wollongong Coal Limited property to Little School Preschool Inc for \$1 per annum, reduced from \$26,000 per annum, until 1 January 2023

### **Further evidence of financial distress**

In July 2020, Wollongong Coal advised that it would delist from the ASX sometime after 2.30pm on 18 September 2020. WCL notified the ASX of the following reasons why it applied to delist:

The key reasons for seeking removal from the official list are as follows:

- (a) WCL has been suspended from trading since december 2018;*
- (b) There has been virtually no liquidity in WCL shares on the ASX or otherwise for a considerable period*
- (c) WCL has been unable to use its listing on the ASX to raise fresh capital and to repair its balance sheet because of the low levels of liquidity and investor interest; and*
- (d) The listing compliance costs are a significant burden to WCL and continuing to incur them serves no useful purpose and is no longer justifiable with securityholders.*<sup>17</sup>

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<sup>14</sup> Wollongong Coal, Annual Report March 2020, pg 97

<sup>15</sup> Wollongong Coal, Annual Report March 2020, pg 1

<sup>16</sup>

[https://www.resourcesregulator.nsw.gov.au/\\_data/assets/pdf\\_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018\\_Redacted.pdf](https://www.resourcesregulator.nsw.gov.au/_data/assets/pdf_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018_Redacted.pdf)

<sup>17</sup> WCL, statement to the ASX, 10 July 2020, Announcement: Application for removal from the official list of ASX

## EPBC ‘environmental history’ test

Under [Section 136\(4\) of the EPBC Act](#), we understand the following applies regarding Wollongong Coal and their environmental history in relation to an application to expand their Russell Vale mine:

*(4) In deciding whether or not to approve the taking of an action by a person, and what conditions to attach to an approval, the Minister may consider whether the person is a suitable person to be granted an approval, having regard to:*

*(a) the person’s history in relation to environmental matters; and*

*(b) if the person is a body corporate—the history of its executive officers in relation to environmental matters; and*

*(c) if the person is a body corporate that is a subsidiary of another body or company (the parent body)—the history in relation to environmental matters of the parent body and its executive officers.*

The provisions of Chapter 4 of the EPBC Act that allow a person’s environmental history to be taken into account are expressed broadly. The provisions do not limit the information relevant to a person’s environmental history to the person’s past environmental criminal convictions or civil penalties awarded against them. Information relevant to the person’s environmental history is that which will indicate whether a person is likely to comply with the conditions of an approval.<sup>18</sup>

## Conclusion

For the reasons explained in this submission, Lock the Gate Alliance and Illawarra Residents for Responsible Mining Inc (IRRM) do not believe that Wollongong Coal has a satisfactory record of responsible environmental management and compliance with environmental laws. The performance of the company to date indicates that Wollongong Coal is unlikely to comply with conditions of an approval, should it be granted, therefore their application - EPBC Ref: 2020/8702 - should be refused.

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<sup>18</sup> Environment Protection And Biodiversity Conservation Act 1999 (Cth), Policy Statement, Consideration Of A Person’s Environmental History When Making Decisions Under The EPBC Act

# Appendices

## Appendix 1 – Schedule of Wollongong Coal’s Non-Compliance

Date	Action	Explanation	Mine	Outcome
Mar 2016	Development Control Order <sup>19</sup>	DPE finds WCL in breach of approval conditions and orders WCL to remove 174,000 tonnes of coal from the Russell Vale site. “The Order was issued because the mine has ceased operations and can no longer store coal at the site according to its approval conditions.”	Russell Vale	Order issued
Mar 2016	Penalty notice <sup>20</sup>	Division of Resources and Energy issues “penalty notice for Non-payment of revised assessed security deposit by the due date”		\$750 fine
Jul 2016	2 penalty notices <sup>21</sup>	NSW EPA fine Wollongong Coal \$30,000 after the Russell Vale coal mine discharged dirty water into Bellambi Gully in December 2015.	Russell Vale	\$30,000 fine
Oct 2016	5 penalty notices <sup>22</sup>	NSW Resources Regulator issues Penalty Infringement Notice x 5 x \$1,000 for ‘Failure to make payment - rents and levies’	Russell Vale	\$5,000 in fines

<sup>19</sup> NSW DPE, Compliance Report March 2016,

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/compliance-report-2016-03.pdf>

<sup>20</sup> This compliance failure is listed in the Table entitled “Wollongong Coal NSW Compliance Matters” at Appendix O the Draft Public Environment Report, Russell Vale Colliery Revised Underground Expansion Project (EPBC 2020/8702) FINAL December 2020

<sup>21</sup> Wollongong Coal issued \$30,000 fine for discharge into Bellambi Gully, 15 July 2016,

<https://www.epa.nsw.gov.au/news/media-releases/2016/epamedia16071501>

<sup>22</sup> NSW Resources Regulator, Monthly business activity report: October 2016, pg 17,

[https://www.resourcesregulator.nsw.gov.au/data/assets/pdf\\_file/0005/693689/rr-bar-october-2016.pdf](https://www.resourcesregulator.nsw.gov.au/data/assets/pdf_file/0005/693689/rr-bar-october-2016.pdf)

Oct 2016	2 penalty notices <sup>23</sup>	Wongawilli Coal Limited Penalty Infringement Notice x 2 x \$1,000 fines for 'Failure to make payment - rents and levies'	Wongawilli	\$2,000 in fines
Oct 2016	Penalty notice <sup>24</sup> <sup>25</sup>	NSW DPIE fine Wollongong Coal "for breaching conditions of their project approval". Compliance officers found that around 200,000 tonnes of coal and rock extracted from the underground mine was not removed from site as required. NSW DPIE issued a "\$3000 Penalty Notice to Wollongong Coal Limited (Wollongong Coal) for failing to remove material from site in accordance with the conditions of approval. Material extracted under the approval has been stored on the emplacement area, which was not authorised and was not in accordance with commitments under the environmental assessment."	Russell Vale	\$3,000 fine

<sup>23</sup> NSW Resources Regulator, Monthly business activity report: October 2016, pg 17,  
[https://www.resourcesregulator.nsw.gov.au/data/assets/pdf\\_file/0005/693689/rr-bar-october-2016.pdf](https://www.resourcesregulator.nsw.gov.au/data/assets/pdf_file/0005/693689/rr-bar-october-2016.pdf)

<sup>24</sup> NSW DPE media release, Friday, 23 December 2016  
Department issues two fines to Russell Vale Colliery,  
<https://www.planning.nsw.gov.au/-/media/Files/DPE/Media-Releases/2016/December/23122016-Department-issues-two-fines-to-Russell-Vale-Colliery.pdf>

<sup>25</sup> NSW DPE Compliance Report, Nov 2016,  
[https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/~/\\_media/03B7AFEDEFEE4438B293E92C23432E5E.ashx](https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/~/_media/03B7AFEDEFEE4438B293E92C23432E5E.ashx)

Oct 2016	Penalty notice <sup>26</sup> <sup>27</sup>	NSW DPIE issued a second \$3000 Penalty Notice to Wollongong Coal “for failing to undertake works in accordance with the conditions of approval. Wollongong Coal had failed to replace the underground pipe section of Bellambi Gully Creek with a suitably designed and engineered open channel constructed on the southern side of the coal stockpile area. The required channel will improve water quality and better manage stormwater flows across the site, reducing the likelihood of runoff from coal storage areas leaving site in the event that the capacity of the current drainage system is reached.”	Russell Vale	\$3,000 fine
Dec 2016	Development Control Order <sup>28</sup>	Development Control order was issued instructing Wollongong Coal to address the aforementioned failure to replace the underground pipe section of Bellambi Gully Creek.	Russell Vale	Development Control Order

<sup>26</sup> NSW DPE media release, Friday, 23 December 2016  
Department issues two fines to Russell Vale Colliery,  
<https://www.planning.nsw.gov.au/-/media/Files/DPE/Media-Releases/2016/December/23122016-Department-issues-two-fines-to-Russell-Vale-Colliery.pdf>

<sup>27</sup> NSW DPE Compliance Report, Nov 2016,  
[https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/~/\\_media/03B7AFEDEFEE4438B293E92C23432E5E.ashx](https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/~/_media/03B7AFEDEFEE4438B293E92C23432E5E.ashx)

<sup>28</sup> NSW DPE media release, Friday, 23 December 2016  
Department issues two fines to Russell Vale Colliery,  
<https://www.planning.nsw.gov.au/-/media/Files/DPE/Media-Releases/2016/December/23122016-Department-issues-two-fines-to-Russell-Vale-Colliery.pdf>

May 2017	Investigation <sup>29</sup>  WCL tell ASX they're under 'fit and proper' investigation	"The NSW Department of Industry and Investment (DII) is conducting an investigation for the purposes of section 380A of the Mining Act 1992 to determine if the Company is fit and proper to hold mining licenses. The Company considers the allegations to be completely baseless but is fully cooperating with the investigation."		The NSW Resources Regulator maintains an open brief on WCL and is particularly interested in the outcome of the criminal case pending against JSPL
Aug 2017	Formal warning <sup>30</sup>	"Failure to test the Pollution Incident Response Management Plan (PIRMP) for Wongawilli Colliery within the 2016.17 reporting period in line with the POEO Act 1997"	Wongawilli	Formal warning
Aug 2017	Named in Administrators report among "Directors Reasons for Failure" of Delta SBD Group <sup>31</sup>	Wollongong Coal mentioned first of "Directors' reasons for failure" in Delta SBD Group's Administrators report. Report cites the following factors in relation to Wollongong Coal "regularly disputing/rejecting claims made by SBD Services and unnecessarily delaying payments", the condition of the mine, equipment breakdowns, roof falls and withdrawal of a service agreement.	Wongawilli	Named in Administrator's report

<sup>29</sup> Wollongong Coal Limited, Annual Report, 31 March 2017, pg 5

<sup>30</sup> This compliance failure is listed in the Table entitled "Wollongong Coal NSW Compliance Matters" at Appendix O the Draft Public Environment Report, Russell Vale Colliery Revised Underground Expansion Project (EPBC 2020/8702) FINAL December 2020

<sup>31</sup> Grant Thornton Administrators' Section 439A Report, 10 August, 2017  
[https://www.grantthornton.com.au/globalassets/1.-member-firms/australian-website/creditors-documents/gtal\\_2017\\_delta-sbd-grou](https://www.grantthornton.com.au/globalassets/1.-member-firms/australian-website/creditors-documents/gtal_2017_delta-sbd-group---s439a-report-to-creditors---10-august-2017.pdf)

Sep 2017	3 penalty notices <sup>32</sup>	NSW EPA issued one fine of \$15,000 for causing water pollution and a second \$15,000 fine for poor maintenance and operation of the Bellambi Gully diversion pipe. A third fine of \$1,000 was issued for failing to publish water quality (turbidity) monitoring data in discharges from the premises to Bellambi Gully	Russell Vale	\$31,000 in fines
Nov 2017	Legal action in NSW Local Court <sup>33</sup>	On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of WCL and WCPL to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act.	Russell Vale and Wongawilli	Conviction recorded in the Downing Centre Local Court
Nov 2017	Investigation  Failure to maintain, test and inspect equipment led to “catastrophic failure” at Wongawilli	NSW Resources Regulator found that a “catastrophic failure” of a diesel engine at Wongawilli could have caused an explosion. “This is an event which in all likelihood could have been prevented – and demonstrates that catastrophic failures and significant risks that can eventuate when appropriate maintenance, testing and inspection is not carried out.” <sup>34</sup>	Wongawilli	Report and recommendations

<sup>32</sup> NSW EPA, EPA issues Wollongong Coal with fines totalling \$31,000, 06 September 2017, <https://www.epa.nsw.gov.au/news/media-releases/2017/epamedia17090601>

<sup>33</sup> Undertaking to the Secretary of the Department of Planning and Environment, WCL and WCPL, June 2018, [https://www.resourcesregulator.nsw.gov.au/\\_data/assets/pdf\\_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018\\_Redacted.pdf](https://www.resourcesregulator.nsw.gov.au/_data/assets/pdf_file/0011/817472/Tab-A-WCL-and-WCPL-signed-Enforceable-Undertaking-5-June-2018_Redacted.pdf)

<sup>34</sup> NSW Resources Regulator, CAUSAL INVESTIGATION Catastrophic engine failure in an underground coal mine, Nov 2017, [https://www.resourcesregulator.nsw.gov.au/\\_data/assets/pdf\\_file/0008/748151/Causal-investigation-Wongawilli-catastrophic-engine-failure.pdf](https://www.resourcesregulator.nsw.gov.au/_data/assets/pdf_file/0008/748151/Causal-investigation-Wongawilli-catastrophic-engine-failure.pdf)

Dec 2017	Penalty notice <sup>35</sup>	<p><b>Fined for failing to hold mandatory community consultative committee meetings</b></p> <p>In December 2017, WCL was fined \$15,000 by NSW DPE – the maximum penalty – after it failed to hold three required community consultative committee meetings.</p>	Wongawilli	\$15,000 fine
Mar 2018	NSW EPA objects Modification 4, Bellambi Creek Gully'. <sup>36</sup>	The EPA's submission on 'Preliminary Works Project Modification 4 Bellambi Creek Gully'. NSW EPA finds that "in recent years WCL has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site"	Russell Vale	NSW EPA find that WCL "cannot consistently manage and maintain pollution control equipment and plant"
April 2018	Prohibition Notice <sup>37</sup>  Resources Regulator prohibits mining until Wongawilli can be made safe for workers	<p>Multiple bolt failures at Wongawilli cause injury to worker.</p> <p>Inspectors attended the mine and identified concerns in relation to apparent failure of fibreglass bolts in multiple areas. This resulted in the immediate issuing of a notice prohibiting mining in the N3 Panel.</p>	Wongawilli	Prohibition notice
Jun 2018	NSW DPIE Enforceable undertaking	Enforceable undertaking required between the Department, WCL and WCPL, which included	Russell Vale and Wongawilli	Enforceable undertaking

<sup>35</sup> NSW DPE, Department fines local coal mines in Helensburgh and Wongawilli, 12 December 2017, <https://www.planning.nsw.gov.au/~media/Files/DPE/Media-Releases/2017/December/2017-12-12-department-fines-local-coal-mines-in-Helensburgh-and-Wongawilli.ashx>

<sup>36</sup> NSW EPA, letter to NSW DPE to object to WCL's 'Preliminary Works Project Modification 4 Bellambi Creek Gully, 28 March 2018, <https://majorprojects.accelo.com/public/1891e34218832970d1907597544c4ee3/Environment%20Protection%20Authority>

<sup>37</sup> Underground mining operations prohibited on the N3 panel at Wongawilli Colliery, 24 April 2018

<https://www.resourcesregulator.nsw.gov.au/news/2018/underground-mining-operations-prohibited-on-the-n3-panel-at-wongawilli-colliery>

		\$300,000 bank guarantee, \$147,000 charitable undertakings, \$24,000 legal costs, reviews of systems and financial capacity, an audit, staff training and payment of fees in advance.		
Jul 2018	NSW DPIE Development Control Order <sup>38</sup>	On 19 July 2018, the Department issued a Development Control Order to Wollongong Coal Limited to remove approximately 200,000 tonnes of coal material, extracted under the Project Approval 10_0046, and stored on the Russell Vale Emplacement Area in contravention of the approval. The terms of the Order contain a number of conditions and requires removal of all the material to a facility lawfully able to take the coal material by the 19 July 2019.	Russell Vale	Development Control Order
Mar 2019	NSW Resources Regulator issues stop work order <sup>39</sup>	Wongawilli mine shut down over serious safety issues in accordance with section 51 of the Work Health and Safety (Mines and Petroleum Sites) Act 2013.  The decision to issue the stop work order followed the Regulator issuing four separate prohibition notices on the mine's operator last month, in relation to significant safety issues identified at the site.	Wongawilli / WCL	Stop work order

<sup>38</sup> NSW DPIE, Inspections and Enforcements, Order issued to Wollongong Coal Limited 19 July 2018, <https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/Inspections-and-enforcements/July-2018-penalty-notices/Order-issued-to-Wollongong-Coal-Limited>

<sup>39</sup> Resources Regulator shuts down Wongawilli mine over serious safety issues, 19th March 2019, <https://www.resourcesregulator.nsw.gov.au/news/2019/resources-regulator-shuts-down-wongawilli-mine-over-serious-safety-issues>

Mar 2019	ASIC restriction over concern regarding overvaluation <sup>40</sup>	“ASIC was concerned that Wollongong Coal’s major assets relating to the Russell Vale and Wongawilli mines were reported at values in excess of their recoverable amounts in the company’s 31 March 2018 financial report, contrary to requirements of accounting standards.”	Russell Vale and Wongawilli	ASIC restricts Wollongong Coal from issuing any reduced-content prospectus
April 2019	NSW Resources Regulator investigation - <i>work health and safety</i>	WCL informed the ASX that the NSW Resources Regulator had commenced an investigation into whether WCL has complied with its duties under the Work Health and Safety Act 2011.  The investigation relates to matters that led to the issue of prohibition notices a stop work order following an inspection of Wongawilli Colliery on 13 March 2019.	Russell Vale and Wongawilli	NSW Resources Regulator Investigation
April 2019	NSW Resources Regulator investigation - <i>financial capacity to comply</i> <sup>41 42</sup>	<b>WCL announces that NSW Resources Regulator is enquiring into WCL’s financial capacity to comply.</b> In an announcement to the ASX, WCL revealed that the Resources Regulator had also “issued a notice under section 248B of the Mining Act 1992, seeking information and records in relation to Wollongong Coal’s financial capacity to comply with its	Russell Vale and Wongawilli	NSW Resources Investigation

<sup>40</sup> 19-068MR ASIC restricts Wollongong Coal from issuing any reduced-content prospectus | ASIC - Australian Securities and Investments Commission  
<https://asic.gov.au/about-asic/news-centre/find-a-media-release/2019-releases/19-068mr-asic-restricts-wollongong-coal-from-issuing-any-reduced-content-prospectus/>

<sup>41</sup> Wollongong Coal : DPE Investigation and Notices | MarketScreener  
<https://www.marketscreener.com/quote/stock/WOLLONGONG-COAL-LIMITED-16093222/news/Wollongong-Coal-DPE-Investigation-and-Notices-28349288/>

<sup>42</sup> Wollongong Coal, Annual Report to end 31 March 2019, pg 16

		obligations under the Mining Act”.		
Aug 2019	Penalty notice	Natural Resources Access Regulator (NRAR) issued a “penalty for notice re water taken illegally” from the Greater Metropolitan Region Groundwater. <sup>43</sup>	Russell Vale	Penalty notice
Jul 2020	Penalty notice <sup>44</sup>	On 23 July 2020, NSW DPIE issued a \$6,000 Penalty Notice to Wollongong Coal Limited (Wollongong Coal) for failing to comply with the Minister’s Development Control Order (DCO) at the Russell Vale Coal Mine. The DCO required Wollongong Coal to replace the underground pipe section of Bellambi Gully Creek with a suitably designed and engineered open channel constructed on the southern side of the coal stockpile area by 20 December 2019.	Russell Vale	\$6,000 fine
Jul 2020	Development Control Order <sup>45</sup>	Another Development Control Order was issued because Wollongong Coal had still not replaced the underground pipe section of Bellambi Gully Creek.	Russell Vale	Development Control Order

<sup>43</sup> The incident is listed in the NRAR Public Register as Item 4334.  
<https://www.industry.nsw.gov.au/natural-resources-access-regulator/reports-data/nrar-public-register>

<sup>44</sup> NSW DPIE, Penalty Notice and Development Control Order issued to Wollongong Coal Limited (MP10\_0046, Wollongong City Council LGA),  
<https://www.planning.nsw.gov.au/Assess-and-Regulate/About-compliance/Inspections-and-enforcements/July-2020-formal-enforcements/Penalty-Notice-and-Development-Control-Order-issued-to-Wollongong-Coal-Limited>

<sup>45</sup> ibid

## Appendix 2 – Schedule of parent company JSPL’s Non-Compliance

Date	Action	Explanation	Mine / Entity	Outcome
April 2012	National Green Tribunal intervention <sup>46</sup>	A major coal mine proposed by JSPL – among the biggest of its kind in Chhattisgarh – was opposed by local villagers. Starting in 2008, community organiser Ramesh Agrawal organised residents to voice their opposition and filed numerous petitions highlighting JSPL’s failure to hold mandatory public meetings and obtain environmental clearance for the project. In April 2012, the National Green Tribunal revoked the permits required for the mine to break ground, citing the various violations reported in Agrawal’s petitions.	JSPL	Revocation of approval for 4Mtpa coal mine
April 2012	Legal intervention by India’s Ministry for Environment and Forests <sup>47</sup>	JSPL was accused in May 2010, by Ramesh Agrawal, of starting work on a power plant without the requisite clearance mandated by India’s environmental legislation. In April 2012 the environmental regulator, the Ministry for Environment and Forests, acted on Agrawal’s complaint and suspended JSPL’s clearance.	JSPL	Ministry for Environment and Forests, suspend JSPL’s clearance
Jul 2019	Criminal charges <sup>48</sup>	Naveen Jindal and four other officials of his company - Jindal Steel and Power Limited (JSPL) -	JSPL	Authorities in India need to be contacted to provide an

<sup>46</sup> <https://www.goldmanprize.org/recipient/ramesh-agrawal/>

<sup>47</sup> KATE MCILWAIN, Illawarra Mercury, Jindal: inside story on new Gujarat owners, NOVEMBER 16 2013, <https://www.illawarramercury.com.au/story/1911804/jindal-inside-story-on-new-gujarat-owners/>

<sup>48</sup> The Economic Times, Coal scam: Delhi court frames charges against Naveen Jindal, others, 25 July, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/coal-scam-delhi-court-frames-charges-against-naveen-jindal-others/articleshow/70380113.cms>

		were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code		update on the current status of this prosecution.
21 Sept 2021	Investigation <sup>49</sup>	News reports reveal that three different Suspicious Activity Reports (SARs) have been filed by Deutsche Bank Trust Company Americas (DBTCA) regarding funds received and sent by Jindal Steel and Power Ltd (JSPL). The Indian Express reported that the SAR had been filed “because “negative information” was found regarding Naveen Jindal, chairman of JSPL, who was on trial on charges of criminal breach of trust and conspiracy in a case of inappropriate allocation of coal block in Jharkhand in 2008.”	JSPL	Suspicious Activity Reports filed

### Background - JSPL’s environmental history

The courts in India have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal.

Here’s how the Minister for Resources at the time - Don Harwin - described the situation on 1 June 2017 in response to a question in the NSW Parliament:

*“On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India’s Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage. The chief compliance officer of the NSW Resources Regulator approved a full review of Wollongong Coal’s fitness to hold an authority under section 380A of the Mining Act last year, and that review is ongoing.”*<sup>50</sup>

In July 2019 in India, newspapers reported that Naveen Jindal and four other officials of his company - Jindal Steel and Power Limited (JSPL) - were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. Naveen Jindal, the company’s former director Sushil Maroo, former deputy managing director Anand Goyal, CEO Vikrant Gujral and the company’s authorised signatory D N Abrol were charged. All

<sup>49</sup>

<https://indianexpress.com/article/express-exclusive/fincen-files-jindal-steel-overseas-funds-deutsche-bank-trust-company-6603938/>

<sup>50</sup> Legislative Council, Hansard, Thursday, 1 June 2017,

<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-73678/link/95>

have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd.<sup>51</sup>

Over the years there have been many reports about the conduct and or the environmental history of JSPL that should be considered by DAWE and the Minister when making a determination on the Russell Vale application - EPBC Ref: 2020/8702. In addition to the matters in Appendix 2 above, these include:

- Alleged human rights violations, environmental destruction and corruption in Mozambique at JSPL's Chirodzi open cut coal mine (this mine is owned by JSPL Mozambique Minerals Limitada, a subsidiary of Jindal Steel and Power).
- In September 2014, the Indian Supreme Court cancelled about 200 coal blocks that the central government had allocated between 1993 and 2010. The court said the allocations were "arbitrary, illegal and amounted to unfair distribution of national wealth." 11 of the coal blocks cancelled belonged to the Jindal group, 7 of which were owned by JSPL.<sup>52</sup>
- In June 2013, the Sydney Morning Herald reported that the chairman of JSPL and former "chairman of the Australia-India CEO Forum, steel magnate and parliamentarian Naveen Jindal" had been charged with "allegedly paying bribes to government officials in order to buy coal blocks at below-market price."<sup>53</sup> According to the SMH:
  - Mr Jindal, was charged with "criminal misconduct, conspiracy and cheating"
  - "As part of the broader "Coalgate" scandal ... police have alleged that former junior coal minister Dasari Narayan Rao was paid kickbacks in exchange for allocating coal blocks at below-market cost to private Indian firms."
  - "The police case reportedly alleges Mr Jindal's company paid a bribe of 22.5 million Rupees (\$410,000) to Mr Rao, in the form of an investment into Mr Rao's own company, within a year of the mining minister awarding a coal block in Jharkhand to Mr Jindal. Police allege Mr Jindal bought shares in Mr Rao's company, paying nearly four times what they were worth".
  - "Mr Jindal's company was the largest beneficiary of coal block allotments by the government between 2006 and 2009, acquiring 11 blocks, but he has maintained all were allotted on merit."
- On 20 October, 2014, India's Business Today reported that the Central Bureau of Investigation (CBI) had "registered another case against Jindal Steel Power in connection with the coal scam probe" alleging "cheating and corruption...This is the second case against the company..."<sup>54</sup>
- On 30 April, 2015, the Indian Express published details of CBI's charge sheet:
  - "The CBI Wednesday filed a chargesheet against former MP Naveen Jindal, former MoS for Coal Dasari Narayan Rao and former Jharkhand CM Madhu

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<sup>51</sup> The Economic Times, Coal scam: Delhi court frames charges against Naveen Jindal, others, 25 July, 2019, <https://economictimes.indiatimes.com/news/politics-and-nation/coal-scam-delhi-court-frames-charges-against-naveen-jindal-others/articleshow/70380113.cms>

<sup>52</sup>

<http://www.businesstoday.in/moneytoday/stocks/coal-sector-coal-blocks-supreme-court-tata-group-jspl/story/211765.html>

<sup>53</sup> <http://www.smh.com.au/business/jindal-caught-up-in-coal-bribe-scandal-in-india-20130612-2o4cs.html>

<sup>54</sup> <http://businesstoday.intoday.in/story/cbi-registers-case-against-jindal-steel-in-coal-block-scam/1/211547.html>

Koda in connection with the 2008 Amarkonda Murgadangal coal block allocation case.”

- “The agency, in the chargesheet filed before special judge Bharat Parashar, has booked Jindal, Rao, Koda and 12 others under Sections 12 120B (criminal conspiracy) read with 420 (cheating) of the IPC and 13(2) read with 13(1)(d) of the Prevention of Corruption act.”
- “Those charge sheeted include former coal secretary and chairman of 35th screening committee H C Gupta, Gyan Swaroop Garg, Suresh Singhal, Rajeev Jain, Girish Kumar Juneja, R K Saraf and K Ramakrishna Prasad. The companies that have been chargesheeted are Jindal Steel and Power Ltd (JSPL), Gagan Sponge Iron Pvt Ltd (GSIPL), Jindal Realty Pvt Ltd, Sowbhagya Media Ltd and New Delhi Exim Pvt. Ltd.”<sup>55</sup>
- On 7 May 2015 the Indian Express reported that a special court had summoned Naveen Jindal along with 14 others in relation to allegations that “Jindal promised then chief minister Madhu Koda of Congress support to his unstable government” in exchange for a coal lease. Special judge Bharat Parashar said Jindal “manipulated the entire government machinery” since the charge sheet stated that a “company promoted by Dasari Narayan Rao received payment of Rs 2 crore from Naveen Jindal on account of undue favour shown by him in allocation of Amarkonda Murgadangal coal block to Jindal group of companies”.<sup>56</sup>
- JSPL has been accused of coercion in resettlements in Raigarh, India, where villagers have also complained of adverse health impacts due to discharge of poisonous effluents by the plant.<sup>57</sup>

In addition to the above, there is the unresolved issue of who was behind the criminal shooting of Ramesh Agrawal, Asia 2014 Goldman Environmental Prize Award winner. Mr Agrawal was shot in 2012, allegedly for his campaign against a JSPL proposed new coal mine which was the biggest of its kind in Chhattisgarh. According to the Goldman Environmental Prize, from 2008 onwards, Mr Agrawal organised opposition to the project highlighting Jindal’s “failure to hold mandatory public meetings and obtain environmental clearance” for its mine. The permits for the mine were revoked by India’s National Green Tribunal citing the violations described in Agrawal’s petitions.<sup>58 59</sup>

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<http://indianexpress.com/article/india/india-others/coal-scam-cbi-files-charge-sheet-against-naveen-jindal-14-others/>

56 <http://indianexpress.com/article/india/india-others/naveen-jindal-promised-madhu-koda-congress-support-for-coal-block-cbi/>

57

<http://business-humanrights.org/en/villagers-allege-use-of-threats-and-coercion-for-land-acquisition-by-jindal-power-limited-company-denies-claims>

58 <http://www.goldmanprize.org/recipient/ramesh-agrawal/>

59 Inside Climate News, Jailed & Shot for Fighting Coal: Q&A With Ramesh Agrawal, Goldman Prize Winner - 'I will continue to fight. From the beginning I knew my life would be at risk.'

By Ranjit Devraj, May 22, 2014,

<https://insideclimatenews.org/news/22052014/jailed-shot-fighting-coal-qa-ramesh-agrawal-goldman-prize-winner/>

## Appendix 3 - Council objection to Mine Expansion

### **Background provided by Councillor Blakey to the Item 22 Notice of Motion - Mine Expansion in the Cataract Drinking Water Catchment**

The following is an extract from [Council Business Paper 26 October 2020, pgs 716-718](#)

“The proposed Russell Vale Colliery Underground Expansion Project is an extension application for bord-and-pillar extraction within the Cataract Reservoir catchment. If approved, the project will also activate permission to longwall mine the remaining 25 metres of longwall 6. The project aims to extract 3.7 million tonnes of run-of-mine coal over a five-year period from the Wongawilli Seam beneath the Bulli and Balgownie seams which have already been extracted. Approximately 50% of the material to be extracted is high quality metallurgical coal, 25% is thermal coal and the remaining 25% is other rock. The metallurgical and thermal coal is destined for overseas markets, being sold by the proponent, Wollongong Coal, to their parent company, Jindal Steel and Power Ltd, India.

The Russell Vale Expansion Proposal is identified as

- Generating noise and dust from the new coal processing plant and 2 new coal stockpiles very close to residents
- Adding 34 truck movements per hour between the mine and Port Kembla coal terminal
- Requiring a license to release mine-affected water into Bellambi Gully Creek with exceedance of the ANZG (2018) default guideline values for freshwater aquatic ecosystems (95% species protection level) for copper, zinc and nickel
- Occurring under significant Aboriginal Heritage sites with rock shelter with art, grinding groves along water courses and camp sites
- Generating 304,600 tonnes of CO<sub>2</sub>-e greenhouse gas emissions
- Blocking public access to the Lower Escarpment Fire Trail adjacent to Brokers Nose.

The mine operates underneath the catchment of the Cataract Reservoir. This is located within the Metropolitan Special Area, a restricted-access area designated to protect Sydney and Illawarra’s drinking-water catchments.

The project is on the Woronora Plateau which supports groundwater-dependent ecosystems such as Coastal Upland Swamps in the Sydney Basin Bioregion. These swamps are listed as Endangered Ecological Communities under the Environment Protection and Biodiversity Conservation Act 1999 and the New South Wales Threatened Species Conservation Act 1995. Where upland swamps are impacted by subsidence, they dry out and increase the bushfire fuel load in the Illawarra Escarpment.

The NSW Department of Planning, Industry and Environment referral states the project is “approvable, subject to strict conditions of consent”. The Independent Planning Commission

is currently considering the matter with the deadline for written submission being 5pm Tuesday 27 October 2020. The proponent, Wollongong Coal, has a history of non-compliance when it comes to the conditions of consent. Wollongong Coal has been fined and issued with orders by multiple agencies, regulators and courts for offences including polluting Bellambi Gully Creek, “poor maintenance and operation” of infrastructure, failing to publicly disclose water monitoring data, failing to hold community consultative meetings and for stockpiling 200,000 tonnes of waste coal on Council land in breach of its development consent at Russell Vale. On 8 November 2017, a conviction was recorded in the Downing Centre Local Court for the failure of Wollongong Coal to pay annual rental fees and administrative levies under section 292C(3) of the Mining Act. In March 2018, the NSW EPA stated that “in recent years” Wollongong Coal “has demonstrated they cannot consistently manage and maintain pollution control equipment and plant on site”.

In March 2018 the NSW Resources Regulator shut down the proponent’s Wongawilli operation due to a serious roof collapse leading to a determination that workplace safety issues were too serious for underground work to continue. In dealings with Wollongong City Council, Wollongong Coal has also a long-standing practice of obfuscation in relation to land dedication of the Russell Vale Golf Course, security bonds, remediation of the emplacement area and creek realignment.

Wollongong Coal currently has no income and debts which exceed its current assets by more than a billion dollars (AUD\$1,089,243,000). Current auditors UHY Haines Norton noted in March 2020 that “a material uncertainty exists that may cast significant doubt on the Group’s ability to continue as a going concern and therefore, the Group may be unable to realise its assets and discharge its liabilities in the normal course of business.” In August 2020 Wollongong Coal delisted from the Australian Stock Exchange. Wollongong Coal was first suspended from trade on the Australian Stock Exchange in 2017 when it failed to lodge its half-yearly report. Wollongong Coal estimates rehabilitation of its Russell Vale mine would cost \$215 million. The NSW Government holds a bond of just \$12.4 million for the mine site. Since 2013 Wollongong Coal has paid \$0 corporate tax.

In India, the courts have determined that there is sufficient evidence for a criminal corruption case to be brought to trial against the majority owner of Wollongong Coal, Jindal Steel and Power (JSPL) and its chairman Naveen Jindal. In July 2019, Naveen Jindal and four other JSPL officials were charged under sections 420 (cheating) and 120-B (criminal conspiracy) of the Indian Penal Code. All have pleaded not guilty. JSPL, via a holding company, JSPL Mauritius, is majority shareholder in Wollongong Coal Ltd. Then Minister for Resources, the Honourable Don Harwin, described JSPL’s problems in India in response to a question in the NSW Parliament on 1 June 2017: “On 29 April it was announced that Jindal Steel and Power Limited, and one of its directors had been investigated by India’s Central Bureau of Investigation on potential criminal corruption charges. The courts in India decided that there was sufficient evidence for a case to be brought to trial. I am advised that no conviction of criminal corruption has been made at this stage.”

In the NSW Department of Planning, Industry and Environment final assessment report on the Russell Vale Expansion Project it states that a “fit and proper test is not a requirement under the EP&A Act and is an irrelevant consideration for a consent authority when making a determination on a development application”.

The “Fit And Proper” test is within the Protection of the Environment Operations (POEO) Act which governs the Environmental Protection Agency (EPA) and awards pollution licenses, and the Mining Act through which the NSW Resource Regulator awards mining leases. However, these agencies have rarely denied an operating license or lease on the Fit and Proper test. To do so would likely be contested through the courts.

The NSW Resources Regulator regulates the mining leases on the basis that the right to mine coal that belongs to the people of NSW is a “special privilege” which our community expects the government to regulate to “prevent harm to the community, other industries and the environment”. The regulator’s ‘Fit And Proper Person Policy’ requires that the right of exploration and mining is “only conducted by companies that can and will respect that privilege”. The NSW Resources Regulator commenced investigation in mid-2016 over whether Wollongong Coal is a “fit and proper person” to hold a mining licence. In July 2020, the Illawarra Mercury reported that the state's mining regulator had “quietly shelved” this investigation, saying there was “insufficient evidence to support a finding that the company is not a fit and proper person”. It appears that the NSW Resources Regulator - under the NSW Mining Act - may choose not to escalate action against Wollongong Coal unless convictions are recorded in India against significant individuals within JSPL.

A review of the evidence already in the public domain causes great community concern over whether Wollongong Coal should be granted further rights to mine in NSW.”