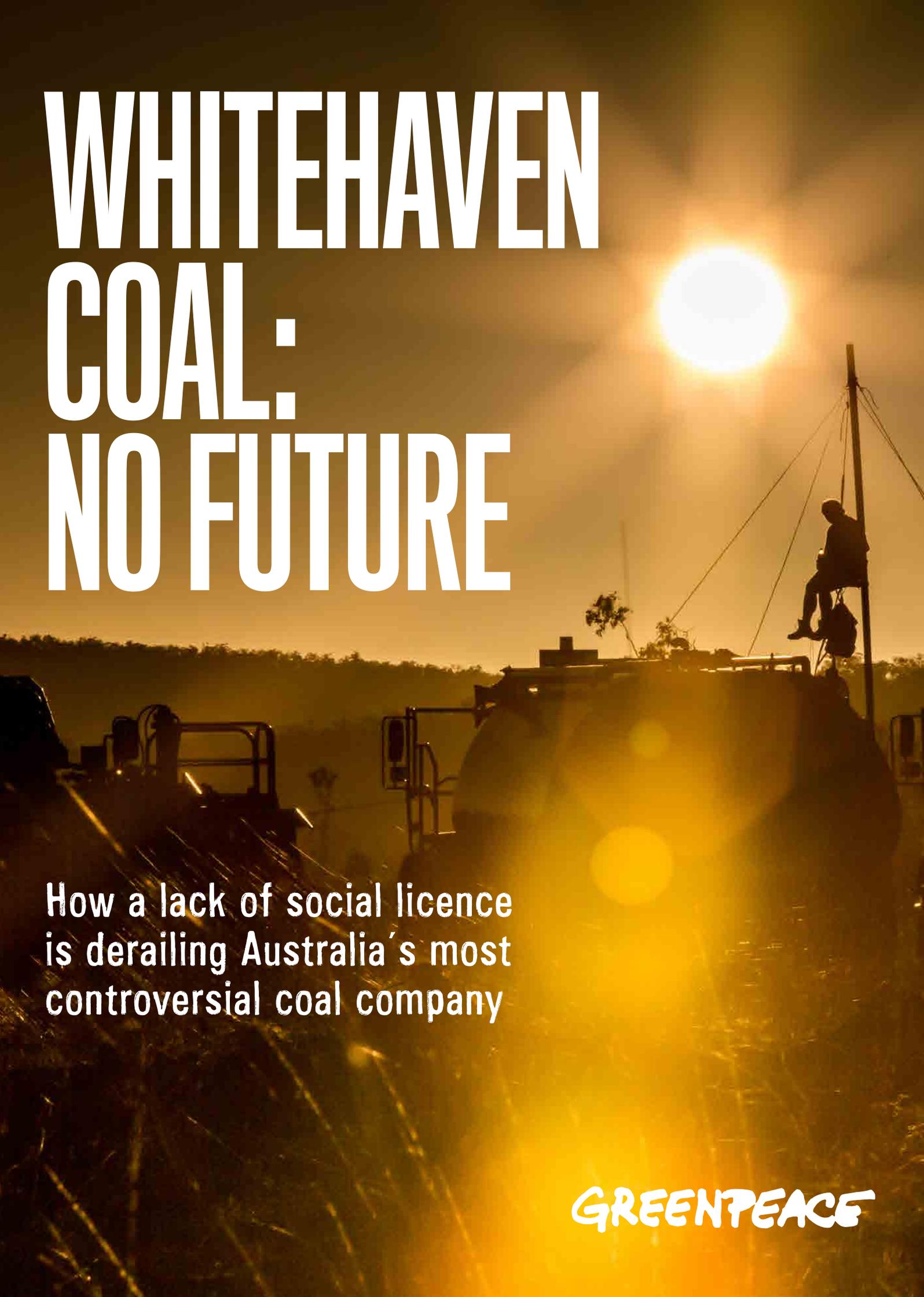


# WHITEHAVEN COAL: NO FUTURE

A person is silhouetted against a bright sun, sitting on a structure, possibly a piece of industrial equipment. The scene is set in a hazy, golden light, suggesting a sunrise or sunset. In the foreground, there are various pieces of industrial machinery, including what looks like a conveyor belt or a large tank. The overall atmosphere is one of industrial activity in a natural setting.

How a lack of social licence  
is derailing Australia's most  
controversial coal company

**GREENPEACE**

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# 01 INTRODUCTION

Much has been written recently about the financial state of Whitehaven Coal Company (WHC). Even more has been written about the divestment campaign currently building across Australia. But the greatest amount of coverage has been given to the growing opposition now confronting WHC. These three facts are intimately related.

WHC is now almost two years behind schedule. The company insists it will move first coal from the Maules Creek mine by first quarter of 2015. It may or may not. But whenever it manages to get some coal to market it will find itself confronting a perfect storm of opposition. This storm is an unholy mix of thermal coal in structural decline, with reduced global demand, over-supply and a tightening global carbon budget, coupled with massive community resistance and on-going protests.

In already difficult investment conditions, WHC faces four specific disadvantages:

1. The company's green field Maules Creek mine is the largest new open cut coal mine currently under construction in Australia. In a carbon-constrained world the commercial risk for WHC is that established mines, with infrastructure close to ports and end use power plants will have a competitive claim on markets.
2. WHC lacks a social licence to operate, guaranteeing ongoing opposition from many quarters of the community.
3. WHC has become a focus of the national and global fossil fuel divestment campaign.
4. WHC is a pure play coal company, with zero diversification to insulate against the structural decline of coal. Carbon Tracker reports that "over the last three years, the

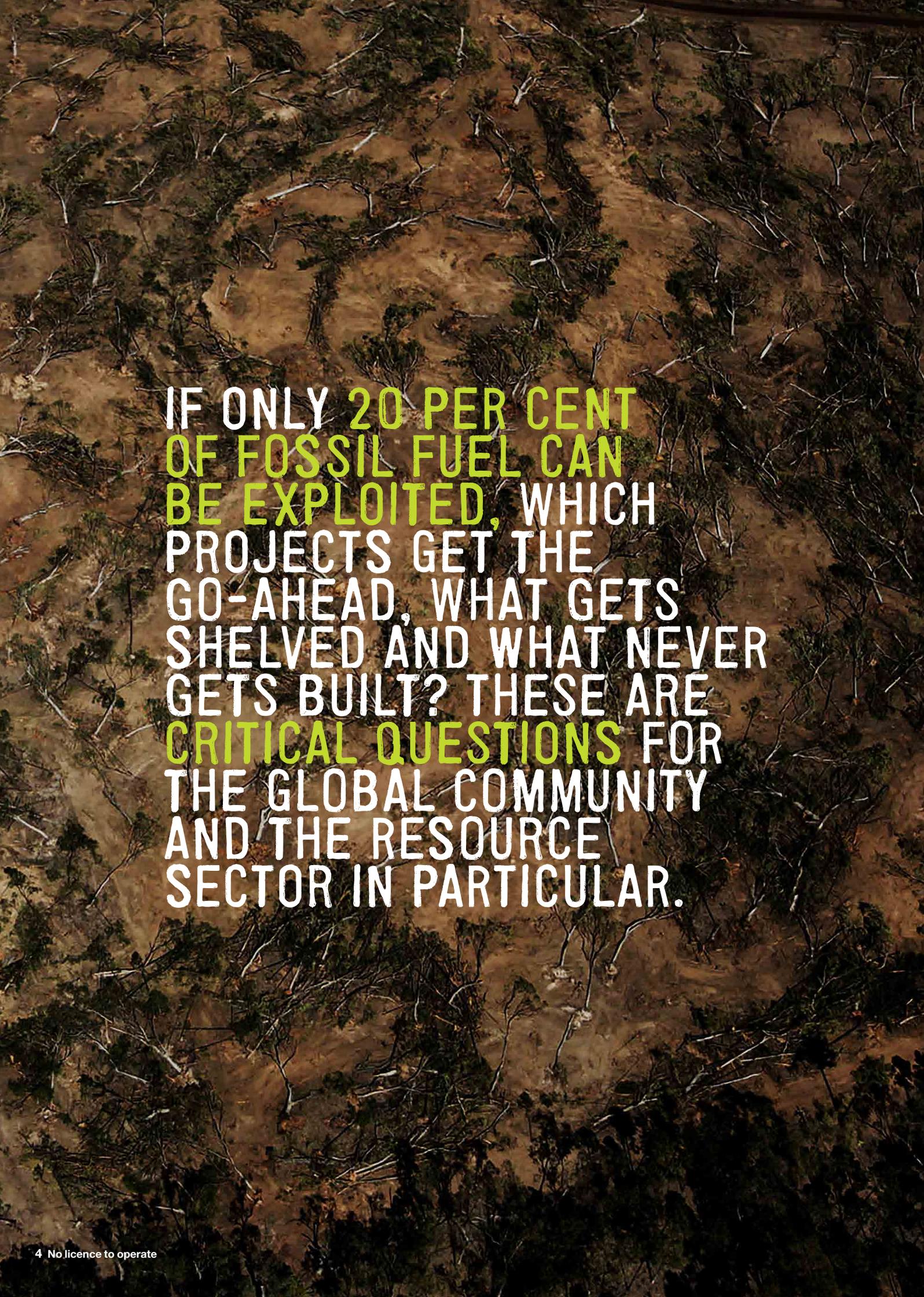


*Bloomberg Global Coal Equity Index has lost half of its value while broad market indices are up over 30 percent. In the pure coal sector there is only one trend – downward; coal prices are down, returns are down, and share prices are down. Some analysts are already calling a structural decline in the seaborne thermal coal market.”<sup>1</sup>*

This report will not duplicate extensive recent analysis already in the marketplace setting out the impact on coal companies of greater energy efficiency, cheaper alternatives and new pollution regulations, all of which are eroding demand. Instead, the focus of this report is on the extent to which investors are at risk through the company's loss of social licence, leading to entrenched and ongoing protest, a growing divestment campaign, ongoing legal challenges and persistent regulatory scrutiny. It was these factors which led to WHC's proposed mine at Maules Creek being characterised by the Sydney Morning Herald as "a *cause célèbre* among green groups and growing numbers of middle-class Australians".<sup>2</sup>

Maules Creek, Monday 31 March 2014: Over 150 people are taking direct action, occupying the proposed mine site of Whitehaven's controversial open cut Maules Creek coal mine – the largest currently under construction in Australia. ©Greenpeace/LEARD FOREST ALLIANCE

AN UNHOLY MIX OF  
THERMAL COAL IN  
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IF ONLY 20 PER CENT  
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THE GLOBAL COMMUNITY  
AND THE RESOURCE  
SECTOR IN PARTICULAR.

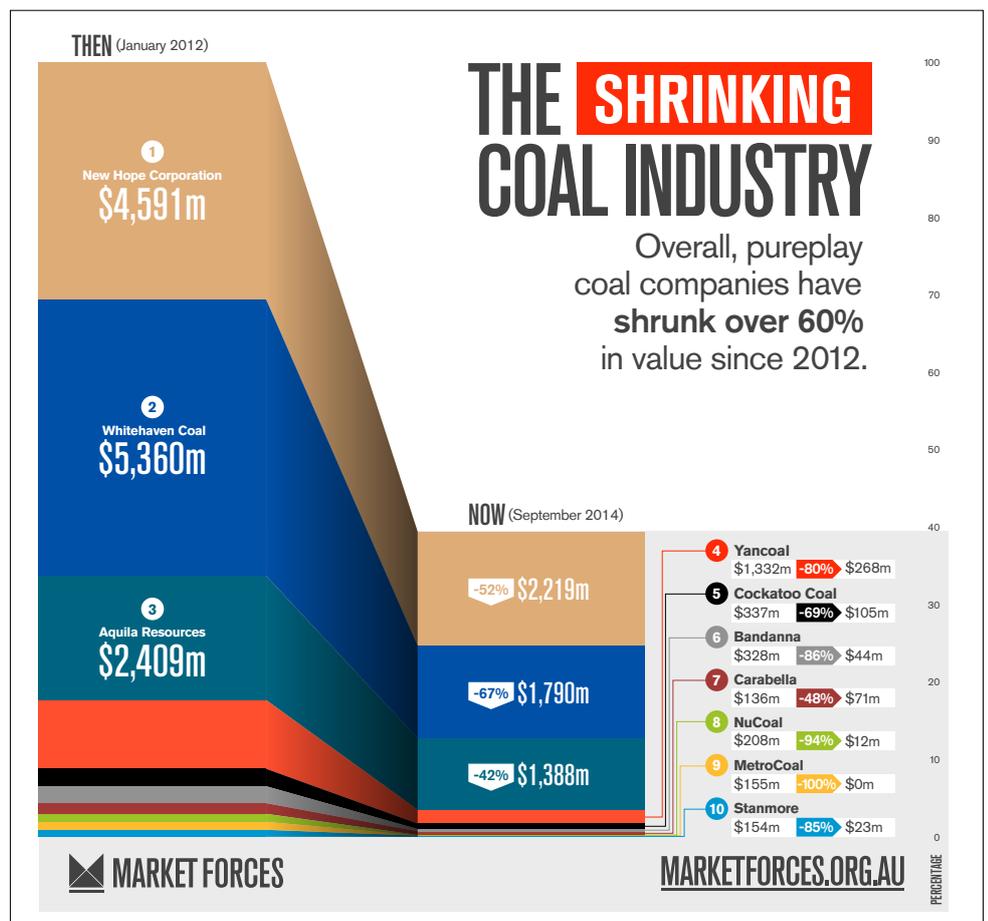
# 02 NO LICENCE TO OPERATE: WHY WHITEHAVEN COAL COMPANY IS A BAD INVESTMENT

On 2 November, 2014 the Intergovernmental Panel on Climate Change (IPCC) will release its Synthesis Report of the findings of its Fifth Assessment Report. The draft going before world governments will confirm that from 2000 to 2010 anthropogenic greenhouse gas emissions were the “highest in history”, with increasing use of coal having “reversed the long-standing trend of gradual decarbonization of the world’s energy supply”.

The same IPCC report will warn that “continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems.” This is why the International Energy Agency’s (IEA) 450 Scenario – in effect – recommends that after 2017 all new energy infrastructure that is built should be emissions free.<sup>3</sup>

In order to avoid catastrophic climate change about 80 per cent of known fossil fuel reserves must stay in the ground.<sup>4</sup> This conclusion is driving a global debate around how to manage the tightening carbon budget. A September 2014 report by Carbon Tracker warns that the “scale of the reduction in coal use required to prevent dangerous levels of climate change should not be underestimated. Achieving these cuts will likely require some disruptive technologies to drive down the cost of renewables further and build out robust energy storage capabilities. Government interventions will also be important, and there are signs of movement from the big players – China and the US.”<sup>5</sup>

Even before [China announced](#)<sup>6</sup> the introduction of a 6 per cent tariff on imported thermal coal to protect its domestic industry



in a falling market, analyst Tim Buckley was arguing China would become a [coal exporter](#) by as early as 2016, saying:

“China is rapidly transforming its electricity system, with a central outcome to diversify the system away from coal-fired power generation. This is driven by the cumulative strategies of the Chinese Government to: reduce air pollution; build energy security; grow the economy through investing in new infrastructure for the 21st Century; drive energy efficiency; and rapidly lower the emissions intensity of growth for China. The lesson for Australia is clear; we can ignore the

looming problem for our thermal coal export industry, but it won’t change the outcome. China is forecast to reach peak thermal coal consumption by 2016 at the latest, and this will permanently alter the dynamics of the seaborne coal markets.”<sup>7</sup>

All of which raises the question: if only 20 per cent of fossil fuel can be exploited, which projects get the go-ahead, what gets shelved and what never gets built? These are critical questions for the global community and the resource sector in particular; but for Whitehaven Coal (WHC) they pose an immediate challenge.

# 03 WHC'S AMBITION AND AUSTRALIA'S CARBON BUDGET

THE UK'S CLIMATE CHANGE MINISTER GREGORY BARKER SAID LAST YEAR THAT UNABATED COAL "REPRESENTS THE SINGLE BIGGEST THREAT TO CLIMATE STABILITY".

At full production, the Maules Creek mine will be responsible for releasing more than 30Mtpa of carbon pollution. This is significantly more carbon pollution than is produced by NSW's entire transport sector each year.<sup>8</sup> Put another way, the lifecycle emissions from Maules Creek over 30 years will be more than twice the greenhouse gas pollution that – on optimistic projections – may be saved by Tony Abbott's Direct Action Plan between 2014 and 2020 (421Mt<sup>9</sup> vs. approx. 900Mt<sup>10</sup>).

None of the coal that WHC sells to its key markets – Japan, Korea and India<sup>11</sup> – is planned to be abated in large-scale integrated carbon capture and storage (CCS) projects. According to the Global CCS Institute's [October 2014 database](#) of CCS projects,<sup>12</sup> there are no large-scale operational projects at all in Japan, Korea, or India, with no projects in the planning pipeline either (other than two very small projects in Korea). The head of the UN's Framework Convention on Climate Change Christiana Figueres recently said that she doesn't believe "unabated coal has a place in the world's energy mix".<sup>13</sup> The UK's Climate Change Minister Gregory Barker said last year that unabated coal "represents the single biggest threat to climate stability".<sup>14</sup> It is in this context that WHC plans to double 2014 production to 23 million tonnes per annum (Mtpa) by 2018 by opening a new coal

mine at Maules Creek, in the Gunnedah Basin in north-west NSW.

In 2013, Carbon Tracker released a report in collaboration with The Climate Institute assessing the risks facing the Australian coal, oil and gas sectors. This report revealed that Australia's coal reserves owned by listed companies are already more than double their market share of the precautionary global carbon budget for coal allocated in line with Australia's current percentage of global production.

The report found that if coal "is allocated a generous 40% of the total [carbon] budgets to have an 80% chance of limiting climate change to 2°C to 2050, it would give coal a budget of between 200 – 360 GtCO<sub>2</sub> ... Australian proven coal reserves (51GtCO<sub>2</sub>) represent 25% of the lower range budget for coal consumption globally." Australian coal resources total about 300GtCO<sub>2</sub>. "Applying the conservative estimate that only 50% of Australia's listed coal resources are developed and burnt (150GtCO<sub>2</sub>), this will occupy 75% of the same lower end [global] budget."<sup>15</sup>

It is unclear why the global community would agree to give Australia 25 per cent of the world's carbon budget for proven coal reserves, or 75 per cent of the same budget for Australian coal resources.



Top: A protestor stops work on Maules Creek by locking on to trucks. Photo: Tom Jefferson Greenpeace. Right: Protesters block entry to Whitehaven's controversial Maules Creek coal mine development.



# 04 BUILDING A COAL MINE IN ONE OF AUSTRALIA'S RAREST WOODLANDS

When WHC decided to dig an open cut coal mine in the middle of the Leard State Forest they were making a decision to build a mine that – together with the neighbouring Boggabri mine – would cover approximately one third<sup>16</sup> of a forest so rare and precious that the NSW Department of Premier and Cabinet described it as having “irreplaceable, ecologically unique values”.<sup>17</sup>

The area to be mined provides habitat for at least 30 threatened fauna species<sup>18</sup> including the squirrel glider, koala and some of Australia’s rarest woodlands birds. The Regent Honeyeater for example, is listed as nationally endangered, with a total known population estimated at between 800 and 2000<sup>19</sup>. The mining area will also impact on the critically endangered ecological community of Box-Gum Grassy Woodland, of which only 0.05% remains in NSW in near to original condition.<sup>20</sup>

WHC sought to deal with this loss of biodiversity by purchasing properties that would act as offsets – that is finding properties of equal or better biological value than the forest being destroyed that could be used to offset the destruction of a place with high biological value. A number of [independent ecologists](#)<sup>21</sup> have repeatedly questioned the validity of the proposed offsets, asserting that the offsets are not ‘like for like or better’ vegetation or habitat as that being destroyed by the mine as is required by approval conditions.

Most recently, the on-going issue of these offsets were subject to scrutiny by an Australian Senate Inquiry. One of the findings in the majority [report](#) (Recommendation 6) would have precluded the use of offsets within Maules Creek by recommending:

*“that the Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy be revised to provide greater guidance on developments in which offsets are unacceptable, including a list of ‘red flag’ areas, such as world heritage and critically endangered ecological communities and species.”<sup>22</sup>*

A May 2014 review of approved offset properties for the Maules Creek mine by the Northern Inland Council for the Environment (NICE) concluded that *“there is literally no other area of forest that can compensate for the loss of the extent and condition of woodland proposed to be cleared for this mine. The offsets are not like for like, or equal to or better, and the extent of the critically endangered ecological community has been grossly exaggerated, and yet the mines have still received approval.”<sup>23</sup>*

During a visit to the Maules Creek blockade camp in September 2014, the leader of the Australian Greens, Senator Christine Milne, vowed to raise the offsets issue with the International Union for the Conservation of Nature (IUCN). The ongoing controversy about offsets is part of the reason that Senator Milne told the [Northern Daily Leader](#) that she *“wanted an investigation into the combination of approvals of state and federal governments and the political donations and the links with the political process of people in the companies and parliaments involved in the approval of Whitehaven Mine.”<sup>24</sup>*



School kids collecting this card from Woolworths learned that the Regent Honeyeater is at “very high risk of extinction in the wild.”

**“30 threatened species is a very high number, higher than that found in many of our National Parks. The reason it is so high is because many of the species are dependent on the Box – Gum woodland of which so little remains in large intact remnants.”**

Independent ecologist, Phil Spark

# 05 GOMEROI TRADITIONAL CUSTODIANS HAVE SUFFERED DAMAGE TO COUNTRY AND CULTURE

In February 2014, Dolly Talbott, a Gomeri woman and spokesperson for the Gomeri, told the Namoi Valley Independent: “Gomeri people, as traditional owners, have a unique cultural and spiritual connection and custodial rights and obligations to care for, access and protect the lands, waters, flora and fauna within Gomeri Country. We especially have responsibilities and rights in relation to the protection of our ancestor’s burials, our sacred places including men’s areas, women’s areas, camping grounds and ceremonial places.”<sup>25</sup>

The Gomeri people are the undisputed Traditional Owners of the country on which the Maules Creek mine is being built. Aboriginal heritage values identified within the mine site include<sup>26</sup>:

- a pre-contact landscape of high intensity Aboriginal activity
- a large pre-contact site associated with a permanent soak in the Leard State Forest with a significantly varied tool assemblage
- rare evidence of Aboriginal grinding tools in three sites
- a number of well-preserved scarred trees all of which have been identified as being of high cultural significance; and
- Leard State Forest itself is a culturally significant landscape feature.

Since the Mabo decision and the enactment of the Commonwealth Native Title Act – now more than twenty years ago – it has been well-established best practice in Australia for resource developers to negotiate comprehensive agreements over land use with Indigenous Traditional Owners. As two leading experts observed more than a decade ago, “[r]esource companies... now seek as a matter of policy to ground their new



**“The common threat of open cut mining in a culturally and environmentally significant area such as the Leard State Forest has brought the communities – farmers, traditional owners and environmentalists – together.”**

**Gomeri elder, Dick Talbott**

*agreements in a strategy for establishing long-term relationships with traditional owners and communities on whose land they operate. They pursue this policy of building relationships with communities as a means of managing risk.”<sup>27</sup>*

Whitehaven appears to have egregiously failed to manage risk in this context and fallen far short of best practice, even going so far as to prevent Gomeri Traditional Owners from visiting sites of significance within the Leard State Forest. On 13 August 2014, the Gomeri announced that Whitehaven and Idemitsu had failed to allow access to Gomeri burial and other sacred sites for ceremony. A formal complaint has now been lodged with the NSW Anti-Discrimination Board with 155 people alleging that both WHC and its construction contractor Leighton Holdings have discriminated against the Traditional Owners, resulting in them being unable to undertake spiritual ceremonies.<sup>28</sup>

In January, 2014 the Gomeri [asked](#) Environment Minister Greg Hunt for an emergency declaration under the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 to protect special areas within the

Maules Creek Coal Project Area.<sup>29</sup> Protection was not granted and the Gomeri have grave concerns about the preservation and integrity of their sacred places.

One consequence of the conflict between WHC and Gomeri is that the Traditional Owners have found common cause with concerned sections of the wider community. In February 2013, a broad alliance of groups led by Gomeri community leaders publicly committed to an historic ‘Aboriginal Cultural Heritage and Environmental Protection Agreement’.<sup>30</sup> The agreement is between Gomeri Elders, Maules Creek landholders and environmental groups working to protect the area threatened by the Maules Creek and Boggabri mines.

# 06 A MINE THAT THREATENS PRODUCTIVE FARMLAND AND RELIABLE WATER

The Maules Creek Coal Mine is located within the catchment of the Lower Namoi Regulated River Water Source.<sup>31</sup> According to the National Centre for Groundwater Research and Training the Namoi “is the most over-committed groundwater basin in Australia”.<sup>32</sup> The Namoi valley also contains some of the best agricultural soils in Australia. University of NSW ground water researchers observe that “concern about the reliability of the underlying groundwater resources” has become a political issue “as the pressure to develop coal-seam gas, open-cast coal and agriculture all play out in the political domain at a local, State and Federal level.”<sup>33</sup>

Irrigation and dry land farming enterprises surround the Maules Creek coal mine project area. High quality productive alluvial aquifers provide water for cropping, stock and domestic uses. In August 2014, Lonergan Research found that four out of every five Australians (80%) agree that “farmers and regional communities should receive critical water supplies before coal mines”.<sup>34</sup>

In a submission to NSW Planning, the Maules Creek Community Council wrote, “it has been shown that containment of onsite water within the 2178 ha mine site would have serious impacts on recharge and surface flows ... reducing the water available for environmental and food production purposes.”<sup>35</sup>

The Independent Expert Scientific Committee (IESC) assessed the cumulative impact of all three coal mines in the Leard State Forest area (Boggabri, Maules Creek and Tarrawonga). One scenario “predicts drawdown in some areas of the alluvial aquifer up to 2 metres.”<sup>36</sup>



## When a final void is contested

In March 2012, the Planning Assessment Commission (PAC) wrote that “water is a critical issue for the region and the Commission does not support the long term water impacts that would result from the proposed final void and lake”.<sup>37</sup> ‘The void’ refers to the hole left in the ground that is left at the end of the coal mine’s life. The PAC went on to emphatically state “that the final landform should not be allowed to generate a pit (void) lake and that emplaced soils must have the capacity to drain to the natural catchment.”<sup>38</sup>

In the Project’s approval dated 23 October 2012, Condition 74 allows for a pit lake in the final void. On 20 December 2012, the IESC’s advice bluntly stated that the NSW approval was not best practice: “The committee considers that, as a general principle, backfilling of mining voids is environmental best practice. The committee notes that the New South Wales Project Approval includes a condition which requires the final mine void to remain open and contain a pit lake.”<sup>39</sup>

The farmland around the Leard State Forest is one of Australia’s prime agricultural areas for cereal crops and grazing. The aquifers are at risk from coal mine development in the area.

**“The impacts in Maules Creek of aquifer drawdown in the 2000s drought led to many people having no access to water for their stock or even for domestic and drinking use, so much so, that extraordinary restrictions were implemented by the Office of Water, to prevent irrigators pumping water where even a ten centimetre drawdown at a known gauge resulted in restrictions on pumping and/or cease to pump orders. A two metre drawdown in the Maules Creek aquifer will lead to some local residents having no water access for stock and even for washing and drinking, at certain times of the year.”**

Peter Watson, local farmer and board member of Namoi Water.

# 07 WHC'S SOCIAL LICENCE: GREENPEACE PROVIDES A ROAD MAP

By Dr Leeora D Black  
Managing Director, Australian Centre for Corporate Social Responsibility

*Dr Black was invited to make a contribution to this report as she is one of Australia's foremost authorities in the area of social licence. The views expressed are Dr Black's and not the view of Greenpeace Australia Pacific and we welcome her incisive and courageous contribution to what we hope will become a national conversation.*

I have been invited to provide an independent commentary on this report, in which Greenpeace asserts that Whitehaven Coal has lost its social licence to operate.

To be clear, I have advised numerous coal companies on how to maintain and strengthen their social licence to operate, but I have had no contact with Whitehaven. I also respect the work of environmental NGOs who have been so important in bringing environmental impacts to the attention of business leaders and in driving higher standards of accountability. But I have had no contact with Greenpeace until now, except in my professional capacity acting on behalf of corporations who wish to strengthen their stakeholder engagement.

Making a *public* statement about a particular company's social licence to operate is new for me, and a potentially perilous act in the absence of hard data that reliably measures the social licence of Whitehaven.

It's a risk I'm taking now because I want companies to *have* a social licence. We are weakened as a society without responsible and profitable companies. The price of a failed social licence is paid not just by shareholders who miss out on dividends, but by communities who miss out on the improved quality of life that great companies deliver alongside shareholder value.

And Whitehaven does make a great case study from a social licence perspective. As the project heads towards its operational phase, it faces strong headwinds. Its impacts on biodiversity, for example, require a sophisticated approach that even if it goes beyond best-practice, may potentially result in irreversible effects on endangered native flora and fauna. The company has faced down

activist demonstrations that include a wide range of groups that include local, national and international interests.

We need only look at the example of Metgasco in NSW to realise that where the social licence wanes, the legal licence can be withdrawn.

The social licence to operate is defined as the level of acceptance or approval awarded a company or a project by the local community and other stakeholders. It can fluctuate from such a low level that it is withdrawn to such a high level that the local community has very high trust in the company. It varies over time and between stakeholder groups. It changes in response to the company's actions and the dynamics among the stakeholders. Greenpeace clearly does not award a social licence to Whitehaven. But it does not necessarily follow that the company has lost its social licence with all stakeholders.

To the extent that Greenpeace can win friends and influence people with its arguments, Whitehaven's social licence is at risk. A project that is still under construction and which has such high environmental values makes a great target for Greenpeace, which has clearly signalled its intention to continue its campaign against the company. Activism is often designed to raise costs and cause delays to a company, in hope that the company will give up its plans.

However, Whitehaven appears to have shrugged off activist action and remains upbeat in its official statements about its future. By its most recent statements, it is on track for commencing operations in 2015. Even if one accepts that there have been delays, given the company has revised its operational target date, work is going on and the cost of delays have been insufficient to deter the company.

Whitehaven has all the necessary legal approvals. That is not enough to earn a social licence to operate. Greenpeace cogently argues that Whitehaven's impacts on Australia's carbon emissions, biodiversity, Traditional Custodians of the land, farmland, and water are significant. Whitehaven's own studies support the biodiversity values of the area it is working.

To build a durable social licence to operate, Whitehaven will need to deal well with the issues raised by Greenpeace, as they are surely not the only advocates of these issues and cannot be dismissed. It could even consider voluntarily leaving some part of the resource unexploited, as some exploration companies have done in Western Australia in agreements with traditional owners to protect culturally significant sites.

At a minimum, Whitehaven needs to ensure that the benefits to the local community and region outweigh the costs to the local community of its operations. It needs to avoid the mistakes that many other companies make in dealing only with the stakeholders who agree with them and not with all the stakeholders who can affect them. It needs to spell out its management approach to the issues raised by Greenpeace. Its management approach needs to go beyond legal compliance, which is the least a company should do, and not the hallmark of a good corporate citizen.

Companies that are the target of activist action often learn to engage effectively with their critics and develop innovative solutions to problems. In my view, it is not too late for Whitehaven to earn a social licence. This report by Greenpeace provides important guidance about what that would entail.



An baby squirrel glider (listed as vulnerable in NSW)

# 08 UNRESOLVED LEGAL PROCEEDINGS

Whitehaven Coal has faced serious legal challenges in the NSW Land and Environment Court and the Federal Court of Australia against its performance and operations at Maules Creek. Two of these legal challenges were mounted by the community and one by the NSW Department of Planning.

The Department of Planning successfully prosecuted Whitehaven for two offences of failing to disclose that it had made political donations after lodging its development application for the Maules Creek mine. The Court held that Whitehaven's offending was in the mid-range of objective seriousness. The laws requiring large natural resource developers to disclose their political donations are at the heart of the Independent Commission Against Corruption hearings.

In 2013 the Northern Inland Council for the Environment challenged Whitehaven's approval granted by the Commonwealth Environment Minister. Before the Court the community pointed to evidence that the environmental offsets proposed by Whitehaven Coal were not of the type required under its project approval. The offsets are required to compensate for the significant environmental damage that will be caused on the greenfield mine site. The Maules Creek Coal mine will destroy 1665 hectares of high conservation value forest which provides habitat for a number of threatened species and includes 544ha of the nationally critically endangered grassy box woodland.

Then in June 2014 the Maules Creek Community Council Inc sought an urgent injunction in the Land and Environment Court to stop Whitehaven from clearing the nationally endangered high conservation value forest to make way for its mining operations. The community, again concerned about



Greenpeace climbers in the trees on day two of a non-violent direct action in Leard State Forest preventing winter clearing of the forest for Whitehaven's Maules Creek Coal Mine.

the destruction of the environment and Whitehaven's compliance with its project approval, argued that under the Biodiversity Management Plan required under its project approval, Whitehaven was not authorised to clear the forest during the winter and spring months.

The community alleged the Biodiversity Management Plan required that clearing be prohibited in winter and spring to protect the high numbers of known threatened species of the forest that hibernate in winter and then breed in spring. Just before the court handed down its decision on whether to grant an injunction or not, Whitehaven offered an undertaking to the court in the same terms that the community was seeking an injunction, that Whitehaven would cease all clearing of the forest until a judgment from the final hearing was handed down.

Before the case could be heard, Whitehaven put a new plan to the Department for approval, but this was rejected by the Planning Secretary due to community concerns "over plans to clear trees in Leard Forest during times wildlife was particularly vulnerable". The Department then announced strict conditions "restricting clearing to between 15 February and 30 April".<sup>40</sup> Having told the Department back in July that they needed to clear up to 163 ha by 31 December 2014 to create "a sufficient area for coal extraction for six months (that is, for the period up to 30 June 2015)"<sup>41</sup>, WHC declared to the ASX on 23 October that the new restrictions which do not permit clearing of the 163 ha "will have no impact on ralling first coal in January 2015, nor will it impact any other key project milestones".<sup>42</sup> The market has a right to know how WHC reconciles these two statements.

# 09 AN HISTORIC ALLIANCE HAS FORMED

The broad range of concerns about the Maules Creek mine has led to the formation of a deep and broad alliance of interests opposed to the project going ahead. For the first time in Australia opposition to a coal mine has been so widespread that it has united war veterans, farmers, religious leaders, doctors and even mining industry businessmen. These individuals have been joined by major environmental and other NGOs in Australia. Organisations that actively support the alliance include Greenpeace, the Wilderness Society, GetUp!, the Nature Conservation Council, 350.org and the Australian Religious Response to Climate Change (ARRCC).

An example of how this alliance is working can be seen in the 1 September 2014, media report in [The Australian](#), that 10 non-government organisations had “called on the Baird Government to order a halt to work ... at Maules Creek ... and carry out a complete audit of the approvals process, following revelations from the Independent Commission Against Corruption (ICAC) ...” Blair Palese, CEO of 350.org, called for the NSW Premier to “hit the pause button on the Maules Creek coal mine until community confidence in the planning process is restored” citing “the apparent willingness of Nathan Tinkler [former owner of Maules Creek] and his associates to pay politicians and cut corners”.<sup>43</sup>

For an overview of the community campaign, see GetUp!’s fundraising video, sent to approximately 900,000 people entitled ‘[What could turn these farmers into unlikely activists?](#)’<sup>44</sup>

Since November 2013, well over 240 people have been arrested for trying to prevent the construction of the mine at Maules Creek. The breadth of life experience of those arrested gives an indication of the wide-ranging nature of the opposition to the Maules Creek mine. Those who have been arrested include:

- Bill Ryan, a 93 year old Australian WW2 veteran who took direct action believing climate change is the biggest threat to Australia since he fought in the last world war.<sup>45</sup>
- 75 year old [Raymond McLaren](#), the owner of a manufacturing company that supplies the mining industry, took direct action believing the coal industry should not be mining in the Leard State Forest.<sup>46</sup>
- A group of [religious leaders](#)<sup>47</sup> including a Buddhist monk, a Catholic priest and Uniting Church ministers, some of whom have been arrested on more than one occasion and have led to the call by the Bible Society to stop the mine altogether (see link [here](#)<sup>48</sup> for more coverage of this direct action).
- [Marion Rose](#), a former solicitor for the Office of the Director of Public Prosecutions, took action after researching the Maules Creek development and its environmental impacts.<sup>49</sup>
- [Thirteen doctors and medical students who blocked the main entrance to the mine](#) and were later arrested by Narrabri police. The group, called Medics against Coal believes the proposed mine poses serious health threats.<sup>50</sup>

- [11 Greenpeace activists who took to the trees in the Leard State Forest in June](#) 2014 to enforce rules requiring Whitehaven Coal to avoid winter and early spring land clearing.<sup>51</sup> These rules were designed to avoid clearing during the key breeding/hibernation seasons for threatened bat and bird species.

James Goodman, Associate Professor of Social Inquiry at the University of Technology Sydney, told Greenpeace Australia Pacific recently the “*blockade against coal mining at Maules Creek redefines climate action in Australia and internationally ... The power of the Maules Creek campaign is in its insistence that extraction has to stop – a bottom-line politics of 'leave it in the ground', not a market management strategy of pricing carbon. We have all heard the elites talk of 'unburnable carbon', and here at last we have a place where we can learn how to put that into effect*”.

**“The police may charge me with interfering with mine equipment, but what kind of nation do we live in when mining equipment gets better protection than our kids and grand-kids – who is protecting them and their future?”**

Former DPP solicitor, Marion Rose

# 10 WHAT HAPPENS WHEN A COMMUNITY LOSES FAITH IN A COMPANY? HAS THE WHC DIVESTMENT CAMPAIGN ENTERED STAGE 3?



Over 150 people are taking direct action, occupying the proposed mine site of Whitehaven's controversial open cut Maules Creek coal mine – the largest currently under construction in Australia.

The controversy associated with the development of the Maules Creek coal mine has reached public prominence at the same time as momentum has developed behind the global movement to divest from the fossil fuel industry. World leaders such as Nobel Peace Prize winner Desmond Tutu have called for, "an apartheid-style boycott to save the planet." Adding:

*"The destruction of the earth environment is the human rights challenge of our time. Time is running out. People of conscience need to break their ties with corporations financing the injustice of climate change. We can, for instance, boycott events, sports teams and media programming sponsored by fossil-fuel energy companies. We can demand that the advertisements of energy companies carry health warnings. We can encourage more of our universities and municipalities and cultural institutions to cut their ties to the fossil-fuel*

*industry. To serve as custodians of creation is not an empty title," Tutu wrote. "It requires that we act, and ["with all the urgency this dire situation demands."](#)*<sup>52</sup>

The global divestment campaign against fossil fuel companies is gaining traction, stigmatising companies whose core business is producing and selling high-carbon fuels, particularly in cases where cleaner and in many cases cheaper alternatives exist.

In 2013 the Oxford University Stranded Assets Programme found that that *"In almost every divestment campaign we reviewed from adult services to Darfur, from tobacco to South Africa, divestment campaigns were successful in lobbying for restrictive legislation affecting stigmatised firms."*<sup>53</sup>

Investors have very good reason to pay attention to this analysis which shows that

divestment campaigns typically evolve over three stages (see table 1).

With companies like WHC refusing to listen to stakeholders, attention is shifting to dialogue with those who are actually funding coal companies – the investors. In September Sydney University announced<sup>60</sup> that it would not continue buying shares in WHC until it had concluded a review of its own internal investment guidelines. That review is currently underway.

Meanwhile one of the world's largest sovereign wealth funds, Norway's Government Pension Fund Global with over \$US840 billion under management, is currently investigating the utility of simply divesting from companies like WHC as a way of dealing with the issues of climate change.<sup>61</sup>



“THE DESTRUCTION OF THE EARTH ENVIRONMENT IS THE HUMAN RIGHTS CHALLENGE OF OUR TIME. TIME IS RUNNING OUT. PEOPLE OF CONSCIENCE NEED TO BREAK THEIR TIES WITH CORPORATIONS FINANCING THE INJUSTICE OF CLIMATE CHANGE.”

Desmond Tutu, Nobel Peace Prize winner

**Table 1: Whitehaven Coal divestment has entered Stage 3 of divestment**

Stranded Assets Program's 3 stages of divestment	Investor decisions affecting Whitehaven Coal and/or the coal industry
<p><b>Stage 1</b> Begins with churches or bodies such as public health associations – who are motivated by ethical priorities. Divestment creates wide public awareness.</p>	<ul style="list-style-type: none"> <li>• In April 2013, the Uniting Church's Synod of New South Wales and the ACT <a href="#">announced a policy divest</a> from corporations engaged in the extraction of fossil fuels.<sup>54</sup></li> <li>• On 29 August 2014, the <a href="#">Uniting Church in Australia Assembly resolved to divest</a> from investments in corporations engaged in the extraction of fossil fuels.<sup>55</sup></li> <li>• On 14 October Working with AMP, Anglican National Super (ANS) – the superannuation provider for the Sydney Anglican Diocese and wider Australian Anglican community – resolved to divest from all areas related to fossil fuels.<sup>56</sup></li> </ul>
<p><b>Stage 2</b> Sees the campaign move to universities or cities</p>	<ul style="list-style-type: none"> <li>• In August 2014, the <a href="#">SMH reported</a><sup>57</sup> that the Sydney University had decided to become “<i>the first institution of its type in Australia to halt further investments in coalmining ... The institution is yet to decide what to do with existing coal investments in its \$1 billion portfolio, although divestment of its \$900,000 holding in WHC is one of "various options" being considered ...</i>”</li> <li>• In September 2014, religious leaders, trade union members, health associations and environmental campaigners delivered an open letter to ACT Treasurer Andrew Barr, <a href="#">calling on the ACT Government to divest</a> its interests in fossil fuels. Fossil Free ACT campaign spokesman Josh Creaser said “<i>Despite having a responsible investments policy and strong commitment to climate action, the ACT Government holds shares in some of the most notorious coal and coal seam gas companies in Australia including Whitehaven Coal, Santos and Glencore</i>”.<sup>58</sup></li> </ul>
<p><b>Stage 3</b> Sees investors such as banks and pension funds divesting</p>	<p>On 7 October 2014, the Local Government Super fund (LGS) decided to abandon coal mining investments. The AFR <a href="#">reported</a> \$15m worth of AGL Energy and Whitehaven Coal stock will be sold. Peter Lambert, LGS Chief Executive Officer said: “<i>Coal and oil sands are the most carbon intensive forms of energy and most susceptible to carbon regulatory risks. With trends such as competitive pressures in the coal industry, concerns in China over pollution and water, and the introduction of energy and carbon efficiency standards on the utilities sector in the US indicating a shift away from a high carbon to a lower carbon economy, we believe that support for these sectors will decrease as will shareholder value.</i>”<sup>59</sup></p>

# 11 NO LICENCE TO OPERATE

Over the last two decades it has become accepted that companies seeking to optimise performance and minimise risk – particularly resource companies – require a social licence to operate. The Australian mining industry not only accepts the need for such a licence, it also offers guidance on how to achieve that outcome saying:

*“To maintain an SLO (social licence to operate) mining companies must keep their promises and commitments, respond to the community’s concerns and requests, ensure that information is not only delivered but also understood by all stakeholders, be accountable to the communities at all stages of the project cycle, and not engage in dishonest or irresponsible behaviour.”<sup>62</sup>*

As the matters described set out in this report clearly demonstrate, WHC does not have a social licence to operate. If anything, WHC’s social licence seems to continue to deteriorate with each fresh revelation of failure to achieve best practice. For example, it was recently [revealed](#) that the NSW Department of Planning was investigating the seemingly phantom appointment by WHC of an environmental group to a compulsory oversight committee for its Maules Creek coalmine.<sup>63</sup> The environmental group in question — Greening Australia — *“says it never attended a meeting of the Maules Creek Community Consultative Committee (MC CCC) or provided feedback”*<sup>64</sup> on the mine’s Biodiversity Management Plan.

The oncoming carbon crunch with its attendant focus on the division of a global carbon budget inevitably raises broader issues of corporate trust and accountability. Investors, communities and governments are entitled to seek both commercial return and the maintenance of social licence.

WHC shares over last three years against ASX average (in red)



WHC has already experienced protracted delays in the roll out of the Maules Creek mine. The failure of WHC to achieve a social licence guarantees ongoing opposition from a wide range of community groups and individuals.

The lack of social licence will ensure WHC continues to find itself a particular target for the global and national divestment campaign. This opposition promises to be a continuing source of frustration and delay to WHC. It is unclear whether WHC will manage to meet its new target of first coal by March 2015. But there is no doubt that first coal will not be the end of opposition to the mine.

In conclusion it is clear the stigmatising impact of the divestment campaign is far greater than the sum of its parts.<sup>65</sup> WHC has made itself a target of this movement because it has failed to understand that, regardless of political power, in the end a long-term infrastructure project like an open cut mine needs to have a social licence to operate.

For its part, the coal industry argues that the divestment campaign is disingenuous because it relies on the world taking climate change seriously, saying:

*“Despite lip-service being paid to a 2°C temperature target increase most governments*

*are making little or no progress to achieving that target. Whether or not that target will be breached is a function both of CO<sub>2</sub> emissions and technology.”<sup>66</sup>*

Spruiking an investment option that inevitably hastens catastrophic climate change is itself problematic. That said, it may well be that losses incurred by those who have already invested in WHC prove the more compelling argument for change.

Over the last three years, the ASX is up 18% vs WHC down 73%. This means WHC has underperformed the ASX by 77%. This is a massive absolute loss but also combines with a material opportunity cost (ie WHC shareholders have not just witnessed the destruction of three quarters of the value of their shares; they have also missed out on the alternative 18% rally in the Australian equity market in the same period).

The next two decades will see the coal industry confront enormous challenges as the world imposes restraints on burning fossil fuel. In such a competitive environment it is not hard to imagine that caloric value, cost and access to markets will make up only part of the equation. The other element will be a social licence to operate and on this count, WHC has next to none.



**Clockwise from top left:** Greenpeace activists dressed as Whitehaven Coal workers construct a mock coal mine on the grounds of Sydney University; aerial view of Gomerai cultural site in the Leard State Forest. Leard State Forest in NW New South Wales includes the most extensive and intact stands of the nationally-listed and critically endangered Box-Gum Woodland remaining on the Australian continent; 'offsets' proposed by Whitehaven. Ecologist and Farmer Phil Sparks has noted that the offsets will not allow the Flora and Fauna of Leard Forest to survive as the habitat and elevation are markedly different to the Leard Forest; Greenpeace paraglider surveys damage from winter clearing; Eastern Grey Kangaroo in the Leard State Forest; On the eve of World Environment Day, a coalition of national environment groups, Labor and Greens MPs and farmers hold a snap rally to protest bulldozing of the Leard State Forest by Whitehaven Coal.

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