



Wando Conservation and Cultural Centre Inc.

Submission Review of Independent Planning Commission

1. Introduction

The Wando Conservation and Cultural Centre Inc. (WCCC) wishes to make a submission to the Productivity Commissioner to assist the Review of the Independent Planning Commission.

WCCC has reviewed the terms of reference of the review and noticed that these terms of reference include the making of recommendations in relation to the IPC's operations and the mechanisms by which State Significant Development is assessed and determined. WCCC has experience of this process and wishes to provide some insights into what occurred when the IPC was called upon to determine a recent SSD (Vickery Coal mine) and a modification of a mine (Boggabri MOD7).

WCCC also wishes to comment upon the extent to which the Independent Planning Commission should rely upon the Assessment Report prepared by the Department of Planning, Industry and Environment, taking into account any additional assessments by other government agencies.

2. Overview of IPC process and outcomes

WCCC's overall perception is that the Commissioners genuinely sought to inform themselves beyond what was provided in the assessment reports. In the experience of WCCC the commissioners were open to discussion of difficult and contentious topics.

WCCC obtained representation at the Vickery public hearings to put forward our case for rejecting the Vickery Coal mine.

WCCC believes that the multistage hearing process, which was introduced along with the most recent major amendments to the Environmental Planning and Assessment Act 1979, has been to the benefit of good planning.

The user friendly nature of the IPC website has made submissions, letters, agency advice, transcripts etc. accessible to the public, which has facilitated greater transparency.

Identification of IPC contact personnel has been efficient and the response time has been acceptable.

The ability to make supplementary submissions has been a welcome innovation and beneficial in that it increases flexibility and encourages the submission of information that might arise after the closing date for submissions.

The IPC appears to be genuinely attempting to make well informed decisions. The perception in the community is that the Department of Planning is too close to mining companies, in particular in our region where the many non-conformances, breaches and questionable environmental practices of Whitehaven Coal are routinely ignored or trivialised by officers of the Resources Assessment branch.

WCCC has observed that the Department of Planning has provided misleading and incorrect information to the IPC. This has led to an IPC decision being made on the basis of the false assertions from the Department (discussed below).. In another instance, inaccurate and misleading maps were provided in an Assessment Report, and critical points omitted.

3. Corruption Risk

Communities in mining-affected regions such as Narrabri – Boggabri – Maules Creek regions in the Namoi Valley have little trust in the Department of Planning or political representatives to take a balanced approach to managing land-use conflict.

In the short life of the IPC, these communities have relied on the IPC for an independent and objective consideration of highly damaging and controversial mining projects. This should not be curtailed in any way. The IPC have acquitted themselves of their duty to consider the planning legislation in a balanced way that implements intergenerational equity, and correctly accounts for greenhouse gas emissions.

WCCC is dismayed that the NSW Mining Council and its members were able to impugn the IPC Commissioners and influence the calling of this urgent Review.

WCCC is concerned that the IPC retain its independence and important role, and be adequately resourced to ensure enforcement of legislation, appropriate reporting and enforcement of proper compliance.

4. Trigger for the Review of the Independent Planning Commission

WCCC understands that this Review has been instigated following a procedural incident concerning the Rix's Creek decision. We urge the Commissioner to examine any role the Department of Planning might have played in the trigger of this entire review. This review seems a disproportionate response, when proper resourcing and staffing of the IPC would ensue no future occurrence of such procedural mal administration.

The Commissioner could call for evidence concerning:

- All communications between the Resource Assessments branch (Stephen O'Donoghue), and specifically Planning officials including Mr Mike Young, Mr David Kitto, Mr Marcus Ray and Mr Stephen O'Donoghue could be scrutinised to ascertain what role those communications had (if any) in the confusion which took hold in the Rix's Creek decision. This should include phone calls and diary notes.
- Any Ministerial directions that were made concerning the IPC's decision on Rix's Creek.
- Internal communications within the IPC which resulted in such a perverse situation.

5. Vickery coal mine

WCCC is aware that the Department submitted to the IPC an Assessment Report that contained numerous errors that were pointed out to Commissioners by other submitters. To our direct knowledge, errors and omissions in the Assessment report related to noise and groundwater impacts of the proposed Vickery "Extension" project. Misdescription of affected properties, that was incorporated in the Department's Assessment Report, had a tendency to mislead the IPC as to the extent of noise affectation. This has considerable implications for the application of the State's Land Acquisition and Mitigation Policy on the neighbouring farm properties and consequently for neighbouring landowners seeking just compensation for noise affectation.

In this instance WCCC drew the attention of the IPC of such errors as misdrawn contour lines, omission of worst case scenarios, erroneous comparisons between the extension project and the original approved 3.5 MTPA mine.

WCCC now believes that the IPC is inadequately resourced to independently navigate the evidentiary landscape and evaluate submissions presented to it, particularly by the Department of Planning as a result of our experiences regarding Boggabri Mod7, outlined below.

6. Boggabri MP09_0182 MOD7

WCCC has communicated to Minister Stokes the below attachment expressing our dismay and disappointment regarding:

- a) the Department of Planning and Environment provided incorrect and misleading information to the NSW Independent Planning Commission in relation to Boggabri Coal Modification 7; and
- b) In reliance on that information the IPC approved a modification of the consent to authorise the undertaking of extensive drilling works without requiring the nature of the works to be specified, or the environmental impacts of the works to be assessed, or imposing specific conditions to restrict the impact and extent of the works.

When Mr O'Donoghue informed the IPC "The exploration activities would be within the approved mine disturbance area..." he was incorrect, as is clearly shown by the maps attached below

Letter from Wando Conservation and Cultural Centre [REDACTED] to Minister Stokes:



Wando Conservation and Cultural Centre Inc.
[REDACTED]

24 September 2019

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Email: [REDACTED]

Dear Minister,

BOGGABRI COAL, MP09_0182 MOD 7

Based in Maules Creek, Narrabri, the Wando Conservation and Cultural Centre Inc is an environmental group established in 2015 to represent the interests of sustainable development and biodiversity conservation (inter alia) on the Liverpool Plains and Namoi Valley.

We are writing to express our dismay and disappointment that:

- c) the Department of Planning and Environment provided incorrect and misleading information to the NSW Independent Planning Commission in relation to Boggabri Coal Modification 7; and
- d) In reliance on that information the IPC approved a modification of the consent to authorise the undertaking of extensive drilling works without requiring the nature of the works to be specified, or the environmental impacts of the works to be assessed, or imposing specific conditions to restrict the impact and extent of the works.

We request that this matter be investigated as a priority and that appropriate corrective action is taken. Measures must be taken to ensure that no drilling is undertaken outside the mine disturbance area and that drilling beyond the approved depth of mining is thoroughly (and transparently) assessed and conditioned before being carried out.

We request that a review be undertaken of the environmental assessment processes for exploration and drilling activities at existing mines to ensure that similar errors are not made by the Department in the future.

We would also appreciate if you would be able to make time to meet with members of our group, to hear first-hand of the oppressive array of troubling planning matters that face our community.

Background

In 28 February 2018, Boggabri Coal Operations Pty Ltd sought a Part 3A Modification to inter alia permit a range of drilling and exploration activities. The proposed location and nature of those activities was not specified in the environmental assessment documentation. In fact, the environmental assessment for mod7 (**Mod 7 EA**) merely indicated that the works may include cored and open hole drilling, other drilling, geotechnical investigation and the establishment of access tracks. Due to significant community concern the modification application was referred to the IPC for determination.

On 11 April 2019 the IPC met with the proponent. The following was said regarding the exploration works at the meeting:

PROF BARLOW: And, in effect, all the areas that you would be undertaking exploration activities in will be mined at some point?

MR BALKS: Correct.

The public meeting was held on 12 April 2019.

On 14 May 2019, Ms Anna Summerhayes Acting Executive Director of the IPC wrote to the Department seeking clarification regarding the location of the exploration drilling program being proposed, indeed already underway pursuant to a Mining Operations Plan (MOP) approved by the Department of Resources. The specific enquiry asked whether the exploration drilling would intrude into the Commonwealth-imposed 500m native vegetation corridor.

On 14 May 2019 Boggabri Coal wrote to the IPC (cc by email Stephen O’Donoghue, Acting Executive Director, Resources Assessments and Business Systems, Department of Planning and Environment) to provide additional information regarding the proposed exploration works. That letter included a map of the proposed drilling program (indicating that the drilling program would extend to areas outside the approved mine disturbance area) and clarified that the modification, if approved, would permit drilling below the Merriown seam (i.e. deeper than that permitted by the Coal lease and existing planning approval). From this letter it was evident that the drilling works could be outside the approved mine disturbance area in two respects:

- a) outside the boundary of the approved mine disturbance area under the planning approval; and
- b) deeper than permitted under the Coal Lease (the approved vertical limit of mining is 90m).

We note that the December 2018 Mining Operations Plan (which did not form part of the environmental assessment materials provided to the IPC) indicates that in the next few years the mine intends to drill up to 200 boreholes to a maximum depth of 400m.

On 15 May, 2019 Stephen O’Donoghue, Acting Executive Director, Resources Assessments and Business Systems, Department of Planning and Environment, replied to Ms Summerhayes: “The exploration activities would be within the approved mine disturbance area...”.

Consequent upon the Department's representation, the IPC relied solely on the information provided, and accepted the assurance that exploration drilling would take place solely within the approved mine disturbance area – which is false, as clearly the maps of the drilling program show.

The IPC determined to approved Mod 7 on 25 May, 2019. The IPC's Statement of Reasons relevantly states:

"74. For the reasons outlined in paragraph 73, the Commission accepts that the area where drilling and exploration activities would occur as a result of the Modification is within the approved Boggabri Coal Mine disturbance area but will not occur within the native vegetation corridor."

The reasons outlined in paragraph 73, relevantly include the 15 May 2019 letter provided by the Department.

The ensuring conditions of consent provide no constraints on the exploration activities and drilling permitted. Approval to undertake the works is provided by way of including the Mod7 EA document in the defined list of environmental assessment documents the project is to be carried out "generally in accordance with". ***As noted above the Mod7 EA provides no detail as to the location, depth or nature of the proposed drilling works.***

Our concerns:

The lack of regulation of these works is extremely concerning because we are very worried about the possible impacts on the aquifer of unregulated deep drilling below the approved coal seam and that appropriate measures will not be taken to respect and protect the areas of Aboriginal cultural heritage that lie outside the mine disturbance area but within the area of the proposed drilling works.

Currently the highest priority for many towns and communities in North West NSW is water security. The severe drought has impacted on dam levels and surface water, making groundwater the last resort for towns, stock and domestic, irrigators and coal mines. Therefore any risks to the security of groundwater should be treated with the maximum of foresight and scientific rigour by the responsible regulators. One such water source is the Gunnedah Oxley Porous Rock Water Source which is known to have connectivity with the Great Artesian Basin to the West and is believed to be at its highest point in the vicinity of Boggabri mine. Without an environmental impact assessment, foresight and scientific rigour is not being applied to the assessment of the deep drilling.

We note that the groundwater impacts of exploration drilling can include "contamination of the aquifer via runoff from drilling activities including chemical storage and handling, drilling fluids and cuttings". With no details from Boggabri Coal about the long-term sealing of wells, the possibility of these contaminants spreading into the alluvium, or the deeper water sources is a matter of great concern.

The map provided by the mine (attached to the 14 May 2019 letter) shows an intention to drill inside a sensitive area of Aboriginal cultural significance on a part of Leard Forest which is currently outside the approved mine disturbance area (but within the area of the Coal Lease, and in an area which was previously surveyed and found to contain artefacts NV5 and NV14.

We note that in the original Boggabri Coal EA (Fig. 29, p. 123) the two locations where these artefacts were found, were classed in the Figure Key as "newly identified sites not to be impacted".

We understand that the Gomeroi representative on the Boggabri Community Consultative Committee has previously requested the opportunity to survey this area and was refused access.

It is extremely worrying that both the Department and the IPC failed:

- to understand that there is a distinction between the “approved mine disturbance area”, the boundaries of the Coal Lease (both two dimensionally and by depth) and the “Project Areas” being the land listed in Schedule 1 of the Project Approval;
- to identify the issues created by the lack of specificity as to the exploration and drilling works provided in the proponent’s environmental assessment (Mod7 EA); and
- to review and appreciate the significance of the information provided by the proponent on 14 May 2019 (and that it reflected a different position than that communicated to the IPC by Mr Balks and understood to be the case by Mr O’Donoghue (as evidenced by the transcript of his discussions with the IPC)).

As a consequence of these failures the community has no comfort that:

- environmental impacts of drilling and exploration activities are being and will be assessed (particularly where they relate to existing approved mines);
- the Department understands the environmental assessment requirements for exploration works;
- care is taken when reviewing information provided by mine proponents to ensure sufficient detail is provided on the nature of proposed works and that discrepancies and deficiencies in information (and their consequences) are identified and understood.

We heard throughout this process numerous times both the proponent and Department of Planning’s representatives state that exploration drilling is implicitly allowed and does not require planning approval. There is no foundation in law as to those assertions. The Department’s own Fact Sheet entitled “Prospecting on a Mine Lease” is clear that if exploration has not been approved as part of the development consent, environmental impact assessment is required in accordance with Part 5..

In this instance the potential environmental impacts of the exploration works were not (and could not have been) assessed. The possible location of the works was only disclosed after the public hearing (and this information seems to have been ignored by the Department and the IPC) and the extent of the proposed works is unknown.

We further note that reliance by the Department on the MOP prepared by the mining company:

- does not satisfy the environmental assessment requirement of the Planning Act;
- does not provide for community input as required by the objects of the Planning Act;
- is ineffective if the type of work permitted to be included in the MOP is effectively unconstrained and the MOP is simply “waived through” by the regulator.

We maintain:

1. Boggabri Project Approval should not be used as a mechanism to authorise drilling outside the approved disturbance area.
2. IPC in its Statement of Reasons says it accepts the conclusions of the Department and in this wrongly ignored evidence to the contrary which was made in other submissions.
3. By granting this consent, IPC summarily approved something that should have been subject to a full environmental impact assessment either in a Modification Application (under Part

3A or 4) or a fresh application under Part 5 of the *Environmental Planning and Assessment Act 1979*.

4. The Department's letter dated 15 May 2019 was incorrect.

5. The maps depicting the surface disturbance area and Aboriginal artefacts area ought have been specifically drawn to the Commission's attention and attached to Mr O'Donoghue's letter of 15th May. This failure contributed to the Commission's misunderstanding of the nature of the works proposed.

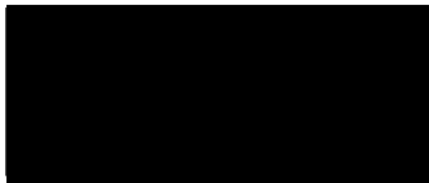
The lack of information provided to the IPC by the Acting Executive Director, Resources Assessments and Business Systems, Department of Planning and Environment has assisted Boggabri Coal in avoiding environmental impact assessment of the exploration drilling program, as well as potentially impacting on Aboriginal heritage. The latter is contrary to Boggabri Coal's Statement of Commitments in its original consent.

We request that this matter be investigated as a priority and that appropriate corrective action is taken to ensure that no drilling is undertaken outside the mine disturbance area and drilling beyond the approved depth of mining is thoroughly (and transparently) assessed and conditioned before being carried out. We also request that a review be undertaken of the environmental assessment processes for exploration and drilling activities at existing mines to ensure that similar errors are not made by the Department in the future.

A copy of this letter has been provided to the IPC and the Minister for Water.

We would appreciate your written acknowledgement of our letter and a response by (3 weeks)

Yours faithfully,



Wando Conservation and Cultural Centre Inc.

cc

Marcus Ray, Group Deputy Secretary Planning and Assessment at NSW Department of Planning, Industry and Environment

Professor Mary O'Kane, Chair of the Independent Planning Commission (IPC)

Professor Snow Barlow, Chair, IPC Panel, for Boggabri MOD7

The Hon. Roy Butler MP, Member for Barwon

ATTACHMENTS

**APPENDIX 2
PROJECT LAYOUT PLAN**

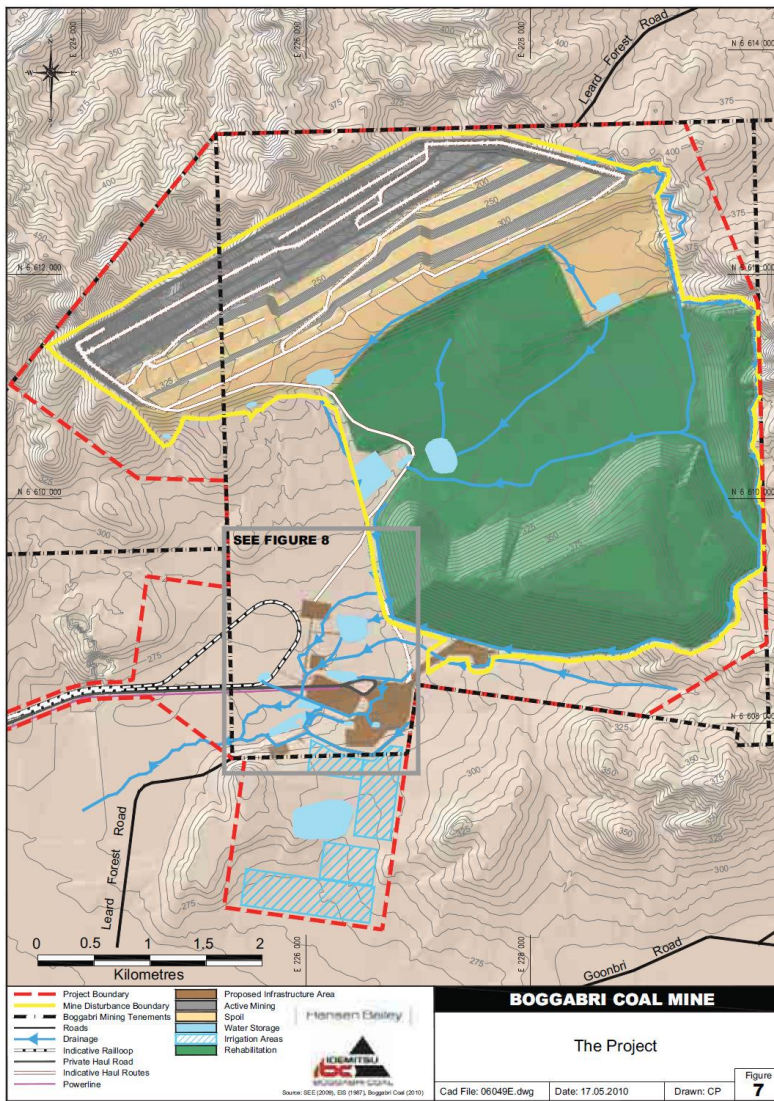


Figure 1: Mine Site Location



Figure 13-1 Comparison of 2017 MOP disturbance and Year 5 progressive disturbance limit

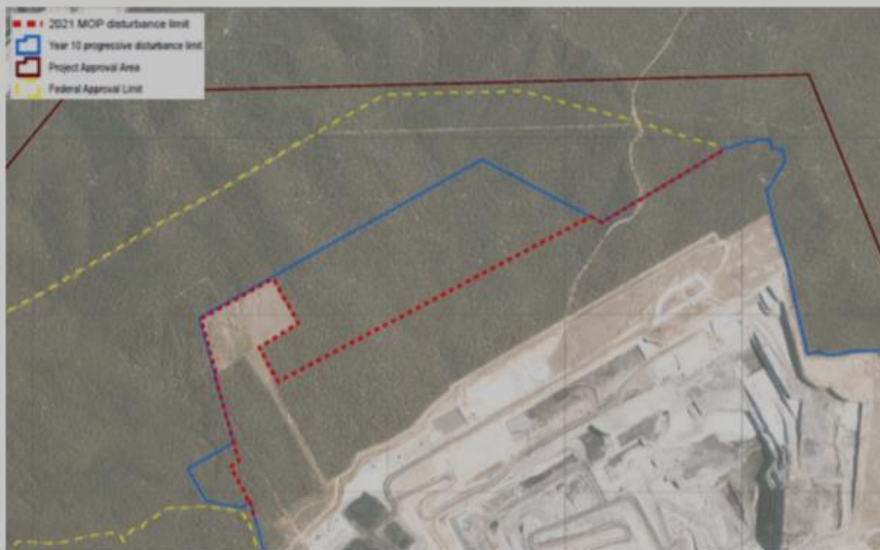


Figure 13-2 Comparison of 2021 MOP disturbance and Year 10 progressive disturbance limit

Red circles refer to the area inside the “drilling program area” from the current MOP (blue line, top figure), but outside the Mine Disturbance Boundary (orange line, bottom figure).

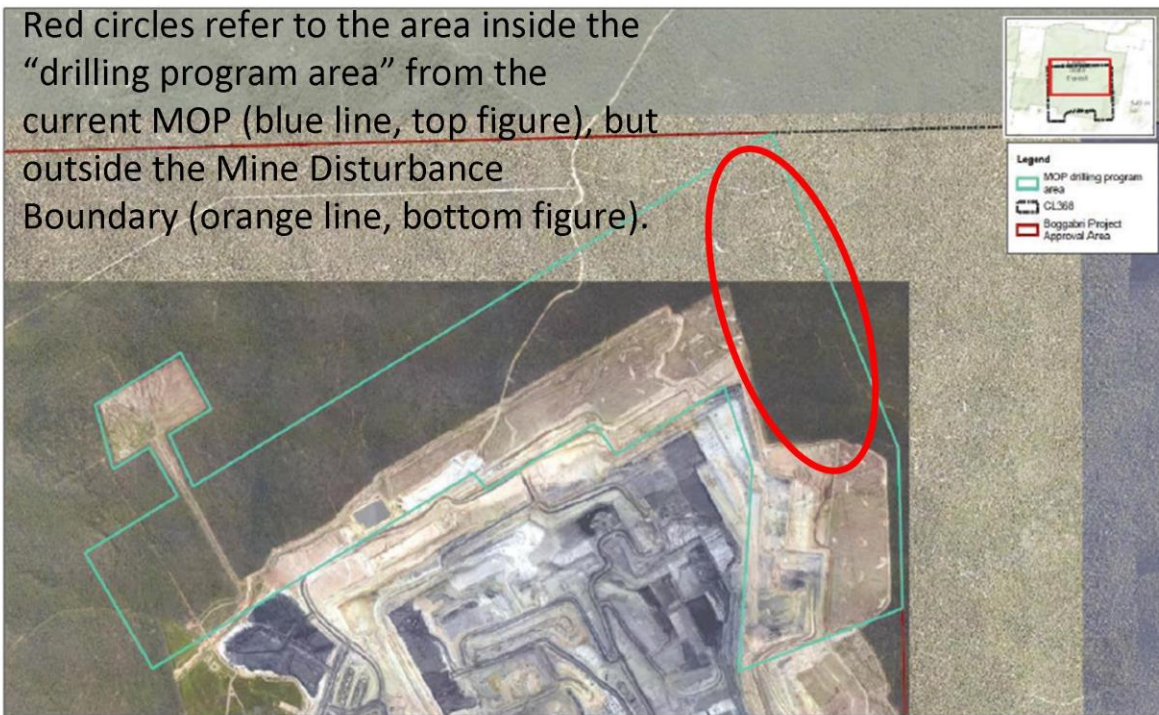
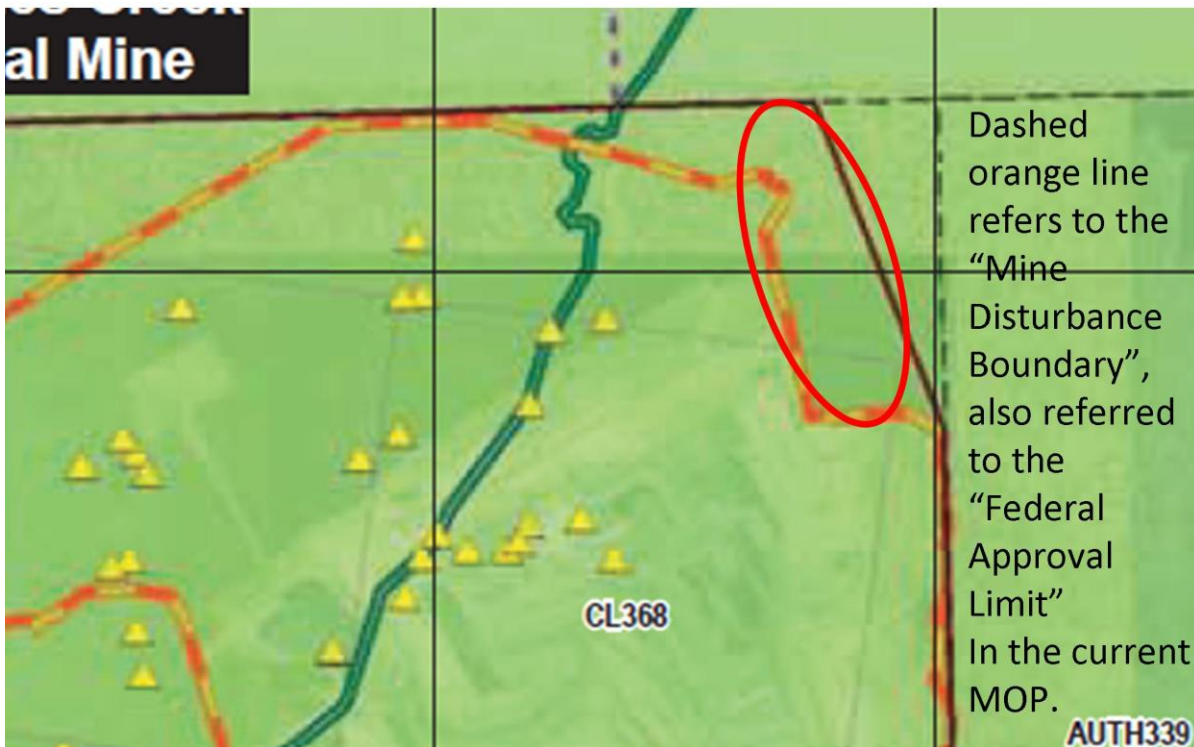


Figure 5-2 Area of drilling 2017-21



Dashed orange line refers to the “Mine Disturbance Boundary”, also referred to the “Federal Approval Limit” In the current MOP.

7. Conclusion

Since the inception of the IPC, it has gained the confidence of the WCCC as a body capable of adjudicating in an informed manner the contributions of a large selection of stakeholders, whilst at arms length from undue influence, and the possibility of corruption.

We strongly urge the government to ensure that the IPC is adequately resourced for its demanding role.

Wando Conservation and Cultural Centre Inc.
15 November, 2019