Nature Conservation Council
The voice for nature in NSW

Major Projects
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

10 March 2016

Submission of Objection: Wilpinjong Extension Project (SSD 6764)

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC **objects** to the proposed Wilpinjong Extension Project due to its significant environmental and cumulative impacts, including impacts on biodiversity, climate and the Hunter landscape.

We also note concerns with the economic modelling underpinning the proposal and the social impacts of the proposed mine expansion, particularly on the nearby village of Wollar.

Our **attached** submission outlines our specific concerns in relation to:

- Impacts on Biodiversity
- Final Mine Voids
- Greenhouse Gas Impacts
- Cumulative Impacts
- Social Impacts
- Economic modelling
- Economic viability of the proponent

We recommend that the proposed mine expansion be rejected. If you seek any further information on the issues raised in this submission please do not hesitate to contact me on (02) 9516 1488 or ncc@nature.org.au

Yours sincerely,

[redacted]

Kate Smolski
Chief Executive Officer

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NCC SUBMISSION - WILPINJONG EXTENSION PROJECT (SSD 6764)

The Nature Conservation Council of NSW (NCC) **objects** to the Wilpingjong Extension Project (SSD 6764) for the reasons outlined below.

IMPACTS ON BIODIVERSITY

NSW is facing a biodiversity crisis. There are currently over 989 species of plants and animals, 49 populations and 107 ecological communities threatened with extinction in NSW[1]. Land clearing and habitat loss is the single biggest cause of biodiversity loss in NSW[2,3]. Protecting habitat and controlling land clearing (including open cut mine associated clearing) are therefore essential if further losses of biodiversity and the services that healthy ecosystems provide are to be avoided.

The Wilpinjong Extension Project will have significant impacts on biodiversity, including threatened species and ecologically endangered communities (EEC's). Proposed clearing associated with the project will lead to destruction of important native vegetation and wildlife habitat.

According to the Biodiversity Assessment Report and Biodiversity Offset Strategy[4], the Biodiversity Assessment Report Development Site Footprint (BAR Footprint) is mostly cleared land, although it contains approximately 354 hectares of native vegetation, comprising dry sclerophyll forests and grassy woodlands in moderate to good condition, which will be cleared if the mine expansion is allowed to proceed.

We specifically note that:

- Approximately 9.5 ha of *White Box - Yellow Box - Blakely's Red Gum Woodland Endangered Ecological Community* (Box-Gum Woodland EEC) occurs within the BAR Footprint. We note that this community is also listed as the *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland Critically Endangered Ecological Community* [Box-Gum Woodland CEEC] under the EPBC Act).

- A single threatened flora species occurs in the BAR Footprint: *Ozothamnus tesselatus.* This species is listed under both the NSW *Threatened Species Conservation Act* 1995 (TSC Act) and the Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act).

- 26 threatened fauna species listed under the TSC Act have been recorded within or immediately surrounding the BAR Footprint including the Black-chinned honeyeater, Brown Treecreeper, Diamond Firetail, Glossy Black Cockatoo, Hooded Robin, Little Lorikeet, Speckled Warbler and Squirrel Glider.

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[1] EPA (2012) NSW State of the Environment Report, 2012 – Environment Protection Authority, Sydney
[2] EPA (2000) NSW State of the Environment Report, 2000 – Environment Protection Authority, Sydney
[3] Coutts-Smith, A.J. & Downey, P.O. (2006) *Impact of Weeds on Threatened Biodiversity in NSW,* Technical Series No. 11, CRC for Australian Weed Management, Adelaide
[4] Biodiversity Assessment Report and Biodiversity Offset Strategy, Wilpinjong Extension Project EIS, Appendix E

- Two threatened fauna species listed under the EPBC Act have been recorded in the BAR Footprint, namely, Corben's Long-eared Bat (*Nyctophilus corbeni*) and Large-eared Pied Bat (*Chalinolobus dwyeri*).

- Two threatened fauna species which are species credit species have been recorded outside the BAR Footprint but are assumed to have potential habitat in the BAR Footprint, namely, Regent Honeyeater (*Anthochaera phrygia*)[5] and Koala (*Phascolarctos cinereus*)[6] (both listed under the TSC Act and EPBC Act).

While the proposal claims to avoid, minimise and offset impacts on threatened species and their habitats, it is our view that the proposed measures are inadequate and will not compensate for the significant impacts on biodiversity.

We are particularly concerned that there is a heavy reliance on offsets to compensate for biodiversity impacts. NCC has repeatedly found that proponents of open cut coal mines, while paying lip service to the principle of avoidance, actually go straight to the offsets option in an attempt to justify the biodiversity impacts of their mining proposals.

Further, substantial research indicates that biodiversity offsetting has significant limitations and does not deliver the biodiversity outcomes needed to compensate for biodiversity loss[7].

For the purpose of this submission, we have provided further comment on the Regent Honeyeater and *Ozothamnus tesselatus* to highlight the inadequacies of the proposed Biodiversity Offset Strategy.

Regent Honeyeater

The Regent Honeyeater is a beautifully marked black, white and yellow honeyeater which has become an icon for birdwatchers in NSW. It is acknowledged by the NSW Office of Environment and Heritage (OEH) that *"the Regent Honeyeater is a flagship threatened woodland bird whose conservation will benefit a large suite of other threatened and declining woodland fauna"*[8].

The bird was listed as Critically Endangered in NSW in 2011 and as Critically Endangered under the Commonwealth EPBC Act in 2015. It was also listed on the IUCN Red List of Threatened Species in 2015. These listings reflect the fact that, without major government intervention, the Regent Honeyeater is rapidly heading for extinction in NSW. Over the last decade, the Regent Honeyeater has undergone a population reduction and continuing decline throughout its range. The NSW population of Regent Honeyeaters may now be fewer than 250 mature birds[9].

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[5] Wilpinjong Extension Project EIS, Appendix E, Figure 11.
[6] Wilpinjong Extension Project EIS, Appendix E, Figure 12
[7] See Walker S. et.al (2009) *Why Bartering Biodiversity Fails* Conservation Letters 2 (2009) 149-157; Maron M. et. al.(2012) *Faustian bargains? Restoration realities in the context of biodiversity offset policies, Biological Conservation* 155 141-148; Curren. M. et al. *Is there empirical support for biodiversity offset policy?* Ecological Applications, 24(4) 2014 pp 617-632.
[8] See www.environment.nsw.gov.au/threatenedSpeciesApp/profile.aspx?id=10841
[9] See www.environment.nsw.gov.au/determinations/regenthoneyeaterFD.htm

Figure 11 in Vol. 3 of the EIS shows very clearly that the current Wilpinjong mine and the proposed extension are located in potential Regent Honeyeater habitat. Not only is there 273 ha of significant potential habitat located in the proposed mine extension footprint[10] (which will be destroyed if the mine is approved), there are also documented sightings of the regent honeyeater to the immediate south of the Wilpinjong mine and even on the current mine footprint itself.

We do not agree with the EIS conclusion that 'the action is not considered to have a significant impact on critical habitat for the Regent Honeyeater, as an abundance of similar vegetation occurs within the surrounding Goulburn River National Park and Munghorn Gap Nature Reserve, and would not be impacted by the action'.

The potential regent honeyeater habitat in the BAR footprint is still critical, despite there being similar vegetation in the surrounding Goulburn River National Park and Munghorn Gap Nature Reserve.

The *Draft National Recovery Plan for the Regent Honeyeater* (Anthochaera phrygia)[11] provides that:

> *Habitat critical to the survival of the regent honeyeater includes:*
>
> - *Any 'breeding areas' or regions where the species is 'likely' to occur.*
> - *Any newly discovered 'breeding' or foraging locations that extend the 'likely' range of the regent honeyeater.*
>
> *Key areas include the Bundarra-Barraba, Capertee Valley and Hunter Valley districts in New South Wales, and the Chiltern area in north-east Victoria, and the surrounding regions.*
>
> *Critical habitat occurs in a wide range of land ownership arrangements, including on private land, travelling stock routes and reserves, state forests and state reserves, and National Parks. It is essential that the highest level of protection is provided to these areas and that enhancement and protection measures target these productive sites.*

For a bird that is critically endangered and heading for extinction, it is essential to avoid further habitat loss. Offsets are not appropriate to 'compensate' for the removal of more habitat for a critically endangered species like the regent honeyeater. In fact, the *Draft National Recovery Plan for the Regent Honeyeater* recognises that the 'current government policy frameworks in relation to development assessment and the offsetting of impacts don't adequately address the key threats of habitat loss and degradation and habitat fragmentation'[12].

Further, the offsets proposed for the regent honeyeater **do not meet the requirements** of the NSW Biodiversity Offsets Policy for Major Projects.

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[10] Wilpinjong Extension Project EIS, Appendix E, p 36
[11] *Draft National Recovery Plan for the Regent Honeyeater,* Department of Environment, July 2015
[12] *Draft National Recovery Plan for the Regent Honeyeater,* Department of Environment, July 2015

The EIS concedes that "the Regent Honeyeater is the only species in Table 32 for which **the offset areas do not generate enough credits** according to the NSW *Framework for Biodiversity Assessment"*[13]. The proponent tries to argue that "the project credit requirement for the Regent Honeyeater is very large considering the area of habitat to be disturbed and this is the result of very high offset multiplier values that are not reflective of a realistic biodiversity offset requirement"[14].

We do not accept the position of the proponent. We see this as shirking responsibility for the destruction of regent honeyeater habitat, which is unacceptable given its conservation status. How rare does a species have to be before the NSW government refuses to permit further destruction of its habitat by open cut coal mines?

The integrity of the NSW Biodiversity Offsets Policy for Major Projects will be under question if this project is approved with the current offsetting plan. The impact of the proposed Wilpinjong Extension Project on the critically endangered Regent Honeyeater provides compelling grounds for refusing the proposal.

Ozothamnus tesselatus

Ozothamnus tesselatus is a dense shrub that has only been recorded in the Hunter-Central Rivers CMA district. It is classified as vulnerable under both the NSW TSC Act and the Commonwealth EPBC Act. *Ozothamnus tesselatus* is identified as a "species that cannot withstand further loss" in accordance with the BioBanking Report available on the *BioNet Threatened Species Profile Database* (OEH, 2015c) [15].

In spite of this, the proponent proposes to destroy 589 individuals of this rare plant, located on the edge of pit 8[16]. Its justification for dismissing the *BioNet Threatened Species Profile Database* identification as a "species that cannot withstand further loss" is that a formal impact assessment concludes that this species would withstand the loss associated with the Project due to much larger numbers recently recorded in the immediate region than were previously known[17]. We recommend that this be verified.

Further, we do not believe that the proponent has taken all reasonable measures to avoid impacts on this species. The recorded locations of this rare plant are right on the edge of the development site footprint, however the proponents have made no attempt to avoid the impacts by moving the site footprint so that these rare plant populations are not destroyed by mining.

Given the conservation status of *Ozothamnus tesselatus* and the fact that it is identified as a "species that cannot withstand further loss" we recommend further detailed consideration be given to the impacts on this species, including whether further measures can be taken to avoid impacts, before approval is given to destroy 589 individuals.

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[13] Wilpinjong Extension Project EIS, Appendix E, p 99
[14] Wilpinjong Extension Project EIS, Appendix E, p 99
[15] Wilpinjong Extension Project EIS, Appendix E, p 43
[16] Wilpinjong Extension Project EIS, Appendix E, Figure 13.
[17] Wilpinjong Extension Project EIS, Appendix E, p 43

Commonwealth Biodiversity Offset Requirements

The EIS states that[18]:

> *"Under the EPBC Act, an offset is only required if residual impacts on protected matters are significant.*
>
> *The significance of potential residual impacts on protected matters … has been evaluated and it is concluded that none of the protected matters are likely to be significantly impacted after consideration of the Significant Impact Guidelines 1.1 – Matters of National Environmental Significance"*

The *Significant Impact Guidelines 1.1 – Matters of National Environmental Significance* state that an action is likely to have a significant impact on a critically endangered or endangered species if there is a real chance or possibility that it will:

- *Lead to a long term decrease in the size of a population;*
- *Reduce the area of occupancy of the species;*
- *Adversely affect habitat critical to the survival of a species;*
- *Destroy, remove or decrease the availability…of habitat to the extent that the species is likely to decline;*
- *Interfere with the recovery of the species.*

In light of our concerns above, particularly in relation to the Regent Honeyeater and *Ozothamnus tesselatus*, it is unclear how the proponent reached the conclusion that none of the protected matters are likely to be significantly impacted. We strongly urge decision makers to review this conclusion as it is our considered view that the mine will have a significant impact.

FINAL MINE VOIDS

The Wilpinjong Extension Project proposes leaving a final void in Pit 8 as part of the post-mining landform[19] . This is in addition to two voids that will be left in Pit 2 and Pit 6 under existing Project Approval 05-0021. The details in relation to the three final voids are unclear, with the final size and depth of the voids to be designed as part of a Final Void Management Plan.

NCC has significant concerns with allowing final voids to be approved as a part of the final post-mining landscape. Mine voids can have significant long-term impacts on water due to elevated water acidity and high salinity. There are also concerns in relation to the cumulative impacts of final voids in the Hunter landscape.

These concerns have been recognised by the NSW Planning Assessment Commission (PAC) who does not accept that a mining legacy of large voids across the Hunter landscape is acceptable. The PAC

[18] Wilpinjong Extension Project EIS, Appendix E, p 72
[19] Wilpinjong Extension Project EIS, Vol 2, Appendix C, Fig 2

recommended that a study should be undertaken by Government as a matter of priority to review the cumulative impacts of voids in the Hunter Valley including the impacts of these voids on the short, medium and long-term on the water table and on the future of agriculture and other associated industries in the Hunter Valley[20].

Given the uncertainty around the long-term impacts of final voids, and the clear recommendation from the PAC that these issues must be given further consideration by Government as a matter of priority, we strongly recommend that in accordance with the precautionary principle, no approval is given to mining applications that propose final voids as part of the project application until there is a clear and acceptable policy on final voids.

Further, questions arise as to why mining companies are permitted to leave final voids in the landscape rather than properly fill and rehabilitate these areas.

Professor Phillip Geary, University of Newcastle, made the following statement in 2015:

> "*The question is: why aren't these miners required to fill in their final voids as a matter of course, as part of the government approved mine rehabilitation plan? One word: cost. … The regulators now accept that mine voids are to remain in the landscape once mining ceases… The cost to rehabilitate the final void should be borne by the industry that has earned income from digging up and selling the coal. It should no longer be acceptable to leave a large hole in the ground as a legacy*"[21].

NCC agrees with these sentiments. By allowing final voids, the user (in this case the mining company) is not paying for the environmental legacy left behind after open cut coal mining. The miner takes the profits and leaves the environmental costs to the State, funded by future generations of NSW taxpayers. It is a clear contradiction of the principle of intergenerational equity to approve an open cut coal mine void without requiring the funds for proper rehabilitation of the site from the proponent. It ultimately leaves the costs of the future management of mine voids to be borne by future generations.

Projects which propose one or more final voids as part of the post-mining landscape should not be approved unless a genuinely independent assessment of the costs of rehabilitation of the mine void is made and mechanisms are put in place to secure funds for the future rehabilitation of the mine site (e.g. payment of money into a trust fund).

It is clear that simply accepting final mine voids as part of the post-mining landscape is inconsistent with the principles of ecologically sustainable development, in particular, the precautionary principle and intergenerational equity. The current proposal should not be approved unless further measures are put in place to avoid a final mine void in Pit 8.

GREENHOUSE GAS IMPACTS

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[20] NSW Planning Assessment Commission, *Warkworth Continuation Project Review Report*, 4 March 2015,
[21] See https://theconversation.com/disused-mines-blight-new-south-wales-yet-the-approvals-continue-39059

In spite of the significant national and international implications of greenhouse gas emissions (GHG emissions) and climate change, the voluminous EIS manages only seven pages on greenhouse gas assessment[22].

We are concerned that the significant greenhouse gas and climate impacts of the project are carefully downplayed, with the key focus being on Scope 1 and Scope 2 emissions. The EIS argues that the project will have a 'relatively low GHG emission rate per tonne of ROM coal extracted' compared to other mining operations in NSW.

While this may be the case, it is the scope 3 emissions that are the most concerning. The total scope 3 emissions for the project are listed in Table 10-4 as 346.34 million tonnes of CO_2 equivalent emissions – dwarfing the figure of 2.2 million tonnes from Scope 1 and Scope 2 sources.

A comparison against the Scope 3 GHG emissions of other proposals shows that the scope 3 GHG emissions of the Wilpinjong Extension Project are substantially greater than other proposals in the area.

Scope 3 GHG emissions over project life (million tonnes of CO_2 equivalent emissions)

Wilpinjong Extension	Bylong Project (currently under consideration)	Mt Owen (considered by PAC on 14December 2015)
346.34	202.5	131.76

The Wilpinjong Extension Project is being considered in the shadow of the historic agreement at the UN Conference of the Parties (the Paris Agreement) on 12 December 2015. The Paris Agreement was unanimously signed by 195 countries. The agreement commits all nations, including Australia, to keeping global average temperatures to below 2 degrees Celsius.

The Climate Council of Australia has stated what this target means for Australian coal mining:

> *"For Australia to play its role in preventing a 2 degree C rise in temperature requires over 90% of Australia's coal reserves to be left in the ground, unburned".*[23]

International researchers from the University College of London, following extensive modelling, have come to a similar conclusion[24]. They suggest that to have at least a 50% chance of keeping global warming below 2 degrees C throughout the twenty-first century, globally a third of oil reserves, half of gas reserves and over 80% of current coal reserves should remain unused. Even with carbon capture and storage technologically and economically available, the report indicates that over 90% of Australasian coal reserves would have to remain unburnt before 2050 to meet the 2 degrees C warming ceiling.

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[22] Wilpinjong Extension Project EIS, Vol 2, Appendix B, pp 53-59

[23] Climate Council of Australia (2015): *"Unburnable Carbon: Why We Need to Leave Fossil Fuels in the Ground", pp iii – iv,* www.climatecouncil.org.au

[24] C. McGlade & P Ekins: *The geographical distribution of fossil fuels unused when limiting global warming to 2degrees C,* Nature, V. 157, 8th January 2015, pp 187-190

The Australian government has committed to reducing greenhouse gas emissions by 26 to 28per cent by 2030. In spite of this commitment, it appears that Australia's annual emissions are increasing when other developed economies are cutting their carbon pollution[25].

NCC maintains that it is fundamentally irresponsible for the NSW Government to continue to approve new or expanded coal mine projects at a time when thermal coal prices are at record lows and Australia's GHG emission trajectory is moving in the opposite direction to that required for Australia to meet its international GHG emission reduction commitments.

In light of the unequivocal evidence that the burning of coal contributes to anthropogenic climate change and international agreement to keep global average temperatures to below 2 degrees Celsius, we do not consider that the approval of the Wilpinjong Extension Project is in the public interest.

CUMULATIVE IMPACTS

The Wilpinjong Extension Project will contribute to the ongoing expansion of coal mining in the Hunter region, which is already having a devastating effect on the climate and local communities, and causing significant environmental damage and irreplaceable biodiversity loss.

The cumulative impacts of mining operations in the Hunter region are likely to cause serious environmental and social problems now and into the future. Whilst the mines are in operation dust, noise impacts and traffic impacts will be immediate. Other impacts such as water contamination, loss of surface water, surface disturbance and loss of biodiversity will be cause serious and potentially irreversible impacts in both the immediate and long-term.

The cumulative impacts of all mining activities in the region must be considered when determining these applications.

SOCIAL IMPACTS

The proposed mine extension will have significant impacts on the village of Wollar, including noise and dust impacts. The proposed noise assessment, monitoring and mitigation measures are inadequate and air quality has not been assessed against the new standards adopted in December 2015.

ECONOMIC MODELLING

We are concerned that the economic analysis underpinning the proposal is inaccurate. For example:

- The forecasts used by Deloitte in the EIS for projected export coal prices appear to be significantly higher than the current, rapidly declining thermal coal price. It is noted that on 24 February 2016, Thermal coal ex Newcastle was fetching $US 40[26]. The EIS projection is, at

[25] *Carbon emissions on rise despite Direct Action*, Australian Financial Review, 1 February 2016, www.afr.com/news/politics/carbon-emissions-on-rise-despite-direct-action-20160131-gmif6a

[26] See www.smh.com.au/business/energy/lngs-hammer-blow-to-thermal-coal-20160223-gn1cod.html

worst, just above $US60, projected through to 2033[27]. The current price represents a 33% decrease in the price modelled by Deloitte – but the modelling only considers price scenarios 15% below the projected price of $US60.

- The Institute for Energy Economics and Financial Analysis (IEEFA) remarks that the seaborne thermal coal market has entered structural decline[28]. IEEFA predicts that global import demand for thermal coal peaked in 2013 and is set for a 40% decline by 2021.

In light of ongoing concerns about the mining industry putting forward incorrect and exaggerated economic modelling[29] and reports that thermal coal market is in decline, we strongly urge the Department to commission an independent review of the economic analysis prior to further assessment of the proposal.

ECONOMIC VIABILITY OF THE PROPONENT

There is also concern about the economic viability of the proponent Peabody Energy, a US mining corporation which owns Wilpinjong Coal, the subsidiary which operates the Wilpinjong coal mine. It has been reported that most of Peabody's mine cleanup costs are 'self-bonded with no concrete backing', and that more costly surety bonds 'could push Peabody closer to bankruptcy'[30].

In light of these concerns, NCC suggests that, in the event the proposal is approved, a surety bond for the cost of mine rehabilitation is required as a condition of approval. This will prevent the cost of rehabilitation falling on the NSW taxpayer in the event of the real risk of bankruptcy of Peabody Energy in the US.

[27] Wilpinjong Extension Project EIS, Vol 4, Appendix M, p 23, Chart 5.3
[28] Tim Buckley, *"The Australian Thermal Coal Industry Facing Global Structural Decline Headwinds", IEEFA, September 2015*
[29] See www.smh.com.au/nsw/mining-assessments-to-be-beefed-up-after-scathing-review-20140616-zs9sd.html; www.businessspectator.com.au/article/2015/4/20/policy-politics/coal-industry-writing-nsw-govts-rules-economics
[30] www.reuters.com/article/us-usa-coal-bonding-idUSKCN0VW278