

Planning Assessment Commission
GPO Box 3415,
Sydney NSW 2001

Friday 2 December 2016

**Submission of Objection
Planning Assessment Commission Review
Wilpinjong Extension Project RO39-16**

Central West Environment Council (CWEC) is an umbrella organization representing conservation groups and individuals in central west NSW working to protect the local environment for future generations.

We appreciate the opportunity to lodge this submission to the Planning Assessment Commission review of the Wilpinjong Extension Project and trust that the issues raised here within will be taken into account.

CWEC maintains our objection to this large mine expansion. We wish to note our disappointment that the issues raised in our submission to the Department of Planning and Environment during the public exhibition of the environmental assessment documents have not been addressed.

1. Response to Submissions

Issues raised in relation to reporting on the current conditions of approval for revegetation and regeneration establishment in the Enhancement and Conservation Areas (ECAs) was not addressed in the proponent's Response to Submissions or the Department's Assessment Report.

We note in the Biodiversity Assessment Report (Attachment A p A-5) that the ECAs contain 80 ha of the critically endangered Box Gum Woodland with a commitment to re-establish another 50 ha. The status of this commitment has not been reported.

Also the issue of monitoring and reporting on existing impacts of fly rock, blast vibration, dust, noise emissions and light pollution on threatened species habitat within the adjacent reserve system, particularly Munghorn Gap Nature Reserve, has not been addressed.

We also raised the issue of inadequate application of the Koala SEPP in assessing the biodiversity impacts of the project. A new siting of Koala recently occurred along the road near the nature reserve. There has been very little targeted survey work done in the region to improve knowledge of the local Koala population.

The issue of cumulative impact on biodiversity has not been adequately addressed. The Response to Submissions (p75) refers to the Biodiversity Assessment Report and Biodiversity Offset Strategy prepared by Hunter Eco.

The Hunter Eco report Table 18 (p 59) shows that approximately 2,226 ha of woodland/forest has been approved to be destroyed in the immediate area of Wilpinjong Mine.

The reference to cumulative impact on threatened species and communities appearing in Appendix A and B of the Hunter Eco report is incorrect.

The report does not provide the area of the critically endangered Box Gum Woodland approved for clearing across the three adjacent mines. It also does not report on the cumulative loss of habitat values for a large number of threatened species listed under the NSW and Commonwealth legislation.

The short to medium term impacts on threatened species habitat is not mitigated in offset strategies that rely heavily on habitat restoration and mine rehabilitation success.

The scale of habitat disturbance in the region is significant and places more competition for resources in the reserve system and remnant patches of vegetation.

CWEC considers that the cumulative impact on biodiversity of the Wilpinjong Extension Project has not been adequately assessed.

2. Inadequate Biodiversity Offset Strategy

The significant and cumulative impact on the critically endangered Regent Honeyeater has not been adequately offset.

We consider that the proposal negotiated between the proponent and the Department does not meet the requirements of the NSW Biodiversity Offset Policy for Major Projects or the Commonwealth Environmental Offsets Policy under the *Environment Protection and Biodiversity Conservation Act 1999*.

The objectives of the NSW Policy are:

- (a) to provide clear, efficient and certain guidance for stakeholders
- (b) to improve outcomes for the environment and communities
- (c) to provide a practical and achievable offset scheme for proponents.

The proposal is inconsistent with the objectives in the following ways:

- The project introduces an inappropriate use of mine rehabilitation to provide offsets, with a credit discount which appears to have been decided without any scientific basis. This is inconsistent with the objectives to reduce negotiation, know biodiversity requirements upfront and provide transparency in decision-making
- The project fails to improve outcomes for the community or the environment by:
 - i) Allowing changes to previously agreed woodland/agricultural ratios that were designed to support future rural communities.
 - ii) Allowing offset credits for areas of mine rehabilitation that the proponent was already obliged to provide and assuming that this rehabilitation can achieve a goal of re-creating Regent Honeyeater habitat, despite a complete absence of evidence this is possible.
- The flexibility introduced by this offset proposal significantly exceeds that envisaged by the Policy.

The Principles of the policy include:

- a) Principle 1: Avoid then mitigate

The project fails to meet this principle by refusing to provide an adequate buffer to the surrounding nature reserve thus impacting Regent Honeyeater habitat.

- b) Principle 2: Reliable and transparent assessment of losses and gains

The project apparently used the linear assessment model for calculating offsets which is entirely inappropriate for the nature of the project.

The project fails to meet this principle by allowing credits for mine rehabilitation already required and/or undertaken without any consideration of the environmental outcomes that should have been achieved through this rehabilitation.

- c) Principle 3: Offsets must be targeted to the biodiversity values being lost

The policy expressly states:

In order to manage the risk of decline of entities that are scarce, the policy does not allow such variation to be applied to critically endangered species and communities or threatened species and ecological communities that are considered nationally significant (listed under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999). These must be offset in a like-for-like manner.

The proposed offsets do not meet this requirement.

- d) Principle 4: Offsets must be additional to other legal requirements

Conditions of approval and the Biodiversity Management Plan for the existing project clearly contemplate mine rehabilitation that has been double counted in the awarding of offset credits for the extension project.

The Conditions of Consent state:

Definitions: Rehabilitation - The restoration of land disturbed by the project to a good condition to ensure it is safe, stable and non-polluting

Biodiversity Management Plan (38). The Proponent shall prepare and implement a Biodiversity Management Plan for the project to the satisfaction of the Director-General. This plan must...(c) include detailed performance and completion criteria for evaluating the performance of the biodiversity offset strategy, and triggering remedial action (if necessary)

The 2016 Biodiversity Management Plan[1] states:

Pg 19 - Niche developed Completion Criteria for the Mine based on benchmark condition states for the two dominant vegetation classes found across the Mine – Western Slopes Dry Sclerophyll Forest and Coastal Valley Grassy Woodlands (Section 6)

Combined with Tables 10-13 the Biodiversity Management Plan establishes a clear requirement to establish Western Slopes Dry Sclerophyll Forest and Coastal Valley Grassy Woodlands with *“sufficient ecological function and resilience to undergo on-going improvement without the need for further management intervention”* (pg 37).

If any offset credits were to be assigned for additional work in this area, it should start from the basis of improving the already required function and resilient woodland. Credits should only be generated for the improvement

component and this credit total should be discounted to recognise the uncertainty associated with mine rehabilitation.

e) Principle 5: Offsets must be enduring, enforceable and auditable

Only a small number of the offsets are required to be protected in the long term. In their response to the Response to Submissions report, OEH noted:

There is no requirement to retire species credits as no BioBanking agreement is proposed. The proposed condition implies that the company's obligation will be assessed within 15 years of the end of mining. This may be too short a time period as it is unlikely that eucalypt species planted will have grown sufficiently to flower. The productiveness of flowering and nectar production capacity of the rehabilitated vegetation will be critical to it becoming Regent Honeyeater habitat.

Despite this, the proposed conditions of approval allow offset credits to be retired after 10 years and any offsets that are not retired may be offset via supplementary measures (itself a breach of the Policy).

f) Principle 6: Supplementary measures can be used in lieu of offsets.

The policy is clear that this principle does not apply to critically endangered species and communities or threatened species and ecological communities that are considered nationally significant (listed under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999)

Transitional Arrangements

The Department has relied on the fact that the Policy is in a transitional period to allow offset arrangements that are not contemplated by the Policy. However, it is clear that the purpose of transitional arrangements is to ensure that the new methodology did not create perverse outcomes.

During the transitional implementation period, all new environmental assessment requirements for major projects (issued pursuant to Part 2 of Schedule 2 of the Environmental Planning and Assessment Regulation 2000) will include a requirement to assess the biodiversity impacts and determine associated offsets arising from a proposal in accordance with the NSW Biodiversity Offsets Policy for Major Projects. However, if application of the policy or its underlying tool, the Framework for Biodiversity Assessment (FBA), results in perverse outcomes that do not reflect the intentions of the policy, the consent authority may vary the application of the policy or FBA to address this.

The Department accepts that a high offset ratio for the critically endangered Regent Honeyeater is not a perverse outcome (Assessment Report pg 54).

On this basis, it is inappropriate to suggest that the transitional arrangements permit such major departures from the Policy.

There has been no information provided about the 'reasonable steps' taken to find appropriate land based offsets that provide suitable Regent Honeyeater habitat to retire the shortfall of 10,359 species credits.

CWEC does not support the proposed biodiversity offset strategy. There is no identification of the proposed tenure of the final mine landform if it is to be all converted to woodland rehabilitation with a large proportion of Regent Honeyeater offset. Nor is there discussion in regard to the rehabilitation bond held by the Department of Resources and Energy.

3. Other key objections:

3.1 Expansion of mine into areas identified for regeneration in current conditions

The proposal to mine into the narrow valleys intruding into the Munghorn Gap Nature Reserve has a number of significant biodiversity impacts that are not clearly identified or discussed in the Department's Assessment Report.

Under current conditions Schedule 3 condition 58 Rehabilitation Objectives Table 12 requires that the proponent:

Restore ecosystem function in Regeneration Areas, establishing a trajectory towards self-sustaining ecosystems comprised of a combination of:
- *native woodland/riparian areas; and*
- *wildlife corridors (as indicated in the figure in Appendix 4).*

The Department notes that the proposed extension into these areas will cause the loss of 163 ha of regeneration. This loss can be avoided.

CWEC considers the additional impacts on the nature reserve and loss of habitat regeneration areas have not been satisfactorily addressed.

The expansion of mining into these areas should be rejected.

3.2 Impacts of mining in Slate Gully (Pit 8)

A significant number of biodiversity, cultural heritage and social impacts will be caused by the proposal to extend the Wilpinjong Mine to the east into Slate Gully.

This will cause the destruction of significant Aboriginal cultural heritage sites in the form of an ochre quarry and artwork.

It will also cause disturbance to a rare Eastern Bent-wing Bat maternity roost. OEH has commented that the loss of specialized maternity sites may place regional populations of this vulnerable species at risk.

The loss of critically endangered species habitat can be avoided if the extension into Slate Gully was not approved.

A third final void is proposed to be left in the landscape.

Finally, the encroachment of open cut mining impacts of noise, dust, blasting, and spontaneous combustion to within close proximity of the Wollar village is too great a cumulative social impact on the region that will not be mitigated.

3.3 Final Voids

CWEC does not support the retention of final voids as a costly legacy for future generations.

We note that in the US where Peabody Energy primarily operates the retention of final voids has been banned since the 1970's. Mines are required to restore the approximate original contour by backfilling, grading and compacting.

One of the drivers of this policy is to facilitate the relinquishment of the mine lease with the lowest possible residual risk and associated costs.

The retention of final voids is a cost shifting exercise onto the environment, future landowners and the public. The estimated cost of \$15m to backfill the proposed void in Pit 8 is immaterial in the context of the cash flow generated by the proposed mine over its projected life.

3.4 Lack of public benefit

CWEC considers that the environmental, social and Aboriginal cultural heritage impacts of the project outweigh the perceived economic benefits.

Wilpinjong Mine has approval to operate for another 10 years and will be able to meet its obligation under contract to supply AGL with thermal coal for the Bayswater and Liddell Power Stations.

CWEC considers that by 2026 the global market for thermal coal will have significantly declined and the commitment to jobs, taxes and royalties as calculated for the mine expansion will not be available to meet the identified public benefit.

We urge the Planning Assessment Commission in your review of the impacts of this mine proposal to take into account that the production of an additional 20.4 Mt/annum of CO₂ equivalent is not in the public interest.

The NSW Government has committed to zero carbon emissions by 2050 and the Australian Government has just ratified the Paris Agreement to limit global warming to acceptable levels. The approval of this mine extension will be a backward step in meeting these goals.

CWEC does not agree that the Department's has carefully weighed the impacts of the project against the benefits. We consider there have been considerable cost shifting agreements that push impacts onto the environment and community and unfairly favour the proponent.

There are many arguments in relation to cost shifting that demonstrate that the project is not viable. For example \$42m noise mitigation costs saved by increasing noise levels in Wollar village, \$15m backfilling costs in Pit 8 saved by retaining a final void, as well as the proposed highly questionable biodiversity offset strategy.

In fact, the CIE peer review of the economic assessment (p 17) identifies issues surrounding the calculation of residual value of capital that is of concern for the economic viability of the project.

The Department recommendation that the project is approvable, subject to stringent conditions, is not acceptable. The current conditions of approval have not been adequately regulated with numerous examples of non-compliance.

CWEC has no faith that 'stringent conditions' will be upheld in the future and recommends that the Wilpinjong Extension Project be rejected.

Yours faithfully

