

“Reclaiming our Valley”

Hunter Communities Network

Planning Assessment Commission
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Submission of Objection Wilpinjong Extension Project R039-16

The Hunter Communities Network (HCN) is an alliance of community based groups and individuals impacted by the current coal industry and concerned about the ongoing rapid expansion of coal and coal seam gas exploration and mining in the region.

HCN lodged an objection to the Wilpinjong Extension Project (extension proposal) as presented in the Environmental Assessment Report exhibited in early 2016.

HCN welcomes the opportunity to provide comment on the Department of Planning and Environment (Planning) Assessment Report (the report).

HCN continues to object to the extension proposal because it is a threshold tipping point for the social, environmental and cultural heritage values of the Wollar district and a significant cumulative impact in the region.

These issues have not been adequately addressed in the proponent’s Response to Submissions or in the report. HCN does not agree that the extension proposal is approvable. Many of the impacts will not be mitigated and the proposed measures are highly inadequate.

The Commission must give equal weighting to the economic, social and environmental factors.

Social Impacts

We note that some of the issues raised in our initial submission have had a response in the form of a recommendation to acquire all remaining properties in Wollar Village. This is seen to be a quite cynical response because Wilpinjong Coal Pty Ltd (WCPL), a subsidiary of Peabody Energy USA, has been pressuring remaining residents in Wollar Village to sell out since December 2014.

One of the key recommendations in our previous submission was to provide fair mitigation of social impacts. This has been refuted for a number of questionable reasons. We stated that:

‘HCN recommends that if the NSW Government decides to approve the extension proposal because of the perceived public benefit, then this should include adequate compensation for all remaining private residents in the Wollar district.’

The compensation should include:

- *Value of property based on comparable nearby centres unaffected by mining*
- *Plus relocation and disturbance costs*
- *Plus a premium for replacement costs to landowners forced to move through no choice of their own*

This compensation should be negotiated through the Secretary of Planning and Environment.’¹

Planning has responded with:

‘The majority of the Wollar community lives in more isolated areas, at least 7 km from the village. Should the project result in further population decreases, it is likely that these residents would be further isolated from social networks and some services.’

The Department notes that these concerns have been raised in submissions, and there have been calls for WCPL to be required to acquire these properties due to the broader social impacts of the project and the loss of access to necessary community services.’

However, the Department notes that the project would comply with the acceptable air quality and noise amenity criteria established by the EPA for rural areas. It is also not clear that the project (in and of itself) would materially reduce access to services as these impacts have either occurred as a result of previous mining activities and/or as a result of a broader decline in the viability of rural villages such as Wollar.’²

This statement reveals two things:

1. Planning does not understand the concept of cumulative impact. The situation under consideration is not simply the impact of *‘the project (in and of itself)’*. The social decline of the Wollar area has been primarily caused by the WPLC ‘proactive acquisition policy’ over a 10 year period. Nearly all of the property in Wollar Village and surrounds has been sold to WPLC and Planning are recommending that the rest of the village be given acquisition rights. The premise that the social impacts on the Wollar community have

¹ HCN, March 2016, Submission to Wilpinjong Extension Project EIS p 12

² Planning Assessment Report, November 2016 pp 40 -41

been caused by anything other than the Wilpinjong Mine ‘proactive acquisition policy’ is misleading.

2. The emphasis on compliance or not with noise and air quality criteria at remaining private properties is immaterial. The extent of the social impacts, as recognized by the Eltons Peer Review of the Social Impact Assessment, are deep-seated and not adequately mitigated by the measures proposed.³

Planning states that the limited land remaining in private ownership is a key consideration for the merit assessment of the project, particularly in regard to residual social and amenity impacts.⁴

HCN agrees with this important direction from Planning and considers that the Planning Assessment Commission needs to give full consideration to the significance of the social impacts on remaining private residents in the district now that acquisition rights have been recommended for the Village.

To leave a handful of private properties stranded in isolation and surrounded by mine-owned land is an unjust outcome.

If the public benefit of the extension proposal is considered to be significant then the remaining private land owners should be provided with an opportunity to leave the district rather than being left with unmitigated social impacts and stranded assets.

With the proposed closure of the Wollar Store these community members will be left with additional costs in travel for everyday consumable purchases and fuel. Stranded properties will also be difficult to sell on the open real estate market. The economic displacement caused by the Planning recommendation to approve the extension proposal has not been assessed in the Elliot-Whiting Social Impact Assessment or the Elton Peer Review Report.

HCN considers it to be unethical to cause communities to be sacrificed for the benefit of the mining industry with no recourse to merit appeal rights.

The Planning statement that ‘*the project achieves a reasonable balance between maximising the recovery of the coal resource and minimising potential social, amenity and environmental impacts, including impacts on Wollar Village and surrounds*’⁵ is misleading and not based on any information provided in the various assessment reports. The social impacts on the remaining residents in the Wollar district are severe and will be increased, not minimized.

³ Elton Consulting, August 2016, Peer Review of Social Impact Assessment, p 3

⁴ Planning Assessment Report, November 2016 p 8

⁵ Ibid p v

HCN considers the decision to approve the extension proposal to be a human rights issue. This is recognized by the leading international expert on Social Impact Assessment, Frank Vanclay. He states that:

*‘Many social impacts can be understood in human rights terms. This includes recognising project-affected individuals and communities as human rights-holders with legal entitlements, including the right of legal redress for impacts on their human rights. Thus when a project creates social impacts, it may also be in breach of its responsibility to respect human rights. This gives extra importance to social impacts, and increases the importance of social impact assessment’*⁶

The loss of association to place and social networks, combined with increased risks to health and well-being as well as economic displacement needs to be carefully considered by decision-makers.

Previous decisions and actions relating to the Wilpinjong Mine has caused significant social impact. The approval of the extension proposal will increase that social impact. An entire community has been destroyed over time by the actions of WPLC with endorsement by Planning with no previous adequate social impact assessment.

HCN considers that the only fair outcome, if the Commission decides to recommend approval, is to include acquisition rights for all remaining private landowners in the Wollar district within the recommendation.

Planning has not clearly identified that the environmental and social impacts would decrease if the extension proposal were rejected.

HCN considers it preferable that the Commission not recommend approval because of the extent of the cumulative social, cultural heritage and environmental impact of the extension proposal.

2. Cultural Heritage Impacts

The ongoing approval to destroy important Aboriginal cultural heritage in the region is untenable.

The Office of Environment and Heritage have identified that *‘impacts on Aboriginal Cultural Heritage is approaching unacceptable thresholds for the region’*⁷

The proposal to disturb significant sites, such as an ochre quarry and rock art at the Rocky Hill Complex in Slate Gully for the development of Pit 8 is unacceptable in a regional context.

⁶ Vanclay, F. 2015. Social Impact Assessment: Guidance for assessing and managing the social impacts of projects p 14

⁷ Planning Assessment Report, November 2016 p 68

The suggestion that cultural heritage ‘offsets’ be evaluated within lands purchased as biodiversity offsets is not based on any current Government policy and cannot be considered as a mitigation measure. The relationship of cultural heritage sites across the landscape is obviously misunderstood by Planning and ignored in the assessment process.

The importance of these sites for local Wiradjuri Elders to teach culture and hand on traditional knowledge to oncoming generations is not recognized.

3. Biodiversity Impacts

The significant loss of critically endangered ecosystems across the region due to mining approvals has not been clearly quantified in any assessment report for this extension proposal.

The biodiversity offset packages for the previous Wilpinjong Mine disturbance, the Moolarben Stage 1 & Stage 2 Mines and the Ulan Mine disturbance footprint are not an adequate mitigation of loss of habitat values for the critically endangered regent honeyeater and other national and state listed threatened species.

The lack of ability to meet land based species credits for the critically endangered regent honeyeater demonstrates the paucity of this species’ habitat needs in the region.

HCN strongly objects to the proposal to award 25% of regent honeyeater species credits from the existing rehabilitation approval made over the past 10 years. This is highly inappropriate and is setting a new low standard for biodiversity offsetting arrangements.

The concept of this outcome providing an incentive⁸ to WPLC to improve rehabilitation effort on the mine site has no relationship to the requirements of a critically endangered species that is about to lose another 190 ha of established and functioning habitat values.

HCN considers that this proposed biodiversity offset is outside the NSW Biodiversity Offsets Policy for Major Projects and should not be considered.

HCN has additional concerns that some of the proposed loss of regent honeyeater habitat is immediately adjacent to the Munghorn Gap Nature Reserve. The proposal to mine into the very narrow valleys that incise the Reserve is a sign of desperation and should not be considered.

The latest approval of the Moolarben Stage 2 Mine required a 50m buffer from open cut operations adjacent to the Reserve. While we don’t support this as an adequate buffer, it is the most current decision and should be observed as a precedent.

⁸ Ibid p 56

If the mine is unviable without causing this level of environmental risk, then the extension proposal should be rejected.

HCN considers the biodiversity impacts of the project are too great and should not be approved.

4. Water Impacts

The assessment of long-term cumulative water impacts on the Wilpinjong Creek catchment are inadequate. Key problems with assessment methodology have been indicated in the Independent Expert Science Committee review.

These issues have not been adequately addressed by WPLC or Planning.

HCN considers the scale of impact of mining on the Upper Goulburn River catchment, a major tributary of the Hunter River system is substantial and further impacts cannot be justified.

There has been no independent regional assessment of the impacts of mining, both large-scale underground and opencut operations, across the headwaters and upper tributaries of the Goulburn River. This is a major failing of the planning system in NSW.

More detailed assessment of the current operations at Wilpinjong Mine and their long-term management is needed before a decision on extended impacts can be made.

HCN is particularly concerned about the need to retire water licences to account for 147 ML/year predicted post mining take.⁹ The cumulative quantification of water license retirement across the Hunter catchment has not been provided.

Post mining drawdown is permanent loss of productive water from the water source over hundreds if not thousands of years. This loss of future production capacity through the permanent retirement of water licenses is not costed in the cost benefits analysis for the extension proposal.

The cumulative loss of productive water through approved retirement of water licenses to mitigate mining impacts needs to be assessed for the Upper Goulburn River catchment and the entire Hunter River system.

5. Final Landform

HCN does not support the retention of final voids in the post mining landform. The proposed third void in Pit 8 is based on saving the proponent \$15 m while passing on a permanent environmental cost and sterilization of land for future use. This is not acceptable.

⁹ Ibid p 63

The proposal to shift the void in Pit 6 to be adjacent to the approved void in Moolarben Pit 4 is a major risk and should not be considered.

If the Commission recommends approval of the extension proposal both the Pit 6 and Pit 2 voids should be required to be backfilled and Pit 8 to be fully backfilled.

The retention of highly toxic groundwater sinks in the post mining landscape with no ongoing management costs or responsibilities identified is not a sustainable or responsible planning decision. The cost shifting onto future land users and future generations has not been calculated in the cost benefits analysis.

The proposal to change the current final landform design from woodland corridors intermixed with pasture for grazing to entirely woodland is a major change in the options for future land use.

There is a lack of discussion on final tenure of the woodland to be established as biodiversity offsets for critically endangered species. The long-term management of this woodland on rehabilitated mine voids post decommissioning has not been raised.

This appears to be an outcome of policy and decision-making on the run with no long-term certainty for the successful achievement of changed rehabilitation objectives.

The currently approved rehabilitation design was based on returning some of the final landform to future agricultural production. This appears to now be forgotten in the unseemly scramble to produce species offsets credits for the nationally listed critically endangered Regent Honeyeater.

HCN is concerned that this change to final landform has not been costed as a loss of future income post mine decommissioning.

6. Viability of extension proposal

HCN has concerns that the public benefit of the extension proposal is based on varying quotes on capital expenditure throughout the document. These range from \$80.2m¹⁰ to \$101m¹¹ to \$172.5m¹²

The Economic Peer Review also raised an issue with the viability of the extension proposal in relation to residual capital value.¹³

¹⁰ CIE, May 2016, Peer review of economic assessment p 18

¹¹ Planning Assessment Report, November 2016, Executive Summary p v

¹² Ibid p 76

¹³ CIE, May 2016, Peer review of economic assessment p 18

HCN is concerned that the viability of the extension proposal, as described in the report, is based on significant cost shifting onto the community and the environment. The Pit 8 void proposes to save \$15m in backfilling costs while the proposed increase in noise pollution will save \$42m in mitigation measures.

Without this cost shifting the extension proposal would be unviable. There is no clear discussion of this issue in the economic peer review.

We are concerned with Planning's position that the consent authority is not required to consider the financial viability of any applicant in determining a development application.¹⁴

If the development relates to 'land' rather than a 'person'¹⁵ then it is inappropriate to be factoring any of the promises of capital investment and job numbers into the public benefit considerations. Even the value of the royalties is questionable because this figure relies on the ability of the 'person' to conduct the development as planned.

We are also concerned that the calculated public benefit ranges from \$123m to \$735m. This is a significant range and any benefit will not be achieved if the proponent cannot meet its capital investment commitments.

Wilpinjong Mine currently produces 13mtpa after the approval of Modification 7 in August 2016 while this proposal was still being assessed. Modification 7 was not placed on exhibition for public comment. The production of 13mtpa product coal is the volume of coal production that the extension proposal economic benefits analysis is based on.

According to the Peabody November community newsletter, 383 people are employed at the mine with 134 contractors. This amounts to 517 people producing the same volume of coal as proposed in the extension. The mine has also announced the trial of driverless dozers. This is likely to impact on predicted job numbers.

The economic benefits of the extension proposal are very rubbery and not based on any factual evidence. HCN considers that the Commission must consider the viability, the cost shifting and the veracity of the information provided before accepting the public benefit figures that appear in the report.

HCN lodged a complaint with the NSW Minister for Mining in September 2016 through Environment Justice Australia in regard to Peabody Energy's fit and proper status to hold a mining lease under the NSW *Mining Act 1992*. (letter attached)

The complaint and request for a review outlines concerns with the financial capacity of Peabody Energy to continue operating Wilpinjong Mine and other mines in NSW.

¹⁴ Planning Assessment Report, November 2016, Executive Summary p 73

¹⁵ Ibid

These concerns are in regard to the relationship of the Peabody Australia Holdco Pty Ltd with the parent company that filed for Chapter 11 bankruptcy in the US in April 2016. There are serious issues with the available use of a \$250 m loan that is for operational liquidity not for capital expenditure as required for the extension proposal.

There has been no response to this correspondence to date and HCN recommends that the Commission follow up with the NSW Minister for Mining to ascertain the outcome of any review conducted into this matter.

7. Climate Change

Australia has now formally ratified the Paris Agreement to restrict global temperature rise to below 2 degrees centigrade. A proposal to cause the emission of an additional 20.4 Mt/year of carbon equivalents for another 17 years is irresponsible and should not be approved.

The principle of intergenerational equity under the object of Environmentally Sustainable Development in the Environment Planning and Assessment Act 1979 must be upheld.

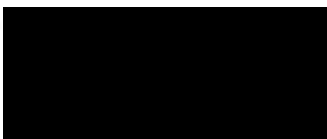
Conclusion

HCN objects to the extension proposal as unsustainable under economic, social and environmental considerations.

The social, environmental and cultural heritage impacts cannot be adequately mitigated.

If the Commission decides to recommend approval, it is imperative that all remaining private landowners in the Wollar district are not left with a major economic and social disadvantage. A condition requiring acquisition of all remaining private property is the only fair outcome.

Yours faithfully

A solid black rectangular box used to redact the signature of Tony Lonergan.

Tony Lonergan
On behalf of Hunter Communities Network