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Presentation
Planning Assessment Commission
Final Determination of Wilpinjong Extension Project

Public Meeting
Tuesday 11 April 2017

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 welcome the opportunity to raise key issues on the biodiversity impacts of the proposed Wilpinjong Mine extension and the inadequacy of the proposed conditions of approval to mitigate these impacts.

We have engaged in the assessment and approvals process for this major coal mine expansion by lodging a submission of objection to the initial Environmental Impact Statement and to the PAC Review.

We consider that the issues raised in our submissions have not been adequately addressed and will not be mitigated by the proposed conditions of approval.

Our key concern relates to the failure to avoid habitat disturbance for the critically endangered Regent Honeyeater and the failure to meet the requirements of the NSW Biodiversity Offset Policy for Major Developments.

We note that in their response to submissions that Peabody Energy rightly recognises that the *'ultimate decision as to the adequacy of the Project Biodiversity Offset Strategy and the associated refining of biodiversity offset credits lies with the determining authorities.'*

We agree that this task is now firmly in the hands of you, Commissioners, and trust that you will consider the issues and recommendations we bring to your attention today.

We also note that the Department of Planning Final Report refers to the 'merit review' conducted by the PAC at the end of last year. The PAC review report, in fact, does not make a decision on the 'merit' of this proposal and has handed the task on to this determination PAC.

The Public Hearing last November extinguished our right to appeal the merit of your decision. Therefore, we are relying on you, Commissioners, to consider very closely the 'merit' of the proposed Biodiversity Offset Strategy and the capacity of the proposed conditions to ensure its success.

The PAC Review made seven recommendations in regard to biodiversity impacts. The Department's Final Report advises that all recommendations have been met through the proposed conditions of approval.

However, the key issue we raised in our submission to the PAC Review, that the Biodiversity Offset Strategy does not meet the requirements of the NSW Policy, has not been addressed.

The proposed strategy is entirely inconsistent with that policy in that it provides for 1,709 species credits for the critically endangered Regent Honeyeater to be retired through the supplementary measure of a contribution to the breeding program.

This does not help replace the loss of 190 ha of breeding and feeding habitat in the Wollar area.

The NSW Offsets Policy is clear that the use of supplementary measures does not apply to critically endangered species that are considered nationally significant and listed under the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999.

Another failure of the strategy is that more than half the species credits, 8,650 credits, are proposed to be retired through rehabilitation of the mine site.

The Offsets Policy also requires that offsets for nationally significant species that are critically endangered must be like-for-like.

There has been no clear justification given for the emphasis on mine rehab rather than the purchase of further land based offsets.

In fact, the Planning Final Report states that if the rehab fails to meet its objectives at mine closure then there are land based offsets available.

Finally, the first principle of the Offsets Policy has been ignored, that is to avoid first, then mitigate. This is particularly relevant to the threat of clearing

11 ha of Regent Honeyeater habitat that could be avoided by implementing a 50m buffer zone around the boundary of the Munghorn Gap Nature Reserve.

Moving onto the inadequacy of the conditions we do not consider that the recommended conditions will adequately regulate the proposed mitigation measures for the significant biodiversity impacts of this proposal for the following reasons.

Nearly all the biodiversity conditions have the caveat '*unless the Secretary agrees otherwise*'. This provides no certainty that the condition will be met or not changed after approval. This caveat is a major loop-hole that undermines the intent of the conditions and significantly weakens them.

We do not support the fact that the proposed conditions to mitigate significant biodiversity impacts should be able to be altered after approval.

Also, we recommend that all conditions relating to the regulation of biodiversity outcomes are met prior to carrying out any development.

Our written submission has provided detailed comments on the changes that are needed to strengthen the regulation of the biodiversity conditions for this project. Some of our key concerns include:

Condition 32 Table 7

CWEC has a number of issues with the areas of the biodiversity strategy outlined in this condition.

The 480 ha of the ECA has not been finalised because of the requirement to excise 3 ha for the realignment of the transmission line.

The 148 ha of regeneration area is a loss of 163 ha from the current approval which stands at 311 ha of biodiversity offset regeneration.

Over half of the strategy, 2,906 ha, is mine rehab that is an untested outcome with no certainty of success.

Conditions 33, 34 and 35 involving the extension of the Enhancement and Conservation Areas (ECAs) and their protection in perpetuity along with other land based offsets must be met prior to carrying out any development under the consent. Only this stringent measure in the conditions will ensure that they **are** met.

We note that under the current consent, condition 37, the ECAs and offset areas D & E were supposed to be protected in perpetuity by December 2015. However, this condition has the caveat and therefore has not been met.

This illustrates our concern about the weakness of the proposed conditions and reinforces our argument that they need to be strengthened.

There is no guarantee, as has been demonstrated, that conditions will be met to achieve protection in perpetuity, if they contain the caveat, '*unless the Secretary agrees otherwise*'. This loop-hole must be struck from all the conditions relating to biodiversity mitigation measures.

Conditions 36, 37 and 38 relating to the rehabilitation offsets require major revision.

It is critical that condition 37 is met prior to carrying out any development under the consent. The development of performance and completion criteria for rehab is central to the achievement of the proposed biodiversity offset strategy.

Because condition 36 includes improvements to **existing** woodland rehab (giving this up to 1.775 species credits per ha), the performance and completion criteria is a critical requirement that cannot be left outstanding.

The proposed condition is very weak and can result in significant delays or none achievement. The heavy reliance on mine rehab in the offset strategy requires stringent conditions relating to its success.

Because of existing condition 56 and proposed condition 62 requiring progressive rehab, it is critical that the performance and completion criteria for the biodiversity offsets on rehabilitated areas are finalised immediately.

Condition 39 is a supplementary measure that does not meet the principles of the NSW Biodiversity Offset Policy for critically endangered species.

We note in the OEH letter to Planning in February 2017 that only 11.6% of captive bred Regent Honeyeaters released into the wild have been recorded after 12 months.

The key threatening process of loss of habitat for this critically endangered species is a significant issue impacting on the survival of both wild and released captive bred birds.

The 1,079 species credits attributed to this supplementary measure must be retired through a like-for-like land based offset.

Condition 40 must be revised so that 50m from the boundary of Munghorn Gap Nature Reserve is protected from open cut mining. This will protect 11 ha of Regent Honeyeater habitat and 163 ha of current biodiversity offset regeneration area, as well as better protecting the high conservation and cultural heritage values within the Nature Reserve.

CWEC supports Conditions 41 & 42 and considers that all the biodiversity conditions should be applied prior to carrying out any development under this consent.

A change to Condition 44 is critical so that a revised Conservation Bond is required to be lodged with the Department prior to the commencement of development.

Again, the proposed condition is very weak and must be strengthened to provide certainty that it will be enforced. The Conservation Bond is critical to ensuring some certainty that adequate mitigation measures for biodiversity loss can be met.

There needs to be some revision of conditions 63 to 66 relating to rehab requirements so that they meet other changes in the conditions. We consider it is critical that all planning for mine rehab under these conditions be finalized prior to commencement of development. More details on this issue have been provided in our lodged written submission.

We note that the existing condition (condition 60 in the consolidated consent) for long term security of rehabilitated areas has been removed from the recommended conditions.

With the changed focus on rehab outcomes to provided biodiversity offsets, we consider it even more critical that this land be protected, if indeed significant conservation values are to be achieved. A condition for long term security of rehabilitated areas must be reinstated within the conditions.

CWEC does not support the retention of pit lakes within the Biodiversity Offset Area. We commend the decision to backfill the proposed final void in Pit 8.

The same outcome is essential for the proposed final voids in Pit 2 and Pit 6. The approval of permanent toxic water bodies in the landscape is unacceptable and should not be contemplated.

The recommendation to backfill Pit 2 and Pit 6 final voids will require further revision of conditions.

On other issues, we continue to object to the Wilpinjong Extension Project because we do not agree that the public benefit outweighs the cost. As we have outlined, we do not consider that the proposed conditions are stringent and they will not adequately mitigate the social and environmental impacts of the project.

If you, Commissioners, decide to approve this mine extension, then it must also be with the following requirements:

- The protection of the significant Aboriginal cultural heritage on the Rocky Hill complex,
- The complete backfilling of the pit 2 and pit 6 final voids,
- No weakening of the noise assessment criteria in Appendix 6
- Acquisition rights for remaining private property in the Wollar district in recognition of the social impacts and social injustice caused by this project over the last 10 years.