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Submission  
D458-17 Wilpinjong Extension Project

**Introduction**

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 are very concerned about 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 through 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 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.*'<sup>1</sup>

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.<sup>2</sup> 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.

We do not consider the Biodiversity Offset Strategy has merit in its current form or that the recommended conditions will adequately regulate the Strategy as proposed.

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 Biodiversity Offset Policy for Major Development, has not been addressed.

### **Inconsistency with NSW Biodiversity Offset Policy**

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.

The proposed strategy is entirely inconsistent 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 Offsets Policy also requires that offsets for nationally significant species that are critically endangered must be like-for-like.

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

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<sup>1</sup> Response to Submissions Report (May 2016) P74

<sup>2</sup> Final Report p4

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

In fact, Planning's Final report states that if the rehabilitation fails to meet its objectives then there are land based offsets available.<sup>3</sup>

Finally, the first principle of the Offsets Policy has been ignored, that is to avoid 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.

We do not consider that the recommended conditions will adequately regulate the proposed mitigation measures for the biodiversity impacts of this mine extension proposal.

### **Inadequate Conditions**

Nearly all the biodiversity conditions have the caveat '*unless the Secretary agrees otherwise*'. This provides no certainty that the condition will be met or remain unchanged after approval. This caveat is a major loop-hole that undermines the intent of conditions.

We do not support that the proposed conditions to mitigate significant biodiversity impacts can 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

#### Condition 32 Table 7

CWEC has a number of issues with the areas of the 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 rehabilitation that is an untested outcome with no certainty of success.

#### Condition 33

CWEC does not support this condition with a caveat allowing for change.

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<sup>3</sup> Final Report p12

For the biodiversity strategy in Table 7 to be met, condition 33 must be revised so that:

Prior to carrying out any development under this consent the Applicant must amend the Conservation Agreement for the Enhancement and Conservation Areas to remove the areas proposed to be incorporated into the re-alignment of the Transmission Line and include an additional area to ensure that the total area of the Enhancement and Conservation Area remains at 480 hectares.

#### Conditions 34 and 35

These conditions for long term security of land based offsets, must also be met prior to carrying out any development under the consent.

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'*.

#### Condition 36

We very strongly disagree with the caveat that this condition can be changed by the Department of Resources and Energy. The dependence on mine rehabilitation to achieve more than half of the species credits is a major weakness of the offset strategy.

#### Condition 37

It is critical that this condition be met prior to carrying out any development under the consent.

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

It is highly unsatisfactory for this to be undertaken within 6 months of commencement of development, or as otherwise agreed by the Secretary.

Again, this is a very weak condition that can result in significant delays or none achievement. The heavy reliance on mine rehabilitation in the offset strategy requires stringent conditions relating to its success.

It is essential that this condition is strengthened so that all performance and completion criteria for offset rehabilitation is developed prior to commencement of the development.

Because of current condition 56 and proposed condition 62 requiring progressive rehabilitation, it is critical that the performance and completion criteria for the biodiversity offsets are developed immediately.

#### Condition 38

We cannot support this condition as it stands. It demonstrates the weakness of the biodiversity strategy and its dependence on mine rehabilitation.

If after 10 years of completion the mine rehabilitation has not met the performance and completion criteria, the outstanding credits must be retired through the acquisition of land-based offsets with like-for-like habitat values.

#### Condition 39

This condition to provide contributions to the Regent Honeyeater Recovery Plan 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<sup>4</sup> that there has only been an 11.6% success rate with the survival of captive bred Regent Honeyeaters when released in the wild.

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

This condition must be revised so that:

The Applicant must insure that the edge of all open cut pits for the development are setback at least 50 metres from the boundary of the Munghorn Gap Nature Reserve.

This change to conditions will protect 11 ha of Regent Honeyeater habitat and 163 of current biodiversity offset regeneration area, as well as better

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<sup>4</sup> Final Report, App B

protecting the high conservation and cultural heritage values within the Nature Reserve

Conditions 41 & 42

CWEC supports these and considers that all the biodiversity conditions should be undertaken prior to carrying out any development under this consent.

Condition 44.

It is critical that a revised Conservation Bond is lodged with the Department prior to the commencement of development and the caveat is removed

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.

### **Rehabilitation Conditions**

There needs to be some revision of conditions 63 to 66 so that they meet other changes. We consider it is critical for all planning for mine rehabilitation under these conditions be finalized prior to commencement of development.

We note that the existing condition (condition 60 in consolidated consent) for long term security of rehabilitated areas has been removed from the recommended conditions. It must be reinstated without the caveat:

#### **Long Term Security of Rehabilitated Areas**

Prior to relinquishing the mining lease over the site the Proponent shall make suitable arrangements to protect rehabilitation areas having significant conservation value, to the satisfaction of the Secretary.

*Note: This condition does not apply to land tenure commitments with Native Title Claimant Groups.*

With the changed focus on rehabilitation outcomes to provided biodiversity offsets, we consider it even more critical that this land be protected, if indeed significant conservation values are achieved in the process.

Condition 60 Rehabilitation Objectives: the reference to final voids must be removed. The retention of final voids as sinks for salinity and other toxic pollutants is inappropriate in an area to be rehabilitated as a biodiversity offset. The danger to wildlife and the surrounding landscape is not compatible with the rehabilitation objectives.

All voids must be backfilled as a requirement of approval for the project

Condition 61 Rehabilitation Strategy: This must be finalized prior to the commencement of development without the caveat '*unless the Secretary agrees otherwise*'.

All reference to final voids should be removed from the Rehabilitation Strategy.

Condition 63 should be removed. We do not support any mining activity within 50 m of the boundary of Munghorn Gap Nature Reserve.

Condition 64 Rehabilitation Management Plan: remove the caveat '*unless the Secretary agrees otherwise*'.

g) Remove reference to final voids

As outlined earlier in this submission Condition 37 relating to rehabilitation offsets performance and completion criteria must be completed prior to carrying out any development.

These should then be included in the Rehabilitation Management Plan before its completion along with the protocols for assessing and reporting on rehabilitation offsets against the performance criteria.

Condition 65 should be removed with the adoption of the above recommendation.

Condition 66 should be removed because the Rehabilitation Strategy and the Rehabilitation Management Plan must be completed prior to carrying out any development under the consent.

The current conditions are very weak with a 6 month period or more available for the approval of the Rehabilitation Strategy and another 3 months until the Rehabilitation Management Plan is completed including another 6 months or more for the completion of the performance and completion criteria.

This is entirely unsatisfactory for the new focus on the mine rehabilitation providing more than half the land based biodiversity offsets and the requirement for progressive rehabilitation.

These vital conditions must all be completed prior to carrying out any development under the consent. Otherwise there is no certainty that they will ever be met or adequately regulated.

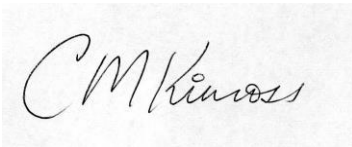
These conditions currently contain major loopholes that are unacceptable and need to be strengthened.

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 this mine extension is to be approved 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 proposed pit 2 and pit 6 final voids,
- No change to the noise assessment criteria
- 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.

Yours sincerely

A handwritten signature in cursive script, reading 'Cilla Kinross', written in dark ink on a light-colored, slightly textured background.

Cilla Kinross  
President