

NSW Planning Assessment Commission  
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## Submission D458-17 Wilpinjong Extension Project

Mudgee District Environment Group is based in the Mid-Western Region local government area. We have been working for the conservation of our natural heritage and a sustainable future for our children in the district for over 30 years.

We have followed the rapid expansion of the coal industry in our shire with great dismay. The cumulative impact on biodiversity, waterways, Aboriginal cultural heritage and local communities has been highly significant and very poorly assessed on a regional basis.

We note that the PAC Review Report dated 20 December 2016 highlighted the need for a long term strategic plan for the western coalfields. This was seen to be of considerable benefit in the assessment of individual projects and would give confidence to mining companies, government agencies, investors and the community about the strategic direction of mining in this area.

The environment group considers that a cumulative impact assessment of currently approved mining operations is a critical step in this process of setting a strategic vision.

We believe it is essential that this work be done before a final decision can be made on the merit of the Wilpinjong Extension Project.

The key issues in this submission are:

- the impact of the proposed expansion on the Munghorn Gap Nature Reserve,
- the failure of the PAC review and DPE to correctly identify the quality of vegetation adjacent to the reserve
- lack of compliance with conditions to protect ECAs
- and the lack of stringency with the proposed conditions

We consider these issues are critical to the consideration of the merit of the project and the ability of the proposed conditions to adequately protect the local environment.

### **Key Recommendations:**

The following revisions be made to the conditions of approval to strengthen the outcome:

1. Condition 40 Schedule 3:

The Applicant must ensure 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.

2. With this revision, Condition 63 can be removed.

3. Condition 33, Schedule 3

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.

4. Condition 34, Schedule 3

Prior to carrying out any development under this consent the Applicant must make suitable arrangements to protect the Enhancement and Conservation Areas and Offset Areas D and E in Table 7 in perpetuity to the satisfaction of the Secretary.

### **Munghorn Gap Nature Reserve**

In our original submission objecting to this project we raised the issue that various impacts of mining operations adjacent to the Munghorn Gap Nature Reserve have not been assessed. The impacts of fly rock, blast vibration, dust and noise emissions and light pollution produced by the current operations have not been assessed or reported. The effects of these impacts on vegetation, cliff line habitat and flora and fauna in the Reserve has not been considered or monitored.

In our submission to the PAC Review we noted that these issues were not addressed in the Wilpinjong Response to Submissions or in DPE's Preliminary Assessment Report.

The PAC Review Report identifies that the Office of Environment and Heritage has recommended a 50m buffer between the reserve boundary and any mining operations.

We also raised that a precedent was set with the Moolarben Stage 2 approval conditions that a 50 m buffer be maintained around the Nature Reserve boundary.

The DPE Preliminary Assessment notes that the coal reserve within the 50m buffer area is less than 1% of the total additional resource proposed to be extracted.<sup>1</sup>

We consider the 50 m buffer is an important precaution to protect the significant environmental and cultural heritage values in the Reserve, particularly in the context of no monitoring data available to measure the current impacts of the mine within the Reserve boundary.

We therefore submit that Condition 40 Schedule 3 should be revised to state:

The Applicant must ensure 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.

With this revision, Condition 63 can be removed.

### **Incorrect information in the PAC Review Report**

We wish to draw your attention to incorrect information provided in the Review Report and the DPE Preliminary Assessment in regard to the vegetation within the 50m buffer zone.

The Review Report incorrectly states that the 50m buffer is currently grassland.<sup>2</sup>

The report continues to incorrectly conclude that because the Nature Reserve is woodland and the mine rehabilitation will be woodland, having a 50m strip of grassland in between would be a poor biodiversity outcome.

This demonstrates a clear contradiction in the Review Report because there is also a reference to the presence of 11 ha of vegetation in the area under consideration.

The Preliminary Assessment notes that 11 ha of vegetation would be destroyed within the proposed 20m buffer and incorrectly states that none of this is EEC.<sup>3</sup>

This report also recognizes that Wilpinjong has a requirement under current conditions to establish connectivity in some areas of the 50m buffer through natural and assisted regeneration of woodland as part of a commitment to regenerate 375 ha of mine-owned land.

These areas are identified in Fig 13 of the report.<sup>4</sup>

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<sup>1</sup> Secretary's Environmental Assessment Report, Nov 2016. p50

<sup>2</sup> Planning Assessment Commission Review Report, 20 Dec 2016. p12

<sup>3</sup> Secretary's Environmental Assessment Report, Nov 2016. p48

<sup>4</sup> Ibid p49

Current condition 58 schedule 3 requires that the following objectives be complied with:

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

We outlined these issues in our submission to the Review PAC noting that there is no reporting on the success of the regeneration in these areas over the past 10 years.

The Preliminary Assessment identifies that 163 ha of this regeneration commitment would be lost if a 50m buffer is not maintained.<sup>5</sup>

We have to conclude that the Review PAC did not take note of these issues as addressed in our submission. Otherwise you would not have arrived at a conclusion that the 50m is all grassland.

DPE's statement that there is no EEC in the 11 ha of impacted vegetation is also incorrect. The Biodiversity Assessment Report (Appendix E)<sup>6</sup> clearly demonstrates that the area contains the vulnerable Slaty Box woodland EEC and Regent Honeyeater habitat.

The first principle of avoidance of biodiversity impacts has not been met by the proposal.

We consider that these are additional strong arguments to require a 50m buffer around the Munghorn Gap Nature Reserve.

### **Lack of compliance with conditions to protect ECAs**

The ongoing issue of protection for the Enhancement & Conservation Areas that are part of the offset and biodiversity outcomes for the current mine operations, is a perfect example of the institutional failure of the NSW Govt to regulate conditions of approval for large mines.

The community has little trust that the so-called 'stringent' conditions of approval for this extension project will ever be met or mitigate the long term environmental damage.

The original conditions approved for Wilpinjong Mine in February 2006, and maintained in the approval of Modification 1 in November 2007, required that the ECAs be provided appropriate long term security by 2009. This did not occur.

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<sup>5</sup> Ibid p53 The regen areas in Table 9 (Biodiversity Offsets) would be reduced from 311ha to 148ha

<sup>6</sup> Ibid. App E Fig 6 p13, Table 2 p14, E App 6 Fig 7 p16

When Modification 3 was approved in August 2010, the time limit was removed. This remained in the conditions for Modification 4 in August 2012 and Modification 5 in February 2014. Still the ECAs had not been protected.

However, the time limit reappeared in the conditions for Modification 6 approved in November 2014 with a requirement for protection in perpetuity by the end of December 2015.

This condition has still not been met, instead we have an application to excise 3ha to reroute the transmission line through ECAs A & B.

Now there are proposed conditions with caveats that keep the door open for further change and no permanent protection. We are greatly concerned that permanent security for biodiversity offsets have not been met. These areas have been set aside to mitigate significant loss of environmental values on the mine site.

The proposed conditions are not stringent, they need to be strengthened as outlined below.

Even when there are stringent conditions with no caveats, as noted until August 2010, these conditions were not met and the regulators have completely ignored the breach.

This raises the question about the value of the conditions for large mining operations. This instance has demonstrated them to be ineffective.

The environment group recommends that the following revisions to the proposed conditions are made to strengthen their intent and ensure they are met:

#### Condition 33, Schedule 3

Prior to carrying out any development under this consent the Applicant must include an additional area to ensure that the total area of the Enhancement and Conservation Area remains at 480 hectares.

#### Condition 34, Schedule 3

Prior to carrying out any development under this consent the Applicant must make suitable arrangements to protect the Enhancement and Conservation Areas and Offset Areas D and E in Table 7 in perpetuity to the satisfaction of the Secretary.

The strengthening of these conditions will cause the intent of the current conditions of approval to be achieved and provide clear certainty that compliance will be met.

## Other issues

If the PAC decides to approve this mine extension, it must be with the following provisions:

- that the significant Aboriginal cultural heritage on the Rocky Hill complex is protected,
- that final voids in pit 2 and pit 6 are completely backfilled,
- that the noise assessment criteria is not changed and
- the remaining Wollar district residents are afforded acquisition rights, to allow them the ability to leave if the social and environmental impacts of the mine become too onerous.

## Conclusion

We do not support that the major impacts of the proposal in its current form will be adequately managed under the proposed conditions. There needs to be significant revisions to strengthen their intent, as outlined in this submission.

We note that the DPE Assessment Report states that:

*‘Based on its assessment, the Department acknowledges that the project would increase the impacts on the local community and environment compared with the existing mining operations. However, these impacts would not be significantly greater than is currently the case, and apart from some minor exceedances, would comply with applicable government guidelines and policies.’<sup>7</sup>*

The acknowledgement that impacts will increase and there will be exceedances is of major concern to the community. The impacts of the existing operations have been highly significant and well beyond those predicted in each subsequent modification. Otherwise, there would not have been the ongoing acquisition of properties not identified in the conditions of approval.

We also note that the Final Report states that:

*‘The Department believes its recommended conditions of consent provide a comprehensive, strict and precautionary approach to ensuring the project can comply with relevant performance measures and standards and ensure the predicted residual impacts can be effectively minimised.’<sup>8</sup>*

We do not consider that there has been any sign of precaution in DPE’s approach to this proposal. Many of the proposed conditions have caveats and loopholes that render the conditions useless, particularly all the biodiversity conditions.

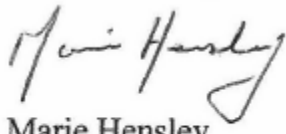
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<sup>7</sup> Ibid Summary pv

<sup>8</sup> Final Assessment Report, March 2017 p3

We do not consider the conditions in their current form to be 'stringent' or capable of effectively minimizing predicted residual impacts.

For these reasons, Mudgee District Environment Group maintains our strong objection to the proposed expansion of Wilpinjong Mine.



Marie Hensley  
Secretary

Thursday 6 April 2017