



Nature Conservation Council

The voice for nature in NSW

Planning Assessment Commission
Level 3, 201 Elizabeth Street
Sydney NSW 2000

7 February, 2019

Submission of Objection: United Wambo Open Cut Coal Mine Project (SSD 7142)

Dear Commissioners,

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing 150 member organisations across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC maintains our objection to the proposed United Wambo Open Cut Coal Project, first expressed in our 2015 submission to the United Wambo Project EIS.

NCC has provided a copy of our original objection on the United Wambo Project to the IPC. Today, we will deliver a report expanding on our concerns expressed in that submission in relation to three key areas:

- Biodiversity
- Mine voids and final landform
- Impact of burning thermal coal on climate change

BIODIVERSITY - IMPACTS ON MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

The map in Figure 1.2 from the 2016 United Wambo EIS¹ shows the degree of land disturbance caused by a number of open cut coal mines in the Upper Hunter valley (and there are more mines not shown to the north and west of this picture). The cumulative impacts of these mines on land containing valuable biodiversity has been growing, and there has been a need for a regional expert assessment of these cumulative impacts on Upper Hunter biodiversity for a number of years.

¹ United Wambo Coal Project EIS, Volume 1, p3

NCC (and no doubt members of the community with an interest in the United Wambo project) was entitled to think that such a cumulative impact assessment would be completed and made publicly available, based on the following statement in the EIS:²

“The biodiversity impacts of the Project are being assessed, managed and offset under the framework of the Upper Hunter Strategic Assessment (UHSA). The UHSA is a joint Commonwealth/State government initiative”.

This process would have been completely consistent with assertions made in the Second Reading Speech in the Commonwealth House of Representatives where the adoption of a strategic assessment process to promote cumulative and regional assessments was promoted as a feature of the new Act³.

In spite of numerous references to the UHSA by the proponent and NSW Dept of Planning/OEH (who also appear to be advocating approval of the project), **no such UHSA document has appeared in the public domain**. NCC was advocating for the release of the UHSA back in March 2015, with CEO Kate Smolski noting that:

“The government is working behind the scenes with mining companies to map the natural values of the Upper Hunter...however, before the UHSA is even made public, massive coal mines continue to go through the planning process”.

That statement was made before the last NSW election. On the eve of the next NSW election four years later, it appears nothing has changed.

The Commonwealth government appears to have walked away from the Upper Hunter biodiversity assessment process even though a number of matters of national significance under the Commonwealth EPBC Act are involved.

In contrast to this apparent lack of interest in the impact of the United Wambo Project on biodiversity matters of national interest under the EPBC Act, the Independent Expert Scientific Committee on CSG and Large Coal Mining development (IESC) has applied its independent expertise under the EPBC Act water trigger to the United Wambo project⁴. Their expert report is very critical of some EIS findings and process on water-related matters, and is exactly the sort of

² United Wambo Coal Project EIS, Volume 1, Executive Summary, p (v)

³ Second Reading Speech on the Environment Protection and Biodiversity Conservation Bill, Commonwealth House of Representatives Hansard, 29/6/1999, p 7771

⁴ [https://majorprojects.accelo.com/public/4e911eeeb70bf5feb6d05fee98301071/IESC%20Advice%202016-079%20United%20Wambo%20Open%20Cut%20Coal%20Mine%20Project %20Expansion.pdf](https://majorprojects.accelo.com/public/4e911eeeb70bf5feb6d05fee98301071/IESC%20Advice%202016-079%20United%20Wambo%20Open%20Cut%20Coal%20Mine%20Project%20Expansion.pdf)

thing the public needed to make sense of some of the inaccurate claims and distortions in the EIS and associated documents relating to the biodiversity impacts of the project.

NCC has always opposed the delegation of Commonwealth assessment powers to the State under the EPBC Act, and the United Wambo project is an excellent example of why this was a bad idea.

This report will deal briefly with some matters of national significance that would be impacted by the project:

- Swift Parrot
- Regent Honeyeater
- Central Hunter Valley Eucalypt Forest and Woodland CEEC (critically endangered ecological community)

Swift Parrot

This unique parrot is migratory within Australia, nesting in spring/summer in Tasmania and migrating to mainland eastern Australia in the autumn where it feeds on flowering eucalypts. The swift parrot is threatened by nest predation and logging of nest trees in its Tasmanian nesting areas, and habitat loss in eastern Australia through clearing of food trees for open cut coal mining and agriculture.

The Swift Parrot is listed as Endangered in NSW, but Critically Endangered on the Commonwealth listing.⁵ **NCC would like the IPC to note the inaccurate listing in Table E1 of NSW Department of Planning and Environment's Final Assessment Report⁶ showing the listing of Swift Parrot and Regent Honeyeater as Endangered rather than Critically Endangered, as shown on the Commonwealth Department of Environment's website (see reference 5).**

The Regent Honeyeater was listed as Critically Endangered in 2015 and the Swift Parrot in 2016. This lack of care in relation to assessing matters of national environmental significance is an excellent illustration of the reason why NCC continues to oppose any delegation of environmental assessments under the EPBC Act to State governments.

We are concerned that the EIS concludes that the United Wambo Proposal will not have a significant impact on the swift parrot. There is a seasonal population of swift parrots in the remnant of the Ravensworth State Forest, part of another coal mine project (Mount Owen Continued Coal mining Operations) run by Glencore and only a few kms from the United Wambo Project disturbance area – just next door for a prolific flier like the swift parrot.

⁵ http://www.environment.gov.au/cgi-bin/sprat/public/publicthreatenedlist.pl#birds_critically_endangered

⁶ NSW Department of Planning and Environment: *United Wambo Open Cut Coal Mine Final Assessment Report*, November 2018, p 76

Any potentially suitable foraging habitat for critically endangered swift parrots in the Hunter Valley is precious and should not be cut down.

We do not agree that the proposal will have no significant impact on the swift parrot.

Regent Honeyeater

The Regent Honeyeater⁷ is a beautifully marked black, white and yellow honeyeater which has become an icon for birdwatchers in NSW. It is acknowledged by the NSW Office of Environment and Heritage (OEH) as:

“The Regent Honeyeater is a flagship threatened woodland bird whose conservation will benefit a large suite of other threatened and declining woodland fauna”.

The bird inhabits eucalypt forests and woodlands, particularly Box-Ironbark woodland, and eats nectar, insects and honeydew found in eucalypt species. This bird is capable of dispersing for over 500kms, and limited breeding in the lower Hunter area has been recorded.

The bird is listed as ‘Critically Endangered’ under the Commonwealth EPBC Act, and was also listed as Critically Endangered in NSW in 2011. Over the last decade, the Regent Honeyeater has undergone a population reduction and continuing decline throughout its range. The NSW population of Regent Honeyeaters may now be fewer than 250 mature birds.

Offsets proposed will be no compensation for a critically endangered species like the Regent Honeyeater. Threats to the bird listed on the OEH website include:

“Continuing loss of key habitat tree species and remnant woodlands from strategic agricultural developments, timber gathering and residential developments”.

For a bird that is critically endangered and heading for extinction, only avoidance of clearing more woodland habitat is an appropriate response. Offsets are not appropriate to ‘compensate’ for the removal of more habitat for a critically endangered species like the Regent Honeyeater.

Central Hunter Valley Eucalypt Forest and Woodland CEEC

We are particularly concerned that the Project proposes to clear 246.8 ha of the Central Hunter Valley Eucalypt Forest and Woodland (listed as CEEC under the Commonwealth EPBC Act) with inadequate offsets proposed to ameliorate the impacts of that clearing. Clearing of a CEEC should never be permitted by the use of offsets.

⁷ <http://www.environment.nsw.gov.au/threatenedSpeciesApp/profile.aspx?id=10841>

At the time the original United Wambo EIS was released (August 2016), the NSW Biodiversity Offsets Policy for Major Projects said the following (@ p 11):

“...the policy does not allow variation rules to be applied to critically endangered species and communities or threatened species and ecological communities that are considered nationally significant (listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999). These must be offset in a like for like manner”

NCC has produced a paper on the issue of offsets, and has recommended as policy that the NSW biodiversity offsets scheme must be rewritten in line with best practice to:

- Require strict like-for-like offsetting
- Rule out destruction of high conservation value habitats
- Exclude supplementary measures, such as mine rehabilitation, discounting and payments in lieu of offsets

NSW Department of Planning has broken most of these rules in relation to the United Wambo project by approving the destruction of an EPBC Act listed high conservation value ecological community and offsetting 44.5% of the area to be destroyed with mine rehabilitation⁸.

NCC would like to ask the IPC how the Department of Planning can be allowed to get away with such a variation of the 2016 NSW Biodiversity Offsets Policy?

We believe this element alone should be grounds for refusal of the United Wambo project.

FINAL MINE VOIDS & ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The Project proposes leaving two voids in the final landform⁹.

NCC has significant concerns with allowing final voids to be approved as a part of the final post-mining landscape. Mine voids can have significant long-term impacts on water due to elevated water acidity and high salinity. They fetter the financial options of future generations for centuries. There are also concerns in relation to the cumulative impacts of final voids in the Hunter landscape.

⁸ NSW Department of Planning and Environment: *United Wambo Open Cut Coal Mine Final Assessment Report*, November 2018, p 77

⁹ United Wambo EIS, Volume 1, p 61

Scientific uncertainty about the environmental impacts of the two proposed mine voids is introduced by the independent expert IESC report (see Footnote #4), which certainly has more scientific credibility than the voluminous advocacy of the proponent's EIS and the unquestioning support of the project from the NSW Dept of Planning.

IESC notes that:

- There is a potential for one of the two proposed voids, Wambo void lake, to become a source of contamination to surface water and groundwater systems
- A geochemical assessment was not included in the assessment documentation, which limits the ability to evaluate potential water quality impacts

In relation to this deficiency of detail, NCC is particularly concerned about the final void water balance model¹⁰, which models water level and salinity over a 500 year time frame, but makes no mention of pH levels and particularly the concentrations of potentially toxic metals building up in the pit lake. Appendix 11 also documents historical water quality monitoring for metals such as the potentially toxic metals Arsenic, Cadmium, Lead and Mercury. It would be completely logical for the proponent to model metal levels in the pit lakes which are intended to be left for generations of Australians to manage over hundreds of years.

In spite of claims by the NSW Department of Planning and the proponents that the United Wambo project is consistent with the principles of ESD, in fact it meets none of them in relation to the issue of mine voids. The interpretation of the NSW Environmental Planning and Assessment Act is a job for judges of the NSW Land and Environment Court, not bureaucrats of NSW government departments like the Department of Planning.

The 4 main principles of ESD are set out in Schedule 2 of the Environmental Planning and Assessment Regulation 2000. The planning principles are interpreted in the BGP Properties case¹¹, and subsequently confirmed in the Telstra case¹² in the NSW Land and Environment Court.

The following is a brief summary of how NCC alleges that the United Wambo project fails to meet any of the ESD principles, particularly in relation to mine voids:

- 1. Precautionary Principle:** As mentioned above, the IESC report shows that there are threats of serious environmental damage in relation to the Wambo void lake, but a lack of scientific certainty as to that damage, due to lack of scientific data in relation to the water quality and behaviour in the voids and the very long time frames involved.

¹⁰ United Wambo EIS Appendix 11, Appendix C, Water Balance Assessment, pp25-27

¹¹ BGP Properties P/L v Lake Macquarie City Council [2004] NSWLEC 399 @ 82-114

¹² Telstra Corporation Ltd v Hornsby Shire Council [2006] NSWLEC 133 @ 107-183

These two conditions trigger the precautionary principle, which requires the proponent to demonstrate beyond reasonable doubt that there is no possibility of the suspected harm occurring.

2. **Intergenerational Equity:** The present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

Leaving mine voids to accumulate potentially toxic water for future generations to manage over hundreds of years is contrary to the principle of intergenerational equity.

3. **Conservation of biological diversity and ecological integrity:** Conservation of biological diversity and ecological integrity should be a fundamental consideration.

The proposed destruction of the Central Hunter Valley Eucalypt Forest and Woodland CEEC, representing about 12% of the remaining ecological community meeting that description, is the complete opposite of the conservation of biological diversity principle.

4. **Improved valuation, pricing and incentive mechanisms:** Includes

- Polluter pays principle – those who generate pollution and waste should bear the cost of containment, avoidance or abatement
- Users of goods and services, including the use of natural resources, should pay prices based on the ultimate disposal of any waste.

Open cut coal miners complain that it is unprofitable to fill in coal mine voids (in spite of being required to do so as the cost of doing business in the USA). NSW government “regulators” refuse to enforce the filling in of mine voids, allowing foreign mining corporations to walk away with their enhanced profits while the NSW community bears the cost of containment, avoidance or abatement of waste into the future.

THERMAL COAL AND CLIMATE CHANGE

Climate scientists have advised that to have at least a 50% chance of keeping global warming below 2°C throughout the twenty-first century, globally a third of oil reserves, half of gas reserves and over 80% of current coal reserves should remain unused¹³. **Even if carbon capture and storage technology is developed, over 90% of Australian coal reserves would have to remain unburnt before 2050 to meet the 2 degrees °C warming ceiling¹⁴.**

Coal is the largest single source of emissions globally at 44%¹⁵. Australia is currently the world’s largest exporter of coal.

¹³ C. McGlade & P Ekins: *The geographical distribution of fossil fuels unused when limiting global warming to 2degrees C*, Nature, V. 157, 8 January 2015, pp 187-190

¹⁴ *Unburnable Carbon: why we need to leave fossil fuels in the ground* by Will Steffen (Climate Council of Australia), 2015

¹⁵ International Energy Agency (IEA) *CO₂ emissions from fuel consumption, overview 2018*, p 5.

Commissioners have a legal obligation to take the public interest into account when evaluating a development application under Section 4.15(1)(e) of the *NSW Environmental Planning and Assessment Act 1979*. There is a significant body of law from both the NSW Land and Environment Court and the NSW Court of Appeal which indicates that the public interest includes the consideration of the principles of ecologically sustainable development (ESD), as set out in Section 6 of the *Protection of the Environment Administration Act 1991*¹⁶. **Climate change is the definitive example of the ESD principle of inter-generational equity.**

International decision-makers, particularly those in Pacific nations who are battling increasing intensity of storms and sea level rise, are highlighting Australia's apparent lack of concern about the impacts of our activities on climate change while they are already starting to feel its adverse effects.

The raw figures illustrate the point. Australia has 0.3% of the world population, but generates 1.3% of the planet's emissions – and that doesn't account for the emissions from the burning of exported coal overseas.

Very recently, the impacts of climate change have been dramatically illustrated by weather phenomena which climate experts say are highly likely to be associated with climate change:

- January 2019 was the hottest month on record in Australia – and in NSW, the figure was 2 degrees hotter than the average for the previous warmest month.
- In February 2019, Townsville Queensland has experienced the heaviest rainfall for a 7 day period on record – exceeding the previous 7 day figure by almost 20%
- Scientists say that forests in Tasmania are burning which have not experienced bushfires for the last 1000 years.

In summary, the approval of the United Wambo project is not in keeping with Australia doing our fair share to meet the Paris agreement, nor with the NSW Government's stated commitment to net zero emissions by 2050¹⁷ which will require a phasing out of all coal. It is irresponsible for NSW to be continuing to approve coal mines whose emissions will be contributing to climate change.

Keith Hart
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¹⁶ http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/poteaa1991485/s6.html

¹⁷ Sydney Morning Herald, 4/12/18, p6