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Submission: Wilpinjong Extension determination

Lock the Gate Alliance is a network of hundreds of community groups and tens of thousands of people around the country concerned about the impacts of inappropriate mining.

We object to this project in the strongest terms. It must be refused consent.

In its review of this project, the Commission expressed the view that it was unable to form a view about whether the project should be approved because there was insufficient information available upon which to base such a judgement. We note that this lack of information had not prevented the Department of Planning from forming the view that the mine could and should be approved. This disparity highlights a significant failing in the advice being prepared for the Commission by the Department. It calls into question the Department's objectivity and rigour in assessing major mining projects against statutory considerations.

We note too that the Audit Office has recommended that the Department of Planning cease the practice of making recommendations that mines be approved and writing draft conditions of consent for the Planning Assessment Commission, but the Department has not followed this recommendation.

Summary

- The Commission's review report expressly required that, "the recommendations of this report must be satisfactorily addressed before the project can be further considered." There are several important matters for which this has not occurred, most notably for Aboriginal heritage and biodiversity. This being the case the Commission cannot grant consent to this project.
- The damage and harm that will be inflicted by this project outweigh the economic benefits that it will bring, which are largely limited to increased profits for the company concerned, given that ongoing mining and employment are already set to continue for a decade without the need for this expansion.
- This mine will fatally and irreversibly condemn the village of Wollar and surrounding rural community to oblivion. The Department of Planning's assertion that this oblivion is now inevitable, thanks to its approval of the mine ten years ago, is not based in sound understanding of the character of the community being impacted. It is a community of uncommon resilience and connectedness. We believe in its ability to thrive into the future, if this project is prevented from destroying it.

- If the Planning and Assessment Commission grants approval for this project, there will be businesses and individuals significantly harmed by it. Each of these people, not just those within the acquisition zone, should be granted just terms compensation for the harm that is to be done to their livelihoods by Peabody Energy and the NSW government.
- Acquisition does not alleviate social impacts, but it can alleviate personal and financial impacts if undertaken on just terms. This is often not the case. We note that the proponent rents properties in the area affected by air and noise pollution beyond the statutory limits.
- There is no evidence that the health impact of this project on people living in, but not owning, affected properties has been considered at any point by the proponent, the Department or the Commission. We raised this issue in our submission to the review and it has not been addressed.
- In responding to the Day Design noise report, the Department states that background noise levels were established for the project prior to any mining being carried out in the area at 30dB(A) and calls this “the lowest possible level under the INP.” We seek clarification as to whether background levels were, as we understand, much lower than this, but were set at 30dB(A) because the Industrial Noise Policy is not capable of accurately reflecting the noise pollution experience of rural communities that are affected by mining.
- Given that the damage of noise is linked to the experience of noise, the Commission must consider the change from actual background noise in Wollar and surrounds, not the change from an elevated background level which is all that the Industrial Noise Policy is capable of assessing.
- Given the unfitness of the Industrial Noise Policy for dealing with mine noise in quiet rural areas, as has been already demonstrated in Wollar and other rural villages affected by mining noise, we believe the Commission should reject this mine and recommend to the government an overhaul of noise considerations for mining operations, including a mandatory set-back from villages, homes, schools and other receptors.
- The Commission recommended that the Department undertake further consultation with the Aboriginal community and ensure that a strong regulatory regime be put in place which “puts and emphasis on impact avoidance for significant sites, and where avoidance is not possible the suitable recording and salvage of artefacts.” The Department has not fulfilled either of these recommendations and its response to these questions in the final Assessment report is unacceptable.
- Failures and gaps in the assessment of the Regent honeyeater that were raised by Lock the Gate and others with the PAC review were not addressed in the review report and have subsequently not been addressed by the Department or the proponent.
- Further, the recommendation made by the PAC Review regarding this species has also not been met by Wilpinjong Coal and the Department. The PAC Review expressly recommended that the Department and Wilpinjong Coal “shall provide additional evidence to confirm that *any* shortfall in species credits are available for purchase by the Applicant.” This has not been done.
- We urge the Commission to uphold the findings of the review and refuse consent to this project on the grounds that there has been no evidence provided to confirm that the credit shortfall for this species can be met.
- The impact of this mine on the Regent honeyeater is clearly unacceptable. This mine will have significant impacts on the critically endangered Regent honeyeater and the mitigation and offset strategy proposed by the proponent is manifestly inadequate. The problems raised by submissions to the PAC Review and by the PAC review itself have not been addressed and the project must be rejected.

- More than half of the offsets proposed by the proponent is future mine rehabilitation. This is clearly not appropriate for a critically endangered species.
- The “appropriate regulatory regime” that the Commission requested the Department ensure is in place to make good water loss for the Wollar Public School has not been provided. We note that previous mine conditions for the provision of compensatory water have not worked. We urge the Commission to reject this mine given the inability of NSW regulation to ensure that there can be adequate compensation to affected landholders and the Wollar Public School.
- The Commission’s request that the Department provide further clarification as to the full extent of the drawdown on the alluvial aquifers within and around the project site to enable a full assessment of the predicted impact was not fulfilled.
- The Department has not mentioned or considered in its Assessment Report the Commission Review’s recommendation for a strategic vision for the management of coal resources in the Mudgee region.
- The Wilpinjong mine was approved to continue mining until 2027. The damage that this extension project will do must be weighed against the reality that there is no need for it to be approved for the current employment and contribution that Wilpinjong makes economically to continue for another ten years.
- Given the changes underway in the Australian electricity sector and the international coal market, the future need for this mine to continue beyond the ten years of life it still has is under considerable question. The purported economic benefits of expanding Wilpinjong mine will continue for ten years without this project being approved. This being the case, there is no justification for the damage to Wollar, cultural heritage and biodiversity that this extension project will cause.

Aboriginal cultural heritage

Given that the need for this project is not urgent, we cannot understand why the Department of Planning has rejected the Commission’s recommendation regarding further consultation with the Aboriginal community over the heritage impacts of this project. The Department provides no adequate explanation for not following this recommendation and we urge the Commission in the strongest terms not to accede to this fundamental neglect of basic consultation and respect.

The cultural heritage impacts of this mine expansion are substantial. The Local Aboriginal Land Council objects to the project, and many other objections have been lodged. The community has raised concerns about the importance of the Rocky Hill complex of artefacts that will be open cut by this extension. Among the places to be lost are a rock cave with artwork and another with an ochre quarry. OEH has stated that cumulative effects on Aboriginal heritage from mining in the region are reaching “critical thresholds.”

In answer to the Commission’s clear recommendation for further consultation and agreement from the Aboriginal community, the Department states that NSW regulation does not require agreement to be reached with the local Aboriginal community about the level of acceptable impact and that the determination of whether impacts are acceptable is a matter for consideration by the consent authority. We submit that you must consider this impact unacceptable, especially in light of the opposition of the Aboriginal community.

The Department of Planning’s treatment of these concerns is bordering on negligent. It compares the irrevocable loss of a highly significant cultural site, featuring rock art and artefacts and a cultural

area which has significance that inheres in the landscape against the mere \$10 million revenue the State of NSW might get from the coal beneath this site and finds the money to be more important. This is a fundamental misunderstanding on the Department's part. Money can be made in many ways but in situ cultural and spiritual heritage cannot be replaced. The Department admits that mining in the area has already had a cumulative impact on Aboriginal cultural heritage in the area. We urge the Commission to protect the Rocky Hill complex and refuse consent for this project.

The Department has also failed to meet the recommendation that clear management objectives be developed for the affected sites.

There is sufficient evidence presented to demonstrate that the loss of the Rocky Hill Complex sites is not acceptable and that the project should be rejected and the community supported to develop appropriate conservation and management plans to protect them.

Indeed, the Commission recommended that the Department ensure that a strong regulatory regime be put in place which "puts and emphasis on impact avoidance for significant sites, and where avoidance is not possible the suitable recording and salvage of artefacts." The Department has not fulfilled this recommendation and its answer to this recommendation in the Assessment report is unacceptable. The Department says the impact is "unavoidable" but this judgement needs to be contextualised in the project as a whole, which seeks an extension of seven years life of a mine that still has ten years to run on its current consent. There is no overwhelming need for this project that outweighs the very grave damage that it will do to Aboriginal cultural heritage.

We note that previous PAC reviews have made recommendations requesting action from the Department in addressing gaps and failings in the regulatory regime as it applies to mining that have also not been fulfilled. We submit that the current regime is not capable of preventing unacceptable loss of sites of high cultural significance such as the Rocky Hill complex and that, as a result, the Commission must refuse consent for the project as the only measure available to it to prevent this loss.

Biodiversity

The Commission recommended assessment of the likely impacts of the mine lighting on bat movements to and from the abandoned mine adit. It was already clear from the assessment materials and from the concerns raised by OEH, that this project will have a significant impact on the Eastern bent-wing bat. Incredibly, despite lactating eastern bent-wing bats being actually captured during surveys from the mine, 152m from proposed Pit 8, the Department of Planning recommended that the mine proceed and asserted that there would be no significant impact on this species. This was despite OEH clearly indicating that "few maternity sites for the Eastern Bentwing bats are known in the Hunter Valley" and "The loss of specialized maternity sites may place regional populations at risk." Clearly, a monitoring program is not a sufficient response to the prospect that the regional population of Bentwing bats may be put at risk as a result of the loss of this site.

The Department does not appear to have obtained any advice from bat experts about the adequacy of the mitigation measures proposed by Wilpinjong coal to deal with the impact that lighting will have on this population. There does not appear to be any advice from OEH on this matter since the PAC review. The Department relies instead on Wilpinjong's response to the PAC's concerns and its own unsubstantiated judgement that these measures are sufficient. The Commission relies on the Department to conduct an adequate assessment, but in this case, that has not occurred, and so the Commission must refuse the mine, having been given no other choice by the inadequacy of the information provided by the Department of Planning.

Failures and gaps in the assessment of the Regent honeyeater that were raised by Lock the Gate and others with the PAC review were not addressed in the review report and have subsequently not been addressed by the Department or the proponent. This is not acceptable. This mine will have significant impacts on the critically endangered Regent honeyeater and the mitigation and offset strategy proposed by the proponent is manifestly inadequate. Lock the Gate's submission to the PAC review highlighted that nowhere in the assessment material had the critical habitat described in the National Recovery Plan for this species been mapped and described. The Department of Planning claimed to have considered the National Recovery Plan but this claim was not substantiated and our concerns about this failure were not addressed by the Review PAC nor anyone else subsequently.

The Recovery Plan quite specifically states that, "Any breeding or foraging areas where the species is likely to occur" including the area where this project occurs, is "critical to the survival" of this species. Any reasonable person would understand that clearing of critical habitat for a critically endangered species is an action that could lead to extinction. More than half of the offsets proposed by the proponent is future mine rehabilitation. This is clearly not appropriate for a critically endangered species and most certainly not for the clearing of critical habitat. The assessment conclusions drawn by both OEH and the Department of Planning about the impact of this project on this species are flawed and must be rejected by the Commission.

A further omission that we raised in our submission to the PAC Review lies in the designation of the impact on the Regent honeyeater as an "impact requiring further consideration" under the Framework for Biodiversity Assessment. The OEH make clear that the Regent honeyeater is a "species for further consideration" for this project. Under the Framework for Biodiversity Assessment, this means the prima facie position of the determining authority should be to refuse consent. This provision of Government policy was not mentioned in the Department's Preliminary Assessment Report. We raised it in our submission to the review, but the PAC failed to mention it in its Review report.

What is the public to do when we raise important and substantial failures of the assessment process for major projects and they are ignored by the agencies?

Further a key recommendation made by the PAC Review regarding this species has also not been met by Wilpinjong Coal and the Department. In recommendation 4, the PAC Review expressly required that the Department and Wilpinjong Coal "shall provide additional evidence to confirm that *any* shortfall in species credits are available for purchase by the Applicant."

This has not been done.

The Department's Assessment Report cites one property that "could" provide less than half the required credits. It provides no evidence that this property would be available for purchase by the applicant, nor that the owner of the property would be willing to enter into a biobanking agreement and sell the resulting credits to the applicant. That there is habitat for this species on a property owned by an unrelated third party is not evidence that the proponent can meet a species credit shortfall. This property was for sale last year and the proponent presumably declined to purchase it for use in its offset package for this project. How could it now be used as evidence that the proponent could meet a shortfall in species credits years from now if rehabilitation fails? The Department offers a glib statement that land owned by Peabody Energy "could also be used to satisfy any residual species credit requirements." We know that other mining companies have had difficulty securing offset credits for this species, and that is not surprising, given its status and rarity.

Again, there does not appear to have been any advice provided by OEH confirming that offset credits will be available for this mine if mine rehabilitation fails.

We urge the Commission to uphold the findings of the review and refuse consent to this project on the grounds that there has been no evidence provided to confirm that the credit shortfall for this species can be met.

Social and noise

The Planning and Assessment Commission review did not take the time to meet with the community at Wollar. The determination PAC must correct this oversight.

The wider Wollar community are warm, generous and tight knit. They work hard to keep the social and cultural life of their village functioning, in spite of the damage the Wilpinjong coal mine has done. They sing songs about their village and its struggles, support their school and throw open their arms, doors and hearts to strangers. The value of these bonds, this life, these histories, are nowhere reflected in the banal assessment prepared by the Department of Planning, which disguises its biased preference in favour of the project behind the faux-dispassionate language of the bureaucracy.

The Planning and Assessment Commission needs to be objective in its assessment of this project, but that does not mean that it should be wilfully blind to the qualities of this community that make it far more valuable than seven years of mining royalties.

This mine will fatally and irreversibly condemn the village of Wollar and surrounding rural community to oblivion. The Department of Planning's assertion that this oblivion is now inevitable, thanks to its approval of the mine ten years ago, is not based in sound understanding of the character of the community being impacted. It is a community of uncommon resilience and connectedness. We believe in its ability to thrive into the future, if this project is prevented from destroying it.

Nevertheless, the Department recommends allowing the extension to proceed and the village to be annihilated. Since the Commission declined to make a recommendation at the review stage, we consider this an opportunity for you to reject this project. But we accept the possibility that you will not do so, and so plead with you to ensure that everyone for whom Wollar village is the hub of social and cultural activity should be granted acquisition rights on just terms for their loss and the cost of relocation. Acquisition rights cannot be allowed to leave people stranded without community services and networks. If the village leaves, all surrounding properties must also be granted the opportunity to leave.

In responding to the Day Design noise report, the Department states that background noise levels were established for the project prior to any mining being carried out in the area at 30dB(A) and calls this "the lowest possible level under the INP." We seek clarification as to whether background levels were, as we understand, much lower than this, but were set at 30dB(A) because the Industrial Noise Policy is not capable of accurately reflecting the noise pollution experience of rural communities that are affected by mining.

Given that the damage of noise is linked to the experience of noise, the Commission must consider the change from actual background noise in Wollar and surrounds, not the change from an elevated background level which is all that the Industrial Noise Policy is capable of assessing.

Given the unfitness of the Industrial Noise Policy for dealing with mine noise in quiet rural areas, as has been already demonstrated in Wollar and other rural villages affected by mining noise, we believe the Commission should reject this mine and recommend to the government an overhaul of noise considerations for mining operations, including a mandatory set-back from villages, homes, schools and other receptors.

We note that the Department has accepted the extension of acquisition rights beyond strict adherence to the limited Voluntary Land Acquisition and Mitigation Policy. It is our strong view that this must go further and that consent for this mine will unreasonably impact on the lives of landholders for whom Wollar is the hub of social and cultural activity. To leave such landholders stranded will inflict harm on them as we have seen occur with other major mining projects.

Finally, acquisition does not alleviate social impacts, but it can alleviate personal and financial impacts if undertaken on just terms. This is often not the case. We note that the proponent rents properties in the area affected by air and noise pollution beyond the statutory limits. There is no evidence that the health impact of this project on people living in, but not owning, affected properties has been considered at any point by the proponent, the Department or the Commission. We raised this issue in our submission to the review and it has not been addressed.

Water

Recommendation 15 by the PAC review was that the Department of Planning “ensure that an appropriate regulatory regime is developed through either a statement of commitment or conditions of consent with regard to the Applicant’s “in-principle make good provision” with regard to groundwater impacts on the Wollar Public School. The 6m draw down expected at the school exceeds the minimal impact criteria of the Aquifer Interference Policy.

The Department and the proponent have not satisfactorily met this recommendations. There is no appropriate regulatory regime in place in NSW to ensure efficient replacement of water lost as a result of mining operations – even where conditions of consent require that this be done. We are aware of more than one case of landholders being unable to secure compensatory water that was promised to them and suffering significant hardship and trouble as a result.

In Werris Creek, for example, there has been considerable draw down in the alluvial aquifer upon which local landholders rely. The Werris Creek mine was experiencing higher than expected groundwater inflows and using evaporators to get rid of excess mine water while elderly landholders had to cart water to fill basic household functions. The volume of water being put through the evaporators increased 79% in 2015. The installed show a steadily declining trend in several monitoring bores in the nearby basalt aquifer. The mining company in question has denied that the water loss is attributable to the mine and the landholders have gone to considerable expense hiring hydrologists to report on the situation and substantiate their case that the mine has caused the drawdown. They have not been able to secure compensatory water.

The “appropriate regulatory regime” that the Commission requested the Department ensure is in place to make good water loss for the Wollar Public School has not been provided. We urge the Commission to reject this mine given the inability of NSW regulation to ensure that there can be adequate compensation to affected landholders and the Wollar Public School.

The Commission also recommended that the Department provide further clarification as to the full extent of the drawdown on the alluvial aquifers within and around the project site to enable a full

assessment of the predicted impact. In answer to this, the Department's Assessment Report refers to an answer to a different recommendation. It has not provided the information required.

Conclusion

Tellingly, the Department has failed to consider or even mention the Commission's recommendation that that a high level strategic vision be developed for the NSW coalfields to deal with the kinds of conflicts and damage that this project brings. The Commission's review found that, "Based on experiences occurring elsewhere in other NSW coalfields, particularly the Central and Hunter coalfields the Commission considers it important to make reference to the need for a long term strategic plan for the western coalfields. The development of a high level strategic vision for the NSW coalfields, and in particular for the western coalfields would be of considerable benefit in the assessment of individual projects and would give mining companies, government agencies, investors and the community confidence in the long term strategic direction of mining within the State."

In the absence of such a vision, the community relies on the PAC to ensure that cumulative impacts and irreversible impacts are given due weight and consideration. We believe that this project is, on balance, not in the public interest and hope that the Commission will refuse consent.

The Wilpinjong mine was approved to continue mining until 2027. The damage that this extension project will do must be weighed against the reality that there is no need for it to be approved for the current employment and contribution that Wilpinjong makes economically to continue for another ten years.

Given the changes underway in the Australian electricity sector and the international coal market, the future need for this mine to continue beyond the ten years of life it still has is under considerable question. The purported economic benefits of expanding Wilpinjong mine will continue for ten years without this project being approved. This being the case, there is no justification for the damage to Wollar, cultural heritage and biodiversity that this extension project will cause.

It is fair to assume that public expects that critical habitat for critically endangered species and highly culturally significant rock shelters that feature art works and artefacts should be protected from open cut mining activity. It is also fair that the purported economic benefits of mining projects be situated within a strategic context and balanced against its social and environmental damage. We do not believe that this has occurred for this project. Indeed, the very reasonable recommendations

The Commission's review report found that "the recommendations of this report must be satisfactorily addressed before the project can be further considered." This has not occurred and so it is clear that consent cannot be granted to this project.