



Nature Conservation Council

The voice for nature in NSW

Clay Preshaw
A/Director Resource Assessments
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

28 June, 2017

Submission of Objection: Hume Coal Project Development Application (SSD 7172) & Berrima Rail Project (SSD 7171)

Dear Sir/Madam,

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 objects to the proposed Hume Coal and Berrima Rail Projects based on the projected impacts the projects will have on the environment, water resources, Aboriginal heritage, climate and the communities of the Southern Highlands.

Our attached submission outlines particular concerns on the following grounds of objection:

- Climate change/Greenhouse gas impacts
- Biodiversity issues
- Water issues
- Unsuitability of site for development
- Statutory/planning inconsistencies
- Hazards and Impact on infrastructure
- Aboriginal heritage
- Local residents' concerns

We recommend that the proposed project be rejected. If you seek any further information on the issues raised in this submission please do not hesitate to contact me on (02) 9516 1488 or ncc@nature.org.au

Yours sincerely,

Daisy Barham
Campaigns Director
Nature Conservation Council of NSW

NCC SUBMISSION – Hume Coal Project Development Application (SSD 7172) & Berrima Rail Project (SSD 7171)

The Nature Conservation Council of NSW (NCC) **objects** to the projects for the reasons outlined below.

Climate Change/Greenhouse Gas Impacts

The Hume Coal Project is being considered in the light of the historic agreement at the UN Conference of the Parties (the Paris Agreement) on 12 December 2015. The Paris Agreement was unanimously signed by 195 countries. The agreement commits all nations, including Australia, to keeping global average temperatures to below 2 degrees Celsius.

The Climate Council of Australia has stated what this target means for Australian coal mining:
“For Australia to play its role in preventing a 2 degree C rise in temperature requires over 90% of Australia’s coal reserves to be left in the ground, unburned”.¹

International researchers from the University College of London, following extensive modelling, have come to a similar conclusion. They suggest that to have at least a 50% chance of keeping global warming below 2 degrees C throughout the twenty-first century, globally a third of oil reserves, half of gas reserves and over 80% of current coal reserves must remain unused.

NCC contends that given Australia’s international responsibility to limit greenhouse gas emissions in the interests of keeping climate change within 2 degrees Celsius, a ‘business as usual’ approach to approving coal mines in NSW is no longer acceptable. International researchers published in *Nature* considering the impact of burning fossil fuels on the prospects of limiting global warming to 2 degrees C reached a similar conclusion:

*“Business as usual in relation to coal mining and keeping global warming to below 2 degrees C are fundamentally irreconcilable”*².

The Scope 1, 2 and 3 emissions for the life of the Hume Coal project will be about 8 million tonnes of CO₂ equivalent. Given the advice of international climate experts on the need to leave most of Australia’s remaining coal in the ground, new projects should be assessed thoroughly as to whether they are in keeping with our global commitments.

The EIS states that 45% of coal which would be produced by the proposed mine is thermal coal. Demand for thermal coal is flat at best, and it will become increasingly a white elephant as renewable sources of energy such as wind and solar overtake coal for preferred electricity generation in Australia and globally.

¹ Climate Council of Australia (2015): *“Unburnable Carbon: Why We Need to Leave Fossil Fuels in the Ground”*, pp iii – iv, www.climatecouncil.org.au

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

NCC requests that the Department reject the project based on the unacceptable contribution the mine will make to fuel climate change.

Biodiversity Issues

NCC is concerned with the likely impact on nationally threatened flora and fauna from this proposed project. NCC requests that there be an independent assessment by the Office of Environment and Heritage before the Department of Planning and Environment or the Minister considers any approval for the project or recommends approval to the Commonwealth under the EPBC Act.

Notably, we are concerned with the following key biodiversity impacts of the project:

- Removal of 64 paddock trees containing potential habitat for threatened species.
- Potential impact on EPBC Act threatened fauna species including the koala and large-eared pied bat.
- Potential impact on the following EPBC Act threatened flora³ species:
 - Paddys river box
 - Dwarf phyllota
 - Broad-leaved sally
- Potential impact on EPBC Act threatened species Giant Dragonfly, and
- Potential impact of groundwater drawdown on all the nationally important wetlands listed on p 277, Volume 1 of the EIS.

Biodiversity Offset Package

NCC has been following the development of the concept and implementation of biodiversity offsets in NSW for the last 10 years. Based on the evidence from existing offsetting agreements in NSW and NSW offsetting policies, we regard the current NSW biodiversity offset policy as lacking in intellectual and scientific credibility. Our recently published report⁴ on biodiversity offsetting details our concerns, which can be summarised as:

- Biodiversity schemes in NSW have failed to deliver the promised outcomes regarding biodiversity;
- Biodiversity offsetting schemes in NSW have become weaker over time as standards have slipped; and
- The latest Biodiversity Assessment Methodology contains fewer best practice principles and standards than any previous scheme and will likely deliver worse outcomes.

In addition to the above, it is completely unsatisfactory that the EIS notes that a Biodiversity Offset Package will be required for the project but fails to provide any details or identify any appropriate offsets⁵. NCC requests that the Minister refuse this project until a satisfactory Biodiversity Offset Package is developed and made available for public comment. Anything less undermines the Government's stated commitment to the transparent application of biodiversity offsetting. If the proponent is unprepared to do a genuine Biodiversity Offset Package, then the application should be automatically refused on biodiversity grounds.

Water Issues

³ Hume Coal EIS, Volume 1,

⁴ Nature Conservation Council of NSW (2016) *Paradise Lost – The Weakening of NSW Biodiversity Offsetting Schemes, 2005-2016*

⁵ Hume Coal EIS, Volume 1, p 280

NCC does not support coal mining within the Sydney Drinking Water Catchment. In 2011, the then Leader of the NSW Opposition Barry O'Farrell promised he would not allow mining in drinking water catchments, but he broke that promise in 2013 after becoming Premier. The Hume Coal EIS devotes very little attention to the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and fails to satisfactorily explain how the project will meet the requirements of the SEPP⁶.

The EIS promises to include an assessment of the project in Chapter 7 – Water Resources, however that assessment does not appear in Chapter 7.

In fact the Sydney Drinking Water Catchment SEPP is important since the Hume Coal Project is entirely located in the Sydney Drinking Water Catchment. Clause 10(1) of the SEPP states that:

10(1) A consent authority must not grant consent to the carrying out of development ...on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.

NCC maintains that the Hume Coal project fails to meet this neutral or beneficial water quality standard and should be rejected on these grounds.

The potential impact of the mine on groundwater levels is also of significant concern. The EIS states that there will be a maximum drawdown of between 2m and 84m predicted for 109 landholder bores⁷.

If the Minister does grant conditional approval to the project, then appointment of an independent authority to ensure that affected bores are made good should be part of the conditions of approval.

Unsuitability of site for development

As the Australia Institute has recently pointed out⁸, coal is conspicuously absent from the local development framework, which envisages carbon-neutral energy sources, intensive agriculture, high quality health care and agri-tourism. Mining is not a significant part of the Southern Highlands economy and is antithetical to many mainstream local industries.

For example, much of the Southern Highlands tourist industry (which unlike the coal industry is fundamentally sustainable) relies on the beauty of the rural environment and its clean air and relative absence of industrial scenery and pollution. Coal mines and their associated infrastructure have no place in such an environment.

The Wingecarribee Shire Council (the district where the Hume Coal proposal is located) reflects the views of the vast majority of its residents in its opposition to coal mining within the shire. In November 2012 the council declared itself a CSG and longwall mining free shire, installing signage containing this message at entry points to the region⁹.

⁶ Hume Coal EIS, Volume 1, page 72

⁷ Hume Coal EIS, Volume 1, p 178

⁸http://www.tai.org.au/sites/default/files/P226%20For%20Hume%20the%20bell%20tolls%20-%20Southern%20Highlands%20business%20case%20studies%20FINAL_0.pdf

⁹ <http://www.wsc.nsw.gov.au/coal-seam-gas-and-longwall-mining>

On the Wingecarribee Council website, the Southern Highlands and Tablelands Regional Action Plan (2012) appears¹⁰. The then Deputy Premier's message at the beginning of the document states:

"The high quality natural environment and heritage of the Southern Highlands and Tablelands will be preserved and natural resources and biodiversity sustainably managed. We will support sustainable agricultural production and manage the impacts of development, climate change, weeds and waste in the region"

The plan does not mention coal mining in the region.

Statutory/planning inconsistencies

The Minister for Planning in assessing an application for State Significant Development such as the Hume Coal Project¹¹, is legally obliged to evaluate the development application in accordance with Section 79C of the NSW Environmental Planning and Assessment Act 1979. NCC maintains that the Hume Coal Project does not satisfy the public interest matter for consideration [Section 79C(1)(e)]. NCC also argues that the site is not a suitable location for the proposed development [Section 79C(1)(c)].

The decision-maker is also obliged to consider the provisions of any environmental planning instrument [Section 79C(1)(a)(i)].

The Hume Coal Project EIS shows the Land Zoning for the project area¹² under the Wingecarribee Local Environment Plan, 2010. The EIS acknowledges that development for the purposes of mining is prohibited in the zones covering the project area¹³ indicated in the Map shown in Figure 3.2. Given that the Local Environmental Plan can be made only after detailed consultation with the local government body and the community of the area, NCC would argue that this process of making a Local Environment Plan is consistent with the requirement in Object 5(c) of the NSW Environmental Planning and Assessment Act which requires that the Act:

"provide increased opportunity for public involvement and participation in environmental planning and assessment"

NCC holds the view that, if the whole Hume Coal project area is covered by zoning where mining is prohibited, then this should be grounds on its own for the NSW Planning Minister to reject the proposed Hume Coal Project. The fact that the proposed development would take place on land where mining is prohibited under the LEP is strong evidence for the fact that the site is unsuitable for the proposed development under Section 79C(1)(c) of the Environmental Planning and Assessment Act.

¹⁰ <http://www.wsc.nsw.gov.au/uploads/2523/southern-highlands-and-tablelands-regional-action-plan.pdf>

¹¹ Hume Coal Environmental Impact Statement (2017), Volume 1, Main report, p 50

¹² Hume Coal EIS, Vol 1, Figure 3.2, p 53

¹³ Hume Coal EIS, Vol 1, p 51

Hume Coal relies¹⁴ on another environmental planning instrument – State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 – the Mining SEPP to get around this issue. Clause 5 of the Mining SEPP states:

Clause 5(3)... if this Policy is inconsistent with any other environmental planning instrument, whether made before or after this policy, this policy prevails to the extent of the inconsistency.

Hume Coal appears to regard Clause 5 of the Mining SEPP as sufficient to overcome the inconsistencies with the Wingecarribee LEP which would prohibit the proposed development. However, Clause 12 of the Mining SEPP is also applicable and is reproduced below:

Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

(a) consider:

- (i) the existing uses and approved uses of land in the vicinity of the development, and*
- (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
- (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*

(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and

(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).

NCC believes that an independent assessment of the proposed Hume Coal mine against the provisions of Clause 12 of the mining SEPP would find that:

- The proposed Hume Coal development is likely to have a significant impact on preferred land uses, as indicated by the prohibition of mining in the LEP zoning for the project area;
- The development is fundamentally incompatible with preferred land uses in the region;
- The negative impacts of the development far outweigh the minimal 'benefits' to the community and local economy; and
- Measures proposed would have little credibility with the community. Research by Lonergan Research in 2015 indicated that less than 20% of Southern Highland community members polled support the Hume coal proposal.

NCC maintains that the local LEP supported and developed by the local community should be respected and implemented as intended.

Hazards and Impact on Infrastructure

The Hazard and Risk Assessment Report¹⁵ exhibits poor knowledge of the local area which will be impacted by the proposed coal mine to the extent that the increased risk of level crossing accidents and potential fatalities is not even mentioned¹⁶. Whilst not strictly within our remit we feel it important that this safety concern does not go unnoticed.

¹⁴ Hume Coal EIS, Vol 1, p 51

¹⁵ Hume Coal EIS, Volume 9, Appendix P

¹⁶ Hume Coal EIS, Vol 9, Appendix P, Section 3.6.1, p 29

Some information relating to increased train movements and risk can be gathered from the Executive Summary of the Berrima Rail Project EIS¹⁷. We learn that:

- Weekly train movements will be approximately 50 movements per week. Along the single line Moss Vale to Unanderra rail line, this represents a 1/3 increase in train movements¹⁸. Traffic delays caused by additional coal trains (four trains daily in each direction) will be up to an extra 24 minutes in total each day¹⁹. This will be a measure of driver frustration leading to increased chances of some drivers taking risks – a significant cause of level crossing accidents in Australia.
- The Moss Vale – Unanderra rail line has an extraordinary 13 level crossings between the main southern railway junction at Moss Vale and Fountaindale Road at Robertson²⁰. Two of these crossings are major road level crossings at Sheepwash Road (Bowral to Illawarra Highway) and Robertson (Illawarra Highway). Both crossings have lights but no gates.

These concerns are not addressed in Appendix P (Volume 9) – Hazard and Risk Assessment which raises concerns about the reliability of the information contained within the EIS. We request that the Minister ensures this risk is fully independently assessed to provide the community with the assurances they deserve.

Aboriginal Heritage

NCC notes that Chapter 21 of the EIS – Aboriginal heritage – documents a comprehensive assessment of the significant aboriginal heritage of the project site. Consultant research led to the discovery of 177 newly recorded aboriginal sites in the Hume Coal and Berrima Rail Project Areas²¹.

We are concerned that the proponent acknowledges the two projects will impact eight sites of moderate significance²². 10 sites were assessed as being of high aboriginal heritage significance. All are located in the Belanglo State Forest and are either rock shelters (with or without rock art) or grinding groove sites²³.

NCC disputes the premise behind the statement that the projects will not impact on any areas of high significance. The flaw in the proponent's argument is revealed in the response to a request by a Registered Aboriginal Party (RAP) that the management of all rock shelters should include baseline recording and future monitoring after mining. The response was that it would be unfeasible to monitor all rock shelter sites and:

¹⁷ Hume Coal EIS, Volume 3A, Appendix D, Executive Summary

¹⁸ Hume Coal EIS, Volume 3A, p 143.

¹⁹ Hume Coal EIS, Volume 3A, Berrima Rail Project Executive Summary, p ES.6

²⁰ Hume Coal EIS, Volume 3A, Figure 9.2, p 134

²¹ Hume Coal EIS, Volume 1, p 535

²² Hume Coal EIS, Volume 1, p 535

²³ Hume Coal EIS, Volume 1, p 531

“...in any event, it is considered unjustifiable because there are no predicted subsidence impacts on any surface features”²⁴.

This type of statement that “there will be no significant impact from the project” occurs repeatedly throughout the Hume Coal EIS.

There is a fundamental flaw in the environmental impact assessment (EIA) regime in Australia. It is not just the Nature Conservation Council of NSW and its associated community environment groups who have experienced this gaping credibility hole. Distinguished environmental lawyer Dr Gerry Bates has also discussed this flaw in his environmental law textbook, and the core of his argument is repeated below:

“One of the most oft-repeated criticisms made of the EIA process is that the EIA documentation will be prepared by, or on behalf of, persons having the greatest stake in the acceptance of the proposal. If the proponent does not prepare the statement, then that responsibility will be delegated to a firm of engineering or environmental consultants who would naturally be expected to assess the environmental impact of the proposal in terms that would reflect as favourably as possible the interests of their clients. It is claimed that this relationship will inevitably lead to aspects of a project that are detrimental to the environment being omitted or glossed over by superficial study and glib assurances”²⁵.

Based on the information provided in the EIS we remain concerned about the close relationship between environmental and other consultants and the proponent and cannot agree that the impacts on Aboriginal Heritage sites will be nil.

NCC opposes the approval of the Hume Coal Project. However, if the NSW Government were to approve this project, NCC requests that as a minimum, the following conditions with respect to aboriginal heritage be attached to the approval:

- All 10 identified high significance aboriginal heritage sites should have baseline recording and future monitoring after mining, as requested by the RAP.
- It should be a condition of development approval that such monitoring be done by officers of NSW Office of Environment and Heritage with experience in Aboriginal heritage. The cost of such monitoring should be paid for by Hume Coal. The experience of NCC and its member groups over the past few years has been that proponent employed staff and consultants are not appropriate to perform this role.

Local Residents’ Concerns

NCC expects that significant concerns about noise, sleep deprivation, air quality and health impacts will feature in a number of submissions from the local community and relevant stakeholder groups.

One area of public concern that NCC wishes to mention is the issue of covered rail wagons to minimize dust emissions during transport. Coal transport emissions have been an ongoing

²⁴ Hume Coal EIS, Volume 1, p 513

²⁵ Gerry Bates, *Environmental Law in Australia*, 9th Ed (2016), LexisNexis Butterworths, pp461-462

complaint for years from many residents along the coal transport route between the Hunter Valley and the coal export port at Newcastle. The EIS mentions that Hume Coal would be the first coal mining company in Australia to introduce covered rail wagons²⁶. While this is very welcome, our organisation remains concerned about the history of proponents requesting a variation to their conditions following initial approval. The experience of NCC and its member groups in the Hunter Valley is that the NSW Department of Planning almost invariably favours the position of coal miners rather than the community.

We request that, if approved, it be a condition of consent that all rail wagons be covered.

²⁶ Hume Coal EIS, Volume 1, p 17