



Wilpinjong Extension Project

SSD 6764

Determination Report

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24 April 2017

EXECUTIVE SUMMARY

The Wilpinjong Extension Project (SSD 6764) (the Project) is a proposed extension of the existing Wilpinjong open cut coal mine. Wilpinjong is located approximately 40 kilometres (km) northwest of Mudgee, near the village of Wollar, within the Mid-Western Regional local government area.

The Project would involve:

- the development of a new open cut pit to the east of existing operations;
- extensions to various existing open cut pits;
- a minor increase in coal production from the current 12.6 to 13 Million tonnes per annum (Mtpa);
- continued use of existing coal processing and surface infrastructure;
- an extension to the life of the mine by seven years (i.e. from 2026 to 2033); and
- development of a range of ancillary infrastructure, including further realignment of Ulan-Wollar Road, relocation of a 330 kV transmission line, and construction of additional surface infrastructure to support mining operations.

On 3 November 2016, the Minister requested that the Planning Assessment Commission (the Commission) conduct a public hearing and review the merits of the Project, with consideration of the likely economic, environmental and social impacts. The Commission was constituted of Mr Joe Woodward (chair), with Mr Alan Coutts and Mr David Johnson. The Commission examined the documents referred to in the Terms of Reference set out by the Minister, including the Environmental Impact Statement (EIS), submissions and Response to Submissions. The Commission also received written submissions, held a public hearing, visited the site and surrounds, and met with the Applicant, the Department of Planning and Environment (the Department) and Office of Environment and Heritage (OEH).

The Commission notes that the preliminary Secretary's Environmental Assessment Report (SEAR) submitted as part of the review was a preliminary assessment of the merits of the project. The assessment considered the potential impacts of the project with regards to noise, blasting, air quality, social, biodiversity, water resources, heritage, final landform, rehabilitation and economic impacts. Other issues identified in the preliminary SEAR include traffic and transport and visual impacts.

Taking into account the information available, views expressed at the public hearing and submissions received, the Commission made 31 recommendations to progress assessment of the Project. The Commission considered the key issues which required further information and consultation with relevant agencies included biodiversity and offsets, final landform and rehabilitation, water quality, Indigenous and non-Indigenous heritage, noise and blasting, social and impacts on Wollar Village.

On 14 March 2017, the Department submitted the final SEAR to the Commission for determination. Of the 31 recommendations, all but one were accepted and adopted by the Department and Applicant.

The Commission for the Determination was constituted of Mr Alan Coutts (chair) with Mr Joe Woodward, Mr David Johnson and Mr John Hann. The Commission considered the information submitted by the Applicant, the Department's preliminary and final SEAR's, the Commission's Review Report and submissions. The Commission also received written submissions, held a public meeting, and met with the Applicant, Mid-Western Regional Council and the Department.

The Commission found that both the Applicant and Department have given sufficient consideration to the issues raised in the Commission's Review Report and all but one of the 31 recommendations have been adopted in full. The Commission is satisfied with the response and justification provided by both the Applicant and Department.

The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have acceptable impacts and that the proposed conditions of consent represent an appropriate reflection on contemporary and best practice management for an open cut coal mine.

The Commission notes that the Project will provide significant benefits to the locality, region and State, with minimal additional impacts beyond that of the existing approved Wilpinjong Coal Mine operations and that the Project is in the public interest.

**NSW Planning Assessment Commission Determination Report
Wilpinjong Extension Project – SSD 6764**

1. INTRODUCTION

On 14 March 2017, the Planning Assessment Commission (the Commission) received from the Department of Planning and Environment (the Department) a State significant development application from Wilpinjong Coal Pty Ltd (the Applicant) for the Wilpinjong Extension Project (the Project).

The Department has referred the development application to the Commission for determination in accordance with the Minister for Planning's delegation dated 14 September 2011 because the Department received more than 25 submissions from the public in the nature of objections.

The Department's referral follows the Commission's public hearing dated 29 November 2016 and review report (Review) dated 20 December 2016.

Ms Lynelle Briggs AO, Chair of the Commission, nominated Alan Coutts (chair), Joe Woodward PSM, David Johnson, and John Hann to constitute the Commission to determine the development application.

1.1 Summary of Development Application

The development application proposes to seek approval to expand and extend the existing operations of the Wilpinjong project area.

The Project would involve:

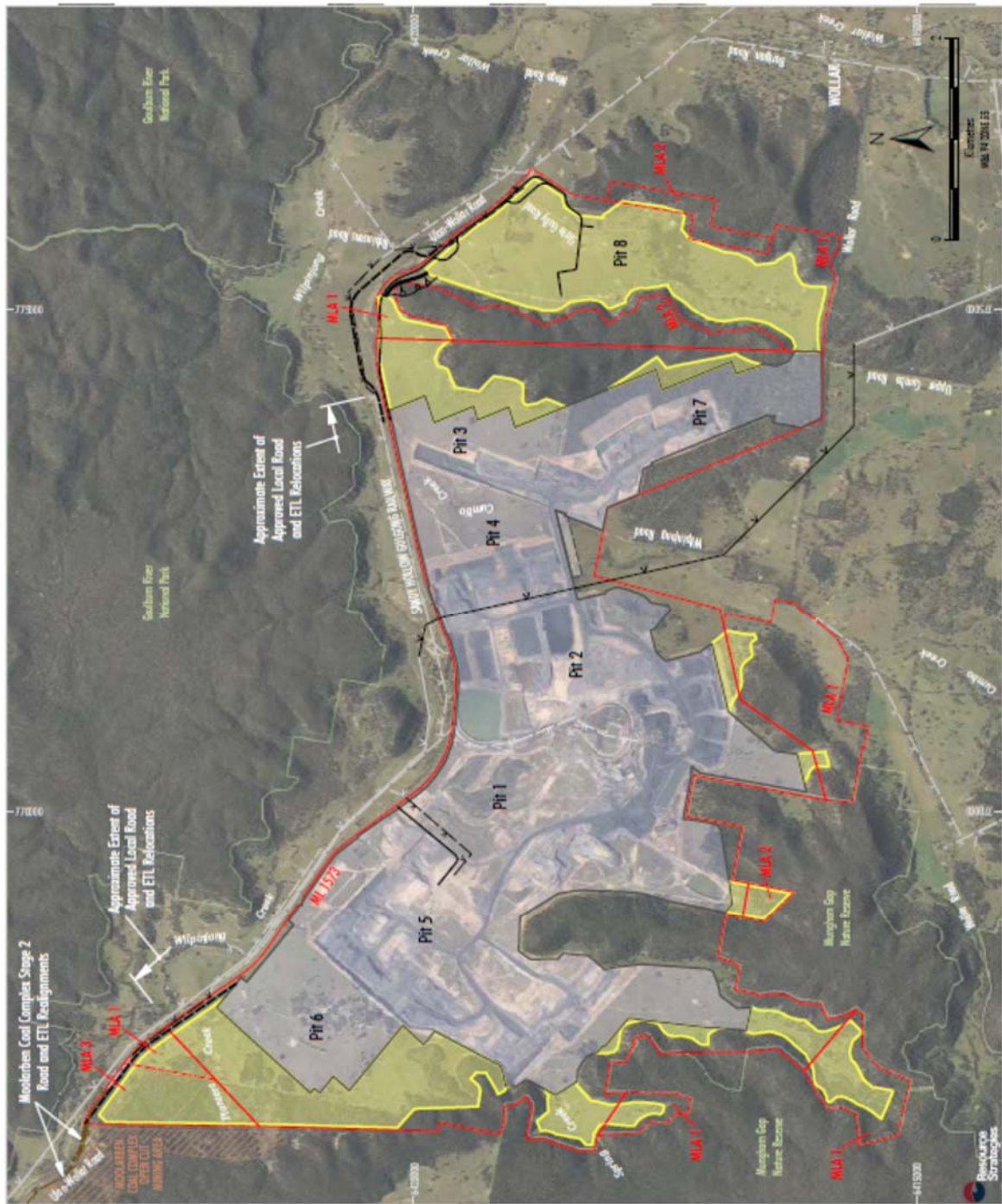
- the development of a new open cut pit to the east of existing operations;
- extensions to various existing open cut pits;
- a minor increase in coal production from the current 12.6 to 13 Mtpa;
- continued use of existing coal processing and surface infrastructure; and
- an extension to the life of the mine by seven years (i.e. from 2026 to 2033).

The Project would also involve the development of a range of ancillary infrastructure, including further realignment of Ulan-Wollar Road, relocation of a 330 kV transmission line, and construction of additional surface infrastructure to support mining operations.

The general arrangement of the Project is shown in **Figure 1**.

- LEGEND**
- Mining Lease Boundary
 - Mining Lease Application Boundary
 - Approved/Existing Open Cut and Contained Infrastructure Area
 - Relocated Black Bank and Cumbo Creek Detritus Area
 - Proposed Open Cut Extension Area
 - Proposed Public Road Realignment
 - Proposed Pit 3/8 Road Flood
 - Proposed Service Road
 - Proposed Local Electricity Transmission Line (ETL)
 - Realignment/Relocation
 - Proposed Relocated TransGrid 330 kV ETL
 - Existing Local ETL
 - Existing TransGrid 330 kV ETL

Source: WCPA (2015); NSW Age of Industry (2015)
 Date/Issue: WCPA (Jan 2015; Jan 2014)



Peabody
 WILPINJONG EXTENSION PROJECT
 Project General Arrangement

Figure ES-3

Figure 1: Wilpinjong Extension Project, Source: EIS, Resource Strategies Pty Ltd

1.2 Need for Project

The Applicant's Environmental Impact Statement (EIS) justifies the need for the Project on the following grounds:

- provides for the continuation and extension of open cut coal mining and processing activities at the Wilpinjong Coal Mine to 2033 and without the Project, production would start to decline in 2017 resulting in a reduction of workforce and the closure of Wilpinjong Coal Mine in 2026;
- the continued development of coal resources in close proximity to WCPL's existing CHPP and other supporting facilities maximises the use of existing infrastructure and associated returns on existing financial investments;
- peak Project operational workforce would be in the order of 625 on-site personnel, including a mixture of direct WCPL employees and on-site contractor's personnel;
- additional construction workforces of up to approximately 100 people would also be required in the first 18 months of the Project, with up to 40 people required for construction activities at other key periods in the Project life;
- a peak of approximately 214 additional direct and indirect jobs in the broader region, and approximately 278 additional direct and indirect jobs in NSW;
- the production of up to approximately 16 Mtpa of run-of-mine (ROM) coal and approximately 95 Mt of additional ROM coal extracted over the life of the Project in comparison to the approved Wilpinjong Coal Mine;
- Project coal production would contribute to NSW export income, State royalties and State and Commonwealth tax revenue, as well as continued payment of developer contributions to the Mid-Western Regional Council (MWRC) and community sponsorships by WCPL in the region; and
- contribution to electricity supply in Australia and other countries that purchase Project coal.

1.3 Background

Existing Wilpinjong Coal Mine:

The Applicant, a subsidiary of Peabody Energy Australia Pty Limited, owns and operates the Wilpinjong Coal Mine, an existing open cut coal mine located approximately 40 km northwest of Mudgee, near the village of Wollar. The project site is located in the Mid-Western Regional local government area. **Figure 1** shows the regional location of the existing Wilpinjong Coal Mine, and its relationship to nearby mines, nature reserves as well as towns and villages.

The mine was approved by the then Minister for Planning in February 2006, following a review by an Independent Hearing and Assessment Panel. The Project approval has been modified on six occasions and currently allows WCPL to:

- carry out mining operations in seven open cut pits;
- extract up to 16 Mtpa of ROM coal;
- process the coal on site at a coal handling and preparation plant (CHPP); and
- transport up to 12.6 Mtpa of product coal by rail for domestic and export markets.

The mine has been operating continuously for 10 years and employs approximately 550 people. The current project approval for mining operations expires in early 2027.

There is approximately 79 Mt of ROM coal remaining within the approved footprint of the mine. However, without an approval to extend the mine, production is expected to significantly decrease from 2017 onwards. This is due primarily to the design of the mine which relies on a number of open cut pits operating simultaneously to maintain production rates and meet customer specifications.

The decline is also exacerbated by the geometry of the mine, which limits the number of fleet vehicles and machines that can be deployed as mining progresses into the narrower sections of the approved mine plan.

Over the next 10 years, production at the mine under the current approval is forecast to average approximately 7 Mtpa, a reduction of approximately 6 Mtpa from current levels. The Applicant has a contract with AGL Macquarie to supply the majority of remaining coal to the Bayswater and Liddell power stations in the Hunter Valley until 2026. A total of approximately 6 million tonnes (Mt) is expected to be available for sale on the export market. The forecast reduction in coal production would also be reflected in the number of employees at the mine, which would reduce from 550 to 150 by 2026. While the decline was forecast under the original approval, the Applicant has identified an opportunity to extract an additional 95 Mt ROM coal from land adjacent to its existing operations.

Wilpinjong Extension Project:

The following is a brief overview of the history of the application and assessment of the Project:

- October 2014: Applicant requests the Secretary's Environmental Assessment Requirements (SEAR) for the Project;
- December 2014: Department issues SEAR's;
- January 2016: Applicant lodges a development application and EIS;
- March 2016: Department requests the Applicant respond to submissions received during the notification period;
- May 2016: Applicant provides Response to Submissions (RtS) – revised RtS submitted May 2016;
- November 2016: Department completes its Preliminary Assessment Report recommending the Project be approved subject to recommended conditions. The Minister for Planning (Minister) requests the Commission review the Project and conduct a public hearing during the review;
- December 2016: The Commission releases its Review Report making 31 recommendations relating to the Project
- February 2017: The Applicant submits its response to the Commission's Review Report to the Department; and
- March 2017: The Department completes its Final Assessment Report (FAR), to be read in conjunction with its Preliminary Assessment Report (PAR) dated August 2015. The Minister requests the Commission to determine the Project.

2. SECRETARY'S ENVIRONMENTAL ASSESSMENT REPORTS

The preliminary SEAR identified noise, air quality, social, biodiversity, water, heritage, final landform, rehabilitation, and economic impacts as key impacts associated with the Project and concluded 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.

On balance, the Department considered that the benefits of the project outweigh its costs, and recommended that the project is approvable, subject to stringent conditions.

In response to the Commission's Review Report, the Departments FAR addressed each of the individual recommendations made by the Commission. The Department accepted all the Commission's recommendations with the exception of one, pertaining to further consultation with the local Aboriginal community.

In summary, the Department has concluded that the Project:

“would result in significant social and economic benefits for the local area and the State of NSW, including the continued employment of up to 625 employees. It would also create a substantial number of indirect employment opportunities in related industries and economic contributions to the State through royalty and local tax revenues.

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.

Consequently, the Department considers that the benefits of the project outweigh its costs, and that the project is approvable subject to stringent conditions”.

3. COMMISSION’S MEETINGS

As part of its assessment of the proposal, the Commission met with the Department, the Applicant, and Mid-Western Regional Council. Notes from these meetings and the site inspection are provided in **Appendix 1**. The Commission also conducted a public meeting. Notes from the public meeting are provided in **Appendices 2 and 3**.

3.1 Briefing from the Department

On 3 April 2017, the Department briefed the Commission on the Project and provided attention to the Commission’s review recommendations and the Departments response to the review recommendations.

3.2 Meeting with Mid-Western Regional Council

On 10 April 2017, the Commission met with Mid-Western Regional Council and Council outlined its position on the Project.

3.3 Briefing from the Applicant

On 11 April 2017, the Commission met with the Applicant who briefed the Commission on its response to the Commission’s review recommendations.

3.4 Public Meeting

The Commission held a public meeting at the Mudgee Town Hall on 11 April 2017 to hear the public’s views on the proposal. A list of the thirty-three speakers that presented to the Commission is provided in **Appendix 2**. A summary of the issues raised by the speakers and provided in all written submissions made to the Commission are provided in **Appendix 3**. In summary, the main issues raised include:

- biodiversity and rehabilitation;
- noise;
- air quality;
- water quality;
- historical compliance;
- indigenous heritage;
- property acquisition;
- social impacts and Wollar Village;
- greenhouse gas emissions; and
- appeal and acquisition rights and conditions of consent.

4. COMMISSION'S CONSIDERATION

In this determination, the Commission has considered carefully:

- the Commission's Review Report of the Project in 2016;
- the Department's 2017 Final Assessment Report (in conjunction with its Preliminary Assessment Report of November 2016);
- all information provided by the Applicant;
- advice and recommendations from government agencies;
- written and verbal submissions from public agencies and from the public;
- relevant matters for consideration specified in section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act), including:
 - any relevant environmental planning instruments;
 - the *Environmental Planning and Assessment Regulation 2000*;
 - any voluntary planning agreements;
 - the likely impacts of the development on both the natural and built environments;
 - social and economic impacts in the locality;
 - the suitability of the site for the development;
 - all written and verbal submissions from the public; and
 - the public interest, including the objects of the EP&A Act.

The Commission is generally satisfied with the Department's assessment of Project related impacts on the locality. However, due to a high level of public interest and concerns raised in relation to the Project, the Commission considers it pertinent to provide some additional context around key matters considered by the Commission which include biodiversity, indigenous heritage, noise, social, water, air quality, rehabilitation and monitoring.

The Commission notes that for the purpose of contextual integrity, this Report should be read in conjunction with the Commission's Review Report (December 2016).

Separate to the Commission's consideration of matters relating to the proposal, the Commission has opted to respond to specific concerns raised in verbal and written submissions to the public meeting in relation to property acquisition, loss of appeal rights and conditions of consent. These matters are discussed in Section 5 of this Report.

4.1 The Commission's Review (December 2016)

The Commission made 31 recommendations in its Review of the Project. Most of the recommendations sought further clarification about the Project, or in relation to statements made within the preliminary SEAR. The Department's final SEAR states that all but one of the Commission's recommendations have been adopted by the Applicant and the Department, apart from a recommendation relating to further consultation with the local indigenous community.

The Commission has considered the Department's responses to its recommendations set out in the final SEAR.

4.2 Avoidance, Mitigation and Adaptive Management

In relation to the evaluation of impacts, the Commission has considered the proposed draft conditions of consent, including the adaptive management condition recommended by the Department.

The Environment Protection Authority (EPA) defines adaptive management as being '*a procedure for implementing management while learning about which management actions are most effective at achieving specified objectives*' (*Office of Environment and Heritage – Adaptive Management*).

The consideration of adaptive management is important in the determination of the Project. It allows the consent authority to give appropriate consideration to uncertain and/or unpredictable impacts, the proposed mitigation strategies and relevant performance criteria with the knowledge that the Project operator is required to operate in a state of constant monitoring and process improvement. This is designed to reduce uncertainty and to ensure that exceedances of criteria or standards are avoided to the highest possible extent.

In this regard, the Department's draft Condition 2 - Schedule 5 requires that the Project adopt adaptive management as follows:

The Applicant must assess and manage development-related risks to ensure that there are no exceedances of the criteria and/or performance measures in Schedule 3. Any exceedance of these criteria and/or performance measures constitutes a breach of this consent and may be subject to penalty or offence provisions under the EP&A Act or EP&A Regulation.

Where any exceedance of these criteria and/or performance measures has occurred, the Applicant must, at the earliest opportunity:

(a) take all reasonable and feasible steps to ensure that the exceedance ceases and does not reoccur;

(b) consider all reasonable and feasible options for remediation (where relevant) and submit a report to the Department describing those options and any preferred remediation measures or other course of action; and

(c) implement remediation measures as directed by the Secretary;

The Commission considers adaptive management to be key in ensuring an effective compliance and consistently applied enforcement regime.

4.3 Air Quality

The Commission received a number of submissions regarding potential impacts of the Project on air quality within the locality. Air quality impacts have been addressed in the Applicant's EIS through the submitted Air Quality Impact Assessment and subsequent peer review. The Commission notes that the Department engaged an independent peer review to consider the Applicant's reports and both the Department and the Environmental Protection Agency (EPA) were satisfied that the Project can be managed to comply with all relevant criteria.

Within its preliminary SEAR, the Department noted that monitoring has indicated that the existing mine has been compliant with dust criteria, apart from isolated events where exceedances of short term dust criteria have occurred. These instances have generally coincided with widespread dust events, but there have been no exceedances of the long term annual average dust criteria.

Furthermore, since the submissions of the final SEAR, the Applicant has submitted its 2016 Annual Review to the Department. The review includes detailed consideration of the existing operations air quality performance over the last year. Importantly, the review indicates that the mine has not exceeded the air quality criteria over the period, except for one event that exceeded the short-term criteria due to a nearby bush fire event.

The Commission notes that exceedances are not a relevant matter of consideration in the determination of the Project and are a responsibility of the appropriate compliance and enforcement organisations.

Specific concerns were raised in submissions that the Applicant does not currently and will not be required to establish real time monitoring of air quality. Further clarification was sought from the Applicant regarding its existing air quality management systems that are currently in place. The Applicant provided the following response regarding existing air quality management:

- *approved Air Quality Management Plan – inclusive of monitoring program;*
- *monitoring via:*
 - *Dust deposition gauges,*
 - *High Volume Air Samplers,*
 - *3 x Tapered Element Oscillating Microbalance – PM₁₀ (TEOM),*
 - *Cameras; and*
 - *operational personnel;*
- *TEOM's provide real time monitoring data which 'alarm' at a point below the applicable criteria, triggering an operational response protocol;*
- *monitoring of real time air quality 24/7;*
- *meteorological station with 60m inversion tower; and*
- *data sharing agreement that allows access to Moolarben Coal and Ulan Coal monitoring networks and data if required. Noting that these companies have equivalent air quality monitoring programs in place.*

In addition to the information provided by the Applicant, the Department recommended several conditions of consent relating to the management of air quality. Of significance is recommended Condition 19(d) – Schedule 3 which requires the Applicant to:

operate a comprehensive air quality management system that uses a combination of predictive meteorological forecasting and real-time air quality monitoring data to guide the day to day planning of mining operations and the implementation of both proactive and reactive air quality mitigation measures to ensure compliance with the relevant conditions of this consent.

In addition, Condition 20(f) – Schedule 3 requires the operation of PM_{2.5} monitoring within Wollar Village.

In this regard, the Commission is satisfied that real time monitoring currently exists and will continue to exist should the Project proceed under the recommended conditions of consent.

It is noted that the Review Report made no recommendations to the Department with regards to air quality.

The Commission acknowledges that whilst the Project has the potential to impact on air quality, such impacts comply with the applicable standards. The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have acceptable air quality impacts.

4.4 Biodiversity and Rehabilitation

The Commission received several submissions regarding potential impacts of the Project on biodiversity within the locality. The Biodiversity impacts have been addressed in the Applicant's EIS through the submitted Biodiversity Assessment Report, Biodiversity Offset Strategy and Aquatic Ecology Assessment.

In relation to biodiversity offsets, the Department has amended the conditions of consent to focus on land holdings which are likely to provide the greatest biodiversity improvements in the short to medium term. The Department also incorporated the need for a long-term strategy for providing habitat for the Regent Honeyeater, specifically through the proposed rehabilitation planting. The Applicant has provided evidence demonstrating the availability of suitable offset areas for the Regent Honeyeater, should the rehabilitation not meet the established completion criteria.

The Commission notes the justification provided by the Applicant for reducing the buffer between the extent of mining area and the boundary of the Munghorn Gap Nature Reserve from 50m to 20m. The Commission notes that during the Review process OEH had originally recommended the minimum buffer be 50 rather than 20m although the Department's recommendation to the Commission supported the 20m buffer. The Commission considered both options and is satisfied that a minimum buffer of 20m would be appropriate for protection of biodiversity. This is based on advice that the direct impacts to native vegetation from this reduction would be minor, with a short duration before the commencement of rehabilitation. Importantly, the proposed mine rehabilitation will establish woodland vegetation within the current buffer zone, which is currently primarily pasture. The Commission also considers that any increase in the indirect impacts to Munghorn Nature Reserve, such as dust deposition and operational noise, will be short in duration and managed through the conditions of consent relating to dust and noise control.

Specific concerns were raised in submissions that the offset strategy adopted for the Regent Honeyeater has not been completed in accordance with current policy due to supplementary measures not applying to endangered species. The Commission sought further clarification from the Department who has been provided the following response from OEH:

The OEH agency input into the Secretary's Environmental Assessment Requirements (SEARs) nominated the Regent Honeyeater as a species that could become a matter for further consideration for the project.

Consistent with Section 9.2.5.2 of the Framework for Biodiversity Agreement (FBA) the proponent's Biodiversity Assessment Report (BAR) detailed an assessment on whether or not the Regent Honeyeater should be a matter for further consideration for the project and require the project to be rejected, modified or have additional offsetting applied. The BAR concluded that the project would not cause the extinction of the Regent Honeyeater from the IBRA subregion or significantly reduce its viability, and therefore should not be considered a matter for further consideration.

The Department of Planning and Environment (DPE) also concluded in its November 2016 Secretary's Environmental Assessment Report recommendation to the PAC (page 57) that the project would be unlikely to cause the extinction of, or significantly reduce the viability of the Regent Honeyeater.

Following review of the predicted impacts and Biodiversity Offset strategy of the Wilpinjong Extension Project, OEH considers that the project is unlikely to cause the extinction of the Regent Honeyeater from the IBRA subregion or significantly reduce its viability. Following consideration of the likely impacts of the Wilpinjong Extension Project on the species, it is no longer considered a matter for further consideration that would require the project to be rejected, modified or have additional offsetting applied.

The Commission's Review Report made seven recommendations for the Project's biodiversity and rehabilitation outcomes. The Commission is satisfied that the Applicant and the Department have responded to the recommendations appropriately to address the matters raised.

The Commission is satisfied that the Applicant has demonstrated its commitment to implement an effective and achievable rehabilitation management program to address potential biodiversity impacts, particularly on the critically endangered Regent Honeyeater. The Commission also considers that the Department has revised its assessment, including the proposed conditions of consent, in a manner which provides greater certainty to how the biodiversity impacts from the proposal would be managed and offset. After consideration of the amended rehabilitation planning, landscape management and offsetting proposals the Commission accepts that the proposal would have an acceptable and manageable impact on biodiversity and rehabilitation.

4.5 Final Landform

The Commission received several submissions regarding the presence of final voids and long term outcome of the voids forming saline sinks post cessation of mining operations. The Applicant initially proposed three final voids at the completion of mining operations, which consisted of the continuation of two existing and approved voids in Pit 2 and Pit 6 and a new void in Pit 8.

The Commission's Review Report made one recommendation relating to the Project's final landform that included removal of the proposed final void in Pit 8 and limiting the extent of the other proposed two voids. The Commission is satisfied that the Applicant and the Department have responded to the recommendations appropriately to address the matters raised.

The Commission acknowledges that whilst the Project will result in two final voids which will overtime become saline, this is consistent with the current operation of the mine under its existing approval. The Commission is of the view that removal of the Pit 8 void with a final landform that maintains natural drainage paths, is an improved outcome for the Project. Furthermore, the Department's recommended conditions require the Applicant to prepare a Rehabilitation Strategy which includes an assessment of the impacts associated with partially filling the remaining voids and consideration of integrating the Pit 6 void with the adjoining Moolarben final void. The Commission considers these measures would provide positive outcomes for the Project, beyond what is required under the existing approval.

The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have an acceptable final landform outcome.

4.6 Indigenous Heritage

The Commission received several submissions regarding the potential impacts of the Project on indigenous heritage within the locality, in particular the Rocky Hill Complex located within proposed Pit 8. Indigenous heritage impacts have been addressed in the Applicant's EIS through the submitted Aboriginal Cultural Heritage Assessment which identified a total of 296 sites within the Project area, of this, 92 sites are located within open cut areas.

The primary impact on Indigenous heritage is within Pit 8 for a site known as the Rocky Hill Complex. This area contains several sites considered as low significance, however, and most importantly to this Project it also contains all three sites of local high significance. These include:

- a cultural area associated with the landscape features which comprise a visually prominent hill top situated in the valley floor;
- a rock shelter with artefacts and art (site WCP579); and
- a rock shelter with artefacts and an ochre quarry (site WCP578).

The Commission's Review Report made four recommendations relating to the impacts of the Project on Indigenous heritage. The Commission is satisfied that the Applicant and Department have responded to the recommendations appropriately to address the matters raised.

Regarding the recommendation to engage in further consultation, the Department is satisfied that the Applicant has adequately met the consultation requirements under current NSW Government Policy. The Department confirmed that the applicant has undertaken significant consultation during the preparation of the EIS, in particular, with the Registered Aboriginal Parties (RAPs) in accordance with OEHS guidelines (Aboriginal Cultural Heritage Requirements for Proponents (2010). Furthermore, additional consultation is required to occur as part of the preparation and implementation of a comprehensive Aboriginal Cultural Heritage Management Plan for the project.

The Commission acknowledges that whilst the Project will impact on Indigenous heritage, such impacts are considered acceptable under current NSW Government Policy. The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed. The Commission acknowledges that the survey of the offset areas is a positive outcome which may inform the presence of other areas or artefacts of cultural significance. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have acceptable Indigenous cultural heritage impacts in accordance with NSW Government Policy.

4.7 Noise and Blasting

The Commission received several submissions regarding the potential noise and blasting impacts of the Project within the locality. Air quality impacts have been addressed in the Applicant's EIS through the Noise Impact Assessment. The noise assessment has been prepared in accordance with relevant guidelines including the NSW Industrial Noise Policy (INP), Rail Infrastructure Noise Guidelines (RING) and the NSW Road Noise Policy (RNP). The Commission notes that the Department engaged an independent peer review of the noise assessment and it concluded that the noise model was in line with best practice, consistent with attended and real-time noise monitoring results, and if anything, may marginally over-predict noise impacts.

A concern raised in submissions was that the assessment of low frequency noise (LFN) was not compliant with the requirements of the INP and that the methodology used represented a weakening of requirements under the draft INP (dINP). The Commission sought further clarification from the Department regarding the application of the INP and dINP in both the noise and LFN assessments to the Project and received the following response:

The Department can confirm that the assessment has been undertaken in accordance with the Industrial Noise Policy (INP), with the exception of low frequency noise.

Although still in draft form, the dING presents the best available methodology for the assessment of LFN and is based on contemporary science, compared to the methodology in the INP. Importantly, the stringency of the methodology has not been weakened by the Department's decision to apply the dING and the objective of identifying excessive levels of low frequency noise has not changed.

The adopted approach merely removes the identification of false positives that would have occurred under the INP. Consequently, the recommended conditions present more accurate requirements than would otherwise be required, and are consistent with best practice for accurately identifying LFN for mining projects.

Additional clarification was sought from the Department regarding the application of the INP and draft INP in both the noise and LFN assessments. The Department confirmed that the noise assessment (excluding LFN) was undertaken in accordance with the INP and that the LFN assessment utilised the draft INP due to the known flaws in the existing INP and that the change in assessment does not result in a weakening of consent requirements for the Applicant.

Concerns were also raised in submissions regarding proposed Condition 1 – Appendix 6, specifically that it provides an exemption from noise compliance during Category G temperate inversions, which weakens existing consent requirements. Additional clarification was sought from the Department which provided the following response:

The proposed conditions recommend a change to the meteorological conditions that excluded the Applicant from complying with the noise criteria in the consent (see Appendix 6 of the recommended conditions).

It is proposed that the excluded meteorology be changed from "greater than 3 degrees/100 metres" under the existing conditions for the mine to "greater than F Class Stability" under the Wilpinjong Extension Project.

An F Class Stability is accepted as being equivalent to 4 degrees/100 metres and therefore the proposed change represents a significant increase in stringency for the Applicant to comply with.

The Commission's Review Report made four recommendations relating to noise and blasting impacts of the Project. The Commission is satisfied that the Applicant and Department have responded to the recommendations appropriately to address the matters raised.

The Commission acknowledges that whilst the Project has the potential to create noise impacts within the locality, such impacts comply with the applicable standards. The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed and that the change in assessment and amendment to existing conditions does not result in a weakening of consent requirements for the Applicant. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have acceptable noise and blasting impacts in accordance with the applicable NSW guidelines.

4.8 Social Impacts and Wollar Village

The Commission received several submissions regarding the potential social impacts of the Project on the village of Wollar. Submissions raised concerns that the social fabric of Wollar had not been appropriately assessed and that the Project would lead to further erosion of existing services within Wollar. Social impacts were addressed in the Applicant's EIS through the Social Impact Assessment, which the Department had independently peer reviewed. The peer review concluded that the assessment was of "a high standard and aligns with leading practice".

The Commission's Review Report made three recommendations relating to the potential social impacts of the Project on Wollar Village. The Commission is satisfied that the Applicant and Department have responded to the recommendations appropriately to address the matters raised.

Several submissions stated that the social and economic demise of Wollar village was due to mining and refusal of the current application would enable re-establishing Wollar as a viable village. The Department's Final Assessment Report stated that the decline of Wollar was inevitable even without mining citing other examples of village decline.

During the Commission's meeting with Mid-Western Council, the Council informed the Commission that many other villages in the Council area without a proximity to mining also showed signs of significant decline and that such decline could not be attributed to mine related impacts only.

The Commission acknowledges that whilst the Project has the potential to further exacerbate the existing decline of Wollar, the most significant impacts have already occurred and the proposed Modification is unlikely to have significant additional impacts. The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed, in particular the Commission notes the Department's proposal to incorporate both the Mine Closure Plan and Village of Wollar Plan into a Social Impact Management Plan for the project. The Commission finds that the social impacts have been addressed appropriately and subject to imposition of the recommended conditions, would not be sufficient to justify refusal of the Project.

4.9 Water

The Commission received several submissions regarding potential water quality impacts of the Project within the locality and beyond. Water quality impacts have been addressed in the Applicant's EIS through the Surface Water Assessment and Groundwater Assessment. The Commission notes that the Department engaged an independent peer review of both assessments.

Concerns were raised regarding the loss of baseflow from the local catchment area and the predicted loss of water quality due to increased salinity. In summary, the water quality assessments have been reviewed, assessed and considered fit for purpose by the Commonwealth Independent Expert Scientific Committee (IESC), Department of Primary Industries – Water (DPI-W) and the EPA. The Department has concluded that the Project would result in an increase in surface water baseflow loss of up to 0.04ML/day from the existing approval and a decrease in groundwater take from the alluvium of up to 14ML/year. The long-term average salinity impact on the Goulburn River and Wilpinjong and Wollar Creeks is projected to be less than 1% which is consistent with the Level 1 impacts under the NSW Aquifer Interference Policy (AIP).

The Commission's Review Report made 11 recommendations relating to potential water quality impacts of the Project. The Commission is satisfied that the Applicant and Department have responded to the recommendations appropriately to address the matters raised.

The Commission acknowledges that whilst the Project has the potential to generate water quality impacts within the locality, such impacts comply with the applicable standards. The Commission is satisfied that the impacts and mitigation methods have been appropriately assessed. The Commission finds that the Project would, subject to the mitigation measures proposed by the Applicant and conditions recommended by the Department, have acceptable water quality impacts.

5. COMMISSION'S RESPONSE TO COMMUNITY ISSUES

The Commission acknowledges that there exists a significant amount of public interest and concern over the Project, and that the community raised several issues pertaining to the assessment of the Project in general, but also to specific issues such as the impacts on Wollar Village and its surrounds, biodiversity and offsets, water quality, noise impacts, air quality, indigenous heritage, rehabilitation and final voids.

The Commission is satisfied that the Applicant and Department have appropriately considered and addressed the concerns raised by the public throughout the assessment of the Project.

However, submissions to the Commission raised concerns about the following additional issues which the Commission sees as being important to address:

5.1 Deferment of consent requirements:

The proposed consent enables the Applicant to defer some consent requirements, generally the preparation of management plans until a later stage of the process with the approval of the Secretary. Submissions perceive this as a way for the Applicant to avoid complying with the consent requirements for the Project. The Commission sought further clarification from the Department regarding this process and received the following response:

Where the conditions include a requirement that can be varied through the inclusion of “unless the Secretary agrees otherwise”, the following process would apply.

An Applicant must write to the Secretary to request a variation to the specific requirement, for example provision of a conservation bond or security of offsets within a specified timeframe. This must include a detailed justification as to why the Applicant is unable to meet the timeframe specified in the consent, as well as a description of the measures undertaken in an attempt to meet the timeframe.

The Department will only recommend that the Secretary agree to vary the timeframe and defer the requirements of a particular condition if the Applicant has provided an adequate justification and demonstrated and provided evidence that it has made all reasonable efforts to meet the deadline specified in the consent.

The Department may also consult where relevant with agencies when considering a request from the Applicant. For example, if the option for securing an offset is through reservation in a National Park estate or conservation agreement, the Department would consult with OEH regarding timing in considering any request.

The Commission is satisfied with the Department’s response and the adequacy of the conditions of consent.

5.2 Loss of Appeal Rights:

Submissions raised concerns regarding the loss of merit appeal rights due to the Public Hearing conducted by the Commission during the Review of the Project. Merit appeal rights become extinguished pursuant to section 98 of the EP&A Act. This process is governed by existing legislation and is not one which can be altered in any way by the Commission, or be a matter of consideration for the Project.

5.3 Acquisition Rights:

Submissions raised a request that all properties within the area which could be potentially perceived as being negatively impacted in some way by the Project be afforded acquisition rights. The Commission acknowledges that property ID 102 has been granted acquisition rights in response to the Commission Review Report; however the Commission notes that this property was considered to be marginal in regard to noise compliance, which is not the case with any other properties within the locality where the relevant noise standards would be met.

6. COMMISSION’S FINDINGS AND DETERMINATION

The Commission has considered carefully the Applicant’s proposal, the Department’s preliminary and final SEAR, public and agency submissions and the relevant matters for consideration under section 79C of the EP&A Act. The Commission has noted the advice and recommendations from Mid-Western Council, and government agencies including the:

- Environmental Protection Agency;
- Office of Environment and Heritage;

- Department of Primary Industries;
- Division of Resources and Energy;
- Roads and Maritime Services;
- NSW Health;
- Rural Fire Service; and
- Independent Expert Scientific Committee.

Finally, the Commission has heard from members of the community about their concerns for the proposal during the public meeting in Mudgee as well as any additional submissions made to the Commission.

The Commission has responded to concerns expressed by speakers at the public meeting, while noting that a number of those issues relate substantively to aspects of the proposal that have already been approved and were not the subject of this development application.

For the reasons set out above, the Commission accepts the Department's recommendation that this proposal be approved. Consequently, the Commission has determined to grant consent to the development application subject to the conditions set out in the instrument of approval.

Alan Coutts (Chair)
Member of the Commission

Joe Woodward
Member of the Commission

David Johnson
Member of the Commission

John Hann
Member of the Commission

**APPENDIX 1
RECORDS OF COMMISSION MEETINGS**

Notes of Briefing from the Department of Planning & Environment

This meeting is part of the Determination process		
Meeting note taken by David Koppers	Date 03 April 2017	Time: 10:00am
Project: Wilpinjong Extension Project – D458/17		
Meeting place: Planning Assessment Commission (PAC Office)		
<p>Attendees:</p> <p>Commission Members: Alan Coutts (Chair), Joe Woodward, David Johnson and John Hann Commission Secretariat: David Koppers (Team Leader) and Alana Jelfs (Planning Officer)</p> <p>Department of Planning and Environment: Mike Young (Director Resource Assessments) and Matt Riley (Planning Officer)</p>		
The purpose of the meeting: For the Department to brief the Commission on the Project.		
<p>Meeting notes:</p> <p>The following matters were discussed:</p> <ul style="list-style-type: none"> • Most significant change to the Project is the removal of the Pit 8 void. Further discussion regarding improving the clarity or specificity to Condition 60 and the options to revise this condition. Department will provide a revised condition. • Discussion regarding the general wording around the management plans and the ability of an Applicant to seek deferment (if agreed by the Secretary) of providing the required plans. • Discussion regarding the Department’s draft Social Impact Assessment guidelines and the requirement for a Social Impact Management Plan (Condition 68), which is to be prepared in consultation with the local community. The Department acknowledges that Aboriginal heritage is a key issue and that the Project would result in impacts on Aboriginal heritage sites. An Aboriginal Cultural Heritage Management Plan will be prepared to manage potential impacts (Draft Condition 47). • There will be some amendment to conditions as Department of Resources and Energy is now part of the Department cluster. 		
Outcomes/Agreed Actions: Department to provide the Commission with an amended Notice of Determination.		
Meeting closed at 11:00am		

Notes of Meeting with Mid-Western Council

This meeting is part of the Determination process		
Meeting note taken by David Koppers	Date 10 April 2017	Time: 4:30pm
Project: Wilpinjong Extension Project – D458/17		
Meeting place: Mid-Western Council – 86 Market Street, Mudgee		
<p>Attendees:</p> <p>Commission Members: Alan Coutts (Chair), Joe Woodward, David Johnson and John Hann Commission Secretariat: David Koppers (Team Leader) and David Way (Planning Officer) Mid-Western Council: Brad Cam (General Manager) and Julie Robertson (Director - Development)</p>		
The purpose of the meeting: For the Council to discuss the Project with the Commission.		
<p>Meeting notes:</p> <p>The following matters were discussed:</p> <ul style="list-style-type: none"> • Council does not object to the Project; • Council was concerned about the impacts on Wollar, however the mine has provided support by keeping the shop open and mowing the village; • Volunteer Planning Agreement (VPA) – Wollar Progress Association can approach Council for up to \$15,000 for works in the village – i.e. maintenance on the hall; • Council currently provides and will continue to provide standard Council services such as road maintenance and waste collection; • Council area has other small towns without mining nearby such as Windy and Hargraves which are showing evidence of population decline; • Many city people are purchasing weekenders in rural areas and do not have small children and therefore do not increase school numbers; • Road from Wollar to Bylong Valley Road is being sealed and will become a transit route through Wollar to Newcastle from the Mudgee region. Will hopefully allow Wollar to become a stopover location once the road is sealed and improved; and • Council conduct Community Surveys and four years ago residents were concerned about the impact of mining within the region. Now residents are more concerned around the potential employment and economic losses from any mining downturn or closures. • 		
Outcomes/Agreed Actions: Council to review the draft Notice of Determination and provide comments back to the Commission.		
Meeting closed at 5:00pm		

Notes of Meeting with the Applicant (Wilpinjong Coal Pty Ltd)

This meeting is part of the Determination process		
Meeting note taken by David Koppers	Date 11 April 2017	Time: 8:45am
Project: Wilpinjong Extension Project – D458/17		
Meeting place: Parklands Conference Centre – 121 Ulan Road, Mudgee		
<p>Attendees:</p> <p>Commission Members: Alan Coutts (Chair), Joe Woodward, David Johnson and John Hann Commission Secretariat: David Koppers (Team Leader) and David Way (Planning Officer)</p> <p>Peabody Energy: Michael Alexander, Blair Jackson, Ian Flood, Stirling Bartlam</p>		
The purpose of the meeting: For the Applicant to brief the Commission on the Project.		
<p>Meeting notes:</p> <p>The following matters were discussed:</p> <ul style="list-style-type: none"> • Applicant’s response to the Review report which addressed the following primary issues: <ul style="list-style-type: none"> - Classification of derived grasslands discussed further with Commonwealth and now resolved; - Bat management and lighting plan to be adopted; - Accepted the biodiversity and offset requirements; - Removed Pit 8 void; - Pit 2 void is the main water storage; - Pit 6 may be able to be rationalised with Moolarben coal mine; - Water balance recalculated from 90th percentile to 95th; - IESC recommendations for water management adopted; - Quarterly meetings with RAPs – engagement is 100% Peabody with Peabody Archaeologist for advice; - Cultural heritage surveys of offset areas to occur; - Property ID 102 provided with acquisition rights; - Both former churches now owned by Peabody; and - 12-14 properties along public roads have mitigation agreements, another 10 have said they are not interested. 		
Outcomes/Agreed Actions: Applicant to provide the Commission with a copy of the presentation.		
Meeting closed at 10:00am		

**APPENDIX 2
LIST OF REGISTERED SPEAKERS**

Meeting Schedule	
<u>Registered Speakers:</u>	1. <u>Steve Philips (Lock the Gate Alliance)</u>
	2. <u>Andrew Palmer (Mudgee Chamber of Commerce)</u>
	3. <u>James Whelan (Environmental Justice Australia)</u>
	4. <u>Veronica Burns</u>
	5. <u>Alisson Smiles</u>
	6. <u>Monica O'Brien</u>
	7. <u>Cilla Kinross (Central West Environment Council)</u>
	8. <u>Nick Clyde</u>
	9. <u>Rusty Russell</u>
	10. <u>Bev Atkinson</u>
	11. <u>Jolieske Lips (Running Stream Water Association)</u>
	12. <u>Robert McLaughlin (Bulga Milbrodale Progress Association)</u>
	13. <u>Bruce Huges</u>
	14. <u>Denise Williams</u>
	15. <u>Colin Faulkner</u>
	16. <u>Bev Smiles</u>
	17. <u>Marie Hensley (Mudgee District Environment Group)</u>
	18. <u>Colin Imrie</u>
	19. <u>Julia Imrie</u>
	20. <u>Chris Pavich</u>
	21. <u>Bev Smiles (Wollar Progress Association)</u>
	22. <u>Di O'Mara</u>
	23. <u>Kay Binns</u>
	24. <u>Margert Reid</u>
	25. <u>Theresa Audretsch</u>
	26. <u>Tane Schmidt</u>
	27. <u>Dan Kent</u>

28. Micheal Fetch

29. Alan Leslie

30. Tony Lonergan (Hunter Communities Network)

31. Wendy Wales (Hunter Environment Lobby)

32. Dr Hedda Haugen Askland

33. Phyllis Setchell

END

APPENDIX 3
SUMMARY OF ISSUES PRESENTED AT PUBLIC MEETING

This meeting is part of the Determination process.		
Meeting note taken by David Koppers	Date: 11 April 2017	Time: 10:30am – 3:30pm
Project: Wilpinjong Extension Project – D458/17		
Meeting place: Mudgee Town Hall		
Attendees: Commission Members: Alan Coutts (Chair), Joe Woodward, David Johnson and John Hann Commission Secretariat: David Koppers (Team Leader) and David Way (Planning Officer)		
The purpose of the meeting: Public meeting to hear community views on the project		
<p>Comments made during the public meeting and in written submissions are synthesised and summarised below.</p> <p><u>General</u></p> <ul style="list-style-type: none"> • Cumulative impact of all mines in the region should be considered; • Baseline conditions have not been presented; • The Commission’s review recommendations have not been adequately addressed by the Department; • Merit appeal rights should be reinstated for mining projects; • No commitment to Ecological Sustainable Development principles; • Mining industry should be replaced by renewables; • Conditions are not adequate, have been weakened, and are not precautionary; and • Requirements should not be amended after approval has been obtained. <p><u>Social</u></p> <ul style="list-style-type: none"> • Department’s assessment did not address the social fabric of the village, which is facing extinction if the proposal is approved; • The Wollar Store will close, extinguishing vital services, including postal; • Residents will be forced to travel further to access these services provided by the Wollar Store; • If approved, the wider Wollar Village should be afforded acquisition rights; • Public benefits do not outweigh the cost. Wollar has the capacity to rebuild and should be given opportunity; • Important to ensure the Commissions’ recommendation for a long term strategic view for the area does occur; • Social disadvantage has increased due to mine. Social impacts have not been adequately assessed; • Local Rural Fire Service will not be able to support due to a lack of resources; and • No strategic plan has been proposed for the area once mining ends. <p><u>Biodiversity</u></p> <ul style="list-style-type: none"> • The project would have unacceptable impacts on biodiversity. Several endangered species not recorded in studies; • Assessment of the Regent Honeyeater is inadequate and the proposed mitigation/offsets are insufficient. Recovery program supports preservation of any potential habitat; • Concerns regarding loss of woodland areas and impacts on bird activity in the area; • Funding to Taronga Western Plains Zoo is not consistent with the <i>NSW Offset Policy for Major Projects</i> and the <i>Framework for Biodiversity Assessment</i> and supplementary measures such as this are not permitted; • Impacts on the Eastern Bentwing Bat, including from lighting, limitations to movement and vibration from trucks and blasts; and • Impacts on the Munghorn Gap Reserve not adequately assessed and insufficient monitoring undertaken. The separation between the project and the nature reserve should be maintained at 50 metres. 		

Noise

- Background levels are lowest possible under Industrial Noise Policy (INP) which are much higher than exists;
- Inappropriateness of the Department of applying draft noise policies before they have been approved;
- The INP is not suitable in rural areas for mining noise. Minimum setback to houses and schools should be applied;
- Noise impacts are worse at night and in winter. Topography channels the noise;
- Low frequency noise has not been adequately assessed in accordance with the INP, despite EPA raising as a concern;
- Compliance trigger levels are too high for rural areas; and
- Noise modelling is not based on the local conditions.

Water

- A 50 per cent loss of water is a significant impact, particularly in dry years;
- Increase salt load to Wilpinjong Creek will impact on water quality. A sensitivity study should be done on salt as done for water balance;
- Combo Creek should not be mined;
- Leaching of contaminants have not been assessed;
- Loss of base flows not accounted for. There are inconsistencies in modelling and predicted impacts;
- Cumulative impacts to water resources, including the Goulburn River have not been assessed;
- Area is vulnerable to salinity and comprises a complex aquifer system. This is not acknowledged in the assessment; and
- Clearing and surface disturbances require a sensitive response to control salinity.

Air quality, dust and greenhouse gas

- Health impacts due to exposure to air pollution and specifically fine particulate. Dust impacts on Wollar Village;
- Dust / air quality modelling do not consider the landscape;
- No real time monitoring proposed;
- Coal mining in the Hunter region contributes to 90% of background particulate matter;
- Parts of the coal chain were not included in the air quality assessment. Sources from bulldozers and overburden dumps were left out; and
- Contrary to the Paris Agreement and targets set by the NSW Government. Climate change impacts.

Heritage

- The community question the Department's rejection to further consultation with the Aboriginal community; and
- Impacts on Aboriginal heritage is unacceptable – particularly the Rocky Hill Complex.

Rehabilitation and final void

- The community do not trust the Applicant to adequately rehabilitate the site. All pits should be filled;
- Protection in perpetuity should be in place prior to commencement of the project. Existing rehabilitation conditions have not been met;
- Proposed bonds do not cover long term management of voids. These should be backfilled and joint void is not suitable. Residual pit voids are not suitable to be included in biodiversity offsets; and
- Rehabilitated areas lack the complex biodiversity evident in established areas, especially the soil profile. These areas are not able to support a diverse ecosystem. Peabody have not provided evidence of current success of rehabilitation onsite.

Supportive

- The mine is a good corporate citizen and supporter of local schools and charities and brings employment and business growth to the region;
- Peabody actively develops and trains their employees;
- The local government area benefits from a diverse economy through tourism, small business and mining;
- The mine generates significant economic benefit to the community and has improved diversity in the area; and
- Wollar has been in steady decline and not a result of the mine. Any extension will not have an impact on its further decline.