



Environment Liaison Office

PO Box 137, Newtown NSW 2042
Level 2/5 Wilson Street, Newtown NSW 2042
Ph: (02) 9516 1488
Fax: (02) 8026 8301
Email: cloane@nccnsw.org.au

15 February 2013

Mr Carl Dumpleton
Department of Planning and Infrastructure
PO Box 39
SYDNEY NSW 2001

By email: carl.dumpleton@planning.nsw.gov.au

Response to the report by the Planning Assessment Commission's review of the Coalpac Consolidation Project.

The Environmental Liaison Office (ELO) champions the conservation priorities of a network of hundreds of NSW community groups. It is governed by representatives from the State's leading conservation groups and provides a single point of contact for the NSW Government to interact with those groups.

We comment on the summary and recommendations made by the PAC in reviewing the Coalpac Consolidation Project (CCP). The report concludes:

"... when the merits of the project are considered as a whole, the benefits of the project are substantially outweighed by the breadth and potential magnitude of the impacts. The Commission therefore recommends that the project should not be approved."

The ELO endorses the conclusion that the CCP be rejected in its entirety, and is encouraged by the comprehensive nature of the report.

It is noted that the panel members comment that the recommendations in their report [p157] *"...were prepared as each individual issue was considered and before the Commission determined its position on the merits of the project as a whole ..."*.

The PAC was employed to review the proposal with specific terms of reference, one of which required it to provide recommendations for ameliorating discrete impacts. The ELO acknowledges that the PAC's numbered recommendations are only tabled within this context. Indeed, as previously noted, this panel does not recommend the CCP; and seemingly, had it been charged with making a final decision, the application would have been rejected entirely.

Such a decision could be consistent with recommendation 53 (reproduced below) which establishes principles for assessing the CCP's biodiversity impacts.

Recommendation 53: The Commission recommends that the following three principles be accepted as underpinning assessment of biodiversity impacts for this project:

- i) rehabilitation cannot restore the existing vegetation associations or ecological balance of the area;
- ii) rehabilitation to mature woodland is unproven for open-cut mines in NSW; and
- iii) the impacts on biodiversity from this project are incompatible with reservation proposals for Gardens of Stone Stage II.

The Ben Bullen State Forest - a high conservation area of NSW

The ELO continues to support the need for the Ben Bullen State Forest to be declared a State Conservation Area as a matter of **urgent** priority:

- 1) The ELO emphasises that the only official petition tabled with the Legislative Assembly of the NSW Government on this matter, 1st May 2012 contains 125 signatures from Cullen Bullen residents who oppose the CCP, and call for the Ben Bullen State Forest to be declared within the state's reservation system.
- 2) The Office of Environment and Heritage states that the Ben Bullen State Forest is of high conservation value and has been flagged for future reservation under the National Parks and Wildlife Act 1974. Members of the ELO have lobbied for this in its own right, and also within the context of the Gardens of Stone Stage 2 reserve proposal.
- 3) Springvale and Angus Place Collieries were designed to supply both Wallerawang and Mt Piper Power Stations for their projected operating life; they present no threat to the high conservation values of the Ben Bullen State Forest, and are still able to provide the coal.

Unit 7 of Wallerawang Power Station is off line and is unlikely to require coal over the next twelve months. Although this will be reviewed periodically, it could well be that, due to cost, pollution and other issues, this power station will be permanently retired.

- 4) There are multiple and unnecessary threats to the forest from open cut mining proposals. ELO applauds the PAC for its recommendation number 52.

Recommendation 52: The Commission recommends that the cumulative impacts on the biodiversity values of Ben Bullen State Forest and the region of this project, together with the proposed Pine Dale Stage 2 Extension, be considered before any assessment of this project is finalised.

Underground coal mining in the Ben Bullen State Forest is compatible with reservation as a State Conservation Area; the precedent of approving open-cut proposals which destroy portions of Ben

Bullen State Forest should not be set. ELO notes that the company proposing the Pine Dale Stage 2 Extension has a 'Stage 3' in the wings.

Approving this mine in part or after adjustment would enable a series of development proposals for 'modifications'. This would increase the intensity of mining in line with something very similar to the current proposal being rejected by the PAC and ELO.

- 5) The Ben Bullen State Forest cannot be replaced.

We commend the PAC on its thoroughness in assessing the biodiversity offsets suggested by the proponent. The proponent presents no replacement of 'like with like' within its biodiversity offsets plan. The ELO accordingly supports the PAC's pertinent comments and recommendation (below).

Recommendation 55: *The Commission recommends that, until the baseline biodiversity characteristics of the site have been resolved to the satisfaction of OEH, assessment of the adequacy or otherwise of the revised offset package should not proceed. The Commission also recommends that particular attention be given in the assessment to the essential nature of the trade-off being proposed, i.e. it is a proposal designed to exchange a number of fragmented areas that generally require extensive rehabilitation work and are currently not considered suitable for reservation, for a single area of high quality habitat that adjoins other areas of high quality habitat and is already proposed for reservation.*

Protecting unique and rare habitat, flora and fauna in NSW

In the context of the Gardens of Stone Stage 2 proposal, protecting the Ben Bullen State Forest from open-cut mining would assist permanent protection of the 70km stretch of pagoda complexes that remain vulnerable to high impact activities. We commend the PAC for its acknowledgement of the values of the pagodas in this area and the native species which they support:

- 01. Recommendation 38:** *The Commission recommends that there should be no impacts to the pagodas and cliff lines from blasting. The Commission does not accept that a 50m buffer will guarantee this outcome, but is unable to determine a satisfactory buffer distance from the available information. To accommodate this situation the Commission recommends that no blasting occur within 300m of the pagodas or cliff lines without an independent geotechnical surveyor certifying that the blasting proposed will not cause impact to the pagodas or cliff lines. In any event a minimum stand-off distance of 100m must be maintained for blasting from all pagodas, cliffs and other rocky outcrops.*

The ELO considers that a buffer of 300 metres is a reasonable minimum which should be mandated as a matter of priority.

- 02. Recommendation 45:** *The Commission recommends that the pagodas and the associated escarpments be considered natural features of special significance and that they be fully protected from any mine-induced impacts.*

The ELO fully endorses this recommendation based on the environmental values of the pagodas and escarpments

- 03. Recommendation 47:** *The Commission recommends that to provide adequate protection for threatened species and other fauna that use the pagoda landform, a minimum setback distance of 300m be maintained from the open-cut highwall to the pagodas and the escarpments.*

The survival of a significant number of native fauna and flora species relies entirely upon the micro environments supported by pagoda complexes.

Protecting local communities

The ELO notes the extensive work the Blue Mountains Conservation Society and the Lithgow Environment Group has carried out with the local community. The ELO notes no resident of the Cullen Bullen community spoke in favour of the proposal at the public hearings held in Lithgow and Cullen Bullen September 19th and 20th 2012 consecutively.

We applaud the PAC for its review of health and other social concerns of Cullen Bullen residents and highlight these points:

- 01.** From Executive Summary pii) that the “...project cannot meet NSW air quality criteria...and is close to the limit at many others. It is therefore at the limit of acceptability for air quality impacts...there is no room for new entrants into the impacted airshed (i.e. no additional impacts can occur); there are potential long-term restrictions on project operations; and further property acquisitions may be necessary. The Commission considers this to be a high-risk situation.”

The risk is high, thus the proposal cannot be supported in its current state.

- 02. Recommendation 3:** *The Commission recommends the NSW long-term acquisition criterion for annual average particulate matter less than 10 microns (PM10) of 30 µg/m3 should be reviewed against the WHO goal of 20 µg/m3 for this parameter.*

The ELO calls for this to be set as a minimum standard across the state.

- 03. Recommendation 8:** *The Commission recommends that operational conditions are sufficiently rigorous to ensure the Real Time Air Quality Management System is used predictively and that failure to do this amounts to non-compliance.*

The ELO highlights the failings of the Real Time Air Quality Management System proposal; it does not prevent or manage air quality issues or responsibly address the concerns raised by NSW Health in its submission on this proposal.

- 04. Recommendation 37:** *The Commission recommends that the Proponent’s approach to controlling noise and vibration from blasting at residences by reducing the MIC and increasing the number of blasts to be rejected as imposing an unreasonable impact on the residents. Any exceedence of the ANZECC guideline for blasting frequency should be strictly limited, particularly when the expected noise or vibration levels are likely to be at or close to the limits.*

The ELO acknowledges that there is no alternative but to set the mining operation back from Cullen Bullen residents. The ELO supports a minimum set back of five kilometres from cities and towns.

- 05. Recommendation 44:** *The Commission recommends that the construction hours of operation should form a condition of any approval, in part to alleviate light pollution impacts on residents and other users of the area.*

While the ELO provides no support for any approval of this application, it notes that mining and other high impact developments within 10kilometre range of a city or town should operate between the hours of 9am and 5:30pm Monday to Friday only. Residents must be protected from the cumulative impacts of light, noise and air pollution.

Mining sand within the proposal area

On page 148, the Commission states “...there are a number of issues to be resolved with this proposal and very little information available to assist with the resolution.”

The ELO highlights that the proposal to mine sand was a late addition to the proposal and is most likely included as a ‘sweetener’ for the sale of Coalpac Pty Ltd and its operations. The sale, including details of its (at the time) current and proposed project operations were advertised in October 2010, concurrent with lodging the CCP application with the NSW Department of Planning and Infrastructure.

The proximity of the proposal to the town of Cullen Bullen and its school aloneshows that the company has little regard for anything aside from profiting from the community as opposed to benefiting it.

In addition to comments in the PAC report, the ELO wishes to draw attention to two commercial proposals which are contingent upon approval of the CCP and demonstrate the pressures placed on decision-makers when businesses assume ‘approval’ and behave accordingly:

- Energy Australia proposes to purchase Mt Piper Power Station contingent upon approval of the CCP.
- Energy Australia’s owner China Light proposes to purchase Coalpac Pty Ltd’s operations if the CCP is approved. It is perhaps commercially opportunistic that Coalpac Pty Ltd has now lodged Mining Lease Application 448 and Mining Lease Application 449. Both about the CCP application and cover lands owned by Coalpac’s current CEO, Mr Ian Follington and General Manager, Mr Brett Leismann.

The ELO urges the Minister for Planning, the DoPI and the decision making PAC not to be influenced by these circumstances.

Conclusion

The PAC review highlights the extensive and fundamental problems associated with this proposal. The ELO notes that the primary purpose of the CCP is to create a more attractive asset for potential buyers of Coalpac Pty Ltd company and its assets. The current owners acknowledge they are not the typical owners of this kind of asset.

The ELO underlines the overarching opinion of the PAC review that extreme and somewhat impossible hurdles must be conquered to achieve the recommendations made. The CCP is discredited to a degree where measures involving amelioration and mitigation of impacts are of such magnitude that the remnants of the CCP would lack commercial viability.

The ELO supports the recommendation of the PAC that the CCP should be rejected in its entirety.

On behalf of the Environmental Liaison Office,



Kevin Evans for the National Parks Association of NSW



Pepe Clarke for the Nature Conservation Council of NSW

On behalf of:

Nature Conservation Council of NSW
National Parks Association of NSW
Blue Mountains Conservation Society
Colong Foundation for Wilderness
The Wilderness Society
Total Environment Centre
Central West Environment Council