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Nature Conservation Saves for Tomorrow

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Referral Business Entry Point
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Approvals and Wildlife Division
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By email: epbc.referrals@environment.gov.au

Coalpac Invincible Colliery and Cullen Valley Mine Modifications Reference Number: 2014/7147

0. BMCS' contentions

BMCS is firmly of the view that this proposal should be a controlled action under the *EPBC Act*. The original Coalpac Consolidation Proposal was found to be a controlled action (ref. no 2010-5776); the latest modifications warrant being a controlled action based on their impacting significant portions of the same area.

BMCS contends that Coalpac's response to Referral document Section 5.1 (Do you THINK your proposed action is a controlled action?) should in all conscience be YES!

The Society therefore contends that Section 5.3 should be changed accordingly by placing an 'X' against: Listed threatened species and communities (sections 18 and 18A)
A water resource, in relation to coal seam gas development and large coal mining development (sections 24D and 24E).

1. Introduction

The Society has been extensively involved with the Coalpac issues as originally presented in terms of the Coalpac Consolidation Proposal (CCP). This latest gambit is an attempt by Coalpac to rescue itself from its own gross miscalculations.

The miscalculations involved Coalpac:

- initially presenting an inadequate Environmental Assessment which was returned to it by the Department of Planning for rectification – the amount of much-needed additional work resulted in a major delay before the revised documents were submitted;

- spending major amounts of money on a new consulting group (Hansen-Bailey) which was charged with subcontracting specialised consulting organizations to produce the voluminous documents which comprised the revised EA;
- failing to appreciate the strength of the environmental and social opposition to the CCP and the role of the Minister in referring the decision (in what was termed a ‘hands off’ process) to the NSW Planning Assessment Commission;
- failing to understand the amount of time needed for all the stages in the process of: (i) having the federal government decide whether or not the CCP constituted a controlled action (ref. no 2010-5776), (ii) the documents going on public exhibition and submissions being made by a vast number of organizations and state government departments, (iii) Coalpac (through its spectrum of consultants) responding to the various submissions and the time needed for the originators of the submissions to consider and reply to Coalpac’s responses and any new material, (iv) the Planning Assessment Commission carrying out its investigations and public hearings as a prelude to completing its review, (v) submissions to the Department of Planning by all concerned (including Coalpac) in relation to the outcomes from the PAC Review, (vi) further submissions to Planning in relation to various modifications to its CCP by Coalpac, and (vii) awaiting the Director-General’s report to the second stage of the PAC, the latter being charged with making a decision on the Minister’s behalf;
- extracting its previously approved tonnage at too rapid a rate and attempting to use arguments that the existing mines were exhausting the approved coal resource and would need to shut down;
- persisting with this form of economic and social blackmail and then actually having to shut down and thereby lose the associated revenue stream; and,
- in the face of a rejection of the proposal in the Director-General’s report, opting to withdraw the CCP application rather than face absolute rejection by the second PAC, and then placing itself into voluntary administration.

There is little doubt that the history of miscalculation, reflecting a belief that superficial economics will always trump the opposing environmental and social concerns, has resulted in the limited proposal as now referred to the Federal Department of the Environment.

2. The proponent’s new proposal

Coalpac shut down the mining operations due to exhausting the approved tonnage, sacked the majority of the work-force, and placed the mines on a care and maintenance footing. Coalpac is currently under voluntary administration and hopes, through the services of the Administrator, to reach an agreement with its principal creditors and effectively trade itself out of trouble.

The proposal aims to extend the existing coal mining operations by open cut (an additional 150 ha) and highwall (an additional 165 ha) mining processes. This necessitates modifying the existing Project Approval for Invincible Colliery (PA 07_0127) to cover a four-year period from December 2016 to December 2020 and obtaining a Development Consent for Cullen Valley Mine (DA 200-5-2003). Most other site operations such as coal production and processing (at a maximum rate of up to 2.2 Mtpa), coal transport, operational hours and employment will supposedly be unchanged.

Coalpac places emphasis on (Referral document Section 2.1 p10) “...backfilling and rehabilitation of the residual final voids resulting from existing mining operations and the rehabilitation of areas affected by subsidence from historic underground mining operations in the area” and facilitating (Referral document Section 2.2 p10) “...the complete rehabilitation of both the proposed and existing mining...at the conclusion of the Modifications’ mining activities.”

The above sounds good, but the Society is concerned because all previous operations should surely have been subject to rehabilitation requirements and involved a bond to ensure that the work's anticipated cost was covered? Is Coalpac effectively suggesting that, should the application be refused, none of the work will be done? If so, this is a severe indictment of the whole process and a totally unjustified basis for any government making a determination.

The Society is further concerned about the statements that (Referral document Section 2.2 p10) "*No feasible alternatives to the Proposed Action are available*" and the "*...primary need for the Modifications is to ensure the short term continued supply of competitively priced coal to the domestic power generating facilities at the nearby Mt Piper Power Station whilst other strategies for longer term fuel supplies can be explored.*"

The first part of the quotation is a truism, but only from Coalpac's viewpoint. Alternatives do exist. The Administrator, government and creditors should not be swayed by Coalpac's self-interests.

The second section of the quotation may be Coalpac's primary need for the new proposal, but an ongoing coal supply is available from Centennial, which is the current supplier. Energy Australia is a foreign-owned company which believes it made a sound business decision by purchasing the local arm of Delta. EA may increase its profit margin if it can access dirt-cheap poor quality coal, but this is neither in the best interests of the impacted residents of Cullen Bullen, nor of the environment. These aspects were evaluated and decided in favour of social and environmental interests by the PAC review and the Director-General's report. Coalpac is asking for the interests of residents and the environment to be put aside so that EA (a major creditor) can benefit from its dealings with Coalpac, whilst concurrently exploring strategies for longer term fuel supplies!

EA (through ownership of Enhance Place) is already pursuing other options in the region. The Society strongly believes that EA is pursuing a 'heads we win, tails you lose' policy. Through what might become effective ownership of Coalpac, it will benefit through Coalpac doing the work and receiving approval for its new proposal. EA would then be in a position to push for subsequent extensions, thereby following the pattern whereby these mines have progressed through a succession of modifications. Of course, should Coalpac fail, it is likely that EA will obtain beneficial ownership through the administration process; Coalpac would then be history and EA would be in a position to decide between the progressive development of Enhance Place, the Coalpac possibility, and reaching a better deal with Centennial.

BMCS sees the Coalpac new proposal and the probability of later extensions in terms of why should mining in this environmentally and socially critical region be allowed to progress through successive encroachments when the overall concept was comprehensively rejected?

3. The proponent's claim

In order to present and comment upon the proponent's claim it is necessary to see the new proposal relative to the boundaries of the original CCP. A map showing these relationships has been prepared by Ms Karen McLaughlin. It will accompany this submission but will constitute a separate attachment identified as **CoalpacEPBCReferral2014-7147_BMCSMapA_140313.pdf**. The map shows that whereas some parts of the CCP have been (temporarily?) spared, there remains a strong correlation between the CCP and the new proposal.

BMCS notes that the triggers for a controlled action relate to the actual and/or potential presence of matters of national environmental significance (MNES) which may be affected by the proposed action. BMCS emphasises that the presence need not be proved beyond any shadow of a doubt, and that any impact by the proposed action does not have to be proved or quantified in some absolute way. Were this not the case, the only way in which the impact of the proposal could be demonstrated would be to allow the action to be implemented and then measure the consequences. Clearly, the aim of the referral process is not to substantiate an adverse outcome by permitting it to happen!

The previous paragraph is emphasised so that the proponent's claims can now be contextually evaluated.

The proponent stipulates that the proposal is NOT a controlled action under sections 18 and 18A of the Environment Protection and Biodiversity Conservation Act, 1999. The reasons for this are summarized as follows (Referral document Section 5.2 p31):

- *“The Proposed Action will **not significantly impact** any EPBC Act listed threatened species and communities.”*
- *“No threatened communities are present **within the Disturbance Boundaries** and **none are expected to be impacted.**”*
- *“No threatened flora or fauna species have been recorded **from (the area inside) the Disturbance Boundaries**, although several threatened species have been recorded from the **locality** and are considered to have **moderate to high potential to occur** due to the presence of potential habitat.”*

The qualifying words built into these statements are emphasised (blue bold) because they are typically used by companies and their consultants when making judgements (usually favourable to the proponent) about ‘likelihood’ and/or wishing to indicate certainty where some doubt remains. In elaboration:

- *‘**not significantly impact**’* – significant by whose definition? Are we to understand that there will be an impact, but that the author feels able to disregard it?
- *‘**within the Disturbance Boundaries and none are expected to be impacted**’* – the emphasis here is within the disturbance boundaries rather than the modification boundaries – there is a difference as is apparent from the Referral Attachment A Part 1. So the question then becomes whether or not any threatened community exists within the modification boundaries. Furthermore, if the *‘**none are expected to be impacted**’* refers to the threatened communities which aren’t present, why is there any uncertainty? Conversely, if it means that threatened communities outside the disturbance boundaries but within the modification boundaries will/will not be impacted, this should be clarified.
- *‘**from (the area inside) the Disturbance Boundaries**, **from the locality**, **moderate to high potential to occur**’* – here the disturbance boundaries are juxtaposed with locality, but it is unclear whether or not the locality includes the modification boundaries. As for the *‘**moderate to high potential to occur**’*, it will be shown below [Section 4.3 (b)] that at least one threatened flora species occurs inside the disturbance area, in the area between the disturbance and modification boundaries, and in the area outside the modification boundary.

The extent to which the proponent’s claim that the proposal is NOT a controlled action can actually be justified will be examined in the ensuing section.

4. Assessment of the proponent’s claim – flora and fauna

4.1 Cumulative concerns

In a submission relating to the CCP EPBC Referral 2010-5776 the Society noted in Section 2.4¹ that:

“The histories of the Cullen Valley and Invincible Mines are complex....The Cullen Valley Mine evolved through consolidation of mines (initially underground operations) extending back to the late 1800’s. The Invincible Mine commenced as an underground operation in 1901 and evolved via a second underground operation until the late 90’s when open-cut extraction commenced. Both Mines have been intermittent as a function of coal-price fluctuations.

The salient points are that the region firstly experienced progressive consolidation of underground mines, and then witnessed movement to open-cut and high-wall mining with larger surface areas adversely affected. The region is now threatened by further consolidation and enlargement of the impacted surface areas. This has protracted and cumulative

¹ CoalpacCons'tion2010-5776_BMCSSubmission_101227.doc available from Admin <bmcs@bluemountains.org.au>CEEC

impacts on groundwater, surface water, and fauna and flora through destruction of habitat. Throughout much of this long history, there was little concern for environmental damage and equally little concern for rehabilitation.”

Disregard of cumulative impacts and/or seemingly cynical minimisation of their importance characterises various parts of the Referral document (RD). Examples are now provided.

- (a) In relation to the 150 ha of totally removed habitat and 165 ha of potentially impacted habitat, the cumulative impact arising from previous operations by Invincible and Cullen Valley are either disregarded or treated as a positive factor. Reference document (RD) p18 notes that the areas encompassed by the disturbance boundaries² “...provide potential habitat for a range of species, including some threatened species”. However, it also suggests that the habitat is of minor significance relative to large areas of similar habitat in the nearby region, and that due to being adjacent to existing Cullen Valley and Invincible approved workings it will not induce habitat-fragmentation and “...it is likely to be already impacted indirectly...”

These suggestions are outrageous because they: (i) involve classical minimisation and ignore the fact that the new proposal is extending the destruction of habitat by the existing mines; (ii) disregard the time- and space-cumulative impacts of past, present and future mines on habitat along the tract of the western escarpment; (iii) are wrong about fragmentation (particularly in the Invincible area)³ as may readily be seen on CoalpacEPBCReferral2014-7147_BMCSMapA_140313.pdf and less clearly on RD, Attachment A, Part 1, Fig. 4a; and (iv) they recognise that the existing open cuts cause impacts beyond their boundaries and apparently see this as in some twisted way justifying the new open cuts – but each additional cut extends the damage envelope.

- (b) Four CE and E species are listed in RD Tables 3.2 and 3.3 as having a moderate likelihood of being present in the areas of removed habitat and potentially impacted habitat; they are a critically endangered leek orchid (*Prasophyllum sp. Wybong*), and the endangered Regent Honeyeater, Swift Parrot and Spotted-tailed Quoll. RD pp19-20 focus on the Swift Parrot, Regent Honeyeater and Spotted-tailed Quoll in terms of the size of the foraging habitat (138.8 ha) which will be removed. It states that: “Within the broader landscape context, the removal of this area of potential foraging habitat is unlikely to impact the availability of foraging habitat for these species in the locality.” The leek orchid is disregarded.

BMCS is of the view that these species are dismissed too lightly: (i) 138.8 ha versus the amount of habitat in the nearby Parks is again minimisation; (ii) the habitat removal is one small part of a cumulative problem, both locally at the scale of the new proposal and existing mining operations, and also more regionally as emphasised in (a)(ii) above; and (iii) there is negligible consideration of what happens to the species when the particular areas of habitat which they visit are destroyed or in other ways impacted – when dealing with endangered or critically endangered species, what level of disruption and risk is deemed to be acceptable?

BMCS notes that the foraging argument has less validity when dealing with mammals such as the rare Quoll, and no validity when dealing with a critically endangered orchid.

- (c) The vulnerable species (see RD Tables 3.2 and 3.3) with moderate to high likelihood of occurrence comprise three plants (Silver-leaved Gum, Clandulla Geebung, Austral Toadflax), one snake (Broad-headed Snake), two ‘bats’ (Large-eared Pied Bat, Grey-headed Flying-fox) and the Bathurst Copper Butterfly).

In relation to all of these, it is stated (RD pp20-21):

“The species have not been recorded and therefore (are) not known to exist within the Disturbance Boundary, however...suitable habitat features occur for them within the Disturbance Boundary...”

² And realistically this also applies to the areas between the disturbance and modification boundaries as shown in the RD, Attachment A, Part 1, Figs. 4a and 4b

³ The only way it wouldn't be fragmentation is if, through additional extensions over time, the original CCP ribbon open cut is envisaged; there would then be no habitat to fragment!

“...no important population of these species occurs within the Modification Boundaries. Accordingly, the proposed action will not reduce the area of occupancy of an important population.”

“...no important population of these species occurs within the Disturbance Boundaries...The Disturbance Boundaries are located directly adjacent to the existing Invincible Colliery and Cullen Valley Mine, and therefore no fragmentation of habitat will occur.”

“The Proposed Action will remove a relatively small area of potential habitat for these vulnerable species when compared with the available areas in nearby conservation areas...The action will not impact habitat to the extent that any vulnerable species known or predicted to occur will decline.”

“It is not considered likely that any vulnerable species would be significantly impacted by the Proposed Action.”

Once again, BMCS believes that the potential existences of these species within the areas encompassed by the disturbance and modification boundaries are dismissed in a too cavalier fashion. Many of the BMCS responses in (a) and (b) above are also applicable here, but too elaborate: (i) cumulative impacts are ignored; (ii) minimisation is rife; (iii) there is negligible consideration of what happens to the species when the particular areas of habitat which they visit or occupy are destroyed or in other ways impacted; (iv) fragmentation is distinctly possible as may readily be seen on CoalpacEPBCReferral2014-7147_BMCSMapA_140313.pdf and less clearly on RD, Attachment A, Part 1, Fig. 4a – again refer to footnote 3; (v) contrary to what is stated in the RD pp20-21 and as will be discussed in Section 4.3 (b), at least one of the species has been recorded within the disturbance and modification areas, is part of an important population, and would certainly decline if this new proposal is approved; and (vi) the last of the above quotes is what the company would like us to believe, but BMCS sees it as absolute nonsense.

4.2 Edge effects, setbacks and stand-offs

The analysis of impacts on species in the RD treats the disturbance boundary as absolute to the extent that there will be total destruction of habitat inside the boundary and no impact beyond it; in other words, edge effects will be nil. This lack of consideration relative to fauna and flora species which are impacted by such things as noise, dust and lighting, seems to follow on from the belief that hardly anything of significance exists in the modification boundary, yet RD, Attachment A, Part 1, Fig. 3 shows that this is incorrect in relation to *P. marginata* [also see Section 4.3(a) below].

In relation to highwall mining, it is stated that it will be designed to have no surface impacts and induce no subsidence. This will be challenged by BMCS in the context of damage to pagodas and the absolute need for not undermining them. These aspects will not, however, be further discussed in the present submission which is principally focused on the need for the new proposal being a controlled action.

There is clearly a need to address edge effects, setbacks from potential breeding habitat and clusters of threatened populations, and stand-offs in the context of cliff-lines and pagodas.

BMCS is firmly of the view that these matters must be covered in any environmental assessment of the new proposal. However, to the extent that the present submission is solely related to whether the new proposal should be a controlled action, the Society believes that the need for a controlled action has been more than satisfactorily demonstrated in Section 4.1 and will be additionally emphasised in Section 4.3. Indeed, the Society considers that the evidence is overwhelming and that suggesting it is NOT a controlled action says much about Coalpac and its advisors.

4.3 Specific concerns – threatened ecological communities and species

(a) ***The CEEC comprising ‘Box Gum Woodland’*** (RD Table 3.1 p15): in RD Section 3.1(d) p18 it is stated that: *“The proposed action will not remove any Endangered Ecological Community (EEC) or habitat for EEC’s”*; and that *“Box Gum Woodland (listed under the EPBC Act as a CEEC) occurs nearby but does not occur in the Modification Disturbance Boundaries and will not be impacted.”*

This is clarified in RD Section 3.3(e) p27: whereas the CEEC (Capertee Rough-barked Apple – Red Gum – Yellow Box Grassy Woodland, MU20)⁴ was originally identified by Cumberland Ecology within the Invincible Colliery modification boundary, it has been re-assessed. Cumberland Ecology now believes that the vegetation better conforms with a variant of the dominant surrounding community, Tableland Gully Mountain Gum – Broad Leaved Peppermint Grassy Forest (MU 35)⁵.

The Society notes that reclassification of this unit effectively removes one obstacle in the way of exploiting the area encompassed by the Invincible Colliery disturbance boundaries [see RD, Attachment A, Part 1, Fig. 4a]. However, it is clear from this reclassification that identifying these differing vegetation assemblages requires much expertise and leaves room for a degree of subjectivity [e.g., as discussed in The Vegetation of the Western Blue Mountains, Sections 4.1.10, 4.1.14, 4.1.15, 4.2.1 (Tables 4.1 and 4.2), 4.5 and 4.6]⁶.

This matter of identifying vegetation communities was also raised in the Planning Assessment Commission's Report on the CCP and cited by Keith Muir in his current submission⁷ as follows: "...given the controversy over this issue, any further survey work to establish the occurrence and distribution of vegetation communities on the site should be fully independent or directly oversighted by OEH at the Proponent's cost". As noted by Mr Muir, Cumberland Ecology has not opted for independent oversight in the preparation of the referral document (RD).

- (b) ***Persoonia marginata*** (Clandulla Geebung): this is based on the work of Chris Jonkers and the Lithgow Environment Group (LEG). Figure 1 below is in many ways self-explanatory. It should however be considered in conjunction with RD, Attachment A, Part 1, Fig. 3 which shows the distribution of *P. marginata* according to Cumberland Ecology.

RD Section 5.2 p31 states: "*Silver-leaved Gum, Austral Toadflax and Clandulla Geebung* [BMCS emphasis] have not been recorded from within the Disturbance Boundaries and the habitat present is not considered to be critical for their survival. No important populations of threatened species are likely to be impacted by the Proposed Action."

RD Section 2.5 p12 states: "...targeted surveys were undertaken at Cullen Valley Mine for *Clandulla Geebung* (*Persoonia marginata*)...Before each subpopulation was sampled, the boundary of the subpopulation was walked to find the limit of outlying individuals...All areas within the currently approved disturbance area for Cullen Valley Mine where *Persoonia marginata* were identified have been conserved."

RD Section 3.1(d) pp20-21 state: "*These vulnerable species have not been recorded from the Modification Boundaries and no important population of these species occurs within the Modification Boundaries. Accordingly, the proposed action will not reduce the area of occupancy of an important population.*" And: "*The habitat to be removed is not considered to comprise critical habitat for any species occurring or with potential to occur on the site.*"

None of these quoted claims withstand closer examination in the context of the LEG work; and even in terms of their own data (RD, Attachment A, Part 1, Fig. 3 by Cumberland Ecology) there is clear evidence that the Clandulla Geebung (*P. marginata*) is part of a significant population within the modification boundary. It is reprehensible that Coalpac, presumably as advised by Cumberland Ecology, has made such seemingly unjustified claims in a formal document to the Department of the Environment.

⁴ <http://www.environment.nsw.gov.au/resources/nature/vegBlueMntnsVol220.pdf>

⁵ <http://www.environment.nsw.gov.au/resources/nature/vegBlueMntnsVol235.pdf>

⁶ <http://www.environment.nsw.gov.au/resources/nature/vegBlueMntnsVol106.pdf>

⁷ Muir K, Reference Number: 2014/7147, Coalpac Invincible Colliery and Cullen Valley Mine Modifications, near Cullen Bullen 25km north of Lithgow NSW, Colong Foundation submission, March 12 2014

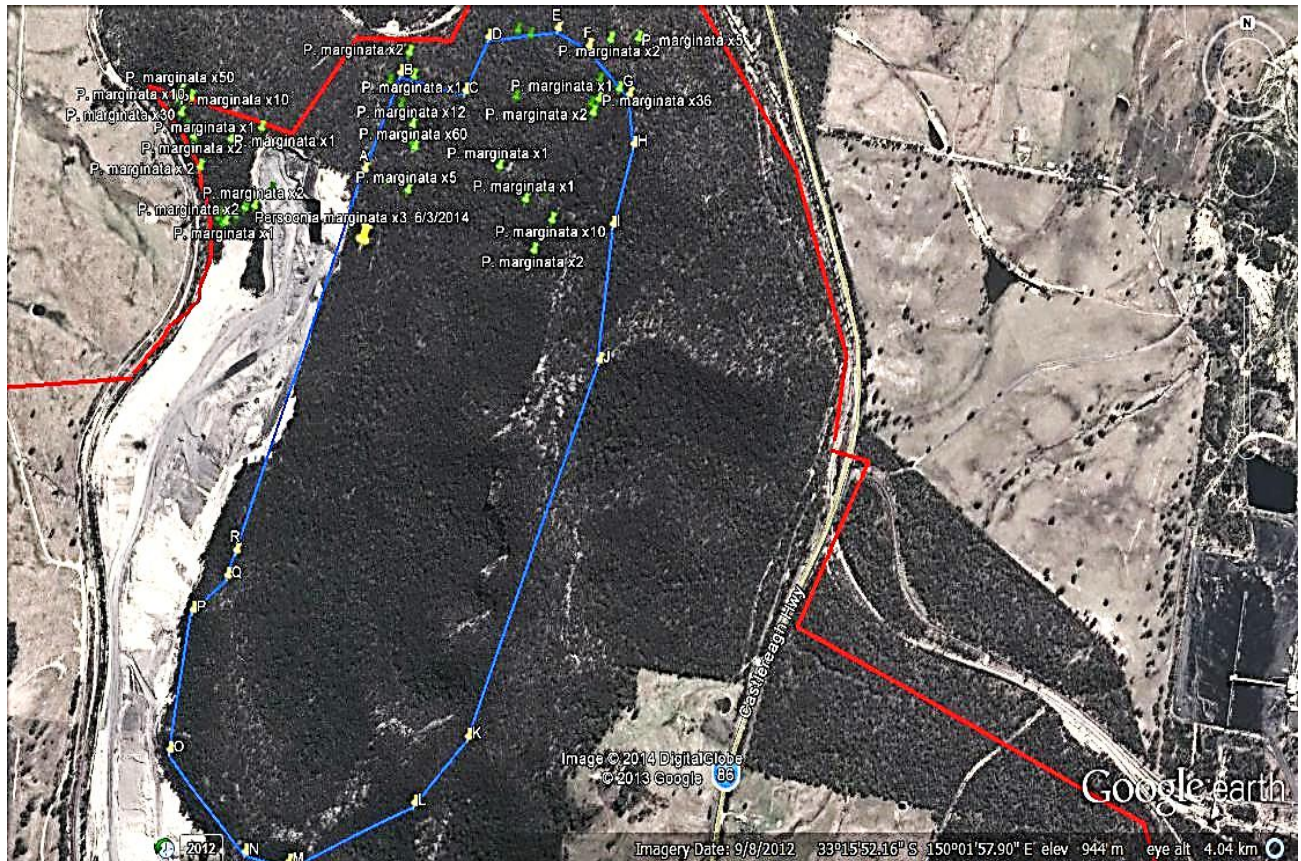


Fig.1: Cullen Valley Modification (blue boundary line); green pins show locations of *P. marginata* x number of plants observed; the large yellow pin marks the location of 3 plants within the proposed open cut (i.e., inside the disturbance boundary)

The Society is particularly conscious of the broader distribution of *P. marginata* in relation to the existing Cullen Valley Mine workings (Fig. 1) as well as the area of the new proposal's open cut and highwall activities. There would seem to be a strong probability that the existing mine workings have fragmented and perhaps destroyed part of the *P. marginata* population. It is abundantly clear that any additional mine-related work will seriously impact this vulnerable species.

- (c) *Prasophyllum sp. Wybong* (a leek orchid which lacks a common name)⁸: this critically endangered (CE) orchid has a moderate likelihood of being present in the areas of habitat to be destroyed (RD, Table 3.2). The Department of the Environment website notes that this terrestrial orchid grows to approximately 30 cm high when in flower but that it otherwise (in winter and spring) comprises a single, tubular, fleshy, dull-green leaf. A principal threat to the species stems from the difficulty of identifying it, other than when in flower, and comprises habitat clearance from mining activities; one population apparently occurred in a proposed open-cut coal mine site!

The Society notes that other than in RD Table 3.2 this CE species receives no further attention. The Society acknowledges that orchids are hard to find and identify when not in flower; but in a Referral document advocating the impacted areas NOT be a controlled action, the Society would have at least expected a clear statement about whether it was subject to a targeted action or in any other way specifically investigated.

⁸ http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=81964

- (d) *Hoplocephalus bungaroides* (Broad-headed Snake – BHS): RD Section 3.1(d) p21 says: “*The habitat to be removed is not considered to comprise critical habitat for any species occurring or with potential to occur on the site.*” And also: “*As no important populations of these species are known or predicted to occur on the site, the breeding cycle of an important population will not be impacted.*”

This vulnerable species received regrettably little consideration in the RD, despite there being a moderate likelihood of its occurrence (RD Table 3.3) and sightings being noted in the broader area. Furthermore, Keith Muir of the Colong Foundation has observed and photographed a BHS “...in the area of the proposed action...”⁹ He considers that the species is present in the general area above the proposed open cut and could well forage in the defined open cut and highwall areas during the warmer months of the year.

Mr Muir has in his submission⁹ drawn attention to advice by OEH that the stand-off distance for a BHS should be 500 m. In relation to the 50 metre stand-off zone for threatened species habitat, as proposed by Coalpac’s consultants in relation to the CCP, OEH noted that the distance had little ecological basis and provided an inadequate level of protection.

The assessment of the RD regarding the BHS is inconsistent with the observations of Mr Muir and the RD’s own Tables dealing with likelihoods of occurrence. The Society appreciates that much of RD pp18-21 is an attempt to handle a range of species using the DoE impact assessment guidelines. The Society would nevertheless hope that this would be done with a reasonable level of objectivity. **In contrast, the aim would seem to have been to respond to the listed dot-points (in pp18-21) for the various categories of threatened species using negative value-judgements, area-based minimisation, and the sad belief that offsets and so-called rehabilitation can compensate for unacceptable destruction.**

- (d) *Other species recorded and/or disregarded by the RD:* these are not pursued here in any detail because BMCS is firmly of the view that there is already sufficient in this submission to ensure that the RD is deemed a controlled action. Nevertheless, the Society highlights the following species which it believes have been inadequately treated in the RD:

- *Thesium australe* (Austral Toadflax) – V (vulnerable) with a moderate likelihood of occurrence; this and other vulnerable species were covered in general terms in Section 4.1(c) items (i)-(vi); LEG¹⁰ considers that a targeted survey should be conducted for this species as it has been recorded at Pine Dale Mine and the Neubeck Coal Project which only a little to the south of the existing Invincible Mine.
- *Prostanthera cryptandroides subsp. cryptandroides* (Wollemi Mint Bush) – V and with a reasonable chance of being within the areas delineated by the disturbance and modified boundaries; this and other *Prostanthera* species have essentially been ignored by the RD; information about the suitability of the habitat is provided by LEG¹⁰.
- *Paralucia spinifera* (Bathurst Copper Butterfly) – V and with a moderate likelihood of occurrence based on suitable habitat; several populations of *Bursaria spinosa ssp. Lasiophylla* (critical habitat for the Butterfly) exist on the Invincible and Cullen Valley mine sites and were recorded on the NSW Wildlife Atlas in 2011¹⁰; the amount of *Bursaria spinosa ssp. Lasiophylla* habitat is understated in RD Table 3.3 p16.
- *Chalinolobus dwyeri* (Large-eared Pied Bat) – V and with a high likelihood of occurrence; this and other bat species require stand-off distances of 500 m from breeding sites according to OEH; they are directly impacted by noise, dust and strong lights and will become collateral damage should the

⁹ Muir K, Reference Number: 2014/7147, Coalpac Invincible Colliery and Cullen Valley Mine Modifications, near Cullen Bullen 25km north of Lithgow NSW, Colong Foundation submission, March 12 2014

¹⁰ Jonkers C, LEG EPBC Submission - Coalpac Pty Ltd - March 2014.pdf

new proposal be accepted; they are essentially disregarded in the RD on the basis that they have wings and there is plenty of alternative habitat nearby.

5. Assessment of the proponent's claim – avoidance, mitigation and compensation

5.1 Avoidance

RD Section 4 p30 emphasises that: “...the mine plan proposed for the Modifications has been modified to avoid environmental impacts. The proposed disturbance area has been reduced to avoid impacts on known occurrences of Box Gum Woodland CEEC, upon a known population of *Persoonia marginata* (listed as vulnerable under the EPBC Act), upon sandstone outcrops and habitat areas that provide overwintering habitat for the Broad-headed Snake.”

The above is amusing in its degree of ineptness for the following reasons:

- The plan has been modified to avoid impacts on the *Box Gum Woodlands CEEC*; this would be impressive were we not told elsewhere (RD Table 3.1, RD Section 3.1(d) p18, RD Section 3.3(e) p27) that this no longer exists and has in fact been reinterpreted as Tableland Gully Mountain Gum – Broad Leaved Peppermint Grassy Forest. The Society would be happy to reinstate the *CEEC* or accept Cumberland Ecology's conclusions if they were checked by an independent expert (refer to Section 4.3(a) for clarification). Perhaps the 'real' *CEEC* exists in areas of the original CCP well away from the modified boundaries and BMCS' amusement is unjustified? Who knows?
- The plan was also modified to avoid populations of *P. marginata*. Unfortunately, as detailed in Section 4.3(b), the areas encompassed by the disturbance and modification boundaries contain several hundred *P. marginata* plants. It is emphasised that LEG representatives had insufficient time to cover more of the proposed open cuts. How many more plants would have been found?
- Ensuring the open cuts avoided the BHS's 'overwintering' cliffs and rocky outcrops is sensible, but it would have been better to entirely exclude such breeding habitat from highwall mining and to stipulate the stand-off distances.

Of course, the simplest way of dealing with the issue and enabling the best environmental outcomes would be to withdraw the new proposal.

5.2 Mitigation

Apart from the 'small' aspects of mitigation, the RD commonly emphasises that destruction of habitat by the open cuts will be temporary because of the progressive rehabilitation programme. BMCS has, in submissions related to the CCP, intensely criticised the mining industry's approach to rehabilitation and does not resile from it.

Companies might ask why rehabilitation is a requirement if it is deemed unsatisfactory by environmental groups. The unfortunate answer is that, when something is trashed, one has to clear up the mess, but cosmetic improvements are far different from the habitat and landforms which were destroyed.

The Society notes (Section 2) that rehabilitating damage from the existing operations is put forward as a reason for approving the new proposal. The Society considers granting extensions to a mining operation on the basis that past damage will be rectified is ridiculous. Actions of this type should not be required if appropriate bonds are taken by government and ongoing rehabilitation is practised and properly policed.

5.3 Offsets

The regulations are that (RD Section 4 p30 in blue font): “...measures aimed at providing environmental offsets, compensation or off-site benefits CANNOT be taken into account in making the initial decision about whether the proposal is likely to have a significant impact on a matter protected under the EPBC Act.”

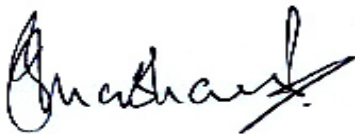
BMCS fully endorses this position. Offsets should not be on the table until the Federal department has discharged its obligations under the *EPBC Act*. This is one of many reasons why the Federal government should not devolve its responsibilities to the state planning departments.

If the Principles of Ecologically Sustainable Development are properly applied the need for offsets will be infrequent. The conflicts over offsets arise because they are not ‘like for like’, the discussions about offsets become part of the decision-making process rather than a consequence following on from making the decision, and the divisions of government charged with protecting the environment become embroiled in determining the details of the offset process.

6. Concluding statement

The limited time available to assess the Referral documents preclude the Society from addressing some aspects such as surface water and groundwater issues, and the past operations of the proponent (the so-called track record).

Nevertheless, the principal objective of this submission is to make a strong case for the new proposal becoming a controlled action.

A handwritten signature in black ink, appearing to read 'Brian Marshall', with a stylized flourish at the end.

***Dr Brian Marshall,
For the Management Committee.***

[One separate map attachment identified as
CoalpacEPBCReferral2014-7147_BMCSMapA_140313.pdf]