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Nature Conservation Saves for Tomorrow

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BMCS comments on Coalpac's response (15/07/2014)¹ re OEH's comments (30/06/2014)² to DoPE

Introduction

The comments are keyed to the numeration adopted by OEH and by Coalpac in Dr Follington's communication as per the DoPE website (see footnotes 1 and 2).

BMCS notes that Coalpac³ has not responded to its previous submission⁴ in relation to Coalpac's response (RTS) to the many submissions which largely opposed the C-Mods proposal. In view of this, it would seem to be a reasonable conclusion that Coalpac does not refute the content of its submission, or is at least unable to find a rational basis for opposing the content. This matter is raised because BMCS addressed some of the concerns rightfully mentioned in the OEH letter (footnote 2) and will cite its previous comments where relevant to the ensuing sections.

1. Reservation considerations

Coalpac has consulted with Terry Bailey and Monica Collins of OEH, presumably as part of the ongoing consultation recommended by Peter Christie. It seems that Biobanking is the preferred form of security.

BMCS is most concerned that this approach is considered to adequately offset the damage which will be inflicted by the C-Mods. This is because the values which were cited by the PAC and Planning in their rejections of the Coalpac Consolidation Proposal are still an integral part of the C-Mods. In support of this, BMCS cites from its previous submission (footnote 3):

- *"A development should be approved/rejected on its merits when assessed in terms of the direct environmental, social, heritage and economic factors – offsetting should not be part of this assessment,*

¹https://majorprojects.affinitylive.com/public/d8e1dacff8cee6fcc0031184b5535aad/Coalpac_Response_OEH_Ltr%20%283%29.pdf

²<https://majorprojects.affinitylive.com/public/33dc71ce7e78f123b90c6018c1a5a259/OEH%20Response%20to%20EA%20for%20Coalpac%20Expansion%20Modifications.pdf>

³ 'Coalpac', where used without further explanation in this present BMCS submission, refers to the letter by Dr Follington as referenced in footnote 1 above.

⁴<https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf>

but should be a subsequently applied 'levy' (akin to a royalty) to fund outcomes reflecting the nature of the development's principal impacts.

- *Independent of dot-point 1, many environmental impacts cannot be offset – destruction of a CEEC/EEC should not be countenanced – the argument that it can be offset by enhancing the CEEC/EEC elsewhere is false to the extent that the number of examples of the CEEC/EEC has been reduced.*
- *The BBPLS is unique and therefore priceless – there is no sensible way of offsetting the total/partial destruction of such an irreplaceable land system. Would it be possible to offset destruction of Sydney's estuary, or the Heads, or Bondi beach, or even the Opera house?"*

In addition to the above, reference is made to the Gulf Mountain property which would seem to be a very strange form of offset. It seemingly lacks the threatened floristic values and has a totally different geology from that underpinning the Ben Bullen Pagoda Land System (BBPLS). The latter consists of Permo-Triassic rocks whereas the former sits on the Palaeozoic rocks of the Lachlan Fold Belt. The only positive things about it are that it is apparently available, has a large area, and boosts the offset ratio; in other respects it is a dud!

2. Pagodas, Escarpments and Associated Features

Coalpac accepts that protection of pagodas, Escarpments and associated features relies on buffers and avoiding subsidence impacts. **Regrettably, Coalpac's C-Mods do not accept this enough to properly observe it!**

In responding to OEH, Coalpac contends that RTS statement about the Invincible C-Mod open cuts not approaching within 200 m of any Escarpment is correct. Coalpac asserts that OEH's use of "geodiversity features" is confusing and for that reason Coalpac used the term "Escarpments"; this "...was deliberate and was intended to describe significant landscape features, such as the Escarpment to the immediate east of the existing Invincible Colliery open cut."

Once again Coalpac is obfuscating. It has returned to its very restricted view of the pagodas and associated cliff-lines that it used in the CCP. This is apparent in Coalpac's statement that "*The "geodiversity features" referenced by OEH appear to be bounded by small scale and, in the case of Cullen Valley particularly, very poorly defined landscape features.*" Yet, somewhat amusingly, Coalpac also asserts its correctness in stating: "*The open cut limit proposed for the Cullen Valley Mine Modification does encroach within 200m of the Escarpment in parts...*"

Coalpac is berating OEH for using "geodiversity features", particularly in the case of Cullen Valley. It justifies this by defining Escarpment in a restricted fashion (to describe "significant" landscape features as seen east of the Invincible open cut). It then confounds its own definition by referring to the Cullen Valley pagodas and cliff-lines as both 'poorly defined landscape features' and 'Escarpment'. Surely this is a case of Humpty Dumpty in Alice Through the Looking Glass?⁵

Let's be clear about four things:

- (a) The BBPLS embraces three units, including the one which is proposed for open-cut mining and the one potentially impacted by highwall mining (Ben Bullen Range Pagoda Unit – BBRPU). The latter extends from SSE-NNW and has various manifestations which have been photographically portrayed in BMCS submissions for the CCP and the C-Mods. **No amount of obfuscatory limitation of definitions will alter the reality of this.**
- (b) As justified in various BMCS submissions about the CCP and C-Mods and recognised by the PAC, **the required stand-off for highwall mining from the BBPRU (alternatively expressed as the set-back distance of the open cut from the BBPRU, is 300 m; it is not the 200 m emphasised by Coalpac and shown by OEH (their Figs 1 and 2) to be considerably less than that in various places for both C-Mods.** As emphasised in the previous BMCS submission (footnote 4, p5) "*Highwalling is unacceptable in these stipulated parts of the Cullen Valley and Invincible areas; these parts (at least) should be excised from any approval by DP&E.*"

⁵ http://en.wikiquote.org/wiki/Through_the_Looking-Glass: "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean - neither more nor less."

- (c) Coalpac adopted a 200 m set back, but acknowledged that the BBRPU was closer in some places by stipulating the blast-monitoring trigger of 50 mm/s PPV limit at the cliff-line. In effect, **if this is not exceeded, the open-cut mining can move even closer to the rock face and the highwall mining could then potentially proceed from wherever the open cut stops.**
- (d) The Director-General's Assessment Report (DGAR) rejected the CCP on the basis of its impact on the unique BBPLS. The CCP was then withdrawn before being referred to the second PAC. Coalpac claims the DGAR accepted that "*Coalpac could manage its mining operations in a manner that would not pose a significant risk to the structural stability of the major pagoda rock formations* [BMCS emphasis] *on the edges of the proposed open cut mining area*", and that "*...highwall mining beneath pagodas could be designed in a manner that would not result in any measurable subsidence...and hence* [there would be] *no discernible impacts on the stability of the pagodas* [BMCS emphasis]..." BMCS perceives these as expedient statements in that they reduced the need to investigate and assess complex areas of rock mechanics when the over-riding basis for rejecting the CCP was already established. **This is perhaps why the language emphasised in bold contains much 'wriggle room' in terms of 'could', 'significant' and 'discernible'.**

BMCS does not accept the levels of confidence conveyed by Coalpac and its consultants, and in elaboration quotes from the previous BMCS submission (see footnote 4 pp4-7):

"These are...claims based on consultants' assumptions about rock-mass behaviour and, in the case of blasting, the application of trial and error analyses such that the risk is taken by the environment."

"...a major collapse of a pagoda or cliff-line is not the only concern, even if it is the principal concern from the company's operational viewpoint. Smaller rock-falls can be triggered by the envisaged amounts (~20 mm) of subsidence and also by blasting. These damage scenic values and can compromise habitat; and they are noticeable..."

"BMCS has in several submissions emphasised that: 20 mm of subsidence can and does affect topography and landform (these are inevitable consequences); the existence of an open cut with a highwall mining face must influence the hydrologic regime; and between the web and barrier pillars are closely spaced rectangular holes, up to 300 m long, from which the coal has been removed – this forms an excellent drainage system which influences the groundwater regime to the potential detriment of floristic values."

3. Broad-headed snake (BHS)

Coalpac indulges in a ridiculous misuse of statistics to conclude that, at most, only 2 or 3 BHSs are likely to be impacted. The implication apparently being that they are expendable, as Coalpac suggests that the C-Mods will have no significant impact on the BHS

OEH gives reasons why a buffer of 300 m should be allowed, but the C-Mods only provide this where it is 'convenient'. Coalpac attempts to justify not providing a 300 m by re-defining the concept of a buffer in terms of area rather than linear distance.

The simple story is that Coalpac (and its consultant) have decided that there is little likelihood of a BHS being in the impacted region and has therefore disregarded OEH's advice; so much for the Precautionary Principle. BMCS again registers its concern that matters raised by OEH are pushed aside in favour of the opinion of a paid 'expert'.

4. Significance of the Vegetation on Permian 'Sediments'

Despite the concerns raised by OEH and BMCS' rejection (reference footnote 4) of Coalpac's RTS arguments, Coalpac continues to state that the proposed C-Mods will have no significant impact upon vegetation on Permian sediments.

Coalpac has seemingly not read or, in responding to the Colong-LEG submission, has assumed that the BMCS submission (reference footnote 4) would be identical and not warrant a response or, as suggested in the Introduction (above), is unable to find rational reasons for refuting the submission. A further possibility, consistent with Coalpac's apparent policy of isolation and reductionism, could be that Coalpac feels its

response to OEH will not result in any counter argument and will be treated by Planning at face value. **To combat any of the foregoing possibilities, pertinent aspects in the BMCS submission will again be raised.**

Coalpac bases its rejection of OEH's concerns on: (i) only a small portion of the Tablelands Grassy Woodland Complex Unit (TGWCU) affected by the CCP will now be open cut; (ii) there are extensive areas of Permian geology with "...similar vegetation communities..." in the broader region such that the C-Mods "...would only impact a very small proportion of the available Permian landscape"; (iii) the impacts can be offset; and (iv) the open cut areas will be rehabilitated. Sections 4.2.1, 4.2.2, 4.3.1 and 4.3.3 of the previous BMCS submission (reference footnote 4) deal with each of these aspects, but the salient matters will now be summarised.

(a) **Item (i):** if the C-Mods and the existing approvals go ahead, some 664 ha of native forest and woodland will be compromised in order to obtain 9 Mt of poor quality coal. Also, the open-cuts and the broader mining activities will disrupt the continuity of the TGWCU within the unique area of the BBPLS – such fragmentation of habitat should be avoided. As per section 4.3.3 (reference footnote 4):

- *“Any destruction of the Tablelands Grassy Woodland Complex Unit and the ‘unique’ BBPLS is tantamount to environmental vandalism.”*
- *“The notion that it might be an acceptable ‘compromise’ to excise (by open cut mining) small parts of the Tablelands Grassy Woodland Complex Unit and therefore degrade that portion of the BBPLS is totally rejected; it may be a political solution but it certainly isn’t environmentally sound.”*

(b) the presence of Permian geology does not mean the original ecology has survived – commonly, the undulating Permian landscape has been extensively cleared for agricultural and forestry purposes; even if not cleared the native vegetation due to abiotic parameters may not include those which concern OEH; **and even if still there and comprising ‘at-risk’ vegetation types on Permian derived soils, it is unlikely to be in full association with the other units of the BBPLS** [see item (i) above].

(c) **Item (iii):** Section 4.2.2 notes that because the potentially impacted Permian vegetation systems are complex (see Section 4.2.1 dot-points 3-5) there may be no like-for-like equivalence – in essence, if CEECs/EECs are being destroyed, offsetting them with a different vegetation type has little merit.

This was further addressed in Section 7 (reference footnote 4):

- *“... many environmental impacts cannot be offset – destruction of a CEEC/EEC should not be countenanced – the argument that it can be offset by enhancing the CEEC/EEC elsewhere is false to the extent that the number of examples of the CEEC/EEC have been reduced.*
- *The BBPLS is unique and therefore priceless – there is no sensible way of offsetting the total/partial destruction of such an irreplaceable land system.”*

(d) **Item (iv):** Section 6 (reference footnote 4) deals extensively with the spin surrounding rehabilitation. BMCS has also presented photographic evidence regarding the deficiencies of rehabilitation⁶.

Coalpac argues that the pits from past open-cut activities need rehabilitating and a better rehabilitation outcome will be achieved if a small amount of additional mining (9 Mt) is approved. But Coalpac also insists that it maintains a substantial bond in place with the NSW Government until final rehabilitation is completed to the satisfaction of DRE.

BMCS therefore comments as follows:

- Such rehabilitation arguments should never be a factor in a development proposal; it becomes a distortion of process.
- If the funds for rehabilitation exist by virtue of the bond – how realistic is the bond in terms of ensuring the necessary rehabilitation should the C-Mods be rejected?
- As final rehabilitation has to be completed to the satisfaction of DRE, it follows that DRE must approve the rehabilitation plan, so what plan exists should the C-Mods be refused?

⁶ *BMCS Submission opposing the C-Mods, Appendix C at <https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf>*

- Who in DRE, if anyone, has assessed the ‘best final outcome’ advocated under the C-Mods proposal versus the ‘current outcome’ if the C-Mods are rejected – or is it politic to just accept the Coalpac spin?

BMCS is extremely concerned that none of this information is brought forward in terms of it being displayed on Planning’s website. It is perhaps naïve to expect DRE, which strongly supported the CCP and the subsequent C-Mods, to responsibly investigate whether or not Coalpac is using the rehabilitation argument to promote the outcome best suited to its economic interests.

5. Flora surveys

OEH’s concerns about the surveys were and still are justified. BMCS elected to commission an independent ecologist to look at Cumberland Ecology’s (CE) work within the C-Mod boundaries. The results of his investigation were extremely enlightening

The original PAC recommendation of an independent survey (i.e. not paid for by Coalpac and not involving an organization likely to be influenced by CE) has not been adopted.

EcoLogical Australia (ELA) has been involved with an ‘independent’ (commissioned by Coalpac!) informal BioBanking assessment for the C-Mods and has given CE’s work a stamp of approval, seemingly with little concern about the flora which were missed or inadequately reported upon. From BMCS’ viewpoint, this says far more about the inadequacy of the system than it does about the comprehensiveness of the surveys.

6 and 7. Indirect Impacts, Edge Effects and Cumulative Impacts

The impact of highwall mining on the hydrologic regime were referred to in Section 2(d) above. It has not been considered by Coalpac.

The 15 m buffer between the highwall crest and the Modification Disturbance Boundary must surely be a joke!

Coalpac makes no serious attempt to consider the cumulative impacts of its proposals. Were it to have done so, it would have accepted the rejection of the CCP and not returned with the invidious C-Mods.

BMCS sees little value in further addressing these issues



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