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Nature Conservation Saves for Tomorrow

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NSW Planning Assessment Commission
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D311/14 - Coalpac Invincible Colliery Mod 4 and Cullen Valley Mine Mod 2

Chair: Mr Garry West

BMCS Comments on the DPE's Assessment Report to the PAC

1. Introduction

The Blue Mountains Conservation Society (BMCS) has made submissions opposing the original Coalpac Consolidation Project (CCP) at all stages of the protracted assessment process. The rejection of the CCP by the PAC Review Report (PAC1) and then by the Director-General's Assessment Report to the determining PAC2 owes much to the issues collectively raised by this Society, the Colong Foundation, and the Lithgow Environment Group (LEG), as well as the numerous submissions from other organizations and individuals.

The Society has subsequently engaged with all stages of the assessment process for Coalpac Invincible Colliery Mod 4 and Cullen Valley Mine Mod 2 (here termed the C-Mods). It has at all times opposed the C-Mods and will continue to do so in representations made to the determining PAC.

BMCS congratulates the DPE on its understanding of the principal factors for and against the C-Mods. Many of the 'lesser' issues evaluated are capable of being managed by stringent operating conditions involving various forms of risk and adaptive management approaches. Whether or not such approaches will assuage the concerns of local residents (i.e. those most heavily impacted) and avoid impacts on the region's scenic and biodiversity values is very much a matter of belief in the company's integrity, the efficacy of the recommended conditions, the rigour with which those conditions are monitored and enforced by government, and the extent to which the management systems build substantial lag times into the processes. The latter point is made because experiences with Subsidence Management Planning processes show that they entrench lag times in the order of six to eighteen months during which the damage is done and potentially exacerbated while mining continues unfettered.

The aim of the present submission is not to evaluate every aspect covered in the DPE's Assessment Report (DPEAR). Rather, it is to focus on some of the principal issues which the Society believes are deserving of further consideration. This approach is necessary because, as is commonly the case when environmental, social and heritage issues are pitched against economic and different social issues, the DPE seems to have decided upon a preferred outcome and emphasised aspects which, despite a superficially even-handed approach, are deemed on balance to support it. Lest the previous sentence be seen as confrontational, the Society notes that the Director-General's Assessment for the CCP, similarly identified a preferred outcome, adopted an even-handed approach, but 'on balance' **opposed** the CCP.

Examples of the report favouring the preferred outcome are obvious within the DPEAR introductory section pp1-6. Thus:

- P2 refers to rehabilitating the voids left by previous mining and notes that *“There is currently insufficient overburden material on the site to properly backfill these voids and to create a suitable final landform that integrates with the surrounding landscape”*.

The above is claimed by the company and seemingly endorsed by the DPE, yet BMCS has seen no definitive work supporting the claim. The matter is considered more fully in **Sections 3.3 and 3.4 below**.

- P3 records advice by the Office of Environment and Heritage (OEH) that the Ben Bullen State Forest (BBSF) is a suitable candidate for future reservation under the *National Parks and Wildlife Act 1974*, but that *“...the area also has substantial coal resources, and at this stage there is no formal proposal by the NSW Government to gazette the area as a National Park.”*

The suitability of the BBSF for reservation as a State Conservation Area was first recognised by the Department of Environment and Conservation (DEC) in 2006 and the OEH is still of that persuasion. The political imperative, seemingly in the context of the sale of the Delta-owned power stations to EnergyAustralia, precluded action by OEH pending resolution of the CCP and this has now been applied to the C-Mods. Whereas the reservation-merits of BBSF are unquestioned, the OEH effectively has its hands tied. This receives further consideration in **Section 3.5 below**.

- P6 in relation to the CCP assessment: the DPE acknowledges *“...that the site was unsuitable for such a large and elongated open cut coal mine, as it would destroy the significant conservation values of the area...”*; it fails to emphasise the uniqueness of the Ben Bullen Pagoda Land System (BBPLS). Instead, the emphasis is upon *“...allowing a smaller extension that would avoid the more sensitive parts of the site, as this would enable some of the remaining coal reserves to be extracted...”*

The most fundamental aspect of the region is the BBPLS, yet DPE seems to deliberately avoid using the term, while the C-Mods attempt to distort the concept by trying to restrict discussion to what they term the ‘significant pagoda landscape’ and ‘escarpments’. Ignorance (deliberate or otherwise) about what constitutes the BBPLS leads to nonsense statements about biodiversity offsets and rehabilitation. The Society will return to this in **Sections 2 and 3.1 below**.

Why have the above three dot-points been developed in the Introduction?

The answer is simple. The DPEAR, whilst appearing to be even-handed, has been written to support a predetermined position. Consequently, **the PAC will be led by the nose to arrive at the same conclusion, unless the PAC fully reads and understands the basis for claiming uniqueness for the BBPLS and the factors impacting its cohesion**. The pertinent reports¹ are on the DPE Coalpac and Invincible websites and will have presumably been made available to the PAC; other reports² have been sent directly to the PAC as they have seemingly been omitted from the Invincible and Cullen Valley websites³.

¹(a) On the Coalpac website

- https://majorprojects.affinitylive.com/public/66d22a9c94ef429ffcc0304b88c2ce6e/Coalpac%20Consolidation%20Project_Special%20Interest%20Submission%20on%20PAC%20Merit%20Review_Env%20NGOs.pdf
- https://majorprojects.affinitylive.com/public/71bb8f1cd841a5126162f44fb6af9d94/Coalpac%20Consolidation%20Project_%20Part%201%20of%204%20Joint%20Response%20from%20BMCS%20and%20LEG%20on%20the%20Coalpac%20Response%20to%20the%20Further%20Submission.pdf

(b) On the Invincible website

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

² Not found on the Invincible website

- Coalpac_C-Mods_BMCSReCpacRespToOEH_140805.pdf – forwarded to the PAC on 24 August
- CoalpacC-Mods_BMCSResponseToHBRResponses.pdf – forwarded to Planning on 15 July – **now 7 September forwarded to the PAC**
- CoalpacC-Mods_BMCSResponseToHBRResponses_Supplement_140722.pdf – forwarded to Planning on 23 July – **now 7 September forwarded to the PAC**

³ The Society has since been advised (08/09/14) that copies of these reports were forwarded to the PAC by DPE.

2. The Ben Bullen Pagoda Land System (BBPLS) – its over-riding significance

The Society and the Colong Foundation used the ‘land system’ concept to explain why the area involved with the CCP, and now with the C-Mods, is unique and worthy of preservation⁴.

Unlike most EISs and similar documents which deal with such things as geology, geomorphology, climate, geographic orientation, pedology, hydrology, vegetation types and fauna under separate headings, **the interaction** of these produces a characteristic **land system made up of discrete units**. Such a land system may once have been less restricted, but **may now have a limited distribution**. This may be due to such things as clearing for agricultural purposes, modification by forestry practices, and damage due to mining activities.

The BBPLS and its three units were recognised as being related to a climatic regime within which Permian geology underpinned characteristic geomorphology, derived soils and vegetation types on west-facing scarp slopes at the western limits of the Sydney Basin structure before it gives way to the older basement of the Lachlan Fold Belt. Because on a more regional basis one of the units has been extensively cleared for grazing, agricultural purposes and forestry activities, while another has been impacted by open cut and underground mining, it was possible to show that a **unique remnant of the BBPLS is in the area which was to have been destroyed by the CCP**.

The significance of the BBPLS can be measured in terms of the effort put in by Cumberland Ecology (Coalpac’s consultant) in trying to discredit the concept and keep the focus on their ‘Significant Pagoda Landforms’⁵. Cumberland Ecology’s arguments were comprehensively rejected by BMCS⁶; and it subsequently became clear that the nature of the BBPLS was accepted by the Director-General’s report to the PAC prior to the CCP’s withdrawal⁷. Pertinent quotations supporting this are given in the Society’s submission regarding the C-Mods (Sections 3.1 and 3.2)⁸.

The foregoing leads to a fundamental question which is why, having accepted the uniqueness of the BBPLS, did the Director-General’s Report leave the door open for a ‘smaller’ proposal? **There is an attempt to answer this in the DPEAR Sections 6.1 and 6.2, but it fails because it practices reductionism by treating the ‘pagodas’ and the ‘biodiversity’ as separate entities rather than complementary components within a unique land system.**

From the PAC’s viewpoint, there should be a clear understanding that the unique BBPLS is a remnant of a larger land system which has extensively been compromised, in part by the very forces which now threaten the integrity of the BBPLS. Viewed somewhat differently, how can destroying the unique BBPLS be balanced against exploiting a meagre 9 million tonnes of low grade coal over 4-7 years?

3. What are the threats to the BBPLS?

These fall into five main categories:

- The BBPLS as a totality – failure to recognise that the BBPLS has three units [the Cullen Plateau Unit (CPU), the Ben Bullen Range Pagoda Unit (BBRPU), and the Tablelands Grassy Woodland Complex Unit (TGWCU)] and that anything damaging part of a unit is indeed an impact on the totality of the BBPLS.

⁴https://majorprojects.affinitylive.com/public/66d22a9c94ef429ffc0304b88c2ce6e/Coalpac%20Consolidation%20Project_Special%20Interest%20Submission%20on%20PAC%20Merit%20Review_Env%20NGOs.pdf

⁵<https://majorprojects.affinitylive.com/public/06f5db0334cdebc6d53d6963c07656a1/Coalpac%20Response%20to%20PAC%20Review%20Submissions.pdf>

⁶https://majorprojects.affinitylive.com/public/71bb8f1cd841a5126162f44fb6af9d94/Coalpac%20Consolidation%20Project_%20Part%201%20of%204%20Joint%20Response%20from%20BMCS%20and%20LEG%20on%20the%20Coalpac%20Response%20to%20the%20Further%20Submission.pdf

⁷https://majorprojects.affinitylive.com/public/b508bc887566a110f8140a9d94e982c9/3.%20Coalpac%20Consolidation%20Project_Director-General%27s%20Report_Initial%20Addendum%20Report.pdf

⁸ <https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf>

- Direct impacts from mining – open-cut and highwall mining by the total removal and/or undermining of parts of two BBPLS units, coupled with inadequate buffering considerations, will fragment and compromise the TGWCU and BBRPU.
- Deficient investigations – there is ongoing concern about the quality of some of the investigations.
- Claims about rehabilitation – these are repeatedly made in justification for trashing native forest.
- The role of government and the political imperative – perhaps more than anything this has been responsible for the DPE’s change of heart.

Each of the dot-points will be expanded upon in the following subsections.

3.1 The BBPLS as a totality

The pertinent sections of the DPEAR are 6.1 and 6.2.

The DPEAR p18 states:

“The significance of the landscape and geo-heritage values associated with the rock pagodas and escarpments ...was canvassed in detail in the Department’s assessment of the Coalpac Consolidation Project.

“...this assessment considered that the rock pagodas adjacent to the site form part of an internationally significant landscape that should be conserved and protected from the impacts of mining.

“...the Department concluded that the extent of the open cut mining associated with the Coalpac Consolidation Project was fundamentally incompatible with preserving the significant conservation and landscape values of the area as a whole...”

The DPE clearly recognises a range of pagodas and ‘escarpments’ (cliff-lines) and notes that **the area as a whole merits protection**, despite its focus being on those pagodas adjacent to the southeast part of the CCP site (what Coalpac terms its ‘Significant Pagoda Landforms’).

DPEAR p23 affirms the value of the ‘area as a whole’ by stating:

*“...the Department considers that the aesthetic and scenic values of the pagoda landform complex are inherent to their status as natural features of ‘special significance’. The aprons and slopes of the pagodas also contribute to the overall geo-heritage and scenic values of the pagodas themselves, and hence the Department believes that **considering the landform as a whole is the only sensible approach to the assessment of the potential impacts of the project on pagodas.**”*

This sounds encouraging because the pagodas and cliff-lines, the aprons, and the shallowly undulating slopes beneath them comprise the BBRPU and the TGWCU of the BBPLS. **However, the assessment is unfortunately deficient in that its concentration on potential impacts on the BBRPU, and its entirely separate consideration of the TGWCU (Section 6.2), negates the interdependence of the units of the BBPLS and the collective implications for the integrity of the BBPLS.**

The same deficiency is apparent when the DPEAR (p18) considers OEH’s mapping and concerns:

“...buffer areas have been based on the relative significance of the various rock features adjacent to the mines... Coalpac has used the term ‘escarpments’ in its assessment to capture the larger cliff-lines and pagoda formations in the area, as opposed to [OEH’s] ‘geodiverse’ features, which would include some smaller and more isolated rock features.

“The Department accepts that the conservation significance of the rock formations does vary, and that the OEH mapping does not distinguish between these variations...the Department believes it is reasonable to adopt a risk-based approach to the assessment of impact where the buffer distance should be adjusted to match the size and significance of the rock features.”

This argument only makes sense provided that one is mainly concerned with the pagodas and cliff-lines (particularly east of the Invincible mine) and does not see the BBRPU as a component of the BBPLS. The scenic intensity of the pagodas and cliff-lines decreases from south-southeast to north-northwest across the CCP and the area involving the C-Mods. This reflects subtle changes in the stratigraphy of the cliff-

forming sandstones and pagodas, and highlights the impact on landform and vegetation embodied in the transition to the underlying Permian stratigraphy and derived soils which support the TGWCU. **The spatial transition across the area is reflecting geological, geomorphological, pedological and climatic attributes; and these are then manifested in changing vegetation types and ecosystems. This is why the BBPLS is a unique summation of the relationships between the three units and particularly between the BBRPU and the TGWCU.**

From a practical viewpoint, there is a composite problem with buffering the structural integrity of pagodas and cliff-lines as a function of “size and significance of rock features”. As the buffer is decreased the area of the TGWCU to be trashed by open-cut mining will be increased, the extent to which highwalling will undermine pagodas and cliff-lines will increase, and the habitat buffer for fauna and flora will be reduced. All of this is why the BBPLS must be treated as a totality rather than, through reductionism, ‘resolving’ what the DPE perceives as discrete impacts.

It is disappointing that the DPE seems to have forgotten the following quotation from the Director-General’s Assessment Report⁹:

“...the Department is satisfied that the vast majority of the project site is properly characterised as a ‘pagoda landform complex’...a complex arrangement of habitats characterised by a convoluted line of towering rock faces that give way to rocky steep slopes and these in turn give way to forested slopes and valley floors dominated by various eucalypt vegetation communities. All components contribute to the overall significance of the pagoda landform complex, and any impacts to components of the landform complex have the potential to compromise the significance of the landform complex as a whole.”

3.2 Direct impacts from mining

This has been well covered in a range of submissions relating to the CCP and then the C-Mods¹⁰.

In summary:

- **Fragmentation of TGWCU habitat** – the three discrete Invincible open-cuts and the Cullen Valley open cut along what was once the continuous contracted CCP open cut must destroy parts of the TGWCU and thereby fragment the continuity of the uncleared habitat. Such fragmentation systematically and disproportionately increases the impacts on fauna and flora. Edge effects further enhance the fragmentation.
- **Extent of blasting impact from the open cuts** – DPEAR p22 insists that a buffer of **at least 100 m¹¹** be maintained between any open-cut mining and the OEH-mapped ‘geodiverse features’ (i.e., the BBRPU) in the context of blasting damage. The DPE is confident that this will be satisfactory as Coalpac will (p22) “...be required to ensure that the blasting on site has no more than a **negligible impact** on the structural stability of any of these rock formations”. BMCS believes that the notion of ‘**negligible impact**’ is untenable. Defining ‘negligible’ in practicable terms in systems undergoing natural and imposed processes is difficult and might well enable the company to interpret outcomes in its own interests! To partly avoid such outcomes, BMCS offers the following paragraph.

Natural processes can create tumbling and small rock-slides. Naturally occurring sites of instability, irrespective of whether they show signs of recent movement or have characteristics indicative of potential

⁹https://majorprojects.affinitylive.com/public/b508bc887566a110f8140a9d94e982c9/3.%20Coalpac%20Consolidation%20Project_Director-General%27s%20Report_Initial%20Addendum%20Report.pdf

¹⁰ <https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf> – Refer to Section 3.2

Also: *BMCS Comments on ‘Coalpac’s Response to Submissions’ in Hansen Bailey Reports, June 2014, dated July 7* and separately submitted to the PAC – see Section 4.

¹¹ It is unclear whether the Coalpac-proposed adaptive management process, including making a baseline geotechnical inspection, will still be commenced at 200 m; BMCS believes it should **at least** start at 200 m, **but as per footnote 12** BMCS believes it should actually start at 300 m.

failure, must be identified by baseline geotechnical mapping and, once mining has reached **300 m**¹² from the BBRPU (i.e., the OEH-mapped ‘geodiverse features’), be checked after each phase of major blasting. This is because these ‘natural’ sites will inevitably be susceptible to and thereby focus blasting impacts. **The importance of this approach is that it recognises both the existence of natural processes and their role in focusing mining-induced damage. There is no doubt about mining’s responsibility.** It avoids the argument made by DPE p22 that ‘zero impact’ cannot be specified because changes to structural stability due to natural processes will be hard to distinguish from blasting-induced impacts.

- **Highwall mining beneath the BBRPU** – the DPEAR p23 suggests that highwall mining is not proposed beneath the ‘Significant Pagoda Landform’ to the east of Invincible, but it is proposed beneath the escarpment to the north of Invincible and to the east of Cullen Valley. **BMCS notes that, contrary to what is stated, there are encroachments on pagodas in the south-eastern parts of the Invincible highwall area**¹³.

The DPE is satisfied that highwalling can be designed to avoid any measurable subsidence, thereby avoiding discernible impacts on the BBRPU, despite consultants to the CCP estimating a maximum subsidence of 20 mm. The DPE’s ‘confidence’ is such that Coalpac will be prohibited from mining within 20 m¹⁴ of an Aboriginal rock-art cave on the Cullen Valley site, and required to meet a performance measure of ‘negligible damage’ to the BBRPU by an Extraction Plan deemed satisfactory to the Department of Resources and Energy (DRE).

Let’s be clear:

- **Were the 305 m stand-off to be used without exception, there would be no risk to the BBRPU from highwall mining – this is the safest solution.**
- ‘Negligible damage’ is rather like the ‘negligible impact’ discussed under dot-points 3 and 4 above – the only way of dealing with this is by detailed geotechnical mapping before highwalling commences, such that **the existence of natural processes and their role in focusing mining-induced damage are recognised. There would then be no doubt about mining’s responsibility and its failure to meet the ‘negligible damage’ criterion.**
- If the open-cut stand-off from the BBRPU is retained as at least 100 m, highwalling will extend under parts of the BBRPU for approximately 200 m – if the DRE is responsible for devising and monitoring the ‘negligible damage’ criterion, the Society will be far from optimistic about the outcome – **an interesting question, which has yet to be answered, is why avoid the Aboriginal rock-art cave if ‘negligible damage’ can be guaranteed?**
- **Destruction of TGWCU vegetation** – DPEAR p18 records that whereas the CCP involved “...removal of almost 800 ha of high quality remnant native woodland representing around 11% of the entire Ben Bullen State Forest. By contrast, the current modifications would remove 150 ha of vegetation, all of which is immediately adjacent to existing areas of open cut mining.” **BMCS sees this as an over simplification which needs correcting in order to appreciate the true picture!**

In a previous submission (Table 1 Section 3.2.1)¹⁵, BMCS pointed out that, whereas the CCP original proposal would have open cut about 950 ha of vegetation, its ‘preferred project’ reduced this to 762 ha and in the ‘final contracted project’ it became 665 ha; this was the case at the time the Director-General’s Assessment Report was written. The C-Mods directly involve destruction of 150 ha of native forest and woodland, but assuming that the **existing open cut approvals will not go ahead should the**

¹² 300 m is selected on the basis that DPE seems intent on allowing open-cut mining up to 100 m from the BBRPU. It is also selected because: the PAC (for the CCP) and BMCS have consistently advocated a 300+ m stand-off from the BBRPU; it may reduce the likelihood of highwall mining beneath the BBRPU; and it is the favoured extent of a BBRPU habitat buffer suggested by OEH.

¹³ This was pointed out in *BMCS Comments on ‘Coalpac’s Response to Submissions’ in Hansen Bailey Reports, June 2014, dated July 7*, as separately submitted to the PAC, and also in a submission to the DPE in <https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf>

¹⁴ This requires clarification – for example, could highwall mining pass more than 20 m below the cave and comply with the condition?

¹⁵ <https://majorprojects.affinitylive.com/public/57b2a69db2013d28b7c2a2d047bcfe07/BMCS%20Submission.pdf>

current proposal be refused, the effective saving of native forest and woodland is (150 + 514) = 664 ha, which is equivalent to the damage to habitat by the final contracted project. This conveys a far better idea of the cumulative consequence of approving the C-Mods in terms of the destruction of native forest and woodland.

DPEAR pp23-24 attempt to detract from the visual impact by indicating that the open-cut area (150 ha) is adjacent to existing mining operations, such that the landscape and visual values have already been impacted and will not be significantly changed by the C-Mods. **BMCS sees this as totally outrageous, but Coalpac would happily cite the statement if the C-Mods are approved and it becomes time to propose the next ‘extension’! This is the recipe for incremental destruction of the whole BBPLS.**

- **Compromising the BBPLS** – fragmenting the TGWCU inevitably creates holes in the integrity of the BBPLS, as elegantly conveyed in the quotation at the end of Section 3.1 above. Likewise, highwalling beneath the BBRPU will inevitably cause damage to the structural integrity of pagodas and cliff-lines; it must also adversely impact the groundwater regime¹⁶.

Parts of two out of three units comprising the BBPLS are impacted¹⁷. The encompassing parts of the BBPLS must therefore be compromised, as made clear in the quotation at the end of Section 3.1 above. This was the guiding principle on which the Director-General’s Assessment Report rejected the CCP. It should be the over-riding reason for the PAC to reject the C-Mods.

3.3 Deficient investigations

Concerns over the quality of some investigations have been mentioned in many submissions by *inter alia* BMCS, the Colong Foundation, Lithgow Environment Group (LEG), the Colo Committee and, in relation to economics, The Australia Institute. The DPE is largely aware of these concerns but has seemingly discounted them in reaching its recommendation.

In summary, the main ones are:

- Investigations of flora, fauna and vegetation communities.
 - LEG documented the failure to show the full distribution of the *Clandella geebung* in the northern part of the Cullen Valley site. – rather ludicrously, in DPEAR p13, Coalpac claims that the mine design avoided areas where threatened species occur – the fact is that it didn’t! Now, having had the deficiency pointed out, Cumberland Ecology (CuE) has decided that it doesn’t matter by stating in Appendix E p9¹⁸: “*The small number of plants that will be disturbed if the Modifications are approved will not make a significant impact upon the known local population.*” How incredibly expedient!
 - LEG similarly emphasised the disregard of ROTAP species and listed others with a high probability of being in the region – none had received serious consideration by CuE despite the long history of investigations – when this was pointed out, CuE finally assessed them and concluded that (footnote 18 pp11-22) the species was not found and/or the Modifications will not have any significant impacts, direct or indirect, on any of the species. A very different opinion was presented by Dr Steve Douglas¹⁹. BMCS remains convinced that CuE has dismissed the range of possibilities in a far too cursory fashion.

¹⁶ Highwall extraction involves an open cut with a highwall mining face – this alone is sufficient to influence the hydrologic regime, but between the web and barrier pillars are closely spaced parallel holes of rectangular cross-section extending up to 300 m into the coal seams. Once the coal is removed, the holes are classical drainage channels which bleed the groundwater, affect the watertable, and potentially affect vegetation and dependent ecosystems.

¹⁷ This is fact! Debate is about the ‘significance’ of the impact in a reductionist context. The DPE believes that impacts can be ‘managed’ through operational conditions, be subject to formulaic biodiversity offset, and/or of less significance to factors including the vested interests of Coalpac, Lithgow Council and EnergyAustralia

¹⁸https://majorprojects.affinitylive.com/public/eb9eac2343417a2acca27c57021d6135/140616%20Coalpac%20Mods%20ORTS_final%20compiled.pdf

¹⁹See Appendix D in

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

- In relation to critically endangered ecological communities/endangered ecological communities, there remains uncertainty. This is emphasised in the BMCS response to Coalpac’s Response to Submissions Section 4.2.1 dot-points 2-5²⁰. CuE makes an incorrect statement about the distribution of *Box Gum Woodland*, makes comment about matters outside its area of expertise, and fails to recognise the potential presence of the *Tablelands Snow Gum*, *Black Sallee*, *Candlebark* and *Ribbon Gum Grassy Woodland EEC*.
- Structural integrity of pagodas and cliff-lines has been extensively discussed and pronounced upon by a series of consultants in relation to blasting and highwall mining; most of the work was done in relation to the CCP, but it has also been applied in the context of the C-Mods. The main argument relating to highwall mining focuses on the designed-in Factor of Safety (FoS) effectively precluding mining-induced subsidence, even though the original 20 mm of potential subsidence now seems to have been reborn as ‘negligible damage’. But the consultants pay little heed to directional deviations of the highwall-mining machine as a function of natural variations in rock-mass properties; nor is significant thought given to the naturally-developed instabilities of the pagodas and cliff-lines that might be triggered by small amounts of subsidence. **Detailed geotechnical mapping before and subsequent to the highwalling must be mandatory.**
- Acid mine drainage and water – concerns about the impacts of acid mine drainage have been raised on several occasions by the Colo Committee (Haydn Washington) and LEG. BMCS sees little that actually deals with this matter.

In relation to discharges of water, these are to be in accordance with the site’s EPL. As the EPA (currently under review) has been responsible for a range of inadequately specified licences (in terms of omissions and/or environmentally detrimental limits) in the Western Coalfield (e.g., Clarence Colliery’s EPL), BMCS has little confidence in the site’s EPL.

- Rehabilitation claims and deficiencies – these will be dealt with in Section 3.4 below.
- The investigations into aboriginal heritage failed to correctly identify at least two significant occurrences of cave art in the BBPLS. The sites are potentially impacted by open-cut blasting and highwall mining activities. BMCS was forced to employ an independent consultant (Michael Jackson), after which OEH carried out an assessment. This resolved the authenticity of the particular cave-art site in dispute, but it raises the question of whether other sites may have been missed by the consultant (AECOM) or considered ‘insufficiently significant’ to even report them?
- Doubts have been raised in relation to the investigation of Air Quality by NSW Health, Doctors for the Environment and Dr Richard Stiles. They have also been raised in respect of the methodology employed in economic claims reflecting cost-benefit analysis. These will not be pursued here, but are likely to be developed in submissions to the Public meeting.
- The matter of cumulative impacts has barely been addressed, despite the CCP PAC Review, OEH and many special interest groups raising the issue. Coalpac argues that anything which happened in the past is not its responsibility to the extent that the conditions are effectively ‘background’; Coalpac conversely argues that it cannot be held responsible for anything where the available information is insufficiently comprehensive. **BMCS rejects this! Were such reasoning to be accepted, the whole issue of cumulative impacts is made redundant.**

3.4 Rehabilitation claims and deficiencies

BMCS stands by its view that rehabilitation is a cosmetic veneer, and emphasises the impossibility of rehabilitating geological structure and the hydrologic regime when one is dealing with an open-cut mine. BMCS also emphasises that it takes many tens of years to establish a decent canopy, understory and soil profile, and much longer still to produce old growth forest. And when that time is up, few will remember what was sacrificed for a spoonful of coal.

²⁰ BMCS Comments on ‘Coalpac’s Response to Submissions’ in Hansen Bailey Reports, June 2014, dated July 7, as separately submitted to the PAC

DPEAR p2 notes that “...there are still significant areas where rehabilitation is yet to occur...6 final voids – 3 at the Invincible Colliery and 3 at the Cullen Valley Mine...There is currently insufficient overburden material on the site to properly backfill these voids and to create a suitable final landform that integrates with the surrounding landscape.”

DPEAR p58 emphasises that: “...if the modifications do not proceed, it is possible that the existing voids on the site would never be filled and they would become a permanent feature of the landscape.” DPE believes that it would be better to accept the limited short term impacts of further mining in order to achieve a better final landform, than would be obtained if Coalpac were to do the rehabilitation now.

BMCS finds this most strange because according to Coalpac p76²¹:

“...the rehabilitation of the existing mining voids is possible, and provided for... however, it should be noted that this would not provide the best final landform and rehabilitation outcome for the area in the long term.”

“In accordance with regulatory requirements, Coalpac maintain a substantial bond in place with the NSW Government until final rehabilitation is completed to the satisfaction of DRE. DRE review the level of bond required on an annual basis.”

A valid interpretation of the various quotations would seem to be that DPE has no confidence in the amount of the bond (reviewed annually by DRE) being adequate to cover the currently needed rehabilitation. Why is this so?

Additional questions requiring answers are:

- As final rehabilitation has to be completed to the satisfaction of DRE, what ‘current plan’ exists should the C-Mods be refused?
- Has DRE assessed the merits of the ‘best final outcome’ versus the ‘current plan if the C-Mods are rejected’ – or has Coalpac’s analysis been accepted at face value?
- Has DRE or any government department checked whether, having used material to backfill the existing voids, there will be sufficient material to fill the newly created voids? Or will this be a rolling problem?
- As Coalpac entered voluntary administration and is now subject to a Deed of Company Arrangement, what understandings exist between Coalpac and EnergyAustralia and has government make any commitments regarding coal supply to EnergyAustralia at the time of, or subsequent to, purchase of the power stations?

BMCS believes that Coalpac is using the rehabilitation argument to promote an outcome best suited to its and EnergyAustralia’s short-term economic interests. Yet factoring in the limitations of rehabilitation, the need for some 18° slopes in the ‘best final outcome’ and the environmental damage caused by the C-Mods (if approved), it surely makes sense to preserve the unique BBPLS free from further endangerment? After all, as noted on DPEAR p58:

“Ultimately, the key issue associated with the modifications relates to allowing further open cut mining in an area of significant conservation value, and close to internationally significant pagoda formations.”

The issue is well stated; shame about the DPE’s recommendation!

3.5 Role of government and the political imperative

- DPEAR p3 notes that community groups have argued that the Ben Bullen State Forest should be protected as part of the Gardens of Stone Stage II National Park²² proposal. It is also acknowledged that OEH has advised the Department that the Ben Bullen State Forest has significant conservation value, and is a suitable candidate for future reservation, but that there is no formal proposal by the NSW Government to gazette the Area. This is indeed true, but the DPE knows that there is intense opposition in government

²¹https://majorprojects.affinitylive.com/public/eb9eac2343417a2acca27c57021d6135/140616%20Coalpac%20Mods%20RTS_final%20compiled.pdf

²² In clarification, the Stage 2 proposal is predominantly for State Conservation Areas and minor National Park extensions; BBSF is recognised as the next part of the proposal following on from reservation of the Mugii Murum-ban SCA.

from Treasury and the DRE, and that OEH (due to government's aim to make parks more commercially viable) has substantial internal problems over allocation of funds and human resources and lack of a face in cabinet.

Despite this, OEH has recently reasserted the importance of the BBSF as being of very high priority for biodiversity conservation²³. **It is not without amusement that this Technical Report has been released at a time when biodiversity offsets in an area (Gulf Mountain), some 20 km northwest of the location of the C-Mods within BBSF, are being touted as a basis for the C-Mods trashing the unique BBPLS within the BBSF.**

- DPEAR p24 notes that its conditionally recommended approval of the C-Mods “...*should not be seen as paving the way for a series of incremental increases to the open cut footprint of either of these mines. In its assessment of the merits of the Coalpac Consolidation Project, the Department made it clear that it considers large-scale open cut mining to be incompatible with the significant conservation values of the broader area.*” BMCS welcomes such a statement but notes that the DRE is actively supporting such an incremental process, presumably on the basis that no tonne of coal should be left unexploited. It is surely time to recognise that international coal prices are falling (as with iron ore prices) such that better quality coal from local underground mines will render the cheap poor quality open-cut product less attractive!

BMCS also notes that regardless of what DPE says about no incremental expansion of Coalpac's assault on the original CCP, the DPE can do nothing to prevent a company from applying. Then, perhaps due to personnel changes and/or to modifications in regulations covering the assessment process (see below), the death of a region by a thousand cuts gradually succeeds.

- Reading between the lines, there is little doubt the DPE is ‘sandwiched between a rock and a hard place’, as different parts of government push for short term exploitation and royalties to boost Treasury's coffers, while others see better long-term outcomes through improving ‘ecotourism’ based around the National Parks, the World Heritage Area, and the biodiversity of the Blue Mountains western escarpment.

Thus, in DPEAR p14 it is noted that amendments to the Mining SEPP “...*introduced a clear statutory requirement that the consent authority must consider the significance of the resource, both to the State and the region where it is located, as part of its decision-making process.*” Nevertheless, to maintain a vestige of balance, it also states: “*While the amendment made clear that the significance of the resource is an important factor in the decision-making process, it is not the only factor, and environmental, social and economic impacts continue to be significant considerations.*” But unfortunately from an environmental viewpoint, the DPE noted that whereas the Mining SEPP does not strictly apply to modifications, it was decided to include the significance of the coal resource in the assessment.

From the Society's perspective, the traditional imbalance would seem to be moving further in the wrong direction!

- A similar story of weighting things in favour of the mining companies is apparent in relation to biodiversity offsets being considered in the context of the OEH's draft *NSW Biodiversity Offset Policy*.

DPEAR p43 recognises that whereas the rehabilitated landscape would not replace the values that would be lost as a result of mining, the draft policy recognises that mine site rehabilitation can achieve a positive biodiversity outcome in the long term. OEH therefore seeks to provide appropriate incentives for mining companies to rehabilitate mines sites for conservation.

BMCS has made substantial submissions regarding the shift in the draft policy to favour the miners' interests. It particularly feels that rehabilitation of mine sites should be (and is) mandatory and set against appropriately large bonds. Complying with this is part of being allowed to exploit the State's resources, so being allowed to claim this a part of an offsets policy is totally irrational.

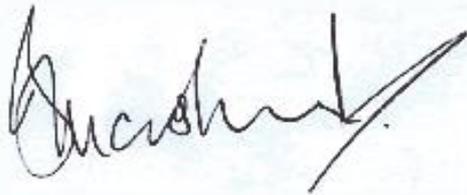
²³ Office of Environment and Heritage, May 2014, Capertee Subregional Assessment – Identifying priority areas for biodiversity conservation and investment in the Capertee subregion and Newnes Plateau – Technical Report 2014/0622. Office of Environment and Heritage, Department of Planning and Environment, Sydney

4. Conclusions

The Society believes that approval of the C-Mods proposal (the son of CCP) will be the end of the unique Ben Bullen Pagoda Land System (BBPLS) as more applications for extensions will follow, and each will be easier to approve because the BBPLS will have progressively lost its integrity.

Should this happen, it will compromise the environmental values of the Cullen Bullen region of the BBSF and detract from the longer term potential of the region's tourism industry. In addition, it will be a testimony to the short-term exploit-all mentality which pervades the mining industry at large and, in NSW, is particularly exemplified by the open-cut coal industry.

The Society sincerely hopes that the PAC will be prepared to look beyond the glossy predictions of cost-benefit analysis and employment statistics, particularly if the few jobs which are created vanish after a few years. The Cullen Bullen will become a ghost town because those who moved there for its lifestyle will have long gone, having been driven out or bought out in the interests of a declining coal-fired power industry.

A handwritten signature in black ink, appearing to read 'Brian Marshall', is centered on a light blue background. The signature is fluid and cursive, with a prominent diagonal stroke at the end.

*Dr Brian Marshall,
For the Management Committee.*

