



Blue Mountains Conservation Society Inc
ABN 38 686 119 087

PO Box 29 Wentworth Falls, NSW, 2782

Phone: (02) 4757 1872

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

COALPAC MODIFICATIONS: CULLEN VALLEY MODIFICATION 2 AND INVINCIBLE MODIFICATION 4

Introduction

1. The Coalpac Modifications (Cullen Valley Modification 2 and Invincible Modification 4) would destroy a significant amount of the internationally significant Ben Bullen Pagoda Land System by increasing to open-cut and high-wall mining at the two separate mine operations.
2. Blue Mountains Conservation Society (BMCS) has submitted seven submissions (including one to the current Planning Assessment Commission (PAC)) and collaborated on a further number of submission in response to the Coalpac Modifications proposals. This submission, therefore, focuses on a number of key issues dealt with in the Department of Planning & Secretary's Assessment Report:
 - a. Impacts of the modifications;
 - b. Proposed controls to manage those impacts;
 - c. The benefit of the proposed rehabilitation;
 - d. Why approving these modifications will not end mining at these two mines.

Conservation values: Unique pagoda land system of Ben Bullen state Forests should be protected

Background

3. The modifications will destroy and impact on the area recognised by the Department of Planning and Environment (DPE) and the 2012 PAC Review as having a unique landscape (termed the Ben Bullen Pagoda Land System (BBPLS)) and significant levels of biodiversity. The pagodas are considered to be internationally significant geological features some 250 million years old and worthy of total protection. [PAC Review Report, 2012 (PAC RR)]
4. In relation to the earlier Coalpac Consolidation project, the 2012 review PAC recommended that the pagodas and associated escarpments be considered natural features of special significance and that they be fully protected from any

mine-induced impacts+ The Ben Bullen State Forest contains the õ . Pagoda land systemqõ the landscape in its totality is unique and needs to be considered this way. [PAC RR at pp.iii and 73-4]

5. DPE stated that %õ the (Consolidated) project site us properly characterised as a pagoda landform complex+. %õ this landform comprises 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 land form complex as a whole.+
6. The DPE concluded that %õ from a regional , national and international land use planning perspective, the highest and best use of the site should be for conservation purposes+[*DPE Director General's Environmental Assessment Report, Coalpac Consolidation Project, 2013* at p. 5)
7. DPE also recognised %õ the inherent incompatibility of open cut mining with preserving the internationally significant conservations value of the site+ [*DPE Director General's Environmental Assessment Report, Coalpac Consolidation Project, 2013* (DPE DG Report) at p. 5)
8. As part of Ben Bullen State Forest (BBSF), these areas have been judge worthy of reservation under National Parks and Wildlife Act by Office of Environment and Heritage (OEH) as part of the Gardens of Stone Stage 2.
9. These issues have been discussed in more detail in the Society's submissions to the Department of Planning and Environment regarding the two current Coalpac modifications and also its submissions on the Coalpac Consolidation Project, including the paper titled *The case for rejecting the Coalpac Consolidation Project proposal and securing a reservation outcome*, April 2013 from BMCS, Colong Foundation and Lithgow Environment Group.

Current Proposal

10. The proposed modifications are located within the previous Coalpac Consolidation Project which was recommended against by the PAC RR, after extensive investigation and evaluation in 2012, and soundly rejected by DPE in 2013.
11. These modifications will destroy and threaten woodland which the 2012 review by PAC in 2012 and DPE assessment in 2013 recommended of sufficient importance to reject the earlier Coalpac Consolidation Project. [PAC RR p. 76]
12. The DPE Assessment Report on the current modifications has changed its approach from taking into account the whole unique land system (the Ben Bullen Pagoda Land System) to considering only certain parts of it. Using this approach DPE is now recommending for mining.

Impact of the proposed extensions from two modifications

The Impacts - How big are these modifications?

13. The modifications are not insignificant. They are not %relatively minor+[*Coalpac Modifications Secretary's Assessment Report*, 2014 (DPE SR), p.13] At Invincible they will increase the open cut area by 58% and the high wall area by 154%. At Cullen Valley they will increase the open cut by 17% and the highway area by 116%.

Mine	Approved open cut area	Area Requested via modification	% increase	Approved high wall mining	Area requested in Mod 4 or Mod 2	% increase
Invincible	152 ha	88.7 ha	58%	56 ha	86 ha	154%
Cullen Valley	362	62 ha	17%	68 ha	79 ha	116%

Coalpac's Environmental Assessment for both modifications 2014 pp. 22-28.

14. This will impact on the destruction of BBSF and enlarge the stark visual impact of bare open cut mining voids adjacent to the significant and unique pagoda land system of BBSF. These incursions will significantly increase the impacts of the approved mines because of their size, shape, location and the lack of strong and realistic controls.
15. At Cullen Valley mine these modifications will extend the current open cut mining far deeper into the BBSF.
16. At Invincible the impacts of that will cause more fragmentation of the integrity of BBSF and lead to edge impacts. This is for several reasons:
- there will be three separate open cut extensions and partly bounded by eight sections of high wall mining undermining the adjoining surface;
 - All of this will push the existing workings the western side into BBSF;
 - it has a relatively long perimeter to area just as was criticised in PAC RR; and
 - the proposed pipeline potentially sections off another area of BBSF adjacent to existing mining
17. BMCS *Pictorial record of Native Forest, Pagodas and Rehabilitation May 2014* for both Modification areas shows examples of threats to the pagoda land system (This was submitted as part of BMCS submission to DPE of May 2014)

The Impacts - Buffer Zones

18. The PAC RR recommended 300 metre buffer zone to protect the pagoda land system including the pagoda rock formations, cliffs but also the vegetation used as a fauna corridor and habitat of the animals.
19. However, DPE has moved from its previous recognition of the pagoda land system and accepted Coalpac's argument that it is only some of the elements (pagodas and

cliff lines) or significant rock formations that need protection from blasting and mining.

20. DPE's recommendation that the buffer be reduced to 100 metres, allows Coalpac to mine in all the open cut area it selected in its application, whereas the 300 metre buffer would have reduce the open . cut area.) DPE has really watered down this control which the PAC RR found was so important just two years ago.
21. Even public roads get a default buffer from blasting of 500 metres [Condition 11, schedule 3].

DPE Proposed Conditions

22. In recommending approval, DPE partly relies on its %strict+conditions to control adverse impacts. However, these conditions are not all sufficiently strict to achieve the outcomes DPE states. DPE's language is notably cautious in the conclusions on p.57. It largely relies on Coalpac's proposals.
23. To manage blasting impacts, DPE is relying on:
 - a. no open-cut mining within 100 metre buffer (not 300 metres PAC RR recommended) from mapped geodiversity features [condition 9, schedule 2],
 - b. having Coalpac ensuring %negligible impacts on pagodas, cliff lines and escarpments surrounding the open cut mining operations ð + [Cond 10 in Schedule 2],
 - c. under Operating Conditions, implementing %best management practice to ð protect pagodas, cliff lines and escarpments surrounding the open cut mining operations ð +[condition 10, schedule 3] and
 - d. preparing and implementing a Blast Management Plan which will describe how the blasting criteria and operating conditions will be met. [condition 12 schedule 3]
24. The Blast Management Plan is to be prepared to the satisfaction of the DPE. . However, it does not need to be completed and approved by Secretary of DPE before blasting starts. The Secretary, DPE has discretion on this point. [Invincible Draft Conditions, schedule3, condition12]
25. A risk-based approach %adjusting the buffer to match the size and significance of the rock features+is just that - inherently risky.
26. Where there are no clear simple requirements to follow like a standard set back, the regulator relies on operator judgement to get it right. But there can and will be human errors and damage to pagoda land system cliffs which cannot be remediated. In the circumstances of allowing open-cut mining right up to what is %an area of significant conservation value+[DPE's description in DPE SR, at p. 58) and underneath through high wall mining, it is NOT an appropriate approach. Errors can't be remediated. It is not sufficiently precautionary to ensure protection.
27. Subsidence from high-wall mining is managed by one condition. %It has to be long term safe and stable+. This is not a useable or realistic standard to rely on. Judging whether something is %long term safe and stable+can only be reliably assessed in the long term, as is assessing whether any %measurable subsidence+ has occurred.

28. Unlike the proposed open cut mining operations, Department of Resources and Energy (DRE) is the agency which has to be satisfied that the proponent has meet these conditions.
29. And unlike the blasting conditions, there are no reporting or monitoring requirements in relation to subsidence!.
30. ~~The~~ Department is therefore satisfied that the risk of any damage to these features as a result of highwall mining would be negligible+. [DPE SR at p.23] However, the previous PAC concluded that there was no certainty about highwall mining and that it should not be carried out under areas of significant geodiversity, which are shown on the OEH mapping. As well, ~~the~~ OEH remains concerned that subsidence impacts caused by highwall mining could irretrievably damage these features+. [OEH's letter regarding Coalpac's Response to Submission (dated 30 Jun 2014)]
31. There is no definition to what a ~~significant~~ rock formation . is it just ~~big~~? Who decides out on site? [DPE SR p.58]
32. DPE seems to consider making Coalpac responsible for ensuring an acceptable outcome is achieved is a good point, but surely they were always responsible [DPE SR, at p.22]
33. Ultimately, if Coalpac or Energy Australia get their blasting and mining operations wrong, there are no penalties or sanctions that are going to be any realistic deterrent.

The “Benefit” of Rehabilitation

34. Rehabilitation is a critical area for DPE as rehabilitation is one of the two benefits that outbalance the degree of environmental protection (damage) DPE is proposing. *“Overall, the department is satisfied that the proposal strikes an appropriate balance between environmental protection and realising the economic and rehabilitation benefits that would flow to the region and the State...”* [DPE SR at p.58]
35. BMCS has outlined in its submissions why it believes the economic arguments put forward are weak and unsubstantiated. Few jobs would be created and the argument that savings from cheap coal would keep retail electricity prices down show no understanding of how the national electricity markets or private companies work.
36. In relation to rehabilitation, DPE has accepted the spurious and illogical argument that Coalpac needs to mine more to rehabilitate what has already been destroyed by open cut mining and would be destroyed by these modifications. It is an irrational conclusion.
37. It is also an argument that could be used again rather than stopping mining and making good. If you accept it is better to mine more then you can approve further proposals in the hope of achieving a ~~better~~ outcome which never gets done.
38. However, rehabilitation is largely a cosmetic veneer over mullock (overburden and rejects) of different landform and over time some vegetation cover. It does not and cannot reproduce the land system and interdependent animals and plants that have

been destroyed by open cut mining, and subsidence. BMCS believes that this does not balance the environmental damage done to get this poor quality, cheap coal out of the ground.

39. However, DPE's balanced recommendation is relying on this being successful. No one will know if it has been for many years. The many abandoned or derelict mines sites in NSW and around Australia show that many mining companies do not follow through on their responsibilities for rehabilitating their mines.

40. The two modifications should be rejected outright for the rehabilitation benefits cannot be relied on for following reasons:

a. Coalpac has a poor history of rehabilitation:

- i. there are six big holes (final voids);
- ii. The consent for Invincible mine ends in just over a year (December 2016) and yet despite claiming that it had a rehabilitation plan and had posted a bond, there are three voids to be filled. The work on the agreed rehabilitation (whatever it was) on this site should be going full steam as it nears the end of its consent;
- iii. Of the land currently to be rehabilitated Coalpac, only 28% has been done at the two sites combined (194 ha out of 706 ha). (Secretary's report at p.43) This is not a good record of achievement in rehabilitation.
- iv. Examples of the poor level of rehabilitation are included in *Pictorial record of Native Forest, Pagodas and Rehabilitation May 2014*
- v. Coalpac claim that they do not have enough overburden to rehabilitate. However, there is overburden on site.
- vi. If it really cannot be used, it must have been foreseen and Coalpac should be being held to its agreed rehabilitation plan. Mining is an extractive industry and so there will always be less volume at the end.
- vii. The small percentage of rehabilitation that has been done does not replace the conservation quality of what was taken out by mining.
- viii. Further, these two modifications would add another 150 ha to be rehabilitated . nearly as much as they have managed to complete in 12 years.
- ix. What they claim they will do will required a much more intensive effort on their part and much more than they have been able to achieve. *How can DPE or the public have confidence that Coalpac will do things differently?*

b. The regulator has not held Coalpac to its existing plans and commitments:

- i. Why has the regulator (DRE) not been discussing this lack of progress with Coalpac as it neared the end of its consent at Invincible Colliery?
- ii. There are stockpiles of overburden material on site and piles along bund walls. If this material was for some reason deficient, why wasn't DRE asking Coalpac how it was going to meet its rehabilitation commitments for Invincible in particular?

- iii. The proposed Rehabilitation Plans for both mines, should these modification be approved, will be prepared and implemented to the satisfaction of DRE. This is the same department which has written to DPE to say Coalpac to bring forward a further proposal after these modifications (*DTIRIS Letter dated 20.5.2014*)
 - iv. *How can DPE or the public have confidence that the regulator here (DRE) will hold Coalpac to these new plans?*
 - v. The conditions of consent which DPE relies on to implement the rehabilitation (rather than refuse it, as it did last time) contain lax time limits as to when this rehabilitation plan, which is going to deliver so much, has to even be completed. The condition says that it must be submitted to DRE for approval prior to recommencing mining operations unless DRE agrees otherwise. This is unlike DPE's Model Conditions for open cut mining which at least says a rehabilitation plan has to be approved within six months of the consent.
- c. The issue of whether there would be enough material to fill the voids (and to manage subsurface heating to Cullen valley) has not been independently been confirmed to DPE, but only by DRE. DRE has no concerns with the feasibility of Coalpac's rehabilitation and final landform plans. [*DPE SR at p.44*]
 - d. Coalpac is not willing to enter into a voluntary conservation agreement under the *National Parks and Wildlife Act* for the rehabilitation areas. This is the preferred position in the Model Conditions.
 - e. The rehabilitation of the final voids is presented as a benefit of these modifications and one that will offset the limited short term impacts of more mining. [*DPE SR at p.58*] In fact, open-cut mining is the most destructive form of mining and not a limited short term impact. Previous approvals had their rehabilitation plans. Coalpac should be held to them
41. The 2012 PAC Review found that rehabilitation after open cut mining in NSW was unproven (PACC RR at p.101). it cannot reproduce the existing land or soil profile; and it takes a long time to determine whether it has been successful. The land the current modifications want to mine was part of Coalpac's previous mining proposal. The PAC RR 2012 looked into the rehabilitation issues extensively and concluded at recommendation 54, Given the considerable uncertainties concerning the likelihood of rehabilitation on this project area being capable of delivering a satisfactory biodiversity outcome, rehabilitation not be given credence as a mitigation strategy in the assessment. [Rec 54 at page 101] These conclusions still hold today for the modifications.
42. The modifications should be refused because the so called benefit of bigger and better rehabilitation is unproven and uncertain and will permanently destroy the value of these parts of BBSF. The ugliness of open cut mining will not attract people to the area.

43. No consideration has been given of what would happen to the rehabilitation if one of both of these modifications were refused
44. The rehabilitation will never restore the same land system that was there and which contributes to the whole Gardens of Stone (GOS) Stage 2 area in Ben Bullen State Forest that will attract visitors. GOS2 will contribute to Lithgow area economy if it is not destroyed.
45. Even DPE is only ~~generally~~ generally satisfied with the rehabilitation proposed. (at p.44)
46. In summary, Coalpac have a rehabilitation plan and a bond. ~~The~~ rehabilitation of the existing mining voids is possible and provided for ~~Coalpac~~ Coalpac maintain a substantial bond in place with the NSW government until the final rehabilitation is completed to the satisfaction of DPE ~~Coalpac's Response to Submissions~~ [Coalpac's Response to Submissions at p. 76] They should be held to that and the modifications refused

If these modifications are approved, more applications for mining at Cullen Valley and Invincible Mines are likely to follow, for the following reasons:

47. DPE ~~concludes~~ concludes in relation to rehabilitation that ~~the~~ the modifications would enable an orderly cessation of mining within the location of the existing open cut mining areas+ [DPE SR att p.45]. However, BMCS believes that Coalpac or its successor, Energy Australia, will not stop with these modifications. Destructive open-cut mining will continue and the current rehabilitation plans that DPE relies on to justify more environmental destruction in Ben Bullen State Forest will not be delivered.
48. DTIRIS has encouraged Coalpac to develop ~~an~~ an expanded project to continue production after this time+(of current Modifications) [DTIRIS letter of letter of 20/5/14]. This is part of realising the ~~significance~~ significance of the resource
49. DPE says that that the current modifications should not be seen ~~as~~ as paving the way for a series of incremental increases to the open cut footprint ~~as~~ [DPE SR at p.24] and ~~large~~ large scale open cut mining is incompatible with the significant values ~~as~~ + p.24. However, DPE cannot stop a proponent from applying for more development..
50. DPE has also been seen to have changed its mind on the relative importance of BBSF pagoda land system compared to 2012 application. This in itself encourages an applicant
51. The Cullen Valley Mine currently has development consent that goes until 2025 so the owners will want to mine it for the next eleven years, not just to 2020.
52. We have already seen what Coalpac or its successors really want to do with these two mines. It is no secret. It was in the 2012 Consolidation Project. A large scale joining up of the two collieries which is only constrained by the existence of the Castlereagh Highway and, to a lesser extent, by Cullen Bullen village. The modifications are the first stage.
53. Energy Australia, the new owner of Coalpac if the modifications are approved, have indicated they want to ~~maximise~~ Maximise the economic value from the regional coal resource+[Energy Australia ~~letter~~ letter at p.2] Energy Australia, a foreign owned company, will want to deliver profits to its overseas owners and shareholders.

54. Energy Australia is also a much larger company than Coalpac and a larger presence in electricity industry. It is vertically integrated into the coal powered electricity production in NSW and other states. Their assets include coal mining, coal fired generation, wholesale and retail electricity markets. It is, therefore, likely to be a more influential company in achieving what they want in the future.
55. For all these reasons, the PAC needs to seriously consider the real likelihood that this rehabilitation plan will not be implemented and there will be more applications for mining on these two sites.

Other condition deficiencies

56. There are no requirements to provide monitoring data relating to breaches of conditions including incidents it is only summary reports. This is more important when using risk based approaches to blasting as are recommended.
57. There is no requirement to report on incidents. This should be included and data relating to any incident should be made publicly available.
58. There are only two independent environmental audits within the next six years. [condition E10]
59. There is only sketchy information regarding the pipeline and how it will operate. There are no construction or operating conditions.
60. There is no information about how or where blending of coal happens on site.

CONCLUSION

BMCS believes that the ~~benefits~~ referred to by DPE in its report do not outweigh the the weaknesses in the economic and rehabilitation proposals and the recognised strength of the conservation importance of the Ben Bullen Pagoda Land System. These ~~benefits~~ do not overcome ~~the~~ inherent incompatibility of open cut mining with the conservation value of the area which DPE recognised in 2013.

These modifications will significantly damage areas that less than two years ago were assessed as worthy of total protection from open cut mining. These should be refused and Coalpac should be required to carry out the rehabilitation it was required to do for its current operations. This is particularly urgent for the Invincible Mine where the consent will end next year.

Madi Maclean

For the Management Committee

