



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

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Referrals Gateway
Department of the Environment,
GPO Box 787
Canberra ACT 2601

By email: epbc.referrals@environment.gov.au

**Cullen Valley Mine – 106 Remnant, Cullen Bullen NSW
Referral 2015/7412**

1. Summary statements

Coalpac and two associated companies became subject to liquidation on 17 November, 2014¹. The liquidator and secured creditors have presumably endorsed Coalpac's current proposal [Cullen Valley Mine – 106 Remnant (CVMR)]², but who now owns the title to ML1557, may become the beneficial owner of Coalpac's mines, and is financially backing the CVMR; and how confident can anyone be that the commitments made in the CVMR will be adhered to?

Responses in the Referral Documents³ such as in Sections 1.9, 1.12, 1.13, 2.2, 2.7, 3.3(j) are at best misleading, while Section 5.1 and parts of 5.3 are incorrect.

The Society opposes this ploy of Coalpac (under liquidation) in which the company, its principal creditors, and the liquidator attempt to circumvent the very clear findings and concerns of the NSW Department of Planning & Infrastructure (DPI) and the Planning Assessment Commission (PAC)⁴. In reaching its conclusions regarding Coalpac's Cullen Valley and Invincible Modifications, the PAC particularly noted (p21) that the proposal would adversely impact the pagoda land complex (i.e., the Ben Bullen Pagoda Land System - BBPLS), and the justification and need for the proposal did not outweigh the environmental costs and impacts. The current proposal immediately abuts the Cullen Valley Modification, impacts the lowermost unit of the BBPLS and involves an obsolescent Development Consent (DA-200-5-2003).

¹ <https://insolvencynotices ASIC gov au/browsesearch-notices/notice-details/Coalpac-Pty-Ltd-in-Liquidation-003558914/6eb2f1c3-3224-4c51-8f26-b9a845c90ced>

² See Figs. 4 and 5 of Attachment A in the Referral documents at: http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=7412

³ http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=7412

⁴ Rejection of the Coalpac Consolidation Project (NSW PAC, CCP Review, Main Report 14 December 2012; NSW DPI, Director-General's CCP Assessment Report and Addenda, 2013); rejection of the Coalpac Modifications Proposal [NSW PAC, Determination Report Invincible Colliery (07_0127 MOD 4) and Cullen Valley Mine (200-5-2003 MOD 2) Expansion Modifications, 17 October 2014].

Apart from the above, the current proposal (CVMR) should be deemed a Controlled Action because of its impacts on three of the items protected under Part 3 of the EPBC Act, as set down on p1 of the Referral Document⁵:

- listed threatened species and communities (Sections 18 & 18A);
- listed migratory species (Sections 20 and 20A); and,
- impact on water resources (Sections 24D and 24E).

These will receive further consideration in later sections of this submission.

2. Liquidation aspects

The Referral Documents are dated 22/12/14 and were posted on the DoE website for public exhibition and comment on 08/01/15. The company's status changed from Voluntary Administration to Liquidation on 17/11/14. It seems most strange that a company under liquidation should be able to prepare and sign Referral Documents, when all assets are under the control of the liquidator.

The Society has concerns about the legality of the CVMR to the extent that any relationships/agreements reached between Coalpac, creditors and the liquidator are unknown. It leads to the types of question raised in Section 1 paragraph 1(above). It again raises the possibilities that: Coalpac may no longer be the beneficial owner of ML1557; any net monies raised from the sale of coal (presumably to EnergyAustralia) may be consumed by payments to the liquidator and creditors; and intentions to rehabilitate damage may not be adequately funded.

Reference to the ASIC website [Document Nos 7E6607780 (17/12/2014) and 7E6579146 (08/12/2014)]⁶ suggests that the company has no assets and has creditor debts exceeding \$110 million. The principal creditors would seem to be Macquarie Bank (>\$33 million), ANZ (>\$27 million) and EnergyAustralia (>\$24 million). If the CVMR is approved, where will the money come from to fund the mining? How much money is held by DTIRIS-Mineral Resources⁷ by way of a bond to cover previous operations? What provision exists to ensure that any previous workings are rehabilitated? What provision exists to ensure that 'voids' associated with the proposed CVMR are properly rehabilitated?

It is noted that neither David Robertson, who signed the Referral Documents in his capacity as Director of Cumberland Ecology (the organisation responsible for much of the information in Sections 2.3 and 3 of the Referral Documents), nor Cumberland Ecology itself is in the list of creditors.

Because of the uncertainty associated with the liquidation and the capacity of the company to fund the CVMR, the proposal should be rejected and the payment returned. Alternatively, the application for a decision by DoE should be held *sine die* until satisfactory information is provided and the liquidation proceedings are fully completed.

3. Deficient/misleading Referral Documents

A list of sections is provided in Section 1 paragraph 2 (above). Each will be briefly outlined to show the level of inadequacy.

(a) Referral Documents Sections 1.9 and 2.2

The response to whether or not an alternative to the proposed action (the CVMR) was considered is 'no', and that 'no feasible alternatives are available'. This is misleading to the extent that two proposals have been comprehensively rejected by government based on unacceptable environmental impacts (Section 1 paragraph 3, above). This must surely have made Coalpac recognise that abandoning coal extraction in this part of the BBSF was and is a feasible alternative! The Society believes that in the face of previous rejections, Coalpac

⁵ http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=referral_detail&proposal_id=7412

⁶ https://connectonline.asic.gov.au/RegistrySearch/faces/landing/SearchRegisters.jspx?_adf.ctrl-state=12zketvylw_4

⁷ It is noted that DTIRIS is a minor creditor for an amount <\$10,000; one hopes that this is not in any way linked to the bond for rehabilitating all previous voids!

should have presented comprehensive information on why it is essential to destroy 6.26 ha of BBSF and vulnerable plant species in order to extract about 250,000 tonnes of poor quality, high ash coal!

(b) Referral Documents Sections 1.12, 1.13 and 2.7

Sections 1.12 and 1.13 respectively ask whether or not the CVMR is a component of a larger action, or related to other actions or proposals in the region; Coalpac responded ‘no’ to both and affirmed this in Section 2.7. What is now within the CVMR proposal was encompassed by the now-rejected Coalpac Consolidation Project (CCP) and associated with the also-rejected Coalpac Modifications proposal (C-Mods); this should have been mentioned because the rejected proposals demonstrate the extent of the company’s ambitions.

There is also little doubt that, through the practice of ‘Modifications & Extensions’, the CVMR will become part of a progressively more substantial operation under whichever company becomes the beneficial owner of the Cullen Valley mine and leases following liquidation. The Society strongly emphasises Section 1.2 of the submission regarding the CVMR by the Lithgow Environment Group (LEG)⁸. LEG provides details of where this practice has happened with the Invincible Mine, makes clear the expectation of the Division of Resources & Energy (DRE) in relation to the C-Mods proposal becoming a much expanded project over time, and the Notice of Modification to DA-200-5-2003 for Cullen Valley Mine (released on 5 August 2014) that extends mining operations until December-end 2025.

All this uncertainty paints a picture of the manipulation of ‘planning’ procedures. A company can apply for a small project citing little (claimed!) environmental impact; but once this is approved, seek a progression of modifications/extensions, each of which has a negligible (claimed!) environmental impact. The ultimate consequence is a much larger operation with a substantial disproportionately large impact.

In relation to the CVMR, one must ask how such a minor operation (both in area and available tonnage) can be economically sustainable without having plans for incremental expansion and thereby becoming increasingly unsustainable due to the enlarged environmental impact.

(c) Referral Documents Section 3.3(j)

This section requires a description of any other key features of the environment affected by, or in proximity to the proposed action. The Referral Documents mention the BBSF and its proximity to National Parks and the Greater Blue Mountains World Heritage Area, but offer nothing more!

No reference is made to the longstanding Gardens of Stone Stage 2 Proposal (GoS2)⁹ despite:

- the successful reservation of the Airly-Genowlan part of GoS2 as the Mugii Murum-ban State Conservation Area (SCA);
- the recognition by OEH that the BBSF deserves reservation as an SCA (see the quote in the next dot-point) and is likely to be the next part of GoS2 to be reserved; and,
- the PAC’s comprehensive evaluation of the merits of the BBPLS in relation to the C-Mods – to quote from Section 7.3 of the PAC’s report¹⁰:

“In its previous assessment of the Coalpac consolidation Project, the Department (DPI) found that...the highest and best use of the site should be for conservation purposes. The Commission notes that the Ben Bullen State Forest has been identified as having significant conservation value and the Department’s assessment acknowledges that future reservation of the area as part of...Gardens of Stone Stage II...has been proposed...for many years.”

“...The OEH’s most recent submission also notes that much of the vegetation that would be removed by the proposed mining is on the Permian sediments (which) are highly cleared and poorly reserved. The Commission agrees with the Department’s (DPI) initial assessment that the...best use of the area is for

⁸ Submission by Lithgow Environment Group re Cullen Valley Mine – 106 Remnant, Cullen Bullen NSW – Referral 2015/7412, 16 January 2015.

⁹ For information: <http://www.bluemountains.org.au/gos2.shtml> and <http://www.colongwilderness.org.au/campaigns/the-gardens-of-stone/about-gardens-of-stone>

¹⁰ NSW PAC, Determination Report Invincible Colliery (07_0127 MOD 4) and Cullen Valley Mine (200-5-2003 MOD 2) Expansion Modifications, 17 October 2014

conservation purposes and considers that this proposed mining is incompatible with the significant conservation values of the site.”

The CVMR abuts the Cullen Valley portion of the C-Mods, is part of the BBPLS and is on the Permian based land unit. **The PAC’s finding is equally applicable to the CVMR.**

4. The Ben Bullen Pagoda Land System (BBPLS)

4.1 The unique BBPLS

The environmental importance of the unique BBPLS was first presented in a submission to the DPI in relation to the CCP; the document remains available on the Planning website¹¹. The uniqueness of the BBPLS was a major factor in the rejection of the CCP by the PAC Review Report¹² and by the DPI Director-General’s Assessment¹³. The CCP was then withdrawn rather than face a further rejection by a PAC.

Coalpac next returned with a revised proposal (the C-Mods) which purported to inflict no significant damage on the pagoda landscape. However, Coalpac effectively disregarded the fact that the lowermost unit of the BBPLS extended outward to cover the poorly-reserved undulating country on Permian-derived soils. The consequence was that the C-Mods were rejected by the PAC [refer to footnote 10; also see Sections 1 para 3 and 3(c) dot-point 3 para 2].

The referred CVMR is an attempt to gain a foothold in the BBSF. The Referral seeks the Federal Government’s acceptance that a small area approved under a now-obsolete Development Consent (DA-200-5-2003) is not a Controlled Action. If this eventuates, the proposal will amount to the thin end of the wedge as Modifications & Extensions will be used to ensure a process of incremental growth [see Section 3(b) paras 2-4].

The Society strongly emphasises that, although a small area, the CVMR again impacts the BBPLS and for that reason alone should be made a Controlled Action.

4.2 The Development Consent

Development Consent (DA-200-5-2003) was granted on 19 August 2004. At that time, nothing was known about the uniqueness of the BBPLS, the GoS2 proposal had not been formally launched, and the Assessment of that proposal by the then Department of Environment and Conservation (DEC) was not completed until August 2006¹⁴. The significance of the latter Assessment is that the potential reservation of BBSF and Wolgan State Forest as SCAs was recognised as a medium term objective.

In view of statements about the environmental importance of the BBSF and the uniqueness of the BBPLS in the reports¹⁵ resulting from the CCP PAC Review, the Director-General’s CCP Assessment, and the PAC C-Mods Determination, the Society believes that the Development Consent is obsolete. It must be reviewed in advance of it being utilised by Coalpac or, in reality, the beneficial owner following liquidation. **The objective of the review should be to examine whether open-cut mining of 250,000 tonnes of poor quality high-ash coal justifies the destruction of 6.26 ha of BBSF on Permian substrate.**

5. Back-filling and Rehabilitation

Section 2.1 of the Referral Document states that: “*The proposed action will enable the back-filling and rehabilitation of a residual final void resulting from existing mining operations to create a stable, free-draining final landform.*”

¹¹https://majorprojects.affinitylive.com/public/66d22a9c94ef429ffcc0304b88c2ce6e/Coalpac%20Consolidation%20Project_Special%20Interest%20Submission%20on%20PAC%20Merit%20Review_Env%20NGOs.pdf

¹² NSW PAC, CCP Review, Main Report 14 December 2012.

¹³ NSW DPI, Director-General’s CCP Assessment Report and Addenda, 2013.

¹⁴ Gardens of Stone Stage Two Proposal – State Conservation Areas and Park Extensions, DEC, August 2006.

¹⁵ NSW PAC, CCP Review, Main Report 14 December 2012; NSW DPI, Director-General’s CCP Assessment Report and Addenda, 2013; NSW PAC, Determination Report Invincible Colliery (07_0127 MOD 4) and Cullen Valley Mine (200-5-2003 MOD 2) Expansion Modifications, 17 October 2014.

It is unclear from the Referral Documents whether the '*final void resulting from existing mining operations*' means the potential void from the proposed mining, or the void due to previous mining immediately east of the proposal (see Referral Documents, Attachment A, Fig. 6). **Regardless, the purpose of the Referral is to see whether mining the 250,000 tonnes of coal constitutes a Controlled Action.** Backfilling and rehabilitation are incidental to this purpose to the extent that the original DA-200-5-2003 required funds to be set aside for backfilling and rehabilitation and, according to responses made by Coalpac in relation to the C-Mods proposal, such funds are held by government. In fact, the PAC C-Mods Determination Report (p20)¹⁶ was highly critical of Coalpac and the DRE's plans to clear new areas to rehabilitate mined areas.

The Society notes that the need for more mining to adequately fund rehabilitation is speciously self-perpetuating. It should have no bearing on the treatment of the Referral Document.

6. Matters of national Environmental Significance (MNES)

Extensive parts of the Referral Document [Sections 3.1(d) and 3.1(e) pp12-20] are devoted to MNES matters. This is unsurprising as Cumberland Ecology completed the Referral Documents and has reproduced much of the information from the C-Mods proposal.

6.1 Listed threatened species and communities

Listed migratory species

The Referral Document states that (p15):

"The proposed action will not remove any Endangered Ecological Community (EEC) or habitat for EEC's."

"Box Gum Woodland (listed under the EPBC Act as a CEEC) occurs nearby but does not occur in the Proposed Mining Area and will not be impacted."

Likewise on p18 the Referral Document states:

"It is not considered likely that any Vulnerable species would be significantly impacted by the Proposed Action."

And in relation to migratory species, the Referral Document p20 states:

"The Proposed Action is unlikely to have a significant impact on the listed migratory species...as large areas of suitable habitat will be retained both within adjacent vegetation and within the proposed offsets, thus the population of these species is considered likely to remain viable in the locality and is not considered to be significantly impacted by the proposal."

That much of this material has been transferred almost indiscriminately from the C-Mods proposal is shown by its largely verbatim nature, together with references to proposed offsets. As far as the Society is aware, the issue of offsets has no bearing on this Referral and is irrelevant in the context of the original Development Consent.

It follows that the Society's comments made on these species and communities in the original referral for the C-Mods have bearing here. Reference is therefore made to the following:

BMCS Submission re Coalpac Invincible Colliery and Cullen Valley Mine Modifications, Reference Number: 2014/7147, dated 13 March 2014.

Pertinent sections in this submission are Sections 3, 4.1 and 4.3.

The only species which will be directly addressed in relation to the current Referral is *Persoonia marginata*; this now follows.

6.2 *Persoonia marginata*

This is a Vulnerable species which is impacted by the CVMR.

¹⁶ NSW PAC, Determination Report Invincible Colliery (07_0127 MOD 4) and Cullen Valley Mine (200-5-2003 MOD 2) Expansion Modifications, 17 October 2014.

Figures 1 and 3 in the Species Management Plan for *P. marginata* show the known distribution of the species. It is useful to compare these with Figures 1 and 2 from the LEG submission¹⁷; the LEG data are a little more detailed. Nevertheless, **it is exceedingly obvious that the existing mine workings have interrupted the continuity of *P. marginata* in terms of the E-W linkage at the northern end of the open cut and the N-S linkage between the northern population and the southern concentration in ML1488.**

Coalpac now proposes to destroy a remnant population of *P. marginata* by open-cutting 6 ha of valuable habitat. The net result of the past and proposed open-cut mining in the 106 area (LEG Fig. 3) is a reduced and disrupted population. The inevitable question is whether the small tonnage of low-grade coal justifies the proposed destruction of *P. marginata* plants and habitat? Not making the CVMR proposal a Controlled Action for this species would be unconscionable.

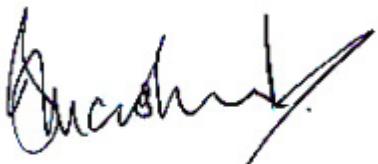
The CVMR proposal [Section 3.1(d)] states that the impact is of little significance. Yet this is contradicted by an 'ambitious' plan to relocate the affected specimens, despite there being little evidence that relocation of *P. marginata* can be satisfactorily achieved. **A vulnerable species should not be subject to such experimentation.**

Debate exists regarding estimates of the number of *P. marginata* plants existing in the area and the percentage of these that would need to be relocated if Coalpac persists with its destructive proposal. The substantial differences are documented in the LEG submission pp6-9¹⁸. The Society has complete faith in LEG's meticulously collected data, but it is conversely aware that the PAC CCP Review (p94)¹⁹ raised concerns about the quality of the data presented by Coalpac's consultant (Cumberland Ecology) and saw need for a totally independent study.

The simple matter is that the disparity between the sets of data from LEG and Coalpac must be resolved through independent investigations. Ideally, the investigation should be done in conjunction with a representative from LEG and Coalpac's consultant to minimise the opportunities for misunderstandings. **It should be abundantly clear that, without the necessary field evaluation, the DoE cannot provide the Minister with sensible advice. It surely means that the only current option is to make the CVMR a Controlled Action.**

6.3 Water resources/Acid Mine Drainage (AMD).

The reason for and issues associated with AMD have been extensively developed in both the LEG and Colong submissions²⁰. The Society has not examined this issue in any detail but has seen some of the evidence and endorses the concerns of the other two groups.



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

¹⁷ Submission by Lithgow Environment Group re Cullen Valley Mine – 106 Remnant, Cullen Bullen NSW – Referral 2015/7412, 16 January 2015.

¹⁸ See footnote 17 above.

¹⁹ NSW PAC, CCP Review, Main Report 14 December 2012.

²⁰ Leg submission – see footnote 17 above. Submission by The Colong Foundation re Cullen Valley Mine – 106 Remnant, Cullen Bullen NSW – Referral 2015/7412, 9 January 2015.