



1 September 2019

NSW Department of Planning, Industry and Environment
320 Pitt St, Sydney 2000
GPO Box 39, Sydney NSW 2001

RE: Dendrobium Mine Extension Project - Proposed extension to the Dendrobium Coal Mine

Application Number: SSD-8194
Assessment Type: State Significant Development
Development Type: Coal Mining
Local Government Areas: Wollongong City, Wollondilly Shire, Wingecarribee Shire
Exhibition Start: 25/07/2019
Exhibition End: 18/09/2019
Contact Planner: Jessie Evans

To Whom It May Concern,

The Illawarra Local Aboriginal Land Council would like to state our opposition to the proposed extension to the Dendrobium Coal Mine and in particular long wall mining across the entire escarpment and water catchment areas. This opposition reflects our position in relation to the Peabody's Metropolitan Mine, Wollongong Coal's Wongawilli and Russell Vale Collieries and South 32's operations at Appin and in this specific instance the Dendrobium Colliery.

While we recognise and appreciate the position and resolve that South 32 has provided in their application for this project to identify the economic advantage that the mine provides to the region. Our view is that they have fallen short in identifying the cultural, environmental and economic inheritance that the community will be responsible for following the completion of mining the finite coal resource that are present in this area.

We therefore believe that before any support or approval for this project can be provided through the planning process; the applicant, South 32, needs to provide further information as to how the following issues will be addressed for the long-term legacy of this region.

The issues are:

- Damage to Aboriginal Cultural Heritage objects above the area to be mined due to subsidence
- Damage to water ways above the mined area which will impact:
 - Aboriginal cultural heritage items
 - Drinking water reserves
 - Environmental biodiversity
- Economic transition away from mining and furthermore steel production in the region over the foreseeable future and life of the mine.

It is the view of the Illawarra Local Aboriginal Land Council that until these issues are addressed, this mine extension project cannot be approved. Furthermore, we argue that mining as it currently



stands in the Southern Coal fields needs to be assessed against these same questions. While we expect that the mine operators would view the economic transition of the region away from mining and steel making as not forming part of their responsibilities, it is our belief that they have an intrinsic responsibility to be part of this process, given the fact that mining is undertaken against a finite resource. Additionally, it is a resource that will cause fundamental desecration to Aboriginal cultural heritage objects without recognition or recompense for the local Aboriginal community who have been custodians of these areas for 10's of thousands of years.

Mining also clearly affects the environment, including flora, fauna and cultural heritage. Additionally, in the instance of the Southern Coal fields there is the added potential conflict that mining occurs under the water catchment that supplies drinking water for all of Greater Sydney, Illawarra and Shoalhaven. The loss of water out of this system places additional impacts environmentally, culturally and socially on the Aboriginal communities in relation to cultural heritage in Sydney's west with the raising of the Warragamba Dam wall and the Shoalhaven in relation to reallocated water flows. This Aboriginal cultural heritage assessment as it currently stands has not reflected the potential impact on these other areas and the associated Aboriginal communities. The application as a whole, in the view of the ILALC has not reflected the inherent impact on the wider communities in and around the Sydney Basin from the perspective of water and the social and community infrastructure relating to the current standard of liveability.

While this application is specific to the operation and extension of the Dendrobium Mine and the mining lease area that it specifically relates too, it is the view of ILALC that any assessment needs to be reflective of the overall community impact. The application has failed in our view to incorporate the impact of the current and future mine operation on the overall social, cultural and environmental landscape. Furthermore, there is limited understanding of what the real long term impact on the community will be from Longwall mining in the Southern Coal fields and the Dendrobium mine specifically. Therefore, it is impossible to determine what the net return to the State and the most populated area of Australia will be from this expansion application.

It is our view that the application fails to address how the mining operation addresses the "efficient use of coal resources" other than from a purely financial perspective and viewed through the operations of South 32. To fully consider if this is an "efficient use of coal reserves" consideration needs to not only reflect the direct and indirect employment and financial returns but also the social, cultural, environmental and liveability standards expected by the millions of people residing across, Greater Sydney, Illawarra and the Shoalhaven should the water catchment sustain a negative impact. The reports and the responses that South 32 have provided in relation to the potential management of risks to the Aboriginal heritage, environment and the water supply for the Illawarra and Greater Sydney region fall significantly short in detail should a significant or unmitigated event occur.

Furthermore, the Aboriginal Cultural Assessment has failed to incorporate the combined impact on the cultural landscape and the potential for environmental change. The potential impact to water flows and how this has considerable impact on the cultural heritage objects in the area and therefore the Aboriginal communities in the Illawarra, South West and Western Sydney as well as the Shoalhaven has not even been considered.



There are many shortfalls in relation to the allowance of mining in the Southern Coal fields and specifically under water catchment areas. The Illawarra Local Aboriginal Land Council believes further investigation and understanding of the absolute potential impact of this activity and the risks associated with the application have not been addressed in this application.

The monitoring process identified, as the main mitigation method, to the impacts of mining does not go far enough particularly as the impacts, after the damage has occurred, is most likely un-reversible. This is not a mitigation measure or appropriate risk management when the lives of residents in the Illawarra, Shoalhaven and Sydney Basin could be impacted by damage to the drinking water supplies.

The State needs to resolve to avoid detrimental impact as per State, Commonwealth and International legislated policy and reject this and any application for mining in this sensitive environmental and cultural area.

Regards

Paul Knight
Chief Executive Officer

Contents

Background	6
Aboriginal Heritage	6
Legislative Instruments – State	6
The National Parks and Wildlife Act 1974 (NPW Act)	6
The Heritage Act 1977(Heritage Act).....	7
The Environmental Planning and Assessment Act 1979.....	7
Legislative Instruments – Commonwealth	8
The Aboriginal and Torres Strait Islander Heritage Protection Act	8
ICOMOS Charter for the Conservation of Places of Cultural Significance - Burra Charter, 20138	
Legislative Instruments – International	9
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).....	9
• Article 2: Equality	9
• Article 11: Culture	9
• Article 12: Spiritual and religious traditions	9
• Article 19: Free, prior and informed consent	9
• Article 27: Independent process	9
• Article 28: Restitution	9
• Article 29: Environment	9
• Article 32: Resource development.....	9
• Article 40: Disputes	9
Concerns of Impact to Aboriginal Cultural Heritage	9
Report Failings	12
Conflicts with Burra charter	13
Article 3. Cautious approach.....	13
Article 7. Use	13
Article 8. Setting.....	14
Article 15. Change	14
Conflicts with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)	
.....	15
Article 2: Equality	15
Article 8: Cultural integrity.....	15
Article 11: Culture	15



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LAND COUNCIL**

Article 12: Spiritual and religious traditions	15
Article 25: Lands, waters and resources: distinctive relationship	15
Article 18: Decision-making.....	16
Article 19: Free, prior and informed consent	16
Article 27: Independent process	16
Article 40: Disputes	16
Article 28: Restitution	17
Article 29: Environment	17
Article 32: Resource development.....	17
Environmental Management	18
Environmental Assessment Issues defined by South 32.....	19
Methodology Shortfalls	19
Narrower Longwall - Doesn't take into consideration potential legacy costs	23

Background

Illawarra Coal Holdings Pty Ltd (Illawarra Coal) has developed what it is referring to as the Dendrobium Mine - Plan for the Future: Coal for Steelmaking (the Project) The Dendrobium Mine is an existing underground coal mine located in the Southern Coalfield of New South Wales (NSW), approximately 8 kilometres (km) west of Wollongong. The Project seeks to gain access to two new underground mining areas (Area 5 and Area 6) (referred to in the submission as the 'underground investigation areas'). Illawarra coal has indicated that extension of the underground mining operations would be supported by existing infrastructure and the development of additional surface infrastructure, and an extension to the approved surface operations. The proposed extensions to the underground extraction area are situated within Consolidated Coal Lease (CCL) 768.

Illawarra Coal is seeking development Consent for the Project under Division 4.7 of Part 4 of the NSW Environmental Planning and Assessment Act 1979 (EP&A Act) (State Significant Development). The Secretary's Environmental Assessment Requirements (SEARs) for State Significant Development were issued for the Project on 6 February 2017. Within the SEAR reference was made to Aboriginal heritage for the Project Environmental Impact Statement (EIS), the SEARs state the following:

The EIS must address the following specific issues:

- Heritage – including an assessment of the likely Aboriginal and historic heritage (cultural and archaeological) impacts of the development, having regard to OEH's requirements.
- The NSW Office of Environment and Heritage (OEH) requirements concerning Aboriginal heritage are as follows:
 - A comprehensive program of archaeological survey and Aboriginal community consultation is required so that the impact of the proposed expansion on Aboriginal cultural heritage can be properly assessed.
 - An Aboriginal Cultural Heritage Management Plan (ACHMP) should be prepared for the proposed Areas 5 and 6 expansion.

Aboriginal Heritage

Before we explore the issues relating specifically to our concerns relating to this project we believe that it is essential that we remind the Government of their obligations and commitments in relation to the protection of Aboriginal cultural heritage objects

Legislative Instruments – State

Aboriginal cultural heritage is protected under the following New South Wales legislation:

The National Parks and Wildlife Act 1974 (NPW Act)¹

The National Parks and Wildlife Act 1974 (NPW Act) is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. Part 6 provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm, which includes destroying, defacing or damaging an Aboriginal object or place, or moving an Aboriginal object from the land.

¹ <http://www.environment.nsw.gov.au/legislation/NationalParksAndWildlifeAct1974.htm>

The Heritage Act 1977 (Heritage Act).²

Items of Aboriginal cultural heritage value, including Post Contact sites, can also be protected by inclusion in the State Heritage Register under the Heritage Act 1977 (NSW).

The State Heritage Register is a listing of items (places, buildings, works, relics, moveable objects, precincts or land) of state heritage value. The Register was established to protect those items listed by requiring approval to carry out works on those items, and makes it illegal to:

- demolish a building or work
- “damage or despoil” a place, precinct or land, or any part thereof
- move, damage or destroy a relic or moveable object
- excavate any land for the purpose of exposing or moving a relic
- carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct
- alter a building, work, relic or moveable object
- display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct
- damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.

The Heritage Council is the approval body for heritage items listed on the State Heritage Register or subject to an interim heritage order made by that body. Minor works to State Heritage Register items may be exempt from the need for approval under standard exemptions published in the Gazette, and available here.

The Environmental Planning and Assessment Act 1979³

The Environmental Planning and Assessment Act 1979 requires that land use planning and development approval bodies such as local councils consider any environmental impacts, including potential Aboriginal heritage, economic and social impacts, before granting an approval

EXTRACTED FROM THE NSW PLANNING, INDUSTRY AND ENVIRONMENT WEBSITE

We protect, respect and conserve Aboriginal cultural heritage in NSW.

Aboriginal people have lived in Australia for over 60,000 years (Clarkson et al 2017). The Australian Aboriginal culture is the oldest living culture in the world. Aboriginal cultural heritage consists of places, traditions, beliefs, customs, values and objects that represent the living history of past Aboriginal generations and are of important cultural and heritage significance to Aboriginal people.

² <http://www.legislation.nsw.gov.au/#/view/act/1977/136>

³ <http://www.legislation.nsw.gov.au/#/view/act/1979/203>

Aboriginal cultural knowledge provides crucial links between the past and present and represents an essential part of the identities of Aboriginal people and all Australians.

Aboriginal cultural heritage includes tangible and intangible values, such as Song Lines, Dreaming stories and ceremonies passed from generation to generation, as well as physical objects and places. These important objects and places provide evidence of the diverse values, activities and knowledge of Aboriginal people who co-existed with the natural environment by living in harmony with the land they cherish and, which the Aboriginal communities now manage and protect for future generations.⁴

Legislative Instruments – Commonwealth

Aboriginal cultural heritage is protected under the following Commonwealth legislation:

The Aboriginal and Torres Strait Islander Heritage Protection Act

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) can protect areas and objects that are of particular significance to Aboriginal people. The ATSIHP Act allows the Environment Minister, on the application of an Aboriginal person or group of persons, to make a declaration to protect an area, object or class of objects from a threat of injury or desecration.⁵

Governments at both State and Commonwealth jurisdictions have developed significant legislation pertaining to the protection of Aboriginal cultural heritage. The legislative instruments also reflect Aboriginal views in that our heritage includes both tangible and intangible objects, such as stories, connection between sites and also the relationship between different resources for example axe grinding grooves do not exist in areas that do not also have a water supply. To damage, remove or concentrate on the tangible object in Aboriginal culture without reference and understanding of the intangible will always result in desecration and destruction of the cultural heritage of a region.

ICOMOS Charter for the Conservation of Places of Cultural Significance - Burra Charter, 2013⁶

The Burra Charter provides guidance for the conservation and management of places of cultural significance (cultural heritage places), and is based on the knowledge and experience of Australia ICOMOS members. We would specifically like to highlight and reference the following Articles without limiting or negating the relevance of the entire 34 articles included in the Burra Charter:

- Article 3. Cautious approach
- Article 7. Use
- Article 8. Setting
- Article 15. Change

⁴ <https://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage/protect-and-manage/about-aboriginal-cultural-heritage>

⁵

<http://www.comlaw.gov.au/comlaw/Legislation/ActCompilation1.nsf/0/55E0993527F830A3CA256FD5001F69E0?OpenDocument>

⁶ <https://australia.icomos.org/wp-content/uploads/The-Burra-Charter-2013-Adopted-31.10.2013.pdf>

Legislative Instruments – International⁷

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The UNDRIP, we contend, also should be considered within this assessment with specific consideration for at least 12 of the Articles contained within, as identified below.

- Article 2: Equality
- Article 8: Cultural integrity
- Article 11: Culture
- Article 12: Spiritual and religious traditions
- Article 18: Decision-making
- Article 19: Free, prior and informed consent
- Article 25: Lands, waters and resources: distinctive relationship
- Article 27: Independent process
- Article 28: Restitution
- Article 29: Environment
- Article 32: Resource development
- Article 40: Disputes

Concerns of Impact to Aboriginal Cultural Heritage

It is our concern that the impact of the Dendrobium mine expansion will impact directly tangible items in the region including rock shelters, art and axe grinding sites. The additional impact of this damage, is that it comprehensively damages the intangible aspects of our culture which includes the connection between sites and potentially the water flows that determined the locations of sites of occupation and therefore rock shelters and art. Therefore, the potential impact extends beyond the project area and impacts will occur to significant stories or songlines that form part of the identity of Aboriginal people from this land.

Desecration of these areas is akin to forced removal. It is The Government and in this case Mining interests, reinforcing the dislocation of Aboriginal people from their heritage, it is making a forced statement that our identity, values and humanity do not matter when it comes to the jobs and the mining interests of a multi-national company.

Given the obvious intent of legislation is to protect Aboriginal cultural heritage, it is our view that the financial windfall to the State in relation to royalties and other financial considerations over approximately 30 years that the project will operate does not represent value when the social and emotional dislocation of Aboriginal people and their connection to the land is included as a balancing item.

We note that South 32's only real statement in relation to Aboriginal cultural heritage and its protection in the application was to state:

⁷ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

The Project includes Aboriginal and historic heritage assessments, which identify suitable management and mitigation measures for potential direct and indirect impacts of the Project (Section 8 and Appendices F and G).

These management measures have been reflected in the words of the report:

A total of 58 Aboriginal heritage sites were identified within the Subject Area, including six newly recorded sites and 52 previously recorded sites.

The locations of eight sites identified on the Aboriginal Heritage Information Management System's (AHIMS) could not be confirmed during the assessment.

All 58 sites are located within the proposed Dendrobium Area 5 and Area 6 underground mining investigation areas, with one site located in close proximity to a proposed ventilation shaft investigation area.

No sites were identified within the proposed Dendrobium Pit Top carpark extension area.

The majority of sites (49 of 58) have low scientific significance. There were three sites of moderate significance and a further six of high significance.

The eight sites that were not relocated were attributed a low archaeological significance based on the information provided in their AHIMS site cards.

The Registered Aboriginal Parties (RAPs) have advised that all sites have cultural significance.

As an Aboriginal community we find that the process of assessment of our sites and their value being reflected in relation to their scientific classification as being completely inappropriate and offensive. This position fails the human test. Aboriginal people are not scientific experiments. Our heritage belongs to us. Our dislocation from our land, our country, our stories belongs to everyone and we need to take responsibility as a community for this. To place the tangible connection to Our Lands and Our Country in the realm of scientific understanding is another slap in the face and a devaluing of our human rights and our identity. It is time for Governments and Industry to understand and accept this, and not give it lip service and skirt the legislation that has been enacted to return the dignity and identity to Aboriginal communities. We find it offensive that these reports on Aboriginal cultural heritage are undertaken in this white paradigm of science and interpreted through the lens of white privilege that provides a token understanding of what real connection and belonging to Country is about.

The Illawarra Local Aboriginal Land Council would also like to emphasise that, our culture is a living culture and our heritage surrounds us every day. Science is not what we live for or aim to contribute too. We strongly believe that the wider community as well as archaeologists and anthropologists need to appreciate and resolve to support the recognition of Aboriginal cultural heritage as part of a living and continually evolving society and place an emphasis on highlighting and celebrating this heritage rather than recording whether it has scientific value.

We therefore recommend that you consider this Project submission by Illawarra Coal and the associated Aboriginal Heritage Report for what it is, the simple destruction and desecration of our heritage and not as to whether it has high, medium or low scientific value. All heritage has high importance to our community and we point out that this importance relates to the tangible and the intangible aspects, values, identity and connection between places, “The Cultural Landscape”, which is not scientific but a value belonging to Aboriginal people as humans. To deny this, is to again place Aboriginal people back in the category of flora and fauna that can be exploited by white colonial privilege.

The Illawarra Local Aboriginal Land Council would also like to draw to the attention of those concerned with the assessment of this project the current consent requirements for the Dendrobium mine include the following:

Aboriginal Heritage⁸

12. The Subsidence Management Plans prepared under condition 7 must include an Aboriginal Heritage Plan, which must include a:

- *description of known Aboriginal heritage sites;*
- *protocol for the ongoing consultation and involvement of the Aboriginal community in the conservation and management of Aboriginal heritage;*
- *description of the measures that would be implemented to protect Aboriginal sites generally,*
- *including measures that would be implemented to secure, analyse and record sites at risk of subsidence;*
- *description of the measures that would be implemented to protect Aboriginal site 52-2-1646, including:*
 - *a full recording and assessment of the site’s rock art;*
 - *a more detailed subsidence assessment for the site;*
 - *measures which seek to avoid any significant impact on the site and any necessary contingency plans to protect the site against collapse or substantial impact on its rock art; and*
 - *description of the measures that would be implemented if any new Aboriginal objects or skeletal remains are discovered during the development.*

While we recognise this attempt to address concerns relating to Aboriginal cultural heritage and its desecration it is obvious that the process makes several assumptions which include:

- all sites are known
- Aboriginal community members are involved in ongoing consultation and have the time and resources for this consultation
- Protection of Aboriginal sites are the mandated position

⁸ [https://www.south32.net/docs/default-source/illawarra-coal/dendrobium/development-consent/consolidated-dendrobium-consent-\(modification-7\)-april-2015.pdf?sfvrsn=a99db8f8_6](https://www.south32.net/docs/default-source/illawarra-coal/dendrobium/development-consent/consolidated-dendrobium-consent-(modification-7)-april-2015.pdf?sfvrsn=a99db8f8_6)

- A process of ongoing recording of sites is in place

Report Failings

These assumptions fail on some key measures which include:

Most importantly, that the approval is only reflected in the subsidence plan and therefore does not appropriately embrace complete avoidance of desecration or destruction to Aboriginal objects.

Without a comprehensive and highly resourced survey of the entire area, that not all sites will or are known. Therefore, any desecration cannot be fully reflected and recorded. More significantly without comprehensively understanding the number and locations of sites, as per the intent of the cultural heritage requirements, than how can you know what needs to be avoided.

The Aboriginal community is not resourced appropriately to be engaged in the ongoing consultation for the management of sites.

Up to this point, the Aboriginal community have only been engaged through a third party consultant group, with restrictions on what they are allowed to discuss or disseminate into the community in relation to any observed impacts. The reports compiled are written through a scientific values based lens and therefore not reflective of Aboriginal cultural values.

The process does not focus on absolute protection as per the intent of much of the legislation covering Aboriginal heritage items, instead focussing on simple recording of the impacts and if damage has occurred what might be done to mitigate the situation. This ignores the fact that any damage to sites, which are thousands of years old cannot be undone.

The entire process does not reflect the intangible and/or landscape attributes to Aboriginal heritage and by design highlights individual objects in isolation of the entire context from a social and cultural landscape perspective.

There is no consideration for the potential impacts of water flow changes and how this will manifestly change water catchment profile and possibly increase water loss and therefore impact water catchment and Aboriginal cultural sites outside of the jurisdiction of this application and the associated mining lease. The transfer of water between the water supply areas of the Shoalhaven, Illawarra and Sydney and the respective impact on Aboriginal cultural landscape also needs to be assessed.

The report did not appear to take hydrological surface water change into consideration when assessing the Aboriginal cultural heritage sites that may be impacted by the Longwall mining process. The potential for surface water runoff changes which may lead to sites that aren't directly impacted by the mining process being inundated by changed surface water flows or sediment from the changing landscape. These changes may see hydrological pressures on rock shelters shifting root structures from trees seeking water due to a change in surface profile creating significant damage to heritage object.

Conflicts with Burra charter

Additionally, the Aboriginal cultural heritage report fails to reflect many aspects of guiding documents such as the Burra Charter to which the NSW government is a signatory. We would contest that the impact which will be attributed to this project does not align with the cost that will be borne by the Aboriginal community in the potential loss of such a significant and highly protected area. It also doesn't identify the loss which will also impact the wider community and therefore assert that, it is not in keeping with what would be expected under the Burra Charter. In support of our assertion we can highlight at least 4 articles in this Charter that can be applied to this project. Specifically, we reference the following types of places of cultural significance including natural, Indigenous and historic places. We also highlight the charter makes reference to cultural values and is a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance, including owners, managers and custodians and therefore encourage further consideration of the following Articles in relation to this project and ask the proponent to address these matters as a matter of urgency before proceeding further.

Article 3. Cautious approach

3.1 Conservation is based on a respect for the existing fabric, use, associations and meanings. It requires a cautious approach of changing as much as necessary but as little as possible. Changes to a place should not distort the physical or other evidence it provides, nor be based on conjecture.

5.1 Conservation of a place should identify and take into consideration all aspects of cultural and natural significance without unwarranted emphasis on any one value at the expense of others.

It is our view that this report and the objectives of this project do not align to this Article and the stated objective of taking a cautious approach.

If this were in fact the case greater consultation and further investigation would be seen as an appropriate step. Additionally, the project would potentially need to be fully reconsidered, due to the potential destruction of such a large area and the relationship with surrounding Aboriginal cultural heritage sites beyond the project area.

Article 7. Use

7.1 Where the use of a place is of cultural significance it should be retained.

A place should have a compatible use. The policy **should identify a use or combination of uses or constraints on uses that retain the cultural significance of the place. New use of a place should involve minimal change** to significant fabric and use; should respect associations and meanings; and where appropriate should provide for continuation of activities and practices which contribute to the cultural significance of the place.

This project will result in permanent and unrepairable damage. Therefore, it should not proceed without further investigation to record, detail and enhance the ongoing connection of the local Aboriginal community back to Country. Additionally, The proponent should be seeking to further engage with the Aboriginal community to determine the most appropriate mechanisms for ensuring the cultural values and connections to the landscape are recognised and that any destruction of cultural sites and objects is absolutely limited.

Article 8. Setting

Conservation requires the retention of an appropriate setting. This includes retention of the visual and sensory setting, as well as the retention of spiritual and other cultural relationships that contribute to the cultural significance of the place.

New construction, demolition, intrusions or other changes which would adversely affect the setting or relationships are not appropriate.

Again, this development is not in keeping with this aspect of the Burra charter and can easily be seen to completely disregard this Article within the Charter. The known subsidence impacts alone do not align with the principles of this Article. Additionally, the Project has not thoroughly investigated the impacts relating to cultural relationships relating to landscapes and their cultural significance.

Article 15. Change

15.1 Change may be necessary to retain *cultural significance*, but is undesirable where it reduces cultural significance. **The amount of change to a place and its use should be guided by the cultural significance of the place and its appropriate interpretation.**

15.2 **Changes which reduce cultural significance should be reversible, and be reversed when circumstances permit.**

15.3 **Demolition of significant fabric of a place is generally not acceptable.** However, in some cases minor demolition may be appropriate as part of *conservation*. **Removed significant fabric should be reinstated when circumstances permit.**

15.4 **The contributions of all aspects of cultural significance of a place should be respected.** If a place includes *fabric, uses, associations or meanings* of different periods, or different aspects of cultural significance, emphasising or interpreting one period or aspect at the expense of another can only be justified when what is left out, removed or diminished is of slight cultural significance and that which is emphasised or interpreted is of much greater cultural significance.

The whole proposal and the recommendation of this report place any consequence or importance in relation to irreparable damage to Aboriginal heritage and the values relating to place well outside the intentions of the Burra Charter. We therefore assert that

this project and the recommended actions be reconsidered or at the very least further investigated with the traditional custodians of the land as they will wear the brunt of the desecration that will occur in the area.

Conflicts with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The ILALC asserts the project and coal mining in the Southern Coalfields is in direct contravention of at least 12 articles in the UNDRIP. We contend that the project has an obligation to address and be assessed against the following Articles within The Declaration:

Article 2: Equality Indigenous peoples are equal to all other peoples, and must be free from discrimination.

To undertake an Aboriginal Heritage study through lens of adding to the scientific understanding of Aboriginal people does not treat Aboriginal people as equal and therefore by the simple act of using this as the lens of evaluation is discriminatory. Additionally, the very premise of asserting mining interests have a greater importance than Aboriginal community interests is also discriminating against the rights and interests of Aboriginal heritage a situation which is more evident when assessed against other Articles within The Declaration.

Article 8: Cultural integrity Indigenous peoples shall be free from forced assimilation. Governments shall prevent:

- a) actions that take away their distinct cultures and identities**
- b) the taking of their land and resources**
- c) their removal from their land**
- d) any form of forced assimilation
- e) propaganda against them.

Article 11: Culture Indigenous peoples have the right to their cultural traditions and customs. This includes aspects of their culture such as sacred sites, designs, ceremonies, technologies and performances. Their cultural property shall be returned to them, if it was taken without their free, prior and informed consent.

Article 12: Spiritual and religious traditions Indigenous peoples have the right to their spiritual and religious traditions, customs and ceremonies. They have the right to their sacred sites, ceremonial objects and the remains of their ancestors. Governments shall assist Indigenous peoples to recover their ceremonial objects and the remains of their ancestors.

Article 25: Lands, waters and resources: distinctive relationship Indigenous peoples have the right to keep and strengthen their distinctive relationship with their lands, waters and other resources.

The ILALC asserts that the project and mining interests across the Illawarra Region is also in conflict with the Articles 11, 12 and 25. The project has the



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potential to permanently damage our cultural heritage, sacred sites and spiritual traditions and therefore identity. This situation cannot be avoided. We have already seen numerous cultural objects desecrated across the lease areas of all the Coal mines within the Southern Coalfields. Furthermore, the very act of mining effectively removes the right of Aboriginal people to access these significant cultural areas and this is further perpetuated by the additional designation as a “Special Area” as it forms part of the water catchment that supplies drinking water to the Sydney and Illawarra Regions.

The Aboriginal community has effectively been dislocated from our cultural lands and our cultural connection severed by Government policy in relation to mining and water catchment management. Although, we would like to highlight that locking people out of the catchment to protect the community is in keeping with Aboriginal values and that we view this as continuing our cultural connection to Country. Government needs to focus on developing a system through which the Aboriginal community can undertake monitoring of this cultural resource (water) and the sites and objects that it relates too.

Article 18: Decision-making Indigenous peoples have the right to participate in decisions that affect them. They can choose their own representatives and use their own decision-making procedures.

Article 19: Free, prior and informed consent Governments shall consult with Indigenous peoples in order to obtain their free, prior and informed consent before adopting laws and policies that may affect them.

Article 27: Independent process Governments shall establish a fair and independent process to recognise and decide the rights of Indigenous peoples relating to their lands, waters and resources. Indigenous peoples shall have the right to participate in this process.

Article 40: Disputes Indigenous peoples have the right to fair procedures for the resolution of disputes with States and other parties, and to effective remedies for infringements of their rights. These procedures must take account of Indigenous customs and traditions.

Mining as it currently stands, and any further extension of mining in the Illawarra Region, effectively ignores Articles 18, 19, 27 and 40 of UNDRIP.

We believe that it can easily be demonstrated that through this process that as Aboriginal people we are not afforded the same representation that is available to mining or development interests as the community has not been provided with the necessary resources to have unfettered and equal access to the necessary expertise to be able to represent our interests as to those available to others.

It may be argued that we are provided with a right to reply and this submission is a reflection of our empowerment in this respect, however this fails to recognise and compensate those involved to equivalent levels of what is available to the mining interests in this case. We would therefore contend that under Article 27 that Government has the responsibility to provide the Aboriginal community the

resources to ensure fair and equitable representation and the fact that there is an independent review process for this project does not adequately address this measure of having an independent process.

It is the view of ILALC that as the NSW Statutory Body with jurisdiction to represent all Aboriginal people within our region that we should be adequately resourced to be able to fully participate in this review process, by having appropriate levels of expert members of staff.

Article 28: Restitution Indigenous peoples have the right to the return of their land and resources when taken without their free, prior and informed consent. Where this is not possible, they shall receive fair compensation in the form of lands and resources, or money.

Article 29: Environment Indigenous peoples shall receive assistance in order to restore and protect the environment of their land and resources. Hazardous material shall not be stored or disposed of on the land of Indigenous peoples without their free, prior and informed consent. Governments shall take measures to assist Indigenous peoples whose health has been affected by such material.

Article 32: Resource development Indigenous peoples have the right to determine strategies for the development of their lands and resources. Governments shall consult in order to obtain the free, prior and informed consent of Indigenous peoples before giving approval to activities affecting their lands or resources, particularly the development of mineral, water and other resources. Just compensation must be paid for such activities, and measures taken to lessen their adverse impact.

There is no doubt that every instrument of Government that seeks to represent Aboriginal interest in relation to Culture, Community and Country aims to ensure that Aboriginal people are treated fairly and with dignity.

Our cultural and human rights are represented within decision making processes and Articles 28, 29 and 32 place an obligation on Governments to support our position and ability to assert our identity as the traditional custodians of this land.

Furthermore, it is evident that Governments recognise that if these rights and interests are impacted in some way that we should be justly compensated in the process.

The application for this extension to mining provides no recognition of this redress, from the proponent or indicates how they will work with Government on ensuring that the Aboriginal community that will be impacted is treated justly. This is major oversight and needs to be addressed with specific contribution from the Aboriginal community via the statutory body (ILALC) to ensure our strategies and interests are properly reflected. It is our view that the discussions need to include references to redress for the disconnection with our cultural heritage sites, assistance with economic growth to recognise that economic dislocation has occurred to Aboriginal people from our traditional economic trading models, to that within which we find ourselves today.

Government and mining interests have a responsibility to ensure we have mechanisms to develop into this new economy. Traditionally, our communities, had full employment and this came from looking after our lands and our communities. Our removal from our lands and our traditional economies, which still continues, and perpetrated by activities such as mining place an obligation under these Articles to assist with the redevelopment of our community into this new economy.

Environmental Management

The ILALC would also like to draw attention to concerns and what would appear to be short comings in the environmental assessment recommendations. However, we do recognise this not our strongest field and there are many others that may be better placed at this point in time to comment on this area of the report.

There are several specific environmental areas that we concluded were unsatisfactorily addressed within the submission. These areas related to:

- Biodiversity impacts
- Upland swamps
- Endangered Ecological Communities (flora and fauna)
- Water loss and changes to surface water flows
- Climate change and changing ecosystems

The ILALC would like to obtain a better understanding and more certainty that the concerns have been considered and avoidance measures identified. In instances where avoidance is not an option a thorough risk assessment undertaken that not only demonstrates that a sound mitigation option exists but the proponent is able to suitable rectify the damage to the environment.

Our emphasis on appropriate mitigation reflects the ambiguous response in the environmental assessment in relation to upland swamps. In the proponent's submission, when discussing remediation of upland swamps they state, "Subject to confirmation from key stakeholders that swamps undermined in Area 3 have been successfully remediated and is practicable, swamp remediation measures could be implemented for the Project." This statement raised significant concerns as it obviously hasn't been proven that they can manage damage to upland swamps and additionally that they could implement the measures on this Project which is fairly vague. Given the importance of these areas we believe there needs to be greater certainty that environmental management controls, that are going to be implemented, are sound and will either prevent or successfully restore damage to the environment caused by the Project.

This uncertainty and ambiguous resolve appeared to be a consistent theme across the environmental impact report provided by the proponent, with the only apparent offsetting position being an economic return back to the State.

Environmental Assessment Issues defined by South 32

Regulatory and public engagement by South32 for the Project (Section 5) has identified the following key assessment issues for the Project:

- Mine subsidence effects and associated potential impacts on: water supply yield and quality;
- water supply infrastructure;
- the interaction of groundwater and surface water resources;
- upland swamp drying and wetting cycles and associated plant species distribution; and
- riparian and aquatic habitats due to alterations to surface water flows.
- Potential impacts of direct land disturbance on biodiversity and heritage values.
- Potential impacts of the continuation of existing Dendrobium Mine surface facilities.
- Potential continuation and extension of the Dendrobium Mine's positive impacts on employment, regional expenditure and royalties.
- The importance of local metallurgical coal supplies to the operation and socio-economic benefits of the BlueScope Steelworks.

Key potential adverse impacts can be generally grouped into: impacts related to underground mining subsidence and associated impacts on the overlying physical environment; and impacts of the surface activities of the Dendrobium Mine that are not related to mine subsidence (noting that the Project maximises the use of the existing surface infrastructure of the Dendrobium Mine).

Methodology Shortfalls

South 32 admits that key potential benefits of the Project identified in engagement were largely socio-economic in nature. It is noted that potential adverse social impacts were not generally raised as a concern for the Project due to the large regional population and the proposed continuation/extension of the existing Dendrobium Mine workforce and operations.

The ILALC believes that South 32 have failed to fully consider the ongoing implications of Longwall mining in this sensitive ecosystem to the extent that they have not inferred the impact that the potential change to surface landform will have on vegetation. These changes include:

- Surface runoff into existing waterways being completely redirected or forming longer surface runs
- Greater chance of soil penetration rather than entry into the creeks from redirected surface profiles
- Compaction of root systems of established vegetation leading to die-back
- Lack of surface water because of drought conditions further impacted by increased ground water penetration through surface cracking
- Increased likelihood of bushfire due to drying vegetation through increased waters into the cracking caused by the Longwall subsidence.
- Increase water flow into historic mine workings which are traditionally closer to the surface than Longwall operations. These increased flows would not be recorded in terms of the impact to the new mine workings.
-

In stating the issues, we perceive in relation to water, we do note that The Dendrobium Mine Development Consent (DA 60-03-2001) requires that there is no greater than negligible reduction in

the quality or quantity of Cordeaux Dam and Avon Dam, and South32's comment that their operations at the Dendrobium Mine continue to comply with this requirement. Our comment would be what constitutes a negligible reduction and is this considered through the lens of drought conditions and remodeled or redefined.

What constitutes a negligible reduction and is this considered through the lens of drought conditions and remodelled or redefined as may be necessary to secure drinking water for the Sydney Basin, Illawarra and Shoalhaven.

It is critical to recognise that the water supplies over the mines across the Southern Coalfields supply drinking water to the Illawarra and Shoalhaven Regions with no other alternative supply. These same water supplies are back up for the water needs of the Greater Sydney Region. If these water supplies are reduced or damaged in anyway the impact will be directly on the populations of the Illawarra. The Illawarra has no backup, such as the desalination plant or alternate supply capacity which is available to Sydney

Furthermore, South32's indicates that through the mine planning processes, which set back Longwall panels from the reservoirs and major watercourses at the Dendrobium Mine, they have been successful to date with respect to protecting water supplies, and this would continue for the Project. This statement does not provide certainty and could be read to infer that they believe they have the solutions to water management, however there is no hard supporting or underlying knowledge that ensures that this result will continue into the future. This vagueness is potentially due to the fact that at any point in time it is possible for a long wall to destabilise a current geological fracture that leads to a draining of a dam. The question that this begs is, what is the ramification and remediation process, should the Longwall, for whatever reason, negatively impacts on the water supply. We are sure that South 32 would point to the water offset process, which has been noted to include environmental externality costs associated with predicted losses of surface water would be internalised by South32 by the proposed payment for the estimated take to Water NSW. This process however doesn't provide certainty to volume of drinking water available to the Sydney, Illawarra and Shoalhaven catchments in terms of their drinking water

"Dendrobium Mine, have been successful to date with respect to protecting water supplies, and this would continue for the Project".

This statement does not provide certainty and could be read to infer that they believe they have the solutions to water management, however there is no hard supporting or underlying knowledge that ensures that this result will continue into the future. This vagueness is potentially due to the fact that at any point in

time it is possible for a long wall to destabilise a current geological fracture that leads to a draining of a dam.

The ILALC would also like to highlight some concerns around the allocation of costs and the financial analysis of the project. We note that in the Table below which has been extracted from Appendix L that there has been no allocation of cost to several cost areas as the infer this will be absorbed as part of the normal operations of the mine through the use of existing impacts and remediation. We then see that they have highlighted specifically water, biodiversity impact and heritage into mitigation and management costs and therefore allocated these to operational expense lines according to the analysis. However, when we look at table 15 we see that the measure around these items is being assessed and resourced through a quantified method of analysis. This method falls short of allocating funds for the impact to cultural and environmental values and I am sure does not allocate funds for the worst case scenario in terms of water impact the complete impact on a dam or dams.

The ILALC has concerns that the environmental, social and cultural impact has not been assessed correctly. We believe the remediation strategies therefore do not cater for the potential impact to these areas and furthermore have not been determined through an appropriate risk management matrix that is fully costed back to the community. The risks relating to mining under the water catchment, the impact of Longwall mining to surface water flows and the resulting change to the landscape, combined with the impact on both tangible and intangible cultural heritage of not been included in this assessment and the financial modelling it therefore flawed. Additionally, it would appear that South 32 have not considered or incorporated costs associated with transitioning the region away from mining. We believe they have an obligation to do this.



**ILLAWARRA
LOCAL ABORIGINAL
LAND COUNCIL**

Table 1: CBA summary of the Project net benefits under central case assumptions (\$ million)

Benefits	NPV*	Costs	NPV*
Direct benefits		Direct costs	
1. Net producer surplus attributed to NSW	74.9		
2. Royalties, payroll tax and Council rates	272.1		
3. Company income tax apportioned to NSW	150.8		
Total direct benefits	497.8	Total direct costs	-
Indirect benefits		Indirect costs	
1. Net economic benefit to landholders	-	1. Air quality	8.0
2. Net economic benefit to NSW workers	365.8	2. Greenhouse gas emissions	0.1
3. Net economic benefit to NSW suppliers	217.6	3. Visual amenity	-
		4. Transport impact	-
		5. Net public infrastructure cost	-
		6. Surface water impact	-
		8. Residual value of land	-
		7. Biodiversity impact^^	-
		8. Noise impact	-
		9. Loss of surplus to other industries	-
		10. Water ^^	-
		11. Aboriginal cultural and Historical heritage ^^	-
		12. Subsidence^^	-
Total indirect benefits	583.4	Indirect Costs	102.4
Total Project economic benefit	1,081.2	Incremental Indirect Cost	8.1
NPV of Project - (\$m)	1,073.2		

Source: Cadence Economics estimated based on information from various sources. ^ Real 2018 Australian dollars. * NPV in 2018 Australian dollars based on a 7 per cent real discount rate. ^^ Incorporated into mitigation and management costs.

Table 15: Summary of indirect costs impacts (\$ million^)

	Assessment type	Cost*
Indirect costs		
Greenhouse gas emissions	Quantitative	0.1
Air quality impacts	Quantitative	8.0
Residual value of land	Quantitative	0.0
Transport/ traffic impacts	Quantitative	0.0
Visual amenity	Quantitative	0.0
Net public infrastructure costs	Quantitative	0.0
Loss of surplus to other industries	Quantitative	0.0
Mitigation and management cost		
Biodiversity impacts	Quantitative	^^
Water impact - including surface and ground water	Quantitative	^^
Ambient noise impacts	Quantitative	^^
Subsidence impacts	Quantitative	^^
Aboriginal cultural heritage and historical heritage	Quantitative	^^
Total mitigation and management costs		94.3
Indirect costs		8.1

Source: Cadence Economics estimated based on information provided from South32 and relevant environmental assessments for the Project.

^ Real 2018 Australian dollars. * NPV in 2018 Australian dollars based on a 7 per cent real discount rate.

^^ Confidential, included in the total internalised costs

Narrower Longwall - Doesn't take into consideration potential legacy costs

South 32 indicate they considered the net effect of adopting narrower panels for the Project and that the outcome would be a material reduction in the recovery of coal and an increase in the cost of mining, with associated reductions in economic benefits to NSW and increased production costs to South32. They reference the NSW Government position that efficient resource recovery is a consideration in the evaluation of mining projects.

They go on to state that narrower panels would result in significant adverse impacts to the economic viability of the Project and continued operations of the approved Dendrobium Mine. Economic benefits potentially forgone if the Project does not proceed amount to a net benefit of \$1,073 million in NPV terms to the State of NSW and \$431 million in NPV terms to the greater Wollongong Region (Appendix L). This includes an estimated \$272.1 million in royalties, payroll tax and council values in NPV terms.

Their own report suggests that narrower Longwalls will reduce the impact:

South32 has considered the option to adopt narrower Longwall panels for the Project (such as the 163 m wide panels adopted by Metropolitan Mine), in which case there would be some reduction in total vertical surface subsidence, and some corresponding reduction in predicted tilts and strains. There would also be some reduction in the height of connective fracturing and associated groundwater depressurisation above the Longwalls, which may reduce or negate the proportion of surface water flows from overlying streams reporting to deeper groundwater systems, and ultimately into the mine water management system.

It is the view of the ILALC that South 32 have again failed in their assessment. They have not factored in the reduced impact that a narrower Longwall would have on the landscape including the biodiversity, waterways and cultural heritage, through a further reduction to subsidence. Therefore their analysis doesn't reflect a legacy impact and the costs which at the end of the day would be borne by the community of NSW. Surely, from a risk mitigation perspective consideration needs to swayed in the favour of narrower Longwall panels, although ideally Longwall mining should not be approved in this area.

It is the view of the ILALC that the submission does not detail hard and well researched methods of remediation. Therefore, how can the community be assured that the impacts are able to be remediated. Remembered that once the works have been undertaken if there are flaws in the mining or remediation methodology the impact cannot be undone and the millions of years that formed the landscape will be lost forever. The remediation techniques that have been identified, which include filling of cracks, will not return ground surface levels back to the previous profile and therefore this will ultimately impact water flow and have the respective impact on vegetation. These changes to the landscape are likely to include creating new areas of water logged land in the lowest point of the subsidence caused by the Longwall in times of significant rainfall. If this is not a typical soil condition the

vegetation is likely to suffer from die back and the impacts to flora and fauna in these instances have not been considered in this report. Furthermore, the impact of Longwall mining and the associated subsidence has not been completely determined. The evidence of Longwall mining to date suggests subsidence levels of on average 60% of the Longwall height and while this may be the case so far, there has been no real long-term evaluation that this will remain the case. We recognise that Longwall mining has occurred in the Illawarra in some form since the mid 1960's however the techniques and processes which have increased efficiency of extraction continue to adapt, and we believe the challenge is knowing what the impact of these modern techniques will have particularly as the geology and landscape is impacted by changing climatic conditions.

Economic Legacy

As the peak body representing Aboriginal people across the Illawarra and Southern Highlands and incorporating the area under direct impact of the Dendrobium mine operations, we have concerns about the legacy that mining operations leave on the region. These concerns cover the environmental and cultural aspects of our communities as well as the economic legacy. It is our view that mining needs to be accountable for the not only rehabilitating mine sites but also transitioning the economy away from the finite life of the resources industry.

While we note the proponent has identified a general rehabilitation and mine closure strategy, which has been included below

7.2.1 General Rehabilitation and Mine Closure Criteria In the long-term, all sites would be rehabilitated to a safe, stable and sustainable landform of a similar character to surrounding areas. The general rehabilitation and mine closure goals for the Project would be to:

- *comply with relevant or applicable legislative requirements;*
- *protect public and employee health, safety and welfare;*
- *limit or mitigate adverse environmental effects;*
- *protect Indigenous values; and*
- *achieve sustainable land use as agreed with the applicable government regulator, and engagement with local communities.*

The objectives of mine subsidence remediation specific to rehabilitation would be to:

- *avoid or minimise impacts to significant environmental values;*
- *implement Trigger Action Response Plans to identify, assess and respond to impacts;*
- *carry out mitigation and remediation works in a manner that is reasonable and feasible, to minimise impacts on the environmental values of the area;*
- *achieve the defined performance measures; and*
- *monitor and report on the effectiveness of the mitigation and remediation works.*

Further investigations would be conducted closer to the end of the Project life to further inform mine closure planning and may include, but not be limited to:

- *geotechnical investigations;*
- *hazardous materials investigations;*
- *non-Aboriginal heritage studies;*
- *water flow and quality assessments;*
- *risk assessments;*
- *the preparation of detailed rehabilitation plans; and*
- *the preparation of detailed engineering design drawings.*

Mined lands would be considered suitable for relinquishment when the nominated standards and/or completion criteria have been met, or if the relevant Minister(s) otherwise accept(s) the rehabilitation status.

Anticipated mine lease relinquishment criteria are outlined in Section 7.8. Stakeholder consultation is recognised as an important component of the mine closure process. A stakeholder consultation strategy specific to closure would be developed and implemented at an appropriate time prior to Project closure, and would include consideration of the potential adverse socio-economic effects due to a reduction in employment (Sections 6.19 and 6.20).

These points are admirable however do not fully address what we believe to be the responsibility of a miner such as South 32. We would also like to reiterate that we believe the current analysis of environmental and heritage constraints on the Project have been understated and therefore the management criteria, which have been identified above, would be inadequate in managing the problems that may arise.

It is with these comments in mind that we assert that the mine should not proceed without addressing the shortfalls in the reports associated to these subject matters.

Following on from this we believe that it is imperative that should this Project proceed in any way that the operator maintains a significant focus on redress and management of Aboriginal cultural and environmental impacts. This focus should not seek to simply be a monitoring approach and should focus on actively rebuilding the environment over the life of the mine as well as enhancing the records associated with the occupation of Aboriginal people not only within the Project area but across the entire cultural landscape. It is our view that Government and all projects such as those relating to resources need to support Aboriginal people develop the capacity to once again be the custodians and leaders across our communities.

Additionally, we strongly assert that given the finite life of mining that all resource operations have a responsibility to realign the economies of regions away from these finite industries. As custodians of Land and Community we take a long term view of impacts and have our values firmly fixed on the opportunities and lives of those that will follow us. From

this position we recognise that the relatively short term economic cycles associated with industries such as resources requires a focus that ensures the ongoing impact to lives beyond the current generation should be factored into the economic and business modelling of these operators. There is no point in getting to the end of the road and then going sorry but that all there is and you're on your own and passing the baton to someone else, usually Government to provide for the dislocation that will be created in community. We all have a responsibility here and now to plan this future and we need to ensure the alignment of all the pieces of the puzzle.

South 32 needs to be absolutely investing in the development of the future economy now. They should be assisting develop the jobs and industries that will replace mining as part of any approval that is provided to this project. They may argue that royalties are paid to Government for this purpose, as traditional custodians we would counter this argument with a focus on the dual responsibility of a custodian, which is to look after your community now and into the future. The royalties that are paid are in our view for the current generation and the investment in other industries is for the future generation.

Recommendations

Avoid all mining in the region due to the impact on cultural heritage, environment, biodiversity and water supplies

Longwall mining should be avoided as there is no method of remediation for a complete change in landscape profile to that which has existed for 1000's of years and the flora and fauna communities that have established themselves during this time.

That the Government remove the classification of State Significant development from the resources industry as this creates a mentality that there is an absolute right to mine. This position needs to be redefined to ensure that miners understand that they do not have a right to mine and Governments do not have a mandate to allow mining.

South 32 and the Dendrobium operations need to demonstrate the full economic impact of mining which includes the social, cultural, economic, environmental and rehabilitation costs. These parameters should be defined by the wider community and not that of the mining or other associated industries. All approved mines in this current day and age have a responsibility to define, and fully cost, the transition of the local, state and national economy away from a reliance on mining as part of their obligations and financial viability.

South 32 and the Dendrobium operations should engage with the Aboriginal community through the Land Council to undertake the ongoing cultural heritage monitoring surveys and



restoration of vegetation and assist with further developing the expertise to enable the Aboriginal community to assert their position as custodians of “Country”

We would further call on the South 32 to invest in the establishment of a native nursery with the ILALC to support the management of a changing climate and changes in vegetation communities as well as the regional Urban Greening Plan.

The LALC would also like to see an investment in the ongoing monitoring of ground subsidence through smart technologies in partnership with the ILALC and UOW. A focus should be on:

- Aboriginal rock shelters particularly if objects are present.
- Monitoring of water flows and soil moisture content above mining areas
- Monitoring of water flows in old mine workings
- Monitoring of vegetation changes

South 32 and Water NSW should support and assist with access to special areas by the Aboriginal community through the Land Council to enable the operation of cultural tours and cultural engagement

South 32 should partner with the ILALC to develop alternate economic drivers that can be sustained beyond the mining lifespan

South 32 supports the Aboriginal community through the LALC to develop and grow economic and heritage credentials. This should include contracted engagement for monitoring and works as well as support for training and development (flora, fauna, geology and heritage)

South 32 should collaborate with the ILALC and the Aboriginal community on the establishment and growth of a research capacity that aligns with the growth and aspirations of the Illawarra Aboriginal community

Undertake further development of a mine closure and remediation plan with explicit identification of how the mine will support the adaptation of the Illawarra and the Aboriginal community into a new economic future.