



**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](mailto:bmcs@bluemountains.org.au) Web Site: [www.bluemountains.org.au](http://www.bluemountains.org.au)**

**Nature Conservation Saves for Tomorrow**

Mining and Industry Projects  
NSW Department of Planning and Environment  
GPO Box 39  
Sydney NSW 2001

7 November 2016

Dear Sir/Madam,

### **Invincible Extension Project 07\_0127 MOD 5**

The Blue Mountains Conservation Society is a community organisation working to achieve the preservation and regeneration of the natural environment of the Greater Blue Mountains area. The Society has a membership of over 800 people.

The Blue Mountains Conservation Society opposes the Invincible Extension Project (IEP) for the reasons set out below, in summary:

- The IEP would allow destructive open cut mining in part of the Gardens of Stone region. In 2012 and again in 2014 the independent Planning Assessment Commission (PAC) comprehensively rejected open cut mining for parts of this region, including for the IEP land, finding that the area should have “the highest level of protection”.
- Both PACs recognised that the area was part of the unique pagoda land system comprising the pagodas and cliffs, steep slopes and woodlands. The IEP is part of the woodlands adjoining the pagodas and is an integral part of the pagoda land system. This land system together supports the plants and animals which live in the pagoda landscape
- Once open cut mined, the land and its plants and animals are gone. The land cannot restore to its former values and it cannot be rehabilitated. Open cut has never been successfully rehabilitated in NSW.
- An approval for the IEP will lead to incremental applications for more open-cut mining in the pagoda land system.

- The IEP would have a big permanent impact for a small amount of nut coal, the primary objective for the modification.

### ***Gardens of Stone Conservation proposal***

The Gardens of Stone Stage 2 Proposal, lodged in 2005, would protect over 40,000 ha of crown lands and state forests extending from Newnes Plateau to Mt Airly. It adjoins world heritage national parks on its eastern and northern sides. The proposal was favourably assessed by the Department of Environment and Conservation (DEC) in 2006. DEC supported the protection of the area including IEP area under the *National Parks and Wildlife Act* and concluded that the proposal contained “significant conservation value” and a number of *Threatened Species Conservation Act* listed endangered ecological communities. <sup>1</sup>

Part of the proposal (Mt Airly and Genowlan Mountain) was reserved as the Mugii Murum-ban State Conservation Area in 2011. According to the DEC Assessment Report, the Ben Bullen and Wolgan State Forests were the next areas under consideration; they remain so. Conservation organisations are seeking protection of the Gardens of Stone Stage 2 area including the area of the IEP as state conservation areas (SCA) under the *National Parks and Wildlife Act*.

### ***Conservation value of Ben Bullen State Forest confirmed by two independent Planning Assessment Commissions***

The proposed IEP was part of two larger rejected mining proposals, located largely within the Ben Bullen State Forest (BBSF): Coalpac Consolidation project withdrawn in 2012 (2012 PAC) and Coalpac Modification for Invincible Mine refused in 2014 (2014 PAC).

- The 2012 PAC Review Report found that the area has a unique landscape 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”. <sup>2</sup>
- The 2014 PAC, in determining to reject the Coalpac Invincible modification project, fully supported this earlier finding. “The Commission accepts the finding of the 2012 PAC Review, the OEH and the Department of Planning and Infrastructure’s (DPE) 2013 Assessment Report, that the pagoda landform complex is a natural feature of special significance and that the features warrant the highest level of protection, i.e. they should be fully protected from risks of mine induced impacts.” <sup>3</sup> The 2014 PAC agreed the “... the highest and best use for the land is conservation purposes” and

---

<sup>1</sup> *Gardens of Stone stage 2 Proposal – State conservation areas and Park Extensions*, Department of Environment and Conservation, 2006, p.24

<sup>2</sup> 2012 PAC Review Report

<sup>3</sup> 2014 PAC Determination Report 17 October 2014 (2014 PAC Report), p.10

said that “this proposed mining is incompatible with the significant conservation values of the site.”<sup>4</sup>

### ***Not just pagodas but a pagoda land system***

The Department of Planning and Environment (DPE) noted regarding the Coalpac Consolidation project that “...the project site is properly characterised as a ‘pagoda landform complex’. 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 landform complex as a whole”.

2012 PAC recognised “the significance and sensitivity of the pagodas and the pagoda landform environment”.<sup>5</sup> The 2014 PAC found that “...the area containing pagoda landforms has high conservation value, both in terms of the unique landforms present and the key habitat features for threatened species. The pagodas and associated escarpments have been found to be natural features of special significance by previous review and assessing authorities and worthy of the highest level of protection. The commission agrees with these findings.”<sup>6</sup>

However, the IEP Environmental Assessment (EA) ignores the importance of the pagoda land system and only refers to the pagodas. This is a serious omission in the EA and demonstrates no understanding of the conservation values of the western part of BBSF as recognised by two PACs, Department of Planning and the Office of Environment. This significantly devalues the conservation importance of the IEP land. It is an integral part of the pagoda land system and needs to be preserved along with the actual pagodas.

The pagoda land system has three well-defined land units: the *Cullen Plateau Unit*, the *Ben Bullen Range Pagoda Unit* and the *Tablelands Grassy Woodland Complex Unit*.” This is a “distinct and significant pagoda related land system which is confined to the western portion of the BBSF and encompasses the Coalpac project area.”<sup>7</sup> “The three land units characterise the landform, soil, geology and vegetation attributes of this particular pagoda landscape system.”<sup>8</sup>

“Only in the western portion of BBSF and particularly the (2012 Coalpac proposal) ‘contracted area’ does the complete range of platy pagoda landforms develop alongside shallow valleys with grassy tableland woodlands on Permian bedrock. These Permian

---

<sup>4</sup> 2014 PAC Report p.16

<sup>5</sup> 2012 PAC Repot p.163

<sup>6</sup> 2014 PAC Report p.20

<sup>7</sup> *The Case for rejecting the Coalpac Contracted project*, (The Case) Gardens of Stone Alliance, 2013, pp. 7-8.

<sup>8</sup> The Case, P.21

sedimentary rocks provide the plant nutrients that enrich the ecosystems of this pagoda landscape. Its native vegetation has a greater productivity and so supports more herbivores and insect prey for bats, birds and other fauna which roost and nest in the adjoining pagoda platforms of lower fertility”<sup>9</sup> BBSF contains a rich diversity of plant and animal species animals species, threatened animal species which gives it rich biodiversity. The area is second only to Hassan’s Walls Reserve for orchid biodiversity in Lithgow LGA.<sup>10</sup>

The proposed IEP, which is covered by tableland woodlands on slopes, is an integral part of this pagoda land system.

### ***Uniqueness of pagoda land system of BBSF***

It is part of the uniqueness of the BBSF that its specific land system does not occur elsewhere beyond the BBSF. This is because it is physically constrained by badly damaged land from mining in the north, badly degraded lands from mining to the south and significant differences in altitude and rainfall to the north, west and east<sup>11</sup>

None of this pagoda landscape complex is protected. The particular grassy tableland woodlands are not found in existing reserves. The area is also a biodiversity hotspot ... a key linkage for migrating woodland birds, such as the regent Honeyeater....” The tablelands grassy woodlands complex vegetation unit in the western part of BBSF is ...irreplaceable. No good substitutes are located outside the Coalpac contracted area.<sup>12</sup>

### ***Conservation value of the IEP land***

The IEP land is covered by grassy tableland woodlands of BBSF with slopes below cliffs and pagodas to its east. It is an integral part of the pagoda land system of BBSF and recognised by the PAC and DPE in relation to earlier mining proposals. These proposals included the IEP.

The western part of BBSF, of which the IEP is part, is unique and absolutely irreplaceable. This is not exaggeration. The value of the IEP is that it is part of this unique and irreplaceable land system. The destruction of the southern extension land cannot be offset with a like area somewhere else as they do not exist or through revegetating land after mining.

---

<sup>9</sup> The Case, p.12

<sup>10</sup> The Case, p.16.

<sup>11</sup> The Case pp.12-13.

<sup>12</sup> The Case, p.23

## **Negative environmental impacts if the IEP**

The society refutes the assertion that the IEP land is not worth saving from destruction. The IEP would

- Contradict the findings of two PACs that this land requires “the highest level of protection”;
- Destroy part of the pagoda land system relating to the closer pagodas. This would reduce habitat plants and foraging areas for animals living in or using the area and completely remove vegetation they rely on for a very long time;
- Put several pagodas at risk of serious damage;
- Enlarge the ugly area of degraded lands which Invincible’s operations have already taken out of the southern part of BBSF;
- Create a precedent which encourages further nearby mining proposals;
- Reduce the buffer zone for the world heritage national parks;
- Weaken the connectivity within the south-western part of BBSF;
- Increase the ugly visual impacts of the mine from the Castlereagh Highway and from other public vantage points, such as above the mine from the trail to its south.

### ***Pagoda and cliff protection needed***

While there are no pagodas on the IEP land, the proposed development allows for blasting as close as 210 m to a nearby pagoda and less than 400 metres for the rest. This is on the spurious grounds that the pagodas nearest to IEP are lesser in some way from other pagodas in the area.<sup>13</sup> This is counter to the PACS findings and conclusions on how close mining can go to pagodas. The 2014 PAC did not accept that adaptive management could assure no impact on any feature. Further, they said that “no safe setback distance is currently available to the commission for consideration. ...the previous PAC review recommended a *minimum* setback of 300 m and indicated this would *lessen* the risk for structures. ...”(Emphasis added)<sup>14</sup>

The IEP proposal also does not recognise the integrity of the remaining pagoda land system (see for instance at EA Volume 1, page iv) and the contribution this 50 ha area makes to that integrity. Management actions proposed to ensure there is no damage will be too late to fix any damage that might occur. There is no recognition of the significance of the pagodas and the land system they are part of. This does not provide the ‘highest level of protection’ and should be rejected.

### ***Open cut mining is not compatible with conservation protection.***

Open cut mining will completely destroy the unique landscape the PAC said should be preserved. Rehabilitation will not restore this. If pagodas and cliffs are damaged, they cannot be patched up.

---

<sup>13</sup> EA Volume 1, p. 54

<sup>14</sup> 2014 PAC Report, p.11

### ***Connectivity to other protected areas***

BBSF is a buffer to nearby world heritage areas, joining them to Gardens of Stone National Park to the north. The Greater Blue Mountains World Heritage Area Advisory Committee submission to 2014 PAC Review said how important this was.

### ***Connectivity to rest of southern part of BBSF***

The IEP land is bounded by open cut mine to north; Castlereagh highway to west, then woodlands in a further part of BBSF; more grassy woodlands to south; grassy woodlands on slopes towards pagodas and cliffs to east in BBSF. The area west of Castlereagh highway and opposite the IEP is roughly one km wide at its widest part and over two kilometres long. If the IEP is approved, connectivity in the southern part of BBSF, including to west of highway, would be reduced.

### ***The IEP should not be assessed in comparison with earlier failed mining proposals***

The EA claims that the IEP should be approved because it is smaller than previous applications.<sup>15</sup> This is irrelevant. The current proposal needs to be assessed on its merits; not in comparison with failed previous proposals. The 2014 PAC made this point in relation to the Invincible Mine Modification: “The PAC has assessed the proposal on its merits rather than against some alternative application that was found to be unacceptable”<sup>16</sup> The same approach must be applied here. The issue is not that it is small enough to be let through or approved. The issue is what this proposal will damage and destroy and how that will impact on the larger area of sensitive and unique pagoda landscape.

### ***Like for like offsets unlikely to exist***

Offsets will be needed for the loss of vegetation cleared for mining. The EA says it is likely there will be a land-based offset located in proximity to invincible.<sup>17</sup> The society believes that it is very unlikely that land outside BBSF would have similar biodiversity and vegetation and play the same role in the pagoda land system. The location of the offset will be essential for an offset to make the same contribution to the land system.

## **Rehabilitation**

The EA exaggerates what rehabilitation can achieve. For instance, It says that rehabilitation “will return the majority of the Invincible site to native woodland and forest generally consistent with ecological communities that would have historically occurred in

---

<sup>15</sup> EA p.50.

<sup>16</sup> 2014 PAC Report, p.15

<sup>17</sup> EA pp.133-4

the area”<sup>18</sup> The statement is qualified but it still overstates what has been shown can be done.

### ***Rehabilitation of open-cut mining is unproven***

The 2012 PAC concluded that “rehabilitation to mature woodland is unproven for open cut mines in NSW”<sup>19</sup> “rehabilitation cannot restore the existing vegetation associations or ecological balance of the area”<sup>20</sup> It cannot reproduce the existing land or soil profile; and it takes a long time to determine whether it has been successful.

### ***Open cut mining is too destructive of its environment to be compatible with rehabilitation***

The proposal uses the word ‘rehabilitation’ which means to restore or regenerate to an improved conditions.” This is different from mere revegetation. It carries with it an element of restoring the area to open-cut mining state and function in wider ecology of the area. The 2012 PAC said that “the essential point is that the rehabilitated area cannot be expected to return to its pre-mining ecological state. It may be revegetated but the composition of the vegetation communities will be different.”<sup>21</sup>

Open-cut mining has long term impacts on the plants and animals it removes and on the wider context they live in. “rehabilitation cannot restore the existing vegetation associations or ecological balance of the area”<sup>22</sup> It has a very long-lasting effect, “open cut mining can only be considered a transient impact in a timescale well beyond the human lifespan”<sup>23</sup>

### ***Will rehabilitation remove all voids?***

The EA says that the IEP lands and the three current voids on the Invincible mine site will be re-landscaped within the life of the project.<sup>24</sup> Mining companies have made such claims before only to apply for further mining, therefore postponing the need to complete rehabilitation under the current approval. For instance this is what was proposed in the two Coalpac proposals which were rejected. The EA does foreshadow the Cullen Valley may be re-opened. Policing rehabilitation is outside the control from the consent conditions and instead managed in a less visible process by the Department of Resources and Energy (DRE). This process did not prevent Coalpac from being so far behind with its rehabilitation. Orphan voids are a common legacy of mining in Australia and become a financial liability to governments and, therefore, to citizens.

---

<sup>18</sup> EA p.vii.

<sup>19</sup> PAC 2012, p.98]

<sup>20</sup> PAC 2012 p.98

<sup>21</sup> 2012 PAC report p.97

<sup>22</sup> PAC 2012 p.98

<sup>23</sup> 2012 p.97

<sup>24</sup> EA pp 33-36

### ***Coalpac's discredited argument that more mining is needed to carry out the required rehabilitation is put forward again***

The EA says that there is not enough fill for voids without more mining.<sup>25</sup> This is due to mismanagement by the previous mine owners. This was a liability of the mine and so it is a cost which the new owners took on along with the responsibility for rehabilitation of the site. This cost would have been identified in the due diligence for the sale. DRE holds a bond which is to pay for the rehabilitation if it is not done by the owner. Lack of reject material on site should not be accepted as a justification for more destructive mining. Material could be sourced in other ways and should be paid for by the owners if necessary, not used as a reason to mine and avoid the true cost.

This argument was completely rejected by the 2014 PAC in the case of the invincible modification. The PAC was “not convinced that additional mining to fulfill the proponent’s pre-existing rehabilitation commitments and requirements is appropriate justification for these extensions. Further, (it) .could set a dangerous precedent”<sup>26</sup> It should not be given any weight in the assessment of the IEP.

### ***Rehabilitation as mitigation for vegetation clearing***

The EA claims that the “Progressive rehabilitation ... mitigates ecological impacts associated with the (IEP) as woodland areas are progressively established across Invincible”.<sup>27</sup> However, as the PACs pointed out rehabilitation which restores similar vegetation is unproven and, if it did occur, would be over a very long time. Much longer than the eight years of the approval being sought. As well, the new vegetation will not be the same as what was removed. This is far too late for any animals that relied on the vegetation which has been removed by mining.

Previous PACs have discredited the argument that a mining project can deliver biodiversity outcomes. The 2012 PAC Report 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.”<sup>28</sup>

### ***Previous rehabilitation on Invincible Site has been slow to start and produced impoverished vegetation***

Contrary to the EA’s assertion that “the existing rehabilitation strategies employed at Invincible have largely been successful to date...”<sup>29</sup> the PAC review for the Invincible

---

<sup>25</sup> EA p.49.

<sup>26</sup> 2014 PAC p.20.

<sup>27</sup>

<sup>28</sup> 2012 PAC p.101.

<sup>29</sup> EA section 6.18 (p.240)



Modification concluded that “the mine operator may not have done adequate preparation and planning to ensure that the site can be rehabilitated in the manner in which it had proposed to do so and within its conditions of approval”<sup>30</sup> Coalpac admitted in its Modifications proposal that the existing rehabilitation was not optimal and used this as an argument to propose more mining so that the rehabilitation could be done.<sup>31</sup>

In 2014 the Department of Planning found that there were six final voids (three at Invincible and three at Cullen valley) and that rehabilitation of these voids together was only 28% complete.<sup>32</sup> This was far from satisfactory progress given Invincible Mine’s consent expired in 2016.

In 2015 a new rehabilitation plan was to be prepared. Soon after that, ownership of the mine passed to a new owner, Manildra. The current proposal, if approved, would lead to yet another different rehabilitation plan.

The current ‘rehabilitation’ areas on the invincible mine site where mining has been completed have limited vegetation which seems to do little more than hold the overburden slopes together. As the PAC observed (see above), the success of this planting will not be known for many years. Coalpac has admitted that “it is difficult to predict the composition and structure of vegetation beyond ten years” and “there is little information currently available on the long term ecological development of rehabilitated communities”<sup>33</sup> Rehabilitation on Invincible site is at most eight years old.<sup>34 35</sup>

## **Visual impacts**

Currently, the southern part of BBSF provides several kilometres of wooded landscape from the highway for visitors and tourists which alleviates the industrial landscape of power stations and mining further south (Blackmans Flat to Lidsdale) and further north with more mines starting with Invincible open cut mining, coal piles and machinery, sparse revegetation on slopes and denuded cliff faces. Yet, this highway is the gateway to tourism areas such as Mudgee.

The IEP would worsen the visual impact from the highway. It would also increase and bring closer the coal mine views from southern BBSF, in particular, along Gardners Gap Trail.

---

<sup>30</sup> 2014 PAC, p.20

<sup>31</sup> Coalpac Modifications Proposals 2014.

<sup>32</sup> DPE’s Secretary’s Report into the Coalpac Modifications 2014 at p.43.

<sup>33</sup> Coalpac Response to Submissions, quoted in 2012 PAC Report p.99.

<sup>34</sup> EA, Figure 6.3 Conceptual Rehabilitation Plan

<sup>35</sup> See also the 2104 Pac’s analysis of the inadequacies including lack of proof after open cut mining. 2014 PAC Report pp. 97-101.

## **IEP will be the first of more incremental requests, each one destroying a bit more of the sensitive pagoda land system**

Approving the destruction of these lands would set a very bad precedent for the future of this unique pagoda land system of the Gardens of Stone region. Approval will open up a path for incremental destruction of other parts of BBSF, which is in better condition than parts of Newnes State Forest (also in the Gardens of Stone region).

Reopening Cullen Valley mine has been foreshadowed in the EA as mentioned above. While MPPS is a major customer of Castlereagh coal, Invincible coal will also be needed for blending. Cullen Valley colliery, with its many years of consent still to run, will be very tempting. Mining might also extend further south or west closer to pagodas and cliffs which were part of the previous Coalpac applications. Castlereagh Coal has applied for a mining lease for the area west of existing disturbed Invincible mine area.<sup>36</sup> It should be noted that DPE has already said that it would not support a series of incremental increases to the open cut footprint of either of Invincible mine (or CV Mine).<sup>37</sup>

### **Weak Economic justification**

- Mining in this location is not essential. There are other sources of coal for Manildra's Shoalhaven plant.
- This is solely for the financial benefit of the proponent.
- The target product of this proposal, the "primary objective" of the proposal, is securing nut coal for its Shoalhaven plant. However, the supply of nut coal for the proponent's Shoalhaven factory is already being supplied from Clarence mine, a mine in the same area. This means that producing nut coal from the IEP will not increase local jobs. These jobs are already here but working for a different company.
- There is no need for another area in the Gardens of Stone region to be damaged permanently in order to extract nut coal.
- The same is true for extracting coal for Mount Piper Power Station (MPPS). MPPS has and is currently using other sources of coal for its electricity generation
- This is a very environmentally damaging proposal given it will only provide 300,000 tonnes of the all important nut coal.
- This is an underhand way to restart a dead and discredited mine and mine method.
- Castlereagh Coal presumably would have got to own the Invincible mine at a bargain price because of Coalpac's bankruptcy. It is a bonus on top of that that the proponent will be able to sell all the other coal it has to extract to get the nut coal.

---

<sup>36</sup> Minview shows MLA 383 over part of ELA 7517. (Minview accessed 1.11.16)

<sup>37</sup> DPE Assessment Report Invincible Colliery Mod 4. August 2014 at p. 24

DPE said that the decision to reject the Coalpac consolidated project proposal was different from others in the area because it did not involve underground mining and because the proposal area was more sensitive.<sup>38</sup> These reasons also apply to the IEP.

Thank you for the opportunity to comment on this modification.

Yours sincerely

A handwritten signature in black ink, appearing to read "Madi Maclean", followed by a period.

Madi Maclean  
For the Management Committee

---

<sup>38</sup> DPE Coalpac Consolidation project Final Addendum Report, September 2013, p.4.