

ASSESSMENT REPORT

HUNTER VALLEY OPERATIONS SOUTH
Dedication of Lands for Offsets Modification
(MP 06_0261 MOD 4¹)

1 BACKGROUND

Hunter Valley Operations (HVO) is an open cut coal mining complex located approximately 18 kilometres west of Singleton in the Hunter Valley (see Figure 1).



Figure 1: Location of Hunter Valley Operations, South and North

¹ The Department notes that some documentation, including Coal & Allied's application letter, incorrectly identifies the application as Modification 5.

The HVO complex comprises two open cut coal mining operations, HVO North and HVO South (see Figure 1), which have separate project approvals, but are owned and managed by Coal & Allied Operations Pty Limited (Coal & Allied) as an integrated operation.

HVO South is regulated by a Ministerial project approval (MP 06_0261), which was granted on 24 March 2009. Under this approval, HVO South is permitted to extract up to 16 million tonnes of run-of-mine (ROM) coal a year from its open cut mining operations.

The project approval has been previously modified twice, as follows:

- MOD 1 – approved on 17 December 2009, which involved changes to Lake James (which forms part of the mine complex's water management system), including an increase in storage capacity; and
- MOD 2 – approved on 3 February 2012, which deleted the 'Archerfield' biodiversity offset area. This was undertaken primarily to enable the Archerfield offset area to be subsumed into a larger offset area for Coal & Allied's Warkworth Extension Project (MP 09_0202).

It is noted that the Warkworth Extension Project, approved by the Planning Assessment Commission (PAC) on 3 February 2012, is currently the subject of a third party appeal before the Land and Environment Court (LEC). During the appeal proceedings, it was identified that the Archerfield offset was inadvertently deleted from the HVO South project approval without being replaced by anything; and that even though the Archerfield offset was deleted from the project approval, a number of commitments were left in the Statement of Commitments attached to the project approval that were inconsistent with the decision to delete the Archerfield offset, and therefore created some doubt as to whether the Archerfield offset had indeed been deleted.

It was also noted during the appeal proceedings that it would be desirable to clarify that no mining-related development is allowed on the two biodiversity offset areas established for the Warkworth Extension Project that sit within the HVO mining lease area.

Coal & Allied is now proposing to resolve these two issues, and has lodged two separate modifications to do so, namely:

- MOD 3 – to provide reference to the Goulburn River biodiversity offset area, along with other minor clarifications; and
- MOD 4 (the subject application) – to clarify that no mining-related development would occur in the biodiversity offset areas.

2 PROPOSED MODIFICATION

On 26 September 2012, Coal & Allied submitted an application to the Department, seeking to modify the Minister's approval for HVO South under Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (see Appendix C).

The proposed modification seeks to modify the project approval to clarify that Coal & Allied would not undertake any mining-related activities in the biodiversity offset areas established for the Warkworth Extension Project that lie within the area subject to the HVO South project approval.

3 STATUTORY CONTEXT

Legislative Framework and Approval Authority

The HVO South project was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act and the proposed modification is required to be assessed under the former Section 75W of the Act.

Under Section 75W, the Minister for Planning and Infrastructure is the approval authority for the modification application. However, the A/Executive Director, Major Projects Assessment may determine the application under the Minister's delegation of 14 September 2011 as there were less than 25 public submissions in the nature of objections and no reportable political donations were made.

Modification

The Department is satisfied that the proposed modification is minor and administrative in nature, would have no adverse environmental impact, and is consistent with the existing approval. Consequently, the Department is satisfied that it can be properly characterised as a modification to

the original project approval and can therefore be assessed and determined under section 75W of the EP&A Act.

4 CONSULTATION

On 28 September 2012, the Department made the modification application and supporting information publicly available on its website. It also notified Singleton Council and the Environmental Defenders Office (which is representing the Bulga Milbrodale Progress Association in the current appeal to the LEC over approval to the Warkworth Extension Project).

Council did not make a formal submission on the application, but by email reiterated its opposition to the Warkworth Extension Project, and asked that the community be given sufficient time to comment on the merits of the application.

The Department has received 13 submissions from special interest groups and the general public in response to the application (and/or MOD 3), including submissions from the following groups (see Appendix B):

- Bulga Milbrodale Progress Association;
- Nature Conservation Council; and
- Hunter Environment Lobby.

None of the submissions raised objections or concerns directly related to the proposed modification (ie to clarify that no mining-related development would be undertaken in the on-site biodiversity offset areas). All submissions either object to or raise concerns in relation to the reallocation of the Archerfield biodiversity offset area. Whilst it acknowledges these concerns, the Department notes that the reallocation was fully assessed and approved in MOD 2 and as part of the Warkworth Extension Project approval, and is not directly related to the current proposal.

5 ASSESSMENT

Coal & Allied notes that the original HVO South project approval permits a heavy equipment access route to be constructed partly within the 'Southern' biodiversity offset area established under the approval for the Warkworth Extension Project (see Figure 2). Coal & Allied also notes that the HVO South project approval consolidated some 25 development consents dating back to the 1970s, and that the project approval is somewhat ambiguous as to whether it technically continues to provide planning approval for other forms of development in the Southern biodiversity offset area associated with these former approvals (despite these activities no longer being proposed to be carried out).

In this regard, the Department acknowledges Coal & Allied's proposal to place it beyond doubt that the company would not undertake any mining-related development within the biodiversity offset areas established for the Warkworth Extension Project that are within the HVO South project approval area, including the Southern biodiversity offset area and the Northern Biodiversity offset area.

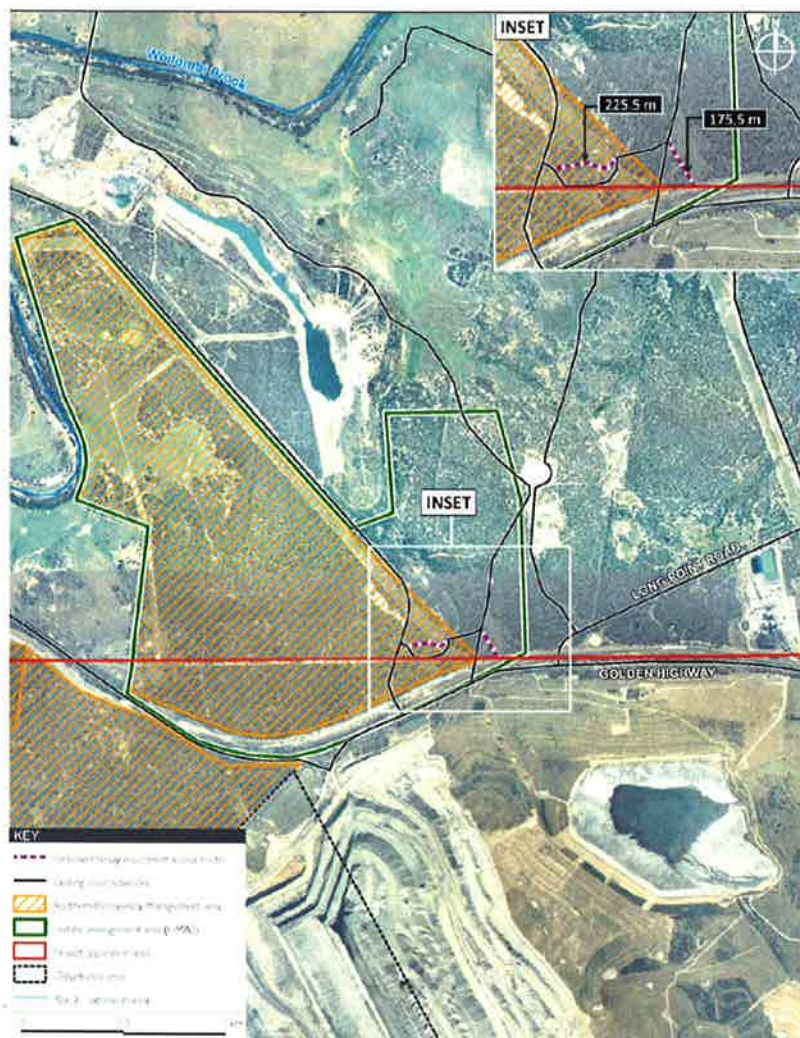
The Department is satisfied that the proposal would not result in any adverse environmental impacts. Indeed, the proposal would clarify that the offset areas are to be used for biodiversity conservation purposes only, and would therefore strengthen the certainty of achieving all proposed conservation outcomes for the offset areas.

6 RECOMMENDED CONDITIONS

The Department has drafted recommended conditions for the modification. Coal & Allied has reviewed and accepted these conditions.

7 CONCLUSION

The Department has assessed the modification application and supporting information on the proposal in accordance with the relevant requirements of the EP&A Act, including the objects of the Act and the principles of ecologically sustainable development. Based on this assessment, the Department is satisfied that the proposed modification is essentially administrative in nature and would have no adverse environmental impact. Indeed, it would clarify the certainty of achieving conservation outcomes required under previous approvals (ie the Warkworth Extension Project approval and the HVO South project approval).



**COAL
ALLIED**

Proposed Heavy Equipment Access Route

Figure 2: Previously Proposed Heavy Equipment Access Route

Consequently, the Department is satisfied that the proposed modification is in the public interest and should be approved, subject to conditions.

8 RECOMMENDATION

It is RECOMMENDED that the A/Executive Director, Major Projects Assessment as delegate of the Minister:

- considers the findings and recommendations of this report;
- determines that the modification is within the scope of section 75W of the EP&A Act;
- approves the modification application under section 75W, subject to conditions; and
- signs the attached notice of modification (see Appendix A).

DKitto 30/10/12

David Kitto
Director
Mining and Industry

HW 31/10/12

Heather Warton
A/Executive Director
Major Projects Assessment

APPENDIX A: NOTICE OF MODIFICATION

Notice of Modification

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure, I modify the project approval referred to in Schedule 1, as set out in Schedule 2.



Heather Warton
A/Executive Director
Major Projects Assessment

Sydney 31 October

2012

SCHEDULE 1

The project approval (06_0261) for the Hunter Valley Operations South Coal Project

SCHEDULE 2

1. Insert the following in the Table of Contents (in numerical order):

APPENDIX 10: HVO SOUTH LANDS DEDICATED AS OFFSETS FOR WARKWORTH MINE

2. Insert the following in the Definitions (in alphabetical order):

EA (Mod 4)	Environmental Assessment titled <i>HVO South Project Approval – Modification 5 – Dedication of Lands for Offsets</i> [sic], dated 26 September 2012
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3. In condition 2 of schedule 2, delete all words after "EA (Mod 3)" (except the notes), and replace with:

- (f) EA (Mod 4); and
- (g) conditions of this approval.

4. Insert the following after condition 29A of schedule 3:

Offsets for Warkworth Extension Project

29B. The Proponent shall not undertake any mining operations or development within the Southern Biodiversity Area or Northern Biodiversity Area as indicated on the plan in Appendix 10, other than any conservation-related activity under an approved Rehabilitation and Biodiversity Management Plan under either this approval or MP 09_0202.

Note: The Southern Biodiversity Area and Northern Biodiversity Area form part of the biodiversity offset strategy for the Warkworth Extension Project (MP 09_0202).

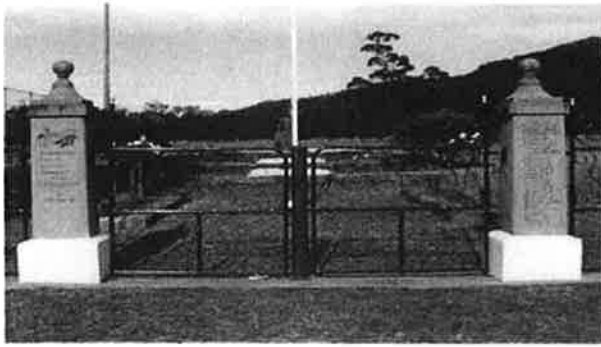
5. Insert the following after Appendix 9:

**APPENDIX 10
HVO SOUTH LANDS DEDICATED AS OFFSETS FOR WARKWORTH MINE**



APPENDIX B: SUBMISSIONS

Bulga Milbrodale Progress Association Inc.



President Stewart Mitchell 6574

Secretary-Judith Leslie 6574 5305

Treasurer – Phillip Reid 6574 5237

**Correspondence
339 The Inlet Road BULGA 2230**

15 October 2012

Phil Jones (phil.jones@planning.nsw.gov.au)
NSW Department of Planning & Infrastructure
Sydney

Re Modifications 4 and 5 to the Hunter Valley Operations South Project (06-0261)

Dear Sir,

We refer to the application contained in the Coal & Allied letter of 26 September 2012 to amend the Hunter Valley Operations (HVO) South Projects Approval 06-0621. We object to the proposals contained in the application.

1. Process followed is not in the public interest nor procedural fairness

Firstly we object to the manner in which this modification has been processed. Modification 2 for HVO was publicly exhibited for a period of 6 weeks allowing the community proper time to prepare submissions. This current proposal only allows a very short time (just over one week) for the community to assess the impact of the proposal.

We understand that none the original objectors or supporters of the modification 2 have been advised by the DoPI of the new modifications 4 and 5 and this is not proper and transparent process. The haste in which this has been prepared is of concern to the community as it appears to be taking short cuts in order to assist the Coal and Allied to gain approval for the amendments. Further, additional information and changes to the original proposals has been provided by Coal & Allied in recent months. This additional information has changed the detail and nature of the offsets proposed for HVO and for the Warkworth Extension.

This major omission from the approval documents resulting in a loss of 140ha of conservation area is of grave concern to the community particularly as this omission was overlooked by the mine, the DoPI and the PAC. The DOPI and the PAC in particular did not carry out a proper independent assessment in arriving at their decision to approve the mine expansion.

The DoPI has not acted independently in this matter and is causing mistrust in the Community.

2. Contrary to DECCW standards

We consider the reallocation of the Archerfield property to an alternative site in the Goulburn River Biodiversity Area to be flawed as it is contrary to DECCW standards. For example:

DECCW Principle 11: Offsets must be located appropriately.

Wherever possible, offsets should be located in areas that have the same or similar ecological characteristics as the area affected by the development.

DSEWP&C Equivalent (Principle 6): Environmental offsets should be located within the same general area as the development activity.

The Goulburn River Biodiversity area is not in the same general area as Archerfield. It is 100 kilometres to the west and not in the Hunter valley

DECCW Principle 13: Offsets and their actions must be enforceable through Development consent conditions, licence conditions, conservation agreements or a contract.

Offsets must be audited to ensure that the actions have been carried out, and monitored to determine that the actions are leading to positive biodiversity outcomes.

DSEWP&C Equivalent (Principle 8): Environmental offsets should be enforceable, monitored and audited.

Clearly no-one has been policing this. HVO has not complied with the requirement of the original approval and shows a lack of responsibility in looking after the environment.

3. Like for Like in offsetting

The Goulburn River Biodiversity area does not contain soils which are like for like to Archerfield and in particular the Aeolian Sands which are the foundation for the Warkworth Sands Woodlands. Offset in the Goulburn River Biodiversity area will not conserve the biodiversity of the local area where losses will occur.

4. The discretion of the Director General.

Many sections of the application refers to "at the discretion of the Director General". Based on the poor performance to date and the lack of protection provided by the DoPI and the Director we do not have any confidence in the Director's discretion. Matters must be accepted and agreed now with proper assessment and not left for a Director in the future to agree to or to change.

5. Use of land for other offset proposals

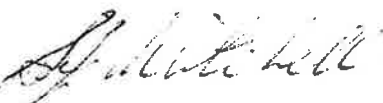
Clause (X) on page 4 (pages not numbered) under "Insert the following conditions" it states "The conservation agreement must remain in force in perpetuity". The history of the Deed of Agreement for the 2003 Warkworth Extension project shows that the community cannot trust or have any confidence in the DoPI or the Mine to provide guarantees for the future of the conservation areas.

This clause also states "This land can be included in a conservation agreement for other offset proposals". This statement trivialises dedicating land as an offset when clearly it states that others can also claim this offset as theirs. This process is 'double dipping' and cannot be allowed.

We request the DoPI reject the offsetting of the 140ha Archerfield site with that proposed in the Goulburn River area.

Yours sincerely

The Bulga Milbrodale Progress Association Inc



Stewart Mitchell
President.

Phil Jones
Project Manager
Department of Planning and Infrastructure
GPO Box 39, Sydney 2001

Monday 15 October 2012

Phil.Jones@planning.nsw.gov.au

Dear Mr Jones

Submission of Objection – Hunter Valley Operations South Modification 5
Dedication of lands for offsets (Ref No: 06_0261 MOD 5)

The Nature Conservation Council of NSW (NCC) is a non-profit, non-government organisation representing more than 100 community environment groups across NSW.

NCC strongly objects to the proposal to alter the conditions of approval for the Hunter Valley Operations South (HVOS) coal mining project in relation to biodiversity offset arrangements.

NCC lodged an objection to this modification when first exhibited in 2010 in conjunction with the proposal to extend the Warkworth coal mine into an area of endangered ecological community that was protected by a Ministerial Deed of Agreement. (submission attached)

The trading of approved offsets for one mining operation to facilitate the approval of biodiversity loss from a separate proposal is inappropriate and not conducive to good planning outcomes.

The proposal to trade biodiversity offsets on the floor of the Hunter Valley for 140ha of native vegetation that occurs over 100km from the area of original impact does not meet the Office of Environment and Heritage 'Principles for the use of biodiversity offsets in NSW'.

The proposed area to be swapped for the current offset areas on the Archerfield property has different ecological character because it occurs in a different bioregion with different geology and different climatic conditions.

There appears to be no assessment of the original area of disturbance of biodiversity values on the floor of the Hunter Valley that led to the approval of the Archerfield offset area for the HVOS operation to proceed.

NCC does not support the trading of the HVOS biodiversity offset as part of the approval process for the Warkworth Mine expansion.

NCC recommends that this application to correct administrative omissions and clarifications be rejected on the grounds of poor process and significant compromise of the principles of ecologically sustainable development

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Clarke', with a stylized, flowing script.

Pepe Clarke
Chief Executive Officer

Belinda Parker
Planning NSW
By E mail Belinda.parker@planning.nsw.gov.au

13 June 2010

SUBMISSION OF OBJECTION

WARKWORTH COAL MINE EXTENSION PROPOSAL (REF 09_0202) AND
PROPOSED MODIFICATION HUNTER VALLEY OPERATIONS SOUTH MINE (REF 06_0261 MOD 2)

Introduction

The Nature Conservation Council of NSW (NCC) is the peak environment organization in NSW with 120 member groups across the state. NCC wishes to lodge an objection to the proposed Warkworth extension and Hunter Valley Operations South modification on the grounds of significant loss to biodiversity on the floor of the Hunter Valley and loss of important drought refuge for species listed for protection under the Federal Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).

The proposal is to clear 764.7ha of woodland and open forest which contains four endangered ecological communities (EEC) and seventeen threatened fauna species listed under the NSW Threatened Species Conservation Act 1995 (TSCA) and three endangered species listed under the Federal EPBC Act.

This proposal is direct contravention of the State Plan Biodiversity Targets:

1. By 2015 there is an increase in native vegetation extent and an improvement in native vegetation condition
2. By 2015 there is an increase in the number of sustainable populations of a range of native fauna species
3. By 2015 there is an increase in the recovery of threatened species, populations and ecological communities

The State Plan Annual Performance Report 2010 has already identified that NSW is off track and unlikely to meet the 2015 target for the number of sustainable native fauna populations and for the recovery of threatened species and endangered ecological communities.

This mining extension proposal will push back the state biodiversity targets even further.

We recommend that:

1. That the Ministerial Deed of Agreement to protect 755ha of woodland in a Non Disturbance Area be upheld.
2. That the remnant areas of WSW be protected in a Nature Reserve.
3. That the Archerfield offset for HVOS remain as approved under that assessment.

4. That the proposed addition to Goulburn River National Park to protect The Drip and Corner Gorge at the western end of the Goulburn River be implemented

Impacts of Mining on Biodiversity in the Hunter Valley

The ongoing expansion of the coal mining industry in the Hunter Valley is causing irreparable environmental damage and irreplaceable loss of biodiversity.

There is a history in the Hunter Valley of offsets being destroyed, conditions of approval not being met and no attempt by Planning NSW to enforce their compliance.

The Mt Owen mine was given approval in 1994 to destroy half of the Ravensworth State Forest. A stringent set of offsets were negotiated to compensate for the loss of critical habitat on the Upper Hunter Valley floor. In 2004 an extension was approved allowing the offset area to be destroyed.

One of the conditions of approval for this offset destruction was the formation of a Hunter Region Flora and Fauna Advisory Committee. To this date no such committee has been formed, nor has Planning NSW enforced this condition.

The Warkworth Mine was granted an extension in 2003 which allowed the clearing of 400ha of valley floor woodland remnant, including 40ha Warkworth Sands Woodland (WSW) EEC.

A condition of approval for this major ecological disturbance was the signing of a Ministerial Deed of Agreement in 2003 that caused 755ha to be set aside as Non-Disturbance Areas (NDA) for long-term conservation of EECs.

The current proposal now wants to mine through the agreed NDA. This is totally unacceptable and raises the question of validity of the Ministerial Deed of Agreement.

Inappropriate Biodiversity Offsets

The new series of offsets being proposed for the Warkworth extension are unacceptable. It is with interest that NCC notes that the Hunter Valley Operations South (HVOS) modification which is intricately linked to the Warkworth extension proposal was lodged after the Warkworth extension went on public exhibition.

The proposal to shift an existing offset area of 140ha from HVOS to the new Warkworth extension and replace it with an undefined area within a proposed extension of Goulburn River National Park, some 100km west of the impact, is a cynical arrangement with no benefit to the species being threatened on the Hunter Valley floor.

The executive summary for the Warkworth extension incorrectly identifies the proposed Goulburn River Biodiversity Area as being in western NSW. This indicates a level of carelessness in the work preparing the proposal document. It also indicates a lack of knowledge, understanding or empathy for the functions and values of local ecological processes.

Other than an undertaking to acquire 1,562ha of land as an addition to Goulburn River National Park which includes the 140ha offset to replace the current offset for HVOS, there is no indication how the proposed Southern Biodiversity Area of 718ha and the proposed Northern Biodiversity Area of 342ha will be afforded long term protection. No safe protective mechanisms have been identified in the proposal.

If this proposal is approved, it is obvious that a Ministerial Deed of Agreement will not protect conservation offset areas. There will be nothing to stop a future extension proposal from identifying these new offset areas for destruction.

The NDA was agreed to in 2003 because there was no commercially viable coal resource identified in that area, at that time. Seven years on, market prices have changed and the NDA is now on a valuable resource. There is no indication that this may not be the case, in the near distant future for the 1,060ha proposed as Biodiversity Areas to offset the major ecological disturbance of this extension proposal.

Protection of Warkworth Sands Woodlands EEC

The proposal outlines extensive regeneration work for replacement of destroyed WSW including research by University of New England (UNE).

The proposal states that areas of WSW cleared in the early 1960s had regenerated by 1979 thus providing confidence that the EEC can regenerate naturally in the Biodiversity areas. However, the 1970s were the last period of very wet conditions in the Hunter Valley. A series of prolonged and intense drought periods have occurred since that time. Seed sources for natural regeneration are particularly impacted during drought.

This has been borne out at a recent presentation on germination trials conducted by UNE researchers. There seems to be a discrepancy between what the proponents have identified as the extent of UNE research work and what UNE is prepared to acknowledge.

There is a significant difference between conducting germination trials and researching the 'recreation' of an EEC.

WSW was identified by the NSW Government in 1992 as needing protection in a Nature Reserve. This is because of the narrow distribution range of the EEC and the fact that it cannot be found or protected in any other site, particularly not Goulburn River National Park.

The current proposal to clear an additional 103.5ha of WSW or 9% of the remaining WSW community is not acceptable. In 2003 it was stated that only 10% of the original extent of the EEC was intact. This ongoing loss is irreplaceable and trials are showing that regeneration either naturally or through rehabilitation works will be very difficult, if not impossible.

Nationally Endangered Species

The recent sighting of both Regent Honeyeater (*Anthochaera phrygia*) and Swift Parrot (*Lathamus discolor*) in the proposed impact area of this mine extension proposal is significant.

The extent of the drought in northern breeding and feeding areas around Tamworth and Barraba has resulted in no sightings of these species for over two years. The habitat in the Lower Hunter and Central Coast for both these endangered species is critical drought refuge.

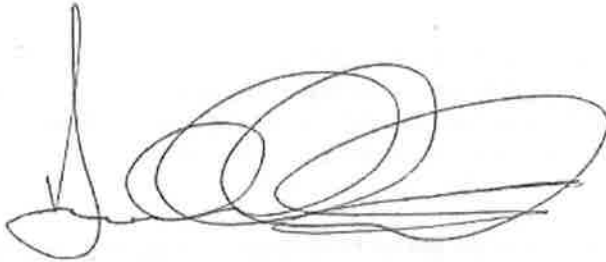
There has been no identification in the proposal of the significance of the 764.7ha of woodland and open forest earmarked for clearing as drought refuge for nationally endangered species.

Recommendations:

1. That the Ministerial Deed of Agreement to protect 755ha of woodland in a Non Disturbance Area be upheld.
2. That the remnant areas of WSW be protected in a Nature Reserve.

3. That the Archerfield offset for HVOS remain as approved under that assessment.
4. That the proposed addition to Goulburn River National Park to protect The Drip and Corner Gorge at the western end of the Goulburn River be implemented.

Yours faithfully

A handwritten signature in black ink, consisting of a series of loops and a vertical stroke on the left.

Prof Don White
Chairperson



Hunter Environment Lobby Inc.

PO Box 188
East Maitland NSW 2323

Department of Planning and Infrastructure
GPO Box 39,
Sydney 2001

Monday 15 October 2012

Phil.Jones@planning.nsw.gov.au

Submission of Objection

HVO South – Modification 5
Dedication of lands for offsets
06_0261 MOD 5

Hunter Environment Lobby Inc. (HEL) is a regional community-based environmental organisation that has been active for more than fifteen years on the issues of environmental degradation, species and habitat loss, as well as climate change.

HEL submitted an objection to the original proposal to change the conditions of approval to the Hunter Valley Operations South (HVO South) project in relation to approved biodiversity offsets at the Archerfield property.

Please find attached the original objection to the proposed swap of the HVO South biodiversity offsets..

HEL has not changed position on this issue and considers that the original approved conditions must be maintained.

The proposal to trade off a set of approved offsets that are intended to compensate for loss of particular habitat and biodiversity values in order to allow additional habitat disturbance on the floor of the Hunter Valley is completely inappropriate.

The relationship between the Archerfield biodiversity offsets, the destroyed conservation values that they are replacing and the proposal to destroy Warkworth Sands Woodlands protected by a Ministerial Deed of Agreement has not been adequately assessed in any document provided by the proponent

This proposal is in contravention to the Office of Environment and Heritage Principles for the use of biodiversity offsets in NSW in particular principles 5,9,10 and 11:

5. Offsets must be underpinned by sound ecological principles.

They must:

- *include the consideration of structure, function and compositional elements of biodiversity, including threatened species*
- *enhance biodiversity at a range of scales*
- *consider the conservation status of ecological communities*
- *ensure the long-term viability and functionality of biodiversity.*

Biodiversity management actions, such as enhancement of existing habitat and securing and managing land of conservation value for biodiversity, can be suitable offsets.

Reconstruction of ecological communities involves high risks and uncertainties for biodiversity outcomes and is generally less preferable than other management strategies, such as enhancing existing habitat.

9. Offsets must be quantifiable - the impacts and benefits must be reliably estimated.

Offsets should be based on quantitative assessment of the loss in biodiversity from the clearing or other development and the gain in biodiversity from the offset. The methodology must be based on the best available science, be reliable and used for calculating both the loss from the development and the gain from the offset. The methodology should include:

- *the area of impact*
- *the types of ecological communities and habitat/species affected*
- *connectivity with other areas of habitat/corridors*
- *the condition of habitat*
- *the conservation status and/or scarcity/rarity of ecological communities*
- *management actions*
- *level of security afforded to the offset site.*

The best available information/data should be used when assessing impacts of biodiversity loss and gains from offsets. Offsets will be of greater value where:

- *they protect land with high conservation significance*
- *management actions have greater benefits for biodiversity*
- *the offset areas are not isolated or fragmented*
- *the management for biodiversity is in perpetuity (e.g. secured through a conservation agreement).*

Management actions must be deliverable and enforceable.

10. Offsets must be targeted.

They must offset impacts on the basis of like-for-like or better conservation outcome.

Offsets should be targeted according to biodiversity priorities in the area, based on the

conservation status of the ecological community, the presence of threatened species or their habitat, connectivity and the potential to enhance condition by management actions and the removal of threats. Only ecological communities that are equal or greater in conservation status to the type of ecological community lost can be used for offsets. One type of environmental benefit cannot be traded for another: for example, biodiversity offsets may also result in improvements in water quality or salinity but these benefits do not reduce the biodiversity offset requirements.

11. Offsets must be located appropriately.

Wherever possible, offsets should be located in areas that have the same or similar ecological characteristics as the area affected by the development.

HEL is concerned that the proposed modification of the HVO South biodiversity offset arrangements has no relationship to the original approval conditions that allowed the project to proceed.

The ongoing loss of biodiversity values and ecological character, fragmentation of landscape scale connectivity and increased occurrence of key threatening processes for state and nationally listed threatened species is a major issue for the ecological integrity of the Hunter Valley region.

The proposal to replace the current biodiversity offset for impacts of the HVO South operations with 140 ha of bushland that occurs over 100km away from the area of impact and contains a different ecological character is entirely inappropriate and sets a very poor precedent.

CONCLUSION:

HEL recommends that this modification not be approved on the grounds that it is not consistent with the principles of biodiversity offsets and will not improve biodiversity conservation in the highly disturbed Hunter region.

HEL recommends that the current conditions of approval for HVO South project be maintained.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jan Davis', with a stylized, flowing script.

Jan Davis
President



Hunter Environment Lobby Inc.

PO Box 188
EAST MAITLAND NSW 2323

3 June 2010

Major Project Assessment
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

Submission - Hunter Valley Operations South modification 2 (06_0261 MOD 2)

I refer to the exhibition of the environmental assessment for the proposed modification to Hunter Valley Operations (HVO) South Coal Project. The proposal is to reallocate 140 ha of remnant woodland vegetation in the Archerfield Biodiversity Enhancement Area to an alternative site within the Goulburn River Biodiversity Area.

The Hunter Environment Lobby (HEL) is an established regionally based environment group and has made many submissions about the proposed mining and infrastructure development in the Hunter Region.

The group has reviewed the environmental assessment of May 2010, and makes the following comments in relation to the proposal. Hunter Environment Lobby expresses its concern about the proposed reallocation of an approved biodiversity enhancement area to facilitate mining elsewhere. Apart from being unnecessary, the group is concerned that areas previously set aside for conservation and biodiversity offsets will be mined in the proposed Warkworth Mine extension as a direct consequence of this reallocation.

The group makes the following comments on the proposal.

Inadequacy of environmental assessment

- 1 The environmental assessment has not included any specialist ecological studies and is not adequate for varying an existing commitment. For the purposes of determining biodiversity offsets and providing at least 80% certainty, detailed ecological studies must be undertaken over at least 5 years, as demonstrated at the Mount Owen Mine near Ravensworth.
- 2 It is noted that the key in Figures 2.3 and 2.4 showing Goulburn River Biodiversity Area is wrong.

General biodiversity issues

- 3 This proposal will contribute to the loss of important habitat for NSW listed threatened species, and for nationally listed species under the Environment Protection and Biodiversity Conservation Act 1999, specifically large contiguous areas of the listed endangered ecological community Warkworth Sands Woodland.
- 4 Approval of the proposed re-allocation of biodiversity offsets to the site is intended to facilitate an increased extent of native vegetation clearing. It therefore does not benefit natural ecosystems in the region or the community.

Biodiversity offsets

- 5 It has not been demonstrated that any consideration has been given to the condition or equivalence of the vegetation communities or the geographic context. On this basis, the application should not be approved. Furthermore, a minimum biodiversity offset ratio to be achieved by the proposal should be 10:1 by area, and 2:1 by habitat quality.
- 6 The security of the new proposed offset areas is not clear. These areas should be dedicated as national park or nature reserve or subject to an agreement in perpetuity. The commitment of the company to maintain offsets cannot be accepted, given that other Hunter Valley projects including Mt Owen Mine and Warkworth have not met their legal commitments to offsets and are now mining, or proposing to mine in areas that have been committed for biodiversity offsets.
- 7 In section 2.5 of the Environmental Assessment report it is noted that "it is proposed to allocate 140 ha of the Narrow Leafed Ironbark Woodland depicted in Figure 2.1" and that "the exact position of HVO's offset is not nominated within this woodland". This confirms that even if the vegetation mapping is correct, there is no commitment to where the new location of existing offsets will be located. This lack of certainty is not sufficient basis on which to approve the proposal.

Existing consents and commitments

- 8 There is no demonstrated reason why the existing consent for the Hunter Valley Operations South Coal Project needs to be varied. The existing biodiversity offset arrangement appears satisfactory and offsets do not need to be relocated 100 km away from the site.
- 9 Alternatives to the proposed offset arrangements have not been identified. These should be evaluated in the assessment report, not dismissed as is done in Section 3 of the report.

Cumulative impacts

- 10 The environmental assessment refers to biodiversity issues from a site specific perspective, and provides an inadequate assessment of cumulative impacts at the appropriate scales. It should give consideration to the regional biodiversity context, without which the appropriateness of offset arrangements cannot be reasonably assessed.

This proposal raises more questions than answers. For example:

- 1 How does the reallocation of biodiversity offsets affect approvals and commitments given by the applicant under the Environment Protection and Biodiversity Conservation Act 1999?

- 2 What assessment has been made of the biodiversity values of the proposed alternative offset site, and what is the security (or insecurity) of these offset areas?
- 3 What management arrangements are in place to ensure that the offset commitments can be achieved?
- 4 Why is the time and resources of the community and government being wasted on reallocations of existing commitments which do not change the development proposal, are confusing, and lack transparency?
- 5 What were the alternatives to the proposal that were considered?
- 6 Does the proposed modification of the development comply with the NSW Government's principles for biodiversity offsetting?

The Hunter Environment Lobby objects to the proposed development and expects that the reallocation of approved biodiversity offsets must be refused consent.

Thank you for your consideration of the above. Please advise the Group of the receipt of the submission, and of the progress with the consideration of the development application.

yours sincerely

Jan Davis (President)

Phil Jones - OBJECTION HVO Modifications

From: carol russell <russellc2@bigpond.com>
To: <Phil.Jones@planning.nsw.gov.au>
Date: 15/10/2012 2:35 PM
Subject: OBJECTION HVO Modifications

SUBMISSION AGAINST THE CHANGES TO THE MODIFICATION TO RELOCATE THE HVO GREEN BIODIVERSITY OFFSET TO THE GOULBURN RIVER
 AREA SEPTEMBER 2012

06-0261 (MOD 4 & 5)

Biodiversity offsets are meant to be enduring, for at least the length of time that the harm being done by mining remained. Planning should reject the claims in the letter supporting these latest modification that it will deliver 'long term' conservation value as meaningless. This has been demonstrated by the 2002 Consent for Warkworth Operations where the mine promised a conservation area be established then did nothing about it. Each year of the Annual Environmental Report actioned it for the following year. Hence it never happened. Nor was the \$50,000 to a Conservation Fund ever contributed. The same will apply to the Goulburn River area since the two mines are owned largely by the same company with the same environmental credentials and since Planning failed to enforce compliance.

Offsets must be located appropriately. The land along the Goulburn River is over 100 kms away from the area where the biodiversity losses will take place. The Goulburn River property consists predominantly of cleared creek flats and slopes comprising shrubby versions of woodlands. The confidence that the woodland communities would return to a sustainably functioning community with the cessation of grazing is not supported by any evidence. No details of enhancement or revegetation plans are offered. I conclude therefore that there will be no net benefit from setting aside this area. I also argue most strongly that this area certainly will not offset losses in the Wollombi Brook area. It is too far away to meet the 'like for like' principle. There is also no connectivity to the Goulburn River. This is an essential requirement for a true offset to provide the environmental outcomes of the bird and animal species which will be displaced. There is no evidence that I have seen from the Developer that the Goulbourn River contains vegetation assemblages even similar to those being lost in the Hunter Valley or that the proposed area will offer equal or greater biodiversity value. Indeed in the few pages submitted by C&A in September there is no further scientific information to demonstrate that the new area will offer vegetation which is not a mere simplified assemblage of lesser biodiversity value. There has been no Risk Assessment examining the potential for failure to deliver a sustainable WSW ecosystem and for the losses of biodiversity enhancement that the Archerfield site currently offers HVO.

I contend that the new biodiversity area at Merriwa is unsuitable and inappropriate for either mining development. The offset strategy is not "like for like" because offset areas are from different communities, and the Goulburn River site, said to be merely within a similar landscape, is in a different locality 100 km distant. The Goulburn River area consists predominantly of cleared creek flats and slopes comprising a shrubby version of the EECs. Although it is bigger in area there has been no commitment to enhancement programs on that property other than excluding grazing. This Offset area is not contiguous with the proposed disturbance area to ensure a direct offset in terms of all the vegetation communities known to occur in the disturbance area and for the loss of habitat of the State and Commonwealth endangered birds and mammals. The location of the proposed biodiversity offset area should provide for the development of broad regional vegetation linkages across the Hunter Valley Floor, to facilitate the development of future regional biodiversity corridors. The choice of this site makes this impossible. It assumes that the biodiversity will be enhanced without outlining any practices other than those normally expected such as weed control.

It is of similar and increasing concern that the area in question does not belong to the proponent. What will be the outcome if the sale does not eventuate but consent for mining previously offset areas is granted? Had the Mining company purchased the land in advance and committed to environmental improvement then public confidence in their promises might have increased. What we have had then and in the latest proposal is nothing more than company spin.

Close reading of the letter 26th September 2012 fails to remove the ambiguity surrounding the life of biodiversity

offsets. The word "perpetuity" is used but no definition of its meaning supplied. The NDAs were also to be protected in perpetuity but the Deed of Agreement supposedly binding this has been revoked. Repeatedly the EA says that the biodiversity area will be protected "for the life of the project". This does not necessarily mean either 'for the life of the mine' or 'for the period that the impact occurs'. The project exists only as long as the consent. Since offsets must be enduring and they must offset the impact of the development for the period that the impact occurs whether this equates to 'the life of the project' or longer. There is no instrument or regulation to provide a legally binding framework for these commitments.

The objectors to the 2002 Warkworth Development Application thought that the previous consent and the commitments made in the existing Biodiversity Offset Strategy would be legally binding. Biodiversity Areas which have been set aside in a previous development approval now proposed as an offset for an alternate mine is totally unacceptable. There can be no confidence as to the security and enforceability of commitments made. It was believed offsets will be enforceable through development consent conditions, that offsets will be secured by appropriate land zoning or other alternatives. This was never enforced. Planning must now give assurances to those beliefs and reject this modification thus ensuring the commitments made in previous development consents.

Sincerely,
Carol Russell
15 Strayleaf Crescent
Gungahlin, ACT 2912

13th October, 2012

Mr Phil Jones
NSW Dept of Planning & Infrastructure
Sydney.

Dear Sir,

Ref: HVO South Project - Modifications 4 & 5

We refer to the Coal & Allied letter dated 26 September, 2012 to your department seeking amendments to Modification 2, from February, 2012.

We object to the proposed amendments for the following reasons:-

1. The haste with which the application was prepared, and dealt with by DOPI casts doubt on the independence and integrity of the Department.
2. We find it incredible that the proponents of the land swap, your department that reviewed the modification and the PAC that approved it could have overlooked the obligation to properly determine an alternate offset area.
3. The local Community including the original objectors to Modification 2 has been denied the opportunity to properly respond to the proposed modification.
4. We consider that the 140 ha of land to be acquired at Goulburn River is not like for like with the Archerfield sands area leaving HVO South Project with no acceptable offset area.
5. We are concerned that the repealed Section 75W of the EPA Act continues to apply even after mining approval has been granted by your Department.

yours sincerely

Marie & Stewart Mitchell

Leslie & John Krey
98 Noses Peak Rd
Bulga NSW 2330

14th October 2012
Tel. 0415 235 368

Phil Jones
Department of Planning & Infrastructure
Sydney

Dear Sir,

Re : Modifications 4 and 5 to the Hunter Valley Operations South Project (06-0261)

We refer to the application in the Coal and Allied letter of 26th September 2012 requesting modification of the HVO South Project Consent.

We object to the proposals contained in the application for the following reasons.

1. It seems the Department of Planning is moving with great haste in an effort to rectify an "error" which was pointed out in the appeal that is being heard against the expansion of Warkworth Mine. It is our understanding that the original objectors have not been given time to address this issue again due the short time allowed.
2. The mine is looking to offset against an existing offset ? Only the mining community could have this rubber stamped by the Department of Planning who seem to have no concept of protecting the community and the environment.
3. To our mind an offset should only be considered if it was like for like, in the same area and not 100 km away. The land in the Goulburn River area is not comprised of Warkworth Sands (Aeolian) and thus is not like for like with Archerfield.
4. Coal & Allied does not own this land in the Goulburn River area.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John and Leslie Krey', written in a cursive style.

John and Leslie Krey

Thursday 11th Oct 2012

Phil Jones
Dept. of Planning NSW

Subject

Applications from Coal and Allied seeking to modify the Hunter Valley Operations South (HVO South) Project Approval (06_0261) pursuant to (former) s.75W of the *Environmental Planning and Assessment Act 1979* (Modifications 4 and 5).

I am objecting to the application so called, "offsetting the offset" for the following reasons:

1. Coal and Allied call it an administrative omission, the fact is they have just been caught out, again. This is another example of their attitude to the public and the consenting system and the regulating systems
2. Their policy is if you get caught, pay the fine and get on with business
3. With Coal & Allied's history, there is sure to be other hidden so called errors.
4. Coal & Allied is owned by Rio Tinto which is the sixth most controversial Company of the world in 2011 according to Reprisk.
5. Rio Tinto treats Australia as a third world country.
6. The Planning Department cannot continue on the run band aiding to cover the so called mistakes that Coal and Allied/Rio Tinto make.

The application should be refused on history alone

I do not and have not made Political donations



Regards
Hubert Upward
95 The Inlet
BulgaNSW 2330

Most Controversial
Mining Companies of 2011

March 2012

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MOST CONTROVERSIAL MINING COMPANIES OF 2011

The extraction industry is traditionally one of the most criticized by various stakeholders for its negative impacts on communities and the environment. This RepRisk special report focuses on mining companies and their projects in 2011.

In order of ranking, the 10 Most Controversial Mining Companies of 2011 were:

1. Alpha Natural Resources
2. Newmont Mining Corp
3. Glencore International
4. BHP Billiton
5. Freeport-McMoRan Copper & Gold
6. Rio Tinto
7. Compania de Minas Buenaventura
7. Barrick Gold (equal ranking)
9. Anglo American
9. Vedanta Resources (equal ranking)

These mining giants and their global operations have come under fire for allegedly polluting potable water supplies, scarring landscapes and damaging sensitive ecosystems. There were also numerous allegations detected by RepRisk related to impacts on local communities and effects on the traditional way of life of indigenous peoples. Furthermore, these companies were accused of having poor occupational

health and safety standards, which resulted in toxic emissions and accidents that have caused injuries,

fatalities or serious illness.

The negative stakeholder sentiment captured throughout 2011 by RepRisk indicates that it may be in a company's best interests to heed the warning signals and proactively address the environmental, social and governance issues raised by various activist groups, employees, governments, shareholders, and communities. For some companies, such as Vedanta and Rio Tinto, mining operations were so heavily criticized that activists disrupted their Annual General Meetings, calling on the companies to put a stop to alleged human rights abuses near their work sites and improve their stance on the environment. For Newmont and Minas Buenaventura, the outcry surrounding their Conga Mine led to the suspension of the project in late November.

BHP Billiton attracted a great deal of NGO criticism for its allegedly widespread environmental destruction and human rights abuses. Following Glencore's Initial Public Offering in 2011, public and media interest in the company's activities increased and it was heavily criticized for operations in Africa and South America. Alpha Natural Resources' purchase of Massey Energy saw its RepRisk Index soar, making it the most controversial miner of the year.

Freeport-McMoRan Copper & Gold faced allegations of human rights abuses, particularly in Papua New Guinea where its subsidiary was accused of perpetuating the abuse of workers by paying police to guard its Grasberg Mine. It was further accused of contaminating water bodies with heavy metals from mine tailings. Barrick Gold had to contend with multiple claims of sexual abuse by security staff, and Anglo American faced ongoing lawsuits by former mineworkers in South Africa, who attributed their illnesses

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1. ALPHA NATURAL RESOURCES INC

Alpha Natural Resources shot to the top of the most controversial mining companies list following its purchase of Massey Energy in June 2011. Massey has been targeted for the controversial practice of mountaintop removal mining, as well as alleged pollution, safety problems, poor employment, and fraud issues. Critics of mountaintop removal claim that it scars the landscape, threatens wildlife and contaminates drinking water.

Massey had a well-documented history of problems prior to its purchase by Alpha Natural Resources, including the infamous explosion at the Upper Big Branch coal mine in April 2010 that resulted in at least 25 miner fatalities. Since the incident, the company allegedly received over 1000 citations from the US Mining Safety and Health Administration. Furthermore, the investigation reportedly found that Massey had kept two sets of books to hide safety problems from authorities. The company's security chief allegedly obstructed the investigation by ordering thousands of documents to be destroyed and notifying mine officials about the arrival of government inspectors. He was later found to have also committed perjury. Alpha Natural Resources has since agreed to pay approximately USD 210 million to resolve civil and criminal penalties for the repeated violations.

Massey and its subsidiary, Rawl Sales & Processing, were accused by West Virginia residents of contaminating aquifers and wells with coal slurry. Approximately 600 plaintiffs claimed that 1.4 billion gallons of toxic slurry had been pumped into underground mines between 1978 and 1987. According to the legal action, this resulted in a wide range of health issues, including cancer and chronic gastrointestinal disorders, in surrounding communities. Around 350 lawsuits were reportedly launched and several are still in progress. The companies have already paid out USD 35 million in settlement fees.

In Logan County, West Virginia, environmental groups have challenged the permit granted to Alpha subsidiary Highland Mining's Reylas mine. In Appalachia, residents claimed that the company operates outside the law and invests significant funds into lobbying bodies in order to influence the political system and fight government regulation on mining safety and the environment. There are further allegations that waste and dust emissions are not effectively controlled and that operations pollute waterways and groundwater.

RepRisk Index for Alpha Natural Resources

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2. NEWMONT MINING CORP

US-based gold and copper producer Newmont Mining received significant criticism during the course of 2011, in particular for the impact of its mining projects in Peru, Indonesia, Ghana and the US. The company is said to have a poor international record on human rights and has been accused of masterminding numerous abductions of activists.

In Peru, Newmont Mining is involved in the highly controversial Conga gold and copper mine project. The project is owned jointly with Peruvian company Compania de Minas Buenaventura. At the

end of

November, Newmont announced a suspension of the USD 4.8 billion Conga mining project after days of increasingly violent protests, in which several people were reportedly injured.

In Ghana, local communities refused to relocate for Newmont Ghana Gold's Akyem Project resulting in violent clashes with police forces. Community members claimed they were being illegally relocated to an inadequate camp. Furthermore, Newmont Ghana Gold was accused of poisoning the Subri River in the Brong Ahafo Region where the company operates its Ahafo Gold Mine. Moreover, documents published by Wikileaks in September showed that Newmont was allegedly responsible for a 2009 leak of highly toxic cyanide from the same mine.

In Indonesia, environmentalists put pressure on the government not to allow Newmont Nusa Tenggara (NNT) to continue dumping tailings from its Batu Hijau copper and gold mine into the sea. The practice has allegedly led to a reduction of the fish population and polluted water. In October, environmentalists objected to the Ministry of Energy and Environmental Resource's decision to present environment management awards to NNT. The activists claimed that the company continues to dump around 140,000 tons of tailings into the sea, allegedly 21 times the amount of Jakarta city's waste.

The US Justice Department and the US Environmental Protection Agency came to an agreement in September with Newmont and Dawn Mining concerning the payment for the cleanup of the Midnite Superfund Site. Midnite Mine is a former open-pit uranium mine that was closed in 1981. The cleanup has an estimated cost of USD 193 million

RepRisk Index for Newmont Mining Corp

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3. GLENCORE INTERNATIONAL PLC

Since the announcement of its Initial Public Offering in April 2011, media focus has turned to Glencore and its complex web of subsidiaries and affiliated companies. Glencore's notorious secrecy has become increasingly controversial as cases of environmental and human rights abuses linked to its global operations have been brought to light.

The company's activities continue to be targeted for safety, environmental impact, human rights and tax issues. Glencore's mining activities in Katanga, a poorly regulated conflict zone of the Democratic Republic of Congo, have made it a target for human rights organizations. There are suspicions that the company supplies copper and cobalt from freelance miners, many of whom are children, who work under life-threatening conditions in the Tilwezembe Open Pit Mine. The mine is owned by Katanga Mining, a Glencore subsidiary.

Sulfur dioxide emissions from the Nkana cobalt plant and Mufulira copper smelter, owned by Mopani Copper Mines (MCM), reportedly exceed locally prescribed limits in Zambia. MCM is majority-owned by Glencore. Around 300,000 locals are reportedly being affected, suffering health problems and a loss of crops. Large amounts of sulfuric acid are allegedly injected into the ground to extract the ore, with devastating effects on the environment and residents.

In Peru, Glencore's Empresa Minera Los Quenuales has allegedly harassed union members, and two people were reportedly killed during a blockade. At its La Jagua coal mine in northern Colombia, the company was

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also accused of trying to prevent unions from being formed.

Glencore's Colombian subsidiary, Prodeco, has also been criticized for allegedly operating in areas where paramilitary forces have forced local residents off their lands and killed at least 18 people. Furthermore, the company came under fire for reportedly disposing of waste illegally. Xstrata (in which Glencore holds a large share) has a one-third stake in El Cerrejon, which operates a controversial coal mine in Colombia. The mine has reportedly contaminated groundwater and created air pollution, which has led to health problems for the local people. The two companies have also been accused of anti-competitive behaviour as Xstrata has allegedly received several contracts from Glencore that were not subject to competitive tenders.

Century Aluminum, which is 44 percent owned by Glencore and also acts as a major supplier, has allegedly

breached a string of environmental laws in the US, including air pollution and groundwater contamination. In China, Glencore has a stake in the proposed PolyMet copper mine, which has also drawn criticism due to its potential impacts on the environment and locals' livelihoods.

Furthermore, food security analysts have accused Glencore of causing a rise in the price of raw commodities, making it increasingly difficult for poor consumers to feed their families. The company is said to have used its dominant position within the global market to drive up prices through speculative activity and also to have sought illicit information from authorities in Russia and Belgium to gain a competitive advantage in local markets.

RepRisk Index for Glencore

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4. BHP BILLITON PLC / Ltd

In 2011, BHP Billiton continued to be one of the most controversial companies in its sector with a consistently high RepRisk Index. It attracted a great deal of NGO criticism for its alleged widespread environmental destruction and human rights abuses. BHP's operations have constantly been associated with resettlement or the forced relocation of communities, the destruction of traditional livelihoods, human rights abuses and the violation of indigenous peoples' rights.

Occupational health and safety was one of the issues consistently highlighted in 2011.

Fatalities at the Cerrejon Coal Mine in Colombia in late 2010 had already called attention to alleged poor working conditions.

Despite a commitment to improving health and safety, BHP has reported 26 deaths from 2009 to 2011. According to a survey conducted by the Financial Times, BHP has failed to decrease the number of fatalities at their operations over the past five years.

In Pakistan, it was reported that 90 percent of the villagers living near the Zamzama gas plant operated by BHP Billiton are allegedly suffering from various diseases resulting from toxic fumes emitted by ponds at the plant. In Australia, workers were also reported to have been exposed to asbestos on a BHP Teekay shipping vessel. Other issues were highlighted at the BHP Billiton Mitsubishi Alliance's (BMA) Peak Downs and Saraji mines in Australia.

The company's drilling techniques have also been controversial. An NGO report called "Dirty Energy" targeted BHP's deep sea oil production, which involves a more carbon intensive process than conventional oil production. Furthermore, BHP reportedly has a huge stake in US shale gas, with plans to use the controversial hydraulic fracturing (fracking) technique to develop it. In Arkansas, BHP

Billiton faced a class action lawsuit over the negative impact of fracking operations.

Critics also accused BHP's CEO of misleading the public regarding its corporate social responsibility agenda when 139 BHP Billiton companies in its group were highlighted as operating from international tax havens. This was further highlighted by the report "Publish what you pay" which criticized BHP for alleged tax evasion. The company was ranked as the 13th least transparent company for country level disclosure on its international operations in Transparency International's "Promoting Revenue Transparency" 2011 Report on Oil and Gas Companies.

RepRisk Index for BHP Billiton PLC

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5. FREEPORT-MCMORAN COPPER & GOLD INC

Freeport-McMoRan operations were highly criticised throughout the year for allegations of poor employment conditions and human rights abuses.

In Papua New Guinea, the company's subsidiary, PT Freeport Indonesia, was accused of perpetuating human rights abuses by paying Indonesian police forces USD 14 million to guard its Grasberg Mine. One union spokesman stated that he and other union members feared for their lives following deadly attacks on company employees. In October 2011, police allegedly opened fire on striking Freeport workers as they boarded a bus to join the demonstration. Since then, at least four workers and two residents have been killed by gunmen near the mine. Workers have also been involved in a pay dispute with the company that resulted in a 3-month strike of 8,000 miners. Local tribesmen also joined the striking workers to air their grievances over land rights and pollution issues. Freeport has reportedly admitted in the past to paying local military and police forces to guarantee security at the mine, despite accusations that the military has violated locals' human rights.

According to environmental group WALHI, the Freeport mine has polluted a world heritage-protected national park by pumping billions of tons of mine tailings into rivers and estuaries, threatening endangered species and polluting forests and water bodies with heavy metals such as copper and arsenic.

Freeport-McMoRan also faced labor disputes and strikes in Peru, where the government was forced to step in to mediate a wage deal with workers at the company's Cerro Verde Mine after they began a hunger strike.

RepRisk Index for Freeport McMoRan Copper & Gold Inc

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6. RIO TINTO PLC

NGOs have targeted Rio Tinto over its alleged human rights and environmental abuses around the world, keeping the company in the media spotlight throughout 2011. Protests organized by representatives from regions where Rio Tinto has operations, such as Indonesia, Mongolia and the US, were held at the company's AGM in April.

Key issues that have been highly publicized include uranium mining; alleged genocide and war crimes in Papua

New Guinea; and the risk of social and environmental damage at many mining projects proposed by Rio Tinto and its subsidiaries.

In Australia, health and safety conditions and a lack of transparency at the Mount Thorley, Hunter Valley and Bengalla coal mines, which are managed by Rio Tinto Coal Australia, have drawn criticism and media attention throughout the course of the year. At Rio Tinto's Bell Bay smelter, union members allege they were harassed by managers of the project. Meanwhile Rio Tinto Alcan pleaded guilty in court to spilling over 62,000 liters of unleaded petrol, resulting in the contamination of soil and groundwater in Arnhem Land.

An NGO report stated that radioactive water is also in danger of spilling from the Ranger Uranium Mine into an Aboriginal community area and Kakadu's World Heritage-listed wetlands. The mine is operated by Energy Resource of Australia, which is controlled by Rio Tinto. Reportedly, over the past 30 years, roughly 100,000 liters of contaminated water have leaked out of the mine's tailings dam per day.

Environmentalists have called on Rio Tinto to stop uranium mining in Western Australia, claiming the company produces radioactive waste which has been known to cause intergenerational sickness. The company was also criticized for supplying to Tokyo Electric Power (the operator of the two Fukushima plants that experienced melt down and cooling problems in Japan), despite Tokyo Electric Power's reported issues of ongoing falsification of information and cover-ups.

In Africa, uranium mining has also been blamed for pollution and for alleged detrimental health impacts on local populations. In addition, the company's operations are often located in areas where regulations and tax laws are lax. In 2011, Rio Tinto was accused of not allowing for proper public consultation, a lack of transparency, failing to deal with waste properly, and health and safety issues regarding its workers in African countries.

New projects proposed by Rio Tinto have also gained attention due to the alleged ecological and social risks they pose. In Canada, Rio Tinto Alcan has been sued by two First Nation tribes in British Columbia's Supreme Court given Kenney Dam's alleged adverse impacts on their culture, sustenance and fisheries.

RepRisk Index for Rio Tinto

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7. (EQUAL) COMPANIA DE MINAS BUENAVENTURA SA
During the course of 2011, the Peruvian Compania de Minas Buenaventura has been harshly criticized for its proposed Conga gold mine, jointly owned with Newmont Mining. The project, located in the northern Peruvian town of Celendin and worth USD 4.8 billion, has been fiercely opposed by local communities. Buenaventura is Peru's largest publicly traded precious metals company and a major holder of mining rights in the country.

In April 2011, four farmers were killed by Peruvian police in the town of Oyon during a clash with Buenaventura. Farmers were reportedly seeking a financial contribution for the water and sewage damage and the return of the land used by the company for its mining operations.

In November, farmers protested against the project, expressing concerns about water resources given that it is located close to 30 lakes that supply water to three provinces. Protesters also claimed that they will see little or no benefit from the project and stated that irrespective of any harsh response from police,

they would continue demonstrating until the government addressed their concerns.

In late November, Peru's deputy minister resigned after allegedly being unable to find a resolution to address the escalating protests against the Conga mine. Following the continuous clashes between protesters and police, the president of Peru declared a state of emergency in the impoverished Cajamarca region. At the end of the month the suspension of the project was announced.

Following the events, in January 2012, the Peruvian government announced a package of development investments in the Cajamarca region aimed at placating protesters and possibly restarting the project.

The continuous negative sentiment detected by RepRisk in 2011 made the company's Reputational Risk Index (RRI) sharply increase during the 12 month period. In January, Buenaventura's RRI was 8, by December it had reached its peak with a score of 54, denoting a high risk exposure for the company.

RepRisk Index for Compania de Minas Buenaventura

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7. (EQUAL) BARRICK GOLD CORP

In 2011, Barrick Gold has been the focus of several reports and news headlines due to the human rights abuses allegedly occurring at its mines. Multiple claims of sexual abuse, beatings and murders have been linked to its security staff. Those affected by environmental destruction, health problems, and loss of land and livelihoods have also achieved a media presence, publicizing their complaints against the company.

In Papua New Guinea, gang rapes were allegedly carried out at Barrick Gold's Porgera mine, for which the company was encouraged to fire several employees after pressure from human rights groups. Its security forces have also been accused of extrajudicial killings and beatings, usually of illegal miners trying to make a living on the mine's periphery. There have also been allegations that the mine is causing extensive environmental damage to forests and farmland, and has taken land required by locals for their livelihoods. In addition, six million tons of tailings from the mine have allegedly been discharged into the Porgera River.

African Barrick Gold, which is largely owned by Barrick Gold, has also been embroiled in allegations of sexual assault levelled against the company's security guards at its North Mara gold mine in Tanzania. This scandal followed another incident where seven intruders were allegedly shot dead at the mine after 800 people stormed the project. The action was sparked due to the forced relocation of 10,000 families, the loss of farmlands and livelihoods, and the ongoing poisoning of local residents.

The Chilean and Argentinian governments have been accused of drawing up a favorable tax treaty for Barrick Gold's Pascua Lama mine, which straddles the border of the two countries. The project allegedly violates OECD and Equator Principles due to impacts on indigenous peoples and their livelihoods, breaches national and international laws, and has reportedly damaged and depleted glaciers. It has also been accused of a lack of transparency, falsely obtained land titles, corruption in supplier contracts, and non-compliance with environmental legislation. In addition, there have been 16 worker deaths at the mine, and the operations have been accused of failing to benefit the local community.

The Bajo Segura Santa Lucia waste treatment facility, used by Barrick's Veladero gold mine in Argentina, has

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allegedly been releasing an illegal discharge into streams.

The construction of an electric transmission line, to power Barrick Gold's Pueblo Viejo mine in the Dominican Republic, has drawn criticism concerning its impact on the Nizao and Banilejo river basins. Over 5,000 people were allegedly displaced in order to make room for the mine's tailings dam. In addition, experts have voiced concerns that the dam could collapse or overflow, potentially contaminating a branch of the Yuli River.

In the US, Native American activists have legally challenged the expansion of Barrick Gold's Cortez Hills mine in Nevada, claiming it will damage the mountains by pumping out 4,100 gallons of water a minute to keep the open pit dry for the mining operations. There are also fears it will pollute the air and dry up groundwater.

RepRisk Index for Barrick Gold Corp

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9. (EQUAL) ANGLO AMERICAN PLC
Anglo American faced criticism across the globe in 2011 for both its current and proposed mining projects.

The year saw protests at many of the company's sites due to concerns about worker safety as well as a great

deal of opposition to its plans for new projects that would allegedly affect local and indigenous communities as well as result in detrimental impacts on the environment.

Anglo American's joint venture with Xstrata and Mitsui & Co at the Collahuasi mine in Chile proved very controversial throughout the year. Over twenty labor unions accused the companies of serious acts of retaliation against union leaders following a series of strikes. Additionally, the company was one of the key investors in the HidroAysen Dam, a project that sparked violent protest across the country when it was granted approval. The project would allegedly flood 6,000 hectares of rare forest, river valleys, national parks and farmland.

The company's Peruvian operations also saw strong opposition this year. The Quellaveco Copper Mine was criticised due to concerns about heavy usage of scarce water supplies. Likewise, its proposed Michiquillay Mine faced protests from residents who sought better compensation and feared it would damage the local environment. In Colombia, the company is part-owner of the highly controversial Cerrejon Mine and continued to attract strong criticism. In the mine's 32 years of operation, communities of Afro-Colombians, indig

enous groups and campesinos claim to have been constantly struggling against displacement, human rights

violations by paramilitary forces, and for the protection of their natural resources.

In North America, the Pebble Mine (proposed by a consortium that includes Anglo American, Northern Dynasty Minerals, and Rio Tinto) faced strong opposition in the Bristol Bay region of Alaska in 2011. Opponents

have claimed it will produce approximately 10 billion tons of toxic waste and have expressed serious concerns

about the impacts on ecosystems and landscapes. These concerns are due to the proposed underground mining operations that would be located between Lake Clark National Park and Lake Iliamna, the largest fresh water body in Alaska and source of the salmon-rich Kvichak River. Furthermore, local

indigenous groups have

voiced concerns over the impact the project would have on their traditional way of life.

In South Africa, Anglo American was one of several mining companies whose workers, led by the National Union of Mine Workers, demonstrated against alleged poor safety standards in an effort to secure a reduction in mining fatalities. Reportedly, 3,500 miners submitted a memorandum of concerns to officials in Johannesburg. Anglo American also faced a lawsuit by 18 ex-employees of the President Steyn Gold Mine, owned by one of its former subsidiaries. The plaintiffs claim that the company knowingly exposed them to silica dust, which led to respiratory illnesses, including silicosis and tuberculosis. The 18 cases were chosen to represent the circumstances of tens of thousands of former mineworkers who have allegedly suffered as a result of working for Anglo American.

RepRisk Index for Anglo American PLC

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9. (EQUAL) VEDANTA RESOURCES PLC

British mining group Vedanta was harshly criticized in 2011 for its mining projects in several countries including India and Zambia. Campaigners from various international NGOs disrupted the company's Annual General Meeting in July, criticizing Vedanta for its alleged poor environmental and safety record, disregard for human rights and pollution from its factories.

In India, Vedanta's proposed Niymagiri mine and a refinery expansion in the state of Orissa have been challenged by local residents and international NGOs such as Amnesty International. The company has been accused of undermining human rights by limiting access to health and water. Local indigenous communities have consistently protested against the project, claiming that it would further pollute their land and water. The indigenous Dongria Kondh tribe considers the Orissa land sacred and believes that this project could threaten their survival.

According to local accounts, a pond storing waste for a Vedanta Aluminium refinery in Orissa overflowed in May into the Vamsadhara River, contaminating nearby water facilities. Allegedly, the spillage of thick red waste, known as red mud, spilled into water sources which had been the source of water for drinking, bathing and washing for locals.

Sesa Goa, a Vedanta subsidiary, has been repeatedly criticized for reported illegal mining and funding political parties in the southern Indian state of Karnataka.

In July, Vedanta Resources and Cairn Energy announced a deal where Vedanta will purchase Cairn Energy India's investments for USD 9 billion. Activists staged a protest outside Cairn Energy's office in the UK claiming that Vedanta should not be allowed to acquire Cairn Energy India. Protesters stated that Vedanta had a poor environmental and social track record in India.

In Zambia, Vedanta has been repeatedly criticized for the actions of its subsidiary, Konkola Copper Mine, which polluted the drinking water of more than 2,000 residents with effluents discharged from its mining operations. The Lusaka High Court fined the company USD 2 million.

RepRisk Index for Vedanta

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risk analysts enter an original summary into the database and link it to the companies and projects in

question. No article is entered twice unless it has been escalated to a more influential source, contains a significant development, or has not appeared for the past 6 weeks. This helps to ensure the balanced and objective rating and weighting of the negative news, and thus the company's quantitative measure of risk exposure, the RepRisk Index (RRI). The RRI measures the risk to a company's reputation, not its actual reputation in general.

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Contact Information

For more information about the RepRisk tool or this report on the Most Controversial Mining Companies for 2011, please contact media@reprisk.com, or visit our website: www.reprisk.com.

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Phil Jones - HVO South Project Approval Modifications 1 to 5 Application 06-0261

From: SSHEG MEDIA <ssheg@hotmail.com>
To: <phil.jones@planning.nsw.gov.au>
Date: 11/10/2012 9:59 PM
Subject: HVO South Project Approval Modifications 1 to 5 Application 06-0261

Dr Neville Hodkinson
 Neotsfield Homestead
 54F Neotsfield Lane
 Whittingham, NSW 2330
 ssheg@hotmail.com

17th October 2012

NSW Government
 Department of Planning & Infrastructure
 G.P.O Box 39
 Sydney NSW 2001
 Phil.Jones@planning.nsw.gov.au

Re HVO South Project Approval Modifications 1 to 5
 Applications 06 - 0261 MOD 1 to 5

We all need to be reminded that in the 1820's Homesteads in the Hunter Valley were built close to a reliable water supply. Why then has this Archerfield Homestead Complex water supply been kept secret and ignored for so long; and ignored in all the Environmental Assessments and Offset evaluations over the years at least back to 2002.

The secret is the Geology of the Archerfield Hill some hundred odd metres above the Hunter River and the Alluvial River Flats below.

As I understand it (in the limited time we have to comment) the Hill is an ancient Sand deposit that sits upon a solid Sandstone Basin filled with fresh water that not only provides "Well Water" close to the Hill surface but plays its part in the flourishing Homestead varieties of old trees of overseas origin that are testament to the Colonial significance of this Site.

As you may now realise and appreciate the Secret Water Story now becomes an impediment to both of the HVO South Offset Proposal as well as the Warkworth Archerfield Offset Plans. Now the Colonial and the European Heritage significance also comes into play as this Secret Water Well is in use today as it has been since the early 1820's. It would be expected that the life blood of the Archerfield Homestead Complex would be at Risk by concentrated reforestation of otherwise farm grazing land planned as the Warkworth Archerfield Offset Proposal.

The Colonial and European Heritage significance was outlined in my Warkworth Extension submission application 09-0202 dated 12 June 2010, where details are provided including Colonial Map 2 -entitled Hunter River District 1822 to 1825 of Colonial settlement land parcels along the Hunter River.

Interestingly this detailing has apparently still been ignored by Planning, PAC, and Mining and in this submission the Archerfield Homestead Property is indicated in section "D" of MAP 2. Similarly, the community disgust regarding the Offset proposals are still relevant in this submission.

Interestingly, and perhaps just as applicable here is Henry Danger's description of the Hunter River land.

Similarly, many aspects of the 2002 Approved Warkworth preserved areas now approved in 2012 and now under Court Appeal are outlined in various of the hundred odd submission, and are invoked here to measure the Warkworth loss and Offset swap content. They also outline the extent of the concern at the integrity of the process.

It is interesting to note that "The Archerfield property was identified as having the highest Conservation significance (with a score of 17 from a possible 20) of all the eight areas assessed". Add to this the Colonial and European Heritage significance and mostly devoid of Aboriginal Heritage to date, then a rethink is warranted of the Offset Plans for the Archerfield Property.

Sincerely,

Dr Neville Hodkinson

11th October 2012

Phil Jones

Department of Planning

Subject

Applications from Coal and Allied seeking to modify the Hunter Valley Operations South (HVO South) Project Approval (06_0261) pursuant to (former) s.75W of the Environmental Planning and Assessment Act 1979 (Modifications 4 and 5).

I am firmly against the change of offsetting an offset. This change should not be considered. I object to the allocation of the 140h Archerfield offset from Hunter Valley Operations ownership to Warkworth ownership. The designation of the equivalent area in Goulburn River area is also unacceptable when it is not in the local area and not like for like. The Goulburn River area is not equivalent to Warkworth Sands Woodlands.

Why should the mine get the opportunity to fix their so called offset package? The original piece they put together should be what is considered as their offset package as they were quite confident in what they had proposed. It is only because the judge has seen the flaws in the offset package and both Coal and Allied and the Department of Planning say it was an oversight or administrative error. To me that stinks of people not really reading, understanding and questioning the material that is put forward to them and the community is left to suffer the consequences of these quick and indecisive determinations that are made on incorrect and less than adequate information.

The application should be refused.

I do not make political donations.

Regards

Melanie Caban
29 Inlet Road
Bulga NSW 2330

DoPI

Phil.Jones@planning.nsw.gov.au

Hunter Valley Operations South Project Approval (06_0261)

Modification 5 Dedication of Lands For Offsets

I do not support the application and I am objecting to the proposed offsetting of offsets as it is flawed and contrary to the principles of offsetting, as set out in the DECCW principles.

The area offered as an offset on an adjacent Rio Tinto mine where a remnant of Warkworth Sands Woodland still exists. There is no guarantee that this offset will not be mined and from MTW, a Rio Tinto mine, previous examples of Non Disturbance Area and Green Offset Strategy 'in perpetuity' has been changed due to economics. Economics will change MTW views on what promises made will be kept or dishonored.

Ian Norris Bartholomew
89 Wambo Road
BULGA NSW 2330

Phil Jones - HVO South - Modification 4 - Administrative Omissions and Clarification

From: "Judith Leslie" <jabulga@bigpond.com>
To: <Phil.Jones@planning.nsw.gov.au>
Date: 9/10/2012 4:39 PM
Subject: HVO South - Modification 4 - Administrative Omissions and Clarification

Dear Mr Jones,

I live in the Hunter Valley, 7 km from the Mount Thorley Warkworth Coal and Allied open cut mining operation.

With regard to HVO South - Modification 4 - Administrative Omissions and Clarification I wish to make a submission against this modification

1. It seems that in the rush to push this through, the spelling was not checked
"Administrative" should be Administrative.
2. The proposed offsetting of offsets is flawed and contrary to the principles of offsetting as set out in the DECCW principles :

DECCW Principle 3: Offsets must never reward ongoing poor performance.

Offset schemes should not encourage landholders to deliberately degrade or mismanage offset areas in order to increase the value from the offset.

Digging coal out of environmentally sensitive areas is deliberate degradation

DECCW Principle 8: Offsets should be agreed prior to the impact occurring.

The mining has started already

DECCW Principle 11: Offsets must be located appropriately.

Wherever possible, offsets should be located in areas that have the same or similar ecological characteristics as the area affected by the development.

DSEWPaC Equivalent (Principle 6): Environmental offsets should be located within the same general area as the development activity.

The Goulburn River is NOT in the Hunter Valley

DECCW Principle 13: Offsets and their actions must be enforceable through development consent conditions, licence conditions, conservation agreements or a contract.

Offsets must be audited to ensure that the actions have been carried out, and monitored

to determine that the actions are leading to positive biodiversity outcomes.

DSEWPaC Equivalent (Principle 8): Environmental offsets should be enforceable, monitored and audited.

Clearly no-one has been policing this.

From where I sit, none of these principles have been adhered to, and to call it an Administrative Omission would be laughable if it did not appear so sinister.

As a Hunter Valley resident surrounded by coal mines and threatened by coal mine expansion, I am very concerned about these "Administrative Omissions" and other deliberate deceptions by the Department of Planning and Infrastructure, that seem hell bent on approving as much coal mining as possible and the citizens can go to hell.

We pay your wages; you and your colleagues should be working for us, not the coal mines.

A handwritten signature in cursive script, appearing to read 'Alan M Leslie', written in dark ink.

Alan and Judith Leslie
"Woonona"
339 Inlet Rd
Bulga
NSW 2330
Australia
Tel +61-2-65745305
Mob Judith 0439745306
Mob Alan 0413145661

Phil Jones - HVO South - Modification 2

From: "Heather Davis" <hda95785@bigpond.net.au>

To: <Phil.Jones@planning.nsw.gov.au>

Date: 8/10/2012 5:00 PM

Subject: HVO South - Modification 2 [- Assumed to refer to MOD 4 PS 1/10]

To the Department of Planning NSW

Re ; HVO South – Modification 2

I wish to object to Modification 2 in that the proposal of offsetting of offsets is greatly flawed and it is also contrary to the principals of offsetting as set out in the DECCW principles.

Yours sincerely

Heather Davis
245 Inlet Road
Bulga, NSW, 2330

Phil Jones - MTW/HVO Offset Area

From: "Danielle" <ddpaints@bigpond.com>
To: <Phil.Jones@planning.nsw.gov.au>
Date: 10/10/2012 7:26 AM
Subject: MTW/HVO Offset Area

Good Morning Phil,

Firstly, I am not a member of the Bulga Progress Association, but I do wish to bring to your attention my opinion on Rio's mines, as a resident of Bulga.

On various occasions I have had the opportunity to present the impact of RIO's operations on our lives, from the PAC to the appeal, it appears that anything that I and others present falls on death ears.

I wish to make the following points, in regard to the new argument regarding offset areas:

- Impact on our lives has been 24/7 for the past 4/5 years;
- The noise is intolerable yet Planning increased the volume output;
- **I do not care about offset areas,** when NSW Planning has allowed mines to impede on our basic human rights;
- NSW Planning have taken our lives, our future, and the value of our homes and flushed them down the toilet;

I REITERATE – **Offset areas** – are not important to us and many others in Bulga, when NSW Planning puts more value on Sands and trees rather than people. Offset areas may be a point of law that the EDO can argue, but the complete avoidance by NSW Planning to be proactive when it comes to our rights belongs in the courts for Civil action (class action);

Put simply NSW Planning had the capacity to ensure that residents of Bulga were treated fairly without discrimination, by ensuring that the acquisition lines included all properties in Bulga, hence giving the people the right to decide their future. Unfortunately, we all know that money talks when it comes to the NSW Government, NSW Planning has the power, not to stop mines nor to control them, but it has an obligation for the people that have been forced to give up everything for the NSW Government, with no compensation.

I have emailed you today not to argue about offset areas, to remind NSW Planning that many of us are realistic that mines are here and will continue to expand, but it is time that NSW Planning listened to what people want, BE PROACTIVE, move the line and forget about mitigation it doesn't work.

Kind regards,
Danielle Hanson

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APPENDIX C: SUPPORTING INFORMATION (ENVIRONMENTAL ASSESSMENT)



Managed by Rio Tinto Coal Australia

26 September 2012

Mr Sam Haddad
Director- General
Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Copied to david.kitto@planning.nsw.gov.au

Dear Mr Haddad

**Hunter Valley Operations South Project Approval (06_0261)
Modification 5 – Dedication of Lands for Offsets**

In reviewing the Hunter Valley Operations (HVO) South Project Approval 06_0261 the proponent has identified various mining operations that it wishes to clarify or ensure that it no longer has planning approval to carry out. HVO seeks to do this via a modification application under section 75W of the *Environmental Planning and Assessment Act 1979* (EPA Act) to amend the HVO South Project Approval to include a condition specifying this.

While it was always our view that the entering into a VCA over this area would prevent any such development from being carried out the inclusion of this condition will further clarify this and confirm that the HVO South Project Approval does not provide planning approval for any development in the Southern Biodiversity Area (SBA) and Northern Biodiversity Area (NBA) offsets as proposed in the Warkworth Extension Project Approval.

We note that the HVO South Project Approval is a "transitional part 3A approval" and accordingly section 75W of the EPA Act is still available pursuant to the transitional provisions provided in Schedule 6A.

1.0 Background

The HVO South Project Approval was granted on 24 March 2009. It provides approval for:

1. consolidation of 25 existing consents to allow production and processing of up to 16 million tonnes of coal across the HVO-South complex;
2. extending the Cheshunt, Riverview and South Lemington Pits;
3. transport of coal, overburden, tailings and rejects between HVO-South and HVO-North;
4. transport of coal via haul trucks or conveyor to the Wambo rail spur, or alternatively construction of a new rail spur, and transport of coal to market via rail;
5. relocation of the Hunter Valley Gliding Club and Comleroi Road; and
6. rehabilitation and revegetation of the site.

Modification 1 was granted on 17 December 2009 and provided for the raising of Lake James.

Modification 2 was proposed to amend the HVO South Project Approval to reallocate the Archerfield Property, provided as a Biodiversity Enhancement Area to offset impacts caused by the clearing of native remnants (48ha) and regrowth (92ha) for the HVO South Coal Project, to an alternative site within the Goulburn River Biodiversity Area.

2.0 Heavy Equipment Access Route

The original HVO South Project Approval provides approval for heavy equipment access routes to relocate heavy equipment including draglines, trucks and shovels across Jerrys Plains Road both to and from Mount Thorley Warkworth mine and HVO as shown in Figure 5.6 of the HVO South EA. The location of the proposed heavy equipment access route with respect to Warkworth Mine's former Habitat Management Area 3 and Warkworth Mine's current SBA is illustrated in **Attachment 1**.

The proposed heavy equipment access routes have not been developed to date. An alternate route using existing roads has been utilised in lieu of the proposed western route and the proposed eastern route has not been required.

The proposed eastern route, located outside the Warkworth Mine SBA, would be required in the event that shovels or draglines were to be relocated between HVO and MTW, which has not been necessary to date. The western route located within the Warkworth Mine SBA is no longer required.

3.0 Other Planning Approval

The HVO South Project Approval consolidated some 25 consents dating back to the 1970s into a single approval.

The HVO South Project Approval is ambiguous as to whether it continues to provide planning approval for other development in the SBA despite such development not having been commenced and no longer being proposed to be carried out. Coal & Allied Operations Pty Ltd has agreed with Warkworth Mining Limited to enter into a VCA in respect of the land that they own which is also in the SBA preventing not only any previously authorised operations but also conserving the SBA in perpetuity in accordance with the conditions of the Warkworth Extension Project Approval. Coal & Allied Operations Pty Ltd seeks to modify the HVO South Project Approval to ensure that it is beyond doubt that there is no planning approval to carry out any development, other than that required to support their use as an offset, in parts of the SBA and NBA which are within the HVO South Project Approval area.

4.0 Modification request

Accordingly, Coal & Allied Operations Pty Ltd requests that the Minister for Planning modify the HVO South Project Approval pursuant to section 75W of the EP&A Act (which is now repealed but which continues to apply in respect of the Project Approval due to the transitional provisions provided in Schedule 6A of the EPA Act) to include the following condition:

"No development, including mining operations, is permitted pursuant to this approval in the areas identified in Annexure 10 as the Southern Biodiversity Offset Area and Northern Biodiversity Offset Area other than any development approved in respect of these areas for their use as an offset."

Please note that a copy of the plan proposed to be included as Annexure 10 of the HVO South Project Approval is found at Attachment 2 to this letter.

We trust that this provides sufficient information and justification to approve the requested S75W modification of the Project Approval.

If any further information is required, please don't hesitate to contact Mark Nolan on 0428885301 or the undersigned.

Yours sincerely



Rory Gordon

General manager – Approvals, Environment and Land - Coal Australia

T: +61 (0) 7 3625 5500

M: +61 (0)428 911 163

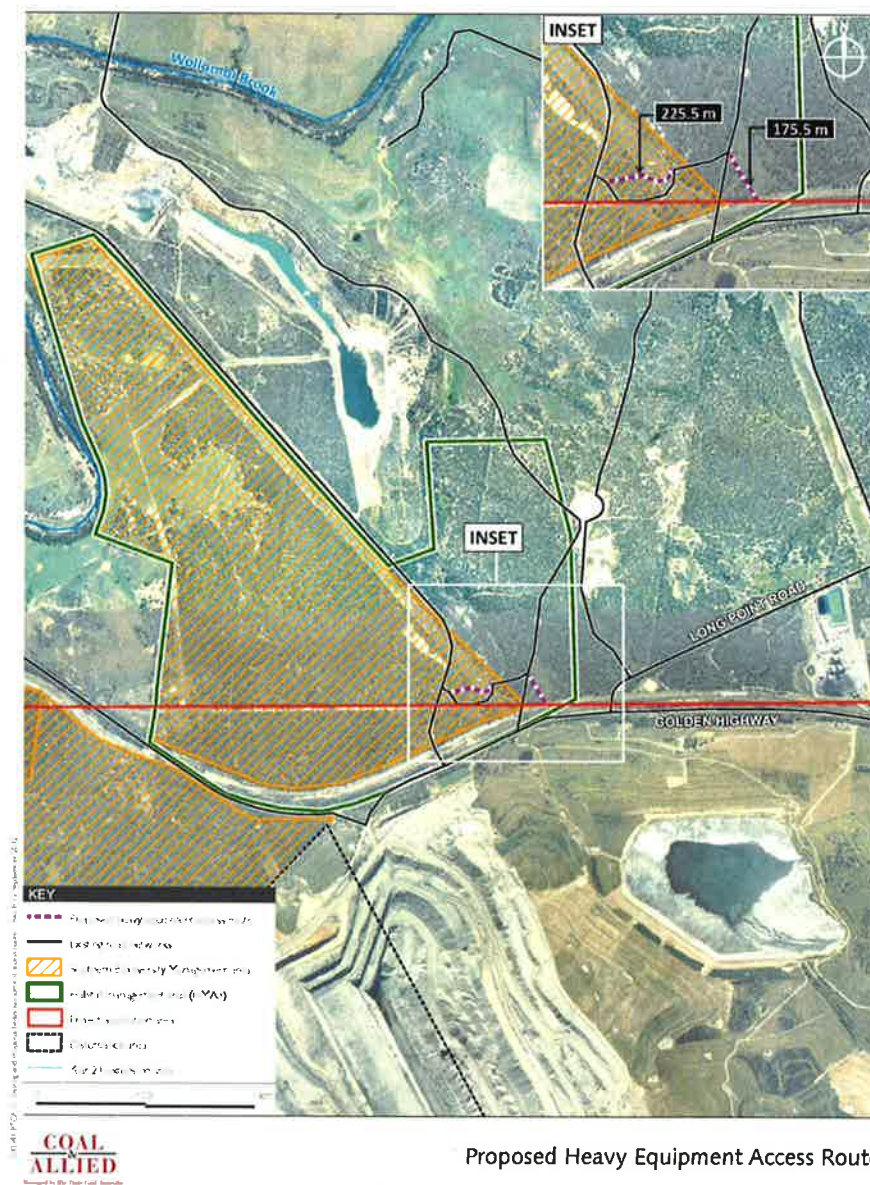
E: rory.gordon@riotinto.com

Enc.

Attachment 1: Heavy Vehicle Access Routes

Attachment 2: Annexure 10 - HVO South Lands Dedicated as Offsets to Other Mines

Attachment 1: Heavy Vehicle Access Routes



Attachment 2: Annexure 10 - HVO South Lands Dedicated as Offsets to Other Mines

