

PAC POWERPOINT NOTES – COALPAC

Lithgow Environment Group: established 2005; 28 members; priority concerns are Conservation of Natural Areas - hence strong advocacy for inclusion of Ben Bullen SF in GoS2; local Water Quality - hence a comprehensive Streamwatch water quality monitoring program since 2006; flora and fauna monitoring; swamp monitoring; cliff fall and crack monitoring; platypus watch; tortoise watch; hands on tree planting, weed control, clean up days, community awareness and education, manning stalls.

Qualifications: Since completing a Bachelor of Science (Forestry) Degree I have had 35 years environmental management experience at State, Local Government, national NGO, Corporate, and community group level. My family has lived in Lithgow for 56 years. I have lived here for 30 years.

LEG totally opposed the Coalpac Consolidation Project on twenty three (23) grounds in our submission on 28th May, and Response to Coalpac's Response to Submissions on 9th September. We obviously cannot discuss all of these in the time available today, however that does not mean they are no longer issues of concern or that we are satisfied with Coalpac's response. Today we will concentrate on errors by omission in the Flora Assessment, licence compliance, and water quality. We fully support the many other speakers who have raised similar issues today.

I grew up in State Mine Gully and Newnes Plateau (part of GoS2) was my backyard. All I ever wanted to be was a Forester and manage natural areas. The key focus of Forest policy when I completed my Degree was **Multiple Use** – forests were not just about harvesting or timber production, they had to be managed **in perpetuity** for everyone and for multiple uses - biodiversity conservation, water catchment protection, research, beekeeping, fire wood collecting, camping, bushwalking,,,,,, I later worked for Greening Australia, where my job amongst other things involved encouraging landholders to retain native vegetation and promote voluntary conservation agreements.

I therefore find this Project quite hypocritical - a State government is promoting the destruction of a publicly-owned State Forest using the most environmentally destructive mining method possible, for the exclusive financial benefit of a single forest user, to burn poor quality high ash-content coal in a government-owned Power Station, precluding all other forest users, depriving future generations of a world class natural area, while at the same time discouraging farmers from clearing trees?

I worked at Wallerawang Power Station for 12 months in the late 1970's, mostly on the old Unit 6 ash & dust plant and new Unit 7 ash plant. I therefore have some appreciation of the dust problems associated with burning poor quality high-ash content coal being mined by Coalpac as part of this proposal. I have personally experienced horrendous fly-ash dust problems from Mt Piper's fly-ash

dump on residents of Blackmans Flat, and witnessed the huge dust plumes at Kersosene Vale Fly ash repository in September 2007 which led to Delta Electricity being fined \$45,000 in the L & E Court.

My first job as a Graduate Forester was in Tasmania, during the Franklin Dam debate. I believe this has parallels for NSW today, because at the core of the Franklin issue was a government department that had too much power, was out of control, and defied the will of the majority. Many people all across NSW believe that NSW Planning and 'rotten to the core' Part 3A planning process has far too much power, is out of control, and continues to defy the will of the majority.

In Tasmania it was the state-government Energy agency the Hydro Electric Commission (HEC)., which pushed ahead building a dam no one wanted to generate 180 MW with no economic justification. The Hydro had simply been building dams for so long they didn't know how to stop. No one could control the HEC, not even the Premier of the day Doug Lowe, they just had him removed.

I recall 10,000 people marching through the streets of Hobart, still I believe one of the largest rallies in Australian history. Remarkable because at that time Hobart only had a population of about 100,000 and the entire Tasmanian population was only around 430,000 people.

I recall Premier Robyn Gray threatening all Public Servants with a \$250 fine for publicly protesting. Aboriginal hand stencils and artefacts were found in a cave in the area that would have been flooded, the dam site was listed as World Heritage - but still a defiant Hydro kept on building.

A correction had to come, and came in the form of Bob Hawke and the now famous High Court ruling. But at the cost of 2 premiers, fall of the Fraser government, the Greens emerged as a new force How many NSW Premier's and Planning Ministers have lost their jobs because of Part 3A?

As a Professional Forester working in Tasmania I was appalled by what I saw, particularly on the woodchip concessions. Every aspect of best forestry practice was being abused, threatened species legislation was being ignored, woodchip companies were out of control. A correction was long overdue, and finally came from the unlikeliest of sources – the market – Gunn's shares are now worth \$0.15c. Any future owner of Coalpac may wish to consider the power of market forces.

I then moved to QLD where again there were parallels with NSW today. I lived through the end of the Bjelke Peterson era , Fitzgerald inquiry, and sacking of the 'Minister for Everything' the late Russ Hinze, famous for the phrase "Never hold an inquiry unless you know the outcome". Public confidence in the QLD Planning System was at rock-bottom. A correction occurred at a huge cost.

One of the positive benefits of the Fitzgerald Inquiry was an entirely new Planning System for QLD – which served QLD well for 20 years, until it was again corrupted in recent years - only this time the ‘white shoe brigade’ was the Coal and Gas lobby.

I spent eight years working within the Planning & Development Sections of local Councils in QLD, and whilst I was not a Town Planner I was involved in biodiversity assessments, community consultation and other activities that gave me good grounding of proper planning principles. Over the last 7 years I have experienced 17 Major planning decisions in Blackmans Flat, with two more looming – and can honestly say I am not the least bit impressed with the NSW Planning system. A correction is urgently required, and the longer it takes the harsher that correction is likely to be.

Each year my wife and I attend the ANZAC ceremony in Wallerawang, and there is usually a speech about sacrifice and Australian values that created our National Identity, immortalised in qualities of mateship, toughness, fairness, tenacity and a preparedness to stand up to bullies and oppressors.

I look up at our (former) Mayor and State Member nodding solemnly and think – are you actually listening to this? A war is going on in your very own backyard in places like Blackmans Flat, Cullen Bullen, and all across NSW in Camberwell, Gloucester, the Bylong Valley..... bully-boy oppressors in the Coal, Gas and Energy lobby have declared war on everyone in NSW, nowhere is safe, it is totally un-Australian, totally unacceptable, and yet there you stand oblivious to or ignoring it all. I suspect our former Mayor and State Member subscribe to another unwritten code – people should keep quiet and suffer for the ‘greater good’ – but silence only empowers bullies, and leads to abuse and corruption. The ‘greater good’ can best be served by an entirely new Planning System for NSW.

A huge correction against Part 3A and pro-miners occurred in this Electorate at the 2011 State Election, another occurred at the recent Council Elections, particularly at Cullen Bullen Polling Booth. Very few local people support Council, the DoP, and TRUenergy’s “Quarry Vision” for Ben Bullen SF.

You can’t manage something that you don’t know exists.

The Environmental Assessment process for mining projects appears to encourage companies to exploit just this – ignore, avoid, downplay, or wilfully omit anything from an EA which may cause problems that may need to be addressed before approval, or during the life of a mine. They then offer generic solutions like Compliance Monitoring and Adaptive Management – which are couched in definitions such as Negligible, Acceptable, and Reasonable damage, knowing that after approval the arbiter is no longer the EP&A Act, but the ruthless, heartless, loveless, bloodless Mining Act. ‘NSW World Class Miners’ regard any and all impacts as ‘negligible’ and ‘acceptable’.

Much of LEG's presentation, as with many speakers today, goes into detail about errors by omission, wilful ignorance, avoidance, minimisation, and other inadequacies in the Coalpac EA. LEG will concentrate mainly on the Flora Assessment, licence non-compliance, and water quality - however we fully support speakers who raised similar issues today.

But first I question the ethics of another mining company tactic, which I have personally experienced in Blackmans Flat – **Intensification of mining and weakening of Consent Conditions after approval.**

A basic planning principle is to give people some certainty and apply some consistency about the rate and scale at which development will take place.

Yet in the Lithgow area and perhaps right across NSW, if a Mining Company thinks that the social or environmental impacts of a Proposal are unlikely to be manageable, their tactic is, and I strongly believe this is done in collusion with DoP staff, to break the project into smaller packages to make it appear less threatening. Once the initial project is approved they follow it up with one Extension and Modification after another, massively ramping up the project to the scale originally intended but couldn't manage the impacts of, saying at each stage that it will only cause a 'negligible' increase to impacts of the previous stage. But in totality the cumulative impacts triple or quadruple over a short space of time, and as initially predicted - the adverse impacts cannot be managed. For Example -

Invincible Colliery's Approval History

LEG objected to the first Invincible Colliery Open Cut Mine Extension Project (Application Number 05_0065) lodged on 22 May 2006, because it was titled an Open Cut Mine Project. As far as LEG was aware Invincible had never been an open cut mine, only an underground mine. We could find no records of open-cut mining on Mine Lease (ML 68), the old Invincible or old Renown Mine sites. After requesting formal documentation the DoP dredged up some old document apparently showing that a tiny area of open-cut had been approved way back in the late 1990's, thus qualifying it as an open-cut mine?

Planning Minister Sartor approved this 10 Ha first stage on 7 September 2006, after which an endless flow of Modifications and Extensions began – **7 Approvals in 4 years between 2006 and 2010, until today when Coalpac are proposing to clear 1000 Ha - a 9900% increase in just 6 years!!!**

Only 3 of those 7 Projects were actually ever approved by a Minister, the rest were approved by planning staff on behalf of a Minister – 3 were approved by a Mr Chris Wilson, and 1 by David Kitto.

- Invincible Open Cut Mine Extension (05_0065): 7 September 2006 – Frank Sartor
- Invincible Open Cut Mine - Modification 1 (Part3AMod): 4 June 2007 – Frank Sartor

- Invincible Colliery Coal Augering (05_0065 MOD 2): 6 December 2007 – Chris Wilson
- Invincible Coal Project (07_0127): 4 December 2008 – Kristina Keneally
- Open Cut Expansion Project (07_0127 MOD 1): 12 January 2009 – Chris Wilson
- Open Cut Expansion Project (07_0127 MOD 2): 12 August 2009 – Chris Wilson
- Open Cut Extension Project (07_0127 MOD 3): 8 October 2010 – David Kitto

However Coalpac were not content to sit back and wait for the gradual ramping up of cumulative impacts - they simply defied the EP&A Act between September 2006 and September 2007 and illegally dug up and transported 80% more coal than their 7 September 2006 approval allowed.

The normal NSW Government response upon learning about such an issue in the Lithgow region would be to go into immediate cover-up, denial and silence mode to protect a mining mate. But in a rare display of ethics the Department of Planning took Coalpac to the Land and Environment Court.

On 11 September 2008 Judge Biscoe found that **there had been damage to the integrity of the planning system**, that Coalpac had acted intentionally and committed this offence in order to obtain a financial advantage, and fined them \$200,000 plus \$55,000 prosecution costs – peanuts.

Despite this ‘damage to the integrity’ of the Planning System, less than 3 months later on 4 December 2008 (07_0127) the then Planning Minister Kristina Keneally ‘rewarded’ Coalpac for their bad behaviour by approving a more than tripling of production from 350,000 MTPA to 1.2 MTPA.

But going back to those 7 Modifications and Extensions - in LEG’s view the worst approval from an environmental and visual perspective was MOD 2 approved by Mr Chris Wilson on 6/12 2007. The two Prior approvals by Minister Sartor only involved clearing 10 Hectares of bushland, and the EA specifically stated that open-cut mining operations would not be visible from the Castlereagh Hwy.

Changing the name of a Project after approval: Minister Sartor’s 2006 Extension changed an underground mine into an open-cut mine with the stroke of a pen. MOD 2 first introduced the term Auger Mining - a new concept for our group. That Project was advertised as the “Invincible Colliery Coal Augering Modification” (MP 05_0065 Mod 2). However in the Final Determination this title had mysteriously changed to “Application to Modify Project Approval 05_0065 to Improve Recoveries Through Highwall Mining and Increase Production at Invincible Colliery Open Cut Extension”. Quite a mouthful - and introducing after approval another term LEG had never heard of – Highwall Mining. MOD 2 gave us the obscene scar you will see tomorrow on the entrance to Cullen Bullen.

Arguably the 2nd worst approval in terms of community impacts was MOD 3 07_0127 approved by David Kitto on 8 October 2010 – *Increased Road Haulage to Transport an Additional 300,000 tpa to Mt Piper*

Power Station, bringing the total amount proposed to be trucked from Invincible Colliery to 1.2 MPTA.

Why was it so bad? Because Mr Kitto knew about but ignored the ongoing dust problem since 1998 of coal trucks from Cullen Valley, Invincible, and Ivanhoe North Mines (MP05_0103 approved 11/4/2007) tracking dirt and mud onto the Castlereagh Hwy, which dried, turned to dust, was constantly stirred and dragged by traffic along the highway thru Cullen Bullen, filling the town and entire valley with dust.

No doubt Cullen Bullen residents will tell you in no uncertain terms tomorrow about this and other problems with Coalpac. They have been aware of this dust issue since 1998, but deny deny deny - only now proposing a coal conveyor to Mt Piper, but let the Cullen Bullen people suffer for 12 years!

Similarly after Planning Minister Craig Knowles approved Cullen Valley Mine on 4 December 1997, they were fined \$30,000 plus the EPA's costs of \$18,000 in 2003 after pleading guilty to a licence breach allowing fine particle mining dust to be emitted from Cullen Valley Mine. As another reward for bad behaviour Minister Knowles approved Extension (DA-200-5-2003) in 2004, followed within months by an Extension of Coal Haulage (00-5-2003 MOD 1) approved by Diane Beamer on 19 August 2004.

Compliance monitoring does not work

Ongoing water pollution from another Coalpac mine - Canyon Colliery into the Greater Blue Mountains World Heritage Area - has been highlighted on many occasions on programs such as ABC Catalyst, ABC Lateline, and in the SMH. Zinc levels >500 times the ANZECC guidelines are affecting the health of aquatic life in the Grose River – subject of a Wild Rivers Declaration by the NSW Government in 2009.

So why didn't the much touted generic solution of 'Compliance Monitoring' detect this pollution?

Coalpac recorded 3 non-compliances in their last two Annual Returns for Canyon Colliery EPL 558 in 1999/2000 and 2000/2001 before that Licence was Surrendered. These were:

- Monitoring not undertaken in accordance with licence.
- Condition M2 requires the licensee to monitor water quality discharged from Points 2 & 4 at a frequency of not less than 90 days. Insufficient monitoring was undertaken from 1/10/99 - 30/9/00.
- Condition R1 requires the licensee to supply a monitoring summary in the Annual Return. No summary was provided in the Annual Report to enable the EPA to assess results and compliances.

In fact over the last 10 years Coalpac mines have recorded 27 Licence non-compliances (Canyon Colliery – 3; Cullen Valley Mine – 13; Invincible Colliery - 11). **A staggering 75% (18 of 27) of these non-compliances were for failing to monitor and report as required by their EPL.** Little wonder the Zinc and Nickel exceedences in the Grose River went undetected for so long!

Mines and power stations in the Lithgow area have recorded 1160 licence breaches since 2000. The annual number of breaches has steadily increased in the last 10 years. An analysis of the types of breaches shows the main increase is in 'failing to monitor and report' type breaches.

Which raises yet another mining company tactic: if you detect a problem don't report it - cop a breach for failing to monitor instead. The EPA will record this as a minor breach, whereas an exceedance of dust/noise/blasting/water quality EPL limits may require action to be taken.

Precedents and patterns of behaviour set by Coalpac over the last 30 years are difficult to change.

Given this past record of bad behaviour by Coalpac, the 900+ people and organisations who lodged a submission on this Project finally deserve to be given some honest answers –

- **How can the 900+ objectors to this proposal ever have faith in Compliance Monitoring?**
- **Is this the FINAL project, or can they expect another 7 Modifications and Extensions, and another 9900% increase in area of pristine old growth forest cleared over the NEXT 6 years?**
- **Will the nearby Ivanhoe North Mine be expanding?**
- **Will the nearby Pine Dale Mine and proposed Nuebeck's Creek Mine be approved?**
- **Will Coalpac comply with all Legislation, Consent Conditions, and EPL licence Conditions?**

The Department of Resources & Energy, the EPA, and DoP know the answers – isn't it about time for some honest dialogue with ALL 900+ stakeholders who lodged submissions on this proposal?

It is therefore very gratifying to finally have the PAC Panel here today, in the hope that this the **8th Coalpac project in 6 years**, and **11th Coalpac project in 14 years** (12th including Ivanhoe North) in the Cullen Bullen area finally receives some proper, open and transparent Planning scrutiny.

The *Persoonia marginata* saga

In April 2011 LEG volunteers found some 1500 *Persoonia marginata* (Clandulla Geebung) growing on and adjacent the Cullen Valley mine site. They occurred often in great abundance and could easily be seen driving along forestry tracks, power line easements, tracks beside the Mudgee Railway Line, Baal Bone Rail Loop, Coalpac Exploratory Borehole CP113, and just 200m off the Castlereagh Hwy. Some plants were only 120 metres from the fast-approaching Cullen Valley open-cut.

LEG contacted the EPA and collected a sample under LEG's Scientific Licence and sent it to the NSW Herbarium. That sample was positively identified as *Persoonia marginata* on 8 April 2011. 3 samples collected by the EPA in the presence of Coalpac staff were also later confirmed.

Persoonia marginata is listed as Vulnerable under the EPBC and TSC Acts. Neither Coalpac nor the prior owners of Cullen Valley Mine reported *Persoonia marginata* in:

- Coalpac's EPBC Referral to the Commonwealth Government in December 2010
- Coalpac's Preliminary application to the NSW Department of Planning Application in 2010
- Flora Assessments for Exploration Program (Borehole CP113 to CP129) in February 2010
- Flora Surveys for the Cullen Valley Lease Extension Project in 2003
- Flora Surveys for the Feldmast Coal Project in 1997

It is a legislative requirement under the EP&A Act 1979 for developers to report the occurrence of threatened species and ecological communities listed under the EPBC Act (1999), and TSC Act (1995).

It is an offence under the NPWS Act 1974 to **knowingly or by omission** do anything that causes damage to any habitat of a threatened species, an endangered population or an endangered ecological community if a person knows that the land is habitat of that kind.

Why would Coalpac omit finding it? To maximise the financial return from the land that it was growing on. The Maximum Penalty for destroying a Vulnerable plant is only \$55,000. Peanuts.

Why is this population so significant? Because it is the largest most southerly population yet discovered, and is isolated from the main population in Clandulla SF, so may have a slightly different gene pool which can protect the species against climate change impacts, inbreeding due to the highly localised nature of populations, pests and disease if the main population were lost (eg. *Phytophthora cinamomii*), fire and other catastrophic events. It is not well protected in the NSW Reserve system. All other populations in State Forest's are equally vulnerable to mining threats.

The first map shows the location of Clandulla Geebung initially found within and near the proposal area. On 27 April we found an additional 23 plants 2.5 km to the south adjacent previously mined areas of Cullen Valley Mine lease ML 1488 and advised the EPA. As the plants tend to occur on rocky slopes with a westerly aspect, we strongly believe they would also have occurred throughout a 3 km strip in ML 1488 and ML 1557 which has already been mined. It is therefore highly likely that many 1000's of *P. marginata* have already been destroyed since this mine was first approved in 1998.

After advising the EPA of this find they explained that Coalpac had been asked to prepare a Species Management Plan for Clandulla Geebung by 27 April 2011. But when we advised them of the additional 23 plants to the south on 27 April they said the report had already been approved. LEG then asked the EPA for a copy of that report – but **the EPA refused our request.**

LEG approached Gardens of Stone Campaigner Justin McKee to obtain a copy of Coalpac's Species Management Plan for Clandulla Geebung under GIPA (Government Information (Public Access) Act 2009). With assistance from Cate Faehrmann MLC we finally sighted that report some months later.

Cumberland Ecology, who prepared the Clandulla Species Management Plan for Coalpac, stated:

- "On the mining lease they (*P. marginata*) are located on the west facing slope adjacent the railway line. They are not found on the crest or the eastern side of the crest line."
- "The average density of the Clandulla Geebung within the mapped area was estimated at 466 individuals per hectare. Total area (see Figure 1) recorded was 38 hectares which resulting in an estimate of 17,708 individual plants".

Whilst waiting for this report under GIPA LEG undertook an intensive survey of the entire Mine Proposal Area along 10 metre transects, and recorded GPS Coordinates for every Clandulla Geebung plant found to establish exactly how many individuals occurred and their distribution. We recorded:

- A total of 587 plants within the Proposal area, nowhere near 17,708 individual plants claimed by Cumberland Ecology – which represents a 3000% exaggeration;
- Found that the plants did extend as far as 1.8 km beyond the eastern side of the crest line.

Cumberland Ecology claimed that Clandulla Geebung only occur on rocky sites on westerly aspects, whereas LEG recorded them at non-rocky sites on northerly and easterly aspects, even on gully flats.

Cumberland Ecology further stated that the Clandulla Geebung only occurs in Scribbly Gum Woodland, whereas LEG recorded more than half the total number growing in Critically Endangered Grassy Box Woodland dominated by Blakely's Red Gum (*Eucalyptus blakelyi*) and on several occasions growing under Capertee Stringybark's (*Eucalyptus cannonii*), also listed as Vulnerable.

LEG also recorded about 140 plants along Wattlemount Road where it passes through the "Hillcroft" Offset, surveyed the Gardens of Stone NP recording about 120 plants, and surveyed the Baal Bone Colliery mine lease area and found 117 scattered plants at several locations including within Long Wall Panels 1, 3, and 25, along an underground cable easement, and along the power line corridor to Licence Discharge Point 3 and South-east Airvent. This proved that Baal Bone Colliery also omitted to record *P. marginata* in the 2007 EA's for the SE AirVent and 2011 Extension. The 2nd map shows all the locations where LEG has since recorded Clandulla Geebung.

To sum up –

- Coalpac failed to record/report Clandulla Geebung in their Exploratory Boreholes Program, EPBC Referral, and Preliminary Assessment to the DoP;
- In all likelihood 1000's of plants had already been destroyed since 1998 in ML 1488 & 1557;
- When told by the DoP that their EA was inadequate and would have to be resubmitted Coalpac's new EA offered no explanation as to how or why the Clandulla Geebung were missed in the first instance, expressed no remorse or contrition, and made minimal effort to undertake a more rigorous or detailed survey for Clandulla Geebung;
- Instead Coalpac's next tactic was to exaggerate the 'estimated' total number of individual Clandulla Geebung within the Proposal Area; and
- exaggerate the 'estimated' total number of individual Clandulla Geebung within the Hillcroft Biodiversity Offset Area;
- Made little or no attempt to avoid up to 500 individual Clandulla Geebung originally discovered by LEG, which may still be destroyed within the Proposed Disturbance Area.

What more can LEG say? Coalpac are making a mockery of the Environmental Assessment Process. When they got caught, they exaggerated the total number of threatened plants to make it seem like what is being destroyed will be minimal. Misrepresentation in an environmental assessment is so easy to do. Mining companies know that the OEH have no field staff to check. Consultants can manipulate findings by surveying for threatened species in the wrong places; avoiding likely habitat; surveying at the wrong times; focusing surveys on areas that won't be disturbed; misidentifying a threatened species and if caught simply apologise for a 'minor' error; relying on desktop surveys when they know that the NPWS Wildlife Atlas is not up to date for particular areas; and of course wilful ignorance, and turning a blind eye.

Is this a rare case? Unfortunately not. The Wildlife Atlas contains a 2000 record for *P. marginata* in the Baal Bone Colliery lease. Yet numerous Flora Surveys for Baal Bone Colliery over the past 30 years failed to report it. A well known flora consultant discredited that Wildlife Atlas record in an EA for Ivanhoe North mine in 2005, claiming that because no sample had been submitted the sighting must be considered dubious. Yet LEG found 117 plants there in just a few hours?

In LEG's view most consultants involved in local Flora Survey work know that Clandulla Geebung occurs in Ben Bullen SF, but also know that Baal Bone got away with not reporting it for 30 years, so why should they? The difference is that open-cut mining destroys it and its habitat.

Precedents and patterns of behaviour set over 30 years by Flora Consultants are difficult to change.

Coalpac has made an absolute mockery of the EP&A Environmental Assessment Process, and Threatened Species Protection Legislation at State and Commonwealth level.

People could be forgiven for thinking that the only Protected Species in NSW is the Mining Industry.

LEG calls on the PAC to consider what damage this widely publicised omission of a threatened species from an EA has done to the integrity of and public confidence in the Assessment Process and Threatened Species Protection Legislation at State and Commonwealth level.

We call on the PAC to:

- Require an independent Flora Assessment to establish the true number of Clandulla Geebung individuals and distribution within the **Project Area** AND **proposed Biodiversity Offset areas.**
- Permanently protect ALL remaining *P. marginata* plants in the Proposal Area by excluding open-cut mining in all locations where it occurs in the northern area.
- Establish a body of experts whom the PAC can call to perform an independent biodiversity assessment at the cost of a Proponent who repeatedly fails to provide adequate information.

Other Species Missed

The next most significant plant species occurring in the Coalpac disturbance area are ROTAP species. All four ROTAP listed species recorded by LEG within the proposal area were missed in the EA - *Acacia asparagoides*, *Leionema lamprophyllum* ssp. *orbiculare*, *Leucochrysum graminifolium* and *Philothea obovalis*. This is highly disturbing, as these are the very plants most likely to become Vulnerable or Endangered in future due to their very restricted distribution.

- *Acacia asparagoides* - 2R – Bell reports that it is restricted to sandstone plateaus in heath and open forest in the upper and northern Blue Mountains.
- *Leionema lamprophyllum* subsp. *orbiculare* - RECOMMENDED 2R-P3 - Bell reports that it is restricted on the western escarpment, with a small population recorded in rocky cliffline habitat in Pokolbin State Forest over 100 km to the east which is now listed as an Endangered Population in the Hunter Catchment.
- *Leucochrysum graminifolium* - 2R - Bell reports that its occurrence in the Gardens of Stone NP on rocky pagodas and rock shelves is the first for a conservation reserve.
- *Philothea obovalis* - 3RCa - Bell reports that it is restricted to montane rocky heath on Newnes Plateau, Mt Jamison, and Point Cameron in the Gardens of Stone NP.

The Rare or Threatened Australian Plants (ROTAP) list and associated coding system was developed and has been maintained by CSIRO since 1979. It lists taxa that are Presumed Extinct, Endangered, Vulnerable, Rare or Poorly Known at the national level. The main Key Threatening Process listed for all threatened species is land clearing, de-forestation and habitat lost.

Why would Coalpac miss these ROTAP species? Because these are the next species most likely to become Vulnerable, Endangered or Extinct in future - perhaps during the 21 year life of this mine and hence creating a potential future problem - so Coalpac simply omitted them.

This is an important, because **none of these 4 ROTAP listed species are likely to occur in any of the Biodiversity Offsets**. What will be lost is therefore not being offset or replaced. The OEH are custodians for Rare and Threatened Species in NSW, and should be keeping track of all ROTAP species being lost **before** they become Vulnerable, Endangered, Critically Endangered or Extinct.

Despite being unable to find these species within Project Area, Coalpac now claim that these species only occur in pagoda areas, which they say won't be directly impacted. Once again Coalpac are not being entirely truthful. LEG has recorded *Acacia asparagoides* in Scribbly Gum Woodland, Tablelands Broad-leaved Peppermint – Brittle Gum – Red Stringybark Forest, and Montane Gully Forests – vegetation types which will almost entirely be wiped out by Coalpac in the Proposal Area.

Whilst *Leionema lamprophyllum*, *Leucochrysum graminifolium* and *Philothea obovalis* do occur mainly in pagoda rock complex and montane heaths, these areas will be severely impacted by the massive edge effects of this proposal. The OEH (Submission R6) highlighted this issue in great detail.

LEG gives the example of *Leucochrysum graminifolium* (ROTAP 2R), which was once common on the cliffs and pagodas above Lithgow township 40 years ago. They are now gone - in all likelihood due to grazing pressure from feral goats and rabbits. Massive edge effects will occur to within 50 metres of cliffs and pagodas, increasing grazing pressure on Pagoda Daisy from Rabbits, Hares (which were not identified in the EA but are prevalent across the Proposal area), feral Goats, and 100's of displaced native animals such as Wallabies, Kangaroos, and Wombats. Weed invasion is already evident in pagoda communities in the Proposal area, and exotic weeds will displace Pagoda Daisy habitats.

The OEH (Submission R6) further states that: "*The following species that were identified in a previous EA (July 2011) as "could potentially occur" but which were not targeted for survey are: Acacia bynoeana, Prostanthera stricta, Darwinia peduncularis, Persoonia acerosa, Thesium australe and Euphrasia arguta. Although for each of these species the proponent states "Not detected during past*

or current surveys”, highly cryptic species that occur at low densities such as *Acacia bynoeana* are extremely unlikely to be detected unless they are targeted for survey.”

LEG pointed out in our submission that *Thesium australe*, *Veronica (syn. Derwentia) blakelyi* and a yet to be identified *Euphrasia spp* have been recorded by LEG at the nearby Pine Dale Mine site. *Chiloglottis palachila* occurs in nearby Sunny Corner State Forest – all are highly cryptic species that occur at low densities in exactly the same habitats as those that occur within the proposal area, and are extremely unlikely to be detected unless they are targeted for survey.

As for the 100+ other species missed, Coalpac basically respond by saying that LEG is nit-picking, and that it is impossible to identify all species. Once again Coalpac misses the point – biodiversity offsets are supposed to represent like-for-like, and unless adequate surveys are undertaken of the species that will be lost and actually occur in the offsets, then we are not comparing apples with apples.

LEG therefore requests that the PAC require an Independent Flora Survey for the entire Proposal Area, and an Independent Targeted Survey for all of abovementioned threatened species plus the following likely-to-occur threatened species: *Diuris aequalis*, *Genoplesium superba*, *Prostanthera hindii*, *P. stricta*, *P. cryptandroides var cryptandroides*, and *Pseudanthus divaricartissimus*.

Hassans Walls Orchids Book Launch - 6 September 2012

Many people in the Lithgow region are in awe of our unique flora. The well attended recent launch of this book was a highlight for Lithgow, and a tribute to the authors. Very few people in the Lithgow area support Lithgow Council, TRUenergy, and the DoP’s “quarry vision” for Ben Bullen SF.

215 Orchid species are listed in the Sydney Basin Bioregion - which extends from Batemans Bay to Nelson Bay, and almost as far west as Mudgee. A staggering 60 of those 215 species (or 28% of the total) occur in the 770 Hectare Hassan’s Walls Reserve. A true biodiversity hotspot.

Ben Bullen State Forest is another local Biodiversity Hotspot for Orchids - in particular the Proposal Area. LEG has recorded well in excess of 20 Orchid species, yet the Coalpac EA only identified 4 species, 2 at only genus level. All 60 orchids in Hassan’s Walls are terrestrial. Ben Bullen SF in addition has numerous saprophytic orchids which grow on rocks or trees.

Pterostylis truncata only occurs at 2 locations in Ben Bullen SF - in the Cullen Valley Mine area, and at Pine Dale Mine – both are under threat from open-cut mining.

Perhaps the best recent example of an Endangered Orchid being missed by a mining EA was at Anvil Hill Mine(now Mangoola). After Centennial Coal lodged their EA in 2006, a local environment group

recorded Painted Diuris (*Diuris tricolor* - Vulnerable EPBC and TSC Act) in 14 locations within the Proposed Disturbance Area. Another Orchid *Prasophyllum sp. aff. petilum* (nominated endangered EPBC Act and TSC Act) was found growing in situ with it at some sites. Centennial's 'qualified and experienced ecologist' could only relocate one of these sites. They simply claimed that plenty more 'probably' occurred in the Biodiversity Offset without any evidence, and Minister Sartor accepted it.

Diuris tricolor was subsequently (27 April 2007) listed as an ENDANGERED POPULATION in the Muswellbrook Area in Part 2 of Schedule 1 of the TSC Act.

Precedents and patterns of behaviour set by the mining industry in NSW are difficult to change.

Water Quality

LEG could not resist including this photo of Premier O'Farrell and Minister Hartcher prior to the 2011 State Election wearing T-shirts carrying the message " WATER NOT COAL".

In the handout material provided by LEG to the PAC Panel we have included:

- a copy of Coalpac's Annual Return 2007/2008 for Invincible Colliery Licence No. 1095, signed by Coalpac Directors Mr Bret Liesemann and Dr Ian Follington
- a copy of a 2007 letter from the Sydney Catchment Authority (SCA) including monitoring data recorded by SCA Scientific staff on 28 June 2007 and 18 July 2007 and a location map of Invincible Colliery LDP01.

Water quality at all other Coalpac discharge points is likely to be identical. These documents and other examples highlighted in our presentation provide ample evidence that this Proposal is highly likely to adversely affect water quality in both the Coxs River and Macquarie River catchments.

We urge the PAC to contact the SCA and other catchment authorities about the true state of affairs.

To Sum Up

The SMH article on 25 June 2010 "*One man approves his own project, another man's dream dies*" says it all. Part owner of Coalpac Mr Noel Craven who prepared his own EA for the 2006 Invincible Colliery Extension conceded that while he may have a conflict of interest - "You don't even have to be qualified to write an Environmental Assessment for a mining proposal". His message is –

- **If the NSW government doesn't care about the Integrity of the Planning system, why should I?**
- **If the NSW government does not place any value on biodiversity, geodiversity, water quality, human health or the environment, why should Coalpac?**

- Xstrata got away with not reporting *Persoonia marginata* at Baal Bone Colliery for 30 years, so why should Coalpac report it?
- Xstrata got away with not reporting Aboriginal Hand stencil sites, so why should Coalpac?
- Xstrata got away with causing 100's of cliff falls at Baal Bone Colliery, so why can't Coalpac?
- Xstrata got away with not having to treat minewater from Baal Bone LDP 3 & 6 for over 30 years, so why should we have to treat our minewater?
- Pine Dale will then claim unfair treatment - Coalpac didn't treat their water, why should we?
- The only Protected Species in NSW is the Mining Industry - and Coalpac P/L know it.

Precedents and patterns of behaviour set over 30 years by mining companies are difficult to change.

The EA for this project has made a mockery of the Environmental Assessment process. If approved it will again set a precedent which **damages the Integrity of the entire NSW Planning process.**

This Proposal will destroy forever 1000Ha of World Heritage class natural areas in Ben Bullen SF.

This proposal will destroy forever the habitats of numerous threatened flora and fauna species, which **will not** be adequately offset or conserved in the proposed Biodiversity Offset areas.

This Proposal will destroy forever the future health, well-being, safety, security, amenity, and quality of life of the residents of Cullen Bullen township.

The Western Australia EPA, South Australian EPA, and NSW National Party all recommend that the best way to minimise the impacts of noise, dust, and blasting on sensitive receivers is to ensure a minimum Separation Distance of at least 3 – 5km between towns, villages and an open-cut mine.

THE MEMBERS OF LEG URGE THE PAC TO REJECT THE COALPAC PROPOSAL IN IT'S ENTIRETY.