



# Nature Conservation Council

The voice for nature in NSW

Attention: Kate Wedgwood  
NSW Planning Assessment Commission  
COMMISSION SECRETARIAT  
Level 13, 301 George Street SYDNEY, NSW 2000

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11 December 2014

**Submission to the Planning Assessment Commission  
Warkworth Continuation Project (SSD 6464) and Mt Thorley Continuation Project (SSD 6465)**

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 130 member organisations across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC objects to the proposed Warkworth Continuation Project (SSD 6464) and associated Mt Thorley Continuation Project (SSD 6465). We shall refer to both of these projects as the Warkworth mine throughout this submission.

The Warkworth Extension Project proposes to mine the same area of land as the previous 2010 Warkworth Extension application. That 2010 application was dismissed by both the Land and Environment Court and Supreme Court of NSW due to “significant and unacceptable impacts on biological diversity, including on endangered ecological communities, noise impacts and social impacts”<sup>1</sup>.

Although there are some differences in this new application, the broad scale impacts of the proposal remain the same. In our view the stated ‘improvements and differences’ set out in the Environmental Impact Statement for the proposal do not adequately address the significant environmental and social impacts of the project.

We are dismayed that the Department has allowed the proponent to lodge a new development application for what is essentially the same proposal. This shows clear contempt for the court decisions, and the residents of the Bulga community.

Given that the courts have previously refused expansion of the mine due to its significant impacts, which still remain, approval of these new applications would be a significant breach of community trust. The applications must be refused.

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<sup>1</sup> Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited [2013] NSWLEC 48 at

## Biodiversity and Threatened Species

The Warkworth mine will have significant impacts on biodiversity, including threatened species and ecologically endangered communities (EEC's). Proposed clearing associated with the project will lead to destruction of wildlife corridors linking ecological communities, as well as habitat fragmentation and loss of habitat trees.

The proposals will require clearing of 611ha of native vegetation including 72ha of Warkworth Sands Woodland EEC, 372ha of Central Hunter Grey Box – Ironbark Woodland EEC and 15h of Central Hunter Ironbark Spotted Gum – Grey Box Forest EEC.<sup>2</sup>

These areas provide important habitat for many native fauna species, including the following threatened species:

- Speckled Warbler (*Pyrrholaemus sagittatus*)
- Brown Treecreeper (*Climacteris picumnu*)
- Grey-crowned Babbler (*Pomatostomus temporalis*)
- Turquoise Parrot (*Neophema pulchella*)
- Glossy Black Cockatoo (*Calyptohynchus lathamii*)
- Swift Parrot (*Lathamus discolor*)
- Regent Honey eater (*Anthochaera phrygia*)
- Squirrel Glider (*Petaurus norfolcensis*)
- Large-eared Pied Bat (*Chalinolobus dwyeri*)

Our recent submission to the Biodiversity Legislation Review, *Conserving and Restoring Biodiversity in NSW*<sup>3</sup>, highlights the dire biodiversity crisis facing NSW. As highlighted in our report, over the last 200 years NSW has experienced a marked decline in biodiversity with over 100 plant and animal species becoming extinct<sup>4</sup>. There are currently over 989 species of plants and animals, 49 populations and 107 ecological communities threatened with extinction in NSW<sup>5</sup>. Between 2009 and 2012 an additional 35 species were listed as threatened<sup>6</sup>. At present a total of 45 key threatening processes, predominantly the result of human activities, have been identified as contributing to biodiversity decline<sup>7, 8</sup>. Land clearing and habitat loss is the single biggest cause of biodiversity loss in NSW<sup>9,10</sup>. Protecting habitat and controlling land clearing is therefore essential if further losses of biodiversity and the services that healthy ecosystems provide are to be avoided.

## Biodiversity Offsetting

As noted above, the applications propose clearing of over 600ha of native vegetation, including significant parcels of endangered ecological communities, including the last stand of Warkworth Sands Woodland.

The biodiversity offsetting measures for the proposals are inadequate: the applications propose to clear areas previously set aside as biodiversity offsets under the 2003 consent and to use the future rehabilitation of land now

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<sup>2</sup> Warkworth Continuation 2014, Environmental Impact Statement, Executive Summary p E.8

<sup>3</sup> Nature Conservation Council of NSW, Total Environment Centre, National Parks Association of NSW and The Wilderness Society, *Conserving and Restoring Biodiversity in NSW – A Submission to the Independent Biodiversity Legislation Review Panel* (September 2014). Download [here](#).

<sup>4</sup> OEH (2014a). Saving NSW threatened species webpage. <http://www.environment.nsw.gov.au/threatenedspecies> Accessed 10 September 2014, Office of Environment and Heritage.

<sup>5</sup> EPA (2012) *NSW State of the Environment Report 2012*, Environmental Protection Authority, Sydney.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> EPA (2000) *NSW State of the Environment Report 2000*, Environmental Protection Authority, Sydney.

<sup>9</sup> Coutts-Smith, A.J. & Downey, P.O. (2006) *Impact of Weeds on Threatened Biodiversity in NSW*, Technical Series no.11, CRC for Australian Weed Management, Adelaide.

<sup>10</sup> EPA (2006) *NSW State of the Environment Report 2006*, Environmental Protection Authority, Sydney.

being mined as a contribution towards offsetting the impact on the critically endangered ecological communities they propose to clear.

We note the specific comments of the Chief Justice of the Land and Environment Court that:

*“I am not persuaded, on the evidence before the Court, that the biodiversity offsets and other compensatory measures proposed by Warkworth are appropriate or feasible or would be likely to compensate for the significant biological diversity impacts”<sup>11</sup>.*

While we recognise that the Government has recently finalised its *NSW Biodiversity Offsets Policy for Major Projects* we do not see this new policy as giving the ‘all clear’ to the clearing and destruction of endangered ecological communities. The decision maker must still take into account the relevant considerations in s79C of the likely impacts of that development, including: environmental impacts on both the natural and built environments, and social and economic impacts in the locality; the suitability of the site for the development; and the public interest.

### **Impacts on nearby residents, including the village of Bulga**

The proposed mine expansion will have noise, dust impacts and amenity impacts that will affect nearby residents, including the community of Bulga. We note that in refusing the original application the Chief Justice of the Land and Environment Court found that *“the project’s impacts would exacerbate the loss of sense of place, and materially and adversely change the sense of community, of the residents of Bulga and the surrounding countryside”<sup>12</sup>*. We do not consider the impacts have been sufficiently ameliorated by these new proposals.

### **Impacts on Water**

Current mining activities in the area are already having an impact on surface and ground water. The expansion of this mine will only further contribute to these impacts. The mine is likely to impact on the alluvial aquifer of Wollombi Brook, which is an important source of water for the wine industry. It will take a substantial amount of water from both the Hunter River alluvium and the Wollombi Brook alluvial.

### ***State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007***

We have previously raised our concerns that the 2013 amendments to *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)*, which placed the economic significance of the resource as the principle consideration for mining proposals, was a direct response to the 2013 Land and Environment decision on the 2010 Warkworth Extension application. In our view, the Government’s policy is not in the public interest.

We also note recent correspondence from the Minister for Planning indicating that the Mining SEPP does not make the resource significance an overarching consideration that outweighs all other issues, such as environmental impacts.

The proponent should not rely on clause 12AA of the Mining SEPP to suggest the changed legislative and policy environment should allow this proposal to go ahead, in spite of the significant environmental and social impacts.

### **Cumulative Impacts**

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<sup>11</sup> *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited* [2013] NSWLEC 48, at 15

<sup>12</sup> *Ibid*, at 18

The Warkworth mine will contribute to the ongoing expansion of the coal mining in the Hunter, which is already having a devastating effect on the environment and communities, causing irreplaceable environmental damage and irreplaceable biodiversity loss.

The cumulative impacts of these mines are likely to cause serious environmental and social problems now and into the future. Whilst the mines are in operation dust, noise impacts and traffic impacts will be immediate. Other impacts such as water contamination, loss of surface water, surface disturbance and loss of biodiversity will be cause serious and potentially irreversible impacts in both the immediate and long-term.

The cumulative impacts of all mining activities in the region must be considered when determining these applications.

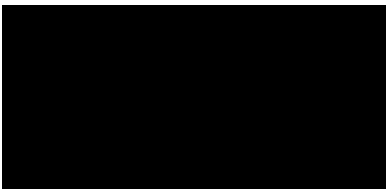
### **Greenhouse Gas Emissions and Climate Change**

The proposed mine expansion will cause long-term environmental impacts due to the significant greenhouse gas emissions that will be produced from the burning of the recovered coal and its contribution to climate change.

### **Conclusion**

The proposed expansion of the Warkworth mine will have long-term damage on threatened species, water and human health in the region. The potential environmental and social impacts have not been adequately addressed by this new application. The Government risks seriously breaching the community's trust in the planning assessment and approval process if it continues to change Government policy to overcome judicial decisions and facilitate the Warkworth mine project despite the courts finding that it will have significant and unacceptable impacts on biological diversity, including on endangered ecological communities, noise impacts and social impacts. I request that you reject these projects.

Yours sincerely,



Kate Smolski  
Chief Executive Officer