

BMCS-LEG Comments on Coalpac's Response to PAC Review Submissions [CRPRS]

PART 2

7. Introduction

PART 1 comprised Sections 1 to 6 and mainly responded to Sections 1 to 3 and principally 3.1.1 to 3.1.5 within the 'Coalpac Response to Further Submissions'. The latter is available on the DP&I website [http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4332].

PART 2 attempts to preserve continuity by commencing with Section 7. Much of the content of Sections 8 and 9 was provided by Mr Chris Jonkers of LEG.

8. Impacts to threatened flora species

From CRPRS p31:

"The Joint Submission [JS] states that the Contracted Project will impact further on Eucalyptus aggregata and Persoonia marginata. This is incorrect. The Contracted Project will avoid any impacts to both these species, and habitat for both is present in the proposed biodiversity offset areas."

"No Eucalyptus aggregata individuals have been recorded in the Contracted Project Disturbance Boundary or will be impacted by the Contracted Project."

"It is stated in the Joint Submission that Derwentia blakelyi and Thesium australe have both been recorded within the Ben Bullen State Forest"... "Contrary to the statement made in the Joint Submission, Thesium australe has not been recorded within the Ben Bullen State Forest according to the Atlas."

Some of these aspects will now be addressed.

8.1 Persoonia marginata (Vulnerable TSC and EPBC Act)

CRPRS p31 claims: *"All known habitat for Persoonia marginata has been avoided and it has also been excised from the currently approved open cut mining area of Cullen Valley Mine. In addition, the Contracted Project also avoids all known habitat for Persoonia marginata where it occurs within the Project Boundary."*

Despite the above assurances, some individual *P. marginata* have been 'lost' since the species was first reported to OEI by LEG on 4 April 2011. Furthermore, all known habitat for *P. marginata* has not been avoided or excised from the currently approved open cut mining area. None of this inspires confidence!

Plate 1 (below), covering part of the Cullen Valley mine area, shows the locations of individual *Persoonia marginata*, as recorded by LEG on 2006 and 2012 GoogleEarth Imagery. The detail of locations on the Plate can be obtained by clicking on the image and then expanding it. There has clearly been a degree of encroachment on habitat through clearing of vegetation evidenced by the pale grey swathe up the centre tract of the 2012 image.

Plate 2 provides detail of the northern end of the cleared and excavated tract in Plate 1 (bottom). It demonstrates that some individual *Persoonia marginata* plants, as recorded by the LEG on 4 April 2011, **have been destroyed**. It also makes the point that the potential for more plants being lost is extremely high. Despite all the written assurances and the opinions of consultants Plates 1 and 2 are 'ground-truth' and show that words and actions are at variance.

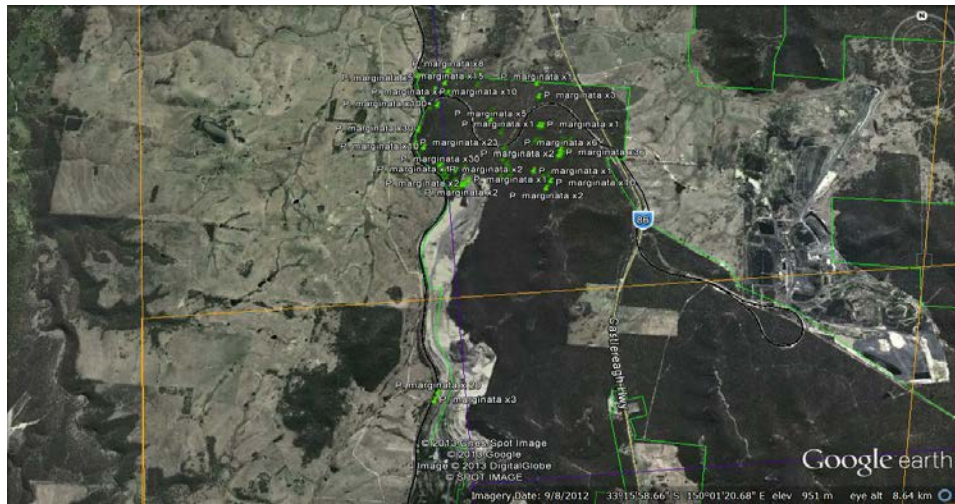
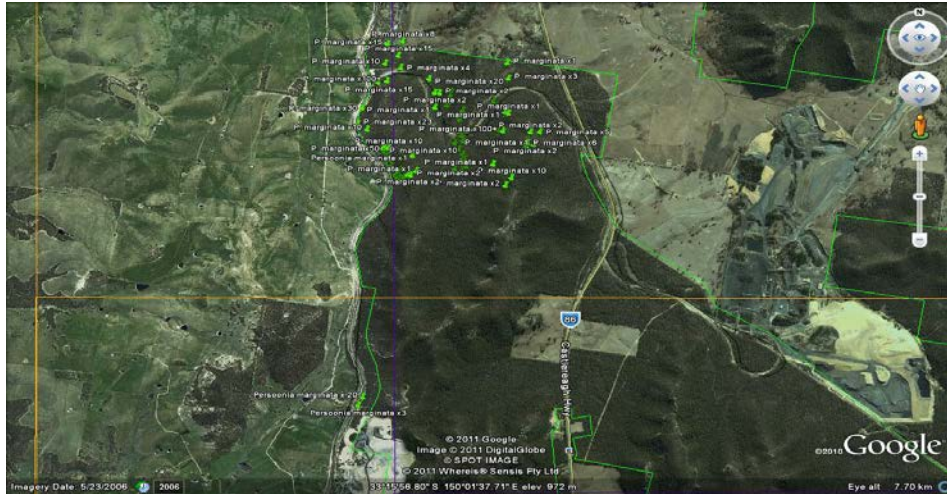


Plate 1: *P. marginata* locations on GoogleEarth 5/23/2006 (top) and 9/8/2012 (bottom) Imagery

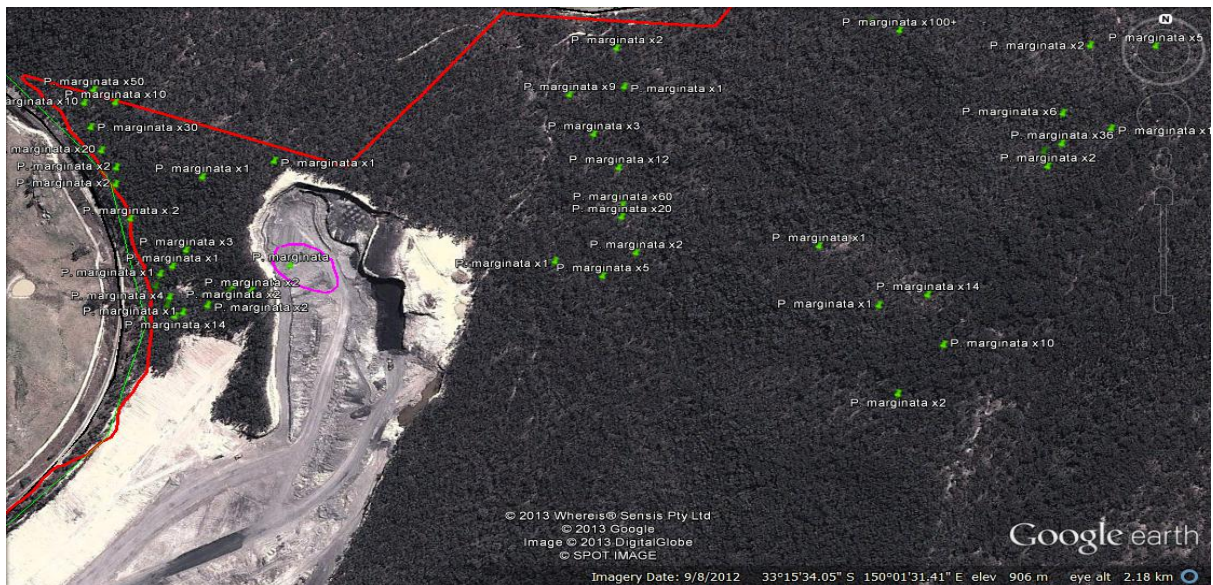


Plate 2: Detail of the northern end of the cleared area in Plate 1 (bottom) – the pink ellipse encompasses the region of destroyed *P. marginata*

The Joint Groups maintain that the NW portion of Ben Bullen SF is *known habitat* for *P. marginata*, and yet this has clearly **neither been excised from nor avoided during the currently approved** open cut mining area of Cullen Valley Mine.

The above matter should be of major concern to government. It provides no comfort that, if the Contracted Project is approved, the same types of assurance are being made in relation to a range of threatened species. Thus, CRPRS p31 states: “*The Contracted Project will avoid any impacts to both these species [Eucalyptus aggregata and Persoonia marginata – BMCS]...*”

Despite all that has been written by Coalpac in response to concerns raised by the OEH, the PAC1 Commissioners, and Special Interest Groups regarding *Persoonia marginata*, Coalpac has still not provided any detailed mapping of the exact location of this species within the Contracted Project, or anywhere within the overall Project Area. Such mapping should be an essential prerequisite, not left to assurances that the work will be done following approval.

Assurances are easy to give, but they provide little protection from mining operations

8.2 *Eucalyptus aggregata* (Vulnerable TSC Act)

CRPRS p31: “*With regard to Eucalyptus aggregata, Coalpac are conserving rather than impacting the species.*”

The Joint Groups raised the *Eucalyptus aggregata* issue in response to PAC1 **Recommendations 49 – 55**, and particularly **Recommendation 52**:

“*The Commission recommends that the cumulative impacts on the biodiversity values of Ben Bullen State Forest and the region of this project, together with the proposed Pine Dale Stage 2 Extension, be considered before any assessment of this project is finalised.*”

Despite conservation claims made by Coalpac, *Eucalyptus aggregata* has been recorded on the Neubeck Coal Project Site, occurs on the Pine Dale Mine site⁵, and also occurs near Invincible Colliery (Lot 12 DP877190). Cumulative losses of *Eucalyptus aggregata* in and adjacent to Ben Bullen State Forest, and also in the wider region, are therefore of relevance to this project. The reservation status and current distribution of *Eucalyptus aggregata* should be considered and properly assessed as part of this proposal.

8.3 *Derwentia blakelyi* (Vulnerable TSC Act)

Derwentia blakelyi was raised by the Joint Groups in the context of the cumulative impacts highlighted by PAC1 (See Section 8.2 above).

Derwentia blakelyi occurs at Pine Dale, and within 1.4 km of the Contracted Open Cut Mining Area. This is shown on Plate 3 below. There is potential for it to occur in the Coalpac Project area.

The Coalpac project therefore has the potential to contribute to the cumulative losses of *Derwentia blakelyi* in Ben Bullen State Forest and the wider region. The reservation status and current distribution of *Derwentia blakelyi* should be assessed as part of this proposal.

Coalpac has previously argued that it cannot be held responsible for the impact of future projects such as Pine Dale. This argument is false. If a species is known to be vulnerable in a region and there is the slightest possibility of a current or future project being approved, the cumulative impact of such approvals should be considered and not rejected through reductionist arguments.

8.4 *Thesium australe* (Vulnerable TSC Act)

CRPRS p32: “*...this species has...been recorded near Blackmans Flat (approximately 5 km to the south of the Project) during surveys undertaken for the Neubeck Coal Project (Centennial Coal 2012) and Pine Dale Coal Mine (R.W. Corkery 2011)*” but “*...despite numerous field surveys by Cumberland Ecology and others, Thesium australe has not been recorded in the Project Boundary.*”

⁵ Enhance Place P/L has not as yet officially acknowledged its occurrence.

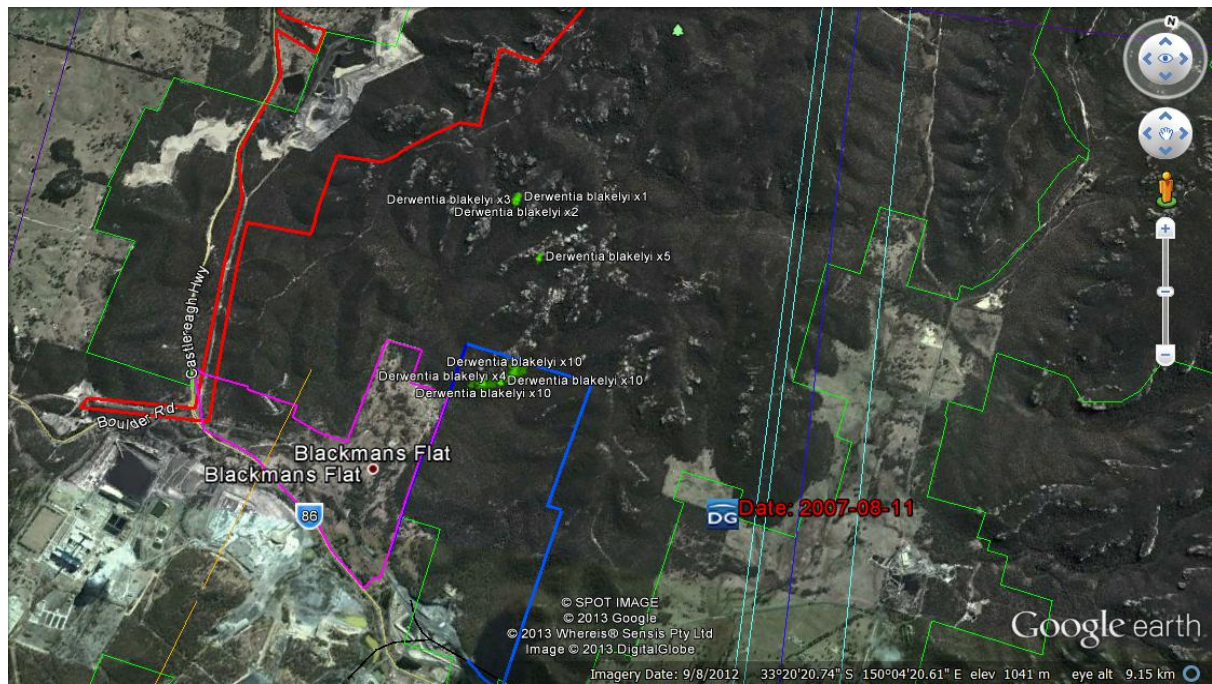


Plate 3: The known distribution of *Derwentia blakelyi* in relation to the Coalpac (in red) and Pine Dale Stage 2 (in blue) proposals

Based on the above observations, CRPRS p32 concluded that the species was unlikely to occur; and that the available evidence was inconsistent with JS’s contention that occurrence was “highly likely”.

The Joint Groups again emphasise that:

- In June 2001, as part of the EPBC Act Referral for the Pine Dale Coal Mine (Yarraboldy Extension), “Surveys conducted by Eco Logical Australia in March 2011 identified a total of 99 individual *Thesium australe* plants from 26 survey plots.”
- On 20 April 2012, the National Herbarium of NSW recorded a specimen of *Thesium australe* (NSW 895972) collected by R.C. Sansom 1.5 km south of the Contracted Open Cut Mining Area.
- In September 2012, Centennial Coal lodged a Briefing Paper for the Neubeck Coal Project with the DoP, which identified a population of *Thesium australe* 1.5 km south of the Contracted Open Cut Mining Area.

These *Thesium australe* populations are extremely close to the Coalpac Project area, as shown on Plate 4 (below). They occur as a component of the Tablelands Grassy Woodland Complex Unit of the JS’s BBPLS. The Tablelands Grassy Woodland Complex is the vegetation type which Coalpac proposes to clear for open cut mining (some 249 ha on Coalpac’s own figures). In view of this, and despite the survey conducted by Cumberland Ecology, the Joint Groups contend that the probability of *Thesium austral* occurring in the Coalpac Project area is still “highly likely”.

The Joint Groups also place on record that these *Thesium australe* represent the only known populations within the Lithgow LGA and wider Sydney Bioregion, *Thesium australe* is unlikely to occur in any proposed Biodiversity Offset, and as a species it is most unlikely to survive relocation.

Finally, the Joint Groups raise the matter of *Thesium australe* in response to the PAC1 Recommendation 52 (see Section 8.2 above). As noted in Section 8.3, Coalpac feels the issue of cumulative impacts in relation to a project (Pine Dale Stage 2) which is ‘on hold’ is not pertinent to Coalpac’s application. The Joint Groups disagree and believe that a targeted survey should be undertaken.

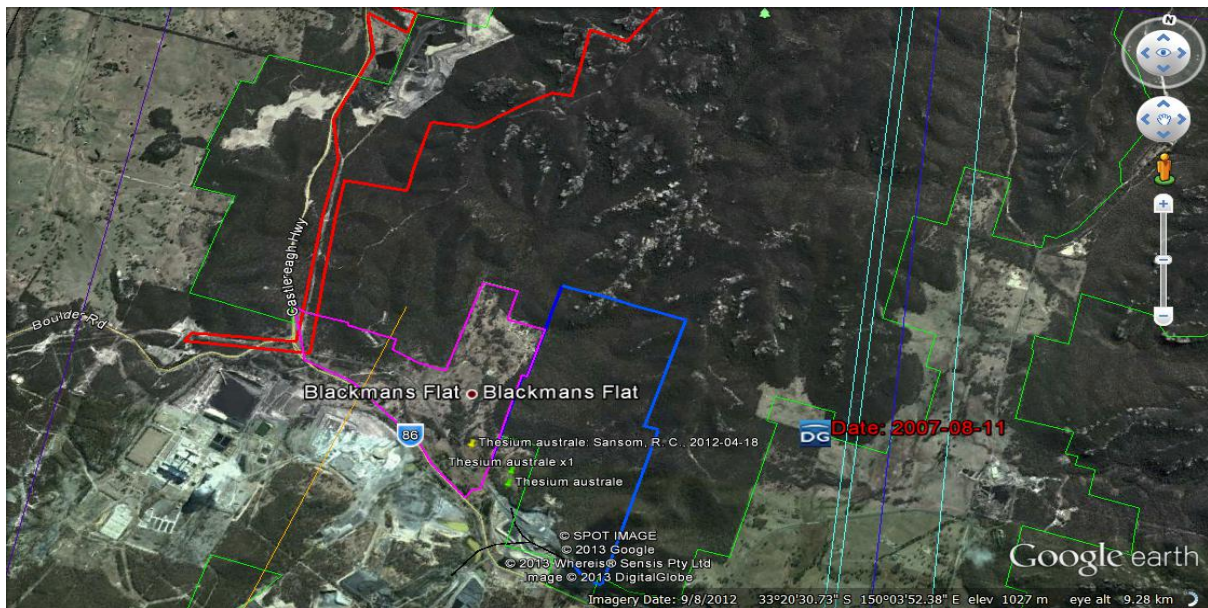


Plate 4: The known distribution of *Thesium australe* in relation to the Coalpac (in red) and Pine Dale (in blue) proposals

8.5 *Eucalyptus cannonii* (Vulnerable TSC and EPBC Act)

The Joint Groups reiterate that 15,428 *Eucalyptus cannonii* will be removed by the Contracted Project, but to date not a single replacement tree has been provided in any Biodiversity Offset. Table 8 of the Main Report clearly states that none of the Proposed Offset Properties contain *E. cannonii*. Offset Properties 3, 6, 7, and 8 only list *E. cannonii* as being recorded within 5 km of the property.

The Joint Groups again refer to the PAC1 Recommendation 52 which draws attention to the need to consider the cumulative impacts on the biodiversity values of Ben Bullen State Forest and the region of this project, together with the proposed Pine Dale Stage 2 Extension before finalising any assessment of this Coalpac proposal.

Cumulative losses of *E. cannonii* have occurred at the previous Invincible and Cullen Valley Mines, Ivanhoe North Open-cut mine, Pine Dale Yarraboldy Extension, and Charbon Colliery. Future losses of *E. cannonii* will occur at the Neubeck Coal Project and proposed Pine Dale Mine Extension Stage 2. It is critically important for government, under instruction from the DP&I or PAC2 to conduct a rigorous and independent assessment of the true conservation status of *Eucalyptus cannonii* in NSW before approving the Coalpac Consolidation Project.

9. Biodiversity in the Ben Bullen State Forest (BBSF) and Contracted Project Boundary

CRPRS pp26-27 states: “Considerable weight in the Joint Submission was placed on the relatively high diversity of Ben Bullen State Forest in terms of flora and fauna species (in particular orchids), vegetation communities and endangered species compared to other NPWS reserves and State Forests. This was determined by comparison of data held in the Atlas of NSW Wildlife (Atlas) for Ben Bullen State Forest and other reserves in the region. Atlas data was further used in the Joint Submission to support the assertion that Ben Bullen State Forest is an area where the abundance of several threatened flora species is particular high. While intuitively appealing, the conclusions drawn from such analysis relying on Atlas data is inherently flawed and is contrary to the intent of the Atlas.” “Atlas data cannot be used to demonstrate that it has a relatively higher diversity than other nearby areas.”

In conducting the evaluation based on Atlas data, the Joint Groups were perfectly aware of the types of limitations raised by the CRPRS. Nevertheless, the Atlas (despite such limitations) is the best available basis for making the type of comparison presented in the JS pp13-14. Despite the vagaries of recording and

reporting data, it is likely that in the region for which the data for the various Reserves and State Forests were compared, the results will be meaningful without being numerically absolute. To disregard such a resource or attempt to totally discredit it⁶ as a guide to biodiversity would be ridiculous.

The Joint Groups therefore stand by the implications of JS pp13-14 that the BBSF is a region of high biodiversity. With regard to the 3 EECs/CEECs listed under State and Commonwealth legislation, this is absolute.

9.1 ROTAP-listed flora species

CRPRS p27 attempts to belittle the importance of ROTAP-listed species: “As the EPBC list has legal force, the ROTAP list is now little used in ecological impact assessment.” “The ROTAP list was last updated in 1996, and as such it is now 17 years out of date.” “...for the purposes of ecological reporting for this Project, ROTAP species are not considered to be threatened species and are not accorded the same consideration in the Cumberland Ecology assessment as species listed under the EPBC Act and/or the TSC Act.”

The Joint Groups accept the primacy of the EPBC and TSC Acts, but there are many species which have not yet been listed which still have high conservation value. Many of those are ROTAP-listed and are of concern to OEH. For example, the OEH Submission on 6 November 2012, page 9 – 10 to the Planning Assessment Commission Review of the Proposed Coalpac Consolidation Project stated: “Although the four ROTAP species are not listed as threatened, considering their restricted distribution and the general lack of information on the reservation status of three of these species, OEH considers that potential impacts to them are of concern. Moreover, in the absence of detailed assessment information, OEH cannot gauge the significance of predicted or potential impacts resulting from the [Coalpac] Project.”

The Joint Groups stand by the reference to and significance of ROTAP species in the JS pp15-16.

It seems probable that concerns about the adequacy of flora surveys resulted in PAC1 Recommendation 49, which stated: “The Commission recommends that concerns about the adequacy of the flora assessment and identification of the vegetation associations present in the project area be resolved to the satisfaction of OEH prior to approval of any extension to open-cut mining in the project area and prior to any assessment of adequacy or otherwise of the biodiversity offset package.”

A new discovery: Lithgow Environment Group volunteers recently recorded *Eucalyptus apiculata* within the Proposal Boundary. *Eucalyptus apiculata* is ROTAP-listed as 3RC.

Eucalyptus apiculata has previously been recorded on the Wildlife Atlas as occurring in a number of locations within Ben Bullen State Forest. This should have served as an indicator to Coalpac’s flora consultants that this ROTAP-listed species had potential to occur within the Proposal Area. **Despite this *E. apiculata* is not identified in any of Coalpac’s numerous flora assessments⁶.**

The Joint Groups therefore request that a targeted survey be undertaken for *Eucalyptus apiculata* to adequately address PAC1 Recommendations 49 and 55.

9.2 Ecological Communities – endangered and poorly reserved

The JS pp13-15 (and in detail in the **JS Appendix 3**) drew attention to the three EECs/CEECs listed under State and Commonwealth legislation, and a range of non-listed **poorly reserved** vegetation communities which would be cleared by the Coalpac proposal including (p14) “...the Ribbon Gum Grassy Forest on alluvial flats community; the Mountain Gum - Apple Box - Blakely’s Red Gum Grassy Forest; and the Broad-leaved Peppermint - Brittle Gum - Red Stringybark Grassy Open Forest community”. The JS also emphasised that the 10h Tablelands Grassy Woodlands Complex on the talus slopes of Permian Illawarra Coal Measures within the proposal area were identified by PAC1 and the OEH as being poorly reserved and cited OEH: “The Unit 10h [the Tablelands Grassy Woodland Complex] represents the extent of vegetation on Permian sediments reasonably well. The limits of this mapping include the fact that Unit 10h comprises four different vegetation types that they [Benson and Keith] have identified, plus one that they missed [Ribbon Gum

⁶ Even highly paid consultants conducting flora surveys still seem to miss critical species!

with a ground layer of palatable grasses and relatively abundant forbs]. *However, it is the best available representation of all vegetation on Permian sediments.*”

All of this was largely to no avail! CRPRS p28 acknowledges the existence of the EECs but contends that “...only one of them, the Box Gum Woodland, will be impacted by the Contracted Project...” The CRPRS (pp25-26) then provides ‘justification’ for CE mapped a smaller area of Box Gum Woodland than suggested by the EEC indicator species on the NSW Wildlife Atlas; **most of this amounted to an exercise in minimisation.**

In relation to the non-listed poorly reserved vegetation communities, CRPRS p25 stated that they are “... not considered to be a critical constraint on the Contracted Project” and “...occur widely within the region, particularly along the western flanks of the Blue Mountains between Hartley and Rylstone.”

The CRPRS’s disregard for non-listed vegetation communities makes it necessary to again quote **from OEH’s submission to PAC1 on 6 November 2012, pp14-15:**

“the following vegetation types are of higher significance due to a high level of clearing, and low level of reservation...(area figures show the area of each vegetation type within the [Coalpac] Project area and exclude areas within approved operations:

- *Ribbon Gum grassy forest on alluvial flats (area = 21.1 ha);*
- *Mountain Gum Apple Box Blakelys Red Gum grassy forest on small drainage lines and footslopes (area – 65.5 ha); and*
- *Broad-leaved Peppermint Brittle gum Red Stringybark grassy forest on small rises (area = 192.5 ha).*

For these reasons, there is a case that impacts to these vegetation types within the Project area should be avoided.”

Also:

*“The same vegetation types...have also been more heavily affected by clearing for mining and agriculture in the Western Coalfield...the clearing associated with the existing Baal Bone and Invincible mines primarily affected...alluvial flats, small gullies and low rises. The Ribbon Gum dominated grassy open forest on alluvial flats, the Mountain Gum apple Box grassy open forest, and the Broad-leaved Peppermint Brittle Gum Red Stringybark grassy forest appear to be the primary vegetation types that would have occurred within the area already cleared for mining...**The current mining proposal would also affect vegetation types of higher conservation significance, continuing the trend of depletion of these vegetation types in the region** [BMCS emphasis].”*

There can be no question that the Coalpac project poses a substantial threat to the poorly reserved vegetation types.

To reiterate, in affirmation of responses made in **PART 1 Section 4 pp2-4** of the current BMCS-LEG document, much of the Tablelands Grassy Woodlands Complex Unit has a limited distribution within the BBPLS. Even parts of the 1,852 ha of 10h Tablelands Grassy Woodlands Complex identified in CRPRS Figures 3 and 5 are not intact bushland and unsuitable for reservation. Thus:

- Woodlands occurring south of Mount Piper are only 50% State Forest and likely to be available for reservation. Cattle and horses are grazing freely throughout the eastern section, and the understorey has been heavily disturbed. Also, parts of this area have been heavily disturbed by mining associated with the old Irondale, Lamberts Gully and Enhance Place Mines, and by works associated with Mt Piper Power Station.
- Woodlands shown along Wolgan Road in Lidsdale have been heavily grazed by cattle and horses such that the understorey is compromised, while other parts private property and unlikely to be available for reservation.
- The woodlands east of Lake Wallace have been heavily grazed by cattle, and as it is not State Forest is unlikely to be available for reservation.
- Woodlands to the south of Baal Bone Colliery have been disturbed by longwall mining operations. Weed infestation and dessication of water courses is evident.
- The area of woodland in the Hartley Valley is private property and unlikely to be available for reservation. It has been compromised by grazing and property development.

9.3 Threatened fauna species – Broad-headed snake

CRPRS Section 3.1.10 pp29-31 deals with this matter. The principal thrust of the response is on p29: *“Although the area where the Broad-headed Snake was found was not mapped as suitable habitat by Biosphere in their review for the PAC Response Report, it is still considered that there is little high quality habitat for this species within and surrounding the Project Boundary based upon the extensive experience of Dr Arthur White.”*

The arguments supporting the above are amusingly self-serving: the lack of suitable shelter resources means that an individual snake is not part of an extensive population, and yet it (p30) *“is clearly part of a local population”*; mitigation measures based on the *“...best available scientific evidence regarding this species’ habitat preferences and movement patterns...”* will minimise impacts, although unexpected behaviour will result in additional impacts; the area within the Contracted Project Disturbance Boundary does not comprise high quality habitat, so any snake encountered will be translocated; and reducing reptile poaching is likely to have longer term benefits than not destroying an area of low quality habitat.

Clearly Ian Brown should be ashamed for disturbing a lonely snake, living in unsuitable housing, and insufficiently educated to know better!



***Dr Brian Marshall,
For the Management Committee of BMCS
And on behalf of the Joint Groups***

11 June 2013