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ACF Submission Hunter Valley Operations North (EPBC 2023/09651) and South (EPBC 2023/09652) coal mines

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide a submission on the EPBC referrals for the proposed continuation of the Hunter Valley Operations (HVO) Complex (EPBC 2023/09651 and 2023/09652) in Liddel, New South Wales (NSW).

Introduction

ACF is Australia's national environment organisation. We are over 700,000 people who speak out for the air we breathe, the water we drink, and the places and wildlife we love. We are independent, non-partisan and funded by donations from our community. ACF believes that Australia and the world face an unprecedented climate and mass extinction crisis caused primarily by burning fossil fuels like coal, oil, and gas. Australia needs a national approach to reduce climate emissions in line with science-based temperature goals that Australia committed to under the Paris Agreement.

Although the HVO North and HVO South proposals have been submitted as two separate EPBC referrals, they are obviously a single activity. The splitting of these referrals only serves to avoid an assessment of the cumulative impacts of each project. In the referrals' current split form, the Federal Government does not have adequate evidence and information regarding the total risks that these proposals will create for our environment. Instead, the HVO North and South sites should be assessed considering the cumulative impact that coal mining has had on the Hunter Valley and the incremental contribution of these "two" projects to that impact.

The proposed continuation of the HVO Complex will produce significant greenhouse gas emissions and contribute to climate change. Mining this volume of coal through the lengthy extension of the current activity is incompatible with Australia's commitments under the Paris Agreement and the Federal Government's own climate policies. Furthermore, this proposal will have significant and devastating impacts on many Matters of National Environmental Significance (MNES) beyond those identified in the proponent's referral, such as water resources, threatened species and communities, and sites of international significance such as the Great Barrier Reef.

Recommendations:

1. The Minister should refuse these referrals under section 74A of the EPBC Act and request the proponent to refer the proposal to take the larger action.
2. Alternatively, if the Minister does not act under section 74A as recommended above, the Minister should determine the following are applicable controlling provisions:
 - a. Listed threatened species and communities (ss 18 and 18A);
 - b. A water resource in relation to large coal mining development (s 24D and 24E);
 - c. World Heritage (ss 14 and 15A);
 - d. National Heritage (ss 15B and 15C); and
 - e. Great Barrier Reef Marine Park (ss 24B and 24C).
3. The Minister should require assessment of this project via Environmental Impact Statement (EIS), in accordance with s 87 of the EPBC Act.

Insufficient referral documentation

It is noted that the current two EPBC referrals have replaced two previous applications that were withdrawn, HVO Continuation South (EPBC 2022/09206) and HVO Continuation North (EPBC 2022/09207). As a result of this re-referral, the proposed continuation of the HVO Complex is unable to be assessed under the NSW bilateral agreement on environmental assessment. It is now up to the Federal Minister to determine which method of assessment will apply to this proposal. **ACF strongly recommends that the Minister requires a full EIS for the HVO Complex.**

The proponent's current referral application includes an EIS that was provided to the NSW Government to secure consent for development. NSW departments which oversee biodiversity, water, and environmental matters raised a number of issues with this assessment. Additional documentation on biodiversity and water impacts has since been provided to the NSW Government, however this information has not been submitted to the Federal Government as part of this application. The documentation that the proponent has provided for the current referral is inadequate and does not provide the Federal Government with the fulsome evidence that is necessary to understand how the HVO Complex will impact MNES.



Contribution to climate change

The HVO Complex is a multi-pit, open-cut coal mine that has been reporting greenhouse gas emissions since the Safeguard Mechanism came into place. The HVO Complex has reported an average of 573,794 tCO₂e per year and is one of the largest coal producers covered under the Safeguard Mechanism. Despite its already substantial emissions profile, it is possible that the HVO Complex is contributing a significantly higher volume of emissions than what is reported due to the methane that is emitted from open-cut coal mines. Research from both the International Energy Agency (IEA) and Ember has found substantial underreporting of fossil methane emissions, with the IEA estimating that Australia is likely underreporting methane emissions from fossil fuel projects by 60% or more. This is likely because the National Greenhouse and Energy Reporting Scheme (NGERS) uses an emissions factor for coal mine methane that is unrepresentative of most Australian coal mines, and for that reason it is currently under review. If a project the size of the HVO Complex is currently underreporting methane emissions, this would have a considerable impact on the accuracy of the understanding of this project's contribution to climate change.

Additionally, in the recent Federal Court's judgement in *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)*, Justice McElwaine found that "It was legally open to the Minister to weigh and assess the applicant's material and submissions cognisant of the potentially catastrophic effects of climate change on MNES." The Federal Court has clearly removed any legal ambiguity about whether Minister may refuse large fossil fuel projects on climate change grounds and found that the Minister does have that ability. Furthermore, the recent amendment of the Safeguard Mechanism, which includes a requirement to consult with the Minister with portfolio responsibility for climate change in relation to emissions-intensive EPBC referrals, and the Federal Government's adoption of an absolute carbon budget to 2030 for industry, make it clear that the government's policy intent is to ensure that new sources of greenhouse gas emissions do not make it more difficult to achieve the Scope 1 abatement task of facilities covered by the Safeguard Mechanism. We would also note that this is the largest thermal coal expansion currently proposed in Australia.

The emissions profile of the project are likely to result in significant impacts on a wide range of MNES. Climate change is found throughout conversation advices of threatened species as a key threat. It is the key threat to the Great Barrier Reef Marine Park and the world and national heritage values of the Great Barrier Reef.

Impacts on water resources

The impacts that coal mining at the HVO Complex may have on local and regional water resources are substantial and inadequately addressed in the proponent's referral documentation. The NSW Department of Planning and Environment Water Division has found that the HVO Complex is "a



significant risk to a key water source in the Hunter Valley” due to the project’s mining activities near the Hunter River alluvium. Additionally, the proposal will result in the removal of significant volumes of rainfall, run-off and other water resources from the Hunter River, potentially to the detriment of the environment, downstream users and the Kooragang Island wetlands, a declared Ramsar site.

At least two of the critically endangered ecological communities to be impacted by the project, including Central Hunter eucalypt forest and woodland CEEC, and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grasslands, are potentially groundwater-dependent, meaning that further drawdown of the subsurface aquifer could compound threats to these ecological communities that are habitat critical to several listed threatened species.

We note that the proponent has acknowledged that mining has already caused significant depressurisation of the subsurface aquifer and the project will cause further drawdown. Given the scale and lifetime of the project, it is not reasonable for the proponent to assert that the project will not have a significant impact on water resources, especially given that this conflicts with the NSW Department of Planning Water Division’s assessment that it will pose a significant risk to surface water. We submit the Minister should determine that the impact on water resources is likely to be significant and hence section 24D and 24E are controlling provision for the purposes of the EPBC Act. This will ensure that the project’s impact on water resources is assessed by the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development.

Impacts on threatened species and communities

The HVO Complex proposal is likely to result in the bulldozing of 234 hectares of critically endangered Central Hunter Valley eucalypt forest and woodland. The conservation advice for that ecological community from 2015 notes that at the time 68% of the community had already been destroyed, less than 2% was in large intact areas, and climate change is a key threat to the community. This ecological community is potential habitat for regent honeyeaters, swift parrots, and the brush-tailed rock wallaby.

Additionally, this project will have significant impacts on Grey-headed Flying-fox, Large-eared Pied Bat and Spotted-tailed Quoll, which are downplayed in the proponent’s referral documentation. The Federal Government should list these species as controlling matters for the HVO Complex proposal and require an EIS and surveying to determine the cumulative impact these projects will have on threatened species.

Kind regards,

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Climate Campaigner – Methane and Fossil Fuels

