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To: Department of Planning.

Upper Hunter Biodiversity Plan and Strategic Assessment.

Comments on Draft Terms of Reference

Context

I do not consider it appropriate that the closing date for submissions should occur so soon after passage of the “Water Trigger” amendment and prior to consequent arrangements being finalised.

Apart from the adequacy, in terms of comprehensiveness and so on, of the Terms themselves (see below) I have concerns regarding the intended purposes of these Strategic Assessments, and therefore seek stronger assurance these Plans will ensure long-term protection of biodiversity, that the survey and assessment work will be independent, and the application of criteria and principles, including especially of Ecologically Sustainable Development, will be genuine and rigorous, not cursory and token, as is usual, and that the offset mechanism will not be abused in a pretence that destroying vegetation can maintain environmental values – again, as is usual – and that impacts on water are comprehensively addressed, with due attention to the need to be precautionary given high levels of uncertainty regarding impacts clearly long-term and irreversible; and most importantly also, that the likely long-term impacts of actions in a global warming context are also comprehensively addressed in a precautionary manner.

The Plans are evidently intended to streamline and simplify assessment and approval processes to benefit mining companies, by fast-tracking “classes of actions” (that is, “ new and expanded coal mining operations undertaken in accordance with an endorsed plan”) to replace processes under the NSW EP&A Act and the EPBC Act:

“From a NSW perspective, it is intended that classes of actions meeting the requirements of the Biodiversity Plan will not require further individual biodiversity assessment, pursuant to the Environmental Planning and Assessment Act 1979.. “

I note that mining companies are making “ a funding contribution for necessary flora and fauna surveys and associated biodiversity assessment reports”, and that the Biodiversity Plan and Strategic Assessment Report, will be prepared by the NSW Government, assisted

by participating mining companies.” For these companies, an average contribution of \$110,000, represents a bargain indeed, for faster simpler approval. Actual flora and fauna survey data from mining company assessments is useful; biased and often misleading or dishonest interpretation, is not. The public cannot trust a Plan and Report prepared by Government, either. A process of independent scientific review is required. And mining companies should in no way be “participating in the preparation” of the Biodiversity Plan and the Strategic Assessment Report.

Consequently my concern here is the apparent contradiction between ostensible (lip-service) biodiversity protection objectives, and actual developer-friendly, simplified approval process objectives. This is explicit in the Government's intended assault on environmental protection to promote economic growth, set out in the White Paper on the EPA Act, and in proposed changes to Vegetation Act, threatened incursions into National Parks, and so on.

The Background to the Terms of Reference speaks of “impacts on biodiversity from new coal mining.. and how regional biodiversity values can be protected”, which by implication means protected by offsetting, since mines are not refused, nor do conditions require them to move elsewhere. What has to be established is here assumed – that new mines can be approved, and values protected. **If this is an honest exercise, it should be explicit that new mines likely to significantly impact values will not be approved.** I would question any assessment claiming impacts in the Upper Hunter can be avoided, ameliorated or satisfactorily offset. This is obvious, so that such statements in the White Paper, and in these Strategic Assessment documents (for Upper and Lower Hunter), about protecting the environment whilst promoting yet further development, called “sustainable”, are as ludicrous as they are reprehensible.

The Terms of Reference

Offsetting

The Terms state the Biodiversity Plan and Assessment Report must identify offset mechanisms to be employed. Major problems with current offsetting principles include that instead of avoiding significant impacts consent authorities falsely accept that offsetting enable values to be maintained or improved, allowing high conservation value vegetation requiring protection to be cleared, and that offsets are allowed which are not “like for like”. However, I am concerned that new offsetting mechanisms adopted for these Plans may be weaker, for example protecting areas of different vegetation type, and remote from the impacted areas. **Offset mechanisms should be in accordance with (no less stringent than) existing NSW and Commonwealth (October 2012) offset principles, and must be rigorously applied, without the pretence that destroying vegetation in devastated landscapes is compatible with maintaining values.**

Promoting Ecologically Sustainable Development.

Once again, these principles (as in the Protection of the Environment Administration Act 1991) must be genuinely and fully applied. The Terms of Reference states, simply and briefly:

“The Strategic Assessment Report must describe how the principles of ecologically

sustainable development (section 3A of the EPBC Act) have been applied in developing the Biodiversity Plan and how these will be implemented.”

I see no reason why these Terms should be so scant compared to the Terms of Reference for the Lower Hunter Strategy, which states:

“D.2 Principles of Ecologically Sustainable Development

The Report must describe how the Program meets the objects of the EPBC Act, in particular that:

- (a) long and short-term economic, environmental and social considerations have been identified and integrated into the Program's design and implementation;
- (b) threats of serious or irreversible environmental damage will be avoided by implementing scientifically rigorous measures and applying the precautionary principle;
- (c) the health, diversity and productivity of the environment is maintained or enhanced for the benefit of the future generations;
- (d) biological diversity and ecological integrity will be conserved, in particular MNES; and
- (e) improved valuation, pricing and incentive mechanisms.”

The Terms of Reference for the Upper Hunter should adopt this same wording.

The Water Trigger

As expert critics observe, long-term impacts on water are very seldom adequately considered:

““If acid mine drainage (AMD) leaks into a stream, the metals concentrations are often hundreds or thousands to hundreds of thousands times higher than the levels that can kill most biodiversity, effectively wiping out the ecology of that stream ...

“It is mine waste which is the achilles heel of modern mining....

“Given that sulfidic mine wastes can cause AMD pollution for centuries to millennia, why aren't we factoring in such thinking when approving new mines? Why wasn't this used as a great moral and scientific justification for the (inept attempt at a) mining tax?

“Let's do some simple maths. Assume engineers can provide a rock solid, rolled gold guarantee that they can successfully rehabilitate mine wastes say 95 per cent of the time – and by success I mean with no future risks whatsoever. Now think of the 5 per cent we fail to rehabilitate or that needs ongoing monitoring and maintenance - this is 5 percent of billions of tonnes growing exponentially annually. This means as much mine waste as was mined at Mt Morgan over the course of a century being produced every year. Imagine this building up across the landscape and affecting the rivers and groundwater and you can begin to understand why so many informed locals and communities are concerned about the sheer scales of mine wastes. Let alone the fact that no intelligent engineer could ever seriously provide a 95 percent or higher guarantee on perfect mine waste rehabilitation.”

(Gavin Mudd, Monash University, *Australia's Mining Legacies*, Arena No. 124, July 2013.)

We know not what we do; and we care not what we do; and so we do not investigate what we may have done, to do better in future. . As Mudd observes,

“Where is the industry and government evidence of assessing mine rehabilitation performance five, ten or twenty years after rehabilitation?”

As with Ecological Sustainability, the commitment to ensure protection of water must be genuine, and supported by scientifically rigorous and precautionary processes.

Global Warming.

If approved, proposals for about 120 new coal mines or mine expansions will triple Australia's coal exports to around one billion tonnes by 2020. This will result in an additional 3 billion tonnes of CO₂ emissions annually. “Consideration of climate change and other long term influences” must take full account of these emissions contributing to global warming.

There is nowhere in these documents any hint of recognition that the Upper Hunter has been cleared and mined and polluted to death by the mining industry, so that plans for new or expanded mining in the area is unconscionable.

Barrie Griffiths.