

Director – Policy, Systems and Procedures
Department of Planning and Infrastructure
PO Box 39
Sydney, NSW, 2001

5 July, 2013

Dear Sir/Madam,

The Nature Conservation Council of NSW (NCC) welcomes the opportunity to comment on the *Strategic Assessment of a Biodiversity Plan for Coal Mining in the Upper Hunter Valley, NSW*.

NCC is the peak environment body in NSW, representing more than 100 organizations across the state, and has considerable experience in environmental assessment, planning and law in NSW. While supporting the flora and fauna surveys proposed as part of the Strategic Assessment, we contend that the plan will do little to address the need for biodiversity conservation in the Upper Hunter region.

The assessment area.

A large portion of the assessment area is already affected by mining or likely to be affected by approved mining activities. Coal mining in the Upper Hunter has effectively created exclusion zones from all other land uses including any possibility of creating offset areas. Large open-cut mines, derelict mines, and mining-related voids have disturbed or destroyed many environmentally sensitive zones within the indicative area.

The plan will only assess a very small area of the Hunter, around Singleton and Muswellbrook, where much damage has already occurred. To be effective, the study area should include landscapes likely to be affected by new mines, especially those further west and around Gloucester.

Insufficient protections for biodiversity.

Legislation aimed at safeguarding biodiversity in NSW does not apply to mining applications or any other State Significant Development (SSD).

SSDs under assessment, including mining proposals in the proposed assessment area, are exempt from the *Native Vegetation Act 2003*, the *Water Management Act 2000*, the *National Parks and Wildlife Act 1974*. These Acts seek to protect native vegetation and biodiversity, Aboriginal heritage and water resources and currently apply to other industries such as general agriculture and construction.

These Acts should be applied to coal mining and coal seam gas project applications that go through the exploration and development application processes of the NSW Department of Trade and

Investment, Division of Resources and Energy, and the NSW Department of Planning and Infrastructure.

The one-stop assessment process.

We have significant concerns about the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) single-approval requirement on a project. The terms of reference and the FAQ indicate this single approval process could act as a blanket approval for any and all changes that were to occur within the entire project area/outline. Further, clarification is needed on how the EPBC Act one-stop approval will work within the joint federal and state planning framework, as suggested in the FAQ.

This process could be abused by proponents applying for larger project areas than needed, thus avoiding the need for new biodiversity plan applications in the event the mine owners want the project to expand. The plan claims to account for future coal mining in the Upper Hunter; however it is unclear whether it will affect any modifications or expansions to existing coal mining and coal seam gas projects. This uncertainty should be clarified.

Land and vegetation offsets.

There needs to be a clarification of how offsets will be determined for the entire life and full extent of mining projects, rather for separate stages of a project, as is current practice. Additional clarification is also needed to show how these offset processes are going to differ between the federal Biodiversity Plan offsets and the NSW EP&A Act offsets.

There is a risk that proponents may purchase large tracts of land as offsets to obtain approval without proper regard to site quality and attributes. There needs to be rigorous assessment of the proposed biodiversity offsets and a strict correlation between the lost biodiversity and the relevant offsets. There are no details about whether or how land offsets, biodiversity hot-spots, conservation areas and other buffer zones for protecting conservation and other environmentally sensitive areas will be identified and located within the indicative area or the designated Upper Hunter regional study area.

The biodiversity plan guidelines should protect private conservation areas established under state and federal legislation, including conservation agreements, Nature Conservation Trust agreements and Indigenous Protected Areas.

An impact assessment and identification of possible land offsets should be part of the biodiversity planning assessment process to identify the project's potential impacts on the biodiversity of the proposed mining area¹.

There is currently a lack of adequate mapping of current biodiversity offset areas associated with existing mine approvals as per Upper Hunter Strategic Regional Land Use Policy. There have been several examples of offset areas later being destroyed for new or expanded mining projects creating the need to offset offsets. This runs completely counter to the purpose of offsets providing conservation land for biodiversity in perpetuity. All offset areas need to be accurately mapped and permanently protected as part of the Biodiversity Strategy.

¹ In response to the NSW Office of Environment and Heritage stakeholder presentation, "Strategic Biodiversity Assessment for Upper Hunter Coal Mines", May 2013, p.16.

Lack of independent assessment and review.

Under current arrangements, environmental impact assessments of projects are provided by consultants selected and paid for by project proponents. This arrangement leads to a clear conflict of interest for consultants². In the interests of probity and transparency, biodiversity assessments for biodiversity plans and assessments should be made by an independent assessment board or other entity that is separate to any groups or consultancy firms that are or have been financed by mining companies.

Cumulative effects of coal mining in the Upper Hunter.

The plan outline fails to discuss any assessment of cumulative effects of large-scale coal mining and coal seam gas activities on the biodiversity of the Upper Hunter region. It fails to take into account any assessment of cumulative impacts of loss of base flows to the Hunter River, loss of alluvial aquifer systems, the number of final voids in the landscape, loss of species habitat or the cumulative disturbance of prime agricultural land.

Conclusion.

NCC believes the Upper Hunter biodiversity plan is too narrow in its focus, however we support mining companies providing approximately \$1 million to the Office of Environment and Heritage for flora and fauna surveys in some remnant bushland in parts of the Upper Hunter. The national 2011 *State of the Environment* report shows NSW is going backwards in biodiversity conversation, with more species listed as threatened every year. To have any hope of reversing this trend in the Upper Hunter the biodiversity plan should be broader in scope and take into account the issues outlined above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P. Clarke', on a light grey rectangular background.

Pepe Clarke
Chief Executive Officer

² Nature Conservation Council, Total Environment Center and EDO NSW, *Our Environment Our Communities*, pg. 23, http://nccnsw.org.au/sites/default/files/Our_Environment_Our_Communities_0.pdf