

Submission by Dr Ann Young, on the Integrated Mining Policy and Upland Swamp Offset Policies, June 2015

The FAQ document comments that *Importantly, the IMP does not change environmental standards or community consultation requirements*. I assume this means that the Government believes that it does not change them for the worse. I would argue that it does change some aspects for the better, but that the changes need to go further.

Firstly, environmental considerations should be given explicit priority in the approval process. The pre-eminence given to economic matters in the 2013 SEPP should be rescinded.

Secondly, the link between approval conditions and offset policy should be clarified. At present, the offset policy sequence of 'avoid, minimise, offset' is reduced to 'predict, offset'. It will reduce - not strengthen - the currently minimal level of protection given to these valued ecosystems. This is not acceptable to the community, which expects increased protection for upland swamps. The Government is well aware of the strength of community feeling on this matter, and it is surprising that this retrograde step has been incorporated into the current draft policies. This is a major weakness of the draft policies and needs to be corrected.

Mine project application and SEARs

The mining-specific requirements for PEA and EIS should be expanded to specify the major environmental considerations. They are not listed in Table 1 nor picked up clearly in the 'biophysical, environmental and heritage constraints of the 'Regional context' requirements. They would include:

- dust, noise and visual pollution + loss of viability of adjacent and uses especially agriculture in the case of open cut mines
- subsidence impacts in the case of longwall coal mines
- transport of product and impacts on nearby communities. These are not really 'ancillary' developments as it seems unlikely that any project could proceed without them.

While these may be seen as subsumed under the general environmental requirements (for an EIS in particular), not listing them in Table 1 or in the outline of requirements send a clear message that they are subordinate to mine management considerations.

I commend the draft Standard SEAR for Coal Mining Projects for:

- the order of the issues that must be considered - environmental, social and economic. It would be heartening if this order truly reflected the priorities of the Government in considering approval of coal mining projects. The 2013 amendment to the mining SEPP was a retrograde step that unbalanced the consideration of significance and slanted the weight well towards economic issues.
- the requirements for 'sufficient baseline data' in describing the existing environment and the assessment of 'cumulative impacts', and the minimum of 2 years of data to describe 'background natural variation'. The planning of mine projects needs to be genuinely adaptive and take into account the lessons of monitoring and impact assessment from earlier projects or activity on a particular project.
- the requirement for information about the 'likely effectiveness' of the 'reasonable and feasible mitigation measures'. However I suggest that the 'description of the measures that would be implemented to monitor and report on environmental performance' should be part of the preceding paragraph 'Assess the likely impacts etc'. My reason is very simple - monitoring is not mitigation! Routinely at present, monitoring at ever-increasing levels of detail and ever-increasing frequency of meetings is the approved response to environmental impacts.

Monitoring and meetings are part of environmental impact assessment and are neither environmentally beneficial nor mitigatory.

- the requirement to include an Agricultural Impact Statement and evaluation of soils especially BSAL. I suggest that assessment of impacts on agricultural land viability be added as a dot point to the list of matters to be dealt with 'In relation to the natural environment' for an EIS for an underground mine. The impacts to long-term food production in Australia of proposed projects in high quality agricultural areas should be an explicit item in this Integrated Mining Policy.

Offset policy

The Biodiversity Offset Policy for Major Projects requires a hierarchy of 'avoid, minimise, offset'; and also provides for a variation from like-for-like as well as for supplementary measures such as a fund. The Mine Application Guideline notes that *Avoidance, minimisation and mitigation measures should be the primary strategies for managing the potential adverse impacts of a development*. Yet the Policy shortly will allow mining companies to fulfil their offset obligations by payment to a fund. If that payment to a fund becomes the default option, not the last resort when all better options have been exhausted, this would contravene the Policy's **Principle 1: Before offsets are considered, impacts must first be avoided and unavoidable impacts minimised through mitigation measures. Only then should offsets be considered for the remaining impacts.**

This is of particular relevance to impacts on upland swamps due to longwall mining.

The draft policy on upland swamps implicitly recognises that remediation/mitigation of swamps damaged by subsidence is not feasible. There are several very commendable aspects of the draft policy:

- nil or negligible consequences being required and compliance being measured by shallow groundwater monitoring. This is a major advance on current compliance criteria vaguely defined as 'ecosystem functionality' and consistent with the 'presumption of long-term impacts' if shallow groundwater is impacted.
- liability being assessed 'as a potential maximum (worst case scenario)'. I read this to mean any section of swamp undermined and showing loss of groundwater will be considered 100% lost for the purpose of calculating an offset.
- details of the Biodiversity Offset Strategy being fully established before approval of the Extraction Plan, ie before mining can commence.
- a minimum 2 years of baseline piezometric monitoring being required for swamps within 400m of a longwall or a 'more conservative assessment of sensitivity' (presumably an assumption that a swamp is highly susceptible to damage) being applied.
- a clear and consistent process for allotting offset liability being based on groundwater trends for 12 months after undermining.

However the draft Swamp Offset Policy deals only with how to calculate offsets and is inconsistent with the Biodiversity Offset Policy framework. It proposes very simple 2 step processes:

1. predict nil consequences = no up-front offset required
2. consequences worse than predicted = find an offset within 6 months

or

1. predict greater than negligible consequences = offset required
2. damage happens = offset secured

In short, the 'avoid' and the 'minimise' steps of the broad offset policy framework are not implemented! In the case of upland swamps in the Sydney water catchment area, where like-for-like swamp offsets are not easily found, it is clear that the draft policy will facilitate a direct path from swamp destruction to payment to a fund, the disbursement from which may have zero benefit to similar ecosystems. I believe that the community does not consider that damage 'within prediction' is acceptable damage. The loss of groundwater is well-documented and well-known, as are the associated impacts of bedrock shattering, iron pollution of streams and erosion and vegetation change in damaged swamps. There is strong community support for the protection of upland swamps both for their ecological and their hydrological value, and offset payments will not be seen as an adequate response to further destruction of upland swamps.

The draft swamp policy needs to be linked to the Integrated Mining Policy so that damage which exceeds 'nil or negligible consequences' is not a trigger to an offset but in fact is a breach of approval conditions that triggers cessation of mining. There are precedents for this compliance requirement, notably the condition that mining at Dendrobium Area 3A should not damage the Sandy Creek waterfall. This needs to happen for upland swamps also. If damage occurs beyond predictions, then before mining is permitted to re-start, the mine layout should be modified to avoid or at least minimise further damage to other swamps.