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Nature Conservation Saves for Tomorrow

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**Department of Planning & Environment,
NSW Government.**

Via: online submission form

Improving Mining Regulation in NSW

1. Preamble

The Blue Mountains Conservation Society (BMCS and also 'The Society' in the present submission) has a membership which fluctuates in the range 800-850. The membership is mainly drawn from the City of the Blue Mountains and the Greater Sydney region, but a scattering of members exists throughout NSW and also interstate.

The Society has a strong interest in the Greater Blue Mountains World Heritage Area (GBMWH) in terms of protecting its many parks and reserves. It is also extremely active in campaigning for the reservation of the Gardens of Stone Stage 2 Proposal over the western portion of the Blue Mountains and the Western Escarpment between Blackheath and the Capertee valley, and pursuing the National Heritage Listing of parts of these areas with a view to having them ultimately being assessed for addition to the GBMWH.

As a result of its environmental concerns, BMCS has particularly engaged with the activities of coal-mining companies in the Western coalfield. BMCS recently made submissions to the Planning Assessment Commission (PAC) in relation to the Springvale Extension and notes that the **draft Swamps Offset Policy** was used by the DPE in formulating the Preliminary Assessment of the Springvale Extension that went to the PAC for consideration in its review report. The DPE recognised that it was using a draft dated April 15, but the use raises a question about the value of the current process of seeking input. Either the DPE is confident that there is negligible likelihood of responses to the 'improvements documents' resulting in any change, or the DPE should not have used the controversial draft Swamps Offset Policy in its Preliminary Assessment of the Springvale Extension.

The Society's response will be presented as two separate sections, because the respective authors have differing experience and concerns:

FAQs and Mine Application Guideline as covered by Peter Green; and,
FAQs, Integrated Mine Policy Overview, and Swamps Offset Policy by Brian Marshall, who is also collating the work and signing the final document.

The Standard SEARS for Coal Mining Projects (underground and open cut) will not be covered in this submission.

It is inevitable that, in adopting this approach, there will be some repetition

2. FAQs and Mine Application Guideline by Peter Green

Mr Green has tertiary qualifications in geology and information technology. He has extensive experience in exploration and mining geology, but is now the principal of an Information Technology consultancy. He has for many years been a volunteer within the State Emergency Services, was until recently a member of BMCS Management Committee, and remains a member of BMCS.

2.1 Introduction

The Society wishes to make this submission in relation to the FAQ document and the draft Mine Application Guideline within the Integrated Mining Policy.

The concept of a State Significant Development (SSD) is an immediate concern. Not for any size or general impact aspect, but from the implication that normal rules could be bent because of a reframed perspective of 'doing whatever it takes'. There should be a warning sign that established societal and environmental protections are likely to be trashed like some sort of collateral damage.

Probably the most egregious aspect of mining approvals, particularly with regard to environmental impact statements, is the manner in which mining companies and expert consultants engage. The simple reality is that, should a consultant provide a company with a report not supportive of that company's intentions, the consultant can expect to receive no further commissions from the company. The obvious alternative model for this process is for the government to manage a pool of consultants and to appoint a relevant expert to each environmental analysis, with the mining company still paying for the work to be done. Without such a system of impartial reporting, it is impossible to have any faith in the proper objectivity of any EIS.

Another unseemly characteristic of planning approvals in New South Wales that needs to be eradicated is the process of lodging variations almost as soon as the initial approval is received. It is as if the approval is seen by applicants as just the opening gambit. In effect, the mining project proceeds from a relatively small base, which tends to minimise environmental and social concerns, through incremental approvals (each of which is framed as stand-alone and relatively small with 'minimal' impacts) until the eventual full scale project is realised.

Any acceptable policy concerning mining proposal approvals would be flawed unless it also examines the exploration phase of mining. A company that has received permission to explore, and has expended considerable funds undertaking that exploration, would quite rightly expect to be given permission to exploit any discovered resource as long as the approval policy settings were known at the time of granting of the exploration permit. Therefore, any land that would be barred from mining, such as under water storage, within an urban area or within a national park, should also be excised from any exploration permit.

2.2 FAQ Document

"The Integrated Mining Policy will apply to all State significant mining developments, including coal and mineral mines".

A major problem with government mining policy is that it does not differentiate between: (i) mining of the metals and industrial minerals which underpin our modern industrial society, and (ii) fossil fuels, notably coal, unconventional liquids and CSG. Yet, the overwhelming consensus of relevant science informs us that fossil fuels have no place in a society which wishes to preserve the liveability of the Earth. It is simply irrational to place economic considerations ahead of environmental ones. **A healthy society fits within, and is dependent on, a healthy environment, not vice versa.**

"The Government has already announced increased penalties to ensure compliance with approval conditions on noise, dust, traffic, waste management, and other impacts from mining activity".

The actual penalties need to be substantial to be an effective deterrent. They need to hurt the corporate bottom line, such that shareholders start to make their displeasure known. The penalty applied to Santos for the Pilliga Forest polluted water spill was seen by most environmentalists as ludicrously inadequate, not a

deterrent at all. It is almost reduced to a simple expense item on the balance sheet, much like tea, coffee and biscuits for head office.

“Importantly, the high standards already in place to manage environmental and community impacts will not change.”

This statement verges on effrontery. The current mining approval and monitoring framework, and associated environmental protections, have done little to protect valuable wilderness like the Wollangambe River from Clarence Colliery pollution, nor cracking of stream beds on Newnes and Woronora Plateaux, nor apparently the existence of the village of Bulga nor the remaining Warkworth Sands Woodlands. To describe current standards as high is an insult to those who have striven to protect precious natural areas from despoliation, and to retain the high quality of Sydney’s water supply systems.

“The Integrated Mining Policy will provide greater certainty around how mining proposals are assessed, including biodiversity offsets and swamp offsets, as well as economic assessment guidelines”.

Given that the Warkworth extension proposal was rejected twice by planning bodies, then approved after the planning rules were changed to favour mining company profits over community and environmental health, and that the government worked with the foreign owners against the welfare of local residents, the only certainty that is apparent is that mining proposals will have a greater certainty of approval. Any reference to ‘balance’ in the assessment process that prioritises the financial health of (largely foreign-owned) corporations over community and environmental health is disingenuous.

The offsets policy, which includes allowing the companies in question to make payments if like-for-like ecosystems cannot be found, is quite inadequate, a sham policy.

“The NSW Government intends to strike a balance between the significant benefits major projects can bring to the economy and the potential impacts on communities and the environment”.

It is difficult to accept that this is a genuine undertaking, given the government’s clearly stated position on planning approvals to the effect that the financial profitability of the mining company (largely foreign-owned) is placed ahead of the health of the environment and the community.

Environmental awareness in our community has grown over time. The benefits are manifold and largely apparent. But we have lately witnessed the unedifying and increasing tendency by those who wish to profit from their activities with no regard for anything or anyone, to attack the array of precautions that have been emplaced. Part of this reflexive attack is the use of the term ‘green tape’ to describe the planning protections we enjoy.

Where a proposed project envisages risks to the environment, the idea of trade-offs is fraught with difficulty. The laws of nature are immutable, and cannot be bent to suit some overarching economic viewpoint. No debate is possible. As the saying goes, ‘nature bats last’, and we must respect that our economic health resides within an environmental framework. We ignore this dependency at our peril.

“The Integrated Mining Policy will provide greater certainty around how mining proposals are assessed, including biodiversity offsets and swamp offsets, as well as economic assessment guidelines”.

Unless the primacy of economic considerations is removed from the planning approvals process, this statement can be interpreted to mean that it is the mining companies which will receive greater certainty that their applications will be approved.

The conservation movement is rightly cynical about offsets policies. Like-for-like is the least unrealistic form of such a policy. The ability of mining companies to cite paying money to compensate for proposed environmental damage is totally unacceptable.

Swamp offsets is also unacceptable. We have already lost swamps, and their contained water, to irreversible damage. There is no pool of unused swamps just waiting to be allocated as an offset.

“Mining is an important industry in NSW. It provides jobs in regional areas and significantly contributes to the local and state economies”.

Published research by the Australia Institute has exposed the lie to the self-proclaimed importance of mining, particularly coal mining, to this state and to the country. The industry is not as large an employer as they like to promote nor as large as the general public believes; indeed the industry is capital-intensive, increasingly so. It is also neither as great a contributor to taxation as they would have the rest of us believe,

and nor are the royalties particularly high, bearing in mind the resource is finite. With coal in demonstrable free fall globally, as demonstrated by the market dive of the likes of Peabody Coal, it is likely that profit per tonne will decrease while, with decreasing tonnage mined, royalty-payments will also decline.

2.3 Mine Application Guidelines

The Integrated Mining Policy requires applicants to ensure that the development of a preferred mine design addresses the full lifecycle from mine application guidelines, through mine construction and operation, to rehabilitation and lease relinquishment.

During the recent Coalpac Consolidation Proposal, application for further mining was supported by the implication that such mining would ensure the proper rehabilitation of earlier mining damage. Given that such rehabilitation is quite unrelated to further mining approval, such a suggestion amounts to little more than a disregard for a legal obligation.

On a broader scale, the Hunter Valley, a jewel in Australia's agricultural crown, has partly become a moonscape-wasteland; and the extent of this wasteland will at least double according to governmental expectations. One wonders if this region will ever be restored to a state remotely like the pre-mining landscape. One certainty is that the geology will never be recreated. But what of the precious soil? And will the government decide to go easy on the coal miners and let them leave a bunch of lakes instead of productive paddocks? Or will the foreign-owned corporations just decamp, leaving our government to clear up the mess, in the process capitalising the profits and socialising the losses? The latter is a likely scenario, given the global state of the thermal coal industry.

Any new legislation needs to instigate the sequestering of sufficient bond-funds to allow complete rehabilitation of the land to its pre-mining state. Nothing less is acceptable.

Applicants should adopt an iterative approach to developing the preferred mine design

This ideally should lead to an optimum proposal that would include minimised environmental and human health impacts. **But any progression of such a regulatory regime into the actual mining phase, such that it morphs into so-called 'adaptive management', is unacceptable where it relates to impacts that are not remediable.** Cliff falls and cracked stream beds would be included in this stipulation, as would local extinction of endangered flora and fauna, and destruction of threatened ecosystems.

: with regular reviews based on consideration of effective resource recovery

Mining companies are not above exaggerating the projected profitability of proposed mining activity. Any application needs to be scrutinised for such flights of fancy. The matter is particularly relevant in situations where the less-than-profitable mining venture closes with insufficient funds in escrow for total remediation.

: evaluation of the project viability and the economic benefits of developing the resource

Applicants need to present independently and impartially verifiable costings. For example, recent coal mine applications seem to consider that the recent crash in the price of coal is just a temporary aberration from an inexorably rising market price, as distinct from structural change due to a global surge to renewable energy and gas. The current price structure is a wake-up call to those companies wishing to underground-mine and export thermal coal, even if there is co-ownership with a company in the importing country.

: ongoing consultation with key stakeholders, including regulators and the community

It would be a rare conservation-minded person who had full confidence in any community consultation process. These are too often seen as an exercise that has been ticked off a check list. A decent application approval process needs to demonstrate that scientifically valid assessments presented as part of this consultation process are properly recognised and taken into consideration.

Land Use Constraints: practical constraints on mining operations such as disposal of incidental water.

The importance of this aspect of a project's EIS is clearly demonstrated by past failings. The pollution of the Coss River (upstream from Lake Burragorang) from Wallerawang Power Station discharges and various Licensed Discharge Points, the pollution of the Wollangambe River by Clarence Colliery, and dead swamps on Newnes Plateau are significant examples of a failed system near or in the World Heritage Area. Similarly, the 'lost water' from Thirlmere Lakes is attributable to nearby longwall mining. State-wide, the main issue would be the contaminated water produced from CSG extraction.

Biophysical, environmental and heritage constraints: water sources for catchments, rivers and aquifers.

This aspect of an EIS needs to be cognisant of the level of denial that seems to characterise the mining industry's appreciation of the effects of various mines on water courses. In the western Blue Mountains, this refers to the loss of water when longwall mining passes under swamps on Newnes Plateau; it also refers to the desiccation of Thirlmere Lakes, when longwall mining took place within 700 metres of the Lakes. It beggars belief that the association in both these cases is not causal, yet there seems little or no concern on the part of the companies in question. Impacts on the macroinvertebrate fauna (and therefore higher up the food chain) in the Grose River due to the now closed Canyon Colliery, and in the Wollangambe River below the Clarence Colliery, further flag the need for impartial Environmental Impact Statements.

The PEA should include an outline of the rationale behind key mine design decisions, for example mining method. (This is applicable to the EIS stage).

Subsidence due to longwall mining is a demonstrated cause of significant surface damage, specifically creek bed cracking and cliff collapse. Neither of these kinds of damage are able to be remediated. Mining company plans must accept that bord and pillar mining (or similar low-subsidence mining) is a necessary mining method, despite the extracted tonnage being reduced. It is also a method that is compatible with State Conservation Areas, themselves a logical precursor to national park status at the completion of mining.

An alternative, as **should be** the case with the Springvale extension, is to avoid undermining swamps and major stream systems, or at least use narrow longwall panels to ensure appropriate width/cover ratios.

What consequences does the preferred extraction method have for the mine layout, operation and impacts? For example the final landform (e.g. final voids).

The wording of this aspect of the proposal suggests that leaving final voids, rather than backfilling, is a satisfactory legacy. By this method, for example, the Hunter Valley would be converted from a food bowl into a swathe of deep lakes, probably acidic from the decomposition of sulphide in the coal formations. This would sacrifice the effectively endless farming production from largely family owned properties for the sake of short term mineral extraction by a largely foreign-owned industry.

2.3 In conclusion

The FAQs and Mine Application Guidelines are of value in that they help define a set of processes linked to 'Improving Mining Regulation'. Nevertheless, as will be seen from many of the comments in Sections 2.2 and 2.3, the words are fine, but their application (from past experience) leaves much to be desired. Furthermore, **it seems that the benefits are largely aimed at facilitating mining rather than improving environmental outcomes and ensuring that the social consequences for those directly impacted are not disregarded.**

3. FAQs, Integrated Mine Policy Overview, and Swamps Offset Policy by Brian Marshall

Dr Marshall has a PhD in geology and a Graduate Diploma of Management, is experienced in metalliferous exploration and mining, and has consulted both in these areas and in engineering geology. He finished his academic career as Adjunct Professor of Geology at UTS. He is a past-President of BMCS, has been on BMCS' Management Committee for more than 10 years, and has responsibility for the subcommittee engaging with the Western Coalfield and Gardens of Stone region, as well as with issues relating to National Parks and the Greater Blue Mountains World Heritage Area.

3.1 Introduction

Peter Green has commented in some detail on the FAQs and the Mine Application Guideline. An essential component of what he has written is that the current system has failed to protect environmental aspects and deems the well-being of impacted local communities of lesser importance than those who stand to directly profit from the resource-exploitation. Instead, the current practice prefers a process of monitoring which, because this is done and interpreted by 'rusted-on' consultants and is subject to commonly unrealistic risk-management triggers, only 'discovers' anything too obvious to be ignored or explained away, and has substantial in-built lags and other bureaucratic impediments to ensure that mining proceeds.

Succinctly, the process ensures that mining benefits at the expense of the environment; nothing in the FAQs and Mine Application Guideline shows the slightest indication that this will change.

In Sections 3.2 and 3.3, additional comment will be made on aspects of the FAQs and the Integrated Mining Policy Overview respectively. The focus will be on the glib statements which effectively show that the goalposts are again being moved to the detriment of sane environmental outcomes. This is, unfortunately, to be expected in a State where public assets are to be sacrificed for short-term gain and the proceeds expended on infrastructure for which the business cases are inadequately researched or deemed ‘business-in-confidence’. It is extremely sad that indiscriminate growth (predicated on the belief there is no such thing as bad growth) is the paradigm driving the State.

Section 3.4 will be limited to the Swamps Offset Policy which has no redeemable features from an environmental viewpoint.

3.2 FAQs

These comments will be made as a series of dot-points linked to particular statements in the FAQs.

- *“...increased penalties to ensure compliance with approval conditions on noise, dust, traffic, waste management, and other impacts from mining activity.”* The penalties are still too low. **The penalties should be commensurate with the level of financial gain achieved through disregarding the constraints.** For example, what fine will apply if a stream loses part of its flow, or a swamp is desiccated through water losses, and the period over which damage accrued is say 6-12 months?
- *“...is intended to clarify and improve existing government processes and policy around the assessment...”* This is reassuring, but the reality is that the Swamp Offsets Policy appeared in draft form on or about April 15 (was then used by DPE in the Preliminary Assessment of the Springvale extension project) and is new – it has not been placed on public notice enabling feedback – it has been presented *fait accompli*.
- *“...strike a balance between the significant benefits major projects can bring to the economy and the potential impacts on communities and the environment.”*
“...a more comprehensive picture of identified environmental impacts and proposed mitigation controls...”
“...strike a balance between the significant economic benefits of major mining projects and minimising potential impacts on communities and the environment.”

The Society would appreciate the criteria involved in **striking a balance**, as the three quotations progressively change the relationships: first we have significant economic benefits versus **potential impacts**, then **identified environmental impacts** versus mitigation controls, and finally significant economic benefits versus minimising potential impacts. This clearly shows the philosophy behind ‘**striking a balance**’: **do whatever it takes in order to ensure mining is approved!**

- *“...the high standards already in place to manage environmental and community impacts will not change.”*
“...provide greater certainty around how mining proposals are assessed, including biodiversity offsets and swamp offsets, as well as economic assessment guidelines.”
“...a whole-of-government project which aims to reduce duplication and improve the efficiency of assessment and regulation of State significant mining.”
“...ensure that stakeholders have access to relevant information at each point in the decision-making process.”

The above statements are inconsistent. If the ‘high standards’ won’t change, how can a Swamps Offset Policy, particularly one favouring the mining industry, be introduced without prior consultation?

Furthermore, if duplication is to be reduced and efficiency improved (admirable aims of course), the Society wonders how much time NGOs will have to deal with each point in the decision-making process. As you must be aware, BMCS has frequently raised concerns about the vast amount of electronic paper it is required to digest within a relatively short period: companies have many months and numerous consultants to develop proposals, whereas NGOs have a few weeks to assess the data,

commission consultants over critical issues, and make substantial submissions. **The bottom line is that the current process is already stacked in favour of a company's deep pockets. Will the efficiencies address the imbalance or in fact worsen it?**

- *"...improves the assessment and determination process for mining developments so that it works better for industry, regulators and the community."*

Although this may be little more than carelessness, it is disturbing that the environment is not specified in the above quotation. **Yep! Look after the industry, regulators and the community (dependent social aspects), but let's not talk about the environment.**

3.3 Integrated Mining Policy (IMP) – Overview

A dot-point approach will again be adopted

- *"...the Integrated Mining Policy will improve transparency, consistency and accountability for assessment decisions."*

This is a welcome set of assurances, but BMCS is concerned that 'transparency, consistency and accountability' can be improved, without in any way achieving a better 'balance' between 'economic and beneficial social outcomes' versus 'adverse social, heritage and environmental impacts'. **The types of assurance offer little comfort to those who have been flattened by the coal steamroller!**

- *"...improve coordination and cooperation between government agencies so that matters can be considered at the same time."*

If this means between Commonwealth and State agencies, the Society registers its concern about the unhealthy delegation of the Commonwealth's responsibility under the EPBC Act to the States. The Commonwealth and States have separate responsibilities for what the Society contends are sound reasons.

It is noted elsewhere in the IMP overview that: *"The new Assessment Bilateral Agreement allows the Commonwealth Minister for the Environment to rely on specified NSW environmental impact assessment processes to assess actions under the Environment Protection and Biodiversity Conservation Act 1999. This effectively creates a one-stop-shop for assessments of major developments. A new Assessment Bilateral Agreement was signed by the NSW and Commonwealth Governments on 26 February 2015."*

Whereas BMCS acknowledges the **simplistic** logic behind the Bilateral Agreement, companies had already dealt with the issue by sending the Department of the Environment (DoE) large amounts of their Environmental Impact Statements (EIS) with little thought as to the pertinence. But the real travesty is that the Office of Environment & Heritage is the poor relation in the DPE and has relatively little support in cabinet. The role of the DoE should be to overcome the inequities created by the State's power politics and ensure that nationally endangered ecosystems are truly protected, rather than being destroyed courtesy of dubiously interpreted monitoring and/or offsets.

- *"...will consult on further Policy reforms as part of Stage Two at a later date."*

The Society finds it interesting that the Swamps Offset Policy (SOP) is introduced at Stage 1, whereas the other policy-reforms will appear in Stage 2.

The draft of the SOP was used by the DPE in the Preliminary Assessment of the Springvale Extension Project, dated April 15 2015. Irrespective of the SOP's merits or lack of them, the DPE decided **(without any consultation)** that this was the best way of 'handling' the protection of the Commonwealth- and State-listed Newnes Plateau Shrub Swamps (NPSS) and Hanging Swamps (HS) that are threatened by the Springvale Extension. It follows that:

- one might reasonably look askance at the DPE's haste in developing an approach which, in the Society's view, seems designed to permit mining regardless of the environmental outcomes;
- one might conclude from the DPE's confident use of the draft SOP, either that despite the current consultation process no substantive change is countenanced, or that if substantive changes can

(and hopefully will) result from current consultation the draft SOP should not have been used; and,

➤ one might anticipate a range of mining-friendly policy-reforms in Stage 2.

- Standard SEARs “...*permit the assessments for an Environment Protection Licence (EPL) and Mining Lease (ML) to be conducted at the same time as the assessment of the development application.*”

This is supposedly more efficient in terms of saving time, but this is questionable. BMCS believes that the SEARs concept is unlikely to be applicable to most of the development applications. BMCS understands that other organizations such as the Nature Conservation Council and Lock the Gate Alliance will be commenting more fully on the SEARs’ deficiencies.

- Standard Development Consent Conditions (SDCC) reduce duplication across the different approvals by “...*ensuring that conditions will be set and enforced by the agency that has the expertise in regulating a particular impact*” and “...*allowing the consent authority to consider proposed conditions on environmental protection licences and mining leases...*”

The SDCC approach is largely seen in terms of reducing duplication and aiding consistency. BMCS questions whether SDCCs are practicable and notes that the “...*consent authority may modify the standard development consent conditions to ensure that all identified environmental risks are properly regulated and controlled.*” It seems more likely than not, that consent conditions will need to be tailored to the identified risks and that **any attempt to force them into a ‘one-size-fits-all’ mold will be to the detriment of the environment.**

BMCS accepts that the agencies with the necessary expertise should set and enforce the conditions to which their expertise pertains. **This would seem to negate the SDCC concept.**

BMCS accepts, and indeed insists, that the consent authority should be able to consider proposed conditions on environmental protection licences and mining leases. It should be totally unacceptable for the consent authority to be confronted with ongoing negotiations between the company and other parties. Putting this more explicitly, **if the agency stipulates the essential needs of (say) an environmental protection licence, the company should either determine how to comply, or withdraw the development application.**

- “...*Government is developing new economic assessment guidelines to ensure that the impacts of proposed projects are robustly measured and analysed in a consistent fashion using recognized economic assessment methods.*”

The Society fully endorses the need for this aspect to be resolved. However, the Society notes that, in view of the contentious aspects of economic assessments, a draft should be circulated to a range of organisations (including The Australia Institute) in advance of public exhibition. **The critical point is that consistency is important provided that the process does not consistently distort outcomes in favour of the companies. Numbers can lie!**

- The Swamps Offset Policy (SOP) “...*extends the principles of the Biodiversity Offset Policy for Major Projects to subsidence related impacts of mining on endangered swamps.*”

The Society made submissions in relation to the Biodiversity Offset Policy (BOP). They were no doubt carefully read and then discounted to the point of rejection. This regrettably seems to be standard practice in the push to marginalize environmental issues in the pursuit of extracting the last tonne of coal before the market collapses. **The diabolical BOP has now been joined by the even more diabolical son of BOP: namely SOP!**

SOP is commented upon under the fourth dot-point above the present one. SOP will be fully analysed in Section 3.4.

3.4 Swamps Offset Policy (SOP)

A dot-point approach will again be adopted.

- The Society has concern with the name of this policy and its intention. Its formal title is: “*Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species – Impacted by longwall mine subsidence, May 2015.*” This is variously shortened to Swamps Offset Policy and Swamp Offset Policy, both of which abbreviate to SOP. The introduction says that the policy is to facilitate “...calculation and provision of offsets for subsidence impacts of longwall coal mining on upland swamps and associated threatened species...”

The concerns are:

- **‘Swamps’ (plural) should always be used** because the upland swamps comprise two types of threatened ecological community on Newnes Plateau – the Newnes Plateau Shrub Swamp (NPSS) and Newnes Plateau Hanging Swamp (NPHS). Both are listed as ‘Matter of National Environmental Significance’ under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). In a recent review report¹, the PAC noted the emphasis on NPSS and advocated paying more attention to impacts on NPHS
- The use of ‘subsidence’ needs clarification. Subsidence, subsidence effects and subsidence impacts are fully defined in the draft consent conditions for the Springvale Extension Project issued by the DPE². Nevertheless, the related PAC differentiates between **conventional and non-conventional subsidence effects**³, and considers that insufficient consideration was given to the latter in the DPE’s assessment report and, by implication, in the company’s EIS. **The Society believes that there is need for DPE to clarify the diversity of subsidence-related effects and impacts in its SOP.**
- Longwall coal mining is listed under *NSW Threatened Species Conservation Act, 2005* as a key threatening process which can significantly impact uplands swamps. The aim should be to avoid undermining endangered swamps and their ecosystems, rather than progressing the mining to the swamps’ detriment. Yet the intention as embodied in the SOP’s introduction (quoted above) **fails to place ‘offsetting’ within the hierarchy of actions designed to protect upland swamps and associated threatened species.**

The hierarchy is avoid, minimise through mitigation and, only after the first two have been implemented, consider ‘offsetting’ as a last resort. Unfortunately, as presented in the SOP, it would seem to be an enabling process; one which enables a company to trash national assets by making an appropriate ‘offset’ payment. This ‘cash-to-trash’ disease will surely meet with mining-company approval.

- The Society’s position on offsets for upland swamps is one of absolute rejection.
 - Avoidance and/or mitigation⁴ should always be used in preference to any consideration of offsets. Whereas mitigation measures reduce the amount of available coal per panel, this is a small price to pay for a degree of environmental protection.
 - By area, NPSS comprise about 2-3% of the Newnes Plateau, all of which is underlain by coal. **It is extreme philistinism to not forego the small amount of a commodity which is facing declining demand.**
 - The Society contends that when upland swamps and their ecosystems are nationally listed and of extremely limited distribution, like-for-like offsetting for upland swamps is ridiculous. Very simply, if you have 10 and you destroy 2, you are left with 8. Like-for-like effectively says allow us to destroy 2 and we will ensure that two of the remaining 8 are ‘saved’; or more realistically, we will spend money remediating damage on several of the remaining 8. **This is insane because the bottom line is that there will still only be 8!**

¹ Planning Assessment Commission Review Report on Springvale Mine Extension Project, June 2015, p22.

² <http://www.pac.nsw.gov.au/Projects/tabid/77/ctl/viewreview/mid/462/pac/470/view/readonly/myctl/rev/Default.aspx>

³ Planning Assessment Commission Review Report on Springvale Mine Extension Project, June 2015, pp11-12.

⁴ Mitigation can be achieved through reducing the width of the proposed longwall panels, increasing the chain pillar widths and ensuring sub-critical width/depth ratios (say <0.7).

- The alternatives are that ‘we’ will spend money elsewhere on saving an entirely unrelated endangered system, or ‘we’ pay a sum of money into a biobank to support an as yet unknown environmentally positive outcome. **This is equally insane because there will still only be 8 left!**
- The Society has heard various refinements of arguments ‘justifying’ offsets, and some of them make more sense when the payment goes towards re-establishing populations of a native species in an area it once inhabited. **But this doesn’t alter the facts that only 8 are left**, swamps and their ecosystems can’t be re-established when the once underpinning groundwater regime has been changed, and they can’t be created in alien settings.
- All of the above pales into insignificance when the details of the diabolical and wildly impracticable SOP are considered. The SOP emphasises that the “...*policy framework will be applied in implementing the Offsets Policy in respect of subsidence impacts on upland swamps and associated threatened species.*” In doing so, it effectively assumes that additional avoidance and mitigation measures are not acceptable to the company, and that neither the DPE nor the PAC⁵ is prepared to either reject the company’s proposal or prescribe additional avoidance and/or mitigation measures.

The ensuing dot-points will largely follow the sections and will loosely approximate headings identified in the draft SOP.

- ***No up-front offset is required if ‘nil’ and/or ‘negligible’ environmental consequences are predicted and supported by evidence.***

The SOP states that ‘nil’ and/or ‘negligible’ environmental consequences mean that subsidence-related impacts will not cause changes to shallow groundwater regimes which support an upland swamp community. The prediction will be included as a consent-condition and compliance will be based on monitoring. Should monitoring show significant lowering of the watertable and should this stabilize for a period of 12 months, then an offset must be identified and secured within a further 6 months.

The Society’s reactions to this are:

- There will be no shortage of consultants prepared to support a ‘negligible’ prediction based on such things as past mining (even though damage may have eventuated it will be ‘statistically uncommon’) and various mitigation measures (but these will be minimal because they involve forfeited tonnage).
- Monitoring is subject to numerous problems including seasonal and longer-term rainfall patterns, the location of the piezometers within the swamps, the location of downstream flow monitors, and the substantial lag effects related to subsidence-related ‘lost’ water. Very simply, the variables are such that any consultant should be able to place a company-favourable interpretation on the data.

The Society recalls a consultant who interpreted falling piezo-levels as drought effects and in no way mining-related; then the rising piezo-levels after heavy rain were ‘proof’ that there was no mining-related damage⁶. The same consultant placed monitors at the edge of swamps because putting them in the swamp would do too much damage; once the watertable fell below the bottom of the piezometers they ‘flat-lined’ and were useless.

- In the case of the Springvale Extension, for which the DPE has provided a positive preliminary assessment report, the company’s own consultant indicated that there will be some rock fracturing under the swamps. Yet this was considered to be ‘negligible’ damage that would probably ‘self-heal’.
- Similarly, the company’s consultant for the Springvale Extension predicts a regional groundwater draw-down of 0.5 to 10 metres as a consequence of the proposed longwall mining.

⁵ Assuming the PAC is involved, as happened to be the case with the Springvale Extension Project when the draft SOP was first utilised – refer to Section 3.3 dot-point 3 above.

⁶ This actually proved that piezometers record the impact of rainfall (or lack of it) on the local watertable, but it in no way precludes an underlying mining-related impact.

Whether or not this would wholly or partially recover after cessation of mining is unclear, but while extant, it would certainly be a disaster for swamps (NPSS and NPHS) and their groundwater dependent ecosystems. Yet damage to the NPHS is deemed ‘negligible’.

- Should ‘significant’ lowering of the watertable be demonstrated⁷, it is still treated as a non-event! Monitoring continues to see whether the fall continues, or the drop in level stabilizes, or whether partial/full recovery takes place. If the watertable stabilizes (and presumably if it keeps falling), the company will have an additional 6 months to secure an offset.

This demonstrates the whole stupidity of monitoring. There is the initial debate about ‘significant’, then about the cause (mining-related or not), and then about recovery (if any). Only after this 12-month lag, will thought be given to a form of compensatory offset. **Meanwhile, the swamp has experienced an impact and nothing has been done about establishing the cause, attempting remediation (joke!), and changing the mining operations to avoid repetition⁸. It is farcical.**

- ***Damage is predicted in the EIS to exceed ‘nil’ or ‘negligible’ environmental consequences***

In this situation, an offset will be required as a condition of consent. This is superficially reasonable, but the question must surely be why has this level of damage been sanctioned by the DPE?

It really comes back to the fact that, if a higher level of damage is predicted for nationally listed swamps and associated species within the ecosystem, **it is surely required (hopefully by Commonwealth and State governments) that protection zones be emplaced as part of the consent-conditions.**

- - (a) *Calculating the ‘maximum predicted offset liability’*
 - (b) *Securing an appropriate offset for predicted impacts*
 - (c) *Performance measures*
 - (d) *Re-crediting of retired/deposited offsets*

The above four headings largely comprise housekeeping measures. **The Society is opposed to offsetting upland swamps and believes that avoidance (protection zones) or environmentally sound mitigation should be employed.** In consequence, BMCS will only highlight what would seem to be disproportionately favourable treatment for mining companies.

- (a) *“If it is predicted (supported by evidence) that a partial impact to an upland swamp is likely, then only the portion of the swamp likely to experience greater than negligible impacts should be included in the offset calculation.”*

BMCS does not accept this. A swamp is an entity and its ecological importance is a non-linear function of the area – as the area decreases, the ecological value exponentially decreases. Realistically, a mining-induced impact is unlikely to be predicted with the inferred level of accuracy. **The only sensible approach would be to state that any ‘significant’ mining-related impact should be treated as an impact on the whole swamp.**

- (b) *“Prior to approval of an Extraction Plan, the applicant must demonstrate that it can satisfy its ‘maximum predicted offset liability’ for all mining subject to that plan. Conditions of development consent may also require that a suitable ‘bank’ of offsets is established early in the life of the development, and then maintained as appropriate.”*

“The offsets identified in the Biodiversity Offset Strategy are only required to be secured or credits retired once the outcomes of mining are confirmed through agreed monitoring.”

Of the above two quotations, the first is sensible and partly ensures that the offsets are available up-front. **The Society contends that all offsets should be available and paid for in advance. The second does not conform and is rejected by BMCS.**

⁷ This requires a definition of ‘significant’. It also hides the probability that the consultant will do his/her best to provide an interpretation unrelated to mining.

⁸ One hopes that somewhere in Schedule 6 of the draft consent-conditions there will be a management plan to investigate and deal with such unexpected impacts – but it is far from clear.

- (c) *“Compliance action may be taken for breach of performance measures.”*

BMCS believes that compliance action **should** be taken in the absence of any ameliorating circumstances.

- (d) *“If ongoing monitoring ... beyond the time when an offset is secured demonstrates that the aquifer has returned to a natural regime (as described by the two year, pre-mining baseline), then the applicant may apply ... for a reduction in a future offset liability ... Any such application must be made within 5 years of the completion of mining within 400 m of the upland swamp.”*

“If less than two years baseline data...was collected...the applicant cannot apply at a later date for a reduction in future offset liability.”

BMCS opposes the first quotation because it allows a period up to 5 years for the return to a pre-mining state. This is far too long. The swamp will have experienced substantial desiccation with significant impacts on the ecosystem. Elsewhere in the SOP it says *“...if monitoring demonstrates that the shallow groundwater aquifer is impacted, then there is a presumption of long-term impacts on the swamp.”* **This is a reasonable presumption, but the corollary that a recovered groundwater regime implies a recovered swamp and ecosystem is not!**

BMCS accepts the second quotation.

- ***Monitoring the environmental consequences of mining on upland swamps and associated threatened species***
Consideration of actual and predicted impacts

The details in these two sections are largely repetitive and have been addressed already.

4. Concluding comments

The overall conclusion is that the Integrated Mining Policy (IMP) will not ‘fly’ as currently presented; it is back to the ‘drawing boards’. However, rather than tinker around at the edges of the problems and end up with a load of motherhood statements and well-meaning intentions masking a confusing mishmash, it might be better to start by reviewing the relationship between the Mining Act and the Environmental Planning and Assessment Act. Currently, the former prevails over the latter and would seem to compromise the more balanced intentions of the IMP.

Partly for the above-outlined reason, the IMP remains an interesting concept, but one that is difficult to implement. It repeatedly emphasises reduction of duplication, increasing efficiency, improving consistency, and somewhat less frequently achieving a balance and creating certainty. These are all worth striving for and easy to claim, yet there is little in the policy as presented that suggests the DPE is close to what it is attempting to attain; and when the IMP is properly ‘road-tested’, that is when hitherto unrecognised practical problems materialize.

Attempts to improve efficiency, create more certainty and consistency, and strike a better balance, commonly result in attempts to create ‘one-size-fits-all’ approaches. The standardized SEARS and Development Consent Conditions are two such examples, but they are less than satisfactory because the basic templates have significant omissions and it is recognized that, even if the templates are improved, the need will remain to tailor them to best serve the various development applications.

Trying to create a balance which will meet the needs of the differing parties (mining companies, environmental groups, and community organizations) will never work. What is good for companies is usually bad for environmental groups, and what is good (jobs and economic factors) for parts of the community is bad (noise, air quality and loss of amenity) for others. And the regulators are only as popular as their last decisions. Nevertheless, when implemented changes favour the miners (by focusing on economic benefits and jobs) and, in doing so, make life easier for the regulators, there is little evidence of ‘balance’ from an environmental viewpoint.

The DPE has done itself a disservice by launching Stage 1 of the IMP as an assemblage of informational (FAQs and the IMP overview) and conceptual (SEARs and SDCC) documents, to which was added a

highly contentious policy document (SOP). The latter appeared to have been rushed through to facilitate a mining-favourable decision about the Springvale Extension Project. This has unquestionably fomented distrust; and the distrust will carry over to the other policy documents in Stage 2. The obvious one which many will focus on will be the economic assessment guidelines.

The Society notes that Planning Minister Stokes intends⁹ to amend the Mining State Environmental Planning Policy (SEPP), by removing the provision which made the significance of the resource 'the principal consideration' when determining projects. This will redress the current imbalance and ensure that the decision-makers give equal consideration to the environmental, social and economic impacts of any mining development.

Unfortunately, as long as the Mining Act prevails, it would seem that the DPE's consent conditions may not prescribe a best-practice adaptive management approach to progressively enhancing environmental protection.

A handwritten signature in black ink, appearing to read 'Brian Marshall', with a long, sweeping horizontal stroke extending to the right.

***Dr Brian Marshall,
For the Management Committee.***

⁹ <http://www.smh.com.au/environment/planning-rule-change-gives-hope-to-bulga-other-communities-facing-big-mines-20150706-gi6bvh.html>