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The Executive Director - Resources & Industry Policy  
NSW Department of Planning & Environment  
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NSW 2001

## **National Parks Association of NSW: Submission on the Integrated Mining Policy**

### **Introduction**

The National Parks Association of NSW (NPA) was formed in 1957 to promote the concept of a network of national parks in NSW legislated through a National Parks and Wildlife Act and managed by a professional National Parks and Wildlife Service. A major step forward in NPAs work was achieved with the passage of the NSW National Parks and Wildlife Act and the establishment of the NSW National Parks and Wildlife Service (NPWS) in 1967.

Today the NPA, as a community group, continues to build on this work through a network of branches and over 20,000 members and supporters. We have a particular interest in the protection of the State's biodiversity and supporting ecological processes, both within and outside of the formal conservation reserve system.

The NPA appreciates the opportunity to comment on the Integrated Mining Policy.

A major objective of NPA is to ensure that areas of high conservation value are adequately protected and appropriately managed in perpetuity to ensure the maintenance of ecosystem processes. This submission is made pursuant to this objective.

### **Key Points**

The NPA objects to the Mine Application Guideline, the Standard Secretary's Environmental Assessment Requirements and the Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species Impacted by Long Wall Subsidence that together form the Integrated Mining Policy. Our key concerns are:

1. These documents are not sufficiently clear and certain to provide for transparent and accountable decision-making;
2. Assessment requirements for PEAs and EISs do not appropriately apply the principles of ecological sustainable development (ESD), in particular, the application of the principle of conservation of biodiversity and ecological integrity and;
3. The Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species Impacted by Longwall Subsidence does not require consideration of the ecological integrity of upland swamps or the ecosystem services that they provide and also fails to acknowledge the conservation significance of some upland swamps by permitting not like to like offsetting and other variations even though some upland swamps are of "national significance". NPA considers that it provides no effective mechanisms for protecting upland swamps.

### **Background**

There is widespread cynicism in the community about how state significant development, in particular mining, is assessed and determined. NPA considers that current legislation and policies, which regulate the assessment and determination of mining projects, promote the interests of proponents at the expense of proper consideration of environmental and social issues. This is not consistent with the principles of Ecologically Sustainable Development (ESD).

Therefore, the NPA welcomes the Minister for Planning's announcement that he intends to repeal cl12AA of the Mining SEPP and that the SEPP is being reviewed. However, it is unfortunate that the consultation on the review of the Mining SEPP and Stage 2 of the Integrated Mining Policy (IMP) are not occurring simultaneously with exhibition of Stage 1 of the IMP. They are inherently linked. NPA notes that one of the recommendations of the Independent Commission against Corruption (ICAC) to reduce corruption is that it be mandatory that major strategic policy documents be considered during the making of planning instruments.<sup>1</sup> This recommendation is equally applicable when a planning instrument is being reviewed and new policy documents are proposed.

Apart from the Mining SEPP, the community has many other significant concerns in relation to the assessment and determination of mining proposals. These issues include:

- The lack of appeal rights from a decision of the Planning and Assessment Commission;
- The appointment of environmental consultants by proponents which has led to a perception that proponents can influence the content of EISs;
- The failure to restore environmental approvals for State significant development when Part 3A was repealed;
- The application of cl 12AB of the Mining SEPP;
- Flaws in the Framework for Biodiversity Assessment and;
- Flaws in the Major Projects Offsetting Policy.

The first four matters are outside the scope of the IMP, however, the latter two are directly and highly relevant as discussed below.

### **General comments on the Integrated Mining Policy**

#### **1. An over-reliance on policies**

- NPA is concerned that increasingly matters related to environmental assessment of projects are being dealt with in non-statutory policies. Legislation including planning instruments provides a more transparent and accountable framework for decision-making. ICAC has recommended that that discretionary planning decisions should be subject to mandated sets of criteria that are robust and objective<sup>2</sup> to minimise the risk of corruption or undue influence from proponents.

#### **2. Uncertainty as to the requirements for EISs**

- The Mine Application Guideline (MAG) or the Standard Secretary's Environmental Assessment Requirements (SEARS) overlap considerably by both including requirements for the contents of EISs. The requirements for EISs would be much clearer and less confusing for both proponents and the community if the MAG only dealt with the Preliminary Environmental Assessment (PEA) requirements and the SEARS dealt only with the EIS requirements. It is assumed that if there are inconsistencies between the two documents, the SEARS will be taken to prevail but this should be stated explicitly.

#### **3. Exploration activities**

- It is not clear whether the policy and other documents apply to exploration activities. Exploration is likely to have significant environmental impacts and accordingly, an EIS should be required for an exploration licence applications well as for mining applications.

#### **4. Failure to consider climate change or carbon emissions**

- In neither the MAG nor the SEARS is there is any requirement to consider the impacts of the

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<sup>1</sup> ICAC (2012) Anti-corruption safeguards and the NSW Planning System

<sup>2</sup> ICAC (2012) Anti-corruption safeguards and the NSW Planning System

use of the material mined on carbon emissions, or indeed any requirement to consider potential climate change impacts in relation to any aspect of proposals.

## **5. Fundamental flaws in the Framework for Biodiversity Assessment (FBA)**

- This documents underpins biodiversity assessment requirements in the SEARS and. If the FBA is unsound so too are the SEARS. NPA considers that FBA is fundamentally flawed in a number of respects and is in urgent need of major review. In particular, the NPA disputes that the FBA:
  1. Always "constitute[s] clear and consistent guidance for assessing and offsetting the biodiversity impacts of major projects";
  2. Strikes "an effective balance between the needs of proponents, communities and the environment";
  3. Provides assessment in accordance with the principles of ecologically sustainable development.

Consistency in the application of the FBA guidelines is called into question by a statement in the NSW Biodiversity Offsets Policy for Major Projects (Offsets Policy) Major Projects Offset Policy that if "potential perverse outcomes" arise from the application of that policy, "the consent authority may vary the application of the policy or FBA to address this". If an FBA may be changed at the discretion of the consent authority, the concern arises that proponents will pressure the consent authority to vary terms of the FBA to give outcomes favourable to the proponent.

It is in the public interest that assessment is carried out by properly qualified persons and that the requirements of the FBA incorporate up to date scientific research and methodology. NPA considers that these outcomes are not guaranteed under the FBA for the following reasons:

1. The NPA understands that although accreditation as a "suitably qualified and experienced" to carry out biodiversity assessment is required under s142B (1) of the TSC Act there is no mechanism to ensure that the qualifications a person holds are relevant to a particular biodiversity assessment. For example, NPA understands that a consultant who has formal qualifications and/or practical experience relating to fauna assessments is not precluded from assessing vegetation issues although they may have no relevant formal training or practical experience. This casts serious doubts on whether the accreditation process for consultants is sufficiently rigorous and on the quality of assessments that are obtained under the FBA;
2. Whilst the NPA supports the application of objective criteria for the assessment of aspects of biological diversity, it questions whether it is appropriate to dictate the way in which such assessments are carried out to the extent that the FBA does. There is a real risk that the FBA will not be updated sufficiently frequently to incorporate new scientifically accepted techniques in biodiversity assessment;
3. The databases and offset credit calculator in the Framework for Biodiversity Assessment will be revised "periodically" at unspecified intervals. This means that there is no requirement for the consultant to consider the most recent relevant scientific research if it has not been incorporated into relevant databases/requirements. There is also no incentive for the consultant to consider relevant information in scientific literature, previous assessments or technical reports if they are not specified in the Framework for Biodiversity Assessment;
4. Many communities are poorly documented, as is the distribution of many species. This means that the databases required to be considered are likely to be inaccurate.
5. The way in which "biodiversity" is treated separately from impacts on hydrology, flooding, water quality, air quality, salinity, land and soils in the FBA (and BOPMP) is inconsistent with proper application of the principle of conservation of biological diversity and ecological integrity which requires holistic consideration of biodiversity and

ecological integrity. The role and valuation of ecosystem services is not assessed under the FBA.

## **6. Fundamental flaws in the NSW Biodiversity Offsets Policy for Major Projects (Offsets Policy) and Major Projects Offset Policy (BOPMP)**

The Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species Impacted by Long Wall Subsidence is to be “aligned” with the BOPMP. The NPA considers that the BOPMP, like the FBA, requires urgent review for the following reasons:

1. As mentioned above the BOPMP acknowledges that it may give “perverse” outcomes;
2. The BOPMP relies on the FBA. If the FBA assessment is unsound so too are the outcomes from the application of the BOPMP;
3. Of major concern to NPA is that in the BOPMP there is no prohibition on major projects that will:
  - Irreversibly harm the habitat of threatened species or endangered ecological communities, or
  - Disrupt important ecosystems processes and services.

Even where potential impacts on the former are considered sufficiently severe to call into question the carrying of a proposal, offsetting (not necessarily like for like) or variations or supplementary measures are allowed. Only where a species or community is critically endangered under TSC Act, or a threatened species or ecological community is listed under the EPBC Act, are compensatory measures restricted to like for like offsetting.

Where there are no known measures to rehabilitate ecological communities that have suffered damage, permitting offsetting and other compensatory measures leads to a net loss of irreplaceable habitat. This is true in the case of upland swamps.

If the Government is to effectively protect threatened species and endangered ecological communities as well as protect ecosystem services, the NPA considers that the BOPMP, the Mining SEPP and other relevant policies must be amended to prohibit mining which would impact land of high conservation value, including:

- a) Critical habitat of threatened species and the habitat of critically endangered species or communities;
  - b) Critical areas of drinking water catchments, for example, the Special Areas of Sydney Drinking Water Catchment;
  - c) All land reserved under the NPW Act;
  - d) Flora and fauna reserves reserved under the Forestry Act and;
  - e) Land previously set aside as an offset under the EP&A Act, the Native Vegetation Act or the Native Vegetation Regulation, or for environmental conservation as a condition of development consent, or that is subject to a conservation agreement under NPW Act.
4. The BOPMP does not apply the following principles of ESD:
- The precautionary principle: that is if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
  - The principle of inter-generational equity: that is, the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations, or;
  - The principle of improved valuation, pricing and incentive mechanisms: that environmental factors should be included in the valuation of assets and services

### **Specific comments on the Integrated Mining Policy**

#### **1. Mine Application Guideline (MAG)**

The NPA has serious concerns about these guidelines for the following reasons:

1. The NPA considers that the MAG fails to give adequate consideration to environmental and social matters. This is at odds with environmental assessment carried out in accordance with the principles of ESD.
2. The requirements for consideration of the impact of proposals on biodiversity are grossly inadequate. This is highlighted by excluding them from Table 1 under the heading “Key Environmental Matters and Mitigation Measures.” One of the objects of the EP&A Act is “the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats”

## **2. Standard Secretary’s Environmental Assessment Requirements (SEARS)**

- The draft SEARs should require consideration of all relevant scientific studies and technical reports in the assessment of the likely impacts of all stages of the development, including any cumulative impacts;
- With respect to rehabilitation, the NPA considers that the proponent be required to rehabilitate the environment impacted by mining as far as reasonably possible back its pre-mining state. Areas that were occupied by native vegetation should be revegetated only with seed of species endemic to the site;
- Environmental groups should be included as stakeholders in consultation about all environmental issues including land and soil issues.

Given the serious concerns raised above about the FBA and the BOPMP, requirements for SEARS must be amended to give proper and adequate discussion of ecological integrity and ecosystem services that are currently not addressed. In particular, SEARS must require that the matters below be addressed to:

1. Give the public a greater confidence in the assessment process and;
2. To ensure that biodiversity, ecological integrity and ecosystem service are addressed in EISs in accordance with the principles of ESD.

SEARs should, in addition to those specified under the heading Biodiversity, include requirements that the EIS provide information readily understandable to a layperson, including but not limited to:

1. The distribution and abundance of native species, populations and the number and integrity of ecological communities on the site which is subject of the proposal and how that information was obtained;
2. Information on the ecology of species which are considered significant and how that information was obtained;
3. A description of the biophysical environment of the site and how that information was obtained;
4. A description of ecosystem services provided by native species, populations and ecological communities;
5. Details of the likely impacts of the proposal on (1-4) above;
6. Measures are proposed to avoid, mitigate or minimise impacts on (1-4) above;
7. Where it is considered that impacts cannot be avoided, mitigated or minimised, details on what proposed offsetting or other compensatory measures are proposed to be undertaken.

### **Additional Recommendations**

The NPA supports recommendations of the submission by the Illawarra Branch of the NPA in relation to the SEARS for longwall mining proposals.

### **Comments specific to The Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species Impacted by Long Wall Subsidence (the Upland Swamp Policy)**

The NPA considers that the BOPMP should not apply to upland swamps because of the flaws in that Policy as detailed above. Additionally, the NPA has a number of specific concerns about the content of the Upland Swamp Policy, in particular:

**1. The Policy lacks clarity and certainty**

The policy fails to define 'negligible impact', 'upland swamp', offset "acquittal" or "a shallow groundwater regime". Objective definitions terms are essential if the operation of the policy is going to be robust, transparent and accountable.

**2. Failure to recognise of the conservation statue of upland swamps**

The policy does not mention that the conservation significance of a number upland swamp communities has been recognised by listings made under the NSW Threatened Species Conservation Act and the Commonwealth Environment Protection and Biodiversity Conservation (EPBC) Act.

Upland swamp communities that have been listed under the TSC Act are:

1. Coastal Upland Swamps of the Sydney Bioregion (Endangered);
2. Blue Mountains Swamps in the Sydney Basin Bioregion (Vulnerable);
3. Newnes Plateau Shrub Swamp in the Sydney Basin Bioregion (Endangered) and;
4. Montane Peatlands and Swamps of the New England Tableland, NSW North Coast, Sydney Basin, South East Corner, South Eastern Highlands and Australian Alps bioregions (Endangered).

Two of these upland swamp communities are also listed under the EPBC Act, Coastal Upland Swamps in the Sydney Basin Bioregion and Temperate Highland Peat Swamps on Sandstone, and therefore are matters of national significance.

The International Union for the Conservation of Nature has also identified coastal sandstone upland swamps as being critically endangered.

**3. Failure to acknowledge that longwall mining is a key threatening process to upland swamps**

Alteration of habitat following subsidence due to longwall mining has been listed as key threatening process under the TSC Act. There are no generally accepted techniques for the rehabilitation of upland swamps after loss of groundwater due to subsidence or other mining impacts.

**4. Failure to acknowledge the significance of ecosystem services provided by upland swamps**

As indicated above, the FBA and the BOPMP do not include consideration of ecological integrity or ecosystem services. This means that these highly significant matters are also not considered in this Policy.

Upland swamps play an important role in water catchments, including those supplying drinking water, by moderating runoff and filtering water to maintain or enhance water quality.<sup>3</sup> "... swamps act as water filters, releasing water slowly to downstream creek systems thus acting to regulate

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<sup>3</sup> R. W. Young and A. R. W. Young, "Altogether barren, peculiarly romantic': the sandstone lands around Sydney," *Aust. Geogr.*, vol. 19, no. 1, pp. 9–25, 1988.

D. A. Keith, S. Rodoreda, L. Holman, and J. Lemmon, "Monitoring change in upland swamps in Sydney's water catchments; Project No. RD07: the roles of fire and rain," Department of Environment and Conservation, Sydney, Sydney Catchment Authority Special Areas Strategic Management Research and Data Program DEC 2006/394, Jun. 2006.

*water quality and flows from the upper catchment areas).*"<sup>4</sup> Current cost-benefit analyses do not adequately value ecosystem services.

#### **5. Lack of Upland Swamps to Offset**

There are very few potential upland swamp offsets sites located on private land that have not been previously been impacted by mining or damaged or destroyed.

#### **6. Like for like offsetting is not required for upland swamps of national significance.**

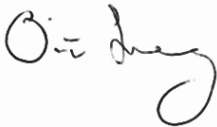
Despite the fact that two upland swamp communities are listed under the EPBC Act, and therefore, should require like for like offsetting under the MOP, the policy states that no like for like offsetting is required.

#### **7. Groundwater Monitoring**

NPA supports the use of piezometers to gauge impacts to a swamp.

#### **Recommendations**

NPA supports the recommendations detailed in the submission by the Illawarra Branch of the NPA in relation to the upland Swamp Offset Policy.



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<sup>4</sup> Sydney Catchment Authority, "Submission to the Independent Inquiry into the NSW Southern Coalfield." Jul-2007