



**AUSTRALIAN
CONSERVATION
FOUNDATION**

Department of Planning and the Environment
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Sydney NSW 2000

9 July 2015

Comments on the Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species

Overview

The Australian Conservation Foundation (ACF) is a national, community-based environmental organisation that has been a leading voice for the environment for 50 years. ACF is part of the Places You Love Alliance - Australia's largest ever coalition of environmental organisations representing 1.5 million Australian members and supporters.

ACF welcomes the opportunity to make a submission on the draft Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species [Draft Policy].

ACF does not support the Draft Policy, despite several commendable provisions; it fails to provide any protection for the endangered Upland Swamps.

Key points on the Draft Policy are outlined below:

- ACF supports the introduction of Peizometer monitoring and shallow groundwater monitoring in the Draft Policy.
- The Draft Policy does not include any provisions requiring impacts on the Upland Swamps be avoided or mitigated prior to offsets being considered. This is inconsistent with international best practise, the NSW Biodiversity Offset Policy for Major Projects and the Assessment Bilateral Agreement signed with the Commonwealth.
- The Upland Swamps are an endangered ecological community of critical importance. Subsidence damage to swamps from longwall mining has been recognised as a key threatening process. To ensure the Upland Swamps can continue to provide key ecosystems services into the future, it is strongly recommended the Draft Policy prioritise the protection of Upland Swamps from mining subsidence and only permits projects which will have nil or negligible consequence.
- The limited availability of like-for-like offsets for Upland Swamps will lead to the variations and supplementary measures, permitted under the Draft Policy, becoming the default response. Such an approach will fail to meet national standards for the protection of threatened ecological communities and lead to significant loss in endangered Upland Swamps.
- The Draft Policy is inconsistent with the NSW Biodiversity Offset Policy for Major Projects, National Offsets Policy and the EPBC Act. It must be altered to recognise the Upland Swamps as nationally endangered ecological community listed under the EPBC Act, and to

reflect NSW obligations to meet Commonwealth standards and meet international obligations for the protection of significant biodiversity.

ACF supports the effective protection of the endangered Upland Swamps and we would welcome the opportunity to discuss options for improving environmental protections for the Upland Swamps.

Introduction of Peizometer monitoring and shallow groundwater monitoring

The Draft Policy does include several commendable provisions. ACF supports peizometer monitoring being required for swamps, as well as shallow groundwater monitoring being used to establish compliance with performance measures. Though the Draft Policy needs to specify what change in shallow groundwater would constitute a greater than 'negligible' impact.

No requirement to avoid and mitigate impacts prior to the consideration of offsets

The Draft Policy provides a two-step process. Where nil or negligible consequences are predicted no offsets are required and where greater than negligible consequences are predicted offsets must be sought. The provision of biodiversity offsets are predicated on the mitigation hierarchy, that is to avoid and mitigate impacts prior to the consideration of offsets. This is considered international best practise.¹ The Draft Policy provides no such provisions. This is inconsistent with the obligations outlined in clause 7.1 b) of the Assessment Bilateral Agreement signed with the Commonwealth on 15 February 2015. It is also inconsistent with the 'avoid, minimise, offset hierarchy' outlined in the NSW Biodiversity Offset Policy for Major Projects [Major Projects Offset Policy]. The failure to include provisions for avoiding and mitigating impacts means under the Draft Policy Upland Swamps are offered no protection from subsidence caused by longwall mining.

Longwall mining is a key threatening process for the endangered Upland Swamps

The Upland Swamps are recognised as an endangered ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), as well as under the NSW *Threatened Species Conservation Act 1995*. They provide habitat to endangered and threatened species including the Giant Burrowing Frog, which is listed as vulnerable under the EPBC Act, and the endangered Southern Brown Bandicoot. Within Sydney's drinking water catchments Upland Swamps provide key ecosystems services to the residents of Sydney. They capture and store water, which ultimately flows into the reservoirs and dams of the catchment. During periods of low rainfalls the swamps provide critical support slowly releasing water and protecting water catchment supply.²

Subsidence damage to swamps from longwall mining has been recognised as a key threatening process

¹ Business and Biodiversity Offsets Programme (BBOP). 2012. Standard on Biodiversity Offsets. BBOP, Washington, D.C. http://www.forest-trends.org/documents/files/doc_3078.pdf

² Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (s266B) Conservation Advice (including listing advice) for Coastal Upland Swamps in the Sydney Basin Bioregion, p.14. Read online: <http://www.environment.gov.au/biodiversity/threatened/communities/pubs/140-conservation-advice.pdf>

by the NSW Science Committee.³ In their submission to the Southern Coalfield Strategic Review the NSW Department of Environment and Climate Change (now Office of Environment and Heritage) listed a number of serious consequences arising from subsidence damage to swamps including: loss of groundwater, loss of flora and fauna, loss of flow regulation, erosion and increased susceptibility to fire.⁴ Remediation efforts have been unsuccessful with swamps losing their ecological and hydrological functions after subsidence has occurred. The Department of Environment's investigation into Centennial Coal's longwall coal mining operations on the Newnes Plateau found:

The mining activities caused a loss of ecosystem function shown by loss of peat, erosion, and vegetation dieback and weed invasion in three swamps. They also caused the formation of a large slump hole, several metres wide and more than one metre deep, at the East Wolgan swamp. These changes mean the swamps can no longer serve their important hydrological role of acting as water filters and releasing water slowly to downstream watercourses.⁵

East Wolgan swamp has not recovered from the damage. The Draft Policy fails to recognise the critical ecological and hydrological services the Upland Swamps provide and does not consider the impact of subsidence damage on water catchments or local species habitat. Considering the importance of the Upland Swamps the precautionary principle should apply and mining should only take place where nil or negligible impact can be established. There are existing precedents for this requirement, a condition of the Dendrobium mine Area 3A is that there be nil impact on the Sandy Creek Waterfall.

Limited availability of like-for-like offsets

The draft policy permits like-for-like offsets where greater than negligible consequences are likely to occur. However like-for-like offsets for Upland Swamps are difficult to secure. Dr Tanya Mason, a Research Fellow at the University of New South Wales, noted that the "use of biodiversity offsets to ameliorate impacts is highly questionable because the combination of hydrological, geophysical, climatic and biotic factors which allow swamp establishment is poorly represented in other areas"⁶. Where like-for-like offsets cannot be secured the Draft Policy permits variations or supplementary measures such as financial compensation. The limited availability of viable like-for-like offsets will likely mean that variations and supplementary measures, such as financial compensation referred in the draft policy could easily become the default. Such an approach would lead to significant loss in endangered Upland Swamps and would fail to meet national standards for the protection of threatened ecological communities that require the improvement or maintenance of the Swamps.

³ Alteration of habitat following subsidence due to longwall mining - key threatening process listing, NSW Scientific Committee - final determination, Read online:
<http://www.environment.nsw.gov.au/determinations/LongwallMiningKtp.htm>

⁴ Submission on the strategic review of the impacts of underground mining in the Southern Coalfield, July 2007, NSW Department of Environment and Climate Change. Read online:
http://www.planning.nsw.gov.au/planningsystem/pdf/southerncoalfieldinquiry_decc_1.pdf

⁵ Australian Federal Government, Department of Environment, October 2011, Mining company to pay environmental damages, media release.

⁶ Russell Vale Expert Report Upland Swamps (Redacted), 30th January 2015, p.4. Read online:
<http://www.pac.nsw.gov.au/Projects/tabid/77/ctl/viewreview/mid/462/pac/455/view/readonly/myctl/rev/Default.aspx>

Inconsistent with NSW Biodiversity Offset Policy for Major Projects, National Offsets Policy and the EPBC Act

The Major Projects Offset Policy with which this policy seeks to align identifies the variations or supplementary measures permitted when like-for-like offsets cannot be secured. However variations are not permitted for species or communities listed as critically endangered, or threatened species and ecological communities listed under the EPBC Act. Similarly the application of supplementary measures is restricted where the above listings apply.

The listing of the Upland Swamps as a nationally endangered ecological community places restrictions on the manner in which such communities are treated under regulatory approvals processes. This is the basis of NSW seeking to accept federal government responsibility for nationally threatened species. However no reference to the Upland Swamps national endangered status or any of the restrictions in the Offsets Policy, mandatory obligations within the NSW assessment bilateral agreement or EPBC Act are reflected in the Draft Policy. Instead the Draft Policy provides that where like-for-like offsets cannot be found options under the variation rules or supplementary measures may be considered. This is explicitly precluded in the Major Projects Policy and inconsistent with national offsets policy and the EPBC Act itself⁷.

To discuss any of the above matters please contact:

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⁷ s134 (2) EPBC Act