

DRAFT INTEGRATED MINING POLICY

Submission by Wollondilly Shire Council

9 July 2015

EXECUTIVE SUMMARY

The draft exhibited Integrated Mining Policy (IMP) has direct relevance to three underground mining projects currently operating within the Wollondilly Local Government Area (LGA). Council acknowledges the preparation of the IMP as being beneficial in achieving a level of consistency in submitted Mining Development Applications. Council also acknowledges its potential benefits in addressing the complexity and duplication associated with the existing policy framework. However, a review of exhibited documents associated with the draft IMP identified a number of concerns over its format, preparation process as well as consistency with the concerns of Council associated with mining operations. These concerns warranted the preparation of a submission.

A key concern is the partial public exhibition of the Policy and uncertainty over the intention by the Department of Planning and Environment to publicly exhibit documents associated with subsequent stages of the Policy. In this regard, Council has resolved that the *"provision of any support is withheld until all documents that are intended to form part of the Policy have been publicly exhibited and reviewed"*. A further key concern with the exhibited IMP is its direct linkage to the *Resource Significance Amendment* which is strongly opposed by Council.

Council has adopted a broad position that the preparation of the IMP presents an opportunity to address deficiencies experienced in the current policy framework for State Significant Developments as well as Environmental Assessments associated with mining projects. In this regard, the submission provides comments to enhance the consistency of relevant Requirements within the **Standard Secretary's Environmental Assessment Requirements** and the Mine Application Guideline to this position as well as expressed concerns of the local community. Key recommended amendments that are requested to be incorporated into the finalised document by the Department of Planning and Environment are:

- The current requirement of the draft IMP that proponents consider the Resource Significance Amendment when preparing Environmental Assessments be removed
- The consistency of mining development applications with all relevant policies as well as scientific research be mandatory.
- The air quality requirements be amended to specifically require the calculation of the full life cycle of greenhouse gas emissions associated with a mining development.
- Environmental Impact Statement's be required to adopt a more robust approach to the assessment of social impacts associated with mining developments based on current best practice such as the Planning Institute of Australia's Position Statement on Social Impact Assessments.

The submission also provides comments on the exhibited **Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species** (Swamp Offset Framework). It expresses Council's opposition to the Policy Framework in its current form until it is in receipt of suitably qualified independent advice that the Policy will not result in adverse outcomes to the values and functions of any upland swamp potentially impacted by underground mining operations.

THE SUBMISSION

This submission provides comments on publicly exhibited documents associated with Stage 1 of the Integrated Mining Policy (IMP) that are of relevance to existing and proposed underground longwall mining projects within the Wollondilly Local Government Area (LGA). The submission provides comments and requested amendments to aspects of the exhibited IMP based on the adopted position and concerns of Council as well as expressed concerns of the local community raised in previous submissions regarding:

- Applications associated with mining projects within the Wollondilly Local Government Area to the NSW Department of Planning and Environment including investigations of these projects by Planning Assessment Commissions.
- Water Sharing Plans for the Greater Metropolitan Region Unregulated River Water Sources and Greater Metropolitan Region Groundwater Sources.
- Coal Seam Gas Projects of relevance to the Wollondilly LGA and response by the NSW Government to this industry including the NSW Gas Plan.
- The Strategic Regional Land Use Policy and associated documents such as the Aquifer Interference Policy.
- Amendments to the *State Environmental Planning Policy (Mining, Extractive Industries and Petroleum) 2007* (Mining SEPP) including the *Resource Significance Amendment* and the *Voluntary Land Acquisition and Mitigation Policy*.
- Resolutions of Council of relevance to mining developments within the Wollondilly LGA.

In addition, the submission incorporates comments provided on the draft IMP by members of Council's Community Minerals and Energy Resource Committee.

The submission is divided into three broad components comprised of background information, general comments on the IMP and comments on individual exhibited documents. A summary of the issues raised and requested response by the NSW Department of Planning and Environment (DP&E) outlined in this submission is presented in Attachment 1.

The submission acknowledges the preparation of the IMP as being beneficial in achieving a level of consistency in submitted Mining Development Applications. However, the DP&E is requested to note that in endorsing this submission at its meeting on 20 July 2015, *Council resolved to send correspondence to the NSW Minister for Planning that:*

- *Acknowledges the benefits in introducing the Integrated Mining Policy;*
- *Expresses disappointment that the exhibited Policy has not addressed issues raised in previous Council submissions; and*
- *Advises that Council is not able to finalise its position until all documents associated with the Policy have been publicly exhibited and submissions received.*

PART A: BACKGROUND INFORMATION

1) Overview of Council position on mining development within the Wollondilly LGA

(i) Overview of mining operations

The Wollondilly LGA contains three existing underground longwall mining projects comprised of the Bulli Seam, Tahmoor Colliery and Wollongong Projects. The boundaries of these projects (both approved and proposed) and current Mine Subsidence Districts within the Wollondilly LGA is provided in Map 1, Attachment 2. This Map indicates that approximately 40 percent of the Wollondilly LGA not located within National Parks are within classified Mine Subsidence Districts and/or approved mining project areas.

Council recognises the contribution that the mining industry provides to the local and state economy as well as the employment both directly and indirectly that the industry provides. However, Council has adopted a general position that longwall mining should be managed so as not to result in adverse environmental, cultural and social impacts. In addition, anecdotal evidence available to Council and received feedback suggests that local residents are more concerned with the long-term damage to natural assets resulting from mining than the temporary economic and social issues arising from changes in employment and economic conditions.

(ii) Issues associated with mining development in the Wollondilly LGA

The high diversity of competing land use pressures within the Wollondilly LGA are viewed as being unique in comparison to other LGA's within NSW that contain existing or proposed coal mining developments. In this regard, Table 2, (presented in Attachment 3), provides a summary of the interaction of longwall mining with the following land uses and major issues encountered by Council as well as applicable Council resolutions:

- Existing and proposed residential (both in-fill and green-field development).
- Agricultural activity in the form of both small and commercial production.
- The approximately 10 percent of land within classified Mine Subsidence Districts located within Sydney Drinking Water Catchment Areas.
- The environmental and recreational values of the 5 lakes within the World Heritage Listed Thirlmere Lakes National Park, which is located in close proximity to the current approved boundary of the Tahmoor Colliery Project.

The investigation of the ability of mining to coexist with residential development as part of Studies associated with the Macarthur South Urban Release Investigation Area has been broadly welcomed. Council resolved at its meeting on 16 March 2015 in relation to this matter "*That Council's final determination of these planning proposals be deferred until completion of the studies into the Macarthur South Investigation Area estimated to be six months as per the advice*". It is considered appropriate that the outcomes of these Investigations be incorporated into the finalised IMP.

2) Experiences with the current policy and legislative framework

It is considered the preparation of the IMP provides a suitable opportunity to address shortcomings experienced in regard to the application, review and determination of coal mining development proposals as well as the overall statutory and policy framework. In this regard, the discussion provides an overview of the shortcomings experienced by Council and the local community it represents in regard to mining developments within the Wollondilly LGA as well as requested responses by the Department of Planning and Environment (DP&E).

(i) *Engagement with local government and the local community*

Council has a statutory responsibility under the *Local Government Act 1993* to engage with the local community within the Wollondilly LGA as well as advocate their expressed concerns and viewpoints. In this regard, Council has prepared a **Community Engagement Handbook** that encourages a commitment and consistent approach by Council to undertake effective and appropriate consultation with the community.

It is acknowledged that EIS's associated with mining projects are publicly advertised. It is also acknowledged that local mining companies on occasions carry out community consultation for specific activities associated with a project that is in excess of statutory requirements. The current assessment, review and determination process for State Significant Developments is however viewed as having a high level of detachment from local government and the local communities that it represents. There is also considered an absence of direct accountability of such proposals to the local community that occurs with Development Applications lodged with Council under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979).

Council's submission to the Bulli Seam Project Application in this regard stated that the "community had not been provided with adequate information on the assessment process nor provided with sufficient opportunity to provide comment". Council's recent submission on a Subsidence Management Plan (SMP) Application associated with the Tahmoor Colliery also requested that the public exhibition process associated with such Plans be consistent with the process for EIS's as well as Council's **Community Engagement Policy**.

It is therefore considered imperative that there be a detailed and transparent process with local government and the local community during the application, review and determination of mining developments.

(ii) *Application and determination process of proposed mining developments*

Council Officers have experienced strong deficiencies in the current application and assessment process for mining projects in regard to both (the former) Part 3A Process as well as the current State Significant Development framework introduced by the current NSW Government. Members of the local community have also expressed a level of dissatisfaction with the current process to Council Officers through a range of forums, including meetings of Council's Minerals and Energy Resource Committee.

The major identified deficiencies in the current application and assessment process experienced by Council can be summarised as:

- The Environmental Assessments are viewed as containing a high level of description on the features of a site and associated land uses but deficient in baseline data and assessment of specific impacts.
- The practice of Environmental Assessments being directly funded by the proponent of a particular mining development is viewed as raising doubt over the transparency, independence and quality of produced documents.
- The current process has a heavy emphasis on the preparation of a wide variety of sub-plans such as Subsidence Management Plans and Biodiversity Management Plans that are prepared after Determination. This process is viewed as resulting in deficient initial Environmental Assessments and a subsequent less formalised application and assessment process.
- The current consultation and public exhibition process is viewed as not being adequate in enabling a comprehensive and understanding of mining developments and associated impacts.

Council is strongly of the view that the community deserves to be assured and shown that the level of independent scrutiny and decision-making should be similar for both Development Applications received by Council and State Significant Developments (SSD). Council has consequently adopted the position that SSD Applications should be assessed consistently with requirements applied to those lodged under Part 4 of the EP&A Act. The Department of Planning and Environment (DP&E) is requested to note in this regard that Council resolved at its Ordinary Meeting of 19 October 2013 that *"Council write to the Minister and Shadow Minister for Planning calling for third party appeals to be permitted for Part 3A determinations or alternatively that Part 3A be removed from the EP&A Act"*.

(iii) *Review and determination of Mining projects by consent authorities*

Council Officers have also encountered significant shortcomings associated with the current Policy framework in regard to the review of mining developments and determination of applications associated with mining projects within the Wollondilly LGA. In this regard, Council has routinely provided scientifically based submissions that provide detailed and viable recommendations to address identified deficiencies. Local community groups as well as individual members of the community have also been noted to have lodged detailed submissions on such projects. An unacceptable level of direct feedback and engagement with the authors of submissions explaining the outcomes of the review process of mining applications by the consent authority has also been observed.

There have also observed to be significant shortcomings in the level of scrutiny by the DP&E in all stages of the review and determination process of mining applications. In this regard, there have been a number of instances have been observed where Project Determinations and Major Project Assessment Reports would appear to be inconsistent with scientific advice provided by other Government Agencies or scientific organisations sources such as the Commonwealth Independent Expert Scientific Committee (IESC).

The deficiencies in the assessment and approval process are considered to be verified by the recent investigation by a Planning Assessment Commission (PAC) on the proposed expansion of the Russell Vale Colliery Project. This PAC was required to review the adequacy of all

documents including the **Major Project Assessment Report** and draft **Project Determination**. The Report produced by the PAC was noted to conclude *"that the Commission does not have sufficient information or confidence to determine the merits of the proposal sufficient for a determination for approval"*.

In relation to this matter, the adequacy of Environmental Assessments was a key issue raised during a discussion on the IMP at a recent meeting of Council's Minerals and Energy Resource Committee. It was the consensus of this Committee (supported in principle by Council Staff) that a viable alternative for the addressing of this issue is the funding of Environmental Assessments by financial contributions received from mining companies. A suitable independent authority could administer the collection and distribution of collected funds.

It is considered imperative that the review and determination of mining projects by the consent authority be carried out in a transparent and consultative process. This process should involve the provision of direct feedback on the outcomes of the review of submissions received as well as other advice such as from specialist Government Agencies.

- (iv) *Implications of recent amendments to the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries)*

Council has noted with concern the apparent intent of recent amendments to the above Policy (the Mining SEPP) to place greater emphasis on the economic benefits of mining projects at the potential expense of other factors including potential impacts to the environment and the community. Council also has strong concerns that these Amendments have been introduced without any detailed public consultation or response to the observed significant opposition that was expressed in lodged submissions.

The following provides an overview of issues raised in Council's submission to the NSW Division of Resources and Energy on recently exhibited amendments to the Mining SEPP:

- Resource Significance SEPP: Council's submission to this Amendment expressed the view that the economic significance of a resource should be considered alongside other relevant factors, such as environment, social and other wider economic factors.
- Voluntary Land Acquisition and Mitigation Policy (VLAMP Amendment): Council's submission to this Amendment expressed concern over its similarity with the Resource Significance Amendment. It also requested urgent clarification from the DP&E over its application to dust and particulate matter emissions from power stations associated with mining projects.

Council fully supports the consideration and assessment of the economic benefits of particular mining development applications. However, Council opposes any requirement that such assessment be the principal consideration by proponents and consent authorities.

SUMMARY OF REQUESTED DP&E RESPONSE

It is considered appropriate and imperative that the shortcomings encountered by Council in regard to the current State Significant Development framework outlined above be addressed as part of the preparation and finalisation of the IMP. In this regard, the following summarises the viewpoint and position of Council and community feedback on requested action by the DP&E to address these identified shortcomings:

- Remove the Resource Significance Amendment from the Mining SEPP to allow for economic factors to be assessed by proponents and consent authorities equally with other factors.
- Investigate and implement procedures to achieve independent funding of Environmental Assessments such as the establishment of a levy funded by mining companies suggested by this submission.
- Environmental Assessments for mining applications should be subject to the same level of assessment, scrutiny and consultation that occurs in regard to applications where local government is the consent authority.
- Mandatory requirements for consultation with government and the local community during the assessment, application and determination process should be enshrined in the legislation and policy framework.

PART B: GENERAL COMMENTS ON THE POLICY

This section of the submission has provided general comments that are applicable to all components of the exhibited version of the IMP.

1) Comments on broad aspects of the Policy

(i) Preparation process of the IMP

There is a noted absence of references in the material available on the DP&E website over the reasons for the preparation and public exhibition of the IMP in stages. It is noted in this regard that documents intending to form part of subsequent stages of the Policy includes a **Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals**. This document in particular is viewed as being integrally linked to the exhibited documents as part of the first Stage of the Policy particularly given the reference to the *Resource Significance Amendment*.

It is consequently considered more appropriate that the IMP be publicly released in its entirety that encompasses all its components. In relation to this matter, it is requested to be noted that Council resolved at its meeting on 20 July 2015 (in part) to send correspondence to the "NSW Minister for Planning which advises that the provision of any support by Council is withheld until all documents that are intended to form part of the Policy have been publicly exhibited and reviewed".

(ii) Application of the IMP

(a) Application to existing mining projects

The **Overview Document** is noted to state that the IMP will apply to all State Significant mining developments. The Frequently Asked Questions Publication is noted to further state in relation to this matter that *"Once the Policy has been finalised, the Department of Planning and Environment will consult with affected parties on a transition process"*. It is considered important that this information be available to the public for transparency and community engagement purposes. **The DP&E is consequently requested to provide Council with details on the application of the IMP to existing mining projects as well as transition arrangements prior to the commencement of its implementation.**

(b) Application to coal seam gas projects

The northern section of the Wollondilly LGA contains 72 approved coal seam gas extraction gas (csg) wells associated with the Camden Gas Project. The recent cancellation of the Petroleum Exploration Licence of relevance to this Project (PEL 2) has been viewed as positive in addressing environmental and health risks associated with the CSG industry. However, it has been noted that current approvals associated with this Project are not affected by the disposal of this licence.

In relation to this matter, there are concerns over the stated reason for the IMP not applying to coal seam gas because *"further coal seam gas reforms are being developed as part of the NSW Government's Gas Plan"*. This Plan was identified as not being adequate in responding to Council's position regarding this industry as well as the Recommendations of the Final Report produced by the NSW Office of Chief Scientist.

Council resolved at its meeting on 17 November 2014 in relation to this matter to request *"the State Government review and alter its NSW Gas Plan to accommodate Wollondilly's concerns"* (in regard to the assessment and regulation of the coal seam gas industry). **The DP&E is requested to note the adopted preferred viewpoint of Council that the Policy be expanded to encompass aspects of the current policy and regulation of the CSG Industry as amended to accommodate Council's concerns regarding the NSW Gas Plan.**

(iii) *Relationship of the IMP to the Strategic Regional Land Use Policy*

The IMP is noted to contain a number of references to the NSW Government's Strategic Regional Land Use Policy (SRLUP) and its associated components including Biophysical Strategic Agricultural Land (BSAL), the Aquifer Interference Policy (AIP) and the Gateway Process. There is an apparent absence of any specific reference over the linkage of these documents to the IMP. **The DP&E is consequently requested to also provide Council with its viewpoint over the relationship between the two Policies.**

In relation to this matter, it is noted the IMP broadly requires mining applications to 'consider' the AIP when assessing potential impacts on water sources. Council broadly welcomed the introduction of the Policy as a means of addressing aquifer interference associated with mining applications. However, the full requirements of the AIP are only considered to apply to those developments located on identified BSAL. Council is therefore of the view that the full requirements of this Policy should apply to all developments rather than those on identified BSAL. **The DP&E is consequently requested to also provide Council with clarification over whether all mining developments will need to be consistent with the full requirements of the AIP under the completed IMP.**

(iv) *Scientific basis of the Integrated Mining Policy*

Council is aware of extensive scientific research, by a number of research organisations, of relevance to certain potential environmental impacts associated with underground mining operations. The inclusion of specific requirements of relevance to this research by the IMP is consequently broadly welcomed. However, as a broad comment, they are viewed as being broad and generic in nature and not sufficiently linked to this research. **It is consequently requested that the Guidelines be amended to require as mandatory that EIS's be consistent with relevant policies as well as scientific research instead of the current requirement that "EIS's must consider any relevant government policies".**

(v) *Consistency of the IMP with Ecological Sustainable Development Principles*

The Mine Application Guideline is noted to state that *"proper consideration consistent with the principles of ecological sustainable development must be given to potential environmental, social and economic impacts during the mine planning process"*. This requirement is consistent with a number of previous Council submissions and is broadly supported.

However, a component of the definition for Ecological Sustainable Development (Environs 1999) is noted to state that *"where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as reason for postponing measures to prevent environmental degradation"* (i.e. a precautionary principle). Council's submission on the Russell Vale Colliery Expansion Project in this regard requested that the PAC exercise the Precautionary Principle and recommend either no approval or project deferral due to identified questions over the adequacy of the scientific basis of aspects of documents prepared by the proponent and the DP&E. **It is consequently contended that the IMP should specifically require that applicants and consent authorities apply the Precautionary Behaviour principle when preparing and assessing mining applications respectively.**

2) **Objectives of the exhibited IMP**

A number of the stated aims and objectives of the IMP are viewed as being broadly consistent with issues regarding the assessment of potential outlined in preceding sections of this submission and are therefore supported by Council in principle. However, the following provides comments based on the adopted position of Council in regard to two of the stated objectives of the IMP and requested DP&E response.

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 potential impacts on the environment and the community

Council is of the opinion that the economic benefit of a mining development should be considered equally with other factors by consent authorities as well as proponents. It is considered in this regard that the achievement of this Objective is significantly impeded as a consequence of proponents being required to consider the *Resource Significance Amendment* when preparing EIS's. **The DP&E is consequently requested to provide Council with details on its viewpoint over how this intended balance will be achieved under the current version of the IMP.**

The IMP is a whole-of-government project which aims to reduce duplication and improve the efficiency of assessment and regulation of State significant mining

This Objective is viewed as having potential benefit in addressing the complexity and duplication associated with the existing framework. However, it is considered imperative that Determinations be informed by any applicable Environment Protection Licence given their scientific basis and statutory nature. **The DP&E is consequently requested to provide details of the intended procedures for the concurrent assessment of mining applications prior to the commencement of the implementation of the IMP.**

PART C: COMMENTS ON SPECIFICALLY EXHIBITED DOCUMENTS

This section of the submission provides comments specifically in regard to exhibited documents associated with the IMP. This section also provides requested DP&E responses to address identified shortcomings in the exhibited documents during both the review and determination of mining applications. These requested responses are consistent with the position and experiences of Council in regard to mining projects outlined in preceding sections of this submission.

The Mine Application Guideline (Application Guideline) is viewed as applying to both Preliminary Environmental Assessments (PEA's) and Environmental Impact Statements (EIS's). The Standard Secretary's Environmental Assessment Requirements (SSEAR Guidelines) is viewed as applying specifically to Environmental Impact Statements. Comments are consequently provided on both the Application Guideline and SSEAR Guideline concurrently given this interconnectivity.

1) Mine Application Guideline and SSEAR Guideline

Both these documents have been reviewed within the context of Council's broad position on mining development and the assessment of associated environmental, social and cultural impacts outlined at the commencement of this submission. The following discussion is based on the structure of the SSEAR Guidelines and incorporates comments provided from Staff with technical expertise in regard to issues addressed by these Guidelines.

The comments are divided into the 'broad position of Council', 'Experiences of Council in regard to mining developments within the Wollondilly LGA', and 'recommended DP&E response' for each of the covered issues. The recommended amendments to the Requirements are designed to address issues raised in previous submissions. They are also based on the adopted position of Council that the independent scrutiny and decision-making should be similar for both Development Applications received by Council and State Significant Developments.

(i) General Requirements for Preliminary Environmental Assessments and EIS's

The SSEAR Guideline is noted to list a range of general requirements for EIS's associated with proposed mining developments. Comments regarding these Requirements that are requested to be considered by the DP&E during the finalisation of the Guideline are provided in Table 3.

Table 3: Comments in regard to selected General Requirements

General Requirement	Council comment
Be informed by stakeholder consultation, including (amongst others) relevant local government authorities as well as the local community.	The documents do not contain legally enshrined requirements for proponents to consult with local government and the communities that they represent.
Contain the information required by Schedule 2 of the <i>Environmental Planning and Assessment Regulation 2000</i> .	The requirements of the exhibited documents are viewed as not being fully consistent with the information listed in Schedule 2 of this Regulation that is required to be contained in EIS's.
Assess the likely impacts of the development on the environment.	The ability to achieve an adequate assessment of impacts is counteracted by the requirement for proponents to consider the <i>Resource Significance Amendment</i> to the Mining SEPP.

The DP&E is requested to amend the Requirements during the finalisation of the IMP based on the comments contained in Table 3 as well as provide a response to these comments.

(ii) Project Description

It is considered important that EIS's for underground mining projects contain a detailed description of all surface and subsurface workings as well as waste and coal storage (including emplacement areas) and disposal. It has been Council's experience, however, that detailed description of works is deferred in large part to documents prepared after determination. It has also been Council's experience that lodged EIS's do not provide sufficient detail to enable an accurate identification of potential impacts due to the deficiencies in description of the project. In this regard, the expansion to the Bulli Seam Project was approved with a statement within the EIS that *"It is estimated that the project would involve approximately 37ha of vegetation clearance (other than that at the Brennans Creek Coal Emplacement Area) and that specific locations of these clearance areas would be provided as required by the Department"*. This statement is not consistent with the requirements of Council's DCP.

The broad statement within the Application Guideline that an *"EIS should include a complete description of any ancillary developments and their approval requirements to a level of specificity and extent of the proposed development"* is therefore supported in principle. However, it is imperative that the DP&E ensure that submitted EIS's comply with this requirement prior to its distribution for adequacy purposes or placed on public exhibition.

The difficulties in providing comprehensive description of a project at the time of lodgement by proponents due to a range of factors such as knowledge of the economic value of the resource and precise properties of the targeted resource are recognised. For this reason, Council's submission on the Bulli Seam Project Expansion requested that approval for this Project be limited to 10 years to allow for this information to be available at the time of

lodgement. It is suggested that such a process would also allow for project modification to reflect changes in socio-economic as well as environmental conditions.

The DP&E is requested to amend the Document to stipulate as mandatory that EIS's must contain details of all components of a mining development. It is further recommended in this regard that the duration of Approvals granted to mining developments be restricted as a means of obtaining greater accuracy of these components in lodged applications.

(iii) Strategic Context

The stated intention of this Section to “ensure that local and regional sensitivities/constraints on the proposed development are clearly described in a development application” is supported in principle. However, this intended outcome is viewed as having relevance to the NSW Government’s Strategic Regional Land Use Policy (SRLUP). **The DP&E is consequently requested to provide clarification over any relevance/implications of the SRLUP to the undertaking of Requirements within this section of the Guidelines by EIS’s.**

The following comments are based on the position of Council regarding the coexistence of mining and other land use types within the Wollondilly LGA outlined at the commencement of this submission.

(a) Biophysical, environment and heritage constraints

It has been the experience of Council that mining applications have traditionally adopted a broad generic approach without sufficient scientific base in identifying biophysical, environmental and heritage constraints. The listed items in the Guidelines for EIS’s to consider are however viewed as not being sufficiently adequate to address this identified shortcoming due to their generic and inconclusive nature. The following suggested alternate items that are scientifically based and consistent with the applicable policy and legislative framework are therefore provided for consideration by the DP&E:

- Areas containing Endangered Ecological Communities and flora and fauna species listed under NSW and Commonwealth biodiversity related legislation.
- Applicable Water Dependent Assets contained in Registers that are currently being produced by the Commonwealth Department of Environment as part of the Bio Regional Assessment Program. Where such information is not available, water sources of significance identified in consultation with the NSW Office of Water and applicable local government authority would be suitable.

(b) Land use constraints

It has been the experience of Council that mining applications have either not referred to or made cursory reference to the issue of coexistence of proposed mining developments with other land uses. In this regard, a recent Subsidence Management Plan Application associated with the Tahmoor Colliery was noted to contain conflicting statements regarding the ability of mining to adequately coexist with both overlying existing and proposed residential development associated with planning proposals. The following provides

comments on proposed information that is required to be contained within EIS's based on Council's broad position policies in relation to this issue:

- Proximity to existing and proposed development: *The listed of required information to be contained in EIS's is broadly adequate in terms of containing reference to all major coexistence issues within the Wollondilly LGA. This list is however viewed as not providing any specific information that would require EIS's to identify potential impacts to other land uses which may provide a constraint to a proposed mining development.*
- Competing rural land uses: This item has particular relevance to an outcome of Council's **Agricultural Action Plan** that "the importance and value of agriculture is recognised in every planning document including Acts and SEPP's". It is consequently considered imperative that the Guideline specifically require that the assessment of potential impacts on agricultural land in terms of productivity and impacts to rural landholders be mandatory for relevant EIS's as part of the identification of constraints.

In a related matter, the 'Land and Soils Section' of the SSEAR Guideline is noted to require that the EIS must "Assess the compatibility of the development with other land uses in the vicinity of the development in accordance with the requirements of the **Resource Significance Amendment**". This Requirement is viewed as having potential adverse impacts for the identification of coexistence issues given the overall intent of this Amendment in giving primary consideration of economic benefits. Clarification is consequently being sought over whether applicants will be required to consider this Amendment when identifying the land use constraints for a particular mining development.

The DP&E is requested to amend the proposed Requirements based on the above recommendations to be more consistent with the concerns of Council and the local community regarding issues associated with the coexistence of mining with other land uses.

(iv) Rehabilitation

The emphasis of proposed Requirements for rehabilitation within the SSEAR Guidelines on open cut mining operations is acknowledged as being appropriate. However, this section of the Guidelines is viewed as having relevance to the rehabilitation of impacts that have occurred to both the natural, cultural and built environment as a consequence of underground mining operations. In this regard, the proponent of the Tahmoor Colliery is currently implementing rehabilitation measures to a significant portion of a local creekline (Myrtle Creek) that the company openly acknowledges has been impacted by mining operations.

It has been the experience of Council that rehabilitation of impacts of underground mining operations to the natural and built environment has been deferred to Subsidence Management Plans (SMP's) prepared after Determination. Council's submission to a recent SMP Application in this regard strongly expressed the view that the Application should be in the form of a detailed EIS with associated comprehensive public exhibition. The DP&E should note in this regard that the viewpoint of Council's community Minerals and Energy Resource Committee that the *Mine Subsidence Compensation Act 1961* should be

expanded to apply to the remediation of natural features is supported in principle by Council Officers.

The only relevant Requirement within the SSEAR Guideline to this matter is noted to be that *"the EIS must outline measures proposed to avoid, minimise, manage and offset direct and indirect impacts"*. There is consequently considered to be an absence of any direct reference to rehabilitation of impacts attributable to underground mining operations. **The DP&E is consequently requested to amend the applicable Requirements to ensure that EIS's contain details of intended rehabilitation measures in the event of impacts occurring to natural and/or cultural features.**

(v) *Land and soils*

This issue is recognised as being of more relevance to soil disturbance that occurs as part of open cut mining operations. However, this Section of the SSEAR Guideline is viewed as also having relevance to surface works associated with underground mining operations as well as the identification and protection of areas of land of agricultural value from impacts associated with these operations.

It has been Council's experience that the assessment of potential impacts to soils by mining applications has been restricted to a broad description of soil properties based on available information. The inclusion of requirements for EIS's for mining developments to consider and assess potential impacts to soil is therefore broadly welcomed. However, the following comments are provided in regard to the listed Requirements based on the experiences of Council and its broad position in regard to mining developments:

- Soils should be characterised in accordance with the NSW Government's Biophysical Strategic Agricultural Land Verification Protocol (BSAL Protocol). *Officers have concerns over this statement given that the purpose of the BSAL Protocol is to assist in the identification of BSAL rather than a scientifically rigorous analysis of soil properties. It is therefore recommended that EIS's be required to contain a soil assessment carried out by a National Association of Testing Authorities accredited authority.*
- The EIS must include an Agricultural Impact Study. *This Requirement is supported however there is an absence of any reference to issues to be addressed by such a Study. It is consequently recommended that the Requirement specify the issues to be addressed by such a Statement in regard to both the impacts on agricultural activities as well as rural landholders.*

The DP&E is requested to amend the proposed Requirements based on the above recommendations to address the concerns of Council as well as expressed concerns by rural landholders regarding the impacts of underground mining on land of agricultural value within the Wollondilly LGA.

(vi) *Water sources*

This section of the submission also refers to Requirements relating to water sources under the Section of the SSEAR Guideline titled '*Subsidence (Underground mines only)*'. This adopted approach is based on the risks to watersources from underground mining

operations noted to have been identified by a range of scientific studies as well as acknowledged by proponents.

(a) Council position

The Wollondilly LGA includes a high number of waterways of significance including the major Nepean and Georges River as well as significant groundwater sources. The protection of these water sources from impacts associated with all types of development is of high importance to Council.

The potential impacts to water sources from mining projects within the Wollondilly LGA have been key components of all submissions lodged by Council on Applications associated with these projects. In general, Environmental Assessments accompanying these Applications have been identified as having insufficient baseline data and inadequate scientifically based analysis of the impacts of mining operations on both surface and groundwaters. Recent scientific research as well as the preparation of Bio Regional Assessments by the Commonwealth Office of Water Science is also considered to highlight the current deficiencies in assessment of these potential impacts by mining applications. Key positions or requests contained in these submissions which reflect broad concerns expressed by the community include:

- *Applications should contain a description of the properties and behaviour of the groundwater environment in a lateral and vertical direction based on modeling that is informed by extensive groundwater monitoring and consistent with scientific research.*
- *All potentially affected watercourses should be subject to detailed assessment within a catchment context.*
- *Applications should contain scientific rigorous recommendations to reduce potential environmental impacts as alternatives to Offsets and associated Trigger Response Plans.*

In a related matter, Council has strong concerns over the practice of storage of coal wash waste at emplacement areas as part of underground mining operations and associated downstream impacts. In this regard, Council Officers have attended workshops organised by the Environmental Protection Authority in regard to the renewal of an EPL associated with the Bulli Seam Project Emplacement Area. Initial water quality monitoring has been noted to have identified a correlation between impacts to aquatic microinvertebrates and discharged pollutants that is yet to be quantified. **The DP&E is requested to note that Council's submission on this Project requested that research to develop alternative strategies commence immediately rather than within five years of consent as proposed by the Application.**

(b) Proposed SSEA Requirements

The inclusion of specific Requirements for EIS's for groundwater monitoring and assessment of potential impacts the groundwater environment is welcomed in principle. However, comments and recommended amendments to Requirements of relevance to the position of Council and the local community are provided in Table 4, Attachment 4 and summarised below.

- It is recommended that the description of relevant groundwater and surface water resources by EIS's be required to be consistent with current scientific knowledge.
- It is recommended that the compliance of EIS's with relevant Government Policies be mandatory in accordance with Council's broad position on the IMP.
- It is recommended that the assessment the potential direct and indirect geological, hydrological and ecological impacts of the predicted subsidence by EIS's be required to contain a detailed assessment that is based on modelling of groundwater behaviour as well as extensive monitoring.
- It is recommended that proponents be required to obtain an Environmental Protection Licence prior to Determination for any discharges associated with the proposed development given the statutory nature of these Licences.

The DP&E is requested to amend the proposed Requirements based on the above recommendations to address deficiencies experienced by Council and the local community in the assessment of potential impacts to water sources from underground mining operations by EIS's prior to the finalisation of the SSEAR Guideline.

(vii) Flooding issues

The extent of flood-prone land within the Wollondilly LGA is limited as a consequence the overall constrained nature of the local watercourses apart from the major Nepean and Georges River systems. Council's Investigation and Design Engineer has advised in this regard that the SSEAR for previous EIS's in regard to flooding have been broadly consistent with Council's requirements within its Development Control Plan. However, this Officer has also advised that EIS's do not commonly carry out modelling of potential flooding based on predicted surface subsidence as a consequence of mining operations.

The DP&E is requested to amend the SEEA Guidelines to require that EIS's for mining developments contain separate flooding analysis that is based on terrain before the development and the predicted subsidence level following the completion of longwall activity.

(viii) Biodiversity

(a) Council position

The Wollondilly LGA contains 90 threatened flora and fauna species as well as seven Endangered Ecological Communities that are listed at either the State or Commonwealth level. There are also significant areas of the Critically Endangered listed Shale/Sandstone Transition Forest (SSTF) and Cumberland Plain Woodland (CPW). There are a number of other communities, which while not listed EEC's, have significant habitat value.

This biodiversity is currently subject to pressures from mining operations as well as a wide range of other land use types. A 'Vegetation Prioritisation Analysis' that provides a criterion based prioritisation of remnant vegetation has been incorporated into Council's DCP as a means of protecting this biodiversity. It is Council's preferred view that the mapping related to this Analysis be utilised for the assessment of biodiversity related impacts of all developments (including State Significant Developments).

The development and implementation of the policy framework for the assessment and management of potential impacts associated with State Significant Developments is acknowledged as being a matter for the DP&E and the NSW Office of Environment and Heritage (OEH). However, it has been noted with concern that these Agencies are pursuing Offsetting Policies such as Biobanking at the expense (considered by Council Officers) of site specific assessment.

In this regard, Council's submission to the recent Review of Biodiversity Related Legislation stated that the current framework was *"viewed as resulting in a fragmented approach rather than a strategic approach informed by baseline data and modelling"*. The DP&E is requested to note in relation to this matter that Council resolved at its meeting on 16 March 2015 to *"write to the Minister for the Environment outlining the concerns over the protection and management of biodiversity as recommended by the Final Report on the Review of Biodiversity Legislation in NSW"*.

It has been the experience of Council Officers that the extent and significance of potential impacts on biodiversity by mining developments has not been assessed sufficiently at the application stage or given sufficient consideration during the review and determination stage by relevant Government Agencies. The assessment of potential impacts associated with underground mining operations have also been observed to be largely deferred to plans prepared after Determination which do not involve any consideration of impacts to biodiversity associated with surface operations. In addition, proponents have been almost universally observed to adopt an Offset Strategy at the early stages of the application process. This approach is viewed as being inconsistent with the first principle of the **OEH Principles for Biodiversity Offsets in NSW** that *"offsets should only be pursued if impacts cannot be adequately avoided or mitigated"*.

(b) Proposed SSEA Requirements in regard to Biodiversity

The following discussion provides comments regarding the proposed Requirements for biodiversity outlined in the SSEAR Guidelines based on the position of Council outlined above. The identified recommended amendments should be viewed as Council's preferred position given that the assessment and regulation process for biodiversity occurs at the State level.

Assess biodiversity values and the likely impact in accordance with the Framework for Biodiversity Assessment The Application Guideline is noted to state that an *"EIS needs to contain a Biodiversity Assessment based on the requirements of Stage 1 of this Document"*. However, there is viewed as being an absence of specific requirements to ensure EIS's comply with individual Sections of the Framework. **It is consequently recommended that EIS's be specifically required to assess values and likely impact in accordance with the requirements of all applicable sections of this Framework**

Assess biodiversity values and the likely impact in accordance with the NSW Biodiversity Offsets Policy for Major Projects (Major Projects Policy)

The comment contained in the submission from the NSW Scientific Committee on the Major Projects Policy that *"The whole Policy is fundamentally flawed, lacks an empirically tested scientific evidence base and will result in increases to the extinction risk of threatened and non-threatened species and ecological communities"* is supported in broad terms by Council

Environmental Officers. It is consequently the broad view of these Officers that this Policy not be adopted by the SSEAR Guideline. However, the following provides the preferred position of Council's Environmental Officers for the protection of local biodiversity from impacts associated with mining development in recognition that the policy framework is determined at the State level:

- Proponents must be required to assess site specific impacts associated with mining developments on terrestrial and riparian biodiversity in full accordance with the applicable policy framework.
- Proponents must be required to consult with local governments during the application process to obtain information on available local data as well as local strategies for the protection and management of biodiversity.
- Any Offsetting Strategies should be designed to maximise biodiversity outcomes such as creating an offsite that enhances the functionability of a local and/or regional habitat corridor.
- An EIS for an underground mining development must be required to consider impacts associated with subsidence attributable to mining operations (discussed below).

The EIS must assess the potential direct and indirect geological, hydrological and ecological impacts of the predicted subsidence in the short, medium and long-term as well as a detailed monitoring program that enables measurement of the actual environmental performance of the development.

It has been the experience of Council Officers that mining companies have not adequately assessed direct and indirect impacts as a consequence of subsidence potentially attributable to underground mining operations. This experience is viewed as being validated by Reports produced by PAC's as well as Scientific Advice provided by the Commonwealth IESC in regard to recent mining development applications within the Wollondilly LGA.

The inclusion and intent of this Requirement is therefore broadly welcomed. However, it is considered that EIS's should be required to contain groundwater modelling as well as detailed assessment of potential direct and indirect impacts to comply with the above proposed Requirement. It is further considered that such modelling and assessment should be required to comply with recent research such as that currently being undertaken by the Commonwealth Independent Expert Scientific Committee.

Should offsets be required (in relation to underground mines), the proponent should develop a Biodiversity Offset Strategy in accordance with the draft Policy framework for biodiversity offsets for upland swamps and associated threatened species impacted by longwall mining

This proposed Requirement is viewed as not containing any reference to biodiversity not located in swamps that can be impacted from subsidence related to underground mining operations. In addition, strong concerns associated with the scientific adequacy of the **draft Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species** are outlined in the subsequent section of this submission. It is therefore recommended that the SSEAR Guideline contain an alternate Requirement based on current scientific research regarding this issue.

The DP&E is requested amend the proposed Requirements based on the above recommendations to achieve consistency with Council's position regarding the protection of biodiversity from underground mining operations prior to the finalisation of the SSEAR Guideline.

(ix) Heritage (European and Indigenous)

The overall protection and management of Heritage within NSW is recognised as being the responsibility of the NSW Office of Environment and Heritage. However, Council has established a close collaborative relationship with representatives of the local Aboriginal community as well as local heritage groups. Council has also established an Environment and Heritage Committee that provides a forum for discussion by community members on heritage matters.

Heritage Reports accompanying mining applications have been viewed to be broadly adequate in identifying items potentially impacted by mining developments. However, the following provides comments in regard to SSEA Requirements for both Aboriginal and European Heritage and recommended DP&E response based on the above position of Council and the local community.

(a) Aboriginal Heritage

Where Aboriginal cultural heritage values are identified, consultation with Aboriginal people must be undertaken and documented in accordance with **Aboriginal Cultural Heritage Consultation Requirements 2010**.

This Requirement is supported however it is requested that mining proponents be required to consult with local government given that many Councils (such as Wollondilly) include an Aboriginal Engagement Officer (or equivalent) with close links to the respective local Aboriginal community.

EIS's must contain demonstrated measures to avoid, minimise and mitigate any impacts on Aboriginal values.

It is contended that this proposed Requirement has inconsistencies with aspects of Guidelines associated with the Due Diligence Process prepared by the OEH. It is therefore considered appropriate that an alternate or revised Requirement that is fully consistent with these Guidelines be developed in consultation with the OEH.

Identify and describe the Aboriginal and historic heritage values that exist across the whole area that will be affected by the proposal. This may require surface survey and test excavation.

It is acknowledged that the OEH routinely issues conditions that require Aboriginal Heritage Impact Permits subsequent to the granting of development approval. However, correspondence and advice received by Council Officers indicate the preferred view of the OEH that detailed archaeological investigations occur at the planning stage to minimise disturbance during the development. **It is consequently suggested that consultation be held with the OEH regarding the inclusions of such investigations within EIS's being mandatory in instances where identified as necessary to comply with applicable OEH Policies and Guidelines.**

(b) European heritage

There are a number of locally listed heritage items within classified Mine Subsidence Districts in the Wollondilly LGA that have the potential to be impacted by underground mining operations. Specialist reports accompanying mining applications have been identified by Council's Heritage Advisor as being broadly adequate in assessing potential impacts to these items. This Advisor did however suggest an amendment to a recent SMP Application to include the monitoring of the movement and damage to stone or masonry buildings given their susceptibility to subsidence related impacts.

The proposed Requirements are supported in broad terms in protecting items of heritage value from impacts associated with mining. However, there is noted to be an absence of specific reference to the protection and management of potential impacts associated with mining development on locally listed heritage items. It is consequently recommended that proponents be required to consult with local governments to identify potentially local heritage listed items as well as measures to protect them from subsidence related impacts during the preparation of EIS's.

The DP&E is requested to amend the proposed Requirements based on the above recommendations to enhance their protection of Aboriginal Heritage and locally listed European Heritage items from impacts associated with underground mining operations prior to the finalisation of the SSEAR Guideline.

(x) *Air quality*

(a) Council position on air quality issues

The maintenance of high air quality of the local region and the minimisation of potential environmental and health impacts associated with emitted pollutants are key concerns of Council. The following provides comments on the position of Council and the local community in regard to air quality issues of relevance to underground mining operations within the Wollondilly LGA.

Dust generation

Particulate matter can be emitted from coal wash emplacement areas and other stockpiles as well as within plumes emitted from power stations that form a component of underground coal mining projects (discussed below). Council has concerns over potential health impacts associated with these emissions based on received advice from specialist organisations such as the Doctors for the Environment.

In relation to this matter, the *Voluntary Land Acquisition and Mitigation Policy Amendment* is noted to permit exceedences of particulate matter criteria issued by the NSW Environmental Protection Authority (EPA) subject to conditions. Council's submission on this Amendment consequently raised concerns over potential adverse implications to the assessment and management of these impacts by mining development applications.

Emissions associated with gas drainage programs

The necessity for the removal of methane gas within coal seams (goaf gas) prior to the commencement of longwall mining operations for safety and operational reasons is

recognised. However, Council shares the concerns of the local community over potential health and air quality impacts as well as impacts to the local amenity of the potentially affected district associated with this process. In relation to this matter, Council's submission on the Bulli Seam Project Expansion stated that gas drainage should be subject to a separate development application process that adequately assesses each required bore hole rather than a program that encompasses the project.

A current proposed extension of the Gas Drainage Program associated with the Bulli Seam Project that may involve (in part) the construction of a power station to utilise a portion of the retrieved gas has generated significant opposition amongst sections of the local community. Council resolved in relation to this matter to *"Convene a meeting with invited community members of Douglas Park and representatives of Illawarra Coal to facilitate consultation between the parties regarding Illawarra Coal's proposed gas extraction and power plant development in the Douglas Park area"*. Details of any formal position of Council in relation to this resolution will be forwarded to the DP&E.

(b) SSEA Requirements for air quality

It has been the experience of Council Officers that Air Quality Assessment Reports almost universally have a similar format comprised of modelling of predicted pollutant levels based on data collected from existing monitoring stations and applicable criteria issued by the NSW Environment Protection Authority (EPA). It has also been the experience of Council Officers that there is a general level of non-acceptance amongst the broader community of justification utilised by proponents for a development that predicted pollutants comply with these EPA criteria.

The requirements in the SSEAR are viewed as being more adequately scientific based and consistent with applicable Guidelines than other technical issues such as Water Sources. However, comments and recommended amendments to Requirements of relevance to the position of Council and the local community are provided in Table 5, Attachment 5 and summarised below.

- It is recommended that EIS's be required to carry out on-going sampling and analysis specifically within the area potentially impacted by the remittance of pollutants. Such monitoring is viewed as having merit in providing transparency and responding to community concerns.
- It is recommended that the carrying out of dispersion modelling be mandatory for any EIS associated with a mining development involving emission of pollutants rather than where there is a risk of adverse air quality impacts as proposed.
- It is recommended that EIS's be required to assess carbon based pollutants (including methane) emitted from gas drainage program as well as emission of such pollutants associated with the utilisation of extracted coal given their potential health and environmental risks.

The DP&E is requested to amend the proposed Requirements based on the above recommendations to address deficiencies experienced by Council and the local community in the assessment of air quality impacts associated with underground coal mining operations by EIS's prior to the finalisation of the SSEAR Guideline.

In a related matter, the SSEAR Guideline is noted to list the **National Greenhouse Accounts Factors** (Commonwealth) as a document to be considered during the preparation of EIS's. However, there is viewed as being an absence of reference to carbon based emissions associated with coal mine developments within the Requirements. There is also considered to be an absence of direct reference within these Requirements to greenhouse gas emissions associated with the both the extraction of the coal resource as well as its use locally, nationally and internationally. **It is therefore requested that EIS's be specifically required to calculate the full life cycle of greenhouse gas emissions associated with a mining development and assess associated risks to environmental harm, human health and amenity.**

(xi) *Economic appraisal*

The economic benefits of mining and its contribution to the local, regional and national economy are acknowledged by Council. It is therefore considered appropriate that EIS's be required to contain an appraisal of the economic costs and benefits of the project application.

Council's submission to the Bulli Seam Project Expansion Application however expressed the view that EIS's must contain a rigorous appraisal of all costs and benefits associated with a mining application based on economic, social, environmental and cultural factors. In this regard, concerns over the accuracy of the stated indirect economic benefits of the proposed Russell Vale Colliery Expansion Project Application were noted to have been raised by a number of community members at the Public Hearing associated with the investigation of aspects of this Application by a PAC. It is consequently considered imperative that EIS's contain a rigorous assessment of direct and indirect costs and benefits.

The SEEAR Guideline is noted to require that EIS's include a *"comprehensive economic appraisal, consistent with the NSW Government's Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals"*. This Guideline is viewed as having implications to the assessment of all factors associated with individual mining development applications as a result of the linkage of the IMP to the *Resource Significance Amendment*. Comments on proposed Requirements regarding this issue have consequently been withheld in the absence of these Guidelines. **The DP&E is consequently requested to provide Council with a copy of this Guideline when complete to allow for the provision of comments regarding this issue.**

(xii) *Subsidence impacts to the built environment*

It is recognised that there is a well-established process for monitoring and repairing damage to built structures caused by subsidence that is attributable to underground coal mining operations. The DP&E is requested to note however that Council's submission on a recent SMP Application referred to the continued level of unrest by sections of the local community over the current process for the investigation and repair of subsidence related impacts to residential dwellings. In relation to this matter, Council is aware of the Independent Committee Against Corruption (ICAC) Inquiry into aspects of the operation of the local branch of the Mine Subsidence Board. It is considered appropriate that the findings of this Inquiry be considered during the finalisation of the SSEAR Guideline depending on the timing of their public release.

The specialist reports accompanying mining applications within the Wollondilly LGA have been observed to be broadly contain details of inspections undertaken as well as modelling carried out to predict those properties likely to experience subsidence related impacts. However, the actual predicted level of subsidence and associated impacts to existing structures within these specialist reports have been observed to be generic without sufficient scientific base.

The inclusion of Requirements for the assessment of potential impacts associated with underground mining operations on built structures by EIS's is therefore broadly welcomed. However, the following recommended amendments can be broadly applied to each of the listed Requirements in the SSEAR Guidelines:

- EIS's be required to carry out predictions, risk assessments and feasibility studies in regard to all potentially affected surface and subsurface features rather than be restricted to those of "*significant economic, social, cultural or environmental value*" as proposed by the SSEAR Guidelines.
- EIS's be required to assess the likely impact to all potentially affected structures as well as associated social impacts based on latest scientific knowledge and applicable Guidelines.
- EIS's be required to include details of intended on-going consultation with all potential affected parties including residents and local governments as well as procedures for the reporting of this consultation.

The DP&E is requested to amend the Requirements based on the above recommendations to assist in the addressing of adverse experiences by members of the community in particular in regard to the management of subsidence impacts to built structures.

(xiii) Potential social impacts associated with mining developments

Council also views local government as the level of government that is most effectively able to carry out community consultation and engagement. Consultation and engagement with the local community is consequently of high importance of Council and is a key feature of a number of its statutory documents including its Community Strategic Plan.

In this regard, Council has prepared a **Community Engagement Employee Handbook** that encourages a commitment and consistent approach by Council to undertake effective and appropriate consultation with the community. It is considered the broad underlining principle of this Handbook that "*Quality consultation and engagement are essential foundations of good government*" is appropriate for adoption as a basic principle by the SSEAR Guideline.

The inclusion of Requirements regarding community consultation and assessment of social impacts associated with proposed mining developments within the SSEAR Guidelines is broadly welcomed. However, the following provides comments and recommended amendments to these Requirements to enhance their consistency with Council's position regarding community engagement.

(a) Assessment of social impacts

The proposed Requirements for the assessment of potential social impacts associated with a proposed mining development are supported in broad terms. However, it is considered that EIS's should be required to adopt a robust approach to the assessment of social impacts in the form of Social Impact Assessments (SIA's). **It is recommended in this regard that the DP&E require the adherence of EIS's to the Planning Institute of Australia's position statement on Social Impact Assessments.**

(b) Community consultation

The statement in the Application Guideline that *"the applicant is expected to conduct an appropriate level of consultation with potentially impacted stakeholders"* is supported in principle. However, significant deficiencies in consultation with Council and the local community during the application and determination of proposed mining developments are outlined at the commencement of this submission. The further comment in the Guideline *"that this (consultation) may include, but is not limited to (a list of broad stakeholders)"* is viewed as not adequately addressing these deficiencies and is therefore not acceptable to Council.

The statement in the SEEAR Guideline in relation to this matter *"that the EIS must describe the consultation that was carried out, identify the issues raised during the consultation, and explain how these issues have been addressed"* is also supported in principle. However, the following provides the broad position of Council on community engagement and involvement that are considered suitable for adaption by mining companies when preparing EIS's. :

- Community consultation should be planned and form part of a wider communication strategy, that establishes timeframes and milestones as well as identifying opportunities for community input and feedback opportunities. This should be a robust process and consist of a range of both traditional and innovative methods designed to engage the widest possible cross section of the community in the conversation.
- Community involvement should commence as early in the process as possible to be inclusive and avoid misconceptions and mistrust of the process. The International Association for Public Participation (IAP) spectrum is internationally recognised as best practice in community engagement and consultation and should inform any robust consultation process.

The DP&E is requested to amend the proposed consultation Requirements to reflect the above broad preferred position of Council regarding community engagement outlined above prior to the finalisation of the SSEAR Guidelines.

2) Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species

(i) Council broad position

(a) Position on upland swamps and their protection from mining related impacts

The eastern section of the Wollondilly Local Government Area includes the Dharawal National Park which contains a high number of upland swamps. These swamps are recognised as being of high significance by Council given their important ecological and hydrological functions which have been highlighted by recent research. They are also viewed as having significant recreational value within both a local and regional context.

The Project Area for the initially lodged Application for the expansion of the Bulli Seam Project included 226 upland swamps located within the upper reaches of the Georges River Catchment. Council's submission on this project application provided strong objection to the proposed undermining of these swamps on a number of grounds that included:

- *More evidence is needed before any assessment can be made as to the role of shallow and deeper groundwater on baseflow and recharge of watercourses, supporting ecosystems, water level as well as groundwater resources and the movement of water in ways not yet fully understood.*
- *The EA has not evaluated the significance of the upland swamp network and the importance of each swamp within this network.*

The Preferred Project Response that excluded these swamps from the Project Application in response to significant deficiencies in the assessment and monitoring program identified by this PAC was consequently welcomed. The announcement of this amendment by the proponent was however noted to indicate a possibility that future mining under the swamps could occur following the completion of scientific studies.

(b) Council broad position on Offsetting and the Offset Policy for Major Projects

The Overview of the IMP document is noted to state that the **Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species** (Swamp Offset Framework) extends the principles of the Biodiversity Offset Policy for Major Projects. The viewpoint of Council Officers that this Policy has the effect of fragmenting biodiversity and resulting in a net loss of biodiversity outcomes have been outlined in the previous section of this submission regarding the SSEAR Guidelines.

In relation to this matter, the **Final Report on the Review of Biodiversity Legislation in NSW** was noted with concern to recommend the extension of offsetting principles to apply to development applications where local government is the consent authority. Officers are of the view that this approach does not adequately recognise planning instruments, policies and associated mapping at the local level. **The DP&E is requested to note in this regard that Council resolved at its meeting on 16 March 2015 to "write to the Minister for the Environment outlining the concerns over the protection and management of biodiversity as recommended by the Final Report on the Review of Biodiversity Legislation in NSW".**

(ii) Comments on the Swamp Offset Framework

The following discussion provides broad comments on the overall approach and specific aspects of the Policy Framework based on the experiences of Council in regard to local mining projects as well as the outcomes of scientific research. The discussion also contains recommended responses by the DP&E to address identified shortcomings of the Framework in adequately addressing the concerns of Council as well as expressed views by the local community.

(a) Application of the Offset Framework

The Overview of the IMP is noted to state that the Swamp Offset Framework extends the principles of the **Biodiversity Offset Policy for Major Projects** to subsidence related impacts of mining on endangered swamps. This statement infers that the Policy will only apply to certain upland swamps that have been identified as having special significance. This approach would not be acceptable as all uplands are viewed as having important environmental as well as recreational functions regardless of their formal conservation status. **The DP&E is consequently requested to provide urgent clarification over this matter prior to the finalisation and implementation of the Swamp Offset Framework.**

(b) Overall principle of the Framework

The structure and principles of the exhibited Swamp Offset Framework is noted to have similarities to the approach adopted by a PPR Report and Major Project Assessment Report in regard to the proposed Russell Vale Project Expansion Application. Council's submission to the PAC that investigated aspects of this Application raised questions over the adequacy of the scientific basis of the DP&E regulatory response based on recent scientific research. This research included a **Remediation Techniques Research Paper** by the IESC which concluded that *"Trigger Action Response Plans as a method of protecting swamps is not considered overly useful because of the impacts are likely to be long-term and difficult to detect without extensive monitoring"*. It has also been noted in this regard that the OEH did not agree with aspects of this approach that was adopted by the Russell Vale Colliery Expansion Project Application.

Council's submission consequently requested that the Commission develop scientifically rigorous recommendations to reduce potential environmental, social and cultural impacts associated with the Project Application as alternatives to the recommended use of Offsets and Trigger Response Plans by the Department of Planning and Environment. The Report produced by the PAC that investigated the Project Application is noted to contain a number of findings on the outcomes of its investigations regarding this matter. Council views these findings as well as the Recommendations of the Report as validating its position and issues raised in submissions regarding this matter.

The DP&E is consequently requested to note the preferred view of Council that the Swamp Offset Framework be amended to achieve full consistency with all applicable findings and Recommendations of this Report.

(b) Adequacy based on a review by Council Environmental Officers

The functions of upland swamps and potential impacts of mining on these functions are recognised as being highly specialised. It is consequently considered more appropriate that the adequacy of the Swamp Offset Framework be peer reviewed by a suitably qualified independent scientific organisation prior to its finalisation and implementation. However, the following provides comments from Council's Environmental Officers in regard to its adequacy in addressing the position of Council and expressed concerns of the local community.

Adoption of the Offsetting approach

The Swamp Offset Framework is noted to have adopted the broad offsetting approach utilised by OEH Policy documents such as the Biobanking Assessment Methodology in calculating the value of a potentially impacted swamp and identified offset sites. Environmental Officers are of the view that this approach will likely result in net losses of biodiversity based on the broad position regarding these Policy documents referred to above. It is consequently the preferred view of Council that this Policy not be utilised by these Guidelines for the protection of upland swamps from potential impacts associated with underground coal mining operations.

Offsetting the functions of upland swamps

Council's Environmental Officers also have strong doubts over the adequacy of the exhibited Policy Framework in comprehensively offsetting the hydrological and ecological functions of any upland swamps removed under the Policy within a catchment context. These doubts are based on the technical knowledge of these officers, field observations and outcomes of scientific research referred to above. These Officers consequently view the exhibited Policy Framework as not being sufficiently scientifically rigorous as well as consistent with recent scientific studies.

Recommended response by the DP&E

The DP&E is requested to carry out the following activities prior to address the concerns of both Council and the local community in regard to the Policy Framework prior to its finalisation:

- The Policy Framework be peer reviewed by a suitably qualified independent scientific body based on the Recommendations of the Report produced by the Planning Assessment Commission, which investigated the expansion of the Russell Vale Colliery Expansion.
- Council be provided with a copy of the report produced from this requested peer review as well as making the report publicly available including the website of the DP&E.
- Record Council's opposition to the Policy Framework in its current form until such time it is in receipt of suitably qualified independent advice that the Policy will not result in adverse outcomes to the values and functions of any upland swamp potentially impacted by underground mining operations be recorded.

PART D: CONCLUDING STATEMENT

This submission acknowledges the preparation of the IMP as being beneficial in achieving a level of consistency in submitted Mining Development Applications. However, this submission outlines a range of requested amendments based on previous Council submissions that includes a request for the deletion of the requirement for proponents to consider the *Resource Significance Amendment*. It also provides comments to enhance the consistency of relevant Requirements within the **Standard Secretary's Environmental Assessment Requirements** and the Mine Application Guideline to address experienced deficiencies in regard to mining projects within the Wollondilly LGA by both Council and sectors of the local community.

A key recommended amendment to the IMP by the DP&E is the deletion of the requirement for proponents to consider the *Resource Significance Amendment* when preparing Statement of Environmental Effects. A further key recommended amendment is that the consistency of mining development applications with relevant policies as well as scientific research be mandatory.

The submission also provides comments on the exhibited **Policy Framework for Biodiversity Offsets for Upland Swamps and Associated Threatened Species**. Council's Environmental Officers have strong doubts over the adequacy of this Policy Framework in comprehensively offsetting the hydrological and ecological functions of any upland swamps removed under the Policy within a catchment context. The submission consequently strongly requests that the Policy Framework be peer reviewed by a suitably independent scientific body (like the Independent Expert Scientific Committee or Commonwealth Scientific and Industrial Research Organisation).

