



Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

November 23, 2017

**Director, Legislative Updates,
Department of Planning and Environment,
GPO Box 39 Sydney NSW 2001**

By email: Regulation.Review@planning.nsw.gov.au

Submission in relation to the Environmental Planning and Assessment Regulation 2000 (*the Regulation*)

Preamble

The Blue Mountains Conservation Society (BMCS or the Society herein) has a membership of about 800. The membership is mainly drawn from the City of the Blue Mountains and the Greater Sydney region, but members also exist throughout NSW and interstate.

BMCS has a strong interest in the Greater Blue Mountains World Heritage Area in terms of protecting its many parks and reserves. BMCS is also part of the Gardens of Stone Alliance, together with the Colong Foundation and the Lithgow Environment Group. As such, it actively campaigns for reservation of the Gardens of Stone Stage 2 Proposal over the western portion of the Blue Mountains and the Western Escarpment between Blackheath and the Capertee Valley. It is also campaigning for the reservation of 'Radiata Plateau' and is part of a broader campaign opposing the Western Sydney Airport

The Society has been and still is actively involved with assessment processes and their deficiencies.

The Society notes that the public consultation period on the issues paper is from 29 September 2017 to 24 November 2017 inclusive.

1. General comment

The Society has examined the Issues Paper and notes the objectives:

- Reduce administrative burden and increase procedural efficiency.
- Reduce complexity.
- Establish a simpler, more modern and transparent planning system.

Such objectives are admirable, but the Society is concerned with what lies beneath the statements. In essence:

- Whose administrative burden is being reduced? It would seem to be that of the DPE and ‘developers’, whilst options for community groups to have **meaningful** input are curtailed.
- Increasing procedural efficiency is a time-function, where time is commonly equated with money – it is more important to focus on effectiveness in terms of achieving the most just¹ outcome.
- Reducing complexity is only of value if issues are fully developed and a just outcome eventuates.
- Transparency is fundamental and is sorely needed – there is far too much secrecy in that negotiations between government and developers occur behind closed doors under the guise of ‘commercial in confidence’.
- Simplicity and modernity are only of value if various checks and balances are not sacrificed on the altar of ‘streamlining’ the processes – the baby must not be thrown out with the bath water.

2. Significance of the current exercise.

The current exercise is one of consultation guided by the Issues Paper. With the input from concerned parties a draft regulation will appear in 2018 and more consultation will be sought before a final revision is made. The process has steamroller attributes!

BMCS believes that the bureaucrats have inevitably taken on board the views of government in preparing the Issues Paper and providing examples of the types of change needed to achieve the inadequately explained/justified objectives. It follows that this current exercise is a case of making changes which will **facilitate developments** and then exposing them to test the response of environmental and other community organizations. How loud will they scream and what token bones can be tossed to placate them?

The above will no doubt be deemed too cynical, but consultation seems to involve gaining responses without, in the main, acceding to them. The process would be far more credible, when the draft regulation appears, were it to be accompanied by a tabulation of concerns, a clear statement about how each concern was assessed, and a clear indication of where changes in the draft were made to reflect the concerns.

BMCS is not so naïve as to believe that this would solve all differences, but a just outcome is more probable when the reasons for making decisions have to be explained.

3. State significant projects

The remainder of this submission relates to Section 3 (pp19-22) of the Issues Paper. The Society does, however, emphasise that there are issues in other sections which are likely to be raised by the Better Planning Network and will be more closely examined by our Land-use subcommittee when the draft regulation appears in 2018.

¹ Based on or behaving according to what is morally right and fair – i.e., impartial and unbiased.

The Society is aware that the DPE is currently reviewing Environmental Impact Assessment for state significant projects. The Society is most concerned with much of what was advocated in the DPE's discussion paper as released in October 2016. Much of the BMCS submission in response to the discussion paper is equally applicable here. In consequence, the Society has attached the previous submission to the current document as ***Appendix A*** in the anticipation that it will receive additional consideration.

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

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

Appendix 'A' follows



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Nature Conservation Saves for Tomorrow

August 24, 2017

**EIA Improvement Project
NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001**

BMCS Feedback on the Draft EIA² Improvement Project

Preamble

The Blue Mountains Conservation Society (BMCS or the Society herein) has a membership of about 800. The membership is mainly drawn from the City of the Blue Mountains and the Greater Sydney region, but members also exist throughout NSW and interstate.

BMCS has a strong interest in the Greater Blue Mountains World Heritage Area in terms of protecting its many parks and reserves. BMCS is also part of the Gardens of Stone Alliance, together with the Colong Foundation and the Lithgow Environment Group. As such, it actively campaigns for reservation of the Gardens of Stone Stage 2 Proposal over the western portion of the Blue Mountains and the Western Escarpment between Blackheath and the Capertee Valley. It is also campaigning for the reservation of 'Radiata Plateau' and is part of a broader campaign opposing the Western Sydney Airport. Part of its concern with the Western Escarpment and the Gardens of Stone proposal relates to the development of open-cut coal mines, and the damage inflicted by longwall mining on the surface- and ground-water hydrologic regime and related scenic values.

The Society has been and still is actively involved with the assessment processes and their deficiencies.

Summary

- Despite the obvious amount of work put into the Draft EIA, the Society supports it neither in concept nor in detail.
- The purposes and anticipated benefits of the Draft EIA are articulated in Section 1, but the Society is unconvinced that the purposes are adequately achieved, and that the benefits will be attained.
- The Scoping Report and SEARs (Secretary's Environmental Assessment Requirements) should primarily be the responsibility of the DPE in discussion with the proponent. The Society rejects the cumbersome process which would involve volunteer organizations in unnecessary work – engagement prior to development of the EIS will achieve little, particularly as there is uncertainty about publicly exhibiting the Scoping Report and much detail about the extent of adverse impacts will be lacking

² EIA – Environmental Impact Assessment

- In the EIS (Environmental Impact Statement) with respect to the Executive Summary (or ‘volume 1’), suggestions regarding technical language and not transferring large amounts from specialists’ reports are broadly accepted – such suggestions are equally applicable to the current system.
- The requirement to declare that the material in the EIS³ is neither false nor misleading is a small step in the right direction and could equally be used in the current system, yet without detailed investigation of compliance it is essentially tokenistic.
- The Society has concerns about the division of impacts into Key issues and Other issues, thereby creating two levels of assessment – the subdivision, which is an artefact imposed by the SEARs at a time before the EIS and its detailed specialist reports are fully available, could limit the comprehensiveness and adequacy of EISs.
- Cumulative impacts are acknowledged, but they are inadequately defined and their significance in terms of the non-linear escalation of impacts is seemingly misunderstood.
- The deficiencies of specialized consultants’ reports and peer reviews when paid directly by the proponents are emphasized. Some criteria are presented but they don’t go far enough. This matter has long been contentious, has not been properly addressed in the current system, and is not adequately resolved in the Draft EIA.
- The Society emphasizes that were the nexus between the proponent and consultants in terms of their selection and payment to be resolved, there would be far less need for peer reviewing, because the latter was introduced to give seemingly biased specialists’ reports greater credibility.
- Modifications are commonly used to increase a mine’s footprint subsequent to the approval and issuance of consent conditions. To minimise abuse of this practice, the Society suggests that modifications with more than a minimal environmental impact should trigger a return to the full application process.
- The Society believes that instead of creating a Draft EIA aimed at expediting approvals, the DPE should focus on overcoming deficiencies in the current system⁴, and on achieving better social and environmental outcomes to at least ameliorate the destructive capacity of mining.

1. Overview of the Draft EIA Improvement Project (here-in-after the Draft)

The objective involves identifying areas where improvement can be implemented across the **entire cycle** of a project, whilst staying within the existing legal framework of the Environmental Planning and Assessment Act 1979 (the Act). This is extremely ambitious. The Draft goes beyond “reforming” Environmental Impact Assessment by encompassing processes after approval, including such things as compliance with consent conditions, and treatment of subsequent modifications.

In relation to Guideline 1, Section 1.1, dot-points 3 and 5, the words are all encouraging, but extensive experience leads to concerns about what is hidden behind the words. For example:

- dot-point 3 talks about public participation and clarifying how feedback is taken into account, yet the perception is that the missing words are ‘rarely’ and/or ‘inadequately’; and,
- dot-point 5 hopes to build community and stakeholder confidence in the EIA and decision-making, yet time and time again the work of environmental organizations is disregarded in favour of the company’s lies and distortions – only when damage is visible, even to blind Freddy, is evidence grudgingly accepted; and even then, the same nonsensical misinterpretations are accepted by the Department of Planning and Environment (DPE) in the subsidence management status reports.

Amusingly, the only thing which rings true is in dot-point 6 where the intention is to provide industry with greater certainty about EIA timeframes – but how will this be achieved? At present, companies take many months (even years) to have highly paid consultants prepare the EIS. It is then placed on public exhibition for a few weeks with insufficient time (in most cases) to have consultants evaluate more technical parts of the EIS.

³ Environmental Impact Statement

⁴ That is, not throwing the baby out with the bath water!

Yet even when a volunteer with much experience and substantial technical expertise makes a submission for an environmental organization, the perception is that report is deemed biased, whereas the company-consultant's report is taken at face value.

As the DPE is seemingly unable to limit the time taken for the company to prepare an EIS, or respond to NGOs' issues raised in relation to the EIS, it is likely that time available for public comment and consultation with the DPE will suffer. This will be further examined in the ensuing sections.

2. Community guide to EIA and Scoping (Guidelines 2 and 3)

Guideline 2 Section 2 p4 shows the opportunities for community input throughout the EIA. The Society notes that this clearly sets down the scoping and post-approval components including the possibility of modifications. Hitherto, scoping has very much involved interaction between the proponent, DPE and, to a lesser extent, other pertinent departments of the State and Federal governments. It is regrettable, that whereas the opportunities for community input are clarified, the ways in which those inputs are evaluated and make input to the assessment process are poorly outlined.

The remainder of this section will be restricted to scoping. This is largely designed to help the DPE develop the SEARs⁵ following production of a Scoping Report by the proponent. It is the forerunner to the full EIS.

The Society believes that:

- The Scoping Report should primarily result from the proponent consulting the DPE and other pertinent government instrumentalities. This does not mean that the company should avoid speaking to interested community bodies, but as is apparent in some of the ensuing dot-points, there is too much uncertainty related to the Scoping Report and whether or not it is publicly exhibited.
- The Scoping Report should primarily be initiated by the proponent – there should be no question of the proponent blaming community organizations and/or the general public because an issue was not brought to the proponent's notice.
- It should and must be the DPE's responsibility to develop appropriate SEARs; the DPE must inevitably consult with the proponent and has the option of consulting relevant community and environmental organizations – there should be no question of government blaming what are usually volunteer organizations for 'something missing' from the SEARs.
- In relation to gaining public feedback, discretionary exhibition of Scoping Reports is unacceptable – it has the potential to lead to corruption – it also necessitates making value-judgements about the level of impact/interest⁶.
- Additional uncertainty is apparent in the next quotations (bold emphasis is mine):

Guideline 2 Section 3.2.4 p6 states: *"For projects with a high level of public interest or a high level of potential impacts, the Department **may** publish the Scoping Report on its website for 14 days and seek public feedback. This will include all critical SSI projects, coal seam gas, applications for new mines or extensions to existing mines. The Department **may** also place the Scoping Report for other projects on exhibition."*

Guideline 2 Section 3.4.2 p8 states: *"**If** the Department exhibits the Scoping Report, the public will be invited to respond to online questions about the relevant matters to be addressed in the EIS."* This is presumably 'seeking public feedback' in the above p6 quotation. It conveys a degree of control in that the feedback would be in response to the DPE's questions based on 'relevance' to the EIS.

⁵ Secretary's Environmental Assessment Requirements

⁶ For example, a small cluster of houses might be intensely impacted, yet the broader community might not protest and so the Scoping Report might not be exhibited.

Guideline 2 Section 3.4.3 p8 states: *“This public feedback, along with the community feedback provided to the proponent when developing the Scoping Report, will be considered prior to issuing SEARs.”*

Guideline 3 Section 7 p12 states: *“The 14-day exhibition will be at the beginning of the period that the Department has to issue SEARs (28 days).”* Provided the DPE **elects** to place the Scoping Report on public exhibition for 14 days, it will receive and need to consider the feedback over the next (say) 10 days in order to produce the SEARs within the required period.

The Society believes the concept of a Scoping Report as presented is misguided. The aim seems to be to get all contentious issues on the table in order to produce suitably tailored SEARs. The proponent should be fully aware of the proposal’s potential impacts, and the DPE, in consultation with other government departments, should likewise be able to discern the likelihood of impacts and therefore structure the SEARs accordingly. **There is no need for more!**

Instead, the DPE has factored in the potential for a substantial report (the Scoping Report), which will inevitably grow in complexity and size due to the involvement of highly paid consultants attempting to justify their fees, and will **possibly** go on public exhibition with provision for feedback. This will inevitably involve volunteer community organizations in a layer of activity for the benefit of the DPE and proponent before being confronted by the multi-volume EIS.

The Society totally rejects the need to spend time doing work which should be done by the company and the DPE.

3. Environmental Impact Statement within the EIA (Guideline 4)

- Guideline 4 Section 2 p2 states:

“Preparation of the EIS follows the scoping phase where the relevant matters to be addressed in the EIS and the level of assessment of those matters is identified, including community and stakeholder perspectives. An effective scoping phase leads to a better quality EIS, with the Secretary’s Environmental Assessment Requirements (SEARs) produced as an outcome of scoping to set the terms of reference for the EIS.”

“It is the proponent’s responsibility to ensure the EIS addresses all the matters identified in the SEARs so that the Department has sufficient information to properly assess the project.”

It should be clear from the last three paragraphs in the preceding Section 2 (above), that the Society does not subscribe to the scoping model embodied in the EIA. BMCS conversely asserts that comprehensive SEARs are the responsibility of the DPE and the proponent.

- Guideline 4 Section 3.1 p3 deals with the use of plain English and introduces the notion of ‘volume 1’, while the Executive Summary (Section 3.5 p4) seems to be similarly orientated.
- BMCS endorses the notion of limiting detailed technical arguments to the specialists’ reports, which should be separately provided as appendices.
- Such specialized appendices invariably include large amounts of ‘introduction’ and ‘project description’ which replicate information in Guideline 4 Section 3.2. **This should be specifically discouraged by DPE!** There is no sound reason why such data can’t be excised from the original appendices.
- BMCS recognizes that excessive technical detail and large sections of specialized appendices **should not be used** in the Executive Summary or ‘volume 1’; cross-referencing is vital. Nevertheless, it must be appreciated that many proposals are intensely ‘technical’, so avoiding some technical language which should be part of a decision-maker’s vocabulary (and indeed that of anyone purporting to assess the merits or otherwise of a proposal) suggests need for practicable compromise.

- Guideline 4 Section 3.9 p12 relates to engagement under the Community and Stakeholder Engagement Guideline. It introduces the concept of a Community and Stakeholder Engagement Plan (CSEP) to demonstrate how the participation outcomes will be met during preparation of the EIS.

The approach is seemingly designed to make the SEARs project-specific (which should happen anyway and should be the responsibility of the proponent and the DPE) and turn it into a 'preliminary EIS'. The apparent thinking is that this will then expedite dealing with the 'real EIS'. Yet there is no certainty that the Scoping Report will be placed on public exhibition; and it is recognized that CSEPs and the meetings to enable the proponent to tick the required consultation box will not resolve fundamental differences. **None of it make sense!**

As emphasised in dot-point 1 of this Section 3 and also in Section 2, the Society believes that the Scoping Report concept is generating another layer of work which will in part usurp the function of the EIS. It is clear that an idea designed to help the DPE produce project-specific SEARs, has already grown like Topsy. **The approach is rejected by BMCS.**

- Guideline 4 Section 3.10 p12: "...proponents must describe how the matters identified in the SEARs have been assessed, and how any potential impacts have been avoided, minimised or offset. In addition, proponents must identify any residual impacts."

"The proponent's Scoping Report and the SEARs issued by the Department will identify the level of assessment for each matter. Each matter will require either:

- *a Key Issue Assessment requiring the preparation of a specialist report to assess impacts and design project specific mitigation measures, typically attached as an appendix to the EIS, or*
- *an Other Issue Assessment where the impacts are reported in the EIS and which can typically be managed through routine mitigation and management measures."*

The concept is expanded upon in Sections 3.10.1 and 3.10.2. **From the Society's viewpoint it is exceedingly disturbing and grossly unacceptable.**

The Society contends that the Scoping Report, leading to the SEARs and now the EIS comprise a bureaucratic exercise designed to ensure that all proposals become approvable in the DPE's assessment report. The SEARs, derived substantially from the Scoping Report, is used to categorize potential issues, which categorization is then the basis for requiring a specialist's report (Key issues), or not (Other issues), as the latter issues *"...are routinely managed, using standard mitigation and management measures."*⁷

The EIS report would need to include information on cumulative impacts, an analysis of how impacts have been avoided, minimised, or offset, and discussion of the acceptability of any residual impacts with reference to relevant standards or guidelines. The apparent objective is to ensure that any contentious issue is countered by specialized arguments prepared by 'suitable' consultants. The belief would seem to be that everything will be 'resolved' by this stage, even though provision is made for responses to the EIS and the proponents response to the responses, before undertaking the formal assessment.

The Society raises the following concerns:

- The way the process is structured, particularly in respect of the heavy emphasis on Scoping, SEARS, offsets, mitigation and residual impacts, comprises a template whereby 'one size fits all'. It is clearly directed at an 'approval' outcome to the extent that every residual impact can be offset. Nothing is sacred!
- The template is an attempt to further limit the comprehensiveness and adequacy of EISs, particular in the area of major mining projects; this is deplorable.

⁷ Section 3.10.2 pp14-15.

- The categorization of impacts into Key issues and Other issues will ensure that the latter will experience a more superficial form of assessment; yet the categorization effectively precedes a comprehensive appreciation of the proposal, as informed by expert evaluation.
- The proposal places trust in the ethics of consultants who are paid by the company and have potential for additional contracts. Particularly with mining companies, this fails to acknowledge the reality: mining companies present EISs which have inadequate baseline data, and misrepresent the scale and intensity of impacts on the surrounding community and environment. Despite clear evidence of damage to Newnes Plateau Shrub Swamps and clear statements by the Independent Monitoring Panel, mining continues to ‘prove responsibility’ beyond a shadow of a doubt. By then it is too late and chicken-feed bonds will be forfeited. **Nothing in the proposal will change this environmentally catastrophic outcome.**
- The requirement for a declaration that the material in the EIS is neither false nor misleading is a small step in the right direction, but it is easy for a proponent (consultant) to cover this by a statement about the ‘present extent of knowledge’, particularly as relationships between mining, the hydrologic regime, and biota are complex; and regardless of this, the effectiveness of such a declaration would depend on detailed monitoring and forensics in order to evaluate compliance.

Cumulative impacts are referred to in relation to the assessment, but the whole concept remains inadequately defined, despite a methodology being promised in 2012. A ‘new’ EIA must take cumulative impacts seriously in relation to biodiversity, water resources, amenity, health, air and noise. Most importantly, the notion that a company can only be assessed in terms of its additional arithmetic contribution should be rejected and dealt with as an exponential function – in simple terms, **the additional component could disproportionately escalate the cumulative impact.**

4. Peer Review within the EIA (Guideline 9)

- Guideline 9 Section 1 p1 emphasises that: *“The way in which consultants carry out their peer review roles contributes to public confidence in the integrity of the EIA.”*

BMCS fully endorses this in the context of peer reviewing.

Apart from peer reviewing, consultants and consulting organizations operating more generally within the mining industry (and probably elsewhere) are selected by a company on the basis of their reputation within the industry. The reputation is based on expertise, the efficient and successful completion of the task, and (although not necessarily broadcast) some empathy with the proponent’s objectives. Successful completion inevitably leads to repeat business which, from a consulting viewpoint, ensures a profitable outcome. In some cases, a particular consultant or consulting organization gains a substantial amount of ongoing monitoring and interpretation, such that the interests of the company and those of the consulting organization are (too) closely entwined. Such ‘rusty on’ consultants and/or consulting organizations, in their endeavour to give the company any benefit of the doubt where uncertainty exists, adversely impact on the integrity of their reports.

Concern inevitably arises when a consulting group acting for the proponent engages a consultant from an organization with a similar ethos to undertake a peer review. This is further addressed below.

- Guideline 9 Section 2.3.1 p3 attempts to outline criteria for engaging peer reviewers. It broadly suggests, **as herein modified for clarity**, that the appointee:
 - should have significant expertise in the field being reviewed and be recognized as a senior practitioner within their industry;
 - should have no prior link to the proponent, no indirect link with the project, and no involvement in a consulting capacity at any time during the project’s development; and,

- should demonstrate independence by being objective, disclosing previously-stated opinions⁸ about pertinent contentious issues in the matter to be reviewed, and being free from any conflicts of interest which may arise in relation to the engagement.

These are all sound criteria as modified, but they do not go far enough. The criteria should include:

- emphasis that consultancies for whom assessment of mining proponents is a significant component of their businesses should not be used for peer review;
- peer reviewers should preferably be drawn from academic institutions which do not gain direct or indirect financial benefits from the mining industry; and,
- there is need for clarification about who pays for peer review reports and who selects the peer reviewer. Even with people who meet all the previous criteria, they must be paid, and he who pays the piper to some extent calls the tune!⁹ **This is the elephant in the room!** The basic needs are a register of peer reviewers compiled by DPE, allocation of a suitable person by the DPE, and payment from a government-controlled fund created by a levy on all proponents.

It is not the place of this submission to solve the problem, but various proposals about improving the integrity of the **whole consulting system** are on record¹⁰. **Had this scheme (or some similar scheme) been adopted, there would be less need to use a peer review system!**

- Guideline 9 Section 1 p1 also states: “*Peer review is an independent process undertaken by a consultant engaged by the proponent, the Department, the Planning Assessment Commission (the Commission) or other government agency.*”

The Society is concerned about the exclusion of other stakeholders such as the community and environmental organizations from the above quotation.

Provision exists for such stakeholders to submit a response when the EIS goes on public exhibition. In most cases, such response is prepared by volunteers with pertinent expertise from within the organization. There are, however, circumstances where a consultant is used, or may be used, to provide an evaluation of contentious claims in a specialist’s report. **Such a report could constitute a peer review and should be allowed for in Guideline 9.**

The DPE is aware that the duration of the public exhibition period makes engaging a peer reviewer difficult, but not impossible. BMCS contends that the EIA process allows open-ended periods for preparation of the EIS by proponents and their consultants, including provision of peer review documents; the proponent also has a less constrained time to develop a response to submissions, including providing a peer review of a contentious matter; and presumably the DPE and/or PAC has time to obtain peer reviews of critical matters prior to assessment or final determination respectively.

The Society believes that instead of trying to create a system which expedites approvals, the DPE should focus on achieving better social and environmental outcomes. This could be done by ensuring a better balance between the time taken to prepare a proposal and the time allowed to oppose it.

⁸ That is positions adopted which are inadequately evidence-based and constitute a personal preference.

⁹ Even if it only involves seeing the draft and politely suggesting subtle changes or clarifications!

¹⁰ http://www.bluemountains.org.au/documents/submissions/bs121213_senate_env_comm_ref_cttee_submission.pdf
<http://www.abc.net.au/cm/1b/5320988/data/ecological-consultants-accreditation-greens-bill-booklet-2011-data.pdf>

5. Modifying an approved project (Guideline 8)

Guideline 8 Section 5 p9 introduces the modification classification. Type 1 is of no consequence here, Type 2 (Guideline 8 Section 5.2 p10) is of limited consequence provided there are minimal ('very small' or 'negligible') environmental impacts and the proponent isn't guilty of misinformation!

The Society is far more concerned with Type 3 modifications (Guideline 8 Sections 5.3 p10 and 6.1.3 pp11-12). They typically need a more detailed level of assessment due to the complexity of the project changes, they include any modification with more than minimal environmental impacts, and there is a strong probability that they require a change to one or more consent conditions.

Despite substantial opposition from BMCS, other environmental organizations, and sections of the community concerned with health issues, noise, farming, and viticulture, mining companies have sought and secured modifications involving: additional longwalls, production increases, open-cut pit enlargements, mining of biodiversity offsets, lifting of conditions imposed to limit water pollution, and increases in the size of overburden emplacements. Such alterations greatly increase social and environmental impacts. Had such alterations been part of the **original proposals**, it is conceivable that the determining authorities may not have approved those proposals, or may have imposed more stringent consent conditions.

The incremental growth of a mining operation's footprint beyond that which was originally approved is unacceptable. It compromises the integrity of the planning system and effectively hopes for a less critical degree of assessment because 'the principal battles were resolved with the original approval'. The approach, which may largely disregard the proper evaluation of cumulative impacts, can be initiated within a year or two of consent being granted; in some cases it seems to be a response to changes in the price of coal.

The Society does not blame the proponents for 'gaming the system' in accordance with their best interests, but it does blame the system for allowing it to continue. To discourage mining companies which put forward mine-plans disguising the full extent of their mining ambitions, but then use modifications to extend and intensify impacts beyond those originally envisaged, it is necessary to ensure that modifications with more than a minimal environmental impact **automatically trigger a return to the full application process**. That is, treat it as a new project.

Finally, the Society feels that the DPE is inadvertently(?) encouraging bad practices by emphasising modifications in the Draft without signifying the undesirability of the way it is being exploited.

6. In conclusion

The Society appreciates the opportunity to comment on the Draft EIA Improvement Project and acknowledges the amount of work which has gone into developing it. Unfortunately, the Society is unable to endorse the approach adopted, because:

- there is little evidence that developing a Scoping Report (particularly if placed on public exhibition – and it should be) and project-specific SEARs will expedite dealing with proposals;
- the Draft comprises a bureaucratic exercise which fails to solve many existing problems and potentially causes more by creating a 'one-size fits all' template;
- particularly in respect of mining proposals, the Draft apparently believes that, by the time the EIS is presented, the major issues will be resolved by irrefutable arguments in the specialist's reports, perhaps supported by peer reviews – all will have been done by consultants contracted to the company;

- nothing in what is presented is likely to build community and stakeholder confidence in the EIA and the decision-making processes; and,
- suggestions have been made to improve the process, but if the same changes were made to the existing system, they would improve it greatly – this would lessen the need to pre-judge issues by introducing complications associated with the Scoping Report and project-specific SEARs.

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