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Nature Conservation Saves for Tomorrow

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Planning System Review

GPO Box 39

Sydney NSW 2001

By email: review@planningreview.nsw.gov.au

SUPPLEMENTARY BMCS SUBMISSION ON NSW PLANNING REVIEW ISSUES PAPER (NPRIP)

1. INTRODUCTION

In addition to the content of the **SOCIETY'S PRINCIPAL SUBMISSION** signed and submitted by the President (**Lachlan Garland**), the ensuing matters are drawn to your attention:

- (a) The Society is an associate member of **RiversSOS** and has read, indirectly contributed to, and endorses the matters raised in the RiversSOS submission by Leonie Kelly and date 17 February 2012.
- (b) The Society is also linked to the **Colong Foundation** and similarly endorses the comments made by Keith Muir and dated 21 February 2012.

The above is emphasized so that the *Planning System Review (PSR)* does not treat any content of these submissions as being of no concern to the Society. It concurrently avoids pages of repetition and hopefully ensures that the *PSR* fully appreciates the commonality of numerous concerns as embodied in these submissions and those of BMCS and the Nature Conservation Council.

2. SUPPLEMENTARY CONCERNS

2.1 Integrity of EIS and other environmental assessment reports (NPRIP A21 & D36)

The recent rejection of the Bill by Cate Faehrmann of the Greens, which was aimed at ensuring integrity and better science is a great pity. The rejection demonstrates that government is not prepared to address one of the biggest, if not the biggest problem besetting the planning and assessment processes: namely, the integrity of consultants who have become closely associated with the needs of the company.

BMCS totally rejects the notion of consulting organizations being subject to 'self-regulation' through membership of professional associations. During resource-based booms going back to the late sixties, members of self-regulating professional organizations had just as many 'ethical' slips as those lacking 'accreditation'.

BMCS reiterates the need for a State-wide independent register of accredited expertise. Appropriately accredited experts should be appointed from this list by government, and paid by government from a pool of funds raised from the pertinent industry. The deep pockets of industry must be kept at arms length.

The above **largely** resolves the problem of 'rusted on' consultants whose livelihoods are linked to 'repeat business', but inadequately addresses problems of collusive behaviour and the presentation of hypothesis/opinion as proved. Scientific rigorosity will only be fostered by a peer-review system and critical evaluation by adequately staffed government departments. Of course, an independent public service is fundamental to the latter!

2.2 Cumulative impacts (NPRIP Question D44)

The notion of cumulative impacts currently receives consideration within EIS documentation. This supposedly is evidence of the assessment process evolving and becoming increasingly rigorous in the context of environmental and social concerns. However, the way it is treated by consultants **at best** demonstrates a lack of understanding of what constitutes cumulative effects and, **at worst**, involves the use of reductionism and minimization. The net result is that the treatment is both ‘Mickey Mouse’ and verges on insulting.

BMCS contends that it is essential to evaluate diverse and discrete impacts from space and time viewpoints. **For example:** (i) if mine-water make from 10 longwalls (LWs) is a discrete factor affecting the quality of a river, what will be the **time-cumulative** impact of 2 additional LWs over the next 18 months, and how much more will this be exacerbated by an as yet unformulated proposal for 6 more LWs over the ensuing 8 years? (ii) If a swamp concurrently experiences mining-reduced groundwater levels, a rainfall deficit, wildfire, a subsidence-related reduction to the surface-flow gradient, and high-impact recreational damage, what will be the **space-cumulative** impacts of these diverse events and how will this change over time? (iii) If a series of open-cut mines have a **space-cumulative** impact on the quantity and quality of surface flows, groundwater, and the related ecosystems, how does this translate into a **time-cumulative** impact when placed in the context of the many previous years of underground mining? And (iv) what are the **space-** and **time-cumulative** impacts imposed on the amenity of inhabitants of a village which is progressively encompassed by open-cut coal mining or CSG extraction?

This must be addressed by a planning system which has hitherto treated each DA as an isolated ‘cut’ rather than ‘death by a thousand cuts’.

2.3 Independent Planning Panels - Planning Assessment Commissions and the like. (NPRIP Questions D65 to D80)

BMCS supports the use of independent determination authorities, but their effectiveness is compromised by two things:

- (a) **Independence of the members of the panel** – a current ‘independent inquiry’ has a ‘balanced set of members’ to the extent that some have clear affiliations (past if not present) with the mining industry, some have commercial interests which might be furthered by the panel’s recommendations, and some have environmental or academic interests which might influence their findings – the point being that it is hard to find truly independent persons, so the panel structure seeks ‘balance’ by juxtaposing potentially adversarial interests and relies on the integrity of its individuals. There is evidence of imbalance in some panels, and this raises concerns about the selection process!
- (b) **Terms of reference** – these may overly constrain the findings of a panel to the extent that, when assessing an open-cut mining proposal, the panel may be precluded from examining low-impact underground alternatives, or from recommending a reserve outcome, or from outright rejection due to insufficient science. **The terms of reference should generally be as open as possible to avoid pre-determining the outcome.**

2.4 Should any overarching objectives be weighted (NPRIP A2)

The National Water Commission¹, Sydney Catchment Authority², the NSW Scientific Committee³, and the Planning Assessment Commission⁴ (Bulli Seam Operations, July 2010) have variously recognised the threat to water quality and quantity and the dependent ecosystems posed by coal mining, and have particularly emphasized the cumulative effects. This concern has now been extended to CSG, such that the increasing and competing demands of coal mining, CSG exploitation, agricultural use, and environmental, heritage and social needs constitute a major challenge to government and planning. It is regrettable that government has so far failed to deal with the challenge, and seems to be resorting to *ad hoc* decisions while planning processes struggle to find middle ground.

Reflecting the above, Sydney’s drinking water catchments are inadequately protected. This has resulted in the EPA Board⁵ noting that the planning system: (i) requires insufficient assessment of underground mining impacts at the approval stage; (ii) permits too much emphasis on the risk-management approach which characterizes the Subsidence Management Planning (SMP) process; and (iii) effectively through the SMP and various management plans facilitates ongoing exploitation to the detriment of the environment.

BMCS contends that the SMP process has been operating for about 8 years and has demonstrably failed in the context of environmental protection. The main fault with the SMP is that, while it aims to avoid catastrophic short-term impacts on significant physiographic features, longer term and less dramatic impacts are ascribed to factors ‘unrelated’ to subsidence. The onus of proof is placed on environmental groups to counter the opinions and interpretations of well rewarded consultants.

BMCS contends that companies should be required to adhere to the Precautionary Principle unless they can prove that adverse short-term, longer term and cumulative effects will not eventuate. Trial and error is not the answer. And the suggestion that companies are observing the Precautionary Principle by conforming with the SMP process is specious and self-serving.

3. OTHER SYSTEMIC DEFICIENCIES

3.1 Exploration licences

Irrespective of whether for coal, oil, CSG, sand, clay or metalliferous minerals, ELs may be granted over parks, water supply special areas, agricultural land and even within city precincts. The right to explore is granted **without any commitment** to the right to exploit a resource. Nevertheless: (i) exploration companies operate on the **expectation** that the right to exploit will not ‘unreasonably’ be withheld; and (ii) affected properties are damaged through the generation of tracks and drilling sites, and owners and the public experience destabilization due to the possibility of exploitation.

BMCS has been assured by DECC (now OEH) and DII (now DPI) that there will be no mining or CSG extraction under National Parks and the WHA, but the community was once told that exploration for uranium would not be sanctioned in NSW – things change!

BMCS therefore believes that the planning and associated processes must ensure that any areas precluded from exploitation are excised prior to granting any form of exploration licence.

3.2 ‘DAs including EISs and EAs’

These comprise enormous documents including the appended reports of the various consultants. The applicant takes months/years to assemble all the data. The application is evaluated and (if acceptable) put out for public exhibition and response within a disproportionately short exhibition period which makes no allowance for constraints endemic to volunteer-based organizations. **If the aim is to impede the capacity of volunteer groups to make submissions, the aim is being achieved.**

Each consulting agency reiterates information already set down in the application. If there are 10 consultants’ reports there will be 10 sets of reiterated information. The applicant should be required to excise such data prior to submission; or is the additional aim to submerge government and community groups in a mass of irrelevant ‘paper’?

In some recent DAs, it is clear that the various consulting groups have met to ensure a consistent story. For example, a groundwater consultant presents an ‘experience-based’ interpretation of what might happen and cites the ‘supporting’ conclusions of the mining and flora consultants, but when the reports of these consultants are examined, it becomes apparent that their conclusions substantially rely on the groundwater consultant’s experienced-based input. Such an incestuous process is poor science and leads to ‘shaped’ findings. **A consultant should provide his/her interpretation of his/her work in the area of expertise; practising ‘group-think’ is unacceptable – or should be!**

Applicants and consultants typically engage in reductionism and minimization such that an impact can be termed minor or insignificant and/or claims can be made about the likelihood of long-term recovery. For example: (i) any reduction of surface flow due to local upsidence is inevitably deemed ‘minor and likely to recover over time due to self-healing’; and (ii) additional discharge of mine-make from two additional longwalls are deemed to be insignificant when compared with the magnitude of currently approved discharges – but what is the impact of the current discharges and how will adding to them improve matters?

BMCS strongly believes that the planning process should:

- (a) acknowledge the limited capacity of volunteer-based organizations by enforcing the removal of extraneous data from appendices and increasing the length of the public exhibition period;
- (b) be cognizant of ‘cross-fertilization’ practices whereby consultants provide over-enthusiastic endorsements of the applicant’s proposal; and,
- (c) recognize the subterfuges of reductionism and minimization, and take action to stamp out these shoddy practices.

3.3 Subsidence Management Planning (SMP)

The SMP process has had limited success in curtailing the worst examples of subsidence related cliff-damage, but far less success in respect of mining-related (including subsidence) impacts on the hydrologic regime (see section 2.4). The process, controlled by DPI (Resources and Energy), employs a risk-management approach to potential impacts. It establishes a range of triggers and responses, which ensures that the progression of mining is only impeded under extreme circumstances.

Plans devised to protect the environment are typically required under the conditions of approval of the SMP Application. All involve monitoring (e.g., actual subsidence data versus predictions in the SMPA, regular cliff surveys, flora and fauna, surface water flows and quality, groundwater behaviour, and systematic photography) and are **superficially** impressive. Unfortunately, if the monitoring is incapable of answering the questions being asked (e.g., due to poor sample locations, inadequate numbers of samples, and distortions arising from uncontrolled natural variables or other forms of interference) it is open to misinterpretations.

The plans, which embody risk-management processes, are devised by the company (using the consultants who prepared the original SMPA) and government departments. Representatives of concerned envirogroups are excluded from this process, seemingly because they are ‘biased amateurs’ and neither subject to government control nor company productivity constraints. The fox is clearly in charge of the hen house!

The company is required to recognize the existence of an impact and, **only if deemed significant under the appropriate risk-management process**⁶, notify government, which then decides in conjunction with the company and the pertinent consultant(s) what should be done. Further investigations may be planned and remedial action considered, but despite not knowing the reason for the problem, mining continues and the precautionary principle is ignored.

By way of example, BMCS cites a mining-induced impact on the East Wolgan Swamp (EWS) on the Newnes Plateau. BMCS first drew attention to lost surface flow in September 2008 – the consultant rejected what was said. BMCS subsequently photographed surface water disappearing down a hole in the stream bed, and then went to the locality with the consultant who at last acknowledged the problem. The company notified government that a Newnes plateau shrub Swamp (NPSS) was affected by substantial water losses – BMCS was excluded from subsequent activities.

A presentation of the consultant’s hypothesis regarding the ‘unique’ circumstances leading to the EWS losses was finally given to BMCS in August 2009. Further investigations were devised to understand the scope of the problem. BMCS was advised (August 3 2011) that the work was completed but the report could not (‘as yet’) be released to BMCS. It has taken 3 years to produce a report which (as far as is currently known) only deals with damage to the peat swamp – nothing relates to the permanent water losses (~8 ML/dy). Remediation plans have yet to be developed.

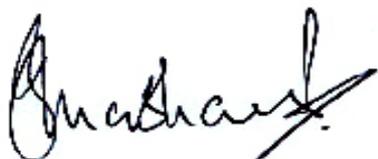
BMCS concludes that the concepts of risk management and remediation proceed at snail’s pace while ‘mining-in-ignorance’ continues unabated.

Based on experience with the SMP process since its inception on Newnes Plateau, BMCS draws attention to the following:

- The consultant who prepared the hydrologic assessments for the SMP Applications (Angus Place, Springvale and Clarence) also worked with government to devise the Newnes Plateau Shrub Swamp Management Plan and had input to the Environmental Management Plans.
- The same consultant was involved with and seemingly devised, again in cooperation with government, the groundwater, surface water and soil moisture monitoring programs.
- The same consultant provides appendices for the SMP Status Reports and annual reports on the effectiveness and interpretation of the monitoring programmes – despite the adequacy of the programs being repeatedly questioned by BMCS.
- The same consultant has provided hydrogeological assessments for Angus Place’s EA (LWs 900W and 910), and Springvale’s EA (LWs 415-417), and has supported Centennial’s contention that the proposals should not be deemed controlled actions under the EPBC Act.
- Because the consultant has devised the management and monitoring plans in conjunction with government, the situation is one of **collective ownership** – criticism of the effectiveness of the plans is unlikely to be well received by their ‘owners’.
- ‘Ownership’ leads to a situation where poorly substantiated interpretations of monitoring data in SMP Status Reports are treated as fact and readily accepted by government, despite there being alternative explanations.
- Scientific and professional credibility stems from obtaining factual data and providing an interpretation whilst concurrently acknowledging alternative possibilities – it does not stem from blinkered interpretations, particularly when they are treated as proven in later documents.
- Government must not accept substandard monitoring programs – rather it should obtain advice on the best available methodology and, if compromises are necessary, fully acknowledge the limitations of the data generated.

BMCS consequently believes that:

- (a) a comprehensive review of the SMP process is urgently needed – the process was introduced to overcome acknowledged and documented environmental damage caused by coal mining, yet it is effectively conniving at it;
- (b) there is need to act against the protracted use of a company's 'rusted on' consultants who have provided 'satisfactory service' – this is a problem throughout planning processes;
- (c) the integrity of staff in planning and other departments must neither be compromised nor have the appearance of being compromised – when a staffer leaves a department controlling the SMP process (say) and lucratively joins a coal company, confidence is lost – confidence is similarly lost when a staffer too readily embraces the assertions of a 'captive' consultant.



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

¹<http://www.nwc.gov.au/www/html/629-effects-of-mining-on-groundwater.asp?intSiteID=1>

² <http://www.environment.nsw.gov.au/water/sdwc2010.htm>

³ <http://www.environment.nsw.gov.au/threatenedspecies/LongwallMining.htm>

⁴ www.pac.nsw.gov.au/DesktopModules/PAC_Review.../getdocument.aspx?...

⁵ NSW EPA Board, Inquiry into NSW Southern Coalfield. NSW EPA Board Submission, July 2007

⁶ This really means that the impact must be outside predicted or 'anticipated' effects as identified in the SMPA, not be classed as a low or very low risk and of little significance, or not be seen as minor and/or probably recoverable.