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Nature Conservation Saves for Tomorrow

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**The Director Strategic Regional Policy
Department of Planning and Infrastructure
GPO Box 39
Sydney 2001**

COMMENT OBJECTING TO THE DRAFT STATE ENVIRONMENTAL PLANNING POLICY (MINING, PETROLEUM PRODUCTION AND EXTRACTIVE INDUSTRIES) AMENDMENT (RESOURCE SIGNIFICANCE) 2013

1. INTRODUCTION

The Blue Mountains Conservation Society has operated in various guises for over 50 years. It interacts strongly with the main Sydney-based conservation groups through what is termed the Electoral Liaison Officer. The Society has a membership of about 850 and is particularly concerned with environmental matters pertaining (but not exclusively so) to the Greater Blue Mountains Area. Particular issues of concern to the Society are: underground and open-cut coal mining along the Western Escarpment and beneath Newnes Plateau; the possibility of CSG exploration immediately to the east and west of the Blue Mountains and even beneath them; changes to Planning which impact on the BMCC's LEP; and any forms of threat to the Greater Blue Mountains World Heritage Area and its contained National Parks and State Conservation Areas. Typical examples of such threats include raising Warragamba Dam, the impact of ongoing longwall mining on Thirlmere Lakes, substantial upgrades to the Bells Line of Road, and now the draft amendments to the Mining SEPP.

The Society initially felt that the uproar from major environmental organizations would be sufficient to deter the Government from persisting with the SEPP amendments, but the Management Committee has now decided that BMCS must strongly oppose the proposed amendments in the interest of communities throughout NSW. In short, the Government would seem to be opting for legislation which will heavily bias the decision-making process in favour of the mining and CSG industries. These industries continue to ask for 'certainty' and time-efficiency in their dealings with government; but this really means 'certainty' and time-efficiency in that government accedes to proposals in minimum time following the principles of economic rationalism. While all companies claim to be good corporate citizens, their principal allegiance is to the bottom line. Their corporate responsibility largely comprises conforming with the constraints imposed on them in the interests of the broader community and the value it places on social and environmental outcomes.

The draft amendments will serve to downgrade the value assigned to social and environmental concerns, these comprising parts of a quality-of-life package, and to further exacerbate the emphasis on crude cost-benefit economic analysis. The consequence will be a strengthening of community opposition, and this will likely lead to enhanced civil disobedience in the face of what will be perceived either, at best, governmental intransigence, or at worst government being in the pockets of 'big business'.

BMCS strongly urges the NSW Government to accept that **the current Mining SEPP and the assessment processes** have evolved to a degree where there is a semblance of balance between the wishes of the mining companies and the well-being of the impacted communities; although many would argue that the process is already biased towards the mining and CSG industries, as is potentially demonstrated by the very few proposals which are rejected. The inevitable conclusion must surely be that the proposed amendments will further disempower all those who believe environmental, social and heritage values are the poor relations as the Government strives to maximise the short-term dollar-value of our finite natural assets.

The proposed amendments should be dropped.

2. RECENT HISTORY

Without wasting too much space covering matters relating to the 2007 Mining SEPP, it is nevertheless worth emphasising that it requires:

- (a) consideration of the compatibility with other land uses in the affected region, must look at the implications and management of social and environmental issues, and must address the matter of rehabilitation; and,
- (b) the establishment of appropriate planning controls to encourage ecologically sustainable development (ESD).

As things currently stand, it is largely a matter for the principal decision-makers to assess a proposal in the context of the Mining SEPP and, in doing so, determine the relative weightings given to the various environmental, heritage, social and economic factors within the broad ESD framework. Increasingly over the last few years, several decisions have suggested a movement away from rigidly quantified economic rationalism in which many social and environmental values are treated as intangibles, to situations where decision-makers have been prepared to conclude (without the need for rigid quantification) that adverse impacts to the community and environment greatly outweigh economic benefits.

There has also been some recognition that:

- consultants' reports to the company which stands to financially benefit from 'approval' are liable to err on the side of that company, particularly when much of the consultant's income derives from 'repeat' business;
- collusive behaviour between consultants working on different aspects of an environmental assessment can lead to undue weight to an interpretation;
- cumulative impacts in a region where there are several existing mines must be part of the assessment process; and,
- some of the work by consultants has been less than competent in terms of the species identified and their distributions, or in terms of the absoluteness assigned to the predictions of indifferently controlled modelling.

These very gradual changes have been welcomed by environmental and community groups because the simplistic dollar- and job-based arguments of the miners have not swept all before them. Not surprisingly, the miners have complained about uncertainty, the time and costs involved with preparing applications, and the time taken for government to make assessments and present definitive decisions.

The mining industry, having been used to the vast majority of applications receiving conditional approval, continues to resist any move towards more enlightened assessment approaches. It has clearly lobbied government to restore the situation where simplistic cost-benefit analyses are the only acceptable assessment criterion.

3. MINING SEPP AMENDMENTS 2013

There is little or no doubt that the amendments as proposed are aimed at speeding up the assessment process by making concessions to the mining industry. In effect, the amendments aim to restrict the options available to decision-makers and thereby grant miners certainty. This is achieved through:

- (a) introducing a new purpose and prescribing how it will be evaluated and by whom (**Section 3.1**); and,
- (b) prescribing non-discretionary approval values for a range of mining-induced impacts (**Section 3.2**).

3.1 The new purpose and its evaluation

A new purpose is added to the SEPP in that it is expressly aimed at promoting “*the development of significant mineral resources*”. This could be seen as superficially harmless, but it is intensely frightening because of what is left unstated: namely, that all other considerations will be subordinate to economic growth defined in terms of the development of the State’s finite resources.

The new purpose inevitably demands answers to what constitutes a ‘*significant mineral resource*’ and how will this be evaluated?

The 2013 draft SEPP stipulates that the “*significance of the resource*” must be the consent authority’s **principle consideration** when deciding on a mining development application. It must do this through having regard to “*the economic benefits*” of exploiting it, the “*relative significance of the resource in comparison with other resources across the State*” and, in case the message hasn’t penetrated, “*the weight to be given by the consent authority to any other matter for consideration...is to be proportionate to the importance of that other matter in comparison with the significance of the resource.*”

Advice on the relative significance of a deposit is to be provided by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS). In producing this advice, DTIRIS must consider:

- the size, quality and availability of the resource which is the subject of the application;
- the proximity and access of the land covered by the application to existing or proposed infrastructure;
- the relationship of the resource to any existing mine; and,
- whether or not other industries or projects are dependent on the development of the resource.

It is extremely hard to envisage DTIRIS (which is charged with maximising the exploitation of the State’s resources) not finding reasons for boosting the relative significance of a deposit. For example, a small, poor quality coal deposit will be deemed relatively significant if it is close to a coal-fired generating plant; and a large sub-economic sand resource will be classed as relatively significant because there are existing sand mines in the area and it could be claimed that a foreseeable construction industry could depend on development of the resource.

There is a well-known saying in legal circles: ‘*Never ask a question if you don’t know the answer*’. This clearly applies to government’s amendments to the Mining SEPP. Asking DTIRIS about the relative significance of a deposit will surely yield a predictable answer!

3.2 Non-discretionary assessment values

The 2013 draft SEPP prescribes “*non-discretionary development standards*” for mining-induced impacts such as cumulative noise and vibration levels, cumulative air quality, and aquifer interference. It stipulates that, if any of the prescribed levels are met, the consent authority may not use the complying impacts to refuse consent.

BMCS is strongly of the view that this approach is totally unacceptable. Why?

- (a) The standards currently used in relation to such things as air quality and noise are commonly invoked by industry and government as ‘*best practice*’, this typically being what has been accepted in approved applications elsewhere in the State, or in another State, or even in another ‘first world’¹ country. The reality is that the standards are generally arrived at through discussions between government departments and the company’s consultants. In most cases, environmental organizations and community groups representing those who will experience the impacts have little input. **The non-discretionary approach will enshrine the exclusion of those most affected!**
- (b) The distribution of such things as noise and air quality factors is typically determined through various computer modelling programs. Again the programs are called best practice and said to have been used in other applications which have gained approval. It should be clear that this has problems: the modelling is about what **is expected to happen in a region which has yet to be mined** – numerous assumptions are made in developing the usually contoured output – the results are commonly treated as absolute, whereas they may well be an example of GIGO². **Would it be too cynical to envisage a company/consultant juggling a few inputs to ensure compliance?**
- (c) Even if the predictions are a reasonable approximation, sensible allowance is made neither for variation in human susceptibility to noise and dust, nor for the fact that the ‘unaffected property’ contains people who are mobile and will spend much of their time in and out of affected portions of the region. **The current system is inadequate and imposing non-discretionary standards will simply give companies a target whilst continuing to disadvantage those impacted.**
- (d) Cumulative non-discretionary values in an area where several mines already exist and several others are in various stages of assessment raise some interesting problems. Clearly the cumulative values must be pre-determined for the entire region, **but has this been properly thought through?** BMCS is aware that Coalpac has argued it should only be assessed on its emissions; that it should be held responsible neither for emissions from existing mines, nor for any mines approved subsequently.
- (e) The NSW Government seems to be obsessed with the ‘one size fits all’ approach to planning issues; it does not work and no attempt to bludgeon people into conformity is going to work in a democracy. The involvement of the PAC in evaluating impacts relative to the specific needs of a region is fundamental recognition of the fact that each development application has unique attributes. Such recognition may result in the conditions of approval being matched to specific needs despite the modelling predictions satisfying the ‘non-discretionary’ values.

In relation to setting non-discretionary levels or making concessionary provisions for particulate matter, biodiversity, aquifer interference and drinking water catchments, the following dot-points are raised to demonstrate that the approach will not work. Consent authorities should in no way be fettered. Their role should not be to promote mining. Their role should be too ensure the best outcomes in terms of protecting heritage and potentially affected communities, and ensuring sound environmental outcomes.

- Particulate matter (PM) generated by coal mining can result in serious health issues. The results of recent studies are showing that there is no such thing as a healthy level of PM intake. The industry and government currently restrict standards to PM₁₀ emissions because it is argued that coal mining gives rise to relatively small amounts of PM_{2.5}. Despite this, the AMA and NSW Health warns that, particularly at an individual level, there is a significant correlation between increasing PM levels and rises in morbidity and mortality. All things of this type involve a degree of compromise and ‘acceptable’ standards are set, but for a commodity which is contributing enormously to greenhouse gas emissions and creates long-term health issues, one must surely reject complacency and err on the side of caution. How many years did it take before assurances about asbestos resulted in setting appropriate standards of exposure?

¹ This is emphasised because mining companies rarely apply rigorous standards in less-developed countries. In terms of the economics of mining, the less rigorous standards are treated as trade-offs against such things as a less stable political situation and the need for greater investment in various forms of infrastructure. Altruism is not a consideration!

² GIGO – garbage in, garbage out!

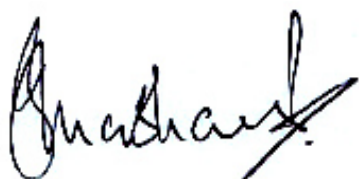
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- Biodiversity impacts are currently treated by offset packages which the consent authority must evaluate. The simple fact is that where a region contains threatened species or unique landforms and associated vegetation units, the offset approach is ludicrous. If you have only 10 known examples of an endangered species and you destroy 6 of them, please explain how an offset can resolve this loss³. Likewise, if a landform is unique, how can an offset recreate it? **The Society continues to argue that offsetting as a way of combatting environmental vandalism is totally unacceptable.**
- The amendments specify non-discretionary standards under the Aquifer Interference Policy. It is totally wrong to make any concession where water resources are concerned. Indeed, where conflict exists between the protection of water resources and development applications concerned with the mining, coal seam gas, and other extractive industries, water resources must be prioritised.
- The above particularly applies to protecting drinking water catchments from activities resulting in physical damage and water contamination. It is unacceptable for the draft SEPP to require decision makers to place economic growth and mineral development before the protection of water supplies. The solution is simple but seemingly hard for Government to grasp: **once and for all, exploration for and exploitation of resources in drinking water catchments must be banned.**

4. CONCLUDING REMARKS

The draft amendments to the Mining SEPP have seemingly been generated to prevent decision makers from reaching decisions which are unacceptable to the mining and CSG industries. In other words, approval of applications based on simplistic cost-benefit analyses which emphasise dollar outcomes and inadequately value agricultural, environmental, social, and heritage issues are the only result acceptable to the NSW Government.

The draft SEPP will, if adopted, negate any adherence to ESD, destroy inconveniently located communities, and seriously compromise threatened species and endangered communities. The conditions placed on operational aspects and entrenched in various management plans and risk-assessment processes are a bureaucrat's delight but have failed to provide adequate protection. In the context of the draft SEPP, there is likely to be even more bureaucratically imposed conditions; but they will be little more than a smokescreen to hide the damage inflicted in the name of the dollar.

The current Mining SEPP is failing the farmers, the environment, and communities; the amended Mining SEPP will greatly exacerbate the destructive capacity of this biased system. The amendments should be dropped.



*Dr Brian Marshall,
For the Management Committee*

³ It is as stupid as placing a value on each Devil identified as road-kill (after the first two) – do you really think that the Devil won't be tossed far into the bush? The monetary value will just promote dishonest reporting (or no reporting).