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Nature Conservation Saves for Tomorrow

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BMCS Submission to the Draft Special Areas Strategic Plan of Management (dSASPoM) 2013

1. INTRODUCTION

The Society notes that the dSASPoM, 'Have your say' indicates that:

"The Special Areas Strategic Plan of Management has been jointly developed by the Sydney Catchment Authority and the NSW National Parks and Wildlife Service (a part of the Office of Environment and Heritage)."

And SASPoM, pvi states:

*"This revised Special Areas Strategic Plan of Management is a strategic document that presents the shared vision of the SCA and NPWS for the management of Special Area lands. **It has been designed to focus on organisational relationships, priority setting, reporting and evaluation. The specific detail about land management work will be derived from reserve and operational plans, and agency policy and planning documents.** This will result in actions that are highly targeted and relevant to the areas being managed."*

It is clear from the above, and particularly from the sentences in bold font, that this is a superficial document which states little about the 'on the ground' management of these areas. Indeed, it is obvious that this document leads to a range of 'reserve and operational plans' which may cover all that is missing from the dSASPoM.

The obvious questions are: when will consultation take place in relation to such reserve and operational plans? Is this a case of public-relations dross floating on nothing substantial? Why are the SCA and NPWS engaging in mutual back-scratching over their collaborative approach, rather than addressing the real issues and making them available for comment?

2. GENERAL EVALUATION

Much of dSASPoM sections 1-3 comprises little more than ‘motherhood’ statements. There is, of course, value in knowing the locations of the special areas, what they are and why they are important, as presented for example in dSASPoM Section 2.3¹. But a true PoM directed at those charged with protecting the areas, and offered for evaluation by those environmental and community groups concerned with the effectiveness of that protection, **should and must be more prescriptive, and should highlight aspects very much in need of improvement.**

The document is largely devoid of information on what is to be attempted, by which of the collaborative organizations, and in what time-frames. Similarly, beyond what may be termed an acceptance of the *status quo* regarding the principal threats to the roles of Special Areas in dSASPoM Section 3, there is little attempt other than through blanket statements to say how they will be handled and whether or not the SCA is satisfied with outcomes under the existing PoM, as set down, for example, on dSASPoM p8². Given the ‘**annual**’ and ‘**every 3 years**’ reporting intervals (as emphasised in footnote 2) and the inevitable lags before such information enters the public domain, BMCS would see little room for satisfaction.

There is also little room for satisfaction with existing outcomes in the face of the increasingly strident demands from well-funded lobbying groups, and the irrational belief that catchments and reservoirs can co-exist with coal mining and CSG extraction. It is outrageous that, despite dSASPoM Section 3.8 pp14-15 recognising the pressures from proposed and ongoing coal mining and coal seam gas extraction and noting that mine subsidence has the capacity to affect ecosystems, water quality and water quantity, the dSASPoM is resigned to these damaging activities continuing. Thus, pp14-15: “*Such development pressures are expected to continue*”, and “*Coal mining in the Southern Coalfield...is likely to continue under the Special Areas into the foreseeable future.*”

Despite the SCA and NPWS having considerable powers, when it comes to potentially adverse activities, the responsibility for sanctioning proposals is effectively shifted to a range of other organizations (dSASPoM p15).

Planning authorities, including local councils are required to consult with the SCA to ensure land-use activities will **have a neutral or beneficial effect on water quality**³. Various zonations (e.g. E2 and E1) are stipulated according to whether the Special Areas are under SCA control or reserved under the *National Parks and Wildlife Act 1974*, but the dSASPoM (p15) then points out that, in any case, “*...mining and mineral exploration are allowable land uses under these zonings.*”

Furthermore, the assessment of exploration and mining proposals within leases granted by the Division of Resources and Energy within catchments, including Special Areas, is assigned to (dSASPoM p15) “*The NSW Department of Planning and Infrastructure, NSW Trade & Investment’s Division of Resources and*

¹ Thus: “*The Special Areas primarily comprise intact native forest and largely exclude land uses with the potential to generate excessive nutrients, sediments, pathogens and other substances that can pose a threat to water quality.*” “*Special Areas provide a critical barrier in a multi-barrier approach to protecting water quality....*”

“*In larger catchments, such as for Warragamba and Shoalhaven, the Special Areas form only a proportion of the hydrological catchment... the Special Areas’ role is particularly critical as they provide a final barrier immediately upstream of the water storage.*”

² Thus: “*...activities in the water supply catchments can increase the potential for adverse impacts on water quality...These activities include grazing, horticulture, intensive animal production, **mining**, urban and transport infrastructure development... the SCA encourages best practice sustainable land...through a mix of incentives, shared information, education and regulation.*”

And dSASPoM p9: “*...pesticides, heavy metals and salt are also monitored as part of the SCA’s water monitoring program. In sufficient concentrations, these pollutants could have serious impacts on the environment, ecosystems and human health...Water quality monitoring results are reported in the SCA’s **annual water quality monitoring report**. Further analysis is provided in the independent catchment audit report **every three years**...*”

³ Very easily said, but by whom and using what criteria is this ‘effect on water quality’ actually determined; and if an adverse finding is made, what happens next?

Energy and the Planning Assessment Commission". Of course, the dSASPoM (p15) points out that the SCA and NPWS are able to provide "...*advice to approval authorities, and may seek to amend proposals and include conditions of approval which will avoid or minimise impacts on water quality and ecological and heritage values*"; but massaging approval conditions is far short of vetoing the approval. **Regrettably, whereas drinking water resources should be of paramount concern, the SCA and NPWS are toothless tigers in the face of short-term economics.**

In Section 4 of the dSASPoM, one would expect to find more than just 'management jargon'. Instead, as indicated in Section 1 above, the detailed management of Special Areas (this being a major concern of BMCS) is (dSASPoM p17) "...*supported by appropriate policy, planning and evaluation*". It would be nice if this were the case, but the SCA seemingly rolls over in relation to protecting Special Areas from a range of adverse impacts (*see previous submission in Appendix A*).

Section 5 is more of the same in that it is largely devoid of the things which are of concern to the Society. The document stipulates that the SCA has responsibility for all aspects of land management on SCA lands, and within the water storages. It therefore has primary regulatory responsibility for managing access to and conduct within the Special Areas. Conversely, it seems that (dSASPoM p18: "*The NPWS is responsible for the management of lands reserved under the NPW Act, including national parks, state conservation areas, regional parks, nature reserves, karst reserves and Aboriginal areas.*")

Where Special Areas are encompassed by NPWS lands, one would hope that whichever organization has the over-riding responsibility (and one would expect that to be the SCA as it is meant to be protecting drinking water supplies) would be identified. This is not the case! Instead, dSASPoM p19 engages in vagaries and motherhood statements about 'joint management' as follows: "*Joint management recognises the separate and mutual interests of the SCA and NPWS in protecting the Special Areas, and recognises that there are shared and complementary strategic and operational opportunities for both*", and so on!

But who actually does the work on the ground, who is specifically funded for it, and who is responsible for resisting the various attempts at encroachment by mountain bikers, horse riders, coal miners, and CSG explorers and exploiters? These aspects are of great concern because OEH (driven by State government policy) is seemingly sympathetic to opening more of its lands (even Wilderness) to some of these forms of encroachment, whereas the SCA should be totally opposed to such activities.

The concerns regarding 'who will do what, how will they do it and when' continue into Section 6. The quotes from DSASPoM pp20-21 in the footnote⁴ are not designed to confuse, but they certainly achieve uncertainty.

The Society realises that it is easy to disparage the dSASPoM because of its reliance on management jargon and its failure to address some of the major issues threatening the Special Areas. But the simple matter is that the document is an attempt to make the uncertainty or lack of clarity surrounding 'who does what, when and how' into what purports to be a carefully structured plan; in this it fails.

⁴ "*The agencies will develop a rolling set of four year land management priorities for the Special Areas...This process will ensure...a common approach to land management and consistency between the agencies in addressing shared issues...*"

"Projects contributing towards the fulfilment of the shared land management priorities will be articulated in annual agency works plans for the Special Areas."

"Agencies will utilise their respective corporate planning processes to prepare works plans, drawing upon the detailed and area specific planning within existing agency planning documentation (such as reserve plans of management, operations plans, fire management strategies and pest management strategies)."

"Collectively, the respective agency plans form the annual work plan for the Special Areas."

"The agencies will implement their annual work plans independently."

SPECIFIC EVALUATION

In this section the Society will highlight a series of issues which should be addressed in any Plan of Management (including the SASPoM) relating to the Special Areas.

3.1 FUNDING ISSUES

Even the best drafted plans will not reach fruition without adequate funding. Unfortunately, the respective roles and detailed responsibilities of NPWS and SCA remain unclear under the dSASPoM and little/nothing is really said about how funds will be allocated. There is, nevertheless, an implication that funding for works done under the 'joint management' approach will be sourced from the budget of whichever agency is doing the work; and that raises the question of whether or not funds have ever been allocated to OEH with its 'joint management' commitments in mind. A similar question could be asked of the SCA regarding its 'joint management' commitments. The conclusion must surely be that when/if the allocation of duties within Special Areas (in turn within 'parks') are adequately resolved, they must be matched with a funding plan. **There should be no question of one agency subsidising the other.**

The above leads to the suggestion that OEH should have responsibility for managing high conservation lands within the Special Areas, **even when they are not currently reserved under the *National Parks and Wildlife Act, 1974* and the *Wilderness Act*. The obvious planning implication is that all Special Areas should, as a matter of high priority, be so reserved⁵.**

An outcome of the above is that the SCA should focus its efforts into those parts of the catchments beyond the outer boundary of the Special Areas. The extent that this should apply to catchments other than those related to Sydney's water supply needs further consideration.

3.2 ACQUISITION OF INHOLDINGS IN SPECIAL AREAS

This is a big issue for OEH ('parks'), the SCA (Special Areas), and the concept of 'joint management' where Special Areas are encompassed by parks. The dSASPoM should address it to the extent that criteria for purchasing inholdings should be established, the extent to which the various inholdings meet the criteria should be investigated, and a financial plan should be developed to ensure that inholdings are acquired at a specific rate over the life of the SASPoM.

A sensible starting point for acquisition would be for the Yerranderie area to be fast-tracked.

3.3 INADEQUATE REPORTING INTERVALS

This issue was raised in Section 2 para3 above. BMCS accepts that compliance with a plan of management is essential. It recognises that compliance involves meeting performance criteria, these ultimately being set down in the dSASPoM and the many other plans within the SCA and OEH to which the dSASPoM indirectly refers. The biggest problem with such an approach is that reporting intervals of 1 to 3 years (see footnote 2 on p2), despite having a rolling set of 4-year management priorities (dSASPoM p20), are insufficiently frequent to enable satisfactory response-timeframes. For example, if the SASPoM is reviewed every five years (the last one was 2007), there may have been only one 3-yearly independent catchment audit report!

BMCS' experience with reporting by coal companies under the subsidence management planning process is one of intense frustration over the lag times generated, even with 3-monthly reporting. For example, a damaging event may take place early in the 3-months period and the report may not become available until 6 weeks after that period. Those monitoring the outcome then take several weeks to deal with the report and a further few weeks are needed to investigate what actually happened. More time is then

⁵ In this respect, it should be noted that the 1998 McClellan Inquiry recommended that the NPWS should manage the Special Areas for both water quality and broader ecological concerns; and this carries the implication that its funding should be commensurately increased.

needed to decide what actions should be implemented to ensure that there is no repetition of the event. The lag time between an event and actions to prevent repetition could easily be 7-9 months.

In the case of an annual report which shows performance criteria have not been met and actions are needed to improve performance, the lag time could easily amount to 18 months. And that could well be optimistic! A strategic plan should identify performance criteria, sensible reporting and assessment intervals, and procedures to be followed where action is needed to minimise perceived deficiencies.

3.4 HORSE RIDING, MTN BIKING, HUNTING AND LOGGING

The Society opposes any attempt to have any of these activities in the Special Areas.

Despite the issues of amateur hunting in parks being partly resolved, and commercial logging in parks supposedly being rejected, it is unlikely that the issues will disappear! Pressures are also being exerted for greater and more varied access to parks (including Wilderness) by horse riders and mountain bikers – considerable concessions have been made under the present government. To the extent that OEH has (at senior levels) been moderately sympathetic to such increased access, there is a real risk that the demands will spill over into the Special Areas.

The SCA must totally reject these forms of encroachment, irrespective of any arrangements made regarding the management of Special Areas, and irrespective of whether the Special Areas are within parks. **These requirements should be stipulated as non-negotiable in any SASPoM.**

3.5 COAL MINING AND COAL SEAM GAS

Coal mining and coal seam gas exploitation potentially have significant impacts upon water catchments. Indeed, coal mining has been identified as a key threatening process to upland swamps on sandstone, this being a threatened ecological community.

Discharges of mine-make from open-cut and underground mining operations are typically saline and carry a significant range of heavy metals. They may also carry other pollutants which are environmentally injurious. **These untreated discharges should not be allowed in drinking water catchments.**

Currently, some longwall mining is permitted beneath drinking water catchments and even beneath the reservoirs. **This should be totally unacceptable. The SCA should be spearheading the opposition to this outrageous practice. Its cessation should therefore be an objective of the SASPoM**

The Chief Scientist and Engineer (CSE) produced an interim report on CSG exploration and extraction. Her final report is unlikely to be available for some time. Government will inevitably mark time until the final report appears. It is likely that the report will sanction CSG extraction under very stringent conditions because there will be insufficient base-line science to prove that well-managed exploitation adversely affects aquifers⁶. This will constitute a ‘suck it and see’ triumph over the Precautionary Principle, no matter how well disguised!

Government has given assurances that neither coal mining nor CSG extraction will be permitted in the World Heritage Area and therefore the National Parks it includes. **BMCS is firmly of the view that neither of these activities should take place in the Special Areas. Any SASPoM should have the total rejection of CSG exploration and extraction, and ultimately the rejection of coal mining in the Special Areas, as clearly defined objectives.**

The society uses ‘ultimately’ (above) because two State Conservation Areas were created over parts of the Metropolitan and Warragamba Special Areas that already contained active coal mines, while two others (Nattai and Yerranderie State Conservation Areas) contain abandoned mines. **Any SASPoM**

⁶ This approach is devious because, almost by definition, any examples of damage due to CSG extraction are attributed to lapses in the management of the ‘risk-free’ practices!

should necessarily take notice of these past actions but not allow them to be recognised as precedents. It should again be an objective of any SASPoM to terminate mining in the Special Areas as soon as it is practicable to do so.



*Dr Brian Marshall,
For the Management Committee*

October 10, 2013

Appendix A

June 1, 2013

**Regulation Review
Sydney Catchment Authority
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By email: regulationreview@sca.nsw.gov.au

BMCS submission regarding the draft Sydney Water Catchment Management (General) Regulation 2013

The Blue Mountains Conservation Society wishes to express its overall support for the proposed Regulation 2013, but concurrently believes that there are instances where greater protection is warranted.

The Society is extremely conscious of the threats to Special Areas⁷ in terms of pressures to gain access by special interest groups such as horse riders and mountain bike organizations. The Society therefore wishes to categorically emphasise that under no circumstances should the restrictions applicable to Special Areas – No Entry, Special Areas – Restricted Access and Controlled Areas – No Entry be in any way weakened. Rather, with increasing pressures linked to population increases and the emphasis placed by government on the acceptability of high-impact recreational activities, there is a very strong case for strengthening regulatory powers.

It is of considerable concern to BMCS that a PEL held by AGL appears to impinge on the Special Areas and the Controlled Areas of Lake Burragorang. It is also of concern that exploratory drilling has been carried out to the west of Oakdale at least within Special Area – No Entry. Should these pieces of information be incorrect, the Society would appreciate clarification. Conversely, if they are correct, such activities are surely incompatible with Special and Controlled Areas Regulations. The Society wonders why the regulations are seemingly not enforced, or how CSG exploration and assessment can proceed irrespective of the regulations. Surely, if CSG exploration and assessment over-ride regulations applicable to Special Areas, the deficiency should be rectified?

⁷ *Special Areas, What you can and can't do in Sydney's water supply catchments*, Sydney Catchment Authority, www.sca.nsw.gov.au

It could be that the Premier's announcement⁸ covers some parts of Special Areas by placing a 2 km buffer around residential areas and 'Critical Industry Clusters', and implying that such buffers will apply to any CSG activity not yet approved under the *EP&A Act* or the *Petroleum (Onshore) Act*. However, all licences and leases, whether for exploration (PEL), assessment (PAL), or production (PPL), are issued and therefore approved under the *Petroleum (Onshore) Act*. It is therefore unclear whether a company with a PEL can continue exploration but will never have a PAL approved, or a company with a PAL will never be issued with a PPL. But regardless of this uncertainty, the larger parts of all Special Areas are unlikely to contain residential or 'Critical Industry Clusters', so there is a strong case for all Special Areas and any parts of water supply catchments not covered by Special Areas to be categorically excluded from any form of CSG activity.

Why is the foregoing a major concern to the Society? The simple answer is that longwall coal mining beneath water supply catchments and holding reservoirs should be totally unacceptable, yet this practice continues to varying degrees with impunity. If government cannot see that longwall-induced subsidence with contamination and loss of surface water and groundwater is a major threat to water supply, the Society has little confidence that government will withstand the temptation of CSG dollars. The Society considers that it is time for government to re-evaluate the relative worth of water supply versus the short-term profits but permanent damage caused by the extractive resources industries.

Hunting and logging: although hunting is on hold pending a governance review of the Game Council, there has been no clear indication from the Premier as to whether he will abandon hunting in parks; logging in parks is advocated by the Committee chaired by Robert Brown of the Shooters and Fishers Party, but the proposal has seemingly been rejected by Minister Parker and Premier O'Farrell. This is gratifying, yet hunting in parks was similarly rejected by Barry O'Farrell immediately before the state election. BMCS believes that hunting and/or logging in the Special Areas and any part of their catchments upstream of the special-area boundaries must be prohibited and appropriate signage displayed. BMCS notes that as there are a few private holdings within the Special Areas, it is essential that the owners and any 'guests' clearly understand that 'private' shooting parties are not acceptable.

In the context of private lands, the 2008 Catchment Management Regulation, Sydney Water (through the SCA) is empowered to prevent damage to fauna and flora, and ensure there is no removal of rock or soil. The Society most definitely supports the continuation of this provision and therefore entirely supports the retention of 2008 Regulation clause 25. This aspect is again emphasised because BMCS construes the **proposed clause 17** as being supplementary to clause 25 rather than in any way superseding it. **Should this not be so**, anyone entering the scheduled areas via a route where the signage is removed or rendered unreadable, might reasonably plead ignorance. But such a plea is invalidated by clause 25 which effectively stipulates that, even in the absence of signage, a map of the Special Areas is deemed to apply.

Despite supporting Sydney Water Catchment Management (General) Regulation 2013, the Society is concerned that neither the current and envisaged planning processes (particularly in relation to controls on developments), nor catchment management authorities are sufficiently empowered to properly control **existing use** within the Special Areas. This concern is exacerbated where the outermost upstream portions of Special Area – No Entry boundaries do not coincide with the catchment watersheds. In relation to the latter, BMCS appreciates that where this occurs on the western side of the Warragamba Special Area – No Entry, the Special Area is bounded by Wilderness; but this does not seem to be the case on the south-western side in the Jocks Creek region. So, two points are made: (i) the special-area boundary should be adjusted in the Jocks creek region; and (ii) despite being bordered against Wilderness, which **should** provide complementary protection to that of Special Areas – No Entry, the fact that higher impact (horse riding) trials are being conducted in some Wilderness regions lessens the comfort which Wilderness **ought** to provide – clearly, special-area boundaries abutting Wilderness should also be adjusted to conform with the watershed.

In 1998, existing use and beliefs resulted in the Sydney water crisis due to contamination by cryptosporidium and giardia⁹. Although the magnitude of the problem was perhaps over-stated, it became clear that there was need for better protection of the catchments¹⁰. Pressures on today's catchments, from population growth and high-impact recreation, demand even more stringent protection than that enlaced as a result of the inquiry into the original crisis.

The Society wishes to raise two additional aspects:

⁸<http://www.premier.nsw.gov.au/sites/default/files/TOUGH%20NEW%20RULES%20FOR%20COAL%20SEAM%20GAS%20ACTIVITY.pdf>

⁹ http://en.wikipedia.org/wiki/1998_Sydney_water_crisis

¹⁰ *Sydney 1998: lessons from a drinking water crisis*, <http://eprints.jcu.edu.au/6501/>

1. The regulations empower the SCA to remove any buildings and other works if they have the capacity to compromise any portion of the Special Areas. Private landowners commonly undertake works which may impact on the water quality in the catchments, and have been implemented without seeking approval from the appropriate authority. This problem could well be exacerbated when the new Planning laws come into force. The Society believes that the powers must be retained and even strengthened in view of the anticipated 'one size fits all' LEP.
2. A major source of potential impact arises because public roads in Special Areas do not class as Crown lands. In consequence, the SCA's capacity to control the users of these roads is somewhat limited. In order to counteract this anomaly, BMCS believes that the catchment regulation should be amended to ensure that the full range of potential users (including trucks, 4wd and 2wd vehicles, motor bikes and off-road trail bikes, mountain bikes and bicycles, and horse-related transport) can be properly controlled.

The Society appreciates the opportunity to provide input on the draft regulation.

Yours sincerely,

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