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Nature Conservation Saves for Tomorrow

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Submission to the Senate Environment and Communications References Committee: Inquiry into the effectiveness of threatened species and ecological communities' protection in Australia

1. INTRODUCTION

The Blue Mountains Conservation Society has approximately 850 members. Its mission is to conserve the natural environment of the Blue Mountains. It has links to the Nature Conservation Council, Colong Foundation, RiversSOS, Lock the Gate, Stop CSG Blue Mountains, to name a few.

This submission relates principally to the Society's concerns with respect to coal mining, sand mining, CSG exploration and exploitation, water quality, the Bells Line of Road Long Term Strategic Corridor Plan, and any threats to the Greater Blue Mountains World Heritage Area. One of the Society's principal campaigns is to achieve reservation of the various components of the Gardens of Stone Stage 2 Proposal.

The fact that there is a Senate Inquiry into the effectiveness of threatened species and ecological communities' protection in Australia recognises that there is a problem. The Society aims to look at some of the more recent and ongoing factors which are likely to contribute to the ineffectiveness. In doing so, the Society will, in sections 2 and 3 of this submission, effectively be addressing the following terms of reference (ToR) of the inquiry:

"(a) management of key threats to listed species and ecological communities; (c) management of critical habitat across all land tenures; (f) the historical record of state and territory governments on these matters; and (g) any other related matter."

In relation to ToR (d), *" regulatory and funding arrangements at all levels of government"*, the Society wishes to make the ensuing two points:

- Protection of threatened species will never work as long as provision exists for various forms of biodiversity offset strategy – in simple terms, if there are 5 known populations of a critically endangered species, and an open-cut mine is allowed to destroy two of them, one is left with only 3 – no amount of offset can possibly alter the fact that government [Office of Environment and Heritage (OEH) and Department of Sustainability, Environment, Water, Population and Communities (SEWPaC)] has sanctioned destruction of the very species the scientific committee has listed as threatened.
- Irrespective of how well regulated the processes associated with threatened-species legislation might be, they must be backed by adequate levels of funding to ensure that the human resources match the required tasks – based on its interaction with the Department of Planning and Infrastructure (DoPI), OEH, and SEWPaC, the Society is concerned that this is not so.

The Society believes that:

- ***The Inquiry should totally reject the use of biodiversity offsets where Matters of National Environmental Significance (MNES) and any threatened federally-listed species and ecological communities are involved.***
- ***The Inquiry should recommend that, above all else, human and financial resources must be increased to a level commensurate with proper protection of threatened species and ecological communities.***

2. GREEN TAPE ERADICATION

The devolution of responsibility for enforcing the *EPBC Act 1999* from the Federal to the State governments, this largely arising at the behest of business groups at the inaugural COAG Business Advisory Forum in April 2012, is one of the most outrageous and ludicrous concepts devised by this or any previous sets of government. It would seem that this has in part been appreciated[1]. Hopefully, the legal problems and the nonsensical concept of trying to get the States' differing systems of environmental planning to meet Federal needs will never be resolved. Nevertheless, it is noted with some trepidation, that the Federal Government will introduce its own legislation *"…to reduce the time taken for approvals of big development projects and to set out whole categories of projects that won't need federal approval at all."*[2] Such a move could well reduce the already inadequate time available for public exhibition[3], and create a range of proposals over which the Federal Government would play Pontius Pilate in terms of its environmental responsibilities. The Society strongly opposes both aspects.

The simple matter is that, whereas 'business' is always claiming that overlapping federal and state environmental powers cost them billions of dollars[4], the claim is partly nonsensical and partly a function of the way businesses have been handling the requirements. [The latter comment is based on the Society's interaction with coal companies in the Western Coalfield.]

Nonsensical is used because the claim is grossly hyperbolic and loaded according to their accounting preferences; the expenditure is always a charge against profits. Furthermore, the 'loss' to business is never (or barely) considered in terms of the $-impact the business is having on: greenhouse gas emissions (GGE) of the State, Australia and globally; and other social, heritage and environmental concerns. In fact, the benefit/cost analyses with which the Society has been involved deal with GGE in reductionist ways, and treat environmental assets as intangibles to be handled through so-called biodiversity offset strategies.

Environmental impact statements (EISs)[5] tend to comprise a company report using segments from consultants' reports. The latter reports are attached as appendices and may also be accompanied by peer reviews. These EISs (sometimes termed preliminary; usually comprising in the order of 100-500 MB of data) are sent to SEWPaC with a covering document stating that the company believes the proposal should/should not be a controlled action under the *EPBC Act 1999.* In either case, the documents go on public exhibition to enable community and environmental groups (collectively termed special interest groups or SIGs) to make submissions as to why the proposal should be deemed a controlled action; and in due course SEWPaC decides whether the proposal should/should not be a controlled action and what (if controlled) needs to be addressed. In many cases, SEWPaC then uses delegated authority to enable the State's department of planning to evaluate the proposal's compliance with both State and now flagged Federal requirements.

The Society emphasises that the company sends in the whole of the EIS, without any real attempt to limit the submission to matters likely to be of national environmental significance (MNES). Somewhat cynically, it would seem that the compliance costs are thereby maximised, while ensuring SEWPaC and the SIGs are buried in electronic paper.

Once the EIS (as now amended by the company to reflect the inputs from SIGs and SEWPaC) goes to 'planning', it may be deemed suitable for public exhibition or more clarification/work be demanded. When 'planning' is satisfied, it goes on public exhibition, submissions are received from other government departments and SIGs; the company then responds to the criticisms and provision is made for further response by government departments and SIGs.

Other cases are known where the 'preliminary' EIS has gone firstly to 'planning' and been placed on public exhibition. The company benefits from having government departments and SIGs provide guidance as to areas which need to be upgraded. It also benefits from these organizations identifying MNES and applying to SEWPac for the proposal to be called in.

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[1] *http://www.smh.com.au/opinion/political-news/bid-to-cut-green-tape-bogs-down-in-detail-20121205-2avve.html*
[2] *http://www.smh.com.au/opinion/political-news/bid-to-cut-green-tape-bogs-down-in-detail-20121205-2avve.html*
[3] *This is currently about 10 working days, yet companies, using highly paid consultants, take from many months to more than a year to develop the EA – this is a gross imbalance which particularly fails to appreciate the limited resources available to volunteer-based environmental groups.*
[4] *http://www.smh.com.au/opinion/political-news/bid-to-cut-green-tape-bogs-down-in-detail-20121205-2avve.html*
[5] *In some cases called Environmental Assessments (EAs) – this terminology will be treated as interchangeable*

Clearly the process *in toto* is cumbersome and costs money, but once the proposal receives approval, these compliance costs are tiny compared with the company's development costs, and pale into insignificance relative to the revenue from the sale of the commodity. In fact, because of the creative-accounting potential open to companies, the 'billions of dollars' are a very small factor in minimising a company's tax. And all this disregards the many 'unseen' government subsidies, best appreciated when the mining industry was presented (by Treasurer Swan) with the option of losing some of its subsidies in order to retain a 1% reduction in company tax; it was no contest – they kept their subsidies.

Business will always be looking at reducing time and energy spent on environmental compliance[6]; why else does it operate in countries with high political risk but low compliance costs? Business aims to maximise profit and will never stop seeking to undermine processes which truly favour sustainable environmental outcomes.

- ***The Inquiry should emphasise the commitment of business to maximising profits and focus on legislation as the only way of ensuring environmental compliance.***

3. SYSTEMIC DEFICIENCIES & CORRUPT PRACTICES

3.1 General picture

Why is federal oversight essential? The current dealings being examined by ASIC in relation to the Obeid family, a government minister, and assorted business people, incontrovertibly demonstrate that corrupt behaviour is simmering below the surface. This is very much a facet of human nature; with power comes arrogance and financial greed. Past examples include the behaviour linked to the banknote bribery scandal, the AWB oil-for-wheat scandal, the Poseidon nickel scandal in the 1970s, the collapse of MinSec, and collapses surrounding HIH and One-tel.

The point is that wherever business operates, room exists for dishonest practices which generally involve a few gaining at the expense of the less-informed public. In environmental matters where intangible natural assets are pitted against the exploitation of metallic and non-metallic resources, the financial incentive looms large such that there is no such thing as too much oversight. Aspects pertinent to this are developed below.

3.2 Specific aspects

There are systemic problems relating to the issue of exploration licences (ELs) that inevitably impact on threatened species and ecological communities, so environmental concerns commence in advance of approvals for development and exploitation of resources. This will be addressed in section 3.2.1 below.

In terms of development and exploitation, EISs/EAs rely heavily upon the reports of consultants. In a majority of cases the consultants are either 'rusted on' to the company or group of companies, or are recognised within the industry for the 'sensitivity' of their reports. This does not necessarily mean that the consultants deliberately lie, but in cases where there is room for uncertainty the consultant tends to favour the company. After all, he who pays the piper calls the tune! The debate is really about the magnitude of the effort reflecting the imperatives of the company, partly the input of the consultants who also run businesses, and partly the role of government departments operating under the exigencies of the government of the day.

The Society emphasises that, although the NSW Department of Planning and Infrastructure (DoPI) has the principal role in approving development applications, many other government departments have opportunities to affect the conditions under which approval is granted, and they also play significant roles in subsequent regulatory practices. In many cases the arguments presented by those for and against approval are extremely complex and deal with economically intangible factors. Perhaps not surprisingly, when faced with decisions to err on the side of precautionary environmental protection, or give approval subject to imposed (but regrettably poorly regulated) conditions which sanction damage through risk-management practices, the government opts for approval. When dealing with MNES, it is essential that their protection is not subjugated to the vagaries of State governments, which are less inclined to acknowledge the bigger picture.

The foregoing and the matters to be raised in the following subsections have bearing on the overall integrity of the processes used by DoPI. They therefore pertain to the effectiveness of threatened species' and ecological communities' protection in NSW and Australia, and the need for SEWPaC to retain oversight in the context of MNES.

BMCS has previously raised these issues in meetings with DoPI in conjunction with RiversSOS (document attached as ***Appendix A***), and in a submission to the NSW Planning System Review (document attached as ***Appendix B***).

[6] *Some companies profess to be good environmental citizens, but to the extent that the claim applies, it is forced on them by government regulation.*

➢ ***The Inquiry should recommend that, in the context of MNES, protection of threatened species and ecological communities under the EPBC Act must remain subject to rigorous oversight by the Federal Government.***

3.2.1 Exploration licences

Irrespective of whether for coal, oil, CSG, sand, clay or metallic minerals, ELs may be granted over parks, water supply special areas, state forests, 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; (ii) affected lands are damaged through the generation of tracks and drilling sites; (iii) owners and the public experience destabilization due to the possibility of exploitation; and (iii) the exploration processes have the capacity to contaminate the surface water and groundwater regimes and their associated ecosystems. These aspects are more fully developed in ***Appendix A Section 1.***

BMCS has been assured by DECC (now OEH) and DII (now DoPI) that there will be no mining or CSG extraction under NSW National Parks and the Greater Blue Mountains World Heritage Area (GBMWHA). However, the community was once told that: (i) shooting would not be allowed in these lands, yet it is happening; (ii) horse riding would not be permitted in wilderness areas, yet pilot schemes are to be implemented; and (iii) exploration for uranium would not be sanctioned in NSW, yet this has been changed. Clearly, political expedience results in changes which have adverse environmental consequences. No matter what weasel words are used, the net consequences of such changes impact on the protection of threatened species and ecological communities, irrespective of whether they are listed under state or federal legislation.

The Society therefore believes that any areas precluded from exploitation must be excised before any form of exploration title is granted. The current Strategic Regional Land Use Planning for NSW provides no certainty whatsoever. In replacing the scandalous Part 3A system and attempting to meet the requirements of farmers and environmental groups, the State Government has failed miserably. Uncertainty is the only certainty! It is inconceivable that the Federal government would devolve its environmental responsibilities to such a chaotic system.

➢ ***The Inquiry should recommend that World Heritage regions and any identified areas of National environmental significance be subject to blanket excision from any form of exploration licence.***

3.2.2 Saturation principle

EISs/EAs are enormous electronic documents comprising the 'main' report (commonly put together by a consultant extracting relevant sections from the reports of the various other consultants) and the full reports of those other consultants. The latter include (for completeness?) vast amounts of superfluous material because each consulting agency reiterates information presented in the proponent's 'main' report. BMCS appreciates that the reports are window-dressing opportunities for the consultants, and also structured to enable each report to stand alone, but it nevertheless results in too much repetition. If there are 10 consultants' reports there will be 10 sets of reiteration. The proponent should be required to excise such data prior to submission. Companies complain of 'green tape' but aggravate the problem through repetition.

The company has taken months/years to assemble the EA which is evaluated by DoPI and (if acceptable) put out for public exhibition and response within a disproportionately short exhibition period. This practice makes no allowance for constraints endemic to volunteer-based organizations. This approach may be inadvertent, but it submerges government and community groups in a mass of irrelevant 'paper'. Government (DoPI and other departments) could fail to read past the executive summaries, and could thereby have less complete appreciations of the proposals[7]. Volunteer-based groups, which need to digest all the detail, could become worn down to the point of capitulation. If the proponent aims to compromise the capacity of volunteer groups to make submissions, the aim is being achieved.

BMCS strongly believes that DoPI should recognise its own best interests, and also acknowledge the limited capacity of volunteer-based organizations, by enforcing the removal of extraneous data from appendices and increasing the length of public exhibition period**s.** This becomes increasingly critical if SEWPaC were to devolve its responsibility for MNES.

3.2.3 'Cross fertilization', collusion, integrity?

From its examination of various development applications and the detailed consultants' reports, the Society notes that various consulting groups would seem to 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 experience-based input.

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[7] *This may well be consistent with (or have even caused) the spread-sheet approach to assessments but it does not meet the needs of a government which has committed to looking at other constituencies than coal mining and CSG extraction.*

There are obviously grey areas between seeking opinion, cross-fertilization to better inform a consultant's evidence-based positions, and collusion which leads to a consultant offering interpretation beyond his/her expertise and evidence-base. The latter incestuous process is poor science and leads to 'shaped' findings. A consultant should provide his/her interpretation of his/her investigation in his/her area of expertise; practising 'group-think' is unacceptable – or it should be!

The Society strongly believes that DoPI should be cognizant of 'cross-fertilization' and collusive practices which lead to over-enthusiastic endorsements of the proponent's interests. Such awareness should be conveyed in instructions to those preparing applications; suitable penalties should be highlighted.

The foregoing leads to concern over the integrity of 'rusted on' consultants. Cate Faehrmann's Bill attempted to address the problem of consultants too closely associated with the needs of the company. Its rejection demonstrated that the State Government was not prepared to confront this issue. 'Self-regulation' through membership of professional associations has never been and will never be the answer. The Society contends that a company's proposal must be founded on reports by accredited experts appointed and paid by government from funds raised from the pertinent industry. Such a process could address the issue of 'rusted on' consultants whose livelihoods are linked to 'repeat business'. The deep pockets of industry should be kept at arms-length.

Collusive behaviour, lack of scientific rigour when an hypothesis or opinion is treated as proved, and the conflict of interest faced by 'rusted on' consultants, inevitably detract from the integrity of the assessment process. This applies at both State and Federal levels because DoPI and SEWPaC tend to be fed the same sets of reports. Accordingly, the inbuilt deficiencies must work to the detriment of threatened species and ecological communities.

3.2.4 Planning Assessment Commission (PAC)

The PAC and various independent panels of inquiry are an attempt to remove the onus of decision from the government. BMCS supports this in principle, but the independence of the appointed panel and the assigned ToR are matters of concern.

For more on this refer to ***Appendix B Section 2.3.*** Once again the problem from the viewpoint of protecting threatened species and ecosystems is that, if the recommendations of a panel are shaped by its composition and ToR, environmental issues may be inadequately addressed. Then, if the Federal Government has delegated its responsibilities to the State, MNES could be compromised.

3.2.5 Reductionism and minimization

Reductionism involves reducing a problem to its parts such that each can be assessed in isolation. On a regional level, the impact of a coal-mining proposal on the hydrologic regime, or on threatened species and endangered ecosystems, could be assessed as minor in isolation, but only if one disregards the impacts from several other open-cut mining operations. At a more local level (i.e. within the project's limits) it can comprise isolating groundwater from surface water considerations as if they were totally independent, separating the cliff-collapse risks due to highwall mining from subsurface pillar failure due to pump-out from old workings, and seeing preservation of a plant species (perhaps by a narrow buffer) as being separate from other parts of an encompassing ecosystem.

Minimization largely amounts to playing down an impact by disparaging its significance. Typically, an impact is said to be 'unlikely' and then, even in the event that something does happen, it would be 'minor' or of 'negligible significance'[8]. Alternatively, a simple numerical comparison is made by expressing the compromised area of forest (say) as a percentage of the total area of forest; a few percent is 'obviously' of no real significance! Typical examples from longwall mining are: (i) any reduction of surface flow due to local upsidence is inevitably deemed 'minor' and likely to 'recover over time due to self-healing'[9]; and (ii) in terms of the hydrological regime, the additional discharge of mine-make from two proposed longwalls is deemed to be insignificant when compared with the magnitude of approved discharges from twenty existing longwalls[10].

The Society considers that DoPI (and SEWPaC) should see reductionism and minimization as shoddy practices regularly used by proponents and their consultants to the detriment of environmental and social issues.

3.2.6 Cumulative impacts

The addition of a new mine or the expansion of an existing mine in a region disproportionately enhances adverse impacts. For any given impact, the cumulative impact potentially exceeds the sum of the contributions from the pre-existing and proposed operations. Yet, in some cases, it has been suggested that contaminants discharged into an already-polluted

[8] *This is usually considered in the context of either the dollar-value of the proposal or the costs of reducing the risk, and effectively being classed as 'acceptable collateral damage' or 'capable of remediation'.*
[9] *But does self-healing stop all losses or perhaps just reduce the rate of loss, and how does this impact on surface flows, and riparian and groundwater-dependent ecosystems? what is the impact of the current discharges and how will adding to them improve matters?*
[10] *But what is the existing impact of the current discharges and how will adding to them improve matters?*

watercourse will have negligible impact on water quality. This leads to suggestions that mining should be allowed because previous mining has already compromised the region. The Society strongly opposes this 'things can't get any worse' argument; the mining industry underestimates its capacity to wreak environmental mayhem!

The notion of cumulative impacts currently receives consideration within EIS/EA documentation. However, the way it is treated by consultants **at best** demonstrates a misunderstanding of the nature and importance of cumulative effects and, **at worst**, involves the use of reductionism and minimization to deliberately downplay them. The net result is that the treatment is environmentally insulting.

Cumulative impacts can be examined with respect to a discrete activity (say open-cut mining from several mines), or from diverse activities (say open-cut mining, LW mining, power generation, forestry and high-impact recreation). Each can then be considered at a single time or over a protracted time, and a further option is whether the evaluation relates to a single site or a broader region. Examples of differing types of cumulative impact are provided in ***Appendix B Section 2.2.***

The Society believes that DoPI and SEWPaC give insufficient weight to the role of cumulative impacts in the context of threatened species and ecological communities.

3.2.7 Section 3 conclusion

The collective consequences of the items raised in Sections 3.2.1-3.2.6, in relation to the effectiveness of protecting threatened species and ecological communities, are two-fold:

(a) The outlined deficiencies **must inevitably reduce** the effectiveness of any protection provided by Federal oversight because, although much of what has been specified relates to DoPI and other NSW government departments, SEWPaC's evaluation is subject to similar reports from companies and their consultants.

(b) In the context of the possible devolution of the Federal Government's powers under the *EPBC Act* to the States, it must be recognised that the reduction of effectiveness **will be substantially exacerbated.**

- ***The Inquiry should register concern at the range of practices used by companies and their consultants to compromise the effectiveness of threatened species and ecological communities' protection, and should strongly recommend that the pertinent departments of Federal and State Governments rigorously penalise such practices.***

4. SPECIFIC EXAMPLES

4.1 Water catchments

The National Water Commission[11], Sydney Catchment Authority[12], the NSW Scientific Committee[13], and the Planning Assessment Commission[14] (Bulli Seam Operations, July 2010) have variously recognised the threats posed by coal mining to water quality and quantity and to the dependent ecosystems; they have particularly emphasized the cumulative effects. The State Government has so far failed to deal with the challenge to the extent that the Strategic Land Use Policy makes no sensible provision with respect to protecting environmentally sensitive lands, including Sydney's drinking water catchments. Minister Hazzard claims that he must be getting the legislation about right because both the environmental organisations and the resources companies are opposed to what he has put in place. A far more realistic assessment would be that 'his' system fails everyone because of its extreme uncertainty.

The NSW Government continues to allow longwall coal mining, and now CSG exploration (and presumably exploitation), under drinking water catchments. The provisions of the special catchment areas that once protected the quality and quantity of the impounded waters are being watered down. These actions are in accordance with the NSW Government's belief that the mining and extractive industries must be given priority to ensure financial well-being. There is currently little sign that the government is in any way concerned with the environment.

- ***The Inquiry should recommend that all drinking water catchments and their contained species and ecosystems be deemed MNES and be protected under federal law from the surface to the 'centre of the Earth'.***

[11] *http://www.nwc.gov.au/www/html/629-effects-of-mining-on-groundwater.asp?intSiteID=1*
[12] *http://www.environment.nsw.gov.au/water/sdwc2010.htm*
[13] *http://www.environment.nsw.gov.au/threatenedspecies/LongwallMining.htm*
[14] *www.pac.nsw.gov.au/DesktopModules/PAC_Review.../getdocument.aspx?...*

4.2 Temperate Highland Peat Swamps on Sandstone (THPSS) and the Subsidence Management Plan (SMP) Process

In addition to the organisations concerned about the ravages of coal mining, as cited in Section 4.1, the EPA Board notes[15] that the planning system has substantial deficiencies to the extent that it: (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.

Longwall mining under Newnes Plateau in the western Blue Mountains has caused damage to both surface water and groundwater and the dependent THPSS. The THPSS (also termed Newnes Plateau Shrub Swamps) are listed under State and Federal legislation. As a consequence of this damage, the company was required to sign an 'enforceable undertaking' to the value of $1.45 million, yet the company continues to argue that accepting the undertaking is not an acknowledgement of being at fault. Regardless of this, the company was not required to stop mining and is now continuing to expand the area of longwall mining to the east beneath the major swamps in the Carne Creek region.

The main thing to be learnt from this is that DoPI and also SEWPaC (as the additional longwalls were called in as a controlled action) continue listening to and accepting the assurances of the company and its consultants. This is despite those assurances having a history of being at fault. It is clear that the EPA Board [items (i)-(iii) above] is correct. Neither the SMP process, nor the development application process (through DoPI), nor the Federal oversight (through SEWPaC) have successfully protected the threatened species and ecological communities

The Society believes that the SMP process, which has now been operating for about 8 years[16], has demonstrably failed to protect the environment. 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. It is unlikely that there will be any improvement as long as the companies are allowed to operate under a risk-management system which facilitates ongoing mining at the expense of environmental protection. 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.

A fuller examination of some of the deficiencies of the SMP process is provided in ***Appendix A Section 3*** and ***Appendix B Section 3.3.***

- ***The Inquiry should fully examine the SMP process and particularly focus on risk-management planning in view of the overall process' failure to protect threatened species and ecological communities – in effect, the SMP process is a 'get out of gaol free' card!***
- ***The Inquiry should also examine the MREMP process and make findings as to whether it is better than the SMP process from an environmental standpoint, or whether its principal function is to reduce green tape and facilitate mining.***

5. CONCLUDING REMARKS

The wide-ranging ToR of the Inquiry have enabled the Society to focus on the many deficiencies of the existing State and Federal systems for evaluating development applications (principally for coal mining) and the contained environmental assessments.

The Society sees the existing processes, even with the current level of federal oversight, as a battle in which 'volunteer-group' Davids confront 'mining' Goliaths. The mismatch between combatants in terms of the massive financial resources available to Goliath, is exacerbated by systems in which: (i) company consultants are treated as unbiased (Ho! Ho!) professionals whereas environmentalists are seen as passionately biased amateurs (irrespective of the expertise available within their membership); (ii) environmental and other management plans are determined at meetings between government departments, coal-company personnel, and selected consultants; (ii) the 'same' participants develop the risk-management plans involving triggers and required actions; and (iv) assessment of environmental damage and remediation plans are carried out and devised behind closed doors by the same parties.

It is clear that the whole system is devised to give the appearance of protecting the environment, including threatened species and communities, but it is equally clear that the system ensures mining continues with minimal disruption unless

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[15] *NSW EPA Board, Inquiry into NSW Southern Coalfield. NSW EPA Board Submission, July 2007*

[16] *The SMP process has been superseded by the MREMP (Mining, Rehabilitation and Environmental Management Plan) process but many mines continue to operate under the old system.*

there is a catastrophic disaster. Despite the mismatch, Goliath resents the system's bureaucratic impediment and the need to expend resources on what it perceives as little more than a charade.

So, to summarize, despite the hundreds of MB of data and the NSW Government's attempts to pacify farmers and environmental groups, without stopping the export of coal and gas, the Society believes that:

- **The NSW systems that are in place to supposedly protect threatened species and ecological communities are beset by deficiencies which seriously compromise their effectiveness.**

- **The Federal Government's overseeing role in relation to MNES is beset by similar deficiencies, but in the kingdom of the blind, the one-eyed man is King – there is no doubt whatsoever that the Society supports full retention of a separate Federal role – there is equally no doubt that the Society opposes any devolution of responsibilities to the State system.**

- **At a time when there is a substantial expansion of mining, it is essential that the government departments which are required to evaluate very complex issues are appropriately resourced – the indications are that this is not happening.**

- **Despite the push from business to reduce green tape and the potentially accommodating changes introduced by government, there is greater need than ever for full community engagement – and this means longer times for public exhibition and more transparency.**

- **Other more specific beliefs are highlighted in blue-bold at the end of various sections - if acted upon the effective protection of threatened species and communities would be substantially enhanced.**

Dr Brian Marshall,
For the Management committee.

Appendix A

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Nature Conservation Saves for Tomorrow

16 September 2011

BLUE MOUNTAINS CONSERVATION SOCIETY PAPER FOR THE RIVERSSOS MEETING WITH THE DEPARTMENT OF PLANNING

As an affiliated group member of RiversSOS, the Society (BMCS) endorses the issues raised and recommendations made in the Rivers 'Agenda and Recommendations' document.

BACKGROUND

- Groundwater and surface water are interdependent – an impact on one is an impact on the other – many coal mining reports seem either to be incapable of grasping this, or to apply reductionism and treat them as independent entities.
- Surface water, perched aquifers, shallow aquifers and deep aquifers comprise the hydrologic regime which is inevitably impacted by underground (particularly Longwall) and open-cut mining.
- The National Water Commission[17], Sydney Catchment Authority[18], the NSW Scientific Committee[19], and the Planning Assessment Commission[20] (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 emphasised the cumulative effects.
- These problems are highlighted with respect to the Western Coalfield but examples could equally be drawn from the Southern Coalfield and other coalfields extending northwest from Newcastle and increasingly impacted by open-cut mining.
- Temperate Highland Peat Swamps on Sandstone (THPSS), including Newnes Plateau Shrub Swamps and Hanging Swamps, are listed under Federal and State Legislation, but are one of many threatened communities comprising listed flora and fauna species in the western Blue Mountains.
- These biodiverse communities are underpinned by the hydrologic regime, which also provides base flows to the Wollangambe-Grose and Colo wild rivers (entering the World Heritage Area), the Wolgan system (flowing through the Emirates Resort and into the WHA), and the Coxs R system (ultimately reaching Lake Burragorang).
- Newnes Plateau mines discharge mine-water make at a rate exceeding 35ML/day and growing as a function of increasing mined volume – current open-cut mines along the Western Escarpment disrupt surface flows and also discharge polluted mine waters, and this will be exacerbated should proposed open-cut mines receive approval.

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[17] *http://www.nwc.gov.au/www/html/629-effects-of-mining-on-groundwater.asp?intSiteID=1*
[18] *http://www.environment.nsw.gov.au/water/sdwc2010.htm*
[19] *http://www.environment.nsw.gov.au/threatenedspecies/LongwallMining.htm*
[20] www.pac.nsw.gov.au/DesktopModules/PAC_Review.../getdocument.aspx?...

- The consequences are that the groundwater regime is compromised to the detriment of groundwater dependent ecosystems, the river systems below discharge sites are polluted by mine waters to the detriment of riparian communities, and the tourism industry is adversely affected by unhealthy or dying swamps, streams with unsightly iron and manganese staining and floating scum, and generally diminished surface flows[21].

SYSTEMIC DEFICIENCIES

1. Exploration licences

- Irrespective of whether for coal, oil, CSG, sand, clay or metallifereous minerals, these are granted over National Parks, water supply special areas, agricultural land and even within city precincts (CSG at St Peters).
- The right to explore is granted without any commitment to the right to exploit a resource, **but:**

  (i) affected properties are intensely destabilised with the possibility of exploitation hanging over their heads, and damage to agricultural lands and Parks through the generation of tracks and drilling sites inevitably occurs;

  (ii) exploration companies operate on the **expectation** that the right to exploit will not 'unreasonably' be withheld, yet even underground extraction requires surface infrastructure and this has substantial potential for impacts; and,

  (iii) BMCS has assurances from DECC (now OEH) and DII (now DoPI) that there will be no mining or CSG extraction under National Parks and the WHA.

- ***Requirement: Planning should ensure that any areas precluded from exploitation should be excised prior to granting any form of exploration licence.***

2. 'DAs including EISs and EAs'

- These now comprise enormous documents complete with the appended reports of all the various consultants – the applicant takes months/years to assemble all the data – the application is evaluated by Planning and (if acceptable) put out for public exhibition and response – the exhibition period is disproportionately short and makes no allowance for **constraints endemic to volunteer-based organisations** – if the aim is to impede the capacity of volunteer groups to make submissions, the aim is being achieved.
- Each consulting agency spends a substantial part of its report reiterating information already set down in the application – if there are 10 appended reports by consultants, then there will be 10 sets of reiterated information – the applicant or consultant should be required to excise such data prior to submission or is the additional aim to submerge Planning 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 – e.g 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 – the process leading to such 'shaped' findings is poor science and incestuous – a consultant should be presenting his/her interpretation on his/her work in the area of expertise, not practising 'group-think'.
- Applicants and consultants typically engage in reductionism and minimisation such that an impact can be termed minor or insignificant and/or claims can be made about the likelihood of long-term recovery – e.g. (i) any reduction of surface flow due to local upsidence will be minor and is likely to recover over time due to 'self-healing'; (ii) the additional discharge of mine-make to the Coxs River from the two proposed longwalls will have no significant impact in the context of the magnitude of currently approved discharges (but what is the impact of the current discharges and how will adding to it improve matters?)
- Applicants and consultants fail to adequately evaluate diverse-cumulative and simple-cumulative impacts from spatial and time viewpoints – e.g. (i) see the previous item (ii) for the time-cumulative impact of discharges; (ii) what is the diverse-cumulative impact on a swamp of mining-reduced surface flow, subsidence-related gradient change and a rainfall deficit? (iii) What is the spatial-cumulative impact on the quantity and quality of surface flows and/or groundwater induced by the open-cut mines distributed along the Western Escarpment, and how does this exacerbate the impact from the previous years of underground mining?

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[21] *Keith Muir, March 2010, documents ongoing damage from coal mining in the Gardens of Stone region – download from: http://www.colongwilderness.org.au/Gardens_of_Stone/Impact_of_coal_mining_on_GoS2_final_low_res.pdf*

- ***Requirements:***

  (a) Planning should acknowledge the limited capacity of volunteer-based organisations by enforcing the removal of extraneous data from appendices *(which might help Planning cope with its 'paper' mountain)* ***and increasing the length of the public exhibition period.***

  (b) Planning should be cognisant of 'cross-fertilization' practices whereby consultants provide over-enthusiastic endorsement of the applicant's proposal.

  (c) Planning should recognise the subterfuge of reductionism and minimisation, and enforce the need for a proper examination of what is embraced by the broader concept of cumulative impacts.

3. Subsidence Management Planning (SMP)

- Introduced in about March 2004 to counteract the acknowledged damage caused by Longwall mining – the process has had limited success in curtailing the worst examples of subsidence related cliff-damage, but there has been far less success in respect of mining-related (including subsidence) impacts on the hydrologic regime – the reasons for this will be presented in the ensuing dot-points.

- The process is controlled by DPI (Resources and Energy) which has devised a risk-management approach to potential impacts – the clear objective is to establish a range of progressive triggers and responses, which ensure that only under extreme circumstances (perhaps akin to the mine explosion in NZ) is the progression of mining impeded.

- Plans devised to protect the environment (e.g., the Environmental Management Plans and Newnes Plateau Shrub Swamp Management Plan for collieries operating in the western Blue Mountains) stem from the Subsidence Management Plan Process – the company submits an application (an SMPA) to mine specific longwalls, approval is typically granted (after public consultation) subject to conditions including the production and approval of plans to manage environmental issues, and the schedule and distribution of systematic reporting (Subsidence Management Status Reports) – BMCS receives these reports.

- All the plans involve monitoring (e.g., recorded subsidence data versus predictions in the SMPA, regular cliff surveys, flora and fauna, surface water flows and quality, groundwater behaviour, and systematic photography) – it involves consultants and company environmental staff in much work and is **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.

- All the plans embody risk-management processes – the company (through the consultants who prepared the original SMPA) and government departments whose inputs are subordinate to the process of maintaining production devise the risk-management processes – representatives of concerned envirogroups are excluded from this process, seemingly on the basis that they are 'amateurs' (irrespective of their formal qualifications), 'biased' and not subject to government control and company productivity constraints.

- The plans and SMSRs require the company to recognise the existence of an impact and, **only if deemed significant under the appropriate risk-management process**[22], notify government in various ways as a function of the nature and urgency of the impact – government then decides what should be done in conjunction with the company and the pertinent consultant(s) – following such meetings and any field inspections at which the consultant's interpretation of what has happened is presented and seemingly taken as 'gospel', further investigations are planned and discussion is had regarding possible remediation – despite not knowing the cause of the problem, there is no attempt to embrace the precautionary principle – one comment from a company in response to this, was that the company was adhering to the precautionary principle by following the prescribed process.

- An example is taken from East Wolgan Swamp on the Newnes Plateau: when BMCS first drew attention to lost surface flow based on data in the SMSRs, the consultant rejected what was said; BMCS subsequently visited the swamp and took photographs of surface water disappearing down an hole in the stream bed and not reappearing further down; in a subsequent site visit, BMCS went to the locality with the consultant who seemed surprised – this was despite a well-defined track to the area in question! The company then took steps to notify government that a NPSS was affected by substantial water losses – BMCS was excluded from subsequent activities.

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[22] *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.*

- Springvale's attention was formally drawn to anomalous surface flow losses in East Wolgan Creek in September 2008 – 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 to be undertaken and for various reasons were delayed – the work has finally been completed and a report prepared (information provided by Centennial – Aug 3 2011), but it could not as yet be released to BMCS. It has taken 3 years to produce a report and (as far as is currently known) it only deals with damage to the swamp – nothing relates to the water losses (~8 ML/dy) to a depth of 60-80 m and never to return!

- BMCS has requested information on swamp remediation plans but although there have been discussions (presumably with government and the ever-present consultant) a plan has yet to be developed – it is clear that the concepts of risk management and remediation proceed at snail's pace while 'mining-in-ignorance' continues unabated.

- The following matters are emphasised based on BMCS' Newnes Plateau experience with the SMP process since its inception:

  - The consultant who prepared the hydrologic assessments for the SMPAs (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 programmes.

  - The same consultant provides reports for the SMSRs and annual reports on the effectiveness and interpretation of the monitoring programmes – this is despite the adequacy of the programmes being repeatedly questioned by BMCS.

  - The same consultant has also been used to provide hydrogeological assessments for Angus Place's EA (LWs 900W and 910), and Springvale's EA (LWs 415-417) – the consultant has also made supporting representation in relation to 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 (and in some cases their total inadequacy) is unlikely to be well received by their 'owners'.

  - 'Ownership' leads to a situation where poorly substantiated interpretations of monitoring data in SMSRs are treated as fact and readily accepted by government, despite there being alternative possibilities – afterall, provided that the reports tick the boxes, government lacks the inclination and resources to question the content, competence and allegiances of their author.

  - 'Ownership' ensures that government interacts with the company to the exclusion of envirogroups – this is further enhanced by the company **not being required under the SMP process** to forward criticism of interpretations in SMSRs to government, and when the envirogroup forwards the criticism to government there is no response – the boat must not be rocked!

  - The envirogroup should be a party to the cosy meetings between the company and government – this would increase belief in the outcomes – Centennial has made representation to government that such meetings be tripartite, but government is not amenable (or so we are told).

  - 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 be lead into accepting substandard monitoring programmes – rather it should obtain advice on the best available methodology and, if compromises are necessary, fully acknowledge the limitations of the data generated.

- ***Requirements:***

  (a) Planning should initiate a comprehensive review of the SMP process which was specifically introduced to overcome the acknowledged and documented environmental damage caused by coal mining, yet is effectively conniving at it.

(b) Planning should ensure that the participation of pertinent envirogroups, which are currently excluded from bipartite decision-making between government and the company, is mandated.

(c) Planning must act against the protracted use of a company's 'rusted on' consultants who have provided 'satisfactory service' – this is a problem throughout planning processes and attains extreme proportions in the SMP process.

(d) Planning must ensure the integrity of its staff and those in other pertinent departments are neither 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.

Appendix B

Blue Mountains Conservation Society Inc

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Nature Conservation Saves for Tomorrow

February 28, 2012

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

rigorousness 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 Commission[23], Sydney Catchment Authority[24], the NSW Scientific Committee[25], and the Planning Assessment Commission[26] (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 Board[27] 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

[23] *http://www.nwc.gov.au/www/html/629-effects-of-mining-on-groundwater.asp?intSiteID=1*
[24] *http://www.environment.nsw.gov.au/water/sdwc2010.htm*
[25] *http://www.environment.nsw.gov.au/threatenedspecies/LongwallMining.htm*
[26] www.pac.nsw.gov.au/DesktopModules/PAC_Review.../getdocument.aspx?...
[27] *NSW EPA Board, Inquiry into NSW Southern Coalfield. NSW EPA Board Submission, July 2007*

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 metallifereous 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. I**f 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**[28], 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 programmers – 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;

[28] *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.*

(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.