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**A SUBMISSION TO THE PLANNING AND ASSESSMENT COMMISSION  
INVESTIGATING THE BULLI SEAM OPERATIONS OF  
ILLAWARRA COAL, A BHP COMPANY 15/2/2010**

**Mr Shepherd and Fellow Commissioners,**

Thank you for the opportunity to respond to this proposal. I have authority to speak for our Branch and this submission is fully supported by The National Parks Association of NSW Inc. (NPA), a 4 200 person strong organisation. A letter summarising this support is attached. The adjoining Macarthur Branch has emphasised some different aspects of NPA's opposition to certain parts of this proposal and its prior submission and presentation to this Commission is also supported by NPA's state governing body. Thus, Commissioners the public interest of the NPA's total membership who use and value reserves such as Dharawal State Conservation Area is reflected in this submission which particularly emphasises NPA's wish that Dharawal SCA is managed sustainably...a legal requirement of both the National Parks and Wildlife Act, 1974 and its 2006 Plan of Management

**EXECUTIVE SUMMARY**

NPA opposes any mining in Dharawal State Conservation Area and the Commonwealth Military lands, and will only consider changing its position if extremely strong environmental harm prevention measures are adopted.

NPA also has a state policy position that potable water catchment areas should be free of potential risks to quantity and quality of water. It thus will continue to oppose any plans for longwall mining in the "Special Areas" which are legislated to protect them from environmental risks.

NPA believes that no swamps should be undermined in view of their acknowledged very high floristic and faunal values and their roles in maintaining water supplies to class P (protected) and Class S (Specially protected) rivers and streams.

NPA has the position that the avoidance of harm, especially habitat destruction through large widths of longwalls, inappropriate mine layouts, and scales of operations planned, fail to consider the precautionary principle with respect to sustainable viability of swamps, threatened vegetation communities and associated plant and animal species. NPA also notes that no Risk Management Zones are designated for some lengths of third and fourth order streams, while all first and second order streams are planned to be largely undermined with minimal precautions

The degree of damage likely to occur is uncoded. NPA thus opposes these proposals as it believes BHP has failed to produce an indicative lan which avoids harm. NPA is not convinced that monitoring and (selected) remediation is an acceptable substitute for such avoidance measures.

NPA further notes that BHP has only recently (2/2/10) referred this proposal to the Commonwealth for referencing under the Commonwealth EPBC Act. The Company has not provided “alternatives” (that would decrease predicted damages) despite the opportunity to do so on the Commonwealth application form. NPA would maintain that BHP has a duty to spell out alternatives that predicts will do no harm to habitats (theoretically) protected in SCAs and Special Areas under state laws. It should be required to be done by this Commission, and I have no doubt that public response to the Commonwealth referral will similarly request the Commonwealth to require alternative management and some less tokenistic analysis of potential cumulative impacts from all the mining operations beneath the Woronora Plateau.

Ecological offsets for destruction of swamps which might occur should not be a stated aim of BHP’s operations. Nothing can replace them.

BHP should be required to provide a publicly administered Security Deposit of at least \$100m which reflects the real cost of effective, long term, remediation of environmental damage to natural ecosystems and physical features (such as rock bars, cliff lines and pools) of any mined areas using the best technology available at the time. Having said that, NPA asserts there is no successful long term remediation method available, so BHP might respond to such a deposit by managing operations so as NOT to forfeit this deposit. For self regulation or weak “reasonable” guidelines will not necessarily lead to positive environmental outcomes required in .high conservation value lands.

## **ABOUT NPA**

**NPA is a non-profit community organisation that seeks to protect, connect and restore the integrity and diversity of natural systems in NSW and beyond through national parks, marine sanctuaries and other means.**

NPA was formed in 1957 to lead a campaign calling for a new government body to manage natural areas throughout the State. The success of this campaign resulted in the *National Parks and Wildlife Act*, in 1967 and the establishment of the National Parks and Wildlife Service.

We are optimistic that our involvement, and opposition to much of the current plans beneath lands which include part of the National Parks estate, will lead to the Commissioners recommending much stronger protective measures for south-western Sydney’s natural areas than that recommended for Peabody’s operations...for the scale of predicted and unpredicted damages which will happen, is, we believe, an order of magnitude greater than that being witnessed at places like Waratah Rivulet.

Other Relevant facts about NPA are provided in Appendix 1

## **TERMS OF REFERENCE ACCEPTED**

NPA notes from the “Terms of Reference” for the Commission that you are to” advise on the significance and acceptability of the potential subsidence-related impacts of these operations on significant natural features and the values of Sydney’s drinking water catchment ...” You are also asked to not just advise on appropriate measures to minimise, manage, remediate or offset these impacts but to how to AVOID them.

The vast majority of the estimated 20 000 pages of the Environmental Assessment is a Company-oriented sanitised advocacy for near maximum exploitation of some of the best conserved lands in South-western Sydney based on the mantra, repeated in a thousand different ways, that the operations will have “minimal impact” or are not “expected to cause significant damage” etc etc

BHP’s concessions to the future of the landscapes and natural ecosystems is to allow longwall setbacks between 200 and 400 m from a couple of the major and more accessible higher order streams and rivers such as O’Hares Creek and Cataract River, and the Georges, Nepean and Woronora Rivers according to the proposed 300m width longwalls in the *indicative base case mine layout*. Longwalls only 140-160m wide have caused devastation of the Waratah Rivulet...and BHP advances what can only be seen as an ambit claim, by proposing longwall widths far beyond that which are currently damaging streams in southern and south western Sydney. Such setback concessions will prove inadequate if proposed longwalls of this width remain unchallenged by the Commissioners, if they really wish to recommend measures to avoid damage, not to only predict and “remediate” damage.

#### **“NO HARM” – A MISLEADING BHP SLOGAN**

A prominent BHP roadside sign near the Westcliff Colliery states “NO HARM” clearly aimed at local opinion. And will local opinion be swayed by the one million dollars in community contributions reported for last year...a contribution, welcome no doubt, from the struggling junior sports clubs and the like? While NPA would understand the value that the community places on such contributions, NPA questions whether this might help blinker many local locals peoples’ abilities to not only see the harm that has happened but that which is so clearly predicted and expected in this current proposal.

What is the value of BHP’s promised “Research Projects, Offsets and Compensatory Measures” to help predict harm and remediate damage (not to *prevent* harm over 30 years? \$1,775,000 . This looks a big number until you express it as 0.02% of total project revenue. And where is the estimate of rehabilitation costs should a major natural feature be damaged? The Southern Coalfields Inquiry (SCI) calls for a “Security Deposit” which will be forfeited should the Company not make good the effective remediation of damage to the environment. Extrapolating from the remediating costs incurred by BHP in the past, and noting the 300m panel widths advocated, the Security Deposit figure should be a minimum of \$100m, (itself only 1% of expected revenue). The Commissioners need to consider whether such a figure will dissuade BHP from following a standard to do “No Harm” or will this figure be a reasonable “business cost” of ensuring maximum profits for shareholders? The Big Australian makes decisions like this on arguably a weekly basis, so the Commissioners need to make recommendations that will truly aim to provide a real disincentive to operations that risk significant environmental damage. Government

regulations including a realistic security deposit is one such tool to provide substance to what the Commissioners recommend to government.

Commissioners should be concerned if BHP attempts to promise environmental offsets if non remediable damages occur (eg collapse of upland swamps) While disused mine land, for example, on the Illawarra Escarpment may be one offset to enhance the NPWS Reserve System, nothing of environmental quality as high as upland swamps exists there for such an offset. Avoidance of any damage to swamps is seen by NPA as far more important than receiving offsets that do not match the acknowledged very high conservation values of upland swamps, and thus NPA has the position that no swamps should be undermined.

NPA believes that BHP should not receive approval to destroy endangered Brown Bandicoot habitat through the planned massive coal emplacements. Alternatives which do not lead to this outcome need to be found. This HARM might arguably be fixed by habitat enhancement elsewhere under a (currently non existent) Biodiversity Management Plan...but alternative habitat niches are full with other animals in this fauna-rich environment. But the support of a mooted local community project (at an unspecified cost) will help enhance the false claim of BHP that it will do NO HARM. Where are the community projects to make good the faunal losses of the less furry water bugs on which endangered amphibia depend within the swamps and first order streams that drain them? Neither the Commissioners, DECCW nor the community should be swayed by promises of conscience-saving “show projects” while BHP continues near maximum resource extraction beneath a public reserve and our water supplies, wrongly labelled as “Special Areas”. Avoidance of habitat destruction will remove the needs for future offsets and community faunal recovery projects.

### **PAST AND PRESENT ACTIONS A KEY TO FUTURE INTENTS**

Mr Commissioners, how can the public accept that BHP has finally seen the light on the need to protect rivers and streams while it continues to damage the Upper Georges River north of Appin through setbacks of just 30-40m we understand? Has the recent damage encouraged BHP to actually respond to such “monitoring” by adjusting setbacks of subsequent longwalls? BHP knows that mining this close to the upper reaches of the Georges River will do harm. Otherwise it would have not suggested 200-400 m setbacks from (only some) of the third order streams and above in the current proposal. What trust can we have in a company that says it will employ adaptive management principles if current monitoring reveals damage beyond what was publicly predicted...and adjustments to mine layouts are avoided? NPA believes that it is inadequate for Companies such as BHP to mainly concentrate on attempting to remediate publicly visible sites such as Marhnyes Waterhole where public pressure is likely to be great. The unremediated damaged sites that are more remote, covered by detritus or even beneath the surface are likely to be of a much larger scale cumulatively than sites in the public’s eye. The challenge for BHP is to demonstrate care for all its current operational sites that will increase the credibility of what it promises for the future.

Make no mistake, Commissioners, that hidden (very poorly) in the hundreds of thousands of words of the Environmental Assessment is a clear awareness by BHP, not only that it will cause damage, but that it wishes to choose not to remediate much of it in lower order streams when the predicted damages occur. There are over 70km

(Appendix PB) of “significant” second, third order and fourth order streams and the majority of upland swamps earmarked for direct undermining. Appendix PB also documents the predicted high degrees of subsidence and closure along multiple reaches of little known streams such as Cascade, Wallandoola, Lizard and Dahlia replete with rock bars, pools, and waterfalls. Threatened Vertebrate Fauna habitat of the Greater Southern Sydney Region (DECC 2007) with their associated crystal clear, water bug rich down-valued first and second order streams, often with a rich array of rock pools and aboriginal axe grinding grooves all earmarked for complete undermining. This seminal cooperative study of NPWS and the Sydney Catchment Authority is not quoted among the 250 references in BHPs “comprehensive” Environmental Assessments. The Commissioners are urged to seek out instances of lack of substance in much of what has been written, due, we believe, at times to a selective reading and referencing of the literature.

**Insignificant** (NPA’s emphasis) streams that drain the upland swamps don’t even figure in this table, despite probable damage to many of them. These 1<sup>st</sup> and second order streams can so easily be dismissed as insignificant watercourses. For example the paltry \$250 000 allocated to research “associated environmental consequences” and “techniques for remediating stream bed fractures” is for so called “significant” watercourses (Table SOC-2). And the ACTUAL allocated or estimated cost to remediate these areas is not stated. To give BHP some credit however, it does state that there will be a monitoring of pool levels to identify the need and subsequent success of stream remediation works. The attempted remediation of Marhnyes Waterhole cost over \$2m and long term success is far from guaranteed. It is no wonder that BHP does not put a dollar estimate on remediating all predicted and unpredicted damage.

The Commissioners might recall that I urged them to seek an estimate from Peabody of remediation costs for all damage to the Waratah Rivulet, a third order stream grossly damaged by a longwall apparently only 160m wide. We ask again, whether this PAC will require BHP to put a spending commitment figure on actual remediation of predicted river and creek damage. and a contingency figure for remediating unpredicted damages? Such a substantive publicly administered fund needs to be set up as a guarantor against **any** environmental damage that may occur should any mining be permitted in Dharawal State Conservation Area. It should not be up to BHP to state or imply what level of damage it will **consider** rehabilitating should it be deemed necessary (by them). Both regulation AND a substantial security deposit needs to be a part of the management of this project.

## **SWAMP REMEDIATION**

NPA Notes (p6-9; Section 6.4.2) that BHP “proposes to implement rehabilitation measures, *where necessary* (NPA emphasis), to maintain the physical state and function of a swamp that experiences subsidence impacts.” The key questions you may choose to ask BHP, Mr Commissioners, is who decides if such measures are necessary. And if BHP can estimate the cost of providing football jerseys to junior sports clubs, can it provide an indicative figure of what it will cost to restore an upland swamp such as Iluka Swamp, 2km long by 3/4 km wide, probably the largest of hundreds of such swamps, if indeed it does collapse. We are heartened that BHP provides a photo (Plate 6-1; P 6-9\_ of Square Coir logs for nick point control from Good et al *unpublished work*.)

The Commissioners might ask BHP the same question asked of it at the Southern Coalfields Enquiry; Does BHP know how to remediate a collapsed swamp? BHP answered in the negative then. Can it now restore a swamp to maintain intact the conditions needed to sustain known populations of endangered vertebrates? And will BHP similarly ensure that it adequately remediate ALL damage to rock bars in first and second order streams to ensure that the water feeding from these swamps into the major creek and river systems will continue to do so?

### **CAN THE PAC RECOMMEND MEASURES TO GUARANTEE “INSIGNIFICANT DAMAGE” TO SWAMPS?**

Hidden within the Environmental Assessment’s 20 000 pages are Options B4A and B4B Longwall setbacks “to achieve 200mm target closure in selected upland swamps”.(Appendix 3) About 8 swamps, selected on unknown criteria, are indicated by a thin red line, keyed in, not as “Swamps to get more protection than most others”, but as “sterilised coal”. This is a little like the foresters definition of a tree as a vertical log...if it wasn’t so serious in its implications. What degree of “closure” is implied for all the other swamps whose coal is not hypothetically sterilised? Why model some sterilisation of coal anyway in these swamps? Are these the eight predicted upland swamps to suffer some damage...and not to be sterilised as illustrated in the public “Illawarra Coal Update” Indicative mine layout. Is it acceptable not to protect these swamps anyway? BHP has predicted they will be damaged. What does BHP offer? It makes promises to alter management regime if monitoring proves BHP’s prediction of damage is correct. A common “Catch 22” in all of this is that the adaptive management implied by this problematic commitment is that it will come after the damage has been done.

Why has the modelling of minimised harm to some swamps not translated into thin red lines surrounding “coal to be sterilised” in the “Indicative Mine layout”? NPA can only conclude that BHP is not serious about its “NO HARM” pronouncement. “No Harm” is PR not a serious statement of intent.

Will this PAC recommend measures to guarantee “no damage” to all these high conservation value swamps? If not, then it will not have seriously addressed the terms of Reference within which it operates. A strategy of “Reasonableness” as employed in the Peabody PAC is not good enough. If BHP fails to take note of its own consultants’ modelling of how swamps can be conserved, then the Commissioners need to recommend that swamps are not undermined in order to keep closures below a level where environmental harm can be avoided.

### **PREDICTION OF HARM AND ADAPTIVE MANAGEMENT... HOW TO TURN THIS STATED INTENT INTO PREVENTION OF HARM**

The Environmental Plans of BHP for Dharawal SCA, Special Areas and Holsworthy Army Lands have the predicted likelihood of some damage hard wired into multitudinous statements throughout the Environmental Assessment. (EA) In fact the Company spends much of its EA space explaining how its predictive abilities are becoming more and more refined and how its “monitoring” will help alert the company to early signs of damage (impacts both within and beyond predicted ranges).

NPA is not convinced that any monitoring regime will allow real “avoidance” of future problems, especially when 80% of impacts can occur within 2 months, and subsidence may continue 2 years after longwall collapse. The ability, and indeed willingness of BHP to alter its longwall geometry and scale under these circumstances is problematic. We in the community have also seen how strongly a coal mining company will argue that impacts are due to non mine-related factors. One only has to look at the situation with Flat Rock Swamp in the Peabody operations as evidence for this assertion. BHP reportedly will not admit that the obvious desiccation of Swamp 1 in Area 2 of Dendrobium is a result of LW mining. This is despite the piezometers apparently not showing any groundwater recharge in response to rain events since undermining occurred. We ask the Commissioners to explore whether the Groundwater has dropped 10 m in this area since mining occurred in the area. In fact all such data up to the present needs to be closely queried.

If BHP claims it can and will alter mine plans on the run should monitoring results imply a need to do so, then the Commissioners should read this as a statement of the fact that BHP KNOWS how to avoid damage if it asserts it can “fine tune” its plans. This predictive science that BHP says is becoming more and more refined should be turned into a tool to prevent harm, not to monitor works they know will cause harm. But BHP chooses to use only a double bottom line in its calculations. If it was to put a price on predicted values of environmental losses, the public interest in conserving the value of natural ecosystems would become far more obvious. Good governance by the NSW Government, including all stakeholder Ministers, and its nominees such as this Commission have a duty to put a price on the environment and require coal exploitation companies such as BHP to truly work at producing NO HARM. NO Long Wall Mining venture in NSW to date has had anything like this standard of operations imposed on it. Now is the time to move into a different paradigm of how Government and large companies like BHP can work together to achieve real sustainable development.

### **DHARAWAL STATE CONSERVATION AREA**

Despite the fact that the Plan of Management for Dharawal SCA acknowledges the leases for coal mining, there are several aspects of the National Parks and Wildlife Act, 1974 and the 2006 Plan of Management that would explicitly prevent this scale and design of planned mining to be disallowed under these instruments provisions.

NPA believes that no mining should be permitted in Dharawal SCA given the indicative plans before the Commission.

Under the *National Parks and Wildlife Act 1974*, the purpose of reserving land as a nature reserve is to identify, protect and conserve areas containing outstanding, unique or representative ecosystems, species, communities or natural phenomena so as to enable those areas to be managed in accordance with section 30J(2) of the Act.

The 2006 Plan of management states explicitly that the values of this SCA are

no different to those of the Dharawal Nature Reserve, and that despite the mining leases and limited recreational usages permitted, Dharawal SCA should be substantively managed as if it was a Nature Reserve. Garawarra SCA is managed as emphasised in the joint Plan of Management for Royal National Park, Heathcote Garawarra State Recreation (now Conservation) Area as if it was part of the adjoining Royal National Park. It too would be a National park if it wasn't for underground mining leases.

Under the *Act*, the purpose of reserving land as a state conservation area is to identify, protect and conserve areas:

It should be emphasized that the *Act* says that the main aim of either type of reserve is to "*protect and conserve*"...not to just *minimise* damage from any licensed activities.

Both reserves conserve exceptional upland swamps, which contain some of the highest species-richness values in the world (Keith and Myerscough, 1993), and the protection and conservation of ecosystems such as this is not a choice for BHP, it is a legislated necessity that it aims to conserve ecosystems, not to predict that damage will be minimal, or that only 8 swamps are under significant risk, or that even if some plants were destroyed "it is unlikely that populations will be destroyed"

The general principles of management for State Conservation Areas in New South

Wales are (Dharawal POM 2006) :

(a) The conservation of biodiversity, the maintenance of ecosystem function, the protection of natural phenomena and the maintenance of natural landscapes;

Landscapes will include rock bars of creeks and cliff lines, which are predicted to suffer some damage despite the this reference in the Plan of management to the need to "maintain" natural landscapes. Damages caused by longwall mining would thus be illegal under the *Act* which mandates Plans of Management as legal documents. The Commissioners thus have a legal duty to demand of BHP strategies that will prevent damage to the natural landscape.

The Minister for Environment having all the rights and power to manage this resource under the *NPW Act*. Part 8A (1974 No 80) states a person must not harm any threatened species, population or ecological community.... with a penalty of 2000 penalty units or imprisonment for 2 years or both"

While certain "development consents" may well waive this penalty, NPA asserts that the out of date Memorandum of Understanding (MOU) initiated by the Department of

Primary Industries - Mineral Resources addressing the continuation of exploration and mining in Dharawal State Conservation Area, was endorsed by the

National

Parks and Wildlife Service, Department of Primary Industries - Mineral Resources,

and BHP Steel (AIS) Pty Ltd. is a relevant document that places particular responsibilities on BHP. The MOU is supposed to have been reviewed five years from the date of its endorsement. At that date, BHP Steel (AIS) Pty Ltd held

Consolidated Coal Leases 724 and 767 within the state conservation area.

Since the MOU has apparently expired and not been renewed, the Minister for Environment may well have a duty to renegotiate this Memorandum with respect to Dharawal SCA, so that the “No harm” provision of the Threatened Species Act can be emphasised in the light of increases in environmental risks arising from increased scales of mining proposed for Dharawal and especially for the increased width of long wall panels since the 1998 MOU, and the recently identified (NPWS; SCA 20072007) importance of swampland habitat for threatened vertebrate species. Neither the scale of future operations, width of longwalls in this Indicative Plan or extremely high importance of swamp ecosystems for endangered vertebrate fauna were fully appreciated at the time of the original MOU. NPA would argue the current irrelevance and arguable current illegality of the original MOU under the present planned scale of operations in Dharawal SCA.

A major proviso of this MOU was that: *no operations shall be undertaken in relation to the nature reserve and the state conservation area unless they are in accordance with the Plan (of Management).*

Following NPA’s detailed evaluation of what is in the Plan of Management, BHP would clearly be in breach of it if the indicative mine layout was to receive approval. BHP must be required to resubmit its plans in ways that truly reflect the words and spirit of the Plan of Management...for in its present form NPA must reject it outright.

NPA will be watching the process by which the Commissioners address the need to ensure that BHP complies in all ways with the Dharawal SCA Plan of Management. This is its mandate. The Commission has a right and a responsibility to tackle the issue of avoidance of harm not just because it has the Terms of Reference which allows it, but it has the legal responsibility to do so because of the explicit legal requirements of the *NPW Act* and the Dharawal SCA Plan of Management, a prime legal document that spells out the standards by which delegated NPWS managers operate.

NPA believes that BHP is demonstrating disregard for the conservation of swamps and natural landscapes, especially through the scale and extent of planned longwalls, and is thus in opposition to the *NPW Act*. NPA has copied the Minister for Environment and Climate Change to alert him of this “disregard”, and has asked the Minister to not concur on this proposal unless significant steps are taken to guarantee such conservation, rather than to

largely monitor and remediate (some) predicted and unpredicted damage.

NPA is placing up front that NO mining should be permitted in Dharawal State Conservation Area, whose tenure extends to the earths centre, as confirmed by NPWS. The Commissioners might well seek legal opinion as to whether this situation, not common for SCAs in NSW, means that the coal should be conserved with the same rigour that NPWS would conserve the lithosphere and biosphere of the surface “skin” of Dharawal

Some specific objectives for Dharawal Nature Reserve and State Conservation Area provide further reasons for mandating “no damage” as the standard by which any mining should be allowed at Dharawal SCA. The emphases are by NPA to highlight the standard of conservation mandate in the POM.

- **protect and maintain** the high water quality and yield of catchment streams within the reserves consistent with the established water quality and river flow interim environmental objectives;
- **protect and conserve the full range** of native species, populations and ecological communities in as natural a state as possible;
- **maintain** established ecological processes and promote recovery of ecosystems and processes where disturbed;
- **avoid** new disturbance, and minimise and rectify adverse environmental impact associated with existing interests and visitor use of the reserves;
- **safeguard** structural landscape features and rock exposures;
- wherever possible, progressively **eliminate exploitation** or occupation inimical to the purposes of reservation and principles of management; and

#### **Policies**

- **Protect** upland swamps from activities and disturbance other than those assessed

to be essential for management and non-destructive ecological research and environmental education.

- **Protect, and where possible improve**, water quality and stream flow consistent with the established environmental objective of the protection of aquatic ecosystems, and with their classification as Class S (Specially Protected) or

Class  
P (Protected) waters

NPA's emphases on actions to be taken are more about conservation and maintenance of status quo rather than remediation of (avoidable) environmental impacts, and this is a further legislative reason for BHP to be subject to much tighter regulation should any permissions to mine be granted in Dharawal SCA.

There are approximately 70 km of "significant" second, third or higher order streams and most (or all) of the upland swamps that BHP intends to completely undermine in Dharawal SCA. Among these is the (partly) 3<sup>rd</sup> order Dahlia Creek...conveniently remote and chosen for complete undermining. No longwall setbacks are indicated. A long wall only 160m wide devastated Waratah Rivulet, a 3<sup>rd</sup> order stream in the Woronora Special Area. The indicative mining layout for BHP indicates an across the board long-wall width of 300 m.. BHP's consultant has modelled subsidence impacts from longwalls between 300 and 700m wide...and foreshadows a time when such widths might become possible as "technology advances" allow. There is no mention of uncostered environmental impacts.

There are no clear guarantees that over the course of the mine there will not be "significant impact" on water courses and to grant a mining lease on the assumption that technological advances might enable even more coal to be removed in the future is fraught with danger. The precautionary principle must be maintained. A potential thirty year open approval that may permit even more predicted damage is obscene should it be permitted.

An intention to nominate the upland swamp communities for RAMSAR listing is stated in Plan of Management. NPA supports this...it should have occurred many years ago. With the Ground Parrot "rediscovered" here after sampling only 8 upland swamps, NPA believes NPWS will have no problems achieving this listing. Thus, there will be even more urgency for any mining plans to avoid damage to all of them...only guaranteed through not undermining them.

A key component of the MOU is that mining "recognises and respects the long term land use of the area for conservation, scientific, water quality and recreational purposes". It is clear from the 2006 Plan of Management that an intention exists to strengthen the conservation status of the SCA to a "more appropriate" tenure. NPA supports this intent. Nowhere in the EA is it acknowledged how the proponent will specifically attempt to maintain the values of Dharawal SCA to achieve its overall strategy and objectives.

Nor is mining under Dharawal (or within the Special Areas) compatible with the values placed by the community on the area. Both the SCI and Metropolitan PAC recorded that community values must be taken into account when developing mine plans. The intensive mining proposed under a reserve with exceptional richness in biodiversity and endemism, including numerous aquatic values, is not consistent with the value of the area."

## **REVIEW OF STATUS OF SCA**

The overall strategy for the reserves notes:

“Reflecting the high conservation significance and little disturbed nature of the two reserves, the state conservation area category will be reviewed in consultation with the Department of Primary Industries - Mineral Resources, either every five years or when existing mining interests expire. The option of re-classification to a more appropriate protected area category such as national park or nature reserve will be considered at that time.”

So Mr Commissioners, there is an overwhelming obligation of the proponent to do NO HARM to this reserve in view of DECCW’s stated values of the area and its intention to upgrade the status of this Reserve to a higher IUCN category. Treat it like a Grade 1 IUCN reserve (Nature Reserve) now is the clear message.

### **NPA’S POSITION ON MINING IN SPECIAL AREAS**

NPA’s position has already been clearly spelt out in its original submission. To emphasise our strong stance, here it is replicated so that the Commissioners are well aware of the position of our 4200 member- strong organisation.

NPA has passed a motion at its State Council meeting on 7<sup>th</sup> November 2009. Viz:

*That NPA, as an environmental organisation concerned with the protection of natural areas, rejects outright any proposed mining under the State’s high conservation value water catchment areas noting that this will also impact on drinking water supplies for towns and cities.*

*And further, that NPA calls on State and Federal Governments to implement tough new laws to protect our water catchments and the drinking water these supply from the negative impacts of mining and other regimes in order to maintain high quantity and quality of water standards.*

*Especially now with the proposed increase in our population, the Federal Government should have a major role in protecting our water supplies into the future. That State Council request the Federal Government to start to play a bigger role in protecting our water supplies by introducing new laws to reduce the State government’s power to make decisions on these important matters.*

***Passed unanimously.***

NPA has also written to Peter Garrett, the Commonwealth Minister for Environment asking that the Commonwealth become involved in this issue in view of its stated interest in water issues across Australia. The Environmental Assessment is unclear whether the Commonwealth will decide to become involved, for water conservation and the numbers of threatened plants and animals in areas listed under the EPBC Act. NPA asks that the Commissioners pursue the matter of possible Commonwealth involvement in a proactive way, and bases recommendations only after consideration of the Commonwealth’s formal response, for NPA has no certainty over when its requests will receive a response. Recommendations should not be made to the State Government without involvement of the Commonwealth in view of the scale of this particular proposal and the clear potential interest of the Commonwealth in helping to guarantee water resources. The EPBC Act will be demonstrated as a toothless Act

UNLESS Minister Garrett becomes involved as requested. It is not good enough, as quoted in the Peabody PAC report, that there is seen to be an “overlap” of floral and faunal species under both state TSC legislation and the Commonwealth EPBC Act.

### **PREVENTING SUBSIDENCE A KEY PRECURSOR TO CONSERVING THREATENED PLANTS AND ANIMALS AND A DIVERSITY OF PLANT ASSOCIATIONS AND CRITICAL ANIMAL HABITATS**

Resource Strategies consultants acknowledges (7-33) that narrower longwalls “generally reduces tensile and compressive strains at the surface” and can “therefore result in some reduction of the scale of subsidence effects that occur at the surface.” In classic consultant speak, we are cautioned that “it is important to consider whether such a reduction would also be accompanied by any material change in environmental consequences that arise from mine subsidence” Very carefully chosen words...but they do nothing to convince us that BHP can justify increasing longwall width if “Technological advances” allow...it correctly emphasises the economic benefits of business as usual despite a growing body of literature of environmental damage caused by mining operations that exploit longwall technologies. And experience from Cataract River points to negligible damage when lonwalls were 100m wide, but much increased damage when up to 200m wide. These panels will be 300m wide and perhaps more in the future. Predictive “science” is the continuing mantra of BHP, but NPA seriously questions the extent to which BHP has considered empirical evidence of damage.

P 22 of the subsidence consultant’s predictions portends of even worse potential impact if a blanket 30 year approval is given for this site.

“As longwall mining technology improves, it is likely that it will become more efficient to extract longwalls at even greater widths than are currently being mined.”

The consultants dare to model maximum systematic subsidence parameter from 300-700m wide

Fig 4.21 acknowledges scale of actual type 3 pool impacts Pool water level have been observed to drop more than predicted by rain profiles (in some undermined areas).

11% of pools experienced type 3 impacts once total predicted closure was 215mm (states that this is low risk )...yet wider longwalls modelled that must increase the risk of pool loss, especially in the vast lengths of creeks still mooted to be directly undermined. The hidden message from BHP is that predicted pool drainage impacts have no monetary (and social and environmental) values.

### **SELECTIVE REFERENCE TO LONGWALL IMPACT LITERATURE**

The References quoted in Section 9 of the main “Bulli Seam Operations” summary contain about 250 references of which about a third quote Company-paid studies that would have had the full editorial involvement of the lead consultancy company that produced them...26 references are from the commercial Ecology Lab, for example.

As a way of assessing the extent to which BHP considered literature that objectively analysed documented examples of impacts of longwall mining on streams and swamps, we looked at one peer reviewed article by Martin Krogh in the Australian

Journal of Environmental Management. Mr Krogh quoted 57 papers in his review, about 20 from reputable, peer reviewed journals and about 20 from public or internal government reports from Australia and overseas. There is extensive evidence of a link between longwall mining and subsidence impacts on natural waterways and ecosystems.

Having postgraduate natural resource management qualifications myself, I would have expected that both BHP's consultants references and Mr Krogh's would have had many references in common, if BHP was seriously investigating ways of avoiding harm through its operations. The number of such common research references among BHP's impressive list of 250 references. None...though Dr Ann Young's scientific paper is quoted, but her more extensive Thesis referred to in Krogh's paper on Swamps is uncited. I do trust the commissioners will search out volume 14, No 3 of the Australian Journal of Environmental Management to get a slightly different, and far more objective "take" on the higher risks of longwall mining to the environment than the levels predicted by the proponent.

For unless BHP is required by a Commission such as this to address the actual results in scientific literature for the scale of damage to waterways from increasingly widening and extensive longwalls, and seriously consider the evidence of damage from residents and environment group representatives, the Commission may give unreasonable weighting to edited conclusions in the main body of this company-oriented assessment.

And where is the independent peer review by scientists of conclusions made by all participating scientists as recommended by the SCI? Review by the lead Environmental consultancy or the company is a poor substitute. I was personally surprised to see that BHP's Botanical consultant at one stage concluded that the extent of environmental impacts (on flora) will be proportional to the amount of long-wall mining. Perhaps, we in the public arena should be thankful, that despite the overall "Minimal impacts" conclusions in the main report, here was a consultant prepared to state that (presumably) larger scale damage will occur with such a scale of development. However, there is no empirical evidence quoted to be able to make such a precise mathematical prediction, with a clear meaning to scientists...Double the Area, Double the damage. While it MAY be true, there is no evidence that it is true in this particular case. It would depend on the types of terrain/width of different longwalls etc etc. If I had written that in a scientific paper. I would expect peer reviewers to challenge me. If we can't trust BHP and the individual consultant's reviewers to pick up basic scientific inaccuracies, how can any of the major conclusions of this Environmental Assessment be trusted? NPA cannot trust BHP to be scientifically objective...and the Commissioners were right in challenging Peabody to the extent that they did in that PAC. NPA expects an even higher level of professional scrutiny of BHP's conclusions...for we who represent the public interest have only today's words, our past submissions, and hope in your true independence, Mr Commissioners, as assurance that BHP will be made to rigorously justify a much more precautionary position and to convince you that what it intends will do "No Harm".

NPA strongly demands that your recommendations will give some substance to the spirit and detail of the Precautionary Principle, for what BHP has provided cannot seriously be considered as other than a highly flawed ambit claim.

Regrettably, this flawed process is not confined to Companies such as BHP. NPA looks forward to a time when employment of consultants and the guarantees to produce truly independent reports is not an internal Company process. Research has shown that a substantial percentage of such assessments fail to predict a major environmental impact. So Commissioners, even given BHP claims to be getting better at predictions, NPA asks you to compensate for the lack of public environmental appeals in a 3A Planning process, and the arguably biased nature of science that must be a risk in this environment, by making recommendations that more adequately reflect the opinions of the objective scientific community.

### **MINIMISE SUBSIDENCE to CONSERVE BIOTA**

If BHP were to use objective Science and real honest company commitment to reducing subsidence, many of the predicted cumulative “minor damages” and “unpredicted” major damages need not have occurred to the scale that has happened historically.

If the swamps don't drain, the endangered burrowing frogs and newly identified Ground Parrot populations will be better protected.

If the cliffs don't collapse, habitat for sooty owls, rock warblers and geckos remain intact

If the creeks beds don't crack, including 1<sup>st</sup> and second order streams, tadpoles can survive, water will continue to flow into larger river and creek systems and aboriginal sites will not be damaged. 15000 of the 20000 pages in this environmental assessment could have been deleted if BHP had spent just 5000 words explaining what it intends to do to reduce subsidence to an absolute minimum by all management tools at its disposal. But it doesn't.

SCI recommends RMZs for 3<sup>rd</sup> order streams and above. Has this been applied to all such streams? Dahlia Creek, for example, would have had this condition imposed on a significant part of its length. But it doesn't. Do No Harm?

### **SOME SPECIFIC RISKS TO FAUNA**

Only three endangered Eastern Ground Parrots were found over the few upland swamps sampled. The combination of habitat, food, nesting materials etc that constitutes the niche of an animal such as this may indeed only be found in a limited number of sites. But without a more extensive survey, this is unknown. This parrot has disappeared from places like Royal National Park, and its closest known stronghold is Barren Grounds on the Illawarra escarpment, preserved as a Nature Reserve due to such endangered bird populations. So too should Dharawal SCA be managed reflecting its high conservation values.

The Vulnerable Giant Burrowing Frog was only represented by tadpoles in one pond in this particular survey. And that population reportedly had to be revealed to BHP by a local resident. Sampling of swamps and ponds is inadequate in this EA.

With such threatened species at stake, all swamps must be conserved. And if those pools containing Giant Borrowing frog tadpoles dried out, will this species become locally extinct within Dharawal SCA? Dharawal should not be mined according to the indicative layout supplied. Minimal thought has been given to how to avoid harm to the habitats and animals of this important reserve.

And what about the lone platypus ? Though it is not vulnerable on a national or state basis, it hardly ranks a mention, hidden as it is in a cloak of scientific jargon as one sighting of “Family Ornithorhynchidae”. If pools dry out, Platypus move overland to find other pools. But do these pools, if still full, contain the correct soil substrate for nesting, and is there an adequate supply of food? When such species are hanging on by a thread in Southern and South-western Sydney, for how long can the argument be sustained that the collapse of some swamps and streams is of no consequence as there are others. ALL high quality animal habitat at Dharawal is precious, and we in NPA ask the commissioners to demonstrate they understand this by recommending “No Harm” strategies to government. If I said to Dharawal’s SCA managers that I wanted to drain just one rock pool to do a complete census of the aquatic fauna, I would be denied...and taken to court if I rejected this direction. Yet, 8 swamps are predicted to be under severe threat. Some (insignificant?) rock holes are predicted to (only temporarily!) dry out. Is this acceptable?

The consultant may well agree with his /her employer that such species are at minimum risk, but cumulatively, over thirty years and with other companies being exploiters of this resource in other adjacent sites, empirical evidence from many formally protected reserves points to a continuing loss of species. And BHP has not been formally reminded of the consensus of the Office of NSW Scientists that it must operate within parameters that will GUARANTEE that their operations are indeed NOT threatening. BHP does not acknowledge in its recent referral to the Commonwealth that there are any cumulative impact issues based on the several other companies operating in the region.

The Vulnerable (NSW TSC Act) Sooty Owl occurs in the region and is known to commonly roost in sandstone rock overhangs and these sites can have a long history of occupation. The threatened Large-eared Pied Bat (TSC & EPBC Acts Vulnerable) is known to roost in sandstone rock overhangs and the regionally significant Rock Warbler (*Origma*) builds its nests almost exclusively in sandstone rock overhangs. The clear rock pavements that commonly comprise the roofs of sandstone rock overhangs are often the sites where large slabs of loose bush rock can be found. These loose rock slabs form the winter habitat of the endangered Broad-headed Snake (TSC Act Endangered, EPBC Act Vulnerable) and its prey of skinks and geckos. With the collapse of sandstone overhangs these rock slabs are also lost, no longer being suitable habitat when on the floor of the forest.

I have not seen a rock warbler in Royal National Park in 20 years. Is it, like the Greater Glider not seen there since 1994 bushfires going to disappear from a theoretically protected NPWS Reserve? Is it OK to risk further regional habitat damage at Dharawal?

The Commissioners are asked to look at this summary of mammal extinctions in Royal National Park over the last 100 years (Appendix 3), caused no doubt by an accumulation of human-caused impacts. What will be your contribution, Mr Commissioners, to help ensure that a future regional list of local species extinctions does not include those that disappeared around the time that this mining proposal was approved? We ask you to do all in your power to guard against this consequence. For animal extinctions are caused by the cumulative impacts of poor planning decisions, habitat destruction and other human impacts over many years. Often though, it is one event that can often be identified as the one that tips a species over the edge. It could be a large fire, or even a chemical spill that coincided with the last sighting of a platypus in Royal National Park a few decades ago. The NSW Office of Scientists did not declare longwall mining a “threatening process” in the Threatened Species legislation for nothing. Yet BHP argues that it is not.

### **CLIFFLINES CONSERVATION FOR WILDLIFE HABITAT CONSERVATION**

NPA concurs with TEC’s position on the risk of rock falls, viz

“Damage to cliff lines has been significantly under-reported by the proponent at another of its mines in the Southern Coalfield. The EA (5-28) states that “Rock falls occur naturally, however subsidence has the potential to further reduce the stability of features such as cliff lines and increase the incidence of rock fall.” It is of concern that this reporting (Dendrobium Area 1) informed further approvals where damage also took place. It would be appropriate for strict reporting conditions to include independent verification of end of panel reports that came in time to have relevant influence on further mining approvals.”

BHP Billiton made statements that there was minimal chance of rock overhangs collapsing at their Dendrobium mine, yet closer inspection revealed far more unpredicted damage. What this prediction was saying was that for every 100m of cliff line, 3 m is predicted to collapse, and this prediction is far from certain as the situation at Dendrobium mine (BHPB) illustrates. There the Community Consultative Committee found 19 collapses where the mine’s consultants initially found only 6 in a limited (but economic) monitoring of cliff sites. Likewise, this current BHP proposal fails to address the cost of full monitoring and full remediation of destroyed habitat...and undervalues the potential impact on ecosystems of cliff collapses LIKELY to occur, if empirical evidence from their own past operations is a reasonable predictor of potential for damage.

Engineers talk of the Sydney Harbour Bridge being “over-engineered” by 300% to ensure it was absolutely safe. BHP Billiton wishes to under-engineer their operations, purely to maximise profit, since it knows from experience it has never been required to place an honest cost on environmental damage. If this approach was taken with the Sydney Harbour Bridge, it would be like making an assumption that the occasional steel girder or sandstone block might plunge into the harbour after 50 years, but that this risk is minimal, and hence acceptable. Actually BHP might say that some bits could fall off...that is predictable.. but company would patch up some of the more important bits when this happens.

### **SPECIFIC RISKS TO FLORA**

There are 6 Endangered Ecological Communities under the *Threatened Species Act 1995*

Of these, the Shale/Sandstone Transition Forest and Cumberland Plain Woodland are listed under Commonwealth Environment Protection and Biodiversity Conservation Act, 1999 (EPBC Act)

7 Plant Species are “Endangered” and 11 are “Vulnerable” under TSC Act  
5 species known to or potentially occurring in the study area are Endangered under the **EPBC Act**

Another 11 species known to occur in or close to survey area from previous studies

Another 11 species listed as rare or poorly known listed in “Rare and Threatened Australian Plants” (ROTAP)

Seven of these threatened plant species occur on sandstone /shale transition soils which abound in the area.

These figures at the very least serve to emphasise the floristic richness of Dharawal State Conservation Area, and helps explain why this site, with largely human influence and weed free terrestrial, swamp and riparian habitats is much in demand from Universities for a diversity of research projects. In this respect, it is being treated by academics as similar, if not in name, to a reference area within a Nature Reserve.

The botanical consultant prefers to group all of the six upland swamp varieties identified by Keith (DECCW) into the one category for the purpose of predicting impacts on swamps. However Fairley (Author of *Seldom Seen, Rare Plants of Greater Sydney*... personal communication, Jan 10, 2010) believes that general groupings of species lists and habitat types produce a biased idea of environmental values of an area. Fairley believes that a much more extensive GPS survey of locations of threatened AND locally significant individual plants needs to be done in order to inform debate on potential impacts. And, through the consultant not differentiating one type of swamp with a particular floristic array from another, it is much easier to state that populations of plants will not be threatened, even if a number of swamps and associated flora are severely damaged. The NPWS Plan of Management for the Dharawal Reserves aims to “conserve the full range of native species, populations and ecological communities in as natural state as possible” The decision to do only a limited floristic sampling of upland swamps and to group these swamps under the one category, makes it easier for BHP to assert that populations of plants will not be at risk.

Fairley Notes. “The (plant) list concentrates on TSC and EPBC species. This is not good enough. While these have legal protective status, we must recognize that there are many other species under threat, including those listed in CSIRO’s ROTAP listing. There are also species which are locally rare and threatened but which have not reached the TSC list. *Euphrasia collina* ssp *speciosa* is one such plant. It was last collected on Woronora Plateau in 1945 (although I found it at Maddens Plain last year). There is also an unnamed *Hibbertia* from swampy areas in Dharawal NR which is not on the TSC list.”

The flora consultant draws heavily on the Department of Planning's Report "Impacts of Underground Coal Mining on Natural Features in "The Southern Coalfield Strategic Review" in assessing potential impact on plants.

He also acknowledges that his main source for conclusions regarding potential impacts are the Subsidence, Groundwater and Surface Water Assessments of the project Environmental Assessment... documents that have been through a further filter to summarise overall expected impacts. I remind the Commissioners, that NONE of references in Krogh's seminal Review of impacts have been quoted. After examining empirical evidence, Krogh concluded "...longwall mining has the potential to severely affect upland swamps on the Woronora Plateau

Where are the references to work carried out by DECCW and SCA?

In contrast to Krogh's conclusion, the botanical consultant concludes: "The impacts of surface cracking as the result of systematic subsidence movements is expected to be isolated and of a minor nature due to the relatively low magnitudes of predicted strains and relatively high depths of cover."

So why are some selected longwalls modelled elsewhere in the report which sterilise some coal in order to achieve 200mm horizontal displacement? But these precautions don't make their way into the final report and Indicative mine layout.

And what about predictions of floral impacts at lower and higher longwall widths? Botanical consultant would have no idea of potential impacts under these unknown scenarios. Where are the recommendations to PREVENT damage to flora? **There is empirical evidence of lesser impacts to subsidence by much narrower longwalls, so why doesn't the consultant allude to this possibility?**

Predictions of low likely incidence of rock falls for major watercourses assume no impact if a few hundred meters away... Consultant has not predicted impacts on rock falls (and associated flora) for more minor rock overhangs, which can still provide valuable plant and animal habitat.

There are predicted "significant natural consequences" to 8/226 upland swamps (3.5%). The botanical consultant, however says that plant populations are not threatened. Yet he further suggests Illawarra Coal would develop and implement measures to mitigate and manage negative consequences in these 8 swamps) NPA questions the certainty of such predictability.

Mr Commissioners, we ask that you ask BHP the same question it was unable to answer at the SCI. "What can be done to remediate a collapsed swamp?"

Summaries of some (unpublished) techniques from elsewhere in Australia point to a possible solution...but how much faith can we place in such unpublished trials? We ask that you request the company to outline long wall width and geometry that will lead to the predicted "significant natural consequences", and to provide alternative scenarios that will avoid such impacts. Is it to "sterilise" the coal around them or to redesign panel widths etc? Whatever the methodology, NPA asks that the company plan for NO IMPACT.

In fact the Commissioners recommended for Peabody's operations that "swamps of special significance will be protected from negative environmental consequences" All swamps in a State Conservation Area such as Dharawal are of high significance, for that is the nature of the NPW Act that demands their protection. The Commissioners must, for even stronger reasons than drawn on in Peabody Proposal, act to protect this vast NETWORK of swamps from "Negative environmental consequences" NPA applauds the Commissioners for moving beyond the generalised "minimal impacts" type statement for which they criticised Peabody. But BHP has not learnt from such past criticisms of the nature of risk statements and still expects the public to accept that they can't guarantee "No Harm" despite its aging street billboard that enunciates this position. BHP KNOWS it can do "No Harm" if it so chooses. It is up to the Commissioners to recommend standards that will make this suppressed knowledge a reality.

NPA does not find it acceptable to accept that 29% of endangered hairy Geebung, *Persoonia hirsuta* will be destroyed at the planned Coal Wash emplacements, and has no faith in promise of an undeveloped "Biodiversity Management Plan" A Plan happens BEFORE problems arise...we the public do not accept promises that it will occur some undetermined time in the future.

### **Terrestrial Floral assemblages**

The mosaic of threatened vegetation associations and plant species in this proposal (such as those on shale/sandstone transition soils) calls for more than minor considerations such as were given in the Peabody case. The 300m Panels at the very least will cause many collapsed areas over the many proposed panels beneath these terrestrial plant associations. These will create environmental conditions that may threaten the ecological integrity of these associations. Normal gullying type impacts associated with subsidence will create microclimates conducive to non local plant colonisation. Higher humidities in depressions, for example, may be more conducive to weed colonisation.

### **RIPARIAN IMPACTS**

(These impacts according to BHP are expected to be "localised and limited in extent. "How localised? How limited. What can be done to prevent damage of all riparian ecosystems?

### **ROCK BARS**

"It is likely that there would be isolated instances of cracking and associated water losses'. This generalised prediction among all the 100s of pages of predictive "science" deserves contempt. Estimate the length of predicted impacts over what Rivers and creeks, and at what total cost for planned remediation. Ask the company to verify it will mainly be concerned with "remediating" cracking in third order and above rivers. Of course NPA and all the groups representing the public interest at this commission reject the reliability of remediation methods tried to date. Read Krogh's paper for a more objective assessment of remediation techniques. And NPA reiterates that the Peabody gift to Helensburgh Coal (a Peabody Mine) for a Minerals Council Yearly environmental award needs to be restated for what it was...an expensive PR stunt that the company has not publicly costed; Nor has it publicly committed a

budget to attempt other showcase dubious remediations of damaged areas beyond these rock bars on the Waratah Rivulet.

### **NATURE RESERVE IS DESIRED FUTURE OF ARMY LANDS...AND THERE IS A NEED TO MANAGE IT AS SUCH.**

NPA has written a number of times to the Minister for Defence stating that NPA believes that Army Lands at Holsworthy should be gazetted as a Nature Reserve should the Commonwealth decide to vacate the area.

We based this position on the fact that plant and animal surveys that were investigating the site as a potential second Sydney Airport discovered a richness of biota, ironically protected more than other circa-Sydney reserves due to the exclusion of most human activities. We are aware that the Army's environmental manager over the decades has aimed to localise impact zones on the firing ranges, and to strongly control troop use impacts through its Environmental Plan of Management.

If the Army vacates the site, there is an overwhelming reason to exclude **people** - unexploded ordnance that restricts entry even in present non impact zones. The history of use will arguably be a major reason why we believe the Army should refuse any surface facilities by BHP.

So NPA does not support any mining beneath the Commonwealth lands for environmental and safety reasons. Nor should BHP be given access to the surface for investigation of above ground works associated with mining there...for both environmental and safety reasons. Has the company obtained permission from the Minister for Defence for such investigations and possible future exploitation?

### **Other Roles of the Commonwealth**

NPA is writing to the Commonwealth in support of the Georges River Environmental Alliance's actions to request the Commonwealth to investigate this proposal from the points of view of threatened water supplies and compromise to a drinking water catchment in a major city. Also, there are 11 threatened flora species in or near the study area listed under the Commonwealth's *EPBC Act*. BHP's consultant seems ambivalent as to whether these risks and environmental values will trigger Commonwealth Action, but NPA is not so undecided. If the Commonwealth will not intervene in doing an independent scoping of threats to resources about which it has enunciated such a responsibility, then the EPBC Act is irrelevant in this case.

NPA asks that the Commissioners to recommend to the state government that it formally requests substantive input from the Commonwealth under its Acts and stated environmental interests in water issues across the country.

**(It appears the issue has just been referred to the Commonwealth for consideration under the EPBC Act...and NPA would ask that this PAC reconvene a supplementary public meeting to consider the outcome from the Commonwealth's involvement, especially how BHP might have altered its mine plan based on input to this PAC and the PAC's considerations together with the Commonwealth investigations.)**

**A formal answer to NPA is requested in view of the incomplete state of the investigations being considered by this PAC due to large delay in BHP requesting involvement of the Commonwealth Government.**

## **In Conclusion**

In the 1980' and 90's some damage to Cataract Reservoir was avoided with long wall panels (i.e. extracted areas) of 80-110 metres wide, with pillars between of 60 metres in width retained between.

([www.colongwilderness.org.au/CatchmentMining/CatchmentMiningBriefing.htm](http://www.colongwilderness.org.au/CatchmentMining/CatchmentMiningBriefing.htm))

NPA would have liked to have seen an analysis of "Miniwalls" proposed by Ashton Coal at Camberwell. That Company has advertised such "miniwalls" as demonstrably more environmentally friendly than conventional longwalls. The Planning and Assessment Commission should probe such alternatives in detail in order for the public to be convinced that it is critically analysing BHP's claims about minimal impact intentions. BHP has not explored the possibility that they could produce a reasonable return to shareholders by toning down its scale of extent of exploitation and longwall widths at Dharawal SCA especially. Just because 300m panels and more are "technically feasible", this is not to say that they are absolutely necessary from both an economic and an environmental perspective.

BHP would prefer to self regulate. Evidence before you points to the fact that BHP is not serious about avoidance of damage as its major *modus operandi*. BHP is clearly depending more on predictive science and sanitised consultants' reports for drawing conclusions regarding minimum environmental impacts and intent to remediate, rather than from broader objective empirical evidence.

We have also seen that adaptive management to correct practices that are causing damage now is often not much more than a hollow promise as damage to the Georges River continues despite plenty of evidence that mining as close as 40 meters to rock bars will do harm.

NPA asks the Commission to recommend to the Minister for Planning, with a necessary copies to the States Ministers for Environment Mr Sartor, Mr Costa, the Minister for Water and Commonwealth Defence Minister to help guarantee interdepartmental dialogue prior to any final recommendations being made to the NSW Government.

The public interest demands that there be regulations in place that will entrench strong conditions of any consent to mine under Dharawal SCA and Commonwealth Lands. NPA requests that you recommend this to the NSW Government, rather than suggesting guidelines based on "reasonableness" And, consistent with NPA State Policy (representing its 4233 members), that you act to conserve the public interest in guaranteeing security of quantity and quality of water supply by rejecting the application to mine beneath the Special Areas, for not to do so, will negate all the values that make these catchments so special. If iron clad protection of the integrity of our water supplies is imposed on the general public, so too should it be imposed on "the Big Australian" and all resource companies who assume that they can compromise these catchments.

The Commissioners need also to insist that prior to any longwall SMPs being produced, that 2 years of detailed baseline data be provided on water, floral and faunal data so that any monitoring is done from a basis of detailed knowledge, not the limited data collection carried out to date. Especially analysis of BHP's and other companies' record of environmental damage plotted against longwall width etc should be conducted and made public to inform future decision making and regulation. This (baseline data) condition recommended by SCI would be easier to meet if there were phased approvals, with a 10-year maximum initial approval period with a review every 5 years...advocated by NPA to facilitate application of the precautionary principle.

Commissioners, we in NPA look forward to seeing how you respond to these strong public demands to conserve these precious waterways and swamps and the flora and fauna which depend on them. You have it in your mandate to do something beyond just fostering "reasonableness" as you did with Helensburgh Coal in allowing some planned panels to proceed without the precautions known to minimise damage. To explicitly state strong conditions of any consent is within your brief. The extremely special, threatened environments in this application call for measures which will truly avoid substantial environmental impacts.

NPA believes in prevention of damage...not ugly mitigation measures such as stress relieving slots to isolate sites from the worst stresses as suggested for some Aboriginal sites. There are 632 Aboriginal sites in Study Area...if this level of development was proposed under ancient cave art sites in southern France there would be a national outcry.

Far better to prevent damage rather than "plan" for "remediation" and unacceptable limited mitigation measures for creeks, cliffs, plants, animals, aboriginal sites.

All this is achievable with more conservative "over-engineering" of mine methodologies aimed at prevention of damage.

Gary Schoer  
Secretary, for Southern Sydney Branch  
and supported by NPA (NSW) Inc  
17/2/10

cc Mr Sartor Minister for Environment and Climate Change  
Mr P Costa Minister for Water  
Mr J Faulkner, Commonwealth Minister for Defence

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swamp vegetation near Sydney'. **Australian Journal of Ecology** 18, pp: 325-344.

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## **APPENDIX 1: About National Parks Association of NSW Inc (NPA)**

NPA is a non-profit community organisation that seeks to *protect, connect and restore the integrity and diversity of natural systems in NSW and beyond through national parks, marine sanctuaries and other means.*

NPA was formed in 1957 to lead a campaign calling for a new government body to manage natural areas throughout the State. The success of this campaign resulted in the *National Parks and Wildlife Act, 1967* and the establishment of the National Parks and Wildlife Service.

Over the years, NPA members statewide have presented a series of detailed proposals for the new national parks to the Government. Many of our present national parks, including Barrington Tops, Mount Kaputar, Morton, Oxley Wild Rivers and Myall Lakes, have come about because of these carefully researched reports. Macarthur Branch was especially active in working for the establishment of Dharawal Nature Reserve and State Conservation Area. The fact that Southern Sydney Branch of NPA has joined forces with our sister branch to highlight natural values of areas beyond our Branch's conventional borders follows the strong submission we made to the Environmental Assessment and the PAC for Peabody's Helensburgh Coal extensions proposals. We see this area as part of an interconnected natural region with the Woronora Plateau at its heart, so we often work cooperatively with other Branches to ensure that conservation planning takes place at a broad scale.

We are optimistic that our involvement, and opposition to much of the current plans beneath lands which include part of the National Parks estate, will lead to the Commissioners recommending much stronger protective measures for south-western Sydney's natural areas than that recommended for Peabody's operations...for the scale of predicted and unpredicted damages which will happen, is, we believe, an order of magnitude greater than that being witnessed at places like Waratah Rivulet.

The Southern Sydney Branch of NPA has taken a leading role in advocating for the effective management of the Hacking River and Royal National Park, and has made major submissions on the Georges River to numerous bodies and inquiries. It has also advocated for effective management of the Illawarra Escarpment and our water catchments. It has even communicated with Metropolitan Colliery management prior to Peabody purchasing the mine in relation to management regimes to protect the Hacking River from Coal waste, and has never opposed the continuing economic viability of that mine. NPA, though, feels duty bound to respond strongly to the current Environmental Assessment, and wishes to flag a continuing interest in being consulted on the progress of any works by BHP in this region.

Appendix 2 (2 pages), (2009) Options B4A and B4B Longwall Setbacks to achieve less than 200mm closure at selected upland swamps,, Consultant's Report, Bulli Seam Operations, Illawarra Coal and BHP is attached

Appendix 3 (2009),  
Mammal Extinctions, Royal NP, Various Sources is attached