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**Nature Conservation Saves for Tomorrow**

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## **2019 Sydney Drinking Water Catchment Audit**

The Blue Mountains Conservation Society (BMCS) is a community based volunteer organisation with over 800 members. Its mission is to help conserve the natural environment of the Greater Blue Mountains and to increase awareness of the natural environment in general.

BMCS' interest in the management of the health of Sydney Drinking Water Catchment (SDWC) relates to its northern section which is partly in the Greater Blue Mountains World Heritage Area. The Society has a history of concern about mining operations in the Western Coalfields which impact on the water quality and volume of the Coxs River and including Lake Burragorang which Coxs River flows into.

In summary the Society believes that there needs to more active effort to address the serious impacts of mining on the catchment particularly the cumulative impacts of mining operations both past and present. This submission covers:

- Implementation of 2016 Recommendations
- Community expectations and SDWC
- Mining impacts issues on SDWC since 2016 Audit

### **1. Implementation of 2016 Audit recommendations**

It is hard for the public to confirm whether and to what extent the 2016 SDWC Audit recommendations have been implemented. The state of the SDWC is a critical public health issue for greater Sydney. It is particularly important with the progressive drying out of South-eastern Australia due to climate change and the large and continuing increase in Sydney's population. The auditors' letter to the

minister accompanying the 2016 Audit Report pointed out that despite the work of responsible agencies in the previous three years, “continued effort in catchment management responses is required by the NSW government”<sup>1</sup>

NSW Waters’ website page on Catchment Audits contains the 2016 Audit report but no report on actions taken on the 2016 audit report recommendations. According to the website, “WaterNSW is required to report to the Minister on its progress to achieve improvements in catchment health, to prevent degradation of existing catchment health and to maintain existing catchment health, having regard to the findings. Such a report must be provided within two years after the catchment audit report is received by the Minister. The report in response to the 2016 Catchment Audit is due in July 2019.”<sup>2</sup>

As well, this webpage also does not refer to the current process of preparing the 2019 audit report nor does it advise how interested organisations or individuals can comment in relation to the 2019 Audit.

The 2016 Audit contained six recommendations regarding “Response to reduce mining risks and impacts in the Special Areas”. Three particularly important recommendations were:

- “Establish the scope and commence a state owned regional surface water and groundwater geotechnical model. It would provide an independent assessment of water loss and inform decisions about mining impacts and future mining proposals and cumulative impacts.
- “establish an independent panel to review of monitoring, analysis and reporting program relating to mines operation in the catchment”
- “compile all empirical evidence of mining impacts in the SDWC in a regional cumulative impact assessment”.<sup>3</sup>

Clearly the 2016 Audit recommended compiling and applying independent, evidence – based information which would provide decision-makers with independent advice for current and future mining operations in or affecting the SDWC. This would be an important advance in protecting SDWC if implemented.

Some of the 2016 recommendations may be partly covered by the yet to be released work of the Independent Expert Panel for Mining in the Catchment (IMP-MC), which has been established since the 2016 audit. This panel “...has been established to provide informed expert advice to the Department of Planning and Environment (DPE) on the impact of mining activities in the

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<sup>1</sup> Covering letter to the Minister accompanying the 2016 SDWC report, page 1.

<sup>2</sup> <https://www.waternsw.com.au/about/legislation/catchment-audits> Accessed 29 October 2019

<sup>3</sup> 2016 Audit of the Sydney Drinking Water Catchment. Volume 1 Main Findings, ecological, June 2017, Table 6, Page 26-27.

Greater Sydney Water Catchment Special Areas, with a particular focus on risks to the quantity of water in the Catchment.<sup>4</sup>

The IMP- MC was to undertake “a review of current coal mining in the Greater Sydney Water Catchment Special Areas with a particular focus on risks to the quantity of water available, the environmental consequences for swamps and the issue of cumulative impacts” The role is not the same as what the 2016 Audit proposed. The report was to be delivered no later than 31 December 2018 (extended to 14 October 2019), however, as of 29/10 this report is not available on Chief Scientist's website. The 2019 Audit report should clarify how and to what extent the 2016 Audit recommendations have been implemented.

### ***Oversight of the implementation of the 2016 SDWC Audit's conditions***

As well as making recommendations, the auditors for the 2016 SDWC Audit asked the minister to consider appointing the NSW Audit Office to monitor the implementation of the recommendations of the 2016 Audit and “to lead subsequent catchment audits to ensure effective and coordinated responses to catchment pressures by the NSW government”.<sup>5</sup> The Society supports the NSW Audit Office take on this role as the Audit Office is an independent body which reports to the NSW Public Accounts Committee. They can require public hearings of agencies which increases the accountability of government agencies and the public availability of information of issues.

## **2. Community attitudes, aspirations and engagement (Theme 4 – Land use and human settlement)<sup>6</sup>**

BMCS expects our government to protect the SDWC from polluting activities including mining. BMCS has a history of working to ensure rivers in the Greater Blue Mountains World Heritage Area (GBMWA) are healthy and not polluted. In 2009 BMCS launched a legal challenge to Wallerawang power station for its polluting discharges (containing heavy metals and high salinity) into the Coxs River via a tributary creek. This action was settled in 2011 when the power station owners, Delta, agreed to progressive improvements to the quality of its discharges. However, these improvements did not all eventuate as the power station's new owners closed Wallerawang in 2014.

The Society has continued its concern with the health of the Coxs River which is one of the main sources of water into Lake Burragorang. The Society welcomed the court challenge in 2016 by environment group, 4 nature, to the decision to allow Springvale Mine to continue to pollute the Coxs River as part of its mine extension. This challenge was unanimously confirmed by the NSW Court of Appeal. (see below)

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<sup>4</sup> NSW Chief Scientist website: <https://www.chiefscientist.nsw.gov.au/reports/independent-expert-panel-for-mining-in-the-catchment>

<sup>5</sup> Covering letter to the Minister accompanying the 2016 SDWC report, page 2.

<sup>6</sup> Ecological Australia letter to BMCS 1 October 2019 regarding 2019 SDWC Audit, Attachment A

The Western Coalfields area (near Lithgow) which impacts on the SDWC is known as the Gardens of Stone for its scenic beauty, internationally significant pagoda landscape and high biodiversity value. In 2005 BMCS, along with Colong Foundation for Wilderness and Lithgow Environment Group, put forward the Gardens of Stone Reservation Proposal Stage 2 which seeks to protect the three state forests (Ben Bullen, Wolgan and Newnes) as a State Conservation Area managed under the *National Parks and Wildlife Act*.<sup>7</sup> The more recent *Destination Pagoda Visitor Management Plan* shows how conservation management and increased tourism in this area could be managed. This plan has been received very positively.<sup>8</sup>

### 3. Mining impacts on SDWC since 2016 Audit

Community concerns raised by BMCS and others through the 2016 process included

- damage to Newnes Plateau swamps from subsidence and surface cracking leading to draining of water and cracking;
- Springvale Mine extension – now approved;
- Springvale water treatment plant – generally supported;
- Angus Place and Pine Dale mines issues.

BMCS comments on the first three issues are set out below.

#### **(i) *Springvale: WTP and Long-wall mining impacts on water supply - far field impacts and work of expert committee***

Since the Society's letter to the 2016 audit, it has become more accepted that far-field impacts from long wall mining underneath the Newnes Plateau have contributed to the loss of water to and drying out of upland swamps. Back in 2016 this effect was not covered in the EIS for Springvale's mine extension and only recognised in southern coal fields. The work of the Springvale MEP Independent Monitoring Panel (IMP), which was established under the Springvale MEP's conditions of development consent, concluded that the nationally and state listed Carne West swamp was likely to have been significantly damaged by far field movement from mining at Springvale colliery. In September 2016 the Society wrote to the Federal Minister for the Environment asking him to intervene and stop further damage as he has the power to amend Commonwealth conditions of consent of the basis of new information.<sup>9</sup> While the Commonwealth minister decided not take further action, at the state level understanding of the far-field impacts gained ground.

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<sup>7</sup> See the Gardens of Stone Reservation proposal at :  
<https://www.bluemountains.org.au/gos2/proposal.shtml>

<sup>8</sup> Destination Pagoda Visitor Management Plan, 2019 <https://www.bluemountains.org.au/#pagoda>

<sup>9</sup> BMCS Letter to Minister Frydenberg, Federal Minister for Environment 8 September 2016

Centennial's Springvale Mine has subsequently acknowledged the impact of far field impacts along lineaments under swamps and amended the mining plans by reducing the remaining longwall panels in northern section. This led to Springvale Mine commencing its operations in the southern section months earlier than was planned.<sup>10</sup>

**(ii) Weakened controls to protect Sydney's drinking water since the 2016 Audit**

Increased protections for SDWC arose as a response to the Sydney Drinking Water water cryptosporidium crisis in 1998. Since the Society's last submission on the statutory audit, in October 2016, the State Environment Planning Policy for Sydney's Drinking Water (2011) (the SEPP) has been weakened. *4 nature's* legal challenge (mentioned above) was the first case to test laws passed in 2009 to protect Sydney's drinking water catchment. Under those laws, a development could not be approved unless the consent authority was satisfied that the development would have a 'neutral or beneficial' effect on water quality.

In 2017 the NSW Court of Appeal ruled that the approval of Springvale, mine extension was unlawful because the SEPP was not correctly applied. At issue was "first, in determining whether discharge of water from the proposed mine would have a neutral or beneficial effect on water quality, as required by the State Environment Planning Policy for development in the Sydney Drinking Water Catchment, what is the nature of the comparison required; and second, was the approach taken by the Commission valid? The Court of Appeal unanimously held that the water quality must be compared on two hypotheses: where the proposed development is carried out and where it is not<sup>11</sup>.

Following the NSW Court of Appeal's judgment, the NSW government legislated retrospectively to weaken the SEPP in relation to "continuing development" projects in the catchment and to approve the Springvale Mine extension. The *Environmental Planning and Assessment Amendment (Sydney Drinking Water Catchment) Bill 2017* amended the neutral and beneficial impact test (NORBE) in the SEPP and the *Environmental Planning and Assessment Act*. The NORBE test when applied to continuing or expanding developments, such as mining projects, now allows pollution discharged to the drinking water catchment by a continuing project to be assessed against its current pollution. In other words, for instance, a mine which wants to extend its operations can continue polluting at the current level. The law in relation to completely new project applications has not changed and the test set out by the Court of Appeal for water quality will continue to apply to such applications.

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<sup>10</sup> The work of the Springvale IMP can be accessed at [http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5594](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5594)  
See also Colong Foundation for Wilderness Media release 10 May 2017 at <https://www.colongwilderness.org.au/media-releases/2017/05/springvale-mine-plan-reduction-step-right-direction>

<sup>11</sup> *4nature Incorporated v Centennial Springvale Pty Ltd* [2017] NSWCA 191

**(iii) Transferable conditions - Weakened conditions of consent for State Significant Developments including mining**

Another concern is the introduction of 'transferable conditions' for state significant development. Mining projects are classified as state significant development. This will allow certain consent conditions on, for instance, mining operations being moved, after development consent, to regulation by other agencies such as the Environment Protection Licence system administered by Environment Protection Authority. EPLs are created by different legislation than development consent. This could have implications for controlling pollution into SDWC.

The government's power to protect the SWDC, and the environment in general, is strongest at the decision to grant development consent. Regulation after consent has been granted follows different rules and at least in the case of EPLs can be a negotiated outcome between the parties. Environmental law experts, Farrier and Stein state the "factors the EPA must take into account in deciding whether to issue a licence and what conditions to attach ...include "practical measures" ... to prevent or control pollution and ... the EPA has general responsibility for ensuring that the best practicable measures are taken for environmental protection".<sup>12</sup> The NSW Court of Appeal has recognised that the terms of a licence "may reflect a compromise between what is desirable and what is practicable". The cost to industry is also a relevant factor when issuing EPLs.

In regard to Pollution Reduction Programs in EPLs, a mechanism which was used in 2006 to negotiate with Sydney Water to improve the performance of its sewerage system licences, Farrier and Stein comment that "An inherent tension in negotiations between the authority (EPA) and licensees over pollution reduction concerns the economic feasibility of lowering emission levels over time. While the EPA can access information on a company's financial position, "...its licensing officers must have sufficient expertise to negotiate realistic and efficient pollution reduction targets in the light of the (financial) information".<sup>12</sup>

One example of the slow progress to improve mine pollution discharge levels into the GBMWA (though not affecting SDWC) is Centennial Coal's Clarence Colliery's discharge to the Wollangambe River.<sup>13</sup>

**(iv) Springvale Water Treatment Plant**

The Springvale Water Treatment Plant, a joint venture of Energy Australia and Centennial Coal, will treat Springvale's mines discharges to Coxs River and send this treated water to Mount Piper Power station for use in its operations. Discharges would therefore cease to the Coxs River. Currently, while the plant is not expected to be fully operation until the end of 2019, this discharge ceased in July and is being managed through a work around. Environmental groups have

<sup>12</sup> Farrier and Stein, *the Environmental Law Handbook* 6<sup>th</sup> Edition 2016 at pp.382 – 384.

<sup>13</sup> For more details of the delay see: <https://www.bluemountains.org.au/wollangambe/wollangambe2.htm>

campaigned to improve this situation. The Water Treatment Plant is a good outcome for the health of the Coxs River and SDWC.

**(v) UNESCO Concern re mining in catchment 2019**

The UNESCO World Heritage Committee, at its recent session to discuss the state of conservation of the world heritage properties, expressed its ongoing concern with the impacts of mining on the Greater Blue Mountains World Heritage Area. It made the following resolutions:

"5. Also notes with concern that several mining projects exist in the vicinity of or adjacent to the property (ie GBMWH), and that some mining activities have resulted in impacts on the property, as evidenced by the incident at the Clarence Colliery, and also requests the State Party (Australia) to undertake an assessment of potential cumulative impacts of all existing and planned mining projects in the vicinity of the property through a Strategic Environmental Assessment (SEA) or a similar mechanism;"

Importantly, UNESCO also restated its concerns about mining operations:

"Reiterates its position that mineral exploration or exploitation is incompatible with World Heritage Status which is supported by the international Council of Mining and Metals (CMM) Position Statement not to undertake such activities within World Heritage properties;" [res 6]

UNESCO has requested Australia provide a state of the conservation report and report on the implementation of its 2019 recommendations by 1 December 2020.<sup>14</sup>

In conclusion, BMCS thanks you for the opportunity to provide comment on 2019 SDWC audit. If you have any enquiries about this letter, please contact Ms Madi Maclean, Gardens of Stone Project Officer at mobile: 0412.428 202 or email: [gms@bluemountains.org.au](mailto:gms@bluemountains.org.au)

Yours sincerely



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<sup>14</sup> [Resolution 9] ." Finally requests the State Party to submit to the World Heritage Centre, by 1 December 2020, an updated report on the state of conservation of the property and the implementation of the above, for examination by the World Heritage Committee at its 45th session in 2021."

**ADDENDUM**

A reference on page 6 has been omitted from the letter submitted. The reference needs to go at the end of paragraph 1 on p.6 and should read

"<sup>1</sup>See *Environmental Planning and Assessment Act 1976* section 4.17 (4A) Imposition of conditions and *Environmental Planning and Assessment Regulation 2000* Clause 96A"