

6 August 2014



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Dear Sir/ Madam

## **WARKWORTH CONTINUATION PROJECT (SSD 6464)**

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The National Parks Association of NSW (NPA) objects to the Warkworth Continuation Project (SSD 6464). NPA is a non-profit community organisation that promotes nature conservation. It has a particular interest in the protection of the State's biodiversity and its supporting ecological processes.

The project will involve the clearing of over 600 ha of native vegetation, 459 ha of which comprise listed endangered ecological communities. These communities are entitled to receive the protection intended for them under the *Threatened Species Conservation Act 1999*. Our objection is based on the following grounds:

- the project would be inconsistent with the objects of the *Environmental Planning and Assessment Act 1979*, particularly in relation to "the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats"
- likely benefits from the project would not outweigh the very substantial environmental and other costs that will be incurred
- the proposed biodiversity offset strategy would not offset the actual biodiversity losses that will be generated by the project, nor would it provide sufficient security of tenure to prevent the subsequent destruction of these offsets by future mining or other activities.

### **Relationship between the Department & proponent**

We also raise issue with the manner in which this proposal is being dealt with by the Department. Notably, the 14 volume EIS comprising several thousand pages was submitted to the Department on 13 June 2014, only 22 days following the date on which the 'Secretary's Requirements' for the EIS was issued. This remarkable feat would seem to have been made possible by an extraordinary degree of coordination and 'proximity' between the Department and the proponent.

Given the *de facto* role of the Department in undertaking much of the assessment and regulatory burden relating to the project (including the preparation of very influential recommendations to the Planning Assessment Commission), we strongly question the appropriateness of this relationship. In this case, our reasonable perception is that the regulator is not at sufficient arm's length from the regulatee.

## Wider objects of the Act

Notwithstanding clause 12AA of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*, the effect of which is to make the ‘significance of the resource’ the principal consideration under that Policy, the project is subject to broader considerations set out in section 5 of the Act.

The issue of ‘significance of the resource’ receives a very commanding attention in the EIS. As a consequence, proportionate weight has not been given to other objects of the Act that are required to be considered. Most notable are objects under section 5 to encourage:

- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats
- (vii) ecologically sustainable development.

Given that the project involves the destruction of 460 ha of endangered ecological communities, and will have a significant impact on several listed threatened species (Regent Honeyeater, Large-eared Pied Bat and Southern Myotis), the objects of the *Threatened Species Act 1995* are also a highly relevant consideration, namely:

- (a) to conserve biological diversity and promote ecologically sustainable development, and
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities, and
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered, and
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities, and
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities is properly assessed, and
- (f) to encourage the conservation of threatened species, populations and ecological communities by the adoption of measures involving co-operative management.

These objects convey a clear expectation that development activities and projects should not be undertaken where they have significant adverse effects on important biodiversity values. Furthermore, where species or ecological communities subject to a risk of extinction are involved, the standard of protection required is strict: the objective standard is “to prevent the extinction”, not to avoid or compensate for it. There is a need for precautionary responses.

The project will further the cumulative loss of biodiversity in the Upper Hunter region. The wide floor of the Hunter Valley has been subject to extensive clearing since the 1820s. There are only a few small unconnected pockets of remnant natural habitat, mostly without legal protection. Consequently, any further loss of habitat or habitat connectivity is significant. Consequently, the biodiversity conservation objectives referred to above assume a very high degree of relevance and importance that has not been given proportionate weight by the project documentation.

## Proposed offset strategy

We do not agree with the conclusion reached by the EIS that the proposed biodiversity offset strategy would ‘maintain or improve’ biodiversity outcomes. This conclusion is an artefact of an assessment methodology that fails to consider the cumulative degradation of the region’s biodiversity.

- The proposed offset sites in the Northern and Southern Biodiversity Areas comprise existing areas of (occupied) habitat that do not in any way replace the habitat being lost. The result is a net loss of habitat.
- Up to 25 per cent of the credit requirements for the proposal are to be met through the provision of mine rehabilitation (1,227.5 ha). Given the low success rate in rehabilitating

mined areas to a specific ecological composition, sufficient attention has not been given to the very real risk that rehabilitation will not be achieved.

- The proposed offsets strategy does not ensure an acceptable level of secure protection for the biodiversity offsets. Any offsets must be secured in perpetuity with appropriate legally binding arrangements, public ownership or trusteeship. The revocation of the 2003 Ministerial Deed demonstrates that equivalent agreements are not sufficiently secure. Dedication to the NSW Government as national park or nature reserve should be the preferred model. In particular, a Warkworth Sands Nature Reserve should be established to protect this native vegetation type in perpetuity. This option should be fully evaluated in the event that consent is granted for the Project.

The object of the *Threatened Species Conservation Act* 'to prevent extinction' requires a much higher degree of certainty than that which is being offered by the offset strategy. The proposed offset strategy is a poor recompense for the biodiversity that is being lost.

## Conclusion

Despite some improvements from the earlier Warkworth Extension project, the overall impact of the proposal on the biodiversity values of the Upper Hunter is highly negative. The finding of the Land and Environment Court in relation to the earlier proposal, that the benefits do not outweigh the very substantial environmental and social costs, is just as apposite to the present proposal.

The proposal should be refused. It would result in the loss of unique biodiversity values that are highly significant, and which will be lost for all time. Such an outcome is one that the planning and threatened species legislation specifically intends should not occur. We call upon the Minister to consult with the Minister for Environment regarding the creation of a Warkworth Sands Nature Reserve.

Yours faithfully



Ian Donovan  
**President, Hunter Branch**  
**National Parks Association of NSW**