

Submission
No 2

**INQUIRY INTO ENVIRONMENTAL PLANNING AND
ASSESSMENT AMENDMENT (SNOWY 2.0 AND
TRANSMISSION PROJECT) ORDER 2018**

Organisation: The Colong Foundation for Wilderness Ltd

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THE COLONG FOUNDATION FOR WILDERNESS LTD.

Friday 4th May, 2018

The Hon Scott Farlow MLC
Chair
Regulation Committee
Legislative Council
NSW Parliament House

email Regulation.Committee@parliament.nsw.gov.au

Dear Mr Farlow,

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018

The Colong Foundation for Wilderness Ltd is pleased that the Regulation Committee is examining the Order for the Snowy 2 proposal. As I understand it, the purpose of this Critical State Significant Infrastructure (CSSI) Order is to prevent subsequent review of the NSW Minister for Planning's final determination decision of the hydro-electricity pump storage and associated electricity transmission proposals. Decision making processes under other NSW legislation will then have no effect and judicial officers of Land and Environment Court are prevented from reviewing the merits of these proposals once determined by the Minister.

There will be five environmental impact statements prepared under this single CSSI Order and for all but the "exploration works" the details of these proposals are currently vague and imprecise.

The CSSI order risks the Minister's subsequent five (or more) development consents being non-adaptive to on-ground circumstances. The detailed assessments supporting development applications are often proven to contain many errors and if the consent is prescriptive then additional avoidable damage can be caused as the development consent may only be varied at the request of the applicant, Snowy-Hydro.

Minister should give reasons for making CSSI orders

The decision to make a CSSI order should be made by an open public process to reduce subsequent errors, especially when there is an apparent rush to build these proposed developments.

The Minister for Planning should at least be required to state his reasons for making CSSI and SSI Orders. The "triple bottom line"¹ process that justifies the making of this CSSI Order has not been made public. The Minister's reasons should be published as a standard procedure.

¹ The economic, social and environmental factors of a proposal comprise the triple bottom line. There are usually clear processes to measure economic benefits but it is particularly important to spell out a systematic means for measuring the other two factors that are often poorly considered.

The Regulation Committee should recommend that the NSW Department of Planning and Environment lay out its “triple bottom line” rules for making CSSI and SSI orders, particularly when such orders shall cause damage to National Heritage, as in this case. The Minister for Planning should then follow these rules and provide the reasons for the order.

The Colong Foundation also requests that a decision on whether or not to make a CSSI order must be considered by a Minister for Planning against a published project proposal that is sufficiently detailed to permit a reasonable assessment of the extent of impacts on all relevant matters to the triple bottom line assessment. The “triple bottom line” assessment and the order should be published so that the public may understand how the public interest in the project is outweighed by other important national or state considerations.

The Colong Foundation believes that the making of CSSI and SSI orders for proposed projects should be informed by the Preliminary Environmental Assessment (PEA) of project proposals that are prepared for the Secretary’s Environmental Assessment Requirements (SEARs) before the preparation of an Environmental Impact Statement (EIS). CSSI and SSI orders should follow after the SEARs and CSSI orders should be limited to the extent of the proposal covered in the SEARs.

CSSI Orders to not properly consider the extent and degree of environmental and social impacts

Unspecified tracts of important national park bushland shall be cleared for the proposed new powerlines if this CSSI proposal is approved.

Questions that need to be considered by the Regulation Committee include:

- On what basis did Snowy Hydro and/or the Department of Planning and Environment (the Department) determine that the proposed new powerline easements are essential to the operation of the project and should be added to this Order?
- Has an assessment been undertaken to determine that the adequacy of the existing powerlines, as well as the adequacy of existing routes for powerline easements?
- Why didn’t this order specify that there is to be no additional disturbance of national park land and no new powerline easements established?
- Has this order weakened the leverage of the Department to require existing easements to be used as it assumes that new easements are required?

The making of the CSSI order weakens the leverage of the Department and the NPWS to prevent new disturbance to national park lands, particularly in regard to the powerline easements.

The Minister for Planning must demonstrate that the order was made in a prudent and reasonable manner. Assessing triple bottom line considerations can be done in many ways, and some ways trivialise important matters². The Minister’s reasons for making the order should explain the balance of triple bottom line factors, be part of the public record and accompany publication of this order. Ministers must be accountable for decisions, especially when a decision to make an order may in my view cause greater damage to a National Park.

National Parks and wilderness areas within them should be sacrosanct.

² <https://theconversation.com/explainer-what-is-the-triple-bottom-line-22798>

The Colong Foundation requests that the Regulation Committee express concern about the making of the CSSI order regarding powerline transmission at this early stage in the planning process for that part of the project that will have adverse consequences on a National Heritage listed national park and many communities outside the park.

The Order assumes new powerline easements are more important than the nation's natural heritage formally listed under Federal statute. Apparently little reflection was undertaken to consider the influence of this order on the design of the powerline proposals. Now that the powerlines are a CSSI proposal less regard may be given to the national park status, as it has been rendered administratively less of a political risk by the order. I believe the prime consideration of Snowy Hydro shall now be cost minimisation, not environment protection. As the powerlines also traverse hundreds of kilometres of farmland, the NSW Government make be criticised by its rural constituents for making this order with undue haste.

The Department may believe that considering and giving reasons for the making of the CSSI order would place too much onus on the triple bottom line assessment before the detailed environmental impact statement report. I believe that a PEA should include the triple bottom line assessment and be published before making a CSSI or SSI order, especially for activities in a national park or any other environmentally sensitive area are involved.

No Preliminary Environmental Assessment is publicly available for the proposed powerline easements through Kosciuszko National Park. The Colong Foundation can have no confidence that this CSSI order was properly made against the triple bottom line rules that are not specified, published and based on any publicly available formal assessment and credible reasoning.

As a matter of principle, new utility easements must not pass through national parks or wilderness, and when an opportunity presents itself, established easements should be relocated to beyond national park boundaries. These principles should be part of the conservation policy of all political parties in Australia otherwise national parks shall become degraded. National parks are land set aside from development, and must not become convenient locations for infrastructure projects. I am sure no such principles guided the deliberations behind the triple bottom line reasoning of this order. Nor would the triple bottom line assessment consider the Snowy Hyrdo consultant report by Marsden Jacob stating that Snowy 2.0 "would improve the economics of coal generation" by "increasing the use of low-cost fuels" [i.e. coal] (page 113) and that, "The power losses during each pumping cycle would increase electricity demand, requiring additional generation and consequently CO₂ emissions" and by ... "increasing lower cost coal-fired generation" (page 116).

Snowy 2.0 "feasibility study" (exploration) was poorly regulated and monitored

In March 2017 a Snowy 2.0 "feasibility study" for the proposed 27 km pipeline was approved. The study was said to generate 250 jobs, with forty drilling sites to be established in the national park along a planned tunnel route from Tantangara Dam to Talbingo reservoir (John Ellicott in *The Land* 11 Jul 2017).

The Colong Foundation does not know how many of these drill holes were actually undertaken as part of the feasibility study. Several Reviews of Environmental Factors were undertaken for this exploration work by the National Parks and Wildlife Service (NPWS) under Part 5 of the *Environmental Planning and Assessment Act*. I understand that these reports were largely generic desktop reports prepared with limited or no field surveys as NPWS staff are busy people and regulation of exploration is not core business.

It may assist the Regulation Committee if it requested these Review of Environmental Factors reports and interviewed NPWS staff to determine the adequacy of regulation and compliance monitoring regarding the establishment and operations of 40 drill holes in Kosciuszko National Park.

A PEA report for Snowy Hydro by EMMConsulting was published on the Department's website in March 2018 as part of the SEARs application regarding the proposed "Exploratory Works" for Snowy 2.0 that will require an Environmental Impact Statement (EIS). It describes the currently approved geotechnical investigation program (i.e. the "feasibility study") as being largely a surface-based program that utilises deep drill holes to access the depths of the proposed underground caverns (page 8 of PEA).

Each drill site can be associated with clearing and roading along the proposed underground tunnel route. Drilling mud must be contained and threatened species avoided. Whatever the extent of these drilling activities, all work took place in Kosciuszko National Park and to my knowledge there was little supervision or compliance monitoring, due to the great rush at which these works were performed. I suspect the NPWS were overwhelmed by this compliance task, with no extra funding or staff allocated.

The "exploration works" for Snowy 2.0 are a controlled action

Unlike, the 2017 "feasibility study", the March 2018 PEA report for "exploration works" describes activities not usually captured by a common understanding of exploration, but rather describes the initial development stage for this as yet unapproved project. This poor definition of works creates an administrative flaw in the approval of the proposed pump storage project because work will start on the actual project before it is approved.

The "exploration" describes a 4.4 kilometre main access tunnel to the proposed Machine Hall cavern. The proposed main access tunnel will be a concrete lined D-shaped tunnel 8 by 8 metres wide. The 750,000 m³ of rock waste from this tunnel will cover 10 hectares of national park beside Yarrangobilly River potentially on flood prone land. A construction pad will cover another 20 hectares beside this river. The access portal and accommodation site will require a further 3 hectares to be cleared and levelled (see pages 23, 25 and 36 of PEA). For about a kilometre a new road is proposed to be constructed in association with many hectares of clearing and levelling along a pristine reach of the Yarrangobilly River (fig 3.2). Other major road works are proposed to make many kilometres of narrow, steep 4WD vehicle roads suitable for truck haulage (fig 5.2). Several floating landing stages are to be built on Talbingo Reservoir to permit delivery by barge of a considerable amount of heavy equipment as part of this so-called "exploration". The proposed "exploratory works" in Kosciuszko National Park, also includes closure of the Ravine region to the public, including a campground, for the duration.

Yet alarmingly the **PEA concludes on behalf of the proponent, Snowy Hydro, that the above listed highly damaging activities are not Controlled Actions under the Federal *Environment Protection and Biodiversity Conservation Act 1999*** (see pages 14 and 15 of the PEA). Kosciuszko National Park is listed as National Heritage and all parts of it are matters of national environmental significance, and not just a selection of its threatened species and endangered ecological communities that are found listed in the PEA report.

Under the expectation of this CSSI order being made, it appears that an attitude of privilege and entitlement has developed regarding the works proposed so that Matters of National Environmental Significance have been discounted and not properly considered in the PEA report. This PEA finding supports the Colong Foundation's case for more accountability in the making of CSSI orders. The proponent and their consultants must be obliged to responsibly discharge the legal obligations under the order, and not use the order as a means to circumvent environmental responsibilities of development control.

Adequate regulatory oversight is frustrated by staged approval processes

The approach under this order is for five approvals that are staged in a manner where the Department (and other government agencies) are unable gain an overall understanding of the potential impacts of the entire project.

The Colong Foundation believes the CSSI order was made ignorant of the contingent adverse consequences of the project upon Kosciuszko National Park, particularly regarding the powerline easements where the PEA for these parts of the project is still being prepared. So the triple bottom line assessment for the CSSI order was to a considerable degree made in ignorance of potential impacts to the national park. In this contingency it would be difficult of the Minister to be satisfied that a proposal (or proposals) meets a triple bottom line test with any surety.

If a CSSI or SSI order has significant conflicting values and significant environmental impacts, then the option of not making such an order should be considered by the Minister for Planning. The Minister should through the Department present the proponents of this sub-category of infrastructure projects with a choice between presenting a development application for a project proposal that would be captured by CSSI (or SSI) that avoids national heritage and national parks, and presenting another development application that would not be CSSI (or SSI) and be subjected to merit appeals. Such optional order making would rapidly improve the consideration and protection of national parks and national heritage.

CSSI is at risk becoming an easy pathway tending towards more damaging proposals that will needlessly degrade our heritage and perhaps social welfare. The environmental impacts of such proposals (if they were properly valued) may become so great that building the final project will not increase overall social welfare³. In this instance, seeking to discount a national heritage assessment processes through a PEA suggests that these values are not being respected and that the proposal is now on a higher environmental impact pathway.

This order in its effect shall make the proposed Snowy 2, and its contingent major earthworks and clearing for transmission lines, more important than the National Heritage listed national park and

³ As the total cost of the proposals under this CSSI order runs to \$8 billion, it is hard to see how Snowy 2.0 will make Australia better off if Kosciuszko National Park is also degraded.

the wilderness areas where it is to be situated. The Colong Foundation for Wilderness believes that the Minister and the Department of Planning and Environment had inadequate advice, evidence and information on which to make such a judgement.

Making this CSSI order based on insufficient evidence or justification brings with it unreasonable risks. **The CSSI order overturns the long-standing practice of avoiding new utility easements through national parks and declared wilderness. It replaces this principle with an easy pathway to damage our nation's heritage without adequate consideration of these consequences.**

The Colong Foundation believes that in practical terms nothing can be done by due process to influence or prevent the damage associated with this CSSI development proposal now that this order is made. The CSSI order is the critical decision point at which judgement must be exercised by the Minister for Planning.

The Colong Foundation believes based on past projects, such as WestConnex, that there is almost no point making submissions on environmental impact statements for CSSI proposals. All comment shall be ignored. Indeed one of the real purposes of these orders is to frustrate opponents to a project, particularly those with valid concerns. The Department of Planning and Environment may not view an CSSI infrastructure EIS in such a light, but from the objectors point of view the Department's assessment of submissions on an EIS report becomes so much riffling and shuffling of papers. No substantial changes can be achieved to the project or its development consent conditions. The CSSI project is locked into a non-adaptive framework by the Minister's order.

The NSW Government must be careful how it makes CSSI orders and considers the triple bottom line outcome for these infrastructure proposals, for there is an ever growing collection of damaging decisions that have alienated components of several electorates who care about the environment. The NSW Government is repeating under SSI and CSSI orders the administrative errors made under the Part 3A of the former planning legislation. The NSW Government should be aware that the proposed Snowy 2.0 shall significantly impacts on Kosciuszko National Park. Such damage to national heritage can reinforce public opinion that major infrastructure projects are poorly managed in NSW and destructive to heritage.

Thank you for the opportunity to comment on this order.

Yours sincerely,

Keith Muir
Director
The Colong Foundation for Wilderness Ltd