

Dharriwaa Elders Group

Submission regarding the

“Opal Mining within the Narran-Warrambool Reserve, Lightning Ridge – Review of Environmental

Factors” by Parsons Brinckerhoff, 2004, for the NSW Dept of Mineral Resources



A place in OPA 4 shown to Heritage Concepts (consultant to Parsons Brinckerhoff) where the rich Aboriginal cultural heritage visible in the archaeological record has been barely surveyed. This waterhole is part of the system of waterways between Angledool and Narran Lakes important for the life of the Ramsar-listed wetland and the maintenance of Yuwaalaraay culture.

The Dharriwaa Elders Group (DEG) ABN: 26 795 240 948 was born 20 November 2000 after working together on projects since 1998. The Group took its name from one of its sacred sites - Narran Lakes – Dharriwaa (common meeting place) and its full members are Aboriginal people over 60 who live in Walgett. The DEG was auspiced by the Walgett Aboriginal Medical Service until 1 July 2005, when it became autonomous. Projects of the Group aim to:

- Support Aboriginal elders to resume leadership roles in the community, keeping active and healthy
- promote local Aboriginal culture, knowledge and identity
- develop the Walgett Aboriginal community

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Overview

Introduction

The Narran Warrambool reserve is significant for its Aboriginal and historic values. The local landscape is dependent upon the mythology of the Aboriginal people, the surrounding language clans, the fossil record, and the natural vegetation and landscape. These are all interconnected with both the recorded and unrecorded Aboriginal archaeological sites.

Activities associated with opal mining will impact dramatically on established Aboriginal cultural heritage by disturbing and destroying items of significance, like camp and burial sites, carved and scarred trees and other evidence of material culture valuable and irreplaceable to Aboriginal people.

Ultimately, as stated on page 6-23 of the Parsons Brinckerhoff “Opal Mining within the Narran-Warrambool Reserve, Lightning Ridge – Review of Environmental Factors” dated April 2004 (REF):

there are currently no safeguards or protocols in place to address the potential impact of proposed or active mining claims on the Aboriginal archaeological and material culture, regardless of whether sites are registered with National Parks and Wildlife Service. The NSW National Parks and Wildlife Act 1974 protects all Aboriginal relics in NSW, regardless of their status. Furthermore, it is illegal to destroy, deface or damage any relics. This presents an area that needs to be addressed in the management of Aboriginal archaeological material cultural and heritage values in OPAs 1-3 and in particular the proposed opening of OPA 4.

Background to Aboriginal Culture and Heritage

Aboriginal cultural heritage in the Walgett area is a world view that has been shaped and reinforced by familiar environment and practices which have taken place over tens of thousands of years. In the last 145 years this world view and environment have been significantly damaged.

Aboriginal people living in the Walgett area who are over sixty years of age remember their grandparents who were predominantly raised by parents who had mostly lived in the traditional Aboriginal world. Therefore, the link with cultural knowledge for elderly people, although it was shamed and actively discouraged until recently, is still ever present. The traditional cultural lifestyle is practiced on a daily basis and this is a comfort in the world of poverty that our elders now live in. The elders believe that if the Aboriginal youth can regain their links with their cultural heritage then they will have the security of identity and strength to help them struggle into the future.

Mining in the Narran-Warrambool Reserve currently occurs within three Opal Prospecting Areas (OPAs 1-3). The fourth proposed Opal Prospecting Area OPA 4, has so far only been impacted upon by cropping and grazing activities. The Dharriwa Elders Group (DEG) has been documenting the creation stories associated with the culturally significant places in OPA 4, and promoting them in its monthly magazine Yundiboo and in its educational activities with the local youth. The DEG has also been actively working for more than four years to protect its local environment through its lobbying and communications activities. The DEG believes these activities are potentially threatened by the proposed mining development at OPA 4.

The Walgett Aboriginal people have received no benefits under the *Native Title Act*. They have made no land claims under the NSW *Aboriginal Land Rights Act* nor have they received any land purchased by the Indigenous Land Corporation.

The Walgett Aboriginal elders and their ancestors predominantly worked for pastoralists, thus working to establish their industries and maintain their lifestyles. Furthermore, their contribution shaped the local economy and landscape that exists today. Despite this significant contribution, none of the Aboriginal farm workers received superannuation, only 2 elders possess an asset base (for example own their own home) and all except two elder members are reliant upon welfare. Overall, the Walgett Aboriginal elders in the DEG feel that their strong attachment to the land is being assaulted.

As stated above opal mining has a detrimental impact on the Aboriginal cultural environment. One of the largest impacts of opal mining is the clearing of native vegetation. Regulators need to recognize that the presence of native vegetation has emotional, spiritual and multiple other benefits for the Aboriginal people. Culture and land are indivisible for Aboriginal people. Aboriginal culture values not just places and things that show evidence of Aboriginal life and material culture, but above all they value the presence of diversity encapsulated in the birds, animals, fish, insects and their communities and habitats as well as the lifestyle given and shaped by rivers, land and native vegetation over tens of thousands of years.

Opal mining also has a dire impact upon the ability of the Aboriginal people to maintain their links with the culturally significant sites.

How the interests of Aboriginal people are represented effectively will differ from place to place. This has always been a difficult process for landholders and NSW government departments and will continue to be, until there is a concerted effort made to roll up sleeves and negotiate local processes with Aboriginal people that are transparent and fair. In the past this has been difficult and it also presents a significant challenge for the future. However, further consultation and interaction with the local Aboriginal groups will greatly assist the process. In light of this the DEG are happy to assist in giving advice on how local processes can be further developed.

Opal-mining practices have had a detrimental impact on Aboriginal cultural sites and places. It appears to be impossible to protect Aboriginal sites from damage by opal mining. There is no evidence that the safeguards recommended by this Report will protect sites or will even be implemented, even if they become government policy. The history with OPA 1-OPA 3 indicate otherwise. Once sites are destroyed you cannot put them back. The DEG want compensation for the local Aboriginal community for those sites that have already been destroyed in OPAs 1-3 and no opal mining in OPA 4.

Format of Submission

The remainder of this submission sets out the comments on specific parts of the REF. We note that the REF is marked "draft" but appears to be being assessed by the Department of Mineral Resources as the final REF.

Comments on Specific Parts of the Report

Chapter 4 – Regional and Planning Context

4.3 Legislation

Native Title Act 1993 and Native Title Amendment Act 1998

Members of the DEG were not consulted by the NSW Minister for Land and Water Conservation in relation to the request:

that the Commonwealth Attorney General determine under Section 26C of the Native Title Act land as “approved opal or gem mining areas” at Lightning Ridge.¹

How can the NSW Minister and Commonwealth Attorney General wipe out Native Title in the Narran-Warrambool Reserve like this with no consultation and with no compensation to native titleholders, or Aboriginal people with ties to the land?

Some Aboriginal people living in the Walgett area are involved in making Native Title claims and many are not. No participants of the DEG are knowingly a party in any native title claim. They are rarely informed of meetings held on the subject and no-one involved in native title has bothered to spend the resources to sit down with each elder and ascertain if they have any native title rights. The Native Title Act appears to be largely irrelevant for the DEG. The Walgett Aboriginal community owns no land and has seen no benefits from the Act. Why is this so, when the DEG is a collection of Aboriginal people over 60 years of age?

National Parks and Wildlife Act 1974

There are many more places and things of Aboriginal cultural heritage significance than those listed with the NSW National Parks. Neither the NSW Government nor Aboriginal people have been properly resourced to map Aboriginal cultural heritage locally and ascribe its Aboriginal cultural heritage value.

A site register search of the NSW National Parks and Wildlife Service Aboriginal Heritage Information Management System identified 124 registered Aboriginal sites within the Narran-Warrambool Reserve.²

The fact that items appear in the NPWS register is not the product of any systematic mapping. Places and items have been listed because a landholder has reported them (rare), a site survey has been undertaken as part of legislative obligations when a landholder has applied for development, or Aboriginal NPWS officers have reported them. If the NPWS Site Register is examined more closely, site clusters on certain properties become evident. This is because only some property owners have allowed NPWS officers access to their properties. Most are unsurveyed.

Aboriginal people rarely list places and items, as they have little confidence that locations will be kept confidential and in many cases, places have been destroyed once they have been identified. There are systemic disincentives for landholders to report and conserve places of Aboriginal cultural heritage, for once they are known, they are more likely to attract NPWS

¹ Page 4-6 Mineral Resources New South Wales, Parsons Brinckerhoff

² Page 4-10 Mineral Resources New South Wales, Parsons Brinckerhoff

Act attention, therefore restricting the landholder's land development. Anecdotal reports of hatred for the NPWS Act amongst local landholders are widespread. We have encountered it when trying to return Aboriginal human remains from museums to where they were originally buried.³ We know that if the NP&W Act is applied correctly, there would be little development possible in the Walgett region for there are so many Aboriginal relics and areas of Aboriginal cultural heritage significance.

Obviously the DEG is happy to work with others to assist in identifying the relevant sites and to protect those sites.

We are of the view that a commitment needs to be made to protect the Aboriginal relics and areas of Aboriginal cultural heritage significance before any decision can be made to open up these culturally significant areas of OPA 4 to opal mining.

Threatened Species Conservation Act 1995 and Threatened Species Conservation Amendment Act 2002

It is our understanding that listings under this Act are not a true picture of threatened species, threatening processes or threatened ecological communities. The NSW Scientific Committee which makes listings under the NSW Threatened Species Conservation Act, the Department of Infrastructure Planning and Natural Resources, the Department of the Environment and Conservation, the Catchment Management Authorities, local government and other bodies involved in government policy planning do not have the resources to gather data about the state of biodiversity and bring their considerations up to date after years of neglect and damage in NSW.

The DEG believes that there are threatened species of flora and fauna in the area, and reminds the Minister that the Coolibah – blackbox woodlands of the Darling Riverine area (i.e. within the Narran Warrambool Reserve) has recently been scheduled under the NSW Threatened Species Conservation Act as a threatened ecological community. We therefore support the REF's opinion and recommendation:

The assessments indicated that continued opal mining in its current form, is likely to result in a significant impact on these species through the loss and modification of habitat. As a result of these assessments, it has been recommended that further assessment is undertaken within OPA 4, to the level of a Species Impact Statement, in order to better understand the likely impacts on flora and fauna (see Section 7.2.2).⁴

We understand that this further assessment has not been undertaken. Any determination of the application for mining OPA 4 must not be made until that assessment has been undertaken and properly considered.

The NSW Aboriginal Land Rights Act has not been included in the list of relevant state legislation in this section, and we believe it should also be included as crown lands in the area are subject to land claims under this Act. Any impact on crown lands or lands adjacent to them will affect the value to Aboriginal people of the land and consequently impact on those people being in a

³ This current project of the DEG is being undertaken with the assistance of Joan Treweeke, prominent landholder, and the Walgett Shire Reconciliation Group.

⁴ Page 4-10 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

position to make a valid claim for the relevant land. The land council network⁵ is a stakeholder in these matters, representing the interests of Aboriginal communities and protecting land that can be claimed in the future under the NSW Aboriginal Land Rights Act. Any modification of crown land, or impact on it from development, has an impact on the Aboriginal value of the crown land and so will detrimentally affect the intention of the NSW Aboriginal Land Rights Act to vest land in local Aboriginal land councils that is of spiritual, social, cultural and economic importance and value to the relevant group.

The **Rural Lands Protection Act 1998** is also impacted by opal mining in the area. Crown lands used for watering and travelling stock (including along the rivers and other waterways) are valued highly by Aboriginal people in our area as they were often the places Aboriginal people camped and passed by (from water to water) so they have sites on them. In places where the rest of the land has been cleared for cropping, stock routes are important sites of remnant native vegetation and are often the last remaining places where bush foods and medicines can be sourced.

These Acts are currently under review.

We urge the NSW Government to improve the rights of Aboriginal people to claim lands and to negotiate any further loss of the value of crown lands with Aboriginal people.

Chapter 5 – Stakeholder and Authority Issues

5.1 Consultation Process

We believe it was only because the DEG had begun to research opal mining planning that the DEG was included in the process of the REF. There was no systematic attempt to consult with the Aboriginal communities. We refer the Department to the “Two Ways Together” NSW Aboriginal Affairs Plan⁶. The consultation process that was conducted was not in accordance with this settled policy. It is our understanding that it is a government requirement that the processes and agreed strategies of the Plan will be followed by all agencies.

We ask that the Department be requested to conform to NSW Government policy and improve its relationship with Aboriginal communities (a relationship which was non-existent before the REF was undertaken in Walgett).

5.2.3 Aboriginal Groups

The fact that the Lightning Ridge Miners Association (**LRMA**) consults one Aboriginal elder regarding Aboriginal cultural issues is a good start, but unsatisfactory for the purposes of the REF. The Report presents no evidence that LRMA members are not impacting on Aboriginal cultural heritage. The LRMA’s relationship with an individual is not going to satisfy the DEG that their members’ activities are not harmfully impacting Aboriginal cultural heritage. There is no evidence presented in the REF that the LRMA has the resources or the desire to monitor its members activities currently, and no evidence that LRMA members have changed their plans after considering the impacts of their plans on Aboriginal cultural heritage or biodiversity.

⁵ The Aboriginal Land Rights Act is currently under review. Whatever happens to that Act and the land council network described under it, Aboriginal elders in the Walgett region and probably throughout NSW, will continue to maintain an interest in the protection of crown lands.

⁶ “Two Ways Together” – Partnerships: A new way of doing business with Aboriginal people. 2003

Miners suggested that money collected for the native title trust be used to mark and protect significant sites. At this meeting the DEG suggested that this money be treated as a royalty for Aboriginal communities, paid to the local Aboriginal Land Councils, and be used to protect and monitor the impact of mining on Aboriginal cultural heritage in the region. The Walgett LALC boundary includes the Grawin Glengarry Sheepparks fields, while the Lightning Ridge LALC boundary includes the Lightning Ridge, Angledool and Cooceran fields. Currently the Aboriginal people in the region do not receive any income from mining.

The DEG has not completed its training of Aboriginal site officers. We persuaded TAFE to begin a course locally, which we modified, and included a local site inspection component with elders, but the course was discontinued when the TAFE employee organizing it was transferred. Meanwhile, the DEG has spent four years producing and attracting funding to complete a multimedia site register to preserve cultural heritage information and put it into a form which can be used by Aboriginal organizations and their consultants.⁷

The two heritage studies mentioned in the REF, conducted by DMR in 1983, and another study commissioned by ATSIIS conducted by Michael Stewart has no status with the DEG. Neither the DEG nor its participants were consulted for these studies. We respectfully suggest that they are therefore worthless for the Walgett region and request that a further report be prepared.

6. Environment Assessment

6.1 Water Management

6.1.1 Surface Water

Potential Impact of Mining Operations within OPA4 & Recommended Mitigation Measures

The DEG supports the Report's recommendation that there should be no extraction of surface water from the Narran River and associated wetland system within OPA 4⁸. We add that this be extended to OPAs 1 –3 and waters restored that have been used for mining in the past. For example, the Angledool Lake and Cooceran Lakes are part of the wetland system, yet are extensively cropped and mined.

Before we support a buffer zone we need to ensure that the boundaries of the Narran Lake system are defined, and not limited to the boundaries of the Reserve, which are a historical artifact. The wetland system extends to Angledool in the northeast. A buffer zone of 3 kms around the Narran Lake Nature Reserve and Narran Lake itself must include the surrounding wetland system.

6.1.2 Groundwater

Recommended Mitigation Measures

The DEG supports the regular inspection of bores to ensure that no wastage of water occurs, and that unused bores should be capped⁹. There are significant mound spring sites within OPA 4 and OPAs 1-3. These are of considerable geological value. They also have spiritual and cultural value for local Aboriginal people. They have been destroyed by opal mining and associated activities and should be restored. We want compensation for their destruction and

⁷ The DEG recently made a submission to the NSW Heritage for funding to complete and launch this resource, which was successful.

⁸ Page 6 – 3 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

for them to be restored. Two are at Cumborah¹⁰, the other north of Angledool. They are listed by the NPWS site register, a fact that has not saved them from desecration.

*Based on current usage of groundwater resources within OPAs 1-3, the future opening of OPA 4 is unlikely to have a significant impact on groundwater resources.*¹¹

We do not accept that current usage of groundwater resources is an indication of future use of groundwater in OPA 4. We have attended meetings with mining communities from Grawin/ Glengarry/ Sheepyards and the Walgett Shire Council and there is a concerted effort by both parties to develop OPA 4 including to provide permanent water supplies to the mining fields. There is already considerable pressure to develop OPA 4 from these parties – so far without any environmental or Aboriginal cultural heritage impact studies being undertaken. We do not believe that the DMR can guarantee that Walgett Shire Council will manage the development of OPA 4 in any pre-planned organised way.

6.2 Geology and Soils

As above, the DEG wants compensation for the destruction of significant geological features by opal mining, and to prevent any future destruction. Opal mining areas must also be rehabilitated.

When soils are taken from within the Reserve, particularly in the ridges, to be used in rehabilitation and hole-filling, they will need to be checked for they will most likely contain artifacts of significance and possibly human remains from burials, which should not be disturbed.

The DEG supports the REF's statement that *"Impacts to the sensitive Narran Lakes catchment should be avoided"*¹² but do not agree that a *"three kilometre buffer around the lake should prevent sediment mobilized by mining activities from reaching the lake"*. For one, the Narran Lake boundary has not been adequately mapped, and for two, as above, the associated wetland system including the Narran River needs to be included within the boundaries before a 3 km buffer zone would be appropriate.

6.3 Flora and Fauna

Self-regulation amongst landholders regarding protection of koala habitation does not work. It would be the same with most listed threatened species. We know that landholders are reluctant to declare they have koala habitat on their land because they know this will close their development options. Aboriginal elders still have knowledge of most koala habitats in this region due to the time spent working on properties and maintaining links with culture. The Bimble Box is one of the dominant trees in the Narran-Warrambool Reserve. It is our belief that koalas live mainly in bimble box and so any impact on the bimble vegetation communities will have an adverse effect on the koala, which is protected.

⁹ Page 6-5 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁰ The "Assessment of impact of proposed town water supply bore from the Great Artesian Basin on local springs at Cumborah township", September 2003, Peter Sinclair Regional Hydrogeologist, Barwon Region, NSW Dept of Land and Water Conservation recommended that the mound springs be restored. See also the Pickard 1990 report "Artesian Springs in the Western Division of New South Wales".

¹¹ Page 6-5 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹² Page 6-8 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

We are not surprised that “*No threatened species of plant were identified during the surveys*”¹³ as the REF surveys were very limited, the NSW Scientific Committee has inadequate resources to research and schedule threatened species, and when they are listed, they would not usually be present in current mining areas.

*Currently, there are no endangered ecological communities within the Narran-Warrambool Reserve listed under either the Threatened Species Conservation Act 1995 or the Environment Protection and Biodiversity Conservation Act 1999.*¹⁴

The coolibah black box woodland has now been listed as a threatened ecological community. This listed community includes species listed in the “Existing Environment” of the REF. The NSW Scientific Committee also reminds that the

*'Alteration to the natural flow regimes of rivers, streams, floodplains and wetlands' is listed as a Key Threatening Process under the Threatened Species Conservation Act 1995.*¹⁵

Opal mining mitigation measures must not constitute a threatening process under this Act. We believe OPA 4 is within the Narran Lake wetland system.

The Report is clear in stating that opal mining impacts badly on flora and fauna:

*The cumulative affect of intensive mining in these areas is likely to have a significant impact upon both flora and fauna.*¹⁶

*The assessment indicated that, on the knowledge gathered in this survey and previous surveys, continued opal mining in its current form is likely to result in a significant impact on the Five-clawed Worm-skink, Bush Thick-knee, Hooded Robin, Black-chinned Honeyeater, Barking Owl and Koala and therefore further investigation is recommended to the level of a Species Impact Statement to assist in developing a biodiversity plan for OPA 4.*¹⁷

The Draft Walgett Regional Vegetation Management Plan is referred to.¹⁸ The Walgett Regional Vegetation Committee had no Aboriginal members who took part in the Plan, and the Plan itself recommended excessive clearing. Much of the Plan has now been discredited.¹⁹

Recommended Mitigation Measures

The DEG asks whether the expense and difficulty of implementing the mitigation measures recommended represents good value for money for NSW and the Walgett community. If OPA 4 is opened, these mitigation measures will be a necessity. But we are very skeptical about their implementation:

Further investigations should be undertaken within OPA 4 to assist with biodiversity planning within the region. These investigations should be undertaken following consultation with the New South Wales Department of Environment and Conservation and the Commonwealth

¹³ Page 6 –10 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁴ Page 6-10 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁵ Associate Professor Paul Adam, Chairperson, Scientific Committee, Proposed Gazettal date: 14/05/04.

http://www.nationalparks.nsw.gov.au/npws.nsf/Content/coolibah_black_box_woodland_endangered

¹⁶ Page 6-16 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁷ Page 6-16 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁸ Page 6-14 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

¹⁹ See the Dharriwaa Elders Group response o the Walgett Draft Native Vegetation Management Plan , NSW Dept Land and Water Conservation August 2002

Department of Environment and Heritage and should aim to develop a planned opening of OPA 4 such that there is no significant impact on threatened species. Areas of vegetation of high conservation value should be identified and set aside for conservation in a way that ensures each of the four main vegetation types listed in this report remain connected by one or more corridors of vegetation. This will ensure that at least some areas of each type of vegetation community are conserved in a high quality state.²⁰

And we add that Aboriginal elders with knowledge also need to be consulted.

We know from their past track record that miners' associations will not implement these measures. We know from past experience that the Department of Mineral Resources will not devote the resources to monitor and enforce these measures. Unless we, the local Aboriginal communities, are assisted to start-up a monitoring and compliance activity to support these mitigation measures, they will not happen.

Bonds for mineral claims should be increased to encourage claim holders to rehabilitate and revegetate mined areas.

Bonds for enforcing rehabilitation of claims are currently an inadequate measure to support rehabilitation of claims. The DEG supports revegetation via replanting with suitable indigenous species on mineral claims, once old-growth native vegetation has been lost. Rehabilitated native vegetation does not have the same value as old-growth native vegetation. Financial penalties can be imposed but old growth native vegetation cannot be rehabilitated once it is cleared – it is lost forever. Once the value has been correctly attributed to native vegetation then perhaps its loss will begin to be correctly valued as well.

The DEG supports the proposed non-refundable environmental levy²¹ to be imposed on all mining claims to be used for environmental rehabilitation of current mining areas. Realistically it is unlikely that miners will take any more responsibility for the rehabilitation of their claims than they have in the past. Revegetation and rehabilitation will only be done if government does it. How many opal mines have been rehabilitated in the past? For that matter how many miners can follow revegetation guidelines and find native seed suppliers? Does the Department have the resources to supervise and assist these miners? No. We propose that the miners be levied, unregistered claims be closed off and rehabilitation tasks be given to Aboriginal community programs under the supervision of the Department of Environment and Conservation and local Aboriginal elders.

Opal miners notoriously underperform their civic duties now. What makes the Department of Mineral Resources and Parsons Brinckerhoff believe that they will perform the mitigation measures recommended? How much state revenue has already been lost to opal miners?

6.4 Cultural Heritage

The DEG wishes to thank Heritage Concepts for its valuable contribution to the REF. We know they subsidized the REF with the extra time they recognized needed to be spent to give the Review justice. The one day they could spend with us on location they soon realized revealed only the tip of the iceberg of uncharted and undocumented Aboriginal cultural heritage in OPAs 1-4.

²⁰ Page 6-17 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

²¹ Page 6-17 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

Aboriginal communities must be supported to develop their own maps which overlay government data, and given access to training and expertise so that Aboriginal people can be integrated into the monitoring and management processes. How else can Aboriginal cultural value be known and maintained?

Importantly any workers in this area must be qualified and endorsed by appropriate²² elders.

The REF acknowledges that:

*the existence of the cultural landscape of opal mining today is very much based on practices that have had a detrimental impact on Aboriginal cultural sites and places.*²³

But then states that:

*Mining has been a constant part of the life and economy of Lightning Ridge and the opal fields' district and has shaped much of the existing heritage of the area. It is therefore important to provide safeguards to insure the protection and ongoing preservation of sites and places of Aboriginal and historic cultural importance.*²⁴

Opal-mining practices have had a detrimental impact on Aboriginal cultural sites and places. It appears to be impossible to protect Aboriginal sites from damage by opal mining. There is no evidence that the safeguards recommended by this REF will protect sites or will even be implemented, even if they become government policy. The history with OPA 1 – OPA 3 indicate otherwise. Once sites are destroyed you cannot put them back. We want compensation for those sites that have already been destroyed in OPAs 1-3 and no opal mining in OPA 4.

As the REF states, there are sites of Aboriginal Cultural Heritage significance everywhere in the Narran-Warrambool Reserve:

*Neither a basic site identification study, nor a comprehensive assessment of the distribution of sites, places and areas of archaeological importance has ever been undertaken. In short, it is an area that has been overlooked in previous academic research and cultural heritage studies. Those studies that do exist are in response to development or resource extraction pressures, and have never fully explored the extent and intensity of Aboriginal occupation and exploitation of the cultural landscape.*²⁵

The DEG encourages archaeological and scientific research so it can be proved to developers and government that there is a rich area of Aboriginal cultural heritage significance in the region west and north of Walgett and it is particularly centred on OPA 4. The DEG has worked since 2000 mapping sites and recording why they are significant so that the Walgett Aboriginal community and its consultants will have a powerful tool to manage natural resources and protecting Aboriginal cultural heritage. We do not trust other people or agencies with this knowledge. Before when places have been revealed they have been destroyed. NPWS has a list of some sites but don't have enough resources on the ground to conduct a complete survey to list all sites or to protect the ones they have listed. As stated before, if a farmer finds an Aboriginal artifact or site on his land, it is our experience that he usually won't report it because his livelihood is threatened.

²² That is, who are identified by most elders as the appropriate elders

²³ Page 6 – 23 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

²⁴ Page 6-23 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

²⁵ Page 6-24 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

Recommended Mitigation Measures

The DEG supports the measures listed. However, we believe that the mitigation measures will not be implemented, and so cannot support the opening of OPA 4.

For any future opal mining activity, practically-enforceable management guidelines for the protection of Aboriginal cultural heritage (including archaeology and biodiversity) must be in place.

Monitoring compliance and evidence-gathering for prosecuting Aboriginal cultural heritage protection law over OPAs 1-4 is limited currently. DIPNR and NPWS staff are selected for their jobs often for their empathy with landholders and agricultural interests. It is our experience that it is notoriously difficult to gather evidence of the destruction of relics in order to prosecute offenders under the National Parks and Wildlife Act as these offences occur in remote areas and go largely undocumented. In order to achieve the aims of this Act, the Government should assist Aboriginal people to regain a closer relationship with the guardianship of the land.

Many government departments will benefit from Aboriginal people being encouraged to take a bigger role in the management of Aboriginal cultural heritage. Here, we believe the DEG's involvement is needed by the Western Catchment Management Authority for the management of development, biodiversity and natural resources, the Department of Infrastructure Planning and Natural Resources for the management of development, biodiversity and natural resources, the Department of Environment and Conservation (incorporating NPWS) for the management of Aboriginal cultural heritage and the environment, the Department of State and Regional Development for economic development of the region through ecotourism and Aboriginal cultural tourism development, NSW Heritage for the protection and maintenance of Aboriginal cultural heritage in the region, the Department of Primary Industries for negotiating the management of mining, forestry and agriculture, to assist the Department of Education and Training to develop local skills and provide cultural awareness for visiting professionals to the region, the Department of Lands for managing Crown Reserves, travelling stock routes etc, and assistance to the NSW Premiers Department for the co-ordination of activities. The Department of Juvenile Justice, Department of the Attorney General and Department of Corrective Services will also benefit locally from our services to develop the facilities and processes to provide sentencing alternatives to jail and diversionary activities, for local Aboriginal offenders. These are the departments who the Dharriwaa Elders Group provides advice to now. All these activities will benefit from OPA 4 remaining intact. That is, all these activities will be adversely impacted by opal mining in OPA 4.

The land council network has proved inadequate and under-resourced for these tasks and ATSIC has been dismantled. Currently the DEG is the only entity on the ground in the Walgett area performing these activities for government and NSW. But it is only a group of Aboriginal elders. We can only take a governance, teaching, supervisory and accreditation role in such activities. Government needs a reliable network of organisations across the state to perform these duties in a consistent way according to protocols that suit Aboriginal communities and are understood by all who work with them.

At present, OPA 4 is the area with the most recorded sites within its boundary and this is prior to any systematic archaeological investigation taking place. It is recommended that further

*sensitivity mapping be undertaken in conjunction with the biodiversity studies to ensure the best possible outcome for these two major issues.*²⁶

The REF has identified the need for mapping and this needs to be done before more places of significance are destroyed. The cost can be shared by departments as most will benefit from it, but the activity and the information itself must be owned by the local communities. Cultural knowledge is one of the few resources Aboriginal people in northwest NSW still have. This knowledge, combined with the remaining places that are unfortunately mostly in OPA 4, present an opportunity for NSW. An opportunity for economic benefits from tourism, and from self-sustaining Aboriginal communities who rely less on welfare and are less dependent on health and justice services.

The DEG supports the recommendation of the REF that rehabilitation activities on existing claims be subject to Aboriginal and historical archaeological assessment and impact statements, and that applications for new claims in OPAs 1-3 be subject to Aboriginal and historical archaeological and cultural heritage and biodiversity assessment. If OPA 4 is opened up (which we object to) then new claims there should also be subject to this assessment.

The Department of Mineral Resources needs an Aboriginal Unit made up of **local**, Aboriginal-designated, **local-designated** positions whose task it will be to develop protocols with Aboriginal elders and communicate them effectively to the Department and miners on OPAs 1-3. Currently, Aboriginal Liaison Officers employed by government are poorly trained and have a **conflict of interest** when working with Aboriginal communities. They work for their local office manager, not the community, and they are grateful for employment in this area of huge Aboriginal unemployment. They need to be supervised effectively and supported by monitoring and compliance resources as they will be alone in an office of mining enthusiasts. They will need exceptional maturity and experience, and training from the DEG as well as the Department. We request that two DEG members be on the selection panel for the positions. Members of the DEG know most Aboriginal people in the region, their track records and their families. Please use this knowledge to place the right people in the jobs.

Areas of Aboriginal cultural heritage significance (which include areas of vegetation of high conservation value) will need to be identified and set aside for conservation.

Offsets are a model currently being considered for the implementation of the NSW Native Vegetation Act 2003, and we recommend they be considered in the implementation of opal mining as well. Offsets should be made to compensate for the damage that has already been done in OPAs 1 – 3 to Aboriginal cultural heritage and biodiversity. They could provide an opportunity for Aboriginal involvement in mining management. Offsets should be made in OPAs, as well as in regions. The DEG maintains that OPA 4 should be conserved to offset the damage already done in OPAs 1-3. In the planning of offsets it must be realized that the loss of old growth cannot be substituted in an offset by regrowth or new planting. They are not equal. That is, they do not have the same Aboriginal cultural value! They cannot be offset by new planting.

²⁶ Page 6-24 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

6.6 Land Use

Impacts of Current Mining Activities

The Report discusses the impacts of opal mining on current land use:

*The major impact of mining activities is the clearing and modification of land making it unsuitable for grazing,*²⁷

but has no discussion of the future land uses envisaged for the region. Mining activities make the land good for nothing. Eco and cultural tourism are slowly being developed by the NSW Department State and Regional Development and local Aboriginal groups²⁸. Other sustainable industries can potentially be developed that exploit Aboriginal cultural knowledge and the places it is linked to. The development of OPA 4 will destroy this possibility. We have no evidence from the REF that it will not, only evidence of the damage already done by mining in OPAs 1-3.

Recommended Mitigation Measures

*The following mitigation measures are recommended to reduce the potential impacts on pastoral leaseholders and to appropriately compensate them.*²⁹

Compensation should be paid to the Crown for degradation of the land that is leased by it to the western lands leaseholders. This should include the degradation caused by stock and cropping, as well as mining. On the basis that the relevant legislative requirements are complied with that allow for damage or destruction of Aboriginal cultural heritage, the Crown (whether through its own resources or funded by the holders of the relevant mining leases) should compensate Aboriginal people for the damage done to their cultural heritage. Of course government is already paying compensation in health and justice costs – but these payments are only to assist the victims after the damage has been done. Why not be proactive and provide funds to prevent these costs in the first place by supporting Aboriginal cultural heritage maintenance?

6.9 Visual Assessment

Recommended Mitigation Measures

Throughout the REF, it is recommended that rehabilitation and revegetation of sites after mining has ceased. Where is the evidence that this has ever been done before? According to other data in the REF, most miners are on welfare benefits. Who is going to meet this cost? Is the government prepared to pay for this? An Aboriginal company (for example, CDEP) should be trained and paid to do this by the Department of Mineral Resources from the proposed non-refundable levy on miners.

²⁷ Page 6 – 28 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

²⁸ *Western NSW Aboriginal Tourism Development Project*, Western Regional Coordination Management Group Strategic Plan 2003

²⁹ Page 6-28 as above

6.11 Social and Economic Aspects

Existing Environment

The Report seems to have been dazzled by the Lightning Ridge Mining Association and Lightning Ridge enthusiasts while they were here:

Tourists are attracted in a large part because the opal mining, as practiced, represents living history reminiscent of the pioneer days in the outback...increasingly the town of Lightning Ridge is displacing Walgett as the major regional centre in terms of the range of services it provides to the local area.³⁰

It is not true that Lightning Ridge is replacing Walgett as a major service centre, although Lightning Ridge residents would like to believe that. May we remind the Department that the Minister for Local Government recently conducted a review into the Walgett Shire Council's activities when it was factionalized and controlled by the Lightning Ridge faction. The Governor sacked the Council, installing an Administrator, after a public inquiry was held at the request of the NSW Minister for Local Government.³¹

The Grawin, Glengarry Sheepyards opalfields are mostly serviced from Walgett. They use our Walgett Aboriginal Medical Service, hospital, shops and government agencies. But how much of their income is from welfare and how much from opal?

We challenge the REF's implications that mining is an important, growing contributor to the local economy. The town of Walgett has a larger Aboriginal population than Lightning Ridge, and it is a larger percentage of the population than in Lightning Ridge. Because of this, opportunities for economic development by the Aboriginal community need to be developed in Walgett and its surrounds. Some Aboriginal people mine claims³², but mostly Aboriginal involvement in opal mining is to "noodle" in the mullock heaps which requires no capital investment. Eco tourism and Aboriginal cultural tourism are industries that hold greater potential for Aboriginal employment and enterprise. The REF's estimate that 70% of the Lightning Ridge population is receiving some kind of government support illustrates that the opal mining industry is no longer an economically viable industry. And at what cost to government is opal mining to expand in this area? And for how long? If opal has run out in OPAs 1-3 (and we don't believe that), then how long will it take for OPA 4's opal to be depleted? Why not begin the development of new industries for the area now instead of putting off the inevitable?

There is an economic and social impact of the presence and absence of native vegetation for Aboriginal people and everyone in NSW. Future enterprises including ecotourism and Aboriginal cultural tourism, use of bush medicines and other products derived from native vegetation which are affected greatly by the biodiversity of an area and which will provide an important economy for NSW Aboriginal communities in the future, have not been valued.

Recommended Mitigation Measures

The REF recommends that Walgett Shire Council consider the infrastructure needed to support opal mining in OPA 4:

³⁰ Page 6-34 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004.

³¹ Walgett Shire Council Public Inquiry Report by the Commissioner Robert A. Bulford, NSW Government 2004.

³² We can think of only three claims mined by Aborigines.

It should be recognized that the needs of the mining, agricultural and tourism industries need to be considered in the development of OPA 4. Consideration needs to be given by Walgett Council in relation to infrastructure and servicing necessary to support mining activities in this area. The release of Opal Prospecting Blocks by the Department of Mineral Resources should be controlled and conducted in liaison with Council and mining representatives to ensure that mining of the area is conducted in a planned way and to allow for the provision of appropriate services. All permanent residents should be encouraged to register on the electoral roll and fill out Census forms for the 2006 Census so that an accurate representation of population can be obtained. This would assist in Lightning Ridge in demanding increased funding for services and infrastructure from both local and state governments.³³

We can testify that the Council before it was sacked, seemed to take the development of OPA 4 as a fait accompli. We were concerned about its actions to source a permanent water supply and other actions to develop around the Grawin, Glengarry Sheepyards without any environmental or cultural heritage impact assessments. Currently there is little evidence that Walgett Shire Council plans for development. A formal investigation by the Department of Local Government under Section 430 of the Act, in its Recommendation 29 stated the Walgett Shire:

Council develop a new LEP as a matter of urgency to replace its long outdated and outmoded planning instrument³⁴.

Council resolved to do this in February 2004, but there is still no LEP. The Council's track record proves that planning for infrastructure for miners will be inadequate, if performed at all.

The assumption by the REF that Lightning Ridge services would need to be increased if OPA 4 was introduced is also misleading. If more citizens participated in the Census then we are sure that both Lightning Ridge's and Walgett's population³⁵ would appear higher and therefore services would be seen to be needed more than they are now in both centres. Development of OPA 4 would probably increase the need for services in Walgett.

We believe that the lifestyle attractions of the Grawin Glengarry area would be ruined if the roads and infrastructure were improved. The tourism benefits of the existing mining villages and of the area known as OPA 4 would be negatively impacted by greater development.

6.13 Cumulative Effects

The current mining activities are likely to be having impacts on flora and fauna, cultural heritage, visual amenity and land use. The opening of OPA 4, even with appropriate mitigation measures in place, is likely to add to the cumulative impacts of opal mining in the Narran-Warrambool reserve. The main cumulative impact within the Narran-Warrambool reserve will result from vegetation clearing associated with mining combined with vegetation clearing for agriculture. ...It is estimated that permission will be given to clear 40,000 hectares of existing grazing land over the next ten years within Walgett Shire, 34,000 hectares in the west of the shire (Department of Land and Water Conservation, 2002)..... Without appropriate conservation planning within OPA 4, the combined effect of vegetation clearing from mining and agriculture may have a significant impact on biological resources of the area.³⁶

³³ Pages 6-35, 6-36 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004.

³⁴ page 69 Walgett Shire Council Public Inquiry Report by the Commissioner Robert A. Bulford, NSW Government 2004.

³⁵ Walgett's high Aboriginal population is also notoriously underrepresented.

³⁶ Page 6-37 Mineral Resources New South Wales, Parsons Brinckerhoff April 2004

We think updated scientific work on biodiversity has proven that native vegetation clearing does have a significant impact on the biological resources of the area.

The DEG recommends that OPA 4 be conserved to offset the impact to OPAs 1 – 3.

Precautionary Principle

The Report recommends application of caution because of the lack of knowledge of OPA 4. We believe this lack of certainty reinforces our strong objection to the opening up of OPA 4. Once Aboriginal cultural heritage has been lost it's gone. And you can't replace it or rehabilitate it. Once old growth native vegetation has gone it's gone.

Intergenerational Equity

The statement that:

OPA 4 would provide ongoing benefits for local communities by providing both direct and indirect economic benefits,³⁷

is, we believe, wrong. We believe that the future economic benefits to local communities from a preserved OPA 4 will be higher than if it is exploited for opal mining. We do not believe (from opal mining's previous record in OPAs 1 – 3) that the parts of OPA 4 valuable to us will be conserved appropriately if opal mining proceeds there.

Valuation and Pricing of Environmental Resources

The value of Aboriginal cultural heritage has not been made by this REF. The cost of the loss of Aboriginal cultural heritage has not been valued. But we can begin to start estimating the value when we look at the costs of services to Aboriginal people, their health and education outcomes. Aboriginal people value highly the remaining places significant to them, the plants, animals, land and water and their knowledge of them. Is opal mining in this area more valuable?

Has the cost of mitigation been widely investigated? We have not seen working mitigation measures implemented in our area. We know miners won't meet these costs – so will the government?

³⁷ Page 6-38 as above

Conclusion

The Dharriwaa Elders Group is strongly against the opening of OPA 4 because it has experienced the negative impacts on OPAs 1-3, which have not been rectified or compensated for, because the area within OPA 4 is special and in some places sacred, and because we have lost enough.

The Dharriwaa Elders Group requires compensation to be made to the local Aboriginal people for the desecration of sacred sites from mining in OPAs 1-3 and the loss of Aboriginal cultural heritage value caused by mining in OPAs 1-3. This is not a damage or loss that can be “rehabilitated”. Monetary compensation is appropriate in these circumstances.

Rehabilitation and revegetation, management, monitoring and compliance activities must occur with existing claims. Miners will not do it. This resource management must be achieved by a partnership between Government and Aboriginal communities.

Any environmental rehabilitation activities must be subject to an Aboriginal and historic archaeological assessment and impact statement.

Assessments of Aboriginal cultural heritage value must be undertaken by assessors accredited by a group of appropriate elders and their work / report approved by a group of appropriate elders representing the cultural interests of the local Aboriginal community.

For value to be attributed to native vegetation and significant places the legislation and planning must include a process for real engagement of the relevant Aboriginal people. Support needs to be given to Aboriginal people to ascribe value. In the Walgett area the NSW Department of Land and Water began this process by the mapping of the “Occurrence and Frequency of Plant Species having an Aboriginal Cultural Value”³⁸.

DMR staff need to be a liaison point between miners and elders and their consultants to ensure that a fair and transparent process is undertaken according to agreed protocols. Previous experience has shown that corruption and unaccredited decisions have been made in the past because of ad hoc, nontransparent dealings between landholders and Aboriginal consultants. DMR Aboriginal liaison staff must be trained by the DEG, which should also be involved in their selection.

We know from experience on the ground that DMR staff are unable to monitor opal mining adequately or enforce compliance. The series of bonds as a penalty measure do not work effectively as a deterrent and do not remedy the loss of biodiversity and Aboriginal cultural heritage value.

The proposal of a non-refundable environmental levy is a sound one. Resources required by the new process will include a trust fund that pays for rehabilitation, assessment and compliances services. The trust fund accounts should be accessible to the accreditation agency of the Aboriginal community.

³⁸ See *Vegetation Communities of the Northern Floodplains – Western Division of Walgett Shire of Western NSW – Book 1, Vegetation Communities of the Northern Floodplains – Brewarrina Shire of Western NSW – Book 2, Vegetation Communities of the Northern Floodplains – North Eastern Section of Bourke Shire of Western NSW – Book 3*, Northern Floodplain Regional Planning Committee 200; which were produced with Natural Heritage Trust funding

A process of offsets should be included in planning for opal mining to offset the amount of native vegetation and other environmental impacts in each OPA and in each biodiversity region.

It is generally understood by government that processes involving Aboriginal people in NSW have to be negotiated through Local Aboriginal Land Councils and Community Working Parties in the Murdi Paaki region. In our area land councils and community working parties aren't strong. NSWALC is currently under administration and the NSW Aboriginal Land Rights Act is under review. The Walgett Local Aboriginal Land Council is under new administration. This means that those who normally represent our interests in these matters on a state level have not in this case. The Dharriwaa Elders Group is strong about Aboriginal cultural heritage and natural resource matters and believes it is not alone amongst Aboriginal communities in NSW.

The Department may not receive many submissions regarding this REF from Aboriginal people, if any, but we request that this not be assumed to indicate a lack of interest or concern.