

## **Draft NPWS Cycling Policy, Strategy and Implementation Guidelines**

Submission by the Illawarra Escarpment Alliance

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*The Illawarra Escarpment Alliance (EscA) is an alliance of like-minded community-based organisations and private landholders of E2-zoned (Environmental Conservation) land, established to focus collaborative efforts to protect the Illawarra Escarpment's cultural and environmental heritage. EscA was established in 2019 in response to the release of a draft Illawarra Escarpment Mountain Bike Strategy that proposed 82km of mountain bike trails in the Illawarra Escarpment State Conservation Area. We seek to continue the tradition of citizens and communities protecting the Illawarra Escarpment from inappropriate or unsustainable development. We are committed to the philosophy of caring for country and support culturally appropriate and ecologically sustainable tourism and community engagement on the Escarpment.*

EscA is pleased to provide the following comments on the National Parks and Wildlife Service (NPWS) *Draft Cycling Policy, Draft Cycling Strategy and Draft Implementation Guidelines*.

### **1. General comments**

EscA members have specific experience in relation to the Illawarra Escarpment State Conservation Area (IESCA). A network of formal mountain bike (MTB) tracks is under development in the IESCA and on adjacent lands, and illegal MTB riding is prevalent and expanding in the IESCA. Some local MTB riders have publicly stated that the planned formal tracks will not meet their expectations, which brings into question any assumption that creating formal tracks will prevent further damage to the national parks estate. EscA believes that our experience locally is directly relevant to the Policy, Strategy and Guidelines. We request that our comments be taken into account in developing these documents, and have included a section on the Illawarra context (see p.7 below).

EscA recognises the benefits of cycling in national parks, and the positives of having a policy and strategy to guide NPWS management of on park cycling. We believe the draft documents have many strengths, including the focus on adaptive cycling, and identification

of the many benefits of cycling as an activity. However, we believe the drafts are not balanced, and favour development of new cycling opportunities over preservation of the cultural and environmental values/heritage of the national parks estate. This is about more than just identifying the 'highest value' areas and protecting them, but about seeing the parks as a whole as being that portion of the state (less than 10% of the land area) that is formally dedicated to conservation. As drafted, the documents include provisions that will, in EscA's view, permit some actions that are not consistent with the provisions of the *National Parks and Wildlife Act (1974)*; in particular the following provisions and the elements therein highlighted in bold text below:

### 30E National Parks

*(1) The purpose of reserving land as a national park is to identify, protect and conserve areas containing outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor or tourist use and enjoyment so as to enable those areas to be managed in accordance with subsection (2).*

*(2) A national park is to be managed in accordance with the following principles—*

*(a) the conservation of biodiversity, the maintenance of ecosystem function, the protection of geological and geomorphological features and natural phenomena and the maintenance of natural landscapes,*

*(b) the conservation of places, objects, features and landscapes of cultural value,*

***(c) the protection of the ecological integrity of one or more ecosystems for present and future generations,***

*(d) the promotion of public appreciation and understanding of the national park's natural and cultural values,*

***(e) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the national park's natural and cultural values,***

***(f) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the national park's natural and cultural values,***

*(fa) provision for the carrying out of development in any part of a special area (within the meaning of the [Hunter Water Act 1991](#)) in the national park that is permitted under section 185A having regard to the conservation of the national park's natural and cultural values,*

*(g) provision for appropriate research and monitoring.*

### 30G State conservation areas

*(1) The purpose of reserving land as a state conservation area is to identify, protect and conserve areas—*

*(a) that contain significant or representative ecosystems, landforms or natural phenomena or places of cultural significance, and*

*(b) that are capable of providing opportunities for sustainable visitor or tourist use and enjoyment, the sustainable use of buildings and structures or research, and*

*(c) that are capable of providing opportunities for uses permitted under other provisions of this Act in such areas, including uses permitted under section 47J,*

*so as to enable those areas to be managed in accordance with subsection (2).*

*(2) A state conservation area is to be managed in accordance with the following principles—*

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

*(b) the conservation of places, objects and features of cultural value,*

*(c) provision for the undertaking of uses permitted under other provisions of this Act in such areas (including uses permitted under section 47J) having regard to the conservation of the natural and cultural values of the state conservation area,*

*(ca) provision for the carrying out of development in any part of a special area (within the meaning of the [Hunter Water Act 1991](#)) in the state conservation area that is permitted under section 185A having regard to the conservation of the natural and cultural values of the state conservation area,*

*(d) provision for sustainable visitor or tourist use and enjoyment that is compatible with the conservation of the state conservation area's natural and cultural values and with uses permitted under other provisions of this Act in such areas,*

*(e) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the state conservation area's natural and cultural values and with uses permitted under other provisions of this Act in such areas,*

*(f) provision for appropriate research and monitoring*

Signally absent in all the documents is a clear acknowledgement of the scale of damage done by illegal MTB riding, or of the difficulties NPWS has had in halting let alone reversing this damage. Much of the damage is inconsistent with Division 3 of the National Parks and Wildlife Regulations (Regulation of Conduct). Without proper recognition of this problem, adding formal tracks is unlikely to address the damage and may even promote its expansion.

The Policy and Strategy require, front and centre, **a credible, fully-resourced plan to identify and stop the proliferation of illegal tracks across parks. The plans must establish the education, monitoring and enforcement activities required to stop this destruction. Most importantly, NPWS should have a well-resourced commitment to repair the damage that has already been done. This will allow responsible cyclists to enjoy safe and appropriately designed MTB riding, while not rewarding those who destroy native ecosystems.**

Additionally, EscA requests that the documents as a whole:

- make more explicit reference to early consultation with stakeholders other than MTB riders;
- articulate in more detail how NPWS will support development of a consistent culture of stewardship consistent with the *National Parks and Wildlife Act (1974)*; and
- remove references to resource constraints in relation to closing and rehabilitating illegal MTB tracks.

Some specific comments on the documents follow.

## **2. The Policy would be improved if it:**

- explicitly acknowledges the problems of illegal track construction and use up front as a threat to park values and as an issue that needs to be managed. The reader doesn't encounter the issue of illegal tracks until point 7, and even here it is only referenced obliquely.
- explicitly references public consultation, including consultation with local Aboriginal communities, in point 17, as part of the process of developing any new cycling 'opportunities.' This is covered in the Strategy, but should be explicit in the Policy.
- commits to community engagement and compliance activities to address illegal track building etc (per point 7) without making this 'subject to available resources and identified priorities.' No such qualification is provided in relation to illegal track closure or indeed to track construction.
- uses the term 'illegal tracks' rather than 'unauthorised tracks.' The latter term pulls its punch, suggesting that today's unauthorised track might be tomorrow's authorised track. Would NPWS refer to speeding on roads in national parks as 'driving at unauthorised speeds' or to littering as 'unauthorised disposal of refuse'?
- the legal status of riding on illegal MTB tracks should be clarified: this should be an offense.

## **3. The Strategy would be improved if revisions:**

- remove the words 'where resources allow' from Objective 1 (Protect and conserve park values) on p.10. Other objectives in the Strategy aren't given this caveat, so there's no clear reason to include it in relation to track closure and remediation.
- reword the second paragraph in Objective 5 to say "Our focus is to engage early with our communities. We will provide stakeholders with the opportunity to *comment* on the design, construction, and maintenance of tracks, and the rehabilitation of illegal tracks." EscA does not support provision of opportunities to *assist with design, construction and maintenance of tracks* as Objective 5 currently states; such work is core NPWS business, and adherence to other objectives such as Objective 1 is conditional on NPWS undertaking these activities, or closely overseeing them at most.
  - In particular we note the potential interaction between Objective 1 and Section 3.3 in the Cycling Strategy Implementation Guidelines about minor track changes, which does not specify responsibility by NPWS; taken together these

could allow a range of 'minor' changes to MTB tracks to be undertaken by MTB riders who may not have relevant expertise in native flora, fauna and ecosystems, and could potentially allow significant damage to be done without any environmental assessment being completed.

- adjust the wording of Objective 7. This Objective currently assumes that a 'self-regulating culture of stewardship' can be developed by NPWS 'working with' user groups. Experience in the Illawarra region (and elsewhere in NSW) indicates that this objective is unrealistic; local efforts to achieve such an objective have been an abject failure, with illegal MTB tracks continuously expanding through threatened species populations and through critically endangered ecological communities. Efforts to close down damaging and dangerous trails have been thwarted by local riders working with local politicians. Some MTB riders have an understanding of 'stewardship' that is environmentally destructive and not consistent with park values. EscA members have seen some MTB riders in the Illawarra region publicly identify deeply destructive activities (such as translocating ferns, destroying bush rock, or removing native vegetation) as being of environmental benefit. **NPWS needs to take the lead on establishing what 'stewardship' means in the context of the national parks estate. Education and active monitoring and compliance activities are in EscA's view also necessary to prevent the ongoing damage to the national parks estate.**
- adjust the Priority Actions in Table 1 on p.15 as follows:
  - change action 1.2 to read "Close illegal track infrastructure that is considered to be inconsistent with the strategic track network design for the park or with the plan of management for the park if no strategic track network design is available, and remediate the park environment." This alternative wording allows for situations in which there is no strategic track network design, but only a plan of management, and removes the resource limitation on remediation activities.
  - change action 1.4 to read "Monitor cycling infrastructure and use at a local level, evaluate its operational environmental performance and viability, and use monitoring and evaluation to adjust or if necessary close cycling infrastructure."
  - include a new action 2.2 "Monitor and evaluate the impact of cycling experiences on the physical and mental wellbeing of NSW residents, and compare this impact with the physical and mental wellbeing of NSW residents undertaking other activities in national parks." This action will complement action 2.1, and ensure there is a clear comparative evidence base for provision of cycling experiences in particular.
  - change action 4.5 to explicitly reference the types of 'appropriate and demonstrable expertise' and include 'expertise in local flora, fauna, ecosystems, geology, and ecosystem services.' This is to ensure that the expertise applied is not limited to track construction.

#### 4. The Implementation Guidelines would be improved if:

- they commit to early and comprehensive consultation with other user groups and stakeholders, particularly the local Aboriginal community, environment groups and impacted residents, around any proposed new bike tracks and associated

infrastructure (Section 2). An approach that was driven by MTB rider demand and largely excluded these other stakeholders was taken for MTB tracks in the Illawarra escarpment and it has generated substantial conflict and delays that could have been avoided if a broader consultative process had been used from the outset.

- they narrow the scope of ‘minor adjustments’ and clarify the process for determining and then implementing minor adjustments set out in section 3.3. This section currently suffers from insufficient clarity.
  - Minor adjustments should not be permitted simply to ‘improve visitor experience,’ as this potentially allows a series of minor changes to tracks that cumulatively may have a substantial impact.
  - The entity that determines whether an adjustment is minor or not, and whether ‘relevant environmental assessments’ have been met, should be specified as NPWS. This avoids the possibility of interpreting this section to mean that MTB riders may make a determination of what constitutes a minor adjustment. Given Objective 1 in the Strategy may allow MTB riders or others a role in maintaining tracks, about which we expressed concerns above, the current wording of section 3.3 could see track maintenance activities being used to gradually widen tracks, add workarounds/parallel additional tracks, add interconnecting paths and so on through a series of small changes each of which might individually count as ‘minor’ but that cumulatively constitute non-minor change.
- the material on track auditing set out in Figures 1 and 2 is explained and described in detail in the text. Based on local experience, track auditing is an essential part of addressing the problem of the damage done by illegal tracks and more attention should be given to how it is done and how it is resourced.
- Section 5.2 (Managing cycling tracks in our parks) is revised to provide more detail and clarity on how its provisions will be actions.
  - Section 5.2.1 (Closure and rehabilitation of unauthorised tracks) would be improved by removing the caveat ‘as resources allow’ in relation to closing and remediating illegal tracks, and by replacing the words ‘to reduce the opportunity for continued use’ with ‘to prevent their continued use.’ This alternative wording would give a clearer signal to all stakeholders that trail closure and remediation is an integral component of NPWS’ approach to MTB riding, not an add-on.
  - The wording of section 5.2.1 would also be strengthened from a park values perspective by adjusting the final paragraph. It currently states that track closure will ‘balance the creation of new biking opportunities,’ wording that suggests that the current situation of extensive illegal MTB track damage is the status quo. We suggest that the final sentence be amended to: ‘To develop a culture of stewardship, volunteer groups will be encouraged and supported to rehabilitate authorised tracks in accordance with appropriate natural resources management principles and practices.’ EscA’s local experience in the Illawarra region is that some MTB riders are ignorant of the environmental impacts of their activities, and over-confident in their knowledge of local ecosystems; without appropriate resourcing, training and supervision, such riders may undertake inappropriate or destructive activities in the belief that these are of environmental benefit. NPWS should not tolerate let alone encourage such activities.

- Section 5.2.2 (Decommissioning of authorised tracks) is revised to clarify that tracks that are decommissioned will be suitably rehabilitated.
- Section 5.2.3 (Compliance programs) is revised to clarify that compliance programs will *act on* – as well as *rely on* – user groups’ and individuals’ feedback on inappropriate use as well as safety concerns. The current situation is that groups such as EscA (and its individual members) are providing regular feedback about inappropriate use, including highly destructive activities, but see little to no compliance action as a result. (To date 250m of illegal track has been closed in the IESCA since 2019, while (on EscA’s estimate) scores of kilometres of new illegal track have been created in that time.) The current approach does not build good will of those who report inappropriate use or safety issues and is profoundly demoralising for many of those who make such reports. We have attached in support of our submission a document that EscA provided to NPWS in 2020 regarding the damage done by illegal tracks.
- Section 5.2.4 (Encourage cyclist stewardship of our parks) is revised to clarify that NPWS will take a *leadership role* in demonstrating to cyclists, particularly MTB riders, what an appropriate ‘culture of stewardship’ involves. At present this section leaves largely open what the term ‘culture of stewardship’ might mean. EscA’s experience is, unfortunately, that some MTB riders can have a very strong sense of stewardship of areas they ride in, to the point of describing themselves as ‘custodians’ of the area, but still not act in ways that respect park values and minimise environmental damage. This is in our view a critical area where NPWS needs to actively intervene.
- Section 5.2.4 is revised to indicate that NPWS will actively support a culture of stewardship across all park users, consistent with the NPW Act and park values, and will develop a plan to achieve this. EscA experience is that, unfortunately, NPSW staff resourcing has declined relative to the park management requirements and that opportunities for bushwalkers and environmental groups to undertake supervised activities such as weed removal have declined over the years, despite these groups typically having good knowledge of local ecosystems, species and bush regeneration techniques. An even-handed, consistent, publicly articulated approach is needed that supports all park users to develop a shared culture of stewardship that fully reflects the NPW Act and park values.

### **5. Background: The Illawarra experience**

MTB trails, both legal and illegal, have been present within the Illawarra Escarpment State Conservation Area (IESCA) for many years, but illegal trail construction accelerated around the time that a draft Illawarra Escarpment Mountain Bike Strategy went on public exhibition in 2018. The draft Strategy promised a ‘like for like’ experience to replace existing illegal MTB tracks, and perhaps inadvertently served as an incentive to create as many illegal MTB tracks as possible. NPWS compliance and education efforts in this time fell further and further behind the scale of MTB track construction and use, to the point that some rangers informally admitted that education activities were ineffective. EscA is not aware of any compliance action such as fines being applied to MTB riding activities, despite the obvious presence of illegal riding in high profile public areas, and despite the substantial and increasing damage to the IESCA’s cultural and environmental values.

The draft strategy and concept plan exhibited in 2018 were officially intended to address the problem of illegal MTB riding by providing formal alternatives. However, the large scale of the proposed tracks (82km), the inclusion of tracks on culturally sensitive land on Mount Keira, and the evident intention of the track network to serve as a tourist attraction rather than a way to give locals an alternative to illegal downhill and single track riding, all undermined the official intention.

One major problem with the approach to developing formal MTB tracks in the IESCA is that the initial consultation and strategy development process was limited to a small group, most of whom were advocates for MTB riding.<sup>1</sup> Stakeholders such as the local Aboriginal community, environment groups, bush walkers, and the general public were largely excluded from, and in some cases not even aware of, the process to draft a MTB strategy for the IESCA. This approach, perhaps not unsurprisingly, resulted in a draft strategy that was considered unacceptable by many of these excluded stakeholders. It unfortunately stoked tension and conflict that continue to this day. An approach that took all stakeholders' views seriously from the outset could have managed conflict and resulted in a better outcome for the community as a whole. **An important lesson for the NPWS Cycling Policy and Strategy is that any consideration of new cycling paths of any kind should include early involvement and comprehensive consultation of key stakeholders, particularly the local Aboriginal community, but also other park user groups and conservation groups as well as residents likely to be affected by rider visitations and associated infrastructure.**

EscA has expressed concerns to NPWS about a range of threats to the environmental and cultural heritage of the IESCA, including illegal MTB tracks, and has repeatedly asked NPWS for a commitment to close and rehabilitate illegal MTB tracks. To date, almost no illegal MTB tracks have been closed, despite these tracks proliferating in recent years, and despite an explicit commitment from NPWS that no formal tracks will be allowed on Mount Keira. Unfortunately, as noted above, scores if not hundreds of kilometres of new tracks have been developed since 2018, including several since NPWS announced that there would be no tracks on Mount Keira. Another key lesson from this aspect of the Illawarra experience is that **resourcing is needed for mapping and monitoring: existing illegal MTB tracks need to be mapped to understand their extent and impact; mapping needs to be regularly**

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1 The Acknowledgements section of the 2018 draft Illawarra Escarpment Mountain Bike Strategy states: "NPWS and WCC would like to thank the NSW Department of Premier and Cabinet, Destination Wollongong, the Illawarra Mountain Bike Alliance, the University of Wollongong, and local Aboriginal representatives for their assistance in developing the draft strategy." The section on community engagement (p.2) provides more detail, indicating that a working group was established in 2015 "to investigate mountain bike opportunities for the Illawarra escarpment. The group includes representatives from Wollongong City Council, Destination Wollongong, Illawarra Mountain Bike Alliance, University of Wollongong and NPWS. The Working Group provided advice on the Illawarra Escarpment Mountain Bike Feasibility Study that council commissioned in 2017. Representatives from state and local government, tourism bodies, mountain biking groups and land managers have provided initial input to the strategy. The strategy introduces the concept of mountain biking in the Illawarra Area and provides a base to begin the conversation with Aboriginal people and the broader community about the proposal." This indicates how much work was done with a limited subset of stakeholders, in advance of sharing the draft strategy more broadly.

**updated with details of the date of trail construction included; and national parks and reserves need active monitoring to identify and prevent illegal construction of trails and associated structures.**

The NPWS officers on the Advisory Group have repeatedly stated that the formal network of MTB tracks in the Illawarra must be completed before illegal tracks can be closed. However, EscA is not aware of any evidence that the presence of formal tracks will stop illegal track construction, and the escalating increase in illegal tracks is only reinforcing the view among MTB riders that illegal tracks are tolerated by NPWS. EscA believes that the current NPWS response is inadequate and does not take into account new track construction, particularly but not only on Mount Keira. **We believe that, based on the Illawarra experience, illegal track closure needs to be prioritised, with illegal tracks fully mapped, and those maps used to prepare fully resourced track closure plans.** This applies across the national parks estate, but particularly to parks directly adjacent to urban areas that can easily be accessed by the public, such as the IESCA, Royal National Park, etc. Without such action new formal tracks will only supplement illegal tracks and potentially even encourage further illegal track construction.

**We also believe that NPWS needs to do further research into MTB riders' values, interests and activities, to understand the drivers behind illegal track construction and inform its engagement, education and compliance activities.** In our experience, some riders are dedicated to illegal track construction and will not be easily dissuaded from this activity. Where they lead, others will inevitably follow. Without targeted efforts to change the behaviour of this key demographic, they will continue to engage in activities that damage the cultural and environmental heritage and values of our national parks, regardless of how many formal tracks NPWS creates.

## **6. Conclusion**

EscA thanks NPWS for the opportunity to comment on the draft Policy, Strategy and Implementation Guidelines, and looks forward to seeing our comments taken into account in the final documents. We are happy to provide further information or discuss any of our comments.

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