

# **ANNUAL REPORT** | 2011-12

NSW Planning Assessment Commission



Planning  
Assessment  
Commission

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# LETTER TO THE MINISTER

17 December 2012

The Hon Brad Hazzard  
Minister for Planning and Infrastructure  
Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Minister

I am pleased to present the Annual Report for the NSW Planning Assessment Commission for the year ending 30 June 2012. This report has been prepared in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (as amended).

The past year has been a highly successful and productive year for the Commission. This is testament to the professionalism and commitment of the Commission members and Secretariat staff.

In the attached report we provide a summary of the Commission's activities and performance in 2011-12.

Yours Sincerely



Gabrielle Kibble AO  
Chair  
NSW Planning Assessment Commission

# CHAIR'S STATEMENT

The past year has been very busy and challenging for the Commission. The repeal of Part 3A of the EP&A Act and the Minister's decision to delegate his power to determine all significant applications lodged by private developers to the Commission saw a significant increase in the number of applications determined by the Commission.

For the reporting period, the Commission:

- determined a total of 105 applications comprising 49 major projects and 56 modification applications. Of the 105 applications, 96 were approved and 9 were refused;
- provided independent advice to the Minister or the Director General on 12 major development proposals and planning matters;
- conducted technical reviews for two coal mining projects that included public hearings as part of the review process; and
- held 24 public meetings to hear public views before making a decision.

Although the workload for the Commission has expanded significantly compared to last year, monitoring results indicated that the Commission performed its functions in a timely manner. On average the Commission:

- determined projects within 7 days where no public meeting was held;
- determined projects within 27 days where a public meeting was held;
- undertook a rigorous and thorough technical review within 91 days after the public hearings; and
- provided advice to the Minister within 26 days following referral.

For many projects, the Commission's review of the assessment report as well as comments received at public meetings has resulted in the Commission modifying the proposal to improve urban design or environmental outcomes. In many cases the Commission strengthened conditions or imposed extra conditions to minimise impacts on the community and to meet a high level of environmental performance. In a small number of cases, the applications were refused for reasons including inadequate justification and failure to address key environmental issues.

In August 2011, the Commission adopted a set of procedures to increase transparency in its decision making process. These procedures outline when and how the Commission will hold a public meeting to hear public views on the Department of Planning and Infrastructure's assessment report before determining an application.

Last year, several Commission members retired and new members were appointed. I would like to extend a warm welcome to the new members and I look forward to working with them in the year ahead.

I believe we, as a team, will continue to provide a high level of independent and well balanced expert advice to the Minister and provide a transparent, fair and consistent decision making process to achieve quality outcomes for the NSW community.

I wish to thank all past and present Commission members and the Commission Secretariat for their commitment, dedication and professional approach to their work during the year.



Gabrielle Kibble AO  
Chair

# COMMISSION AT A GLANCE

## WHO WE ARE

The NSW Planning Assessment Commission is a statutory body established under the Environmental Planning and Assessment Act 1979 (EP&A Act) in November 2008. The Act provides for the Commission to consist of up to 9 members including a chair.

Commission members are appointed by the Minister and selected from a broad range of disciplines with experience in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

## WHAT WE DO

The key functions of the Commission are:

- to determine State significant development and infrastructure applications and transitional Part 3A applications where Ministerial delegation applies;
- to carry out a review of any aspect of a State significant development including the holding of public hearings as requested by the Minister or Director General; and
- to provide independent expert advice on a range of planning and development matters when requested.

The Commission plays an important role in improving transparency, certainty and independence in the planning and decision making process of the NSW planning system. The Commission provides an additional level of expert scrutiny in the review or determination of State significant development proposals, particularly those where:

- there is a high level of community interest;
- a political donation has been made;
- a potential for a perceived conflict of interest exists; and
- where complex environmental issues arise.

## MINISTERIAL DELEGATION

On 14 September 2011, the Minister issued an instrument of delegation to the Commission delegating some of his powers and functions to the Commission including the power to determine certain major development applications and modifications if the application:

- was made by a private proponent where a reportable political donation has been declared;
- was objected to by the relevant council; and
- has more than 25 objection submissions.

## DECISION MAKING PROCESS

An application is referred to the Commission for determination after the Department has completed its assessment report and recommendation and has made it available on the Department's website.

In August 2011, the Commission adopted a set of meeting procedures to make its decision making process more transparent and to ensure the delivery of consistent and robust decisions. A copy of the procedures is available on the Commission's website.

In brief, if an application received more than 25 objection submissions, the Commission will hold a public meeting to hear public views on the Department's assessment report and recommendation before determining the application. In circumstances where there are less than 25 objection submissions, the Commission may decide to meet with the relevant Council, proponent and/or residents/community groups or hold a public meeting if it considers additional public input will benefit its decision making process. The meeting is generally held in the local area where the proposed development is located.

# COMMISSION MEMBERS

In May 2012, the Minister appointed several new members to the Commission as well as additional casual members. This ensures the Commission maintains a broad expertise base and sufficient resources to carry out its functions in a timely manner.

Three Commission members, Mr John Court, Ms Janet Thomson and Mr Lindsay Kelly retired in May 2012 following valuable contributions to the Commission. Their efforts and professionalism have improved the outcomes of many major developments.

## CURRENT COMMISSION MEMBERS

Ms Gabrielle Kibble AO (Chair)  
Dr Neil Shepherd AM  
Ms Donna Campbell  
Mr Garry Payne AM  
Mr Garry West  
Mr Paul Forward  
Mr David Johnson  
Ms Jan Murrell  
Ms Abigail Goldberg

## CURRENT CASUAL MEMBERS

Emeritus Professor Kevin Sproats  
Mr Richard Thorp  
Mr Brian Gilligan  
Mr Joe Woodward PSM  
Mr David Furlong  
Mr Bob McCotter  
The Hon Pam Allan  
Ms Annabelle Pegrum AM  
Mr Yehudi Blacher PSM

# A YEAR IN REVIEW

Following the Ministerial delegation issued in September 2011, the number of applications referred to the Commission for determination has increased significantly from 29 in 2010-11 to 105 for this reporting period. Appendix 1 provides a list of the applications that were determined by the Commission for the financial year.

Of the 105 applications determined by the Commission, 49 were concept plan or project applications and 56 were modification applications for already approved developments. The Commission refused 9 applications, 2 of which were modification applications and 7 were concept plan/project applications. The Commission held 24 public meetings during the year to hear the community's views on the Department's assessment report and recommendation. The Commission also met with the relevant Councils and Government Agencies as a part of its consideration of applications.

Although the Commission accepted the Department's recommendation for approval in most cases, the Commission amended recommended conditions of approval and/or imposed extra conditions to strengthen the environmental performance requirements of many projects.

Examples of where the Commission has strengthened or imposed new conditions include:

- Dargues Reef Gold Mine;
- Warkworth Coal Mine Extension;
- Apex Drilling Project Modification;
- Marrickville Metro Shopping Centre; and
- Mixed Use Development at Lewisham.

The Commission also provided independent expert advice on 10 planning matters and major development proposals and reviewed two coal mining proposals which required public hearings.

The following sections provide a brief summary of the outcomes of applications where:

- a public meeting was held before determination due to high level of public interest;
- advice was provided to the Minister or Director-General; and
- expert reviews and public hearings were conducted.

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# DETERMINATIONS

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## **D049-11 Dargues Reef Gold Mine**

**8 June 2011 – 2 September 2011**

The Dargues Reef Gold Mine project sought approval for a new underground gold mine at Majors Creek, approximately 13 km south of Braidwood in the Southern Tablelands. The project involved extraction and processing of up to 355,000 tonnes of gold ore a year, for up to 7 years. Processed ore would be transported from the site by road. The Department recommended that the application be approved subject to conditions.

The Commission held a public meeting in August 2011 and 44 people spoke at the meeting. Key issues raised at the meeting included water impacts; flora and fauna impacts; noise; blasting and vibration; air quality; transport; and visual impacts.

The Commission raised concern with a number of aspects of the proposal, including

- the potential for processing or smelting of material from offsite;
- the structure, operations and management of the tailings dam;
- the road upgrading requirement;
- monitoring of ecosystems and groundwater;
- noise monitoring and management, particularly during temperature inversions; and
- reporting requirements.

The Commission discussed its concerns including drafting of conditions of approval with the Department on two separate occasions. Following these discussions, the Department prepared an addendum report with a set of revised conditions for the Commission's consideration.

Following the submission of the addendum report and revised conditions of approval, the Commission was satisfied that the environmental impacts of the proposal could be adequately mitigated or managed. The application was approved subject to the final set of recommended conditions.

## **D067-10 Ashton South East Open Cut Coal Mine**

**9 August 2011 – 19 December 2011**

The Ashton South East Open Cut project sought approval to develop a new open cut mine south of Camberwell, in the Singleton Local Government Area. The new coal mine would be in addition to Ashton's existing underground and open cut mining operations. The application sought approval to remove approximately 16.5 million tonnes of run of mine coal from the new mine over a 7 year period.

Ashton also sought approval to modify its development consent for the existing mining complex, to integrate the two operations and to increase the maximum production rate at the open cut mine complex from 5.45 to 8.6 million tonnes a year and the underground mine from 2.95 to 5 million tonnes a year.

The Department's Assessment Report concluded that the proposal represents a reasonable extension of the existing mining complex, making use of existing infrastructure and facilities. The Department recommended that the applications be approved subject to conditions.

The Commission held a public meeting in September 2011 and 24 people spoke at the meeting. Key issues raised included air quality; noise; blasting; surface water and groundwater; flora and fauna impacts; traffic and transport; greenhouse gas emissions, heritage, visual impact and socio-economic impacts.

In addition to the public meeting, the Commission also met separately with the Department of Planning and Infrastructure, NSW Office of Water, NSW Health, and the proponent.

The Commission noted that the NSW Office of Water (NOW) raised significant concerns throughout the assessment process and was not convinced that its concerns had been satisfactorily resolved. NSW Health indicated that it could not support the project on health grounds, in particular the cumulative impacts of the proposed and existing coal mines around Camberwell.

After carefully considering the available information, including the changes to the original proposal aimed at managing the potential adverse impacts, the Commission considered that on balance the benefits of the project did not outweigh the combined risks from the project's potential impacts on Glennies Creek and its associated water resources, and its potential impacts on air quality and noise. The application for the new open cut mine was therefore refused.

In relation to the modification application, the Commission returned the application to the Department for further consideration in light of the Commission's decision on the project application.

Following the decision to refuse the application, the Proponent lodged an appeal with the Land and Environment Court in February 2012. By consent, the Court ordered the application be remitted to the Commission for re-determination. The Commission is reconsidering the application.

#### **D080-11 Entertainment Quarter** **2 September 2011 – 25 November 2011**

This proposal sought concept plan approval for six additional buildings envelopes within the Entertainment Quarter precinct of the Moore Park Showground. Specifically, the concept plan sought approval for:

- the location, maximum height and maximum floor area of 6 new buildings;
- a maximum total floor area of 144,000 m<sup>2</sup> across the entire Moore Park Showground site, including 76,500 m<sup>2</sup> for the Entertainment Quarter and 67,500 m<sup>2</sup> for the Working Studio; and
- demolition of two buildings.

The Department's assessment report concluded the proposed development is satisfactory and in the public interest as it will reinforce the Entertainment Quarter as a unique employment and entertainment destination. The Department recommended that the application be approved subject to conditions.

A public meeting was held in October 2011. Four people spoke at the meeting. Key issues raised included the transfer of floor area between the working studio and the entertainment quarter; future land use permissibility; built form and urban design; heritage; transport; environmental and residential amenity; adequacy of community consultation; economic viability and justification for the proposal.

The Commission also met with the Department of Planning and Infrastructure, Centennial Park and Moore Park Trust, City of Sydney Council and the proponent as a part of its consideration.

Following careful consideration of the Assessment Report, public and agencies submissions as well as views expressed at the public meeting the Commission determined to approve the concept plan as recommended subject to additional conditions including:

- a requirement for design guidelines to be prepared to encourage high quality design;
- a requirement that future development applications demonstrate that parking and traffic impacts on the surrounding area will be acceptable;
- a requirement that all future development applications to erect a building under the concept plan must include a detailed description of the proposed uses for the building; and
- a requirement for the Emergency Evacuation Procedures Manual for the Entertainment Quarter site to be reviewed and updated.

## **D083-11 Calderwood Stage 1** **19 September 2011 – 17 April 2012**

The proposal sought project approval for Stage 1 of an approved concept plan for the redevelopment of the Calderwood site, located within the Shellharbour local government area. The original Concept plan approved 4,800 dwellings, approximately 50 hectares of mixed retail, commercial and light industrial uses, open space, and associated infrastructure and community facilities.

Stage 1 comprised 231 residential lots, nine mixed use and medium density lots, four residue lots, one allotment for a future substation, open space and landscaping. The application also sought approval for associated infrastructure works, site preparation and flood mitigation works.

The Departments assessment report concluded that the proposal should be supported subject to a number of conditions to ensure that all environmental and social impacts would be minimised or managed to an acceptable level.

The Commission held a public meeting in October 2011 and 29 people spoke at the meeting, 12 in support and 17 in opposition. Key issues raised included, flooding; ecology and biodiversity, open space and drainage; traffic impact and accessibility; state and local infrastructure contributions; urban design and subdivision; stormwater management; earthworks and construction impacts.

The Commission also met separately with the Department of Planning and Infrastructure, Office of Environment and Heritage (OEH), Shellharbour City Council, Wollongong City Council, Kiama Council, Sydney Water, NSW Transport. It noted that the three Councils objected to the proposal on a number of grounds and the OEH raised significant concern in relation to the potential risks and adverse impacts associated with flooding.

In response to the concerns raised, the proponent provided additional information to the Commission in relation to hydrology, floodplain regrading, land ownership and management, infrastructure contributions, transportation, utilities, land supply and affordability.

Following careful consideration of the Director General's assessment report, submissions from government agencies and Councils as well as views expressed at the public meeting, the Commission determined to refuse the Stage 1 Project Application.

In reaching its decision the Commission was particularly concerned with the issue of flooding. The Commission noted that the three key agencies, Shellharbour City Council, the Office of Environment and Heritage and the NSW Office of Water all raised significant concerns about flooding. The Commission noted the Department's assessment and the proponent's response to their concerns, however the Commission was not persuaded that flooding had been satisfactorily addressed.

It was also a significant concern to the Commission that the documentation submitted for the project application relied heavily on the documentation originally submitted with the Concept plan application. The Commission was further concerned that a comprehensive flood impact study for the Stage 1 project had not been prepared.

Other concerns with the application related to:

- the lack of site specific Development Control Plan to guide future development;
- no assessment of impacts on threatened species;
- the failure of the Management Plan to address impacts on the EEC, mitigation/rehabilitation measures and monitoring regime and lack of consultation on flora and fauna and vegetation management plans;
- no Section 94 contribution plan to provide for the necessary social and physical infrastructure to support the proposed development; and
- no agreement on the future ownership of the riparian corridors.

## **D084-11 Apex Drilling Project Modification** **20 September 2011 – 21 November 2011**

This modification sought approval to drill an additional coal seam gas exploratory borehole into un-mined coal seams to the north west of 15 previously approved boreholes. The drill site is on land managed by the Sydney Catchment Authority in the Woronora Dam catchment to the north of Darkes Forest Road. The site lies within the Wollongong Local Government Area.

A public meeting was held in November 2011 and 17 people spoke at the meeting. Key issues raised included the need for coal seam gas; the impacts of 'fracking' (hydraulic fracturing); future extraction and related issues; impacts on native vegetation and threatened species (*Pultenaea aristata*); impacts on upland swamps; offset requirements; lack of details on management and monitoring plans; noise and traffic impacts; dust emissions; groundwater monitoring; water security; and aquifer integrity.

The Commission also met with the Department of Planning and Infrastructure, Office of Environment and Heritage (OEH), NSW Office of Water (NOW), Sydney Catchment Authority (SCA) as a part of its consideration.

Following careful consideration of the Assessment Report, public and agencies submissions as well as views expressed at the public meeting the Commission determined to approve application subject to additional conditions including:

- The new borehole (AI 19) should be filled with cement as soon as the testing is complete and within 8 weeks from the cessation of drilling to ensure there is no significant risk to aquifer integrity or quality as a result of this exploratory borehole.
- A requirement for an offset to be incorporated into a larger offset provision should a gas production operation be developed arising out of this exploration.
- The site and access road must be rehabilitated within 8 weeks after completion of the borehole sealing.

The Commission was satisfied that the amended conditions would be adequate to control this phase of the project to minimise potential impacts and to protect water security and the environment. The Commission noted that the proponent does not intend to undertake 'fracking' or hydraulic fracturing to stimulate coal seams for gas extraction.

The Commission was conscious that the approval of this application should not be read as giving any endorsement for extraction of coal seam gas on a production basis in this field or for any activity involving stimulation of the coal seam for production purposes.

## **D086-11 Warkworth Extension** **5 October 2011 – 3 February 2012**

This proposal consisted of two parts, the Warkworth extension project and a modification to the Hunter Valley Operations South Project. The mine is located about 9 kilometres to the southwest of Singleton in the upper Hunter Valley in an area dominated by large-scale and intensive mining operations.

The project involved a significant westward expansion of the current mine complex. The project would extend the life of the Warkworth mine by a further 11 years and enabling extraction of an additional 200 million tonnes of ROM coal. The proposal also sought to mine land previously set aside as an offset under the existing approvals and to mine across Wallaby Scrub Road, requiring its closure.

The Commission held a public meeting in November 2011 at Singleton. A total of 69 people spoke at the meeting over 2 days. Key issues raised included noise impacts; blasting; air quality; water resources; biodiversity; Aboriginal heritage; historic heritage; and transport.

Other issues included visual amenity; greenhouse gas emissions, socio-economic impacts; justification for the project; failure to deliver previous commitments; past and current environmental performance; complaint handling and community relations; road closure; and

the destruction of the social fabric of Bulga Village. A substantial number of people also indicated that underground mining could be acceptable as an alternative.

In considering the application, the Commission focused its comments on several aspects of the proposal. These included the justification for the project, environmental performance of the Mt Thorley-Warkworth complex, noise, dust, closure of Wallaby Scrub Road, biodiversity offsets, and social impacts.

The Commission discussed its concerns including drafting of conditions of approval with the Department on several occasions. Following these discussions, the Department prepared an Addendum Report with a set of revised conditions for the Commission's consideration.

The Commission considered the revised conditions and made further changes to strengthen some environmental performance obligations. The Commission required improved control over noise-generating activity at the mine complex including:

- imposition of at-source controls including purchase, retro-fitting and maintenance of noise attenuation equipment;
- improved practice during adverse meteorological conditions; and
- improved monitoring and reporting.

The Commission also requested that consideration be given to those properties that may experience significant impacts from the western expansion of Warkworth. In response the proponent increased the number of properties to be offered an option for acquisition.

A number of conditions were also strengthened to address dust, including at-source controls for the Mt Thorley-Warkworth complex, improved monitoring and reporting requirements, improved incident notification and provision of information on health risks to potentially affected residents. The Commission also imposed additional investigation and reporting obligations for operations under adverse conditions.

In relation to the closure of Wallaby Scrub Road, the Commission concluded that the proposal to mine through the road without relocation was supportable provided the conditions concerning emergency access, road and intersection upgrades, heritage management and blasting operations are strictly adhered to and enforced.

With regards to mining the offset areas, the Commission did not accept that the existence of coal under an offset area provides justification for setting aside the offset agreement. However the Commission did note that the existing offset areas were of a questionable value and under the existing agreement parts of the offset area could be mined by open cut methods at some future date. The Commission was however satisfied that the new offset areas were acceptable and the approval conditions provided a level of certainty necessary to ensure that the proposed offset lands would be protected in the long-term.

Overall, the environmental management requirements for the mine would be significantly more onerous and explicit, enforcement options have been expanded, the option of acquisition has been extended appropriately by the proponent, and there are substantial community enhancement provisions. It was only with the strengthened conditions that the Commission considered that, on balance, the benefits of the project outweigh the disbenefits and that the project could be approved.

## **D092-11      NCIA Tile Manufacturing** **26 October 2011 – 18 January 2012**

The application sought approval for the expansion of the existing ceramic tile manufacturing facility on Racecourse Road Rutherford. The expansion would be facilitated by a second factory building accommodating 4 new production lines and four new kilns. This would increase production capacity from 12.8 million square metres to 25.6 million square metres of tiles per annum. The Department recommended that the application be approved subject to conditions.

The Commission held a public meeting in November 2011. Seven people spoke at the meeting. Issues raised at the meeting included noise impacts; potential adverse air quality impacts; Section 94 contributions; and visual amenity.

Other issues considered included potential land use conflicts; landscaping; water supply and consumption; traffic; heritage; parking; hazards, greenhouse gas and energy efficiency; cumulative impacts; land use conflicts; social and health costs; employment benefits; odour; environmental performance of the existing factory; adequacy of buffer zone and opportunity cost analysis.

Following careful consideration of the proposal and the issues raised at the public meeting the Commission requested the Department to explore and consider additional measures to reduce air quality impacts associated with the proposal, such as increasing stack heights. The Department however, advised that the additional modelling results did not demonstrate a clear environmental benefit from increasing stack heights.

After carefully considering the Department's assessment report and associated documents as well as the views expressed at the public meeting, the Commission determined to approve the project. The Commission was satisfied that the proposed expansion is consistent with surrounding industrial development and would not pose unreasonable impacts on existing or future developments in the area. The Commission was also satisfied that the recommended conditions of approval would adequately mitigate the potential impacts and ensure that the facility meets regulatory environmental criteria.

#### **D100-11 Yelgun Cultural Events Site** **1 December 2011 – 24 April 2012**

This proposal sought concept plan and project application approval for a cultural events site at Yelgun, for up to 50,000 patrons including supporting infrastructure and amenities. The proposal would be developed over three stages. Project Approval was sought for the first two stages only.

The Director-General's environmental assessment report concluded that the proposal will provide Byron Shire with a permanent cultural events site attracting visitors to the area and generating employment, as well as providing environmental benefits arising from revegetation. The key issues can be appropriately managed and approval should be granted subject to trialling the largest events over a minimum of 7 years with capacity from 30,000 patrons to 50,000 patrons. The conditions also provided for phasing in two smaller events per calendar year.

The Commission met with the Department of Planning and Infrastructure twice to discuss its concerns regarding the proposal, particularly impacts on the road network, the number of patrons and the timing/frequency of events. The Commission also met separately with Byron Shire Council and the proponent.

A public meeting was held in February 2012. Over one hundred people spoke at the public meetings held over two days. Those who support the proposal believe it will provide significant social and economic benefits in terms of employment, broadening the economic base, support the arts industry and tourism role of the region and provide a focus for young people in the community. Further, there are sufficient buses available to cater for the needs of the festival and environmental benefits associated with the project include vegetation management and regeneration of the site.

Issues raised by objectors included the overall justification for the proposal; the suitability of the site; size and frequency of outdoor events; the assessment process; traffic generation and impacts on existing road infrastructure; noise; impact on biodiversity; flooding and evacuation procedures; bushfire hazards; and Aboriginal cultural heritage.

Other issues raised included operational issues; performance monitoring and evaluation; Section 94 contributions and impacts on land values.

After careful consideration of the proposal the Commission concluded that should be approved subject to a number of amendments to appropriately manage impacts associated with the proposal. Key to the Commission's decision was capping the total number of visitors to the site at 35,000 visitors per day rather than 50,000 as proposed. The Commission noted that approval was sought for a broader range of activities than just outdoor events which was the focus of most objections. Large outdoor events should be able to be carried out without significant impacts on the community if the environmental management plans are implemented and performance is consistently monitored.

The application was approved subject to recommended conditions as modified by the Commission. These included:

- The concept plan approval be capped at 35,000 visitors per day, rather than 50,000.
- a trial period of 5 years up to the end of 2017 with patron capacity from 25,000 (Year 1) to maximum 35,000 (Year 5);
- After the trial period, a new application is required to be lodged with Council for events to continue.
- Noise limit is set at background plus 10dBA between 11am and midnight. All stages must be shut down at midnight. All amplified music must cease at 2am. Noise control levels are to be reviewed after the first year trial to assess their suitability and performance.

### **D105-11      Marrickville Metro Shopping Centre** **15 December 2011 – 19 March 2012**

The concept plan as amended by the preferred project report (PPR) sought approval for expansion of the Marrickville Metro Shopping Centre including the addition of a first floor to the existing retail building on Victoria Road and construction of a new building with two levels of retail on the Edinburgh Road site with an additional 528 parking spaces to provide a total of 1628 spaces for the whole shopping centre.

The Department's Assessment Report concluded that the site is suitable for the proposed development and on balance, the project's environmental, social, economic and public benefits to the region would outweigh its costs. The proposal was recommended for approval subject to conditions.

The Commission held a public meeting in February 2012. Twenty eight people spoke at the meeting. Issues raised in the public meeting included economic impact; traffic, access, public transport and car parking; building height and built form; residential amenity and landscaping. Other issues raised included strategic planning and public consultation. Of particular concern to many submitters is the issue of existing centre management.

The Commission met with the Department, Marrickville Council and the proponent separately prior to the public meeting. Following the public meeting, the Commission met with Marrickville Council and the proponent again to discuss issues raised at the public meeting.

From visiting the site, reviewing the Department's Assessment Report and written submissions, and hearing the concerns raised at the public meeting, the Commission found strong public dissatisfaction with some aspects of the current operation of the shopping centre. These included deliveries traffic and hours, operation hours, shopping trolleys, litter, and impact on residential amenity.

The Commission agreed with the Department that the proposed expansion onto the Edinburgh Road site is consistent with key strategy policies. It also accepted that there will be some economic impact on the shopping strips within Marrickville but would not be sufficiently detrimental to justify refusal of the application. In order to minimise the impact, the proposed expansion should be required to be developed in 2 stages with a minimum 3 year gap between occupation of Stages 1 and 2.

In issuing consent for the redevelopment as recommended by the Department, the Commission has used this as an opportunity to resolve some of these existing problems, by

imposing conditions that are more stringent and require more effective management of the shopping centre operations.

## **D108-12 Woodlawn Waste Expansion** **11 January 2012 – 16 March 2012**

The proposal involved two sites, the Woodlawn Bioreactor and the Crips Creek Intermodal Facility. The main activities associated with the proposal were to increase the volume of waste from 500,000 tonnes to 1.13 million tonnes per annum, increase rail and road transports, extending the hours of operation, and installation of additional lighting and other equipments.

The Department's assessment report recommended that the application be approval subject to conditions.

The Commission held a public meeting on 22 February 2012 at Tarago Hall. Eight people spoke at the meeting. The key concerns raised at the public meeting included waste capacity, demand, future resource recovery, cap on quantum and additional regional waste; traffic and transport issues and odour. Other issues assessed included soil and water, noise, SEPP infrastructure, air quality, green house gas emissions, pest, vermin and noxious weed control, hazards and rehabilitation.

The Commission also met separately with the Department, Goulburn Mulwaree Council, Palerang Council and the proponent as a part of its consideration.

Odour was a key issue raised by the Councils and community. The Commission noted the existing facility has been the subject of odour complaints. The proposed increase in volume, if approved, has the potential to increase odours if mismanaged. The Commission considered the recommended conditions should be strengthened and additional conditions be imposed in order to minimise offensive odour impacts.

The Commission questioned the justification for receiving the additional regional waste as this may undermine the waste reduction efforts of surrounding Councils. In response, the Department revised the recommended condition requiring demonstration of net environmental benefit and no significant impact on the capacity to receive waste from Sydney. The Commission strengthened the condition further to require demonstration of no undermining the waste reduction efforts of regional councils.

Following careful consideration of the Department's assessment report, issues discussed at the public meeting and other meetings with stakeholders, the application was approved subject to recommended conditions as modified by the Commission.

## **D112-12 Concept plan for mixed use development at Lewisham** **19 January 2012 – 15 March 2012**

The application sought approval for a mixed use development including 7 residential buildings ranging from 4 to 9 storeys in height with an FSR of 3.5:1, commercial and retail uses at ground and basement levels and parking for 681 vehicles below ground. Following exhibition of the application, the proposal was amended to reduce the FSR to 3.04:1, increase the open space area from 1300m<sup>2</sup> to 3097m<sup>2</sup>, reduce number of parking spaces to 448, increase number of units from 400 to 430, and increase the maximum height to 10 storeys.

The Department's assessment report identified the key issues were traffic generation, capacity of local road network, parking, internal road layout and access, development density, built form, public benefits, and residential amenity.

The Commission met with Marrickville Council staff on 16 February 2012 to hear Council's concern and the proponent on 20 February 2012 for a briefing on the proposal. The public meeting was held in February 2012 and 31 people spoke at the meeting including representatives from Marrickville Council and Ashfield Council. The Commission met with the

Department on 7 March 2012 to discuss the justification of the proposal in the context of the then recently gazetted Marrickville LEP 2010, other major development proposals in the area and potential cumulative impacts.

Following careful consideration of the Department's assessment report and associated documents, views gathered at the public meeting and meetings with Marrickville Council and other stakeholders, the Commission found that:

- the site is highly accessible by public transport and will be serviced by 3 different modes of public transport when the light rail commences operation in 2014.
- Future development on the site should be as closely aligned to the Masterplan and Marrickville LEP 2010 as possible.
- The proposed building height is generally within the LEP height control.
- Building height along Old Canterbury Road should be restricted to a maximum of 4 storeys.
- The central open space is the key to the Masterplan. The open space should be functional, accessible, well defined with good solar access during mid winter and have a minimum site area of 3000m<sup>2</sup>. To meet these requirements, the proposal should be modified either through height or building bulk reduction. Other open spaces should be usable and clearly defined, not "through site links" or drainage reserve.
- To address the issue of built form and design, future development applications should achieve design excellence in accordance with the Director General's Design Excellence Guidelines.
- The existing traffic congestion is a wider road network capacity issue and the Commission recommended the Department, Ashfield and Marrickville Councils to initiate discussion with the Roads and Maritime Services to facilitate the implementation of network capacity improvement to alleviate the congestion problem in the area.

The Commission was satisfied that the inclusion of addition modifications would ensure the resultant development more closely aligned with the Masterplan. The performance requirement for the central open space would ensure a good quality, functional and accessible open space for the community. The concept plan was approved as recommended by the Department subject to conditions as modified by the Commission.

## **D119-12 Hill Top Shooting Complex Modification**

**15 February 2012 – 7 May 2012**

The application sought approval to modify certain conditions of the Southern Highlands Regional Shooting Complex approval. The modifications included:

- Increasing the maximum noise limit and adopting a different noise measurement;
- Deleting the requirement for acoustic shelters at the 800m range; and
- Extending the time required to place noise compliance testing reports on the website from 7 days to 14 days.

The modification application was modified in response to concerns raised during the exhibition of the proposal. The report concluded that the proposed modifications were acceptable and recommended that the application be approved subject to amended conditions.

The Commission met with the proponent for a briefing on noise measurement, compliance monitoring, existing/future range criteria and amenity impacts on surrounding properties. The proponent also provided additional information in response to the Department's assessment report and recommended conditions.

A public meeting was held in March 2012. Twelve people spoke at the meeting on issues concerning noise, impact on amenity, access & traffic, property value, health impacts, measurement of noise, mitigation measures, enforcement, impact on the natural environment, approval process and consideration of alternatives.

The Commission met with Wingecarribee Shire Council on 22 March 2012 to hear Council's concerns, which included adverse noise impact on surrounding residential properties and the difficulties in monitoring, enforcing and verifying breaches of noise limits.

Following careful consideration of views expressed at the public meeting and in meetings with the proponent, Council and the Department, the assessment report and agency and public submissions, the Commission found the proposed modification has not been adequately justified and that it would not be in the public interest to approve it as recommended. The application was refused for the following reasons:

- The proposed change of noise limit
  - would allow a substantially greater level of noise impact on residents and the potential magnitude of impact has not been quantified or adequately assessed; and
  - would establish two different limits for firearm noise emanating from a single site making regulatory surveillance and enforcement virtually impossible.
- The proposed changes to the measurement and assessment of noise impacts will most likely result in an unquantified increase in the current allowable noise impact at residential premises and this potential increase has not been adequately assessed.
- No robust evidence is provided to establish that monitoring at the proposed locations will provide an equivalent outcome to monitoring requirements in the current consent. The effect of these changes on measurement of noise impacts on residents has not been adequately assessed.
- It is not in the public interest for residents to be subjected to an unquantified increase in allowable noise impacts as an alternative to implementation of mitigation options.
- To delete the requirement to install an acoustic shelter at the 800m firing point is premature in the absence of a comprehensive assessment of mitigation options for the 800m range as a whole.

## **D126-12      Atchison Street, St Leonards** **8 March 2012 – 1 May 2012**

The proposal sought approval to demolish 3 existing 3-4 storeys commercial buildings and replace them with a 28 storey mixed use building including a 6 level basement car park for 168 cars. The proposed building will be for retail (ground floor), 4 storeys serviced apartment (76 units) and 21 storeys residential apartment (173 units).

The Department's Assessment Report considered the key issues were built form, non residential floor space, traffic and parking, public benefit and amenity impacts. The report found that the proposed building height of 95.5m is excessive and should be reduced by 14m and recommended accordingly. The non-compliance setbacks were considered acceptable. The proposal would support businesses in St Leonards and create 41 full time jobs. Further that, the site is well located and capable of accommodating a building of greater height and density than permitted in the North Sydney Council controls. The proposal has a high quality design and with recommended amendments, it would be consistent with Council's character statement for St Leonards.

The Commission met separately with North Sydney Council for a briefing on Council's concerns and the proponent for a project briefing. A public meeting was held in April 2012 to hear public views on the Department's assessment report and recommendation. Seven people spoke at the meeting. The issue raised at the meeting were building height, setbacks including impact on the development potential of adjacent sites, wind impacts, traffic and parking and strategic planning.

The Commission has considered the site in the context of the Draft Inner Subregional Strategy and the St Leonards Strategy. Given its central location and minimal overshadowing impacts, the Commission accepted the Department's recommended height as reasonable.

Although the proposed building setback complies with North Sydney Council's DCP requirement from Atchison Lane, it does not comply with the guidelines of the *Residential Flat Design Code* (RFDC). In considering the non-compliance, the Commission noted the strategic importance of the area and the site has been identified as having an unusually high

development potential due to its limited overshadowing impacts. The proposal has a high quality design that meets most other RFDC requirements.

The Commission was satisfied with the Department's assessment and accepted the recommendations in regard to the use, height and density of the proposed development. The project was approved subject to recommended conditions.

### **D128-12 Allengrove Road, North Ryde** **20 March 2012 – 3 May 2012**

The concept plan (as amended by the preferred project report (PPR)) sought approval for a residential development at Epping Road, Lane Cove Road and Allengrove Crescent. The proposal includes 5 buildings ranging between 4 and 8 storeys for 196 units with 3 levels basement car parking for 273 car parking spaces.

The Department's Assessment Report assessed key issues including strategic context, built form, traffic and access, open space, noise, site amalgamation, public infrastructure and construction impacts. Although the Report concluded that the proposed development's scale, height and form are appropriate within the site's context, it recommended a reduction in building height to improve the development's transition to neighbouring residential area and greater level of internal amenity. The proposal will increase housing supply on a site with accessibility to public transport, employment opportunities and a range of services and facilities. The application was recommended for approval subject to conditions including future assessment requirements.

The Commission met separately with Ryde City Council for a briefing of Council's concerns and the proponent for a briefing of the proposal. A public meeting was held in April 2012. Eight people spoke at the meeting. Issues raised at the meeting were similar to those identified in the Department's assessment report.

The Commission has carefully reviewed the application, the Department's Assessment Report, public and agency submissions, and representations made by Council, proponent and those who spoke at the public meeting. It was accepted that the site is in close proximity to Macquarie Park and its public transport links and job opportunities, and in future there may well be a strategic planning process aimed at revitalising these residential areas proximate to Epping Road. However, the layout and design of this proposal is not of sufficient merit and significance to pre-empt an orderly planning process in the context of the proposal's impact on the surrounding low density residential properties. The application was refused.

### **D129-12 Redevelopment Scottish Hospital** **22 March 2012 – 2 May 2012**

The proposal sought approval to redevelop the Scottish Hospital site for aged care and seniors housing including 100 residential aged care beds, 79 independent living units, 132 car parking spaces and associated driveway and open space.

The Department's assessment report identified the key issues were:

- built form (height, density, bulk and scale),
- residential amenity including privacy, view, building depth & separation, solar access, overshadowing;
- parking, traffic and access;
- other issues including heritage, landscaping, contamination and remediation, voluntary planning agreement and s94 contribution.

The assessment report concluded that the heritage significance of the site and surrounding conservation area and the special qualities of the surrounding streetscapes will be preserved. The proposed building height, bulk and scale are acceptable with no unreasonable impact on residential amenity for neighbouring properties.

The Commission held a public meeting on 23 April 2012. Fourteen people spoke at the meeting. The issues they raised were similar to those assessed by the Department. Some also considered there were inaccuracies in the Department's assessment. The Commission's determination report focused on the issue of built form, set back of residential aged care building and its relationship to the Scottish Hospital, landscaping and removal of trees, loading dock and associated traffic and parking impacts, and voluntary planning agreement.

In brief, the Commission accepted that the proposal is a denser form of development than its surroundings. However, it does not believe that its density and height are so different as to render the project incompatible with the rest of Paddington. The Commission also accepted that the proposal will change the character of the site and will have some negative impacts on the surrounding area. However, it considered the impacts would not be so serious as to justify the refusal of this application.

The Commission has carefully considered the Department's assessment report as well as comments made during the public meeting. It has determined to accept the Department's recommendation and approve the application subject to recommended conditions as amended by the Commission.

## **D146-12      Mangoola Coal Modification 4**

### **30 April 2012 – 22 June 2012**

The Mangoola mine is bisected by an Electricity Transmission Line (ETL) running north-west to south-east. The proposed modification was to relocate a 9km section of the ETL to enable extraction the coal beneath the ETL and to rationalise the mine pit plan, extend the disturbance areas by about 11.7ha, add a temporary run-of-mine coal stockpile, change site water management, increase employee numbers, increase train movements, construct an acoustic barrier and incorporate a rail re-fuelling facility.

The proposed relocation of the ETL was declared a major project. The Minister is the approval authority for the project because the proponent, Transgrid, is a public authority. The Director General requested the Commission to advise on the proposal before the Minister determines the application. (See also A053-12)

The Department's Assessment report identified the key issues were flora & fauna, Aboriginal heritage, historic heritage, water resources, visual amenity, air quality, noise (operational, rail and road), blasting, greenhouse gas emissions, traffic (rail and road), and socio-economics. The assessment concluded that the proposed modification represents a reasonable and logical amendment to the existing Mangoola Coal Project. Particularly, it would improve the efficiency of the mine and develop a coal resource that would otherwise be sterilised. The application was recommended for approval subject to conditions.

The Commission met separately with the Department, Muswellbrook Shire Council and the proponent. A public meeting was held in June 2012 to hear public views on the Department's Assessment Report and recommendation on the proposed modification to the mine as well as the relocation of the ETL.

Issues raised in the meeting were similar to those identified in the Assessment Report. Other issues raised included impacts from current operation of the mine, cumulative/increase impacts of noise, traffic and dust, reduction in property values, attenuation and acquisition scope and processes, clarity and enforceability of conditions, and impact on the character of Wyong.

The Commission has considered all the information before it and made specific comment on noise impacts, air quality, offsets and other draft conditions in its determination report. The Commission supported the proposed modification as it would rationalise the mine plan and allow more efficient extraction of a coal resource within the bounds of an approved coal mine. The proposal would have minimal additional detrimental impacts on local residents.

The Assessment report was considered comprehensive and has addressed the issues raised in public submissions satisfactorily. The application was approved subject to recommended conditions as amended by the Commission. Amendments included rectification works on Wybong Road to be carried out prior to April 2013. The Air Quality Management Plan includes description of the management process and applies the necessary mitigation measures to minimise the effect of dust deposits on the performance of rainwater filtration for human consumption and electronic solar systems on private residential properties within a 4km radius of the mine.

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# Independent Expert Advice

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## **A045-11      Ku-ring-gai LEP amendment 216** **3 August 2011 – 8 August 2011**

On 30 July 2011, the Minister requested the Commission to advise on the Department's recommendation to make the Ku-ring-gai Local Environmental Plan Amendment 216. The proposed amendment was to rezone some unformed portions of Hall Street and Warner Avenue, South Turramurra to the adjoining low density residential zone (2C) and reclassify six parcels of Council owned land from community to operational.

The main reason for the proposed rezoning and reclassification was that the lands in question were no longer required as a road corridor for the connection of the F3 and M2 motorways. The reclassification of land would allow Council to sell the land for residential development and use the fund for the development of an aquatic and leisure centre at West Pymble.

The Commission noted that a public hearing was held for the reclassification of land in accordance with s29(1) of the Local Government Act 1993. The report on the public hearing found that the reclassification of the land was appropriate and recommended that issues raised in public submissions be addressed in detail in the Development control Plan (DCP) and at the development application stage.

The Commission agreed that issues raised in public submissions including those from government agencies could be addressed in the DCP and at the subdivision stage. The Commission found the Department's recommendation to rezone and reclassify the land reasonable.

## **A046-11      Nords Wharf residential development rezoning and VPA** **18 October 2011 – 27 January 2012**

## **A047-11      Gwandalan residential development rezoning and VPA** **18 October 2011 – 27 January 2012**

## **A048-11      Middle Camp rezoning and VPA** **16 November 2011 – 27 January 2012**

The Coal and Allied Group is a major land holder in the Lower Hunter region. Three proposals were lodged with the Department of Planning and Infrastructure to rezone land for residential and environmental protection at Nords Wharf, Gwandalan and Middle Camp, as outlined below:

1. Nords Wharf - 10 hectares for residential at the southern end of the existing township of Nords Wharf and 116 hectares for national parks and nature reserves (E1);
2. Gwandalan - 62.4 hectares for residential at the southern end of Gwandalan and 205.75 hectares for national parks and nature reserves (E1); and
3. Middle Camp - 28.2 hectares for residential and 525.87 hectares for national parks and nature reserves (E1).

The draft Voluntary Planning Agreements were for the dedication of the conservation land into the public reserve system.

The Minister requested the Commission to advise whether (1) the recommendation to rezone the lands in Nords Wharf, Gwandalan and Middle Camp for residential and conservation was reasonable, and (2) the draft Voluntary Planning Agreements (VPAs) should be executed.

The original rezoning proposals commenced in 2006 and reviewed by an Independent Hearing and Assessment Panel (IHAP) in 2007. The concept plans were revised following the IHAP recommendations and finalised in 2009. Before the concept plans and associated applications

were determined, they were withdrawn because of a Land and Environment Court decision invalidating approvals granted to other lands in the area because they relied on an MOU similar to those signed by Coal and Allied to dedicate land for conservation.

In July 2010, the then Minister for Planning agreed to consider rezoning of the lands and authorised the submission of concept plans.

The Commission met with Departmental staff, the proponent and the Reference Groups for a briefing on the proposal and the issues that were of concern to the community. A tele-conference was held with Lake Macquarie City Council to hear Council's concerns.

One of the key issues raised by the community was the history of the Lower Hunter Regional Strategy and how this and other sites were included in the Strategy. The Commission noted their concern, however, was of the view that the Strategy has been adopted and is the current planning policy for the region up to 2031. While this remains the case, the proposed rezoning must be considered in the context of the adopted Strategy. The Commission considered the key questions were (1) whether the proposed dedication of land justified rezoning the land for residential use now rather than later, and (2) would the rezoning have any significant adverse environmental impacts.

The Commission found the proposed dedication offered an opportunity to secure the protection of the high conservation value land in the national park system and is likely to have wider community support. It did not agree that current zoning of environmental conservation in the LEP provided adequate protection as these lands would be subject to continuous rezoning pressure if not protected in the national park system.

As to the draft VPAs, the Commission supported the execution of the VPAs to dedicate the high conservation areas for permanent protection subject to the resolution of a drafting issue. The Commission considered the irrevocable offer should be linked to the rezoning of the land not to a particular concept plan as drafted in the VPA.

#### **A049-11 Advertising signs F3 Mt Colah** **9 December 2011 – 21 December 2011**

The proposal was to install two illuminated advertising signs on either side (northern and southern facades) of the Ku-ring-gai Chase Road overpass. The proposed display area for each sign was 12.66m x 3.35m about 42m<sup>2</sup>.

The Minister is the consent authority for the proposal under State Environmental Planning Policy No 64 (Advertising & Signage). The Director-General considered the application should be referred to the Commission for advice given the issues raised by Hornsby Council.

Hornsby Council in its submission to the Department raised the following concerns:

- the compatibility of the proposed sign with the existing natural landscape character of the area;
- the signage protrudes below the bridge deck;
- visual impact on the residential area of Wahroonga to the south; and
- the need for a design review panel to review the proposal.

The Commission advised that the proposed advertising signs were inappropriate as they were incompatible with the character of the area and surrounding land uses; would have a negative visual impact, particularly on the Ku-ring-gai Chase National Park; and could distract motorists within a high speed 110km per hour zone. The proposal was not supported.

#### **A050-12 BHP Closure Area Mayfield** **25 January 2012 – 7 March 2012**

A request was made to the Minister to declare a proposal intermodal terminal and other works located within the BHP Closure Area at Mayfield North as State Significant Development (SSD). Although the subdivision, civil works and service infrastructure components of the proposal would

not be regarded as SSD if considered individually, these components would facilitate the intermodal terminal development.

The Director-General requested the Commission to consider the Department's recommendation so that it could advise the Minister whether the proposal should be called-in.

The Commission noted the proposal is generally consistent with the *NSW Ports Growth Plan* and the *Draft Strategic Development Plan for the Port of Newcastle*. The proposed intermodal terminal would support industrial and port related development.

The consolidation of the assessment and approval process of the various components of the proposal would ensure a coordinated and integrated approach to the proposal and adjacent developments for port related activities. The Newcastle City Council also supported the proposal to be called-in by the Minister as State Significant Development.

The Commission agreed with the Department's assessment and recommendation that the proposal is of State and regional planning significance.

### **A051-12      Black Hill employment lands** **2 April 2012 – 14 May 2012**

The Minister requested the Commission to advise on the reasonableness of the Department's recommendation to rezone certain lands for industrial purposes (IN2) and National Parks and Nature Reserves (E1 and E2) at Black Hill and the execution of a draft Voluntary Planning Agreement to transfer the rezoned E1 and E2 lands to the public conservation reserve system.

Some residents objected to the proposed rezoning as it would require the clearing of the Lower Hunter Spotted Ironbark Forest. They also questioned the need for additional industrial land in the area.

The Commission noted that the site has been identified for future employment generating uses under the *Lower Hunter Regional Strategy*. Newcastle City Council also supported the rezoning to provide additional employment lands for the area.

Although the Commission acknowledged that some of the lands are currently zoned for conservation purposes, it considered the existing zoning in the LEP does not provide adequate protection. Experience indicated that these lands would be subject to continuous rezoning and/or development pressure if not protected in the national park system. The Commission agreed that the proposed dedication of lands into the public conservation system would be a significant public benefit.

Having regard to the Regional Strategy, Newcastle City Council's support and the public benefit of including significant environmental lands into the public reserve system, the Commission found the Department's recommendations to make the draft SEPP to rezone the lands and to execute the draft VPA were reasonable.

### **A052-12      Rezoning of Kolotex and Labelcraft sites** **10 April 2012 – 10 May 2012**

A planning proposal was prepared to rezone the sites known as Kolotex and Labelcraft at 22 and 30-40 George Street Leichhardt from industrial IN2 in the Leichhardt LEP 2000 to a mix of light industrial (IN2) at the southern end of the site, a mixed use zone for small scale retail and commercial in the central part and general residential R1 for medium density at the northern end of the site.

The Minister requested the Commission to advise whether the proposed rezoning should be submitted for a Gateway determination.

The proposed rezoning of the site commenced in 2006. In March 2011 a council report recommended Council to forward the planning proposal to the Department for a Gateway

determination. The Council resolved to defer the application pending clarification of issues including FSR, building height and other matters. The proponent considered the Council's resolution required detailed information commensurate with a development application, rather than a Gateway determination.

The Department's preliminary planning report recommended the Commission to endorse the planning proposal and form the opinion that the proposal should be submitted for a Gateway determination.

The Commission noted the site is within the inner city suburb that is experiencing transition in its demographics and land values impacting on employment and housing needs. The location is well connected to public transport. Retail and commercial precincts, social infrastructure and public open space are in close proximity. The site also provides a good opportunity for additional employment and housing which is consistent with strategic planning objectives.

The Commission agreed that the level of details required (as set out in Council's reasons for deferral) is premature within the context of the Gateway process and the need for subsequent development applications. The Commission concluded that the proposal has strategic merit and should proceed to the Gateway determination process. However, its conclusion did not indicate a support of the planning proposal as presented, including FSR or building height, as it has not carried out a detailed assessment of the planning proposal.

#### **A053-12 Relocation of the Bayswater to Mt Piper 500kV ETL** **30 April 2012-22 June 2012**

Mangoola Coal mine is located about 20 kilometres west of Muswellbrook in the Upper Hunter Valley. Currently there is a 500kV electricity transmission line (ETL) running from the northwest to southeast bisecting the mine. To extract the coal beneath the ETL and rationalise the mine pit plan and operations of the mine, the proponent proposed to modify its project approval for the operation of the Mangoola Coal Mine and relocate a 9 kilometre section of the ETL. The application to relocate the ETL was declared a major project and the Minister is the approval authority for the project because the proponent Transgrid is a public authority. The Director General requested the Commission to advise on the proposed relocation of the ETL and make a recommendation on the application before the Minister determine the application.

As the proposed modification to the mine operation and the relocation of the ETL are inter-related, one environmental assessment was prepared. The modification application was referred to the Commission for determination as it met Ministerial delegation. The Commission held a public meeting to hear submitters' views on the Department's assessment and recommendation. See D146-12 for details.

#### **A054-12 Minmi rezoning and VPA** **21 May 2012 – 29 June 2012**

The Minister requested the Commission to advise on the reasonableness of the Department's recommendations to rezone about 520 hectares of land near the Minmi-Newcastle Link Road. The proposal sought to rezone the land for residential, commercial and environmental conservation purposes and the execution of a related Voluntary Planning Agreement (VPA) to dedicate about 1500 hectares of land to the National Parks and Nature Reserves.

The proposed areas to be rezoned are located in two local government areas, namely, Newcastle City and Lake Macquarie City whilst the proposed dedicated lands are located within Newcastle City, Lake Macquarie City and Cessnock local government areas.

The Department identified the key issues included: land uses and urban design, provision and contribution to local infrastructures, State infrastructure, loss of local biodiversity values, flooding and climate change impacts, site contamination, mine subsidence, issues of traffic and access, European and Aboriginal heritage, traffic noise impacts, noise and air quality impacts from Summer Hill Waste Management Centre and bushfire hazard.

The Commission met with Departmental staff for a briefing on the history of the proposal, the planning process, consultation with local government authorities, mitigation measures for road noise, potential impacts from the Summer Hill Waste Facility, mine subsidence, management measures for steep slopes and options for ownership and management of undevelopable land.

The Commission held a tele-conference with Newcastle City Council staff to hear Council's concerns including the integration of the draft SEPP into the Newcastle LEP 2012 and inconsistency between the two documents; width of environmental links; the consolidation of one commercial centre and lack of identified recreational facilities.

The meeting with the proponent focused on issues concerning the history, scope and process of the proposed rezoning and the draft VPA, housing demand, proposed E2 zone within the site, ownership and management of riparian corridors and recreation facilities.

Following careful consideration of the Department's report and associated documents, information provided by Newcastle City Council and the proponent, the Commission considered the rezoning proposal is within the Strategic context identified in the Lower Hunter Regional Strategy. The Department's recommendation to include E2 zone within the site is reasonable and necessary to protect the ecological values of the riparian corridors and other sensitive areas from development. As to the draft Voluntary Planning Agreement, the Commission considered the proposed dedication of land into the public reserve system is the best opportunity to ensure permanent protection of lands having significant conservation values. Therefore it supported the executive of the draft VPA.

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# Expert Review with Public Hearings

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## **R013/11      Maules Creek Open Cut Mine**

**19 August 2011 to 14 March 2012**

Ms Gabrielle Kibble AO (Chair)  
Mr Brian Gilligan  
Mr Gary West

Aston Resources sought to develop an open cut coal mine in the Leard State Forest, in the Narrabri Local Government Area. The proposal is known as the Maules Creek Coal Project and would involve open cut mining. The mine would produce up to 13 million tonnes of coal a year, disturbing 2,178 ha of land over a 21 year period. The Maules Creek site is a greenfield site, predominantly outside of productive agricultural lands.

The Minister for Planning and Infrastructure requested the Commission carry out a review of the merits of the proposal. The review was to assess the potential cumulative dust, noise, blasting and water impacts; the potential biodiversity impacts; the merits of the mine plan, paying particular attention to the proposed overburden dump and future rehabilitation; and any other potentially significant impacts of the project. The review should also recommend appropriate measures to avoid, minimise and/or offset these impacts. A public hearing should be held during the review.

The Commission held public hearings on 23 November 2011 at the Boggabri Golf Club. Eight verbal submissions were heard at the public hearing including Narrabri Shire Council and Gunnedah Shire Council. The Commission also received six written submissions on the proposal.

The Commission undertook a separate review of the Boggabri Coal Project, which is proposed to occupy an adjoining portion of the Leard State Forest. Noting that a third mine in the cluster (the Tarrawonga coal mine) is also currently seeking to expand, the Commission found that the potential cumulative impacts arising from the combination of multiple mines operating in relatively close proximity required careful consideration.

Many of the issues arising from both the Maules Creek and Boggabri coal mines needed to be addressed at a regional scale, or at a cumulative level encompassing the whole cluster. Key issues associated with the proposal included biodiversity impacts associated with extensive clearing of the Leard State Forest, dust, noise and blasting emissions and water impacts.

The Commission has recommended a regional strategic framework approach to deal with the cumulative impacts of the growing mining sector in the area. Regional strategies have been particularly recommended to deal with biodiversity and air quality, but also have relevance for noise, water and other long term regional issues such as stability of the agricultural sector and employment and population demographics more generally.

The Maules Creek project involves the clearing of 1665 ha of native vegetation. The proponent proposes to restore and preserve certain areas of land for conservation, to mitigate the significant loss of biodiversity which would occur on site. In order to ensure the long term success of the biodiversity conservation areas and corridors, the Commission has recommended that a Regional Biodiversity Strategy should be developed and implemented. The strategy will need to set out the long term framework of management, monitoring and land use security to be applied consistently across all biodiversity conservation areas in the region.

The conservation corridors proposed to be developed would link directly to the Leard State Forest. Currently mining applications are seeking to mine from the north and the south of the forest only leaving a narrow strip of undisturbed vegetation between them. The Commission did not believe this narrow corridor is adequate, on grounds both of integrity of the biodiversity corridor and also in relation to the potential for groundwater interactions between the two mines. The Commission has recommended that the 'barrier' between the two mines should be increased to include a minimum

of 500 m of undisturbed vegetation, in line with advice from the Office of Environment and Heritage. Both mines would contribute equally to the barrier, with each company establishing a 250 m exclusion zone on its side of the boundary.

Although largely within the forest, agricultural properties (mainly to the north and west of the mine) have the potential to be impacted by the mine's dust, noise and blasting emissions. The Commission has assessed these issues and considers that they can be adequately managed through use of appropriate equipment and operational procedures. As mentioned previously, the cumulative impacts of mining activities in the area will also need to be carefully managed and monitored. In this regard, the Commission has recommended that a number of regional strategies need to be prepared to ensure the mines work together to prevent emissions exceeding accepted levels.

The Commission was satisfied that water impacts would generally be localised and unlikely to have significant wider regional implications that would warrant waiting for the Namoi Water Study to be completed. Notwithstanding this, water is a critical issue for the region and the Commission did not support the long term water impacts that would result from the proposed final void and lake. The Commission considered it is possible to design the final landform to drain to the natural catchment and recommended the landform design to be modified to prevent a pit lake from forming.

Overall the Commission considered the project has merit subject to certain requirements and recommended that an appropriate regional management framework and mine specific management plans and conditions be prepared to ensure the impacts of the project would be minimised and adequately managed.

Some of the key recommendations from the review included:

- the preparation of a regional biodiversity management strategy;
- the establishment of a viable biodiversity corridor through the Leard State Forest;
- Regional air and noise management strategies;
- compliance with a 35 dB(A)  $L_{Aeq}$  15 minute noise limit at residential properties;
- compliance with state and national air quality standards;
- Timely publication of monitoring data and identification of operational response to monitoring data and weather forecasts;
- The long term landform must not generate a pit (void) lake; and
- Emplaced spoils must have a capacity to drain to the natural catchment and drained waters must not adversely impact upon the downstream environment.

## **R014/11 Boggabri Coal Project**

**21 September 2011 to 9 February 2012**

Ms Gabrielle Kibble AO (Chair)  
Mr Brian Gilligan  
Mr Gary West

The Boggabri Coal Project involved continued open cut mining of the Maules Creek formation in the Leard State Forest, in Narrabri Local Government Area. The mine would produce 7 million tonnes of coal a year over 21 years, disturbing 1,835 ha of land.

The Minister for Planning and Infrastructure requested the Commission carry out a review of the merits of the Boggabri Coal Project. The review included assessment of the potential cumulative dust, noise, blasting and water impacts; the potential biodiversity impacts; the merits of the mine plan (particularly the proposed final void and future rehabilitation); and any other potentially significant impacts of the project. As part of the review, a public hearing should be held.

The Commission held a public hearing for the proposal and received five verbal and five written submissions. The Commission also met individually with representatives of the proponent, Narrabri Shire Council, the Office of Environment and Heritage and the Office of Water.

Key issues associated with the proposal included biodiversity impacts associated with extensive clearing of the Leard State Forest, dust, noise and blasting emissions and water impacts. These impacts could be potentially significant when combined with the impacts from other mines in the vicinity, both existing and proposed.

Together with the Maules Creek Coal Project, the Commission particularly focussed on the potential cumulative impacts arising from the location of the mine and the strategic context in which it sits. In order to address the potential growth in cumulative mining impacts from proposed mines in the area which include the Maules Creek Coal Project which occupies an adjoining portion of the Leard State Forest and the nearby Tarrawonga coal mine, the Commission recommended that a number of regional strategies need to be prepared to address impacts on biodiversity, air quality and noise.

After careful consideration of the project, the Commission considered that the project has merit subject to certain requirements. Some of the key recommendations from the review included:

- the preparation of a regional biodiversity management strategy;
- the establishment of a viable biodiversity corridor through the Leard State Forest;
- Regional air and noise management strategies;
- compliance with a 35 dB(A)  $L_{Aeq}$  15 minute noise limit at residential properties;
- compliance with state and national air quality standards;
- Timely publication of monitoring data and identification of operational response to monitoring data and weather forecasts;
- The long term landform must not generate a pit (void) lake; and
- Emplaced spoils must have a capacity to drain to the natural catchment and drained waters must not adversely impact upon the downstream environment.

While acknowledging the environmental impacts of the project, the Commission considered that overall, the project has merit. Subject to the above recommendations and a detailed assessment by the Department of Planning and Infrastructure, the Commission was satisfied the project could be approved, subject to stringent conditions.

# APPENDIX 1

## LIST OF APPLICATIONS DETERMINED

### Concept plan and Project Applications

Ref No	Project Name	Determination Date
1. D139-12	Kemps Creek LOGOS concept plan and project application	5/06/2012
2. D138-12	Newcastle Gas Storage Tomago	10/05/2012
3. D136-12	Marina extension Dolans Bay	20/04/2012
4. D135-12	Marina at Koolewong	9/05/2012
5. D133-12	Royal Rehabilitation Centre Stage 1 Phase 1	1/05/2012
6. D129-12	Redevelopment of Scottish Hospital	2/05/2012
7. D128-12	Allengrove Road, North Ryde	3/05/2012
8. D126-12	Atchison Street, St Leonards	1/05/2012
9. D120-12	D'Albora Marina, The Spit	12/03/2012
10. D116-12	Music Festival Royal Randwick Racecourse	8/02/2012
11. D115-12	Concept plan for Creek Street, Hastings Point	9/02/2012
12. D114-12	Concept plan for City One Wynyard	3/04/2012
13. D112-12	Concept plan for Old Canterbury Road Lewisham	15/03/2012
14. D111-12	Mixed Use Development at Lindfield Ave & Havilah Lane	27/01/2012
15. D108-12	Woodlawn Waste Expansion	16/03/2012
16. D106-12	Myuna Colliery Expansion	18/01/2012
17. D105-11	Concept plan for Marrickville Metro Shopping	19/03/2012
18. D102-11	Bulli Seam Operations Project	22/12/2011
19. D100-11	Yelgun Cultural Events site concept plan and Stage 1 project application	24/04/2012
20. D099-11	Concept plan & Stage 1 residential subdivision Lake Cathie	28/11/2011
21. D097-11	Riverwood Stage 1 Project Application	22/11/2011
22. D096-11	Glebe Island temporary use	9/11/2011
23. D092-11	Tile Manufacturing (NCIA)	18/01/2012
24. D091-11	Capital II Wind Farm	1/11/2011
25. D090-11	Mixed use development at Macquarie & Marsden Street, Parramatta	28/10/2011

26.	D086-11	Warkworth Extension and HVO Modification	3/02/2012
27.	D083-11	Calderwood Stage 1	17/04/2012
28.	D082-11	Wongawilli Continue Operation	2/11/2011
29.	D081-11	Jones Bay Wharf marina	30/09/2011
30.	D080-11	Concept plan for Entertainment Quarter	25/11/2011
31.	D078-11	31 & 47 Crown St, Wollongong (Dwyer & Oxford Tavern site)	21/09/2011
32.	D077-11	Caltex jet fuel pipeline upgrade project	5/09/2011
33.	D075-11	Gujarat NRE No 1 Colliery preliminary works project	13/10/2011
34.	D070-11	S75R Order Former Sunbeam Factory site	16/08/2011
35.	D066-11	Edmondson Park concept plan and project application	18/08/2011
36.	D059-11	Concept plan for Riverwood North Estate	15/07/2011
37.	D057-11	Concept plan for 88 Christie Street, St Leonards	19/07/2011
38.	D056-11	Montefiore Concept plan & Project Application	19/07/2011
39.	D055-11	Channel 7 site Building 7 & 8	12/07/2011
40.	D051-11	Bloomfield concept plan Orange	5/08/2011
41.	D049-11	Dargues Reef Gold Mine	2/09/2011
42.	D048-11	Treacy Street, Hurstville	1/07/2011
43.	D037-11	Googong Water Cycle Project concept plan and project application	24/11/2011

## Modification Applications

	Ref No	Project Name	Determination Date
1.	D154-12	Cement Grinding Mill modification 1	22/06/2012
2.	D152-12	SAN Hospital Modification 3	13/06/2012
3.	D149-12	Warriewood Modification 6	12/06/2012
4.	D146-12	Mangoola Coal Modification 4	22/06/2012
5.	D145-12	Warriewood Modification 4	10/05/2012
6.	D141-12	7 Railway Street, Chatswood Modification 1	30/05/2012
7.	D140-12	Honeysuckle Centre Modification 1	8/05/2012
8.	D134-12	Sydney Adventist Hospital Wahroonga Modification 2	11/04/2012
9.	D132-12	Berrima Coal Extension and Modification	20/06/2012
10.	D131-12	Pine Dale Coal Modification 1	4/04/2012
11.	D130-12	Bloomfield Coal Project Modification 2	29/03/2012
12.	D127-12	Wilga Park Power Station Modification	14/03/2012
13.	D125-12	Newstan Colliery – Main West area Modification 4	16/03/2012
14.	D124-12	Gwandalan Subdivision Modification 1	5/03/2012
15.	D123-12	Killeaton Street Modification 5	29/02/2012
16.	D122-12	Hakoah Club Modification 3	22/02/2012
17.	D121-12	Spectator precinct Modification 1	25/02/2012
18.	D119-12	Hill Top Shooting Complex modification	7/05/2012
19.	D118-12	Killeaton Street Modification 4	20/02/2012
20.	D117-12	Wambo Coal rail refuelling facility Modification 2	17/02/2012
21.	D113-12	Ivanhoe Rehabilitation Project Modification 1	19/01/2012
22.	D110-12	120-122 Jones Bay Wharf (Alira Restaurant) Modification 2	16/01/2012
23.	D109-12	Lucas Heights Waste Facility Modification 8	18/01/2012
24.	D107-12	Warriewood Stage 1 Modification 5	12/01/2012
25.	D104-11	Sydney Adventist Hospital Modification 1	23/12/2011
26.	D103-11	Warriewood concept plan Modification 1	15/12/2011
27.	D101-11	Port Kembla Grain Terminal Modification 1	7/12/2011
28.	D098-11	Killeaton Street Modification 3	1/12/2011
29.	D095-11	Warriewood Stage 1 Modification 3	15/11/2011
30.	D094-11	Hakoah Club Modification 2	1/11/2011

<b>Ref No</b>	<b>Project Name</b>	<b>Determination Date</b>
31. D093-11	Angels Beach residential development Modification 4	3/11/2011
32. D089-11	Mandalong Coal Modification VRM	11/11/2011
33. D088-11	1-17 Elsie Street, Burwood Modification	13/10/2011
34. D087-11	Bluetongue Brewery Modification	10/10/2011
35. D085-11	Riverwood North concept plan modification	29/09/2011
36. D084-11	Apex Drilling Project Modification	21/11/2011
37. D079-11	Shoalhaven Starches Modification 1	30/09/2011
38. D076-11	3 modifications to the former CUB site	30/08/2011
39. D074-11	Channel 7 site early works Modification 3	25/08/2011
40. D073-11	Channel 7 site early works Modification 2	25/08/2011
41. D072-11	S75W Modifications to Outer Harbour Development, Port Kembla	8/09/2011
42. D071-11	Cement Grinding Mill Port kembla	8/09/2011
43. D069-11	Angus Place Colliery Modification 1	29/08/2011
44. D068-11	RNSH Modification 4 change to L9	11/08/2011
45. D065-11	Vincentia District Town Centre Modification 3	8/08/2011
46. D064-11	Sydney Rehabilitation Centre Modification 5	1/08/2011
47. D063-11	IKEA Modification 5	27/07/2011
48. D062-11	Bonnyrigg Concept plan Modification 3	28/07/2011
49. D061-11	Bonar Street Arncliffe Modification 6	20/09/2011
50. D060-11	Costco Modification 3	13/07/2011
51. D058-11	Huskisson Hotel Modification 1	12/08/2011
52. D052-11	Warriewood Stage 1 Modification 1	15/07/2011
53. D045-11	Star City Modification	29/07/2011

# SUMMARY OF AFFAIRS

## COMMISSION EXPENDITURE

The total expenditure by the Commission for the financial year was \$2.476 million. The Commission does not directly employ staff. The Department of Planning and Infrastructure provides technical and administrative staff to support the operation of the Commission.

## CONSULTANTS

During the financial year, the Commission engaged two experts, Emeritus Professor Jim Galvin and Dr Col Mackie, to assist its review of the Boggabri Coal Project and Maules Creek Open Cut Coal Mine at a total cost of \$65,719.00.

## GOVERNMENT INFORMATION (Public Access)

The Commission received one request to access information under the Government Information (Public Access) Act 2009. A preliminary determination has been made to release the requested documents pending the payment of processing fee.

## PRIVACY AND PERSONAL INFORMATION

In the 2011-12 reporting period, the Planning Assessment Commission received one internal review application about privacy breaches. The complaint was that the Commission published the personal details of a submitter on its website without approval. The Commission's preliminary investigation found that the public notice it advertised calling for submissions included a statement to the effect that all submissions are public documents and may be published on the Commission's website. The statement was not explicit enough to alert submitters that their personal details contained in the submission would also be made public on the website. The internal review concluded that the Commission might have breached the Act.

Following the internal review, the Commission took step to address the issues raised in the application including an update of its public statement to alert submitters that their personal details, except name, will be removed when their submission is published on the Commission's website. The applicant found the Commission's action satisfactory and withdrew the application.

## OVERSEAS TRAVEL

No overseas travel was undertaken during the year.

## FURTHER INFORMATION

The Commission's website ([www.pac.nsw.gov.au](http://www.pac.nsw.gov.au)) includes a register of matters that have been referred to the Commission.

## CONTACT

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