Ms Sally Barnes  
Chief Executive  
Office of Environment & Heritage  
PO BOX A290  
SYDNEY SOUTH NSW 1232  

25 September 2012  

Dear Ms Barnes  

**Proposed Coalpac Consolidation Project – Castlereagh Highway, Cullen Bullen**  

The Commission is currently conducting a Review, under section 23D(1)(b)(ii) and Schedule 3 of the *NSW Environmental Planning and Assessment Act 1979*, of the Coalpac Consolidation Project Proposal (10_0178) at Cullen Bullen, near Lithgow. The terms of reference are to:

*Carry out a review of the Coalpac Consolidation Project, and:*  
a. *Consider the Environmental Assessment of the project, all issues raised in submissions on the project, and any information provided on the project during the course of the review;* 
b. *Assess the merits of the project as a whole, paying particular attention to the potential:*  
   • Local health and amenity impacts of the project, particularly dust, noise and blasting impacts noting its proximity to the village;  
   • Biodiversity impacts of the project;  
   • Water resource impacts of the project; and  
c. *Recommend appropriate measures to avoid, minimise and/or offset these impacts.*

The Commission conducted an inspection of the project area and surrounds accompanied by officers from your department on 18 September 2012. Two issues emerged from the Commission's inspection:

(i) that a briefing from staff involved in any proposal for progressing Gardens of Stone 2 could assist the Commission in preparing its report; and  

(ii) the project as currently presented involves open-cut mining to within 50m of the pagodas and escarpment to enable access for the high-wall mining equipment to the upper level coal seams beneath these features. While there are arguments as to whether a 50m setback will preserve the integrity of the geological features, little consideration appears to have been given to the impacts on native species that utilize either the pagoda or gully habitats exclusively, or to those species (such as the broad-headed snake, brush tail rock wallaby and lyrebird) which require access to both habitat types either seasonally or on some other basis.
The terms of reference for the review require the Commission to recommend appropriate measures to avoid, minimise and/or offset these impacts.

While a recommendation for refusal may satisfy the avoidance component, in the Commission's view it must also consider options for more effective mitigation of impacts in the event that the project proceeds.

The Commission would appreciate the considered views of OEH on what such mitigation options might entail in relation to the flora and fauna of the pagodas and adjacent areas and how any such options might be implemented. In this context the Commission notes that simply extending the 50m buffer (to some other fixed distance such as 100m or 310m as proposed by different Special Interest Groups) may be simplistic and that a more sophisticated assessment of the critical areas of habitat proposed for high-wall mining may be more appropriate.

In addition to the above matters, it appears from the Special Interest Group submissions that additional threatened species have been found in the project area to those reported in the EA. Can OEH please advise the Commission on the significance of these additional reports and any steps that may be required to avoid, mitigate or manage any impacts from the project on these species?

Could you please advise as soon as possible whether you would be able to assist the Commission with these requests? The Commission's report is due mid November 2012 and timeframes for assembling information are therefore tight.

Following the Commission’s briefing by OEH and in addition to the above, two further issues have arisen that may require advice from the OEH.

The first relates to the presentation by the Colong Foundation at the Public Hearing. They assert that underlying geology of the Project Area is different to the surrounding areas in that the Project area contains Permian sediments of the Illawarra Group that have produced rolling and flattish terrain of higher nutrient levels and that this has implications for the conservation value of the project area. Further details on this are being sought from the Colong Foundation. Once this information is to hand the Commission is likely to request advice from OEH as to the importance of this for considering potential biodiversity impacts of the project.

The second is that on 19 September 2012 OEH registered an Aboriginal cave site [REDACTED] within the Project area, with a subsequent site visit carried out on 21 September 2012. The proponent has provided initial advice it is in consultation with OEH, and that it intends to carry out an assessment and include the cave within its proposed Aboriginal Archaeological and Cultural Heritage Management Plan for the Project. Following the proponent’s formal response, it is anticipated that the OEH will advise the Department and Commission on the significance of this discovery, and whether the proponent’s suggested measures would avoid, mitigate or manage any impact on the cave.
Ms Sera Taschner (Commission Secretariat) can assist with any enquiries concerning the Commission’s requests on (02) 9383 2117 or email sera.taschner@planning.nsw.gov.au.

Yours sincerely

Dr Neil Shepherd AM  
Chair, Coalpac Commission