



11 July 2022

Mr Steve O'Donoghue
Director Resources Assessments
Department of Planning and Environment

By email: stephen.odonoghue@planning.nsw.gov.au

Dear Mr O'Donoghue

MOUNT PLEASANT OPTIMISATION PROJECT (SSD 10418)

At the second day of the public hearing into the above application, Ms Lauren Sims (counsel briefed by the Environmental Defenders Office) made submissions regarding the Department of Planning and Environment's (DPE's) approach to the assessment of the application.

In that verbal submission (at line 22, page 42 to line 9, page 44 of the Day Two transcript linked [here](#)) Ms Sims stated that DPE's Assessment Report '*...proceeds on the basis of a comparison between what it calls the approved project and the proposed project*' (lines 28-29, page 42).

Ms Sims went on to state at lines 4-6, page 43 that:

*'In the usual case, and particularly this is frequently done for mining expansions, the comparator – that is, what would occur otherwise – is usually represented by what's been approved previously. **In this particular circumstance, that's not an apt point of comparison...**'*

[Emphasis added]

A similar submission was made by Dr Sarah Pritchard SC (senior counsel briefed for the Hunter Thoroughbred Breeders Association) at lines 21-32, page 73 of the transcript. Dr Pritchard stated at line 40, page 73 to line 4, page 74 that:

*'So even if the proponent were to surrender its existing consent, the Commission would not be relieved of its obligation to fully assess the impacts of the current proposal. **Unpicking the future impacts permitted under the current consent from the impacts of the proposal would at best be difficult, and in my submission impossible, based on the information currently provided to the Commission.**'*

[Emphasis added]

The Panel would be assisted by DPE's response to Ms Sims's and Dr Pritchard's submissions on this point. In particular, the Panel would like the following questions addressed in that response:

1. Does DPE consider that Ms Sims's and Dr Pritchard's characterisation of DPE's approach to the assessment is correct – in that they assert that DPE has compared what has been approved (but either has not, or cannot be carried out before the existing consent lapses) with what is proposed under the present application?
2. If the answer to [1] is "Yes", to what extent has DPE relied on section 4.63(3)(a) of the *Environmental Planning and Assessment Act 1979* in so assessing the present application?
3. To the extent that DPE has assessed only the difference between what is currently approved and what is proposed in the application, how does DPE respond to what the Panel understands to be Ms Sims's submission that that approach is not apt in the present case given the extent to which what is currently approved has not been fully carried out?

The Panel would be assisted by DPE's prompt written reply, on or before 5pm Wednesday, 13 July 2022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S Barry', with a long horizontal line extending to the right and a large loop at the end.

Stephen Barry
Planning Director