



Planning
Assessment
Commission

Warkworth Continuation Project

Second Review Report

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The Warkworth Continuation Project PAC Report ©
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EXECUTIVE SUMMARY

The Warkworth Continuation Project is a proposed extension of the existing Warkworth open cut coal mine, which is located approximately 8 kilometres south-west of Singleton and approximately 3 kilometres from the village of Bulga in the Hunter Valley. The proposal is seeking approval for a westward expansion of the mine to extract a further 230 million tons of coal over 21 years, with tailings and overburden to be transferred to the Mt Thorley mine. It would continue to extract up to 18 million tons of run-of-mine coal per year and would use the existing coal transportation infrastructure.

On 13 August 2015, the Minister for Planning, the Honourable Rob Stokes MP, requested the Chair of the Planning Assessment Commission (the Commission) to carry out a second review of the project, including the holding of a public hearing to consider possible changes to the assessment of the project brought about by the proposed changes to the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP Amendment). The terms of reference for the review are listed in **section 2.1** below.

The Commission was constituted by all of the Members that have been involved in the previous Commission processes for this project, including Lynelle Briggs (chair), Paul Forward, Garry West and Gordon Kirkby. The Commission examined the documents referred to in the terms of reference, including the Final Assessment Report provided by the Department of Planning and Environment (the Department) in regards to the recommendations from the Commission's first review. The Commission also received written submissions and held a public hearing on 7 and 8 September 2015.

The Commission made a total of 22 recommendations in its previous review report. The majority of these recommendations have been addressed through the provision of additional information from the Applicant, the Department's Final Assessment Report and consultation with relevant agencies, including Singleton Council. The table in **Appendix 1** provides a summary of the 22 recommendations and the Commission's comments on how these have been addressed.

Apart from the main focus of the review (the Mining SEPP Amendment), a small number of new issues that required further consideration and clarification were identified during this review, including the Aboriginal stakeholder consultation and the cumulative impacts of final voids.

The Commission has considered carefully the effect of the Mining SEPP Amendment and has given a balanced consideration to the potential economic, social and environmental impacts of the project. This is reflected by the fact that the Commission has made a number of additional recommendations aimed at the strengthening of conditions relating to biodiversity, final voids, air quality and noise. The Commission also emphasises that various changes have been made to the current application to reflect changes in government policy and to address issues raised in the Land and Environment Court's judgment about the previous application.

The Commission has made six recommendations in this report, relating to seeking confirmation from OEH about Aboriginal stakeholder consultation, the strengthening of the relevant management plans to ensure ongoing monitoring of Warkworth Sands Woodlands regeneration activities, the strengthening of conditions around the future management of final voids, the management of non-compliances or exceedances of air quality and noise limits, and further consideration of the social impact assessment.

The Commission has carefully balanced the key areas of concern, including Aboriginal cultural heritage, final voids, air quality and noise, and the socio-economic benefits. The Commission notes that the Warkworth-Mt Thorley mine complex is the biggest employer in Singleton, and is a very important contributor to the local and regional economy. The Commission also notes that Singleton Council has reached a preliminary agreement with the Applicant about a Voluntary Planning Agreement that will include approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewerage treatment facilities for Bulga within the first five years.

The Commission is satisfied that the project's benefits as currently understood outweigh its potential impacts, and that on balance the project is approvable. The project should proceed to determination, subject to the recommendations outlined in this report.

1. INTRODUCTION

On 13 August 2015, the Minister for Planning, the Honourable Rob Stokes MP, requested the Chair of the Planning Assessment Commission (the Commission) to carry out a second review of the Warkworth Continuation Project, including the holding of a public hearing. The same request was lodged in respect of the Mt Thorley Continuation Project and a separate report has been prepared by the Commission for that project. Ms Lynelle Briggs AO, chair of the Commission, nominated Mr Garry West, Mr Paul Forward and Mr Gordon Kirkby to constitute the Commission for the review. Ms Briggs chaired the panel.

1.1 Project Application

The Warkworth Continuation Project is a proposed extension of the existing Warkworth open cut coal mine, which is located approximately 8 kilometres south-west of Singleton and approximately 3 km from the village of Bulga in the Hunter Valley. The proposal is seeking approval for a westward expansion of the mine to extract a further 230 million tons of coal over 21 years, with tailings and overburden to be transferred to the Mt Thorley mine. It would continue to extract up to 18 million tons of run-of-mine coal per year and would continue to use the existing coal transportation infrastructure.

Warkworth mine is currently operating under an approval granted in May 2003, which has subsequently been modified six times. The approval included a Ministerial Deed of Agreement between Warkworth Mining Limited and the then Minister for Planning, whereby land in the non-disturbance areas and habitat management areas are protected for conservation, and open cut mining is generally excluded. These areas included Wallaby Scrub Road, Saddleback Ridge and offset areas containing Endangered Ecological Communities.

1.2 Previous PAC Review

On 6 November 2014, the Minister requested the Commission to conduct a public hearing and review the merits of this project and the Mt Thorley Continuation Project, paying particular attention to the potential amenity, health and social impacts on the village of Bulga and surrounds, and to provide recommendations on any reasonable and feasible measures that could be implemented to avoid, reduce and/or offset the potential impacts of the project. In accordance with the Commission's terms of reference, a public hearing was held on 18 and 19 December 2014.

The Commission made a total of 22 recommendations in its previous review reports. A summary table of the Commission's recommendations and comments about how they have been addressed is provided in **Appendix 1**. Subject to these recommendations, the Commission was satisfied that the projects were consistent with government policy, and considered both the Warkworth and Mt Thorley Continuation Projects approvable.

1.3 Determination Process

In May 2015, this project and the Mt Thorley Continuation Project were referred back to the Commission for determination with an accompanying Addendum Report and in June, the Commission held a public meeting in relation to the determination. After the public meeting, the Commission also sought further submissions on the proposed Mining SEPP Amendment. As a result of the Minister's request to conduct this second review, the Commission's determination process is currently on hold.

2. THE COMMISSION'S SECOND REVIEW TASK

2.1 Terms of Reference

The Minister's request for the second review was made on 13 August 2015 under Section 23D of the *Environmental Planning and Assessment Act 1979* and Clauses 268R and 268V of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

The terms of reference are as follows:

1. *Carry out a review of the Warkworth Continuation Project (SSD 6464) and Mt Thorley Continuation Project (SSD 6465) by considering:*
 - a) *the draft State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) Amendment (Significance of Resource) 2015 (draft SEPP) and explanation of intended effect, notified to the Planning Assessment Commission and published on the Department of Planning and Environment's website on 7 July 2015;*
 - b) *the terms and effect of the draft SEPP if it is made;*
 - c) *the additional information provided by the Department of Planning and Environment to the Planning Assessment Commission in a letter to the Chair of the Commission dated 7 July 2015 and published on the Planning Assessment Commission's website;*
 - d) *any written submissions made to the Planning Assessment Commission in response to the call for further submissions published on the Planning Assessment Commission's website on 7 July 2015;*
 - e) *any submissions made to the Planning Assessment Commission as part of any public hearings held in relation to this review; and*
 - f) *any submissions made by the applicant to the Planning Assessment Commission on the matters the subject of this review.*
2. *Hold a public hearing on matters arising from or relevant to the review as soon as practicable.*
3. *Complete the review and provide a final report to the Department of Planning and Environment containing any findings and recommendations by 21 September 2015, unless the Secretary of the Department agrees otherwise.*

2.2 Public Hearing and Submissions

A public hearing was held on Monday 7 and Tuesday 8 September 2015 at the Singleton Civic Centre. A total of 99 verbal submissions and 71 written submissions were made, comprising various local businesses, special interest groups, employees of the mine, and numerous other individuals. A list of speakers at the public hearing is provided in **Appendix 2** of this report.

The Commission also met with representatives of the Wonnarua Aboriginal group privately at their request, at the end of the public hearing on 8 September 2015 in accordance with clause 268R(5) of the EP&A Regulation. The Commission was asked to keep the records of this discussion confidential.

The Commission received a total of 407 written submissions from the community before and after the public hearing. A summary of the project specific issues raised at the public hearing and written submissions is provided in **Appendix 3** of this Report. The main concerns related to the protection and rehabilitation of Warkworth Sands Woodlands, Aboriginal cultural heritage, final voids, air quality and noise, and impacts on Bulga Village.

The Commission has also considered the 1,850 submissions it received on the proposed Mining SEPP Amendment during the determination process, which is currently on hold.

2.3 Correspondence

On 2 September 2015, the Applicant sent a letter to the Commission providing information about the effect of the Mining SEPP Amendment on the project application.

On 10 September 2015, the Commission received a letter from EMGA Mitchell McLennan, which was the consultant commissioned to undertake the social impact assessment for the Applicant. This letter was prepared in response to a small portion of a submission from Dr Michael Askew and Dr Louise Askew relating to the social impact assessment.

On 11 September 2015, the Applicant sent another letter to the Commission addressing the key concerns raised by speakers at the public hearing.

On 16 September 2015, the Commission received a letter from a spokesperson for Tocomwall Pty Ltd which is an organisation representing the Plains Clan of the Wonnarua People (PCWP). The letter alleged that the Applicant had failed to comply with legislative requirements relating to stakeholder consultation.

The Commission notes that it was asked to present its review report by 21 September 2015, however due to the new and existing information presented by speakers at the public hearing, the Commission is of the view that the new information provided was of significant importance for this review. The Commission received verbal agreement from the Department for an extension of time to seek further information and prepare its review report. Therefore, on 23 September 2015, the Commission sent a letter to the Department requesting further information on the key outstanding issues that were raised at the public hearing and in submissions, including the consultation process with Aboriginal stakeholders, the rehabilitation of Warkworth Sands Woodlands, the social impact assessment (SIA) and the cumulative impacts of final voids.

On 2 October 2015, the Department sent a letter to the Commission that provided further information on each of the outstanding issues referred to in the Commission's letter dated 23 September 2015. The Department's letter attached separate correspondence from the Applicant dated 27 September 2015 that also provided responses to the issues raised by the Commission.

On 14 October 2015, the Commission received a further letter from Dr Michael Askew relating to the SIA and EMGA's letter.

Copies of all of the correspondence listed above are publicly available on the Commission's website and are discussed in detail in **sections 4.1 to 4.7** below.

2.4 Teleconference

On 4 September 2015, the Commission held a teleconference with representatives from Singleton Council and the Applicant to discuss the status of the negotiations on a Voluntary Planning Agreement (VPA).

Council and the Applicant informed the Commission that they have reached a preliminary agreement that the VPA will include a total of approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewerage treatment facilities, and associated infrastructure, for Bulga. The VPA would also include provisions to ensure that the water treatment facility is constructed within the first five years.

3. DEPARTMENT'S ASSESSMENT

3.1 Secretary's Environmental Assessment Report

In November 2014, the Department prepared the Secretary's Environmental Assessment Report (Assessment Report) for the project application, which was considered by the Commission as part of the first review process. The Assessment Report concluded that the proposal is *"designed in a manner that achieves a reasonable balance between maximising the recovery of the coal resource and minimising the potential impacts on surrounding land users and the environment"*. The Department also provided a recommended set of conditions that might be applied to an approval.

3.2 Final Assessment Report

In May 2015, the Department prepared the Final Assessment Report, which has been considered by the Commission as part of the current review process. The Final Assessment Report focuses on the recommendations identified in the Commission's previous report. It concluded that *"the project benefits outweigh its residual costs, and that it is in the public interest and should be approved"*. The Department also provided a revised set of recommended conditions.

4. COMMENTS, FINDINGS AND RECOMMENDATIONS

The majority of the issues and recommendations that the Commission identified in its previous report have been addressed through the provision of additional information from the Applicant, the Department's Final Assessment Report and consultation with relevant agencies, including Singleton Council. The table in **Appendix 1** provides a summary of the recommendations of the previous review and the Commission's comments on how these have been addressed.

The Commission notes that the revised set of recommended conditions that the Department has provided have been significantly strengthened in the areas that were identified in the Commission's previous review report, including additional requirements relating to:

- carrying out regular monitoring and auditing the performance of the attenuated fleet and equipment;
- the application of an appropriate noise modification factor for low frequency noise;
- an additional appendix outlining the noise criteria of the existing consent (DA-300-9-2002-1);
- public information briefings to clarify the operation of the Trigger Action Response Plan and the application of the low frequency noise modification factor; and
- the requirement for offset management and the lodgement of a bond in the Biodiversity Management Plan.

While the Commission is satisfied that the majority of issues have been adequately addressed since the previous review, there are a small number of key issues that require further consideration and clarification, including the recent Mining SEPP Amendment, issues relating to Aboriginal stakeholder consultation, rehabilitation of the Warkworth Sands Woodlands, final voids, air quality and noise impacts. These are discussed in detail in **sections 4.1 to 4.7** below.

4.1 Mining SEPP Amendment

The key terms of reference in the Minister's request for a second review of the project relate to the then draft Mining SEPP Amendment, and its effect. The Mining SEPP Amendment took effect on 2 September 2015. The Amendment repeals clause 12AA of the SEPP, which required that the consent authority provide principal consideration to the relative significance of the resource and the economic benefits of developing the resource, both to the State and the region in which the development is proposed to be carried out. The repeal of clause 12AA removes that requirement.

The Government advised that the aim of the Mining SEPP Amendment was to provide a balanced framework whereby economic, social and environmental impacts are given equal consideration.

Balanced consideration of the project

As requested in the terms of reference, the Commission has carefully considered the Mining SEPP Amendment in this current review and has ensured that it has given a balanced consideration to the potential economic, social and environmental impacts of the project.

In terms of economic impacts, the Commission notes that the Warkworth-Mt Thorley mine complex is now the biggest employer in Singleton, and is an important contributor to the local and regional economies. In terms of environmental and social considerations, the Commission has made a number of additional recommendations aimed at addressing the key environmental and social impacts of the project, which are discussed in **sections 4.3 to 4.7** of this report. These recommendations reinforce a more balanced approach to the assessment and include specific proposed changes to key conditions relating to biodiversity, final voids, air quality and noise.

Provided that these recommendations are adequately addressed, the Commission is satisfied that the project is still able to be managed in a manner that is consistent with the aims, objectives, and provisions of the Mining SEPP and the objects of the *Environmental Planning and Assessment Act 1979*, including the principle of ecologically sustainable development.

Recent changes to government policy

A number of verbal and written submissions made during this second review have raised concern that the effect of the repeal of clause 12AA has not been sufficiently taken into account in the current assessment process. Some submissions have also claimed that the assessment of the current project application should now 'revert' to the Land and Environment Court's previous refusal.

The Commission does not consider that the former clause 12AA was the key factor that led to the recent Commission's previous recommendations to approve the current project applications. The Commission emphasises that various changes have been made to the current project applications to reflect changes in government policy and to address issues raised in the Court's judgment about the previous application.

The Commission notes that a number of important changes in government policy have occurred since the Court's previous refusal, and these are relevant to the assessment of the current project applications. In particular, the NSW government has introduced the *NSW Biodiversity Offsets Policy for Major Projects* (the Biodiversity Offsets Policy) dated October 2014 and the *Voluntary Land Acquisition and Management Policy* (the VLAMP) dated December 2014, which are briefly described below.

The Biodiversity Offsets Policy is based on the following six principles:

1. Before offsets are considered, impacts must first be avoided and unavoidable impacts minimised through mitigation measures. Only then should offsets be considered for the remaining impacts
2. Offset requirements should be based on reliable and transparent assessment of losses and gains
3. Offsets must be targeted to the biodiversity values being lost or to higher conservation priorities
4. Offsets must be additional to other legal requirements
5. Offsets must be enduring, enforceable and auditable
6. Supplementary measures can be used in lieu of offsets.

The Biodiversity Offsets Policy enables biodiversity liability to be addressed through direct offsets, by translating liability into a monetary value to provide funding into an offset account, or through supplementary non-land based offsets.

The VLAMP sets out the criteria for noise and particulate matter where voluntary mitigation and acquisition rights apply, but only encourages acquisition as a last resort after all reasonable and feasible mitigation measures have been undertaken. The preferred approach is to manage exceedances of the relevant assessment criteria through negotiated agreements between the mine and the affected landowners.

In circumstances where acquisition is the only option, the VLAMP provides that the acquisition price to be paid by a proponent should not be less favourable than a 'market value' rate. This rate is calculated as if the land was unaffected by the development and with reference to section 55 of the *Land Acquisition (Just Terms Compensation) Act 1991*.

Changes to the current applications

Since the Court's refusal of the previous application, a number of significant changes have been made to the current project applications, including:

- a revised assessment of biodiversity impacts and a revised biodiversity offset strategy prepared in accordance with the Biodiversity Offsets Policy and the *Framework for Biodiversity Assessment*;
- a revised noise assessment, addressing concerns regarding background noise levels;
- a revised social impact analysis and economic assessment;
- operational changes in response to ongoing stakeholder engagement, particularly regarding the management of noise and dust;
- additional commitments, including the inclusion of an additional area within the Wollombi Brook Aboriginal Cultural Heritage Conservation Area, and the establishment of local historic heritage conservation initiatives;
- changes to the final landform, including the emplacement of overburden at Mount Thorley mine, enabling the void at Mount Thorley to be backfilled; and
- extraction of coal as part of Warkworth mine's operations which is approved for mining operations under Mount Thorley's development consent (DA 34/95), avoiding the need to relocate Putty Road.

4.2 Issues Raised in Submissions

While the Commission has carefully considered the Mining SEPP Amendment as required by the terms of reference, it notes that the terms of reference also require the Commission to consider any submissions made as part of any public hearing in relation to this second review. As noted above, a number of key issues have arisen from the public hearing for this second review, and they are discussed in detail in **sections 4.3 to 4.7** below.

4.3 Aboriginal Cultural Heritage

The Commission notes that the Office of Environment and Heritage (OEH) has previously provided advice stating that it was satisfied that the Aboriginal heritage assessment and consultation for the project was undertaken in accordance with applicable guidelines, including OEH's *Aboriginal Cultural Heritage Consultation Requirements for Applicants* (2010). However, during this second review, the Commission was presented with a range of new information relating to the consultation process with Aboriginal stakeholders.

At the end of the public hearing, the Commission met privately with a group of people, at their request, claiming to represent the Wonnarua Aboriginal group. The Commission was informed that the group is currently in the process of seeking to register a native title claim within the project area. This group claimed that the Applicant had not responded to numerous requests for a meeting with them and had not adequately consulted with the relevant Aboriginal stakeholders about potential impacts to Aboriginal cultural heritage sites.

The Department has provided information to the Commission confirming that of the 82 Aboriginal parties that registered an interest in relation to the assessment of the Warkworth Continuation Project, 10 of the 12 Wonnarua native title applicants were registered. The Commission has been informed that these 10 registered parties subsequently declined invitations to participate in the Registered Aboriginal Party consultation process, however they were still provided with copies of the Aboriginal Cultural Heritage Assessment and other relevant documents.

The Commission also received a submission from Mr Scott Franks from Tocomwall Pty Ltd, which represents the Plains Clan of the Wonnarua People (PCWP). It claims that the Applicant has not adequately consulted with the PCWP about the cultural values within the project area and not provided a copy of the completed Aboriginal Cultural Heritage Assessment Report to the PCWP.

The Department has provided information to the Commission confirming that Mr Franks registered an interest as a Registered Aboriginal Party on behalf of the PCWP, however the group declined to participate in the Registered Aboriginal Party consultation process. The Commission was informed that the Applicant has nevertheless attempted to maintain continuous consultation with Mr Franks.

The Commission has carefully considered the further information provided by the Department and the Applicant and is generally satisfied that the level of consultation with all relevant Aboriginal stakeholders was adequate. Nevertheless, the Commission recommends that Department seeks confirmation from OEH about the adequacy of the consultation process given the new information that the Commission has received through the second review process.

Recommendation

1. That the Department seeks confirmation from OEH about the adequacy of the consultation process with all relevant Aboriginal stakeholders, particularly in relation to the information presented to the Commission by the Wonnarua native title applicants and Tocomwall Pty Ltd.

4.4 Warkworth Sands Woodlands

At the public hearing, various speakers raised concerns about the proposed rehabilitation of Warkworth Sands Woodlands (WSW). In particular, a submission by Dr Stephen Bell claimed that regeneration of the WSW would not result in restoration to the original conditions but rather the creation of a “*novel ecosystem*”.

The Department has provided additional information to the Commission confirming that regeneration research and trials indicate that WSW can be regenerated successfully and that the success of regeneration is largely dependent on the regeneration site. In that regard, the Commission notes that the Applicant is proposing to regenerate WSW only on land that has been previously cleared for grazing, rather than mined land (as suggested in some submissions). The Commission also notes that the Applicant’s current WSW regeneration program commenced in September 2014 and has recorded a 70 per cent survival rate to date.

Since its first review of the project, the Applicant has added an extra land-based offset area, calculated the relevant ecosystem and species credits, acquired the land-based offsets and secured the sites for regeneration. Furthermore, the Department has amended the recommended conditions for the Biodiversity Management Plan regarding offset management and lodgement of a bond, in order to ensure the offset sites are managed for biodiversity conservation purposes.

The Commission notes that the recommended conditions would require the Applicant to lodge a one million dollar bond for the WSW regeneration, which would be forfeited in the event that the regeneration does not meet the performance criteria. The Commission recognises that the implementation of this bond is an important safeguard in the event that the Applicant does not meet the WSW regeneration performance criteria. However, the Commission also believes there needs to be a stronger focus on ensuring that the regeneration activities are in fact successful in achieving the performance criteria.

The Commission notes that the recommended conditions requires the WSW regeneration to be checked at the end of 15 years, however there are no specific requirements to ensure that the regeneration activities are monitored or checked on an ongoing basis. The Commission's view is that the regeneration should be initially assessed against the performance criteria after five years.

The Commission is generally satisfied with the Department's response to the concerns raised about the regeneration of the WSW and notes that a number of important steps have been taken by the Department and the Applicant since the Commission's previous review. Nevertheless, the Commission believes there is scope to strengthen the conditions in order to ensure that the regeneration of WSW is successful.

A number of verbal and written submissions also raised concern about the current status of the WSW in Commonwealth and international listings. The Commission sought further advice from the Department on this matter and was informed that the WSW is not listed as threatened under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* or the International Union for Conservation of Nature Red List.

Recommendation

2. That the proposed conditions of consent relating to the Biodiversity Management Plan and Rehabilitation Management Plan should be strengthened to explicitly require that all regeneration activities are monitored and checked on an ongoing basis to ensure that they are on track to meet the relevant performance criteria, including an initial review undertaken after five years of operations.

4.5 Final Void

A number of verbal and written submissions in the second review raised concerns about both visual and cumulative impacts of final voids at the Warkworth and Mt Thorley Continuation Projects, and other coal mining projects in the region. The Commission recommended in its previous review that *"as a matter of priority ... a study be undertaken by the Government to establish a policy position on voids for future mining projects and mine expansion projects"*.

The Department has provided an update to the Commission confirming that policy planning in relation to the regulation of final voids is under active consideration, however it is yet to be finalised by the NSW Government. The Commission also notes that there would be a net decrease of approximately 46 hectares in final void area across the mining complex as a result of the backfilling of the approved final void at the Mt Thorley mine.

Nevertheless, the Commission notes that there are still uncertainties about the long term cumulative impacts of final voids across the Hunter Valley, particularly in relation to potential impacts on water resources. Consequently, the Commission believes that the recommended conditions of consent should be strengthened to ensure that any change in government policy about final voids will be incorporated into the rehabilitation of the mine.

The Commission also notes that the Applicant is proposing to implement a suite of mitigation measures to minimise visual impacts, particularly in relation to final voids. The Applicant has committed to constructing small vegetated bunds and installing vegetation screening at appropriate locations around the site boundary to shield views of the mine. The recommended conditions of consent also require the Applicant to establish and maintain an effective vegetative screen along the boundary of the site that adjoins public roads, where feasible.

However, the Commission believes the recommended conditions should specifically refer to the visual impacts of final voids and provide more details about the proposed timing of any screening measures.

Recommendations

3. That the proposed condition of consent relating to the Rehabilitation Management Plan should be strengthened to take into account the outcomes of any review of the NSW Government's current policy on final voids.
4. That the conditions of consent relating to visual mitigation measures should expressly refer to final voids and be strengthened to ensure that vegetation screening or other mitigation measures are implemented in a timely manner.

4.6 Noise and Air Quality

A number of speakers at the public hearing raised concerns about the potential air quality and noise impacts of the project, particularly in relation to previous non-compliances.

The Commission requested that the Department consider the possibility of any amendments to the proposed conditions of consent relating to the air quality criteria. The Department reiterated its stance that the recommended conditions are appropriate and also noted the importance of the Air Quality Management Plan in ensuring that air quality impacts are minimised.

The Department also provided further information about its new compliance monitoring regime in the Hunter Valley. In particular, it has an expanded compliance team in the Hunter region with six compliance officers working on all the coal mines and other major developments in the region. The compliance team's investigation tools include regular surveillance and unannounced inspections of coal mines. The Department also emphasised the increased penalties for non-compliance (through recent amendments to the EP&A Regulation) on industrial noise. In particular, on-the-spot fines for coal mines and other high impact developments that breach their approval conditions have been increased five-fold to \$15,000.

In relation to complaints about non-compliance, the Commission notes that the recommended conditions contain standard requirements that a protocol is established for managing and reporting any incidents, complaints, non-compliances or exceedances of performance criteria. However, given the level of concern raised about non-compliances and the history of complaints at the mine complex, the Commission believes there is further scope to strengthen the relevant management plan conditions to improve community relations in relation to noise and air quality.

Overall, the Commission is generally satisfied with the recommended conditions of consent relating to the air quality criteria and notes that a number of important steps have been taken by the Department to ensure that compliance with noise and air quality limits is achieved.

Recommendation

5. That the proposed conditions of consent relating to the Noise Management Plan and Air Quality Management Plan should be strengthened to explicitly address non-compliances or exceedances of the relevant performance criteria. This may include requirements to independently investigate complaints and to respond effectively, and to undertake regular briefings with the community and provide updates on recent air quality and noise levels.

4.7 Social Impact Assessment

The Commission received a submission from Dr Michael Askew and Dr Louise Askew dated 8 September 2015 relating to the methodology used in, and the findings of, the social impact assessment. The Askews are both social environmental researchers and were engaged by the Applicant to undertake data collection and analysis for the social impact assessment. In their submission, the Askews raised concern about various purported “*inaccuracies*” within the final social impact assessment.

The Commission initially received a letter in response from the consultant commissioned to undertake the social impact assessment for the Applicant (EMGA Mitchell McLennan), which responded to only a small portion of the Askew’s submission, as the full submission was not publicly available at the time. Since then, the Applicant has provided a further response on the social impact assessment, which addresses each of the specific issues raised in the full submission from the Askews. The Commission also notes that the Department has provided a response to the Askew’s concerns.

The Commission has received a further letter from Dr Michael Askew dated 8 October 2015, in response to the letters from EMGA and the Applicant. This provides more detail about the Askews’ role in the preparation of the social impact assessment, and discusses the methodology for the preparation of that document.

The Commission has considered the issues raised in the latest Askew letter and believes that these have been addressed in the various responses from the Department and the Applicant. The Commission acknowledges that there are a variety of methods available to undertake social impact assessments, and notes that while the Secretary’s Environmental Assessment Requirements (EARs) included a requirement that a social impact assessment was undertaken, there was no reference to any specific methodology that should be used.

The Commission believes that the Department should be given an opportunity to review the latest letter from Dr Michael Askew and should ensure that it is satisfied that the social impact assessment adequately addresses the Secretary’s EARs.

Recommendation

6. That the Department should review the letter from Dr Michael Askew to the Commission dated 8 October 2015 and ensure that it is satisfied that the social impact assessment adequately addresses the Secretary’s Environmental Assessment Requirements.

5. CONCLUSIONS AND RECOMMENDATIONS

The Commission has carefully considered the proposal and the submissions made, including written submissions to the Commission, presentations at the public hearing, the submissions made on the Final Assessment Report, various other documents provided by the Department, other government agencies and the Applicant, and the Mining SEPP Amendment. The Commission has sought clarification on a number of issues from the Department.

The Commission has made six recommendations in this report, particularly relating to seeking confirmation from OEH about the Aboriginal stakeholder consultation process, the strengthening of the relevant management plans to ensure ongoing monitoring of Warkworth Sands Woodlands regeneration activities, the strengthening of conditions around the future management of final voids, the management of non-compliances or exceedances of air quality and noise limits, and further consideration of the social impact assessment in relation to the Secretary's Environmental Assessment Requirements.

Provided that these recommendations are adequately addressed, the Commission is satisfied that the project can be approved, subject to conditions.

APPENDIX 1: TABLE SUMMARY OF RECOMMENDATIONS FROM PREVIOUS REVIEW REPORT AND COMMENTS

Recommendations	Comments
Economic Impacts	
1. The Applicant's economic assessment, including the CBA, should be updated to reflect the current economic climate.	Deloitte (DAE) undertook a review and concluded that environmental externalities such as the cost of backfilling final void had not been considered. However, it noted that neither of these issues would affect the cost benefit analysis. Nevertheless, the Applicant states that the costs of backfilling the void are not reasonable.
2. As part of the determination of the project, DAE should review the additional information provided by the applicant and any updated economic assessment/CBA provided by the applicant and provide updated advice to the Department as required.	
3. The following options should be considered for the future of Bulga village:	The Department "considered" all options, as recommended.
a. Relocating the village at the expense of the state government and applicant. The government would be required to deliver all new infrastructure, while the applicant would be required to pay for the construction of new houses. Any relocation decision and associated planning would need to involve the residents of Bulga	No justification for paying compensation to Bulga residents or relocating the village. Nevertheless, the Applicant is required to address impacts to affected residents in accordance with NSW Voluntary Land Acquisition and Mitigation Policy (VLAMP). Furthermore, the Applicant has in place a community enhancement program and supports the option to develop a Village Enhancement Strategy
b. Compensating property owners who wish to sell. This compensation would be paid by the Applicant and the compensation amount would be the difference between movements in the average regional/sub-regional property price and that of local property sale prices based on an independent valuation process. A dispute resolution process would also need to be agreed	
c. Requiring the Applicant to develop a Village Enhancement Strategy in consultation with the local community and Council and to fund and implement a program of works or similar via a VPA with the Minister and Council.	The Applicant and Council have informed the Commission that they have reached a preliminary agreement that the VPA will include a total of approximately \$11 million in contributions, including \$5 to \$6 million to be spent on the construction of water and sewage treatment facilities, and associated infrastructure, for Bulga. The VPA would also include provisions to ensure that the water treatment facility is constructed within the first five years.
Noise	
4. The acceptability of setting noise limits above the PSNL should be considered by the NSW government, ideally via a review of the INP.	New Industrial Noise Policy (INP) standards are being developed. No date has been given for publishing. However the Department does not support limits above PSNL for this project as exceedances are of 2db which is found to be negligible according to the VLAMP. Residences impacted with 3 to 5 dBA of exceedance will have access to noise mitigation measures over 5 dBA have already received acquisition rights.
5. The question of how often calm conditions occur in the area should be independently verified by the Department before the application is determined	The Department engaged Todoroski Air Sciences and found that there is a high level of certainty about the frequency of calm conditions in the area.
6. To ensure the benefits of the attenuation program will be fully realised, regular monitoring and audit of the performance of the attenuated fleet and equipment should be carried out	The Department amended condition 7 of schedule 3 to reflect the recommendation and also amended condition 6 of schedule 3 requiring the attenuation program be completed by the end of 2016.

Recommendations	Comments
7. A public information briefing session should be held to clarify the operation of the Trigger Action Response Plan	The Department amended condition 7 of schedule 3 to reflect the recommendation. The Department will attend these sessions to explain its compliance and enforcement role under the EP&A Act.
8. Draft recommended conditions 8 and 9 in Schedule 2 and draft recommended conditions 4 and 5 in Schedule 3 should be amended to ensure that when the new consent commences, the new noise criteria should apply and the noise criteria in Condition 18 of DA-300-9-2002-I be attached as an appendix to the new consent if the subject application is approved.	The Department has added an appendix as recommended, however, the attenuation program will keep its schedule. This program is aimed at decreasing noise at its source. The program is currently being carried out in order to reduce noise at its source.
9. The Applicant should update its Statement of Commitment to provide acquisition and mitigation rights to those properties which were granted such rights under the now repealed approval. The terms of these rights should be similar to those that would be granted under the approval conditions should the application be approved	The Department claims it cannot compel the applicant to amend its Statement of Commitments. However, the Applicant will reinstate acquisition rights for those entitled under the Warkworth Extension Approval from 2012.
10. The recommended public information briefing session referred to in Recommendation 4 should include a briefing on the application of the LFN modification factor and the purposes of different types of monitoring as well as the operation of the Trigger Action Response Plan	The Department amended condition 7 of schedule 3, as recommended.
11. The concerns raised in the SKM report that insufficient data was collected to enable it to assess the accuracy of ongoing routine noise monitoring carried out by the Applicant should be addressed before determination of the current application	The Department's independent noise expert states that this concern is no longer valid given the significant amount of data available since then. However, the Department engaged a 10-day attended monitoring noise audit with specialist acoustics consultants Wilkinson Murray at 5 residences in Bulga. The audit found no intrusive noise limits, all measurements were below amenity criteria in the INP, and that the Applicant triggered real-time operational control measurements to reduce noise levels to less than the noise limits within 75 minutes, as required under the approved Noise Management Plan.
12. The conditions in any approval should require the application of an appropriate noise modification factor for LFN during compliance testing if LFN is prevalent before comparison with the PSNL in the approval. However, if a new INP is adopted before the determination of this application, the new INP methodology and criteria should apply	The Department is satisfied that measured and predicted low frequency noise (LFN) levels associated with the existing mine are below the annoyance threshold and unlikely to result in any unacceptable noise impacts in the surrounding area. However, the Department has amended the recommended conditions to clarify that the modifying factor for LFN is to be applied, except where it can be demonstrated that this is only as a result of differential attenuation over distance.
13. Up-to-date information should be provided on both the Rio Tinto website and hotline with respect to blasting schedule.	The Department amended condition 14 of schedule 3 to reflect PAC's recommendation.
Air Quality	
14. Clarification should be provided in relation to Location 264 as to whether this property should be granted acquisition rights as part of any future approval of the subject application having regard to air quality impacts.	According to the VLAMP, location 264 does not fall under acquisition criteria.
15. Prior to any approval conditions 17-19 should be amended to require compliance with established criteria.	The Department considers that the condition should retain the requirements previously recommended as there are significant problems with amending the condition in the manner suggested. This would put liability where the mine is only contributing with a small portion of the overall concentrations of dust.

Recommendations	Comments
Biodiversity	
16. Further detail should be provided which includes a clear and transparent strategy to achieve ecosystem and species credit requirements as required by the NSW Biodiversity Offset Policy for Major Projects.	Detailed surveys of the land-based offsets were not available when PAC reviewed the project. Since the review, the Applicant has added an additional land-based offset area and calculated the ecosystem and species credits. The Department recognise that OEH would need to verify the adequacy of the land-based offsets in accordance with NSW Biodiversity Offset Policy for Major Projects. After this verification occurs, the need for additional offset measure would be finalised. The Department is satisfied there is a clear process consistent with applicable NSW Government policy.
17. Further justification should be provided to indicate why the Project should not be required to secure offsets before development commencement as required by the NSW Biodiversity Offset Policy for Major Projects. Alternatively conditions of consent should be amended to comply with the Policy and require that offsets be secured prior to commencement of development.	The Applicant has acquired the land-based offsets and therefore has some security over the sites. The Department has amended condition 36 schedule 3 of the BMP regarding offset management and lodgement of a bond to ensure that the offset sites area managed for biodiversity conservation purposes. The Department notes that these arrangements for the offset areas would facilitated as part of the security arrangement under the Upper Hunter Strategic Assessment.
18. Prior to any development approval further additional information be provided to:	The Department is satisfied that the Applicant has done everything that it can reasonably do to substantiate the viability of the proposed WSW regeneration, and that evidence suggests that it can be successfully regenerated subject to appropriate management. However, there is likely an increase in risk of extinction of the ecological community. The Department recommended conditions that would effectively mitigate the risk of WSW extinction to an acceptable standard.
(a) substantiate the viability of the proposed Warkworth Sands Woodlands EEC regeneration	
(b) quantify the indicative cost of undertaking this work 15 years post commencement should the Applicant's regeneration program be unsuccessful as assessed against OEHs agreed performance criteria. The bond proposed in Condition 33(b) (Schedule 3) should be amended to reflect the estimated cost of the proposed regeneration works to ensure that these works are able to be undertaken.	
19. Condition 34 (Schedule 3) should be amended to require the bond required by condition 33(b) to be used by OEH for the regeneration of Warkworth Sands Woodlands EEC in the local area should it be forfeited.	The Department acknowledges that the \$1 million bond would not absolve the Applicant from its responsibility, notwithstanding the Department has amended the condition to reflect the PAC's recommendation (while retaining some flexibility at OEH's discretion).
Final Void	
20. The Applicant should be required to undertake further investigations to minimise the size and depth of the final void prior to determination of the application. These additional investigations should also consider opportunities to partially fill the gap between the two main overburden emplacements, reduce the slopes of the final highwall and / or incorporate additional micro-relief as recommended by the Department.	The Applicant has already proposed a final void taking into account different options. Backfilling the void is costly and if done would make the project not feasible. Overburden will increase void size and cause much further disturbance to land. The Department is satisfied that their recommended condition and the micro reliefs proposed by the Applicant can be managed through the detailed Rehabilitation Management Plan, as required under recommended condition 58 of schedule 3.

Recommendations	Comments
<p>21. A study should be undertaken as a matter of priority to review the cumulative impact of voids in the Hunter Valley including the impact of these voids in the short, medium and long term on the water table and on the future of agriculture and associated industries in the Hunter Valley. The findings of the study should be used to establish a policy position on voids for future mining projects / mine expansion projects.</p>	<p>The NSW Government is considering strengthening the regulation of mining operations including the nature and scale of final voids associated with coal mines. Nevertheless, the Department is satisfied that the Applicant has assessed the cumulative impacts of the proposed final void with regard to long term impacts on ground water.</p>
Rehabilitation	
<p>22. Recommended Condition 58 (Schedule 3) should be amended to include timeframes for achieving specified rehabilitation benchmarks with penalties to be enforced if these benchmarks are not met.</p>	<p>The Department has amended condition 58 to reflect the PAC's recommendation, by requiring the Applicant to include timeframes for achieving the specified rehabilitation objectives. Any failure to meet the performance and completion criteria would constitute a breach of the development consent and actions could be enforced under <i>The EP&A Act</i> and <i>Mining Act 1992</i>.</p>

APPENDIX 2: LIST OF SPEAKERS AT THE PUBLIC HEARING

7 September 2015

1. Mark Rodgers Rio Tinto
2. Mark Ihlein (Singleton Council)
3. Stephen Williamson
4. Georgie Woods and Steve Phillips (Lock the Gates) and Stuart Ewan (Wine Tourism Association)
5. Paul Harris
6. Andrew C Fraser
7. Kristen Keegan (Hunter Business Chamber)
8. Dr Brian Fisher
9. Dr James Whelan (Environment Justice Australia)
10. Suzie Gold
11. Lynden Jacobi
12. Jan David (Hunter Environment Lobby Inc)
13. Beverly Smiles (Hunter Community Network)
14. Helen McCready
15. Bronwyn Vost
16. Kate Smolski (Nature Conservation Council)
17. Peter Donley
18. Liz Donley
19. Simon Montgomery (Tefol Pty Ltd)
20. Andrew White (Upper Hunter Education Fund Inc)
21. John Lamb
22. Shaun Barry
23. Greg Walker
24. Ted Finnie (Merriwa Health Environment Group)
25. Dennis Maizey
26. James Dales (Veolia)
27. Jacob Timol
28. Leslie Krey
29. Trevor Woolley
30. Judith Leslie for Greg Dopell
31. Paul Whelan (Boom Logistics)
32. Maria Brown (Strike Force Services)
33. Brianna Millgate
34. Kathy Hart
35. Jasmin Kaizer
36. Kylie Kaizer
37. David William Whitson (Lake Macquarie Climate Action Group)
38. David Biddles
39. Greg Searles
40. Hayley Frazer
41. Craig Staub
42. Nell Schofield (Running Stream Water Users Association)
43. Peggy Fisher
44. Todd Barry
45. Jerry Johnson
46. Hugh Upwards

47. Graeme O'Brien
48. Susanna O'Brien
49. Damien Williams
50. Dean Manning
51. Pat Garnet
52. Nicole Roser
53. Tony Dick
54. Kim Jupp
55. Jan Hedley
56. Ian Hedley
57. Kristy Hedley
58. Tim Berryman
59. Marie Mitchell
60. Alan Leslie
61. Richard McAlpin
62. Lyn McBain
63. Mark Mulholland
64. Cynthia Mulholland
65. Anne-Marie McLaughlin
66. Robert McLaughlin
67. Stewart Mitchell
68. Luke Tressiter
69. Craig Gradwell
70. Dr Glen Albrecht
71. Wendy Wales (Denman Aberdeen Muswellbrook Scone Healthy Environment Group)

8 September 2015

1. Rod Campbell (Australia Institute)
2. Paul Wilcher
3. Wayne Diemar (Hunternet)
4. Graeme W (Alfabs Group)
5. Barbara Brown (Broke Fordwich Wine and Tourism Association)
6. Belinda Prideaux
7. Ashleigh Harris
8. Dr Stephen Bell
9. Kevin Taggart (Wonnarua Tribal Council)
10. Patricia Capper
11. Warren Schillings
12. Warren Taggart
13. Veronica Talbert
14. Jane Delaney
15. John Krey (Bulga Milbrodale Progress Association)
16. Patrick Cochrane
17. Clare McLaughlin (for Climate and Health Alliance)
18. Danielle Gittoes
19. Jim Morris
20. Bev Atkinson
21. Christopher Kelley
22. Kevin Waldock
23. Phillip Clements

24. John Hayward
25. Melanie Caban
26. Chris Cook (Singleton Business Chamber)
27. Dallas Bird
28. Ross Kuhn
29. Darren Gardner

APPENDIX 3: SUMMARY OF ISSUES RAISED AT THE PUBLIC HEARING

1. Aboriginal Heritage

- Impacts this project is causing to Aboriginal land especially in the interaction between coal mines and environmental features.
- The presentation by Kevin Taggart mentioned that the project was destroying their community's shared history and rights to their home, taking away places where generations have lived and passed.
- The Wonnarua had not been consulted by the Applicant as required for the EIS process and that other sacred areas are not documented in the EIS report.
- Technology should be used to protect rather than destroy their Aboriginal community, history and pollute rivers and creeks.

2. Impacts on Warkworth Sands Woodlands

- Vegetation ecologists had been working in the area and have identified endangered core species and some are occasionally represented.
- Dr Stephen Bell presented that WSW according to the IUCN Red List of Ecosystems, would be considered critically endangered and that it would also qualify in state, national and international terms.
- Regeneration of the WSW will not result in restoring it to its original conditions but rather the creation of a "novel ecosystem" which show resemblance to but are not equivalent to original ecosystems.
- Applicant's commitment was questioned from when the Deed of Agreement was signed, stating that it would not expand its activities to the woodlands and the ridge.
- If the project was already denied by the LEC and the Commonwealth Supreme Court, why was the project once more under consideration by the Department and the PAC.
- Most of the WSW is located on land owned by mine companies, which reduces confidence that the WSW will be adequately protected.

3. Cumulative Impacts

- Concerns regarding the cumulative impacts of mining activities in the regions have not been taken into consideration and that the EPA and the Department should engage to assess these impacts, especially for water resources and air pollution.
- The proposed void size represents an imminent risk to surface and underground waters and the Applicant should not avoid the proper remediation regardless of the cost arguing that environmental remediation is part of the mining cost.
- The Department's knowledge on void remediation was questioned, and concerns that climate change should be an important consideration for determining the proposal's outcome as coal contributes to climate change.
- The Commission notes that a number of speakers raised concerns about the noise and air quality impacts of the project.
- It was raised several times that the Applicant has breached its approval by not complying with noise and air quality standards a number of times.

4. Other Issues

- A large number of speakers expressed their support to the expansion.
- The Applicant assuring future work if the project goes ahead does not guarantee that will take place, instead due to the decline of coal in the market, jobs will be cut regardless of the determination of the proposal

APPENDIX 4: RECORD OF TELECONFERENCE WITH APPLICANT AND COUNCIL

Meeting note taken by Clay Preshaw and Jorge Van Den Brande	Date: Friday, 4 September 2015	Time: 4:00pm
Project: Reviews of Warkworth and Mt Thorley Continuation Projects		
Meeting place: Teleconference		
Attendees: PAC Members: Ms Lynelle Briggs AO, Mr Garry West, Mr Gordon Kirkby and Mr Paul Forward. PAC Secretariat: Clay Preshaw, Jorge Van Den Brande. Singleton Council: Lindy Hyam (General Manager) and Mark Ihlein (Director Planning and Sustainable Environment).		
The purpose of the meeting is to discuss updates on the negotiation of the Voluntary Planning Agreement (VPA)		
Below is a summary of the issues discussed at the meeting: <ul style="list-style-type: none"> • The PAC requested clarification regarding the status of negotiations relating to the VPA, the likely benefits of the VPA to Bulga and whether the delivery of specific infrastructure is proposed. • Singleton Council has reached a preliminary agreement with the Applicant for a VPA that will include a total of approximately \$6 million in contributions, including \$1 million to be spent on the construction of water and sewerage treatment facilities within the first five years. • Council's preferred approach is for water and sewerage infrastructure to be provided directly to Bulga by the Applicant. • The timeframe is not rigid and the lead-in design could take up to five years. • The VPA will also benefit the local government area of Singleton more broadly through projects such repairs to a local church, cemetery, the scout hall, stock route and wetland areas rehabilitation in local parks. 		
Meeting closed at 5:00pm		