

For decision

Purpose:

Determination of a development application (DA No.31-2-2004-i) for the construction and operation of a gas-fired power station at Uranquinty in the Wagga Wagga local government area.

Background:

- On 16 February 2004, Wambo Power Ventures Pty Ltd (the Applicant) lodged a development application with the Department for the construction and operation of a 600 megawatt gas-fired power station at Uranquinty, near Wagga Wagga. A map of the site is attached.
- The Minister is the consent authority for the proposed development by virtue of a declaration of State significance made by the Minister on 20 January 2004. The Minister's decision to make this declaration was based on:
 1. the significance of the proposal in the context of greenhouse gas emissions and the interrelation with the Government's emerging greenhouse gas policy; and
 2. the significance of the proposal as a component of the State's electricity generation and transmission network, and as a contributor to the National electricity grid.
- The development would involve capital investment of \$117 million and would generate 8 jobs during operation. It is expected that 110 jobs would be provided during construction.
- The Applicant proposes to undertake the development in two stages – the first with capacity up to 300 megawatts, and the second to expand the development to 600 megawatts at a future date (subject to timing of generation demand).
- The development application and Environmental Impact Statement were publicly exhibited with a total of 146 submissions received (nine from Government and 137 from the public).
- Only three public submissions supported the proposal, with the remaining 112 public submissions objecting on the basis of: justification for the proposal, site selection (strategic land use planning), air quality, health impacts, noise emissions and visual amenity impacts, inter alia.
- On 7 July 2004, the Minister directed that a Commission of Inquiry be held into all environmental aspects of the proposal. The Minister made this direction in light of the local community concern and opposition to the proposal, as well as the key assessment issues of:
 1. justification for the need for the development (in terms of additional generation capacity);
 2. appropriateness of the site for the development;
 3. visual amenity impacts; and
 4. the public perception that the development would devalue local properties.
- The Commission of Inquiry was held in September and November 2004. The Commissioner's report was publicly released on 21 February 2005. A copy of the Commission's report is attached with the executive summary highlighted.
- **The Commissioner recommends that the proposed power station be refused.**

Commissioner's Findings

- The Commissioner recognises the significant benefits to the State and region through additional electricity generation capacity.
- Subject to the conditions, the Commissioner identifies that the proposed development could meet established environmental criteria in relation to air quality and noise, and that there would be no significant impacts to public health, nearby farming enterprises, flora and fauna, heritage, traffic and water quality. The Department concurs with this position.
- However, the Commissioner identifies that:
 1. although the Applicant has demonstrated with reasonable confidence that electricity infrastructure can be upgraded to accommodate the first 300 megawatts of generation capacity, there is no certainty that transmission infrastructure could be upgraded for the full 600 megawatt proposal.
 2. the proposal is permissible with development consent, but the Wagga Wagga Rural Development Control Plan 2002 identifies that the development (being a "generating works") is "generally not suitable" on the site.
 3. the visual amenity impacts of the proposal are likely to be significant at a number of surrounding properties, despite extensive vegetation planting and landscaping.
 4. there is significant ongoing public concern that the proposed development would be inconsistent with the nature of the local area, and as a result would negatively affect perceptions of Uranquinty.

- Based on these matters, the Commissioner considers that the proposal should be refused.
- **The Department does not concur with the Commissioner, and considers that subject to imposition of conditions to mitigate and manage residual impacts, the merits of the proposed development warrant the granting of development consent.**

Department's Consideration of Issues

- The Department's analysis of issues raised by the Commissioner in this regard is attached and summarised below. Detailed environmental impact assessment of the proposed development is provided in the Commission's report and the Department's submissions to the Inquiry.
- While the Department agrees with the Commissioner that the issues outlined above are relevant considerations in determining the development application, the Department considers that the Commissioner has placed too much weight on the significance of these issues relative to the benefits of the proposal. This is particularly in the context of all other issues (air, noise, water etc) being resolved, residual impacts being acceptable and manageable through conditions of consent, and the project having benefits for a predicted electricity deficit in 2008/2009 and current transmission constraints.
- The Department highlights that environmental impact assessment under the Act requires consideration of relevant matters in the context of the relative weight of those matters. The Commissioner, although considering relevant impacts, has skewed the weighting of the assessment issues to place disproportionate emphasis on residual visual amenity impacts, guidance in the Development Control Plan, and future coordination of infrastructure.
- Further, the Commissioner has not considered possible options for resolving those matters underlying the recommendation to refuse the proposal. As outlined below, reasonable and feasible options exist to resolve each of these matters, but were simply not identified or considered by the Commissioner.
- The Commissioner also did not have the benefit of the Government's Energy Directions Green Paper at the Inquiry. A Commission of Inquiry only considers information presented to it, and does not undertake its own investigation or research outside of the Inquiry sessions.

Infrastructure Upgrades

- In relation to certainty of infrastructure upgrades, the Department concurs with the Commission that any necessary transmission upgrades for the second stage of the development (from 300 MW to 600 MW) has not been finalised by the Applicant and TransGrid (in relation to options for location, upgrade or new infrastructure), nor has it been assessed or obtained necessary environmental planning approvals. Notwithstanding, the development has been assessed on the site as acceptable up to 600MW capacity. In this context, the Department considers that development consent for the proposal could be staged, subject to sections 80(4) and 80(5) of the Act. In applying this approach, the Minister would be granting approval for the immediate commencement of the development at 300MW, but requiring that the Applicant demonstrate that all necessary transmission upgrade approvals had been obtained before proceeding to a full 600MW capacity. This approach is reflected in the attached recommended instrument of consent, and would satisfy the Commission's concerns in that regard.

Development Control Plan

- The proposed development is permissible with consent under the *Wagga Wagga Rural Local Environmental Plan 1991*. The development is correctly characterised as a "generating work" under the associated *Wagga Wagga Rural Development Control Plan (WWRDCP)* and is nominated as "generally not suitable" on the site.
- Consistent with the approach applied by the NSW Court of Appeal, the Department has considered the guidance provided in the WWRDCP as a focal point for the merit assessment of the proposed development. The outcomes of the Department's merit assessment of the proposed development indicate that it is consistent with the requirements and standards in the Act, environmental planning instruments and applicable environmental policies.
- The outcome of a comprehensive merit assessment for the proposal does not support the guidance provided in the WWRDCP nor does it support the Commissioner's assertions that the development would not be suitable on the site.
- Wagga Wagga City Council suggested that if the provisions of the WWRDCP were an impediment to the proposal, it would simply amend the WWRDCP. The Department considers that amendment is not necessary as the WWRDCP does not legally prohibit the proposed development and only acts as a focus for the merit assessment of a permissible proposal.

Visual Amenity

- A photomontage prepared by the Applicant is attached, indicating the appearance of the development with difference colour schemes from the most-affected visual receptor.
- The Department considers that the Commissioner has placed too much weight on the significance of residual visual amenity impacts relative to the broad public interest in allowing the development to proceed. In reality, in the order of ten existing residential properties lie within three kilometres of the development site, and many of these are already screened from the site by virtue of vegetation or orientation. It would be possible to screen a large part of the development with provision of vegetative barriers on the site, but it would not be possible to totally screen the 30-metre stacks, or avoid impacts at elevated visual receptors. While the Department considers the residual visual amenity impact to be acceptable, it recommends that the Minister impose conditions of consent requiring the Applicant to negotiate screening treatments for existing residential receptors within three kilometres of the site, if requested by the landowner within five years of commencement of construction. The recommended instrument of consent reflects this requirement, and provides a mechanism for the matter to be referred to an independent expert, through the Director-General, if a dispute cannot be resolved between the parties. This mechanism is commonly applied in relation to land acquisition around mining proposals, but in this case has been applied to negotiated visual screening.

Further Submissions:

- Following the Commission of Inquiry, both the Minister and the Department have received representations from stakeholders providing further comment and information on the development, as summarised in the table below.
- The Minister should note that in making his determination of the subject development application, he must consider all relevant matters and is not necessarily bound by the Commissioner's findings or the information before the Commissioner. He may therefore take into account further comments and information provided in submissions, as he may consider relevant to his decision, together with all other submissions.

Stakeholder	Issues/ Comment
Uranquinty Action Group and several local residents	• Supporting/ commending the Commission's findings and recommendations • Criticising supporters of the development, including the local member and Council, for lack of involvement in the assessment process • Strong concerns over Applicant's possible intention to submit additional information without community knowledge, input or response
NSW Treasury	• Highlights that the Commission did not have the benefit of considering the Government's Energy Directions Green Paper, which was released shortly after the Inquiry concluded. The Paper, and subsequent Government public comment, articulates the position that there are significant benefits from additional peak and high shoulder generation such as the proposed development. • Notes that Government supports private sector investment in the energy sector • Highlights benefits from the development in terms of black-start capability (ie restarting in the event of total network failure) • Suggests a staged approach to enable transmission infrastructure to be proved for the ultimate capacity of the development • Suggests imposing conditions to revisit solutions to visual amenity impacts, if current proposal is not considered adequate
NSW Department of State and Regional Development	• Supports submission from NSW Treasury • States its "policy position" that electricity generation should be in an industrial or special use zone, with exceptions in the case of strong strategic advantages • Notes possible future constraints on finding appropriately-sized sites near gas pipelines • Suggests that progression of the development may encourage further private sector investment in future • Suggests that local business is supportive of the development
Applicant	• Argues that the Commissioner misinterpreted the Wagga Wagga Rural Development Control Plan – it does not prohibit the development • Highlights that it's consultant has assessed visual amenity impacts as being acceptable • Commits to providing off-site vegetative screening for affected residents, and funding installation and maintenance over five years • Argues that feasible, low impact options existing for infrastructure upgrades • Reiterates that the proposal will address a predicted reserve deficit in 2008/2009

State Wide Benefits of Proposal

Generation Capacity

- The 2004 Statement of Opportunities prepared by the National Electricity Market Management Company (NEMMCO) identifies that the electricity demand/ capacity balance in NSW will fall into reserve deficit in the summer of 2008/2009. This means that there will not be enough electricity generated in the State, or available for import from other states, to reliably meet NSW demand. NEMMCO's 2004 predictions indicate a reserve deficit in NSW of 157 MW in 2008/2009, climbing to approximately 500MW and 900MW respectively in the following two years.
- Unless additional capacity is provided, load shedding would be expected in 2008/2009, with resultant adverse impacts on the State's economy.
- The proposed development will offset this reserve deficit by 300MW in Stage 1, and then by 600MW at the ultimate Stage 2 capacity of the development.
- There are important benefits from additional peak and high shoulder generation, as highlighted in Treasury's submission.

Transmission Constraints

- TransGrid has indicated that there are currently transmission constraints through the South West (Wagga Wagga) Region. This means that there will be a conflict in future between the electricity demands of the Wagga Wagga area and the ability to transfer electricity between New South Wales and Victoria. Transgrid has indicated that an acceptable outcome would be a reduction in export of electricity to Victoria in order to maintain reliability of Wagga Wagga supply. However, the proposal would alleviate this potential future conflict by supporting the regional demand growth and relieving additional pressure on interstate transmission.

Policy Considerations

- The proposed development would generate greenhouse gases at a rate of 0.628 tonnes per megawatt hour (as carbon dioxide equivalent). This is significantly lower than the "pool coefficient" (State average) of 0.913. In effect, the proposal would contribute to a reduction in greenhouse gases generated per unit of electrical power – a positive step towards managing greenhouse gases and global warming.
- The proposed development would be consistent with the Government's emerging Energy Directions policy, as a new low-emitter of greenhouse gases. Without low greenhouse gas emission electricity generators there will be increased difficulty in reducing greenhouse gas emissions in accordance with the Government's greenhouse policy.
- The Minister may also wish to note that the proposal involves private investment in the NSW electricity generation sector, consistent with Government policy.

Conclusion

- The balance of the issues detailed above can be seen through the table below. The Department highlights that the table demonstrates that potentially negative factors have been resolved or can be addressed through conditions of consent.

Positive/ Neutral Factors	Resolution of Negative Factors
Off-set of predicted peak electricity demand short fall in 2008/2009	Non-compliance with the aims and objectives of the Wagga Wagga Rural Development Control Plan <i>Merit assessment demonstrates that proposal acceptable on environmental planning grounds</i>
Compliance with criteria for most environmental impacts (air, noise, water, traffic, hazards, flora and fauna, heritage etc)	Significant visual amenity impacts that cannot be further mitigated <i>Residual visual amenity impacts may affect up to ten residences, but can be adequately mitigated through on-site and off-site vegetative screening</i>
Remove the need to reduce export of electricity to Victoria over time	Uncertainty over the viability of transmission infrastructure for connection of 600 MW to the electricity grid (economic and environmental) <i>Development consent can be staged to require relevant approvals for transmission upgrades prior to progressing to full capacity of the development</i>

- Particularly, the Department considers that:

1. infrastructure upgrades for the second stage of the development can be addressed through the issue of a staged development consent under sections 80(4) and 80(5) of the Act;
 2. using the Development Control Plan as a focal point for the merit assessment of the proposal, the outcomes of such an assessment indicate that the proposal can meet all relevant environmental planning requirements and standards;
 3. residual visual amenity impacts at up to ten mid-field receptors can be mitigated to an acceptable level with on-site and off-site vegetative screening;
 4. all other impacts of the proposal, from a comprehensive merit assessment, can be mitigated and managed within acceptable limits;
 5. the proposal will have broad positive public interest ramifications, through off-set of a predicted electricity reserve deficit in 2008/2009, and installation of a lower greenhouse gas generator.
- The Department's recommended conditions are attached, with key conditions summarised.

Views of the Local Member and Local Council:

The proposed development is located within the State electorate of Wagga Wagga, for which Mr Daryl Maguire MP is the local member. Mr Maguire made a submission to the Commission of Inquiry, and has subsequently resolved to support the proposal. Wagga Wagga City Council resolved to support the proposal, provided that the Commission of Inquiry found that the environmental impacts of the development would be acceptable.

Recommended Action:

In determining the subject development application, the Minister is required to consider the Commissioner's findings and recommendations; to consider issues raised in public submissions; and to consider the assessment heads of consideration as detailed in the attached assessment documents (the Department's assessment and the Commissioner's report). At the time of determination, the Minister must consider all relevant material before him, including representations that may have been made following the release of the Commissioner's report. All of this information is relevant to the Minister's decision, and must be assigned a weight in the decision-making process. None of these inputs binds the Minister's discretion in any way, other than the requirement that each must be considered.

The Department's advice, accounting for all the relevant information and the appropriate weight of each, is that the balance of the benefits of the proposal to the State and Wagga Wagga region outweighs the residual environmental planning issues, which can be mitigated and managed within acceptable limits subject to the imposition of the recommended conditions.

Accordingly, it is recommended that the Minister:

- a) **consider** the findings and recommendations of the Department's assessment, as detailed in the primary submission and reply submission to the Commission of Inquiry;
 - b) **consider** the major findings and recommendations from the Commission of Inquiry into all environmental aspects of the DA-31-2-2004-i;
 - c) **consider** the Department's assessment of the Commission's findings;
 - d) **agree** that all outstanding issues identified by the Commission are resolvable through conditions of consent to an acceptable level and on balance, the merits of the proposal warrant its approval;
 - e) **grant** development consent for DA-31-2-2004-i, as submitted by Wambo Power Ventures Pty Ltd by signing the attached instrument of consent.
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DEPARTMENT'S CONSIDERATION OF COMMISSION'S FINDINGS

The Commission recommends that the proposed development be refused consent based on the following considerations:

1. although the Applicant has demonstrated with reasonable confidence that electricity infrastructure can be upgraded to accommodate the first 300 megawatts of generation capacity, there is no certainty that transmission infrastructure could be upgraded for the full 600 megawatt proposal.
2. the proposal is permissible with development consent, but the Wagga Wagga Rural Development Control Plan 2002 identifies that the development (being a "generating works") is "generally not suitable" on the site.
3. the visual amenity impacts of the proposal are likely to be significant at a number of surrounding properties, despite extensive vegetation planting and landscaping.

Certainty of Infrastructure Upgrades

The Applicant has indicated that upgrades to transmission infrastructure would be required as a result and in support of the proposed development. For the first stage of the development (300MW), upgrades would involve alterations to existing transmission infrastructure. The Applicant and TransGrid have confirmed that a number of options exist for stage 1 transmission upgrades, including duplication of the existing transmission line, or upgrading the line to a higher capacity. In both cases, there would be minimal changes to the transmission infrastructure along existing infrastructure easements. The Commission and the Department are satisfied that the certainty of these options would be reasonably high if the proposed development were to be approved, given that new structures in new easements would not be required, and in the context of town planning, the upgraded infrastructure would remain unchanged in a planning perspective.

In contrast, increase in generation capacity of the development to 600MW would require additional transmission infrastructure, rather than simple upgraded or expanded existing works. The Applicant has presented information that feasible options for new infrastructure would exist, particularly replacement of existing single circuit 132kV lines with compact double circuit 132kV lines. However, a new easement would need to be created for at least four kilometres, which will affect additional land and require assessment of the impacts of that use. The Department agrees with the Applicant that options exist for transmission infrastructure to support the ultimate capacity of the development (600MW). In the context of the Commission's comments in relation to the certainty of these transmission works, the Department considers that uncertainty does not arise with respect to the availability of options, but rather with respect to the acceptability of any of those options from an environmental planning perspective. There has been no consideration by any party to date as to whether transmission upgrades for the ultimate 600MW capacity of the development would be acceptable in an environmental planning context. This would need to be undertaken as part of the usual assessment process for the transmission infrastructure under the *Environmental Planning and Assessment Act 1979*.

The environmental impact assessment of the subject development has been undertaken at full capacity (600MW), and demonstrating that the proposal would meet acceptable environmental planning outcomes at that capacity. As such, the Department considers that the development in its entirety could be granted development consent, with the viability of the second stage only being subject to final attainment of any necessary additional approvals for transmission infrastructure upgrades. To manage this process, the Department recommends that the Minister grant staged development consent to the proposal under section 80(4) and 80(5) of the *Environmental Planning and Assessment Act 1979*. This would be framed as follows:

- subject to compliance with the relevant conditions of the development consent, the Applicant may construct and operate the first stage of the development (300MW) from the commencement of the consent;
- the second stage of the development (expansion to 600MW) may only commence once the Applicant has sought and obtained the Minister's approval to proceed to that stage. In seeking the Minister's approval, the Applicant must demonstrate that relevant approvals for infrastructure upgrades have been granted.

The Department considers that this approach resolves the Commission's concerns over the certainty of transmission upgrades prior to progression to stage 2 of the development, and ensures

orderly and economic coordination of development on the site and associated off-site infrastructure provision.

Consistency with Development Control Plan

The Commission notes that under the *Wagga Wagga Rural Development Control Plan* (WWRDCP), development for the purpose of “generating works” is “generally not suitable” on the site. Having regard to the WWRDCP and the heads of consideration under the *Wagga Wagga Rural Local Environmental Plan 1991*, the Commission considers the proposal inconsistent with the stipulated planning outcomes for the site, supporting the Commission’s conclusion that the proposed development should not be approved. The Applicant has provided counter argument firstly that the WWRDCP is not legally binding on the Minister, and that the development, correctly characterised, should be defined as a “public utility undertaking” which is not a use that is considered to be “generally not suitable” on the land.

The Department disagrees with both the Commission and the Applicant on this matter. Firstly, the Department considers that the proper characterisation of the development would in fact be “generating works” under the WWRDCP. It is not correct to suggest that the development is a public utility undertaking, given that this term is applied in planning instruments with respect to utility undertakings carried out by, or under the authority of a public authority. A clear example of this is the definition of this term under the *Environmental Planning and Assessment Model Provisions 1970*. It is also used variously in other instruments to the same effect: *State Environmental Planning Policy No. 29 – Western Sydney Recreation Area* as one possible example. It also seems inconsistent to define the development as a “public utility undertaking” when there clearly is a specific development category assigned to development for the purpose of generation (“generating works”).

Under the WWRDCP, the Rural 1 Zone of the *Wagga Wagga Rural Local Environmental Plan 1991* is divided into a number of sub-zonings, for which objectives and desired planning outcomes are provided in further detail than that specified in the LEP. Under the LEP, the proposed development is permissible with development consent (as an innominate use). Under the WWRDCP, the subject land falls within the 1a sub-zone, in which Council has indicated that some developments do not require approval (consistent with development that is permissible without development consent under the LEP), some require Council consideration and others are “generally not suitable” in the sub-zone. “Generating works” fall into the latter category. It is important to note that this delineation in development types is intended *to give the public a guide as to the land uses Council would prefer to see in each of the rural areas* (section 7.4 of WWRDCP, page 7.7).

There was significant argument and counter argument during the assessment process and the Commission of Inquiry as to whether the WWRDCP prohibited the proposed development, and whether the weight of definition as a “generally not suitable” use meant that the proposal should not be approved. The WWRDCP itself gives no guidance on the origin of this preference, or under what circumstances such a development may be considered suitable. The Commission’s report is vague on the thinking behind its conclusion that the development is inconsistent with the WWRDCP, and simply states that the development is inconsistent with the guidance provided in the WWRDCP. It goes on to suggest that while there is no legal impediment to approving a development that is inconsistent with a Development Control Plan, such an approval would need to be based on the guidance provided in the Plan, balanced with the merits of the proposal.

The Department considers that the appropriate role of a Development Control Plan is to act as a “focal point” for the assessment of the merits of the development. This is consistent with the position taken by the NSW Court of Appeal (*Zhang v Canterbury City Council* [2001] NSWCA 167 (14 June 2001)). The fact that the development has been nominated as “generally not suitable” on the land does not automatically prohibit the development, but should act as a focus for the Minister in considering the development and prompting the question: “why is this type of development generally not suitable – has assessment of the development indicated the contrary?”. In answering these questions, the Department highlights that:

- the proposed development has been assessed by the Department, and confirmed by the Commission, to pose acceptable environmental impacts with respect to air, noise, water, traffic, waste, heritage, hazards/ risk, flora/ fauna.

- the Department, while recognising that the proposed development would exert a residual visual amenity impact, is satisfied that this impact can be mitigated and managed through conditions of consent (refer below).
- the development is permissible with consent on the land, and is consistent with the objectives of the zone. Particularly, it would not affect the conservation, enhancement or protection of natural resources and features such as agricultural land, soil stability, forests, mineral resources, trees, water resources, rare or significant natural features or heritage items. The footprint of the proposed development is such that a minor area of land will be occupied and as a consequence will no longer be available for agriculture. The Department of Primary Industries has indicated that it does not consider this loss to be significant. This Department concurs with DPI, and considers that on balance, the benefits of the proposal justify the very small loss of agricultural land.
- the general considerations to be taken into account when assessing a development application on land zoned for rural uses, as detailed in the WWRDCP, are consistent with the objectives of the overarching zone stipulated in the LEP. Further detailed heads of consideration in the WWRDCP relating to flood prone land, subdivision of land etc are either not relevant to the proposed development or are matters with which the Applicant has already demonstrated consistency during the assessment process.
- the proposed development site is particularly suited to the development as it is at a crossing of gas and transmission infrastructure. The development meets all of the development and environmental standards applicable to the proposal on the subject land, as stipulated in the WWRDCP, environmental planning instruments, the Act and Government environmental policies. The nature of the development, as distinct from a heavy industrial installation (and as compare with such in some submissions), is neutral in the context of potential land use planning conflicts. Given that the development meets criteria for air, noise etc, there is no likely significant conflict between development for the purpose of a gas-fired power station and the surrounding agricultural uses of land. By its very nature, development of any type would have a visual impact on the locality, and it is not appropriate to suggest that a visual impact in itself is sufficient to generate a land use conflict. As considered further below, residual visual amenity impacts are considered to be manageable and within acceptable tolerances, having appropriate regard to the scale and nature of the development, and the quality and absorptive capacity of the locality and its associated receptors.
- the Department considers that the proposed development is in the interests of the NSW public, given its likely positive contribution to addressing predicted generation deficits in 2008/2009, and in alleviating some of the current transmission constraints through the Wagga region. In contrast, while there will be residual impacts exert in the locality as a result of the development, the assessment of the proposal has established that these residual impacts lie within acceptable limits, and with the imposition of the recommended instrument of consent, will be managed and mitigated to the greatest extent reasonably and feasibly possible.

In the context of the above considerations, and the outcomes of environmental impact assessments conducted by the Department and Commission, it is clear that the proposed development meets acceptable environmental, health and safety criteria, as applied consistently to State significant developments. The only outstanding matter is the simple line in the WWRDCP that development for the purpose of “generating works” is “generally not suitable” on the land. From the assessment process, there is no basis to support the assertion that the development is not suitable on the subject site. While the WWRDCP has provided the focal point for the assessment of the development, there is no matter raised by the WWRDCP or other relevant consideration under the *Environmental Planning and Assessment Act 1979* that would suggest that the development is not suitable or that it is incompatible with its possible location on the site as proposed.

Visual Amenity Impacts

The Department agrees with the Commission that the development would pose residual visual amenity impacts. It considers, however, that the Commission has placed exaggerated weight on the significance of this issue, when considered and balanced against all environmental planning issues associated with the proposal, particularly with regard to the broader public interest. The significance of the residual impact is also exaggerated in the context of the scale and nature of the development, and the sensitivity of the locality of its receptors.

In reality any development will pose a visual amenity impact on its surrounds, with this impact impossible to completely mitigate. There will always be a residual visual amenity impact to be considered in the context of the scale and nature of the development, and the sensitivity of the locality and its receptors to visual impact. Visual amenity is not a matter for which clear and unambiguous criteria can be established, with assessment of the issue be a subjective consideration on which minds may differ. During the assessment process, the Applicant prepared a series of photomontages to illustrate the visual effects of the development from the nearest receptor, and with application of various surface treatments (refer attached).

The Commission's report indicates general accept of the visual amenity assessment completed by the Applicant. In addition, the Commission states that vegetative screening on and off-site the site would go a significant way to screening the development and reducing residual visual amenity impacts in the longer-term, but would not be able to address the proposed 30-metre stacks. As a result, the Commission suggests that there would be a detrimental visual impact in the immediate vicinity of the site (500 metres), affect middleground views to lesser extent (500 to 2500 metres), and generally have a minor impact at a distance further than that. The Commission recognises in its report that there are no existing visual receptors in the immediate vicinity of the site (500 metres) and of the order of ten receptors within the middleground view. Many of these receptors do not have direct lines of sight with the development site.

The Department is satisfied from the assessment undertaken to date that the bulk of the proposed development could be screened with the installation of vegetative barriers on the site. This will not completely screen the development, particularly the proposed 30-metre stacks and equally not in relation to elevated receptors in the locality. It will, however, significantly reduce the magnitude of any residual visual impact, as confirmed in the Commission's report. While the Department considers that the residual impact with this screening in place would be acceptable, it does recognise the subjectivity of visual amenity and the fact that some receptors in the locality may considered further screening appropriate. To this end, the Department recommends that the conditions of consent require the Applicant to commence negotiation of a visual screening outcome with any existing visual receptor within three kilometres of the site, if the landowner requests such screening within five years of the commencement of construction. Where an outcome cannot be negotiated and agreed between the parties, the matter may be referred to the Director-General for determination, including provision for appointment of an expert to assess the situation. The recommended instrument of consent clarifies that the negotiated outcome must be based on a direct visual impact, through a direct line of sight, and take into account the nature of the receptor location (eg bedroom, recreation area, common area etc). It also provides for the Applicant funding maintenance of vegetative barriers for a period of five years from the installation of the barrier.
