

24 December 2012

**PAC Determination – NRE No 1 Colliery, Preliminary Works Project
Modification 1 – MP10_0046 MOD 1**

1. Background

The mine the subject of this determination (NRE No. 1) is located approximately eight kilometres north of Wollongong. Underground mining has been undertaken on the site since the late 1880s in the Bulli and Balgownie Seams. The current owner and operator is Gujarat NRE Coking Coal Ltd (Gujarat).

On 13 October 2011 the Planning Assessment Commission (the Commission) granted project approval (MP07_0103) for the NRE No. 1 Colliery Preliminary Works Project. This permitted extraction of up to 1 million tonnes per annum (Mtpa) of run-of-mine coking coal for a period of three years. The approved coal extraction methodology was through first workings and pillar extraction only, from the Bulli and Wongawilli Seams.

Since this approval, Gujarat has extracted coal using longwall mining techniques from one panel (Longwall 4). This occurred under a Subsidence Management (SMP) approved by the Division of Resources and Energy (DRE) due to a transitional provision in the Environmental Planning and Assessment Regulation 2000 (clause 8K). Gujarat sought DRE approval for Longwall 5 through this same process. However, DRE did not determine this matter and the transitional provision window has now closed.

Gujarat has also submitted a Part 3A project application for its Underground Expansion Project (MP09_0013). This would significantly expand mining to the west for a period of 18 years, and involves longwall mining for up to an additional 16 longwall panels. The Director-General's Requirements were issued on 18 August 2009. The EA has recently been submitted to the Department and is currently being considered for adequacy prior to any public exhibition.

2. Project Modification

On 14 May 2012 Gujarat lodged an application to modify the project approval for the Preliminary Works Project, seeking consent to:

- extract coal using longwall mining techniques in the Wongawilli Seam for Longwalls 4 and 5; and
- develop the maingates for Longwalls 6, 7 and 8.

During the course of the application the length of Longwall 5 has been shortened from 1,145m to approximately 845m, primarily to reduce the potential impact on an upland swamp (CCUS4).

The Commission notes that there is no current approval for extraction of Longwalls 6, 7 and 8 which the proposed maingates are intended to service.

A total of 877,220 tonnes of coal would be extracted. The capital investment value is \$20 million, and the proposal would continue employment for 284 workers at the mine.

3. Delegation to the Commission

The Honourable Brad Hazzard MP, Minister for Planning and Infrastructure, delegated his powers and functions to determine certain project applications to the Planning Assessment Commission.

The NRE No 1 Preliminary Works project was referred to the Planning Assessment Commission, and then determined under the terms of the Minister's delegation of 14 September 2011. This subsequent Modification 1 under section 75W of the *Environmental Planning and Assessment Act 1979* also meets the terms of this delegation, and as such has been referred to the Commission for a decision.

Ms Gabrielle Kibble AO nominated Dr Neil Shepherd AM to chair the Commission and Mr Garry West to be a member of the Commission for determination of the modification.

4. Department's Assessment Report

The Director-General's Environmental Assessment Report provided a detailed assessment of the following key issues:

- Subsidence effects;
- Upland swamps;
- Surface water;
- Biodiversity;
- Groundwater;
- Impacts of various changes to the conditions and Statement of Commitments; and
- Socio-economic implications.

Other issues considered include: Aboriginal and non-Aboriginal heritage, air quality/greenhouse gas emissions, waste and noise.

5. Commission's Consultation

On 18 and 19 December 2012 the Commission met with representatives of the following:

- Illawarra Residents for Responsible Mining (IRRM);
- Save Our Water Catchment Areas (SOWCA);
- National Parks Association (NPA);
- Construction, Forestry, Mining and Energy Union (CFMEU);
- Wollongong City Council;
- The Proponent (NRE);
- The Department of Planning and Infrastructure (the Department);
- Office of Environment and Heritage (OEH);
- Sydney Catchment Authority (SCA); and
- NSW Office of Water (NOW) (via teleconference only).

At each meeting the Commission Chair for this determination (Dr Neil Shepherd AM) provided an outline of the process to date, the timing for a decision, the process compared to other matters (such as a review), that the EA for the major expansion project has recently been submitted, other meetings to be held, the scope of documents reviewed and appeal rights.

The Commission's summary of the other matters discussed at each of these meetings is available in Appendix A.

6. Commission's Comments

6.1 Timing of the Decision and Process

The Commission received this project modification for determination on the evening of 3 December 2012. The nature of the modification, and the proximity of its arrival to the traditional Christmas 'shut-down', created some issues for the determination process. Under its usual procedures for a project of this type the Commission would hold a public meeting to give the general community and Special Interest Groups an opportunity to provide comment to the Commission on the content of the Department's Assessment Report and recommendation. These meetings require advertising, appropriate notice and a significant amount of organizing. As a matter of practice they are not held in the period from shortly before Christmas until toward the end of January. The reason is that any public process conducted in this period is generally considered to lack *bona fides*.

The Community Groups argued (and maintain the position) that a public meeting should be held in February 2013. But for this project, deferral of the public process until February 2013 would mean closure of the two mines and significant loss of employment. Faced with these opposing interests, the Commission made a decision to proceed as follows:

- invite the Community Groups who had been involved with the project assessment to a meeting with the Commission to discuss their issues directly. This meeting was held in Wollongong on 18 December 2012. Meetings were also held at Wollongong on that day with the CFMEU, Wollongong City Council and the Proponent;
- invite the government agencies who had expressed concerns to meet with the Commission on 19 December 2012. Meetings were held with OEH and SCA, and a teleconference was held with NOW; and
- receive a briefing from the Department on 19 December 2012.

The Commission itself met on 18 and 19 December and liaised on other occasions.

The Commission recognises that this does not satisfy the concerns of Community Groups and that some individuals were unable to attend the meeting with the Commission. However, a wide range of issues was discussed (see section 5.1) and the Commission considers that it was presented with a comprehensive overview of the issues of concern across the full spectrum from residential amenity to impacts on the drinking water catchment and the perceived deficiencies in process, information and consultation associated with this modification and its assessment. There was also considerable focus on the track record of the Proponent in relation to previous commitments and regulatory requirements and whether this record demonstrated a lack of capacity to meet commitments or requirements necessary to achieve the performance outcomes under this proposed modification.

The Commission has made changes to the recommended conditions as a result of the meetings with Community Groups, government agencies and the Council.

6.2 Socio-Economic Factors

The Community Groups argued that the acknowledged difficult financial position of the Proponent was attributable to actions by the Proponent and should not be allowed to influence either the timing of the Commission's decision or the decision itself. The Commission agrees with this assessment.

However, employment is a relevant consideration and there are some 284 jobs directly dependent on the decision and a further 236 indirectly dependent (but closely tied) jobs at the sister colliery (Wongawilli). It appears to be common ground between the Proponent, CFMEU and the Department that if the modification is not approved both mines will close with the loss of 520 jobs. There have already been significant reductions in contractor positions with completion of Longwall 4 and in line with similar reductions elsewhere in the

mining industry. The usually claimed local and regional multiplier effects have not been factored into the above employment figures.

The Community Groups pointed out that the positions were a very small proportion of the total Illawarra workforce, that industries came and went in the Illawarra on a regular basis, and that there was no guarantee that this project modification was any more than a temporary fix that would need to be re-visited within a short period. The Commission doesn't disagree with this analysis. However, the other side of the coin is that assessment of the main project¹ is now making some progress, continuity of employment during this period is highly desirable for the industry and for the employees and their families, and that there may be some longer term future employment prospects once a determination on the main project is made later in 2013.

In this uncertain framework the Commission is of the view that the balance lies with maintaining continuity of employment if this can be done within the context of the overall merits of the proposal and maintenance of proper decision-making processes.

6.3 Concerns with sufficiency of Information and Deferral of Decisions to Management Plans

The system of mining approvals under the former Part 3A (which still applies to some transitional projects including this one) relies on the project approval containing the performance outcomes and the 'skeleton' of the requirements for how these are to be achieved, monitored and reported on, with the detail contained in various plans required to be provided and approved prior to particular actions occurring, such as commencement of construction or increase in production. Approvals under Part 3A also effectively override controls under some other legislation, e.g. Threatened Species and Aboriginal Cultural Heritage.

Community Groups raised concern about the amount of information-gathering and decision-making that was being deferred to these subsequent plans which were not available when the decision to approve or refuse the project application was being made. They also expressed concern that these subsequent decisions were critically important in terms of the impacts of a project, but not subject to public consultation. These concerns have been raised with the Commission in relation to many other mining projects and have been identified in Commission reports. However, the overall model for mining approvals is a matter for government. The Commission's role is to be satisfied that the model can work in relation to the application under consideration.

In relation to the community group concerns about sufficiency of information and deferral of decision-making, the Commission has taken the view that, provided there is sufficient information on which to base the decision and the approval contains clear performance outcomes and clear requirements as to how these are to be achieved, the model can work. But what amounts to 'sufficient information' is a contested issue. Community Groups argue that all baseline information required under various policies and procedures should be available (e.g. 2 years baseline data on many natural features such as watercourses and upland swamps). This is echoed by some government agencies in the context of their statutory responsibilities (e.g. NSW Office of Water, Office of Environment and Heritage, Sydney Catchment Authority).

In the Commission's experience perfect data sets are rarely (if ever) available. While this is regrettable (and ought to be solvable), it is currently reality. The issue was discussed extensively in the Commission's determination reports on Boggabri Coal Expansion Project

¹ The Proponent has been preparing a proposal for a much larger project for some time (the Underground Expansion Project MP09-0013) which is referred to as the 'main project' in this report.

(2012)² and Berrima Colliery Continued Operations Project (2012).³ The latter determination is currently under appeal to the Land and Environment Court,⁴ in part on this issue. The Commission considers that, while the data are deficient for some important aspects of this project application (a point also acknowledged in the Department's Assessment Report at p.24), there is sufficient information available on which to base a decision and that the risks involved are manageable.

However, it is fair criticism that the relevant information for this modification was confounded with a large amount of information from the studies undertaken for the main project application and it was time-consuming and difficult for people to find and assess the relevant material in the time available. While information volume and time constraints are common complaints made to the Commission about participation in the assessment process, in this case the complaints were supported by examples of irrelevant material and changes to material during the exhibition period. The Commission has therefore allowed for the fact that the level of concern expressed by submitters, including the Community Groups, probably under-represents the level of concern.

The other important issue that was raised with the Commission in this context is that the subsequent plans often contain requirements for consultation with relevant government authorities (usually State, but also Councils and the Commonwealth) and/or the relevant community consultation forums. These consultation requirements are often relied on by these bodies to ensure that they can provide meaningful input at an appropriate stage to address concerns that they expressed in the assessment phase. Without this mechanism, outright opposition to approval would be much more evident.

It follows that for this to work the consultation must be meaningful and the Department must take full account of it in its assessment and approval of the subsequent plans. Concern has been expressed to the Commission on multiple occasions (including this one) that neither proponents nor the Department necessarily meet expectations in this area. In a number of recent approvals the Commission has addressed specific concerns by requiring that the relevant agency be satisfied with the plan prior to its approval by the Director-General (see Ashton South East Open Cut Coal Project Determination Report (2012), pp.11-12 re NSW Office of Water, and Boggabri Coal Expansion Project Approval, (2012) re Office of Environment and Heritage).

The problem with this as a general model is that it effectively re-introduces a *de facto* concurrence power into the approval. However, given the effect of Part 3A and the importance that the plans have assumed as a mechanism for addressing concerns held by various bodies about aspects of project proposals, this approach may need to be adopted more frequently in the future if the concerns expressed by agencies and the community groups about the effectiveness of consultation are not addressed.

The Commission has not taken this step for this project modification given its limited scope and duration of effect. However, the performance of the consultation processes for both agencies and the Community Consultative Committee under this approval should be considered as relevant inputs to decisions about the next stage(s) of the project.

6.4 The Role of Repeated Modifications in this Mining Project

This project modification needs to be seen in context. As noted above, the Proponent has been preparing a proposal for a much larger project for some considerable time. In October

² PAC, Boggabri Coal Expansion Project Determination Report, 2012, pp.3-4

³ PAC, Berrima Colliery Continued Operations Project Determination Report, 2012, p.7

⁴ SHCAG Pty Ltd v Minister for Planning and Infrastructure and Boral Cement Limited 2012 NSW LEC Case No 12/10752

2011 the Commission approved a modification to allow limited extraction and development of preliminary works for the main project in the belief that this would allow the environmental assessment for the main project to be lodged, exhibited, assessed and determined without the need for any other modifications. This approach was strongly opposed by some government agencies, Wollongong City Council and Community Groups on the basis that it was a piecemeal approach to planning in which the primary purpose of the application was to facilitate positive decisions on a subsequent controversial project proposal for which no detail was available.

The Commission agreed with the views expressed by these submitters: *'the Commission considers that separation of project applications where the primary purpose of the first is to facilitate the second could lead to lack of public confidence in the NSW assessment and regulatory systems and must be considered undesirable. In this context it should be noted that major regulatory authorities and Wollongong City Council were among those submitters who raised the concern.'*⁵ However the Commission considered that the benefits of continued operation while a proper consideration of the main project was undertaken outweighed the concerns. The Commission also considered that the potential environmental impacts of the modification were acceptable.

The position with the current modification is essentially the same as the last one. It is an interim step designed to provide continuity of mine operations while the main project is assessed and determined. It also suffers from the same type of perceived defects as the last one: it seeks approval for some extraction and some development works to facilitate future operations for which limited detail is available. It has also received the same in-principle criticisms from the same sources. The only differences evident to the Commission are that the future operations to be facilitated are smaller in scale and the environmental assessment for the main project has at least now been lodged with the Department.

The question is what to do about it. The position of the Community Groups is clear: the modification is an abuse of process and should be refused. The agencies and Council are equally concerned about approval of the maingates without full information about the potential environmental impacts of extraction of the longwall panels they are designed to facilitate. The Proponent and CFMEU point out that, without at least some of the maingates in place when LW5 is completed, the continuity of operations will be lost and the main project will fail during the assessment process.

The position is compounded by the fact that, even if this current modification is approved, at least one or more modifications will be required to extract LW6 (and possibly LW7) before the main project can be determined. This is based on extraction of the shortened LW5 taking 4-5 months and the fact that the information relevant to a decision on LW6 and LW7 is not included in this modification application.

The Commission has carefully considered the options available and the concerns expressed by the various interested parties. The Commission is not prepared to agree to development of all the maingates sought (i.e. 6, 7 and 8). Because of the immediacy of the continuity requirements, the Commission will agree to the development of Maingate 6 in conjunction with extraction of LW5. (On the information available to the Commission, to approve LW5 without Maingate 6 would be a futile exercise.)

The Commission makes no comment about the merits of extraction for LW6. That will have to be considered on the basis of the information supplied at the time approval is sought. The approval of the maingate for LW6 should not be taken as any form of endorsement by this Commission of the possibility of approval for extraction.

⁵ PAC, NRE No 1 Colliery Preliminary Works Project Determination Report, 2011, p.3

6.5 Upland Swamps

Community groups emphasised the Commission's previous position on protection of upland swamps in the Sydney Catchment Area based on their intrinsic biodiversity values and their critical role in regulating flow and water quality in the catchment (see Bulli Seam Operations Review Report, Chapter 6, pp.81-138).

The Commission considers that its decision to approve LW5 and Maingate 6 is consistent with the principles in the Bulli Seam Operations Review Report (BSO Review Report):

- (i) the swamp of special significance, CCUS 23, has been protected by shortening the proposed LW5 and the swamp of special significance in the vicinity of LW6 (CCUS 4) will not be impacted by development of the maingates for LW6. OEH have confirmed (meeting with Commission 19/12/12) that they do not believe that LW5 will cause impact to CCUS 4 based on the subsidence data from LW4.
- (ii) The swamp to be undermined (and therefore potentially impacted) by LW5 is CCUS 3. This swamp was originally thought to fit draft criteria for special significance, but the position has been revised based on work by the Proponent's consultant, Biosis. The Commission is satisfied that this revised position is not a matter of 'convenience'. Experts from both OEH and SCA were interrogated on this issue and supported the revised status. OEH investigations show the swamp to be relatively dry.

The BSO Review Report was clear that for mining to proceed in the catchment some swamps that were not classified as being of special significance would be impacted. The objective was to minimise the number to be impacted and the nature of the impacts (see pp.136-138 of the BSO Review Report re the application of the principles and the Metropolitan Coal Project Review Report 2009 pp.80-84 for a discussion of the issues). The additional factors since publication of the PAC review reports are the listing of upland swamps as EECs under the NSW Threatened Species Act in 2012 and the circulation of draft guidelines by OEH on upland swamp environmental assessments.⁶

The OEH draft guidelines have been used by the Proponent's consultants (Biosis) in their mapping of swamps in the Project Area. The Department's Assessment Report notes that this is appropriate (Assessment Report, p.13). The Proponent, when questioned by the Commission on this issue, responded that the guidelines provided a reasonable baseline to work from. SCA and OEH have indicated that the Biosis mapping is of high quality and supported by ground-truthing. The Commission therefore accepts the classifications of upland swamps provided in the Proponent's Response to Submissions (RTS) for the purposes of determination of this project.

In the absence of government decisions that no swamps will be impacted, or that no mining will occur in the catchment, the position remains essentially as described in the BSO report with the two additional factors described above.

The Commission considers that the socio-economic factors associated with this project modification warrant accepting that some impact will occur to swamp CCUS 3 associated with the mining of LW5. Additional monitoring conditions have been added to the draft approval conditions to improve the information base concerning subsidence impacts on upland swamps arising from longwall mining, including a focus on the swamps in Table 1 of Schedule 3. This covers CCUS4, CCUS3 and CRUS1. Both OEH and SCA consider this an acceptable outcome based on the information available. However, the agencies and the Commission note that monitoring must commence immediately.

⁶ OEH, Draft Upland Swamp Environmental Assessment Guidelines, 2012

The issue of strategies to manage impacts to swamps was discussed with the Community Groups, the Proponent, OEH and SCA. From these discussions it appears to be common ground that:

- adaptive management strategies are not likely to work for upland swamps already exposed to impacts, but that they may inform management decisions for avoiding consequences for other swamps that may be exposed to similar subsidence impacts under the existing mine plan;
- like-for-like offsets are not available; and
- remediation of swamps will not be feasible in the foreseeable future.

The options are avoidance, alteration of the mine plan in the vicinity of the swamp (principally narrowing longwalls or stopping short) or alternative forms of offset. For CCUS 23 the longwall has been shortened (LW5). The Proponent acknowledged that a similar approach will be required for CCUS 4 in the context of LW6.

6.6 Surface Water

Given the Commission's decision to restrict the approval to LW5 and Maingate 6 there is relatively little potential impact on surface waters. However, SCA raised concern that the predicted subsidence could cause impacts on Cataract Creek at the very end of LW5 and requested that the adaptive management plan reflect this risk and the need to avoid impacts above the 'negligible environmental consequences' threshold. The Commission considers that the amended conditions provide for this, but specifically draws the concern to the attention of the Proponent and the Department so that there is no possibility of misunderstanding the Commission's intent.

The SCA also drew attention to the differences between Cataract Creek and many other streams in the Catchment Area (also noted in the Department's Assessment Report at pp.15-16) and requested modifications to some of the performance outcomes in Schedule 3 to ensure that the potential impacts on this stream would be catered for adequately. The Commission has therefore inserted additional criteria in the relevant Table in condition 1 of Schedule 3.

6.7 Proposed Modifications to Existing Conditions and the 2010 Statement of Commitments

Four of these changes were recommended for approval by the Department. Community Groups were adamant that the process of consultation on these was unsatisfactory and complained about changes in the proposal to accommodate these modifications on the last working day of the exhibition period. The Community Groups generally objected to the proposals.

(i) Bulli Conveyor Decommissioning

Currently required by end 2012. This requirement was based on expected completion of other works that would have eliminated the need for the conveyor. These works have not been completed, but the need to move coal remains. This will have to occur using the conveyor or some other means. The conveyor is a source of noise impact on the surrounding community. The Department's recommendation was simply to extend the timeframe for decommissioning until 2016. However, the Proponent can meet its need to move coal using the conveyor during daytime hours only and this restriction has been inserted in the conditions. This is considered a reasonable outcome until the conveyor can be decommissioned. Decommissioning will now be required as soon as the driveage for the Wonga Mains is completed.

(ii) Bellambi Creek Diversion

The Proponent advised the Commission that the coal stockpile modification would not occur for some time and that there would therefore be no change in the current

risk profile associated with the existing underground pipe section of Bellambi Creek. The Department recommended the completion date be extended to December 2014. This is opposed by Council and by the Community Groups.

It is clear that the commitment will not be met by 31 December 2012 and it is also clear that the Community Groups see this as a high priority. The Commission has therefore imposed a condition to override the existing commitment with a required completion date of 31 December 2013.

(iii) Acoustic Screens

The Proponent had committed to construct two noise barriers as part of the original application for the Preliminary Works Project. There has been some contention over whether the noise barriers would be effective. The Community Groups clearly have an expectation that noise attenuation will be delivered. Simply deleting the screens as proposed by the Proponent and the Department will not meet this expectation. The Proponent has indicated to the Commission that it is prepared to provide the screens as committed, but considers that it would be preferable to spend the money on something that would be effective.

The Commission considers that the best course is to utilise the noise audit (or other noise assessment if the noise audit has been completed) to determine what options for noise reduction exist and to apply the funds to the most appropriate options. A condition has been inserted to achieve this.

(iv) Speed Limits on Bellambi Lane

The Commission considers the proposed amendment to the Statement of Commitments is acceptable. However, the Commission has inserted an additional condition requiring the Proponent to consult with Council concerning the possibility of imposing a general 50kph limit on Bellambi Lane. This would shift enforcement responsibility for speed limits to the appropriate authority.

6.8 Statutory Context

The application is for a modification under section 75W of the EP&A Act. Community Groups have submitted that this application is for a substantially different activity than is covered by the original Preliminary Works Project approval. The Department argues (Assessment Report, p.3) that, although there are some differences, they are minor and do not change the essential nature or scale of the activity.

The positions adopted appear to reflect different objectives rather than different facts. In the Commission's view the Department's position is arguably stronger, but the matter is not free from doubt. The Commission will therefore proceed to determine the matter on the basis that it is a legitimate exercise of the powers under 75W.

6.9 Conclusion

The Commission notes the considerable disquiet expressed by Community groups, government agencies and Wollongong City Council on a range of matters including, *inter alia*, absence of important information, the piecemeal approach to assessment of this mining project, the track record of the Proponent in meeting commitments and regulatory requirements and the risk to the catchment.

There were significant environmental impacts associated with this modification as proposed. These have been reduced substantially by reducing LW5 in length and by removing Maingates 7 and 8 from the proposal. Additional monitoring requirements have been imposed for natural features. The agencies with regulatory responsibilities for natural

resources (OEH, SCA and NOW) accept the revised proposals as reasonable and consider the predicted impacts of these revised proposals are acceptable.

The proposed modifications that would have affected residential amenity have also been amended to reduce their impact on the local community. However, their effectiveness is still dependent on implementation action by the Proponent. The Department will need to ensure this occurs.

The Commission's approach will secure the continued direct employment of up to 520 people during the next phase of this project development. The Commission considers that this is a significant benefit that weighs substantially in assessing the benefits and disbenefits of the proposal.

Overall, the Commission considers that this modification should be approved with significant amendments to reduce the environmental impacts to an acceptable level. However, the community clearly has little faith in the capacity of either the Proponent or the regulatory agencies to ensure that the project proceeds within the boundaries of the approval and that commitments are met. It is important for the credibility of the industry, the planning process, and the regulatory agencies that the litany of errors, breaches and non-delivery of commitments is not repeated.


7. Commission's Determination

The Commission has carefully considered the Department's Assessment Report, public and agency submissions, recommended conditions of approval, and associated documents such as the Proponent's Response to Submissions and the Addendum to that Response. The Commission has also considered views expressed at meetings with representatives of community and special interest groups, government agencies, Wollongong City Council, the CFMEU and the Proponent.

The Commission considers that the proposed modification is within the scope of section 75W of the EP&A Act and that, on balance, the modification should be approved subject to the Commission's amended conditions. The reasons are set out in this report. This approval does not extend to the development of Maingates 7 and 8 as identified in the modification application.



Dr Neil Shepherd AM
Member of the Commission



Mr Garry West
Member of the Commission

Appendix A – Details of the Commission’s Consultation

A.1 Resident and Environmental Groups

The Commission met with representatives from the following resident and environmental groups on 18 December 2012 between approximately 10.00am and 12.30pm:

- Illawarra Residents for Responsible Mining (IRRM);
- Save Our Water Catchment Areas (SOWCA); and
- National Parks Association (NPA).

The matters raised by the groups’ representatives included:

- Process issues:
 - No justification for not holding a public meeting, it is required under the PAC guidance and it should be held in February 2013.
 - The make-up of the PAC Commission members and the absence of an environmental representative on the PAC.
 - The timing and late notice of the meeting affected who could attend to represent the groups.
 - Timing and poor availability of documents during the exhibition period, including updated documents.
 - The proposal is not a ‘modification’ under s75W.
 - The supporting documents were over 1,000 pages which is not commensurate with a modification, and difficult for people to understand especially in tight notification timeframes.
 - No modification should be approved until existing issues are resolved.
 - Ongoing use of financial viability and job losses (‘brinkmanship’) by the Proponent to pressure the Government into making a decision.
 - Lack of enforcement of existing and proposed conditions of consent.
 - Broader concerns about the Proponent’s poor compliance record.
 - Bias in Proponent funded reports and need for independent reports.
 - Poor consultation process (e.g. local Aboriginal people have expressed concern about lack of meaningful consultation, and lack of notification to local residents re conveyor and sound barriers in particular).
 - The Commission should read all the EA, and background documents and visit the site.
 - Reliance on community and environmental groups to take on a non-paid monitoring role, which is the enforcement authority’s role.
 - Piecemeal, incremental and fractured assessment process.
- Environmental issues:
 - Triple-seam mining untested, yet being carried out in a highly sensitive area.
 - Shortening of longwall 5 does not resolve the impacts.
 - Subsidence impacts.
 - Impacts on swamps particularly Swamp 4, but also need to consider effects on Swamp 3 and question its reclassification from being a swamp of ‘special significance’.
 - Previous mining has caused damage, such as rock fracturing from mining in the Bulli seam and drop in swamp water levels.
 - Long term impact on drinking water, including from acid mine drainage.
 - Uncertainty of impacts.
 - Potential that the community rather than the mine will bear the cost of remediation.
 - It is not possible to stop a longwall and therefore TARPs will be of no use.
 - TARPs are entirely ineffectual in relation to swamps.
 - Need to avoid damage as remediation is not always possible, and hence should seek ‘nil’ damage rather than ‘negligible’.
 - Baseline monitoring has not been carried out and lack of confidence in compliance with conditions of consent.
 - Offsets are inappropriate and ineffectual.

- Need to define words such as 'negligible' and provide criterion to ensure impacts are measurable.
 - Incremental decision making impacts on the environment, and the need to protect headwaters and swamps in the most important rivers and catchments.
 - A precautionary approach is required.
- Socio-Economic issues:
 - The project viability or financial position of a private company should not determine the planning process or outcome.
 - The employment benefit has been overstated (and would be some 221 rather than 300).
 - The employment generated is minor within the context of the broader area with some 180,000 people forming the Illawarra workforce.
 - As technology improves the employment rate decreases, and jobs have already been lost consistent with other coal mines.
 - Limited evidence that the mining industry has unusual upstream or downstream economic benefits.
 - The potential impact on the water supply is not factored into the potential costs of the project.
- Other local area issues:
 - Dust, noise and general health impacts on local residents.
 - Concern above the creek diversion and prior flooding event.
 - The need to manage overflow paths and the need for the Proponent to establish a notional self-insurance fund that is government guaranteed for liabilities in case of future events.
 - The conveyor should be decommissioned, as that was a commitment made and impacts that arise such as noise with no mitigation suggested.
 - The sound barriers should not be removed, as that was a commitment made and intended to reduce noise impacts with no real justification (e.g. noise assessment) or alternate suggested.
 - Noise audit required by condition has not been released.
 - Proponent cited lack of complaints as a justification – locals have 'put up with impacts' as they have been patient and expected the impacts to cease at the times set out in the project approval.
 - Impact on Aboriginal cultural heritage sites.
 - Need to provide bushwalker access to SCA areas to monitor mining impacts.

A.2 Construction, Forestry, Mining and Energy Union (CFMEU)

The Commission met with representatives from the CFMEU on 18 December 2012 between approximately 1.00pm and 1.30pm, where the CFMEU made the following key points:

- If the application is not approved, it will result in job losses at both No.1 and then Wongawilli (on top of recent job losses).
- If the application is not approved, other companies will not be paid resulting in broader job losses and economic impacts in the Region.
- Potential that without further income from the coal associated with Longwall 5 that current and future employee pay and entitlements may not be paid out.
- History of two-tier mining in the area, and now Longwall 4 has been completed.
- Longwall 5 appears likely to provide a better yield and quality of coal than Longwall 4.
- Longwall 4 was a learning and training opportunity, with the experience able to be applied to Longwall 5.
- Longwall 5 will bridge the gap to any approval of the major expansion project and keep the existing investment, infrastructure and employment maintained.
- Need the main gates to maintain continuity.
- General support for approval of the modification, and support for the company to continue operating, and recognition of the mine's existing and future employment opportunities.

A.3 Wollongong City Council (WCC)

The Commission met with representatives from Wollongong City Council on 18 December 2012 between approximately 1.30pm and 2.00pm, where the Council made the following key points:

- Support for the shortening of Longwall 5.
- Need to ensure that environmental management and compliance is achieved and enforced.
- Concern about the delay proposed for the creek diversion and would prefer it within 6 months.
- Concern about both retention of the conveyor and removal of the acoustic barriers, due to current noise impacts on residents and lack of mitigation measures.
- In a flood event the Council would likely assist in any clean-up but no mechanism to claim compensation from the mine.
- Council is relying on Department advice with regard to swamps due to lack of in-house expertise in this specific field.
- Need for Council to both encourage employment in the short-term and also longer term environmental needs, with a particular emphasis on protecting the water catchment.

A.4 Proponent (NRE)

The Commission met with representatives of the Proponent on 18 December 2012 between approximately 2.00pm and 4.00pm, where the following was discussed:

- The Proponent outlined its planning history and process to date, which has resulted in the Preliminary Works and Major Expansion projects as separate applications.
- Confirmation that Longwall 4 is completed.
- Various delays have resulted in financial difficulty, and without approval it is difficult to secure investment finance.
- The company purchased the mines and made them operational, increasing employment and economic activity.
- Updated Management Plans have been submitted to the Department.
- The Proponent advised Maingates 6, 7 and 8 are required for continuity as they link to future stages, continue employment, and extract coal.
- If the future mine plan is not approved, the Proponent accepts the risk but also considers there would be some scope to modify the maingates (e.g. narrow pillars, narrow or shorten the longwalls).
- Use of data from Longwall 4 which is also multi-seam, to assist with Longwall 5.
- Longwall 5 if approved would take approximately 4 months commencing mid-January.
- Likelihood that further modifications would be required to continue mining due to the assessment timeframe likely for the major extension project.
- Likelihood of major issues with Longwall 8, particularly its impact on the surface features (including swamps and Cataract Creek).
- Inability to use TARPS when undermining a swamp, and potential for long-term impacts and inability to remediate.
- Discussions on the implications for any changes to the modification as recommended by the Department.
- Reasons for, timing, and possible mitigation impacts in relation to the conveyor. Ability to meet daytime operation restriction.
- Reasons for, and other possible mitigation impacts in lieu of the acoustic barriers. Need for an appropriate evidence base to justify any removal from the commitments.
- Issues surrounding the 50km/hr self-imposed speed limit on Bellambi Lane which is in conflict with the posted speed, and impossible for the Proponent to enforce considering the other users of the road. The Commission recommended approaching the Council about possible changing the posted speed limit which would then apply to all users.
- The Proponent's changes in consultants to SCT and Biosis and improvement in communication with government agencies.
- Issues with prior compliance and lack of base monitoring information.

A.5 Department of Planning and Infrastructure (the Department)

The Commission met with representatives of the Department on 19 December 2012 between approximately 9.00am and 10.00am, where the Commission outlined its concerns on the following:

- The need to monitor Swamp 3 during any mining of Longwall 5 and as an evidence base for Longwall 6.
- The need to monitor Swamp 4 during any mining of Longwall 5 because of risk of edge effect.
- The need to commence monitoring of Longwall 5 now to establish the baseline, noting it will commence from the west.
- The purpose of Maingates 6, 7 and 8 and implications of any approval.
- Likelihood of a future modification seeking to continue mining prior to any major expansion project approval, and status of the EA.
- Mitigation options in relation to the conveyor and implications if it is not decommissioned.
- The purpose of the creek diversion and timing.
- The Department advised the noise audit is currently being prepared, and the Commission's view is it needs to consider the audit results and more detailed noise assessment before a decision is made to remove the acoustic barriers.
- Lack of ability for a private operator to enforce speed limits on Bellambi Lane and the need to avoid large disparities in travel speed, and that a preferred approach is for the authority responsible for the road to determine the speed limit.

A.6 Office of Environment and Heritage (OEH)

The Commission met with representatives of the Office of Environment and Heritage (OEH) on 19 December 2012 between approximately 10.00am and 11.30am, where the OEH outlined its remaining issues as:

- The impact on swamps and creeks, including Swamp 3, is unknown and needs monitoring.
- Broad issue with prior mining damage to swamps and creeks, and the impact of different types of underground mining and effects.
- Issue with lack of monitoring, adequacy of monitoring, timing of monitoring, insufficient baseline data and that it would be useful for data to be provided to OEH.
- General issue with monitoring being pushed down the line to management plans where OEH is not an approval authority, and that without monitoring can't then demonstrate or measure whether consent conditions are met.
- Preference to simplify measurements (e.g. use of water level measurements with piezometers on swamps as a primary indicator with a substantial baseline) and a general issue on how to monitor and judge impacts attributable to mining.
- Issues associated with TARPS, swamp remediation and offsets.
- OEH advice that the Aboriginal consultation process was consistent with that undertaken for large-scale projects and it was satisfied with the consultation process and the assessment.
- General discussion on where there can be a disparity between Aboriginal consultation and the 'significance' identified and management outcomes of Aboriginal Cultural Heritage.
- Low likelihood of subsidence impacts on Aboriginal Cultural Heritage but mining processes generally seem to accelerate degradation. Preferred method is to avoid impacts and to protect the context of ACH.
- In relation to Condition 38 OEH requested upfront clarification in the definitions of what is 'negligible' environmental impact and 'in consultation with the OEH'. Concern that details are deferred to a management plan and that OEH has no approval role.
- OEH's general frustration with the piecemeal approach and ongoing information of information through the process which should have been available upfront.

A.7 Sydney Catchment Authority (SCA)

The Commission met with representatives of the Sydney Catchment Authority on 19 December 2012 between approximately 11.30am and 1.00pm, where the SCA outlined the following matters:

- The sensitivity of the location in relation to Sydney's drinking water catchment and that it is within a SCA Special Area.
- The SCA's mining principles being essentially about protecting water supplies, the environment and human health.
- Photographs from a recent site visit including discolouration in Cataract Creek including bedrock delamination presumed from recent mining activities.
- SCA endorses the recommended conditions in relation to negligible environmental consequences.
- SCA concern about Maingates 6, 7 and 8 providing access to further longwalls with potentially significant impacts on Cataract Creek, swamps and possibly Cataract Reservoir.
- The Proponent's poor record of compliance with conditions of approval.
- Evidence of some 'negligible' subsidence impacts on Cataract Creek.
- Potential for bank erosion of Cataract Creek and the need for additional negligible environmental consequence criteria.
- Potential for increase in sediment in Cataract Creek and the need for additional negligible environmental consequence criteria.
- Potential for reduction in quantity of water reaching reservoir and the need for additional negligible environmental consequence criteria.
- Research findings indicating redirected water flows are not simply automatically finding another path to reservoirs but may be being 'lost' from the system to the sea or groundwater storage areas that may or may not fill and then flow to the reservoir.
- SCA concern adaptive management not adequate to ensure acceptable environmental outcomes.
- Need for Proponent to report weekly during longwall mining on the surface impacts.
- Mining LW5 may need to pull up short to stop impact on Cataract Creek.
- Turbidity in streams and creeks.

A.8 NSW Office of Water (NOW)

The Commission spoke with a representative of the NSW Office of Water via teleconference on 19 December 2012 between approximately 2.00pm and 2.15pm, where the NOW outlined the following matters:

- Noted receipt of the LW5 water management plan, and no in-principle objection to the modification in itself.
- However, there remains a large degree of uncertainty about subsidence and its effects on upland swamps and creeks.
- Requirement for comprehensive monitoring and if performance criteria breached then need to cease operations.
- Need to properly use TARPs and apply effective adaptive management (e.g. if triggers reached need to reduce the width and length of workings).
- Issues with access to information from the Proponent, and also to the site for monitoring.