



New South Wales Government
Independent Planning Commission

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Digital Advertising Signage – 150 Cormorant Road Kooragang (DA 22/8565)

Statement of Reasons for Decision

Professor Richard Mackay AM (Chair)

23 December 2022

1. Introduction

1. On 5 December 2022, the NSW Department of Planning and Environment (**Department**) referred a development application (DA 22/8565) (**Application**) made by Barr Property and Planning Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application seeks approval for an advertising sign to be located at 150 Cormorant Road, Kooragang, within the Port of Newcastle (**PON**) Lease Area.
2. The Minister for Planning (**Minister**) is the consent authority for Part 4 applications on land within the Port of Newcastle Lease Area under section 5.6 of the *State Environmental Planning Policy Transport and Infrastructure 2021 (T&I SEPP)*. However, as the owner of the land (Port of Newcastle Lessor Pty Ltd) disclosed a reportable political donation under section 10.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, the Commission has been requested to exercise the Minister's functions as consent authority under the Minister's delegation of 14 September 2011.
3. Professor Mary O'Kane AC, Chair of the Commission, nominated Commissioner Professor Richard Mackay AM to constitute the Commission in determining the Application.

2. The Application

4. The Applicant is seeking approval for the construction and operation of a new double-sided 'Super 8' sign including the construction of an advertising structure and the advertisement (DA 22/8565).

3. Site and Locality

5. The Department's Assessment Report (**AR**) dated November 2022, states that the site is located at 150 Cormorant Road, Kooragang, and is legally defined as Lot 33 in DP 1184229 (the **Site**).
6. AR section 1.2.2 states that the Site was previously used for an Energy Australia wind turbine, established in 1997. The 73m wind turbine was dismantled in 2014 and relocated to an offsite location. The Site is currently mostly undeveloped with the exception of a temporary use fenced construction car park in the south eastern corner. The sign is proposed to be located southeast of the intersection between Cormorant Road (a State classified road) and Kooragang Rail Depot Access Road.
7. The Commission notes that the Site was originally referred to by the Applicant and Department in various documentation as 30 Cormorant Rd, Kooragang.

4. The Commission's Consideration

4.1 The Department's Assessment Report

8. The Department's AR was prepared to set out the Planning Secretary's whole-of-government assessment of the Application. As part of this assessment, the Planning Secretary through the Department, considered the Application with regard to the relevant statutory obligations, supplementary information provided by the Applicant, public submissions and advice from Government agencies.
9. The Department's assessment of the development identified site suitability, visual impact, illumination, road safety and public benefit as the key issues for consideration (AR section 7.1.3).
10. The Department considers the development is approvable, subject to conditions of consent (AR section 7.1.5).
11. The Commission broadly agrees with the Department's assessment (to the extent that assessment is consistent with this Statement of Reasons).

4.2 Public Submissions

12. No public submissions were made when the Application was originally placed on public exhibition. The Commission also invited submissions from the public via the Commission's website from 7 to 21 December 2022. No submissions were received.

4.3 The Commission's Meetings

13. As part of the determination process, the Commission met with representatives of the stakeholders as set out in Table 1. All meeting notes were made available on the Commission's website.

Table 1 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Department	12 December 2022	14 December 2022
Applicant	13 December 2022	15 December 2022
Council	14 December 2022	15 December 2022

4.4 Site inspection / locality tour

14. The Commission undertook a site inspection / locality tour on 13 December 2022 as part of its consideration of the Application. No other parties attended.

4.5 Material Considered by the Commission

15. In making its determination, the Commission has carefully considered the following material (**Material**):
 - Department's [letter referring DA22/8565 to the Commission](#) (undated, received by the Commission on 5 December 2022)
 - Department's [Assessment Report](#) (dated November 2022)

- Department's [recommended consent conditions](#) (undated, received by the Commission on 16 December 2022)
- City of Newcastle [Section 7.12 Development Contributions Plan](#) (dated 26 October 2021)
- Applicant's [response to the Commission's request for information](#) (dated 14 December 2022)
- Applicant's [Development Application Form](#) (dated 2 August 2022)
- Department's [response to the Commission's request for information](#) (dated 16 December 2022)
- Newcastle City Council's [response to the Commission's request for information](#) (dated 21 December 2022)
- Applicant's [Statement of Environmental Effects \(SEE\)](#) prepared by Barr Planning (dated May 2022), and all supporting documentation
- Applicant's [Response to the Department's Request for Additional Information \(RFI Response\)](#) (dated 29 September 2022), and all supporting documentation
- Department's [Transport Corridor Outdoor Advertising and Signage Guidelines \(Guidelines\)](#) (dated November 2017)
- all submissions made to the Department and Commission in respect of the Application

4.6 Statutory Context

4.6.1 Applicant

16. The Department's AR (section 1.1.3) states:
The proposal has been submitted by oOh! Media (the Applicant).
 (The Commission notes that the correct representation of this party is oOh!media).
17. In the Commission's meeting with the Applicant on 13 December 2022, Ms Rebecca Johnston (Director of Barr Property and Planning Pty Ltd) stated that:
Barr Property and Planning Pty Limited made the application in accordance with the requirements of the planning portal. oOh!media were notified to be the payee of the application, so meaning that they paid the development assessment fees but the application was made by Barr.
18. The Commission wrote to Barr Property and Planning Pty Ltd on 13 December 2022 requesting written clarification as to the correct applicant for DA 22/8565.
19. Barr Property and Planning Pty Ltd responded to the Commission on 14 December 2022, confirming their advice that "Barr Property and Planning Pty Ltd" was the correct applicant.
20. The Commission wrote to the Department on 15 December 2022 requesting written clarification as to the identification of the correct applicant for DA 22/8565.
21. The Department responded via email on 16 December 2022, supplying updated recommended conditions of consent which identify Barr Property and Planning Pty Ltd as the Applicant.

4.6.2 Consent Authority

22. The Department's AR (sections 4.2.1 – 4.2.3) states:
- 4.2.1 *Under Clause 5.6 of the Transport and Infrastructure SEPP, the Minister is the consent authority for Part 4 applications on land within the Lease Area of the Port.*
 - 4.2.2 *On 14 September 2011, the then Minister for Planning and Infrastructure delegated functions to determine Part 4 applications to the former Planning Assessment Commission (now known as the Independent Planning Commission (Commission)) where:*
 - *there are more than 50 public submissions in the nature of objections, or*
 - *the relevant local council has made an objection, or*
 - *a political disclosure statement has been made.*
 - 4.2.3 *Council did not object to the development and less than 50 public objections were received during the exhibition period. However, reportable political donations were made by the Applicant on behalf of Port of Newcastle Lessor Pty Ltd within the last two years. Accordingly, the development is to be determined by the Commission under delegation.*
23. In the Commission's meeting with the Applicant on 13 December 2022, Ms Rebecca Johnston (Director of Barr Property and Planning Pty Ltd) stated that:
- So in both assessment reports, section 4.2.3, it states that the reportable donations have been made by the Applicant on behalf of Port of Newcastle Operations Pty Limited. That's not the case. The Port of Newcastle Operations have made those political donations themselves. Neither Barr Planning nor oOh!media have made donations on their behalf.*
24. The Commission wrote to Barr Property and Planning Pty Ltd on 13 December 2022 requesting written confirmation that the correct applicant for DA 22/8565 had not made a reportable political donation within the last 2 years.
25. Barr Property and Planning Pty Ltd responded to the Commission on 14 December 2022, stating:
- Confirming that Barr Planning and oOh!media have not made a reportable political donation within the last 2 years.*
26. The Commission wrote to the Department on 15 December 2022 requesting written confirmation that the Commission was the correct consent authority for DA 22/8565 given the statement in section 4.2.3 of the Department's AR that:
- reportable political donations were made by the Applicant on behalf of Port of Newcastle Lessor Pty Ltd within the last two years. Accordingly, the development is to be determined by the Commission under delegation.*
27. The Department responded via email on 16 December 2022, stating:
- The Independent Planning Commission (IPC) is the correct consent authority for both DA 22/8564 and DA 22/8565. The current Ministers delegation that applies to determination of development applications under section 4.16 of Environmental Planning and Assessment Act 1979 (the Act) where a reportable political donation under section 10.4 of the Act has been made, is dated 14 September 2011. As noted in the development application forms submitted for both DA 22/8564 and DA 22/8565, a reportable political donation under section 10.4 of the Act was disclosed. Clause [sic] 10.4(3) of the Act requires any person with a financial interest in the application to report political donations and Clause [sic] 10.4(7) defines any person having financial interest as including landowners of the site. For DA 22/8564 and DA 22/8565, a political donations disclosure was made by Port of Newcastle in both DA forms. Port of Newcastle is the landowners of both sites. Therefore, as the landowner, Port of Newcastle has made a political donations disclosure as required by section 10.4 of the Act and as such, the Department have*

referred both DAs to the IPC for determination in accordance with the 14 September 2011 delegations.

28. The Commission has proceeded to determine the Application, relying on the Department's confirmation that the Commission, as the Minister's delegate, is the correct consent authority for the Application.

4.6.3 Permissibility

29. As the Site is in the PON Lease Area, [Chapter 5 Three ports - Port Botany, Port Kembla and Port of Newcastle](#) of the T&I SEPP applies. The analysis in section 4.1 of the Department's AR identifies that the development:
- is permissible with development consent under the T&I SEPP;
 - has a capital investment value (CIV) of less than \$100 million;
 - is not designated development under Schedule 3 of the *Environmental Planning and Assessment Regulation 2021*; and
 - accordingly, the development does not meet the criteria for State Significant Development as outlined in section 5.27 of the T&I SEPP, hence Part 4 Division 4.3 of the EP&A Act applies.
30. The Department's AR (sections 4.3.1 and 4.3.2) identifies that:
- the site is zoned SP1 Special Activities under the T&I SEPP;
 - 'Advertisement' and 'Advertising Structure' are permitted uses in this zone; and
 - the development meets the relevant objectives of the SP1 zone.
31. The Commission accepts the Department's assessment relating to the permissibility of the development.

4.7 Mandatory Considerations

32. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The Mandatory Considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the Mandatory Considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 2 – Mandatory Considerations

Mandatory Considerations	Commission's Comments
Relevant EPIs	<p>Sections 4.4.3 to 4.4.6, and Appendix B of the Department's AR identify relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP); • State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP); • State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP); and

	<ul style="list-style-type: none"> • draft State Environmental Planning Policy (Remediation of Land) (draft Remediation of Land SEPP). <p>The Commission generally agrees with the Department's assessment of EPIs set out in Appendix B of the Department's AR, noting that the Newcastle Local Environmental Plan 2012 (Newcastle LEP) does not apply as the Site is located within the Port of Newcastle lease area.</p> <p>The Commission has considered the provisions of section 5.20(3) of the T&I SEPP insofar as the proposal involves minor earthworks.</p> <p>The Commission otherwise adopts the Department's assessment.</p>
Relevant DCPs	The Newcastle Development Control Plan 2012 (Newcastle DCP) does not apply to the Site because the Site is located within the Port of Newcastle lease area. However, the Commission has considered the Newcastle DCP as a guide where appropriate.
Likely Impacts of the Development	The likely impacts of the Application have been considered in section 6 of the Department's AR. The Commission agrees with and adopts this assessment, subject to the additional matters covered in section 5 of this Statement of Reasons.
Suitability of the Site for the Development	The Commission agrees with the assessment in section 6.2 of the Department's AR and finds that the Site is suitable for the development and would not result in significant adverse impacts to the surrounding environment.
Objects of the EP&A Act	In this determination, the Commission has carefully considered the Objects of the EP&A Act and is satisfied that the Application is consistent with the Objects of the EP&A Act.
Ecologically Sustainable Development	<p>The Commission has considered the principles of ESD in its determination as set out below.</p> <p>a) The precautionary principle</p> <p>The Commission finds that the precautionary principle has been appropriately applied through the mitigation and management measures set out in the Application, the Department's AR and the conditions of consent imposed by the Commission.</p> <p>b) inter-generational equity</p> <p>The Commission has considered inter-generational equity in its assessment of the potential environmental, social and economic impacts of the Application, and finds that the Application will, on balance, benefit current and future generations.</p> <p>c) conservation of biological diversity and ecological integrity</p> <p>The Commission finds that the Application is unlikely to have a significant impact on biological diversity and ecological integrity.</p> <p>d) improved valuation, pricing and incentive mechanisms</p> <p>The Commission finds that, when considering the current policy framework, scope of the Application and assessment of costs and benefits, the Application is not inconsistent with improved valuation, pricing and incentive mechanisms.</p> <p>In summary, the Commission finds that the Application is consistent with ESD, because the development, for the reasons set above, can achieve an appropriate balance between relevant environmental, economic and social considerations.</p>

The Public Interest	<p>The Commission has considered whether the grant of consent to the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts.</p> <p>The Commission's consideration of the public interest has also been informed by the submissions made with respect to the Application, the absence of any public submissions and the information conveyed at meetings with the Applicant, the Department and Council.</p> <p>The Commission has given consideration to the principles of ESD in its assessment of each of the key issues, as set out in Section 5 below. The Commission finds that, on balance, the Application is not inconsistent with ESD principles, and that the development would achieve an appropriate balance between relevant environmental, economic and social considerations. The likely benefits of the development warrant the conclusion that an appropriately conditioned approval is in the public interest.</p>
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5. Key Issues

5.1 Site Suitability

33. The Commission agrees with the assessment in section 6.2 of the Department's AR and finds that the Site is suitable for the development and would not result in significant adverse impacts to the surrounding environment for the following reasons:
- the Application is permissible with consent;
 - the proposed sign satisfactorily complies with the site selection criteria of *State Environmental Planning Policy (Industry & Employment) 2021*, the Guidelines and AS4282-1997 (Control of Obtrusive Effects of Outdoor Lighting);
 - the proposed sign would not adversely impact on the existing or future character of the land uses surrounding the site as the proposed sign would be integrated into an existing industrial setting with negligible to low visual impacts;
 - the location of the sign adjacent to a roadway corridor is suitable for digital advertising and consistent with signage on other classified roads; and
 - the proposed signage would be in a location where there is no current digital advertising signage.

5.2 Visual and Illumination Impacts

34. The Commission agrees with the assessment in section 6.3 of the Department's AR and finds that the visual impacts of the development are acceptable for the following reasons:
- the signage is compatible with the context of the surrounding area as the site is zoned as SP1 Special Activities and is an existing area of industrial land use which includes the Newcastle Coal Infrastructure Group Wharf Facility to the east and predominantly vacant land immediately surrounding the proposed signage;
 - the sign is proposed to be located adjacent to the existing roadway corridor and is not in proximity to any residential areas or public open spaces;
 - the proposed signage's scale will integrate with the existing infrastructure including streetlights and powerlines; and

- the sign would not obscure or compromise important views, would not dominate the skyline or reduce the quality of vistas of any environmentally sensitive areas, heritage areas or open space.

35. The Commission agrees with the assessment in section 6.3 of the Department's AR and finds that the illumination impacts of the development are acceptable for the following reasons:

- the Application has demonstrated compliance with the relevant Guidelines and Australian Standards and would not result in any adverse illumination impacts; and
- the Commission has imposed the Department's recommended condition (A19) to ensure the signs operate within the limits outlined in Table 2 of the Department's AR.

5.3 Road Safety

36. The Commission agrees with the assessment in section 6.4 of the Department's AR and finds that the road safety impacts of the development are acceptable because the Application:

- would not reduce existing driver sightlines;
- would not interfere or obstruct views to traffic signals;
- would display static images only;
- would comply with the dwell times outlined in Guidelines; and
- is positioned within the road corridor and not overhanging the road.

37. The Commission has also imposed the Department's recommended conditions (A16-A20) to ensure:

- the signs do not contain or use any method of illumination that distracts or dazzles drivers;
- compliance with the 25 second dwell time and 0.1 second transition; and
- compliance with the Guidelines.

5.4 Public Benefit

38. The Commission notes that the Applicant, in its RFI Response, proposed to allocate 5% of the display time on the digital advertisement screen for public purposes. Accordingly, the Department recommended that the Commission impose draft condition A26:

DISPLAY OF ROAD SAFETY AND EMERGENCY MESSAGES

A26. The LED advertising screen shall be available for 5 per cent of all advertising time each year for the display for public purposes by Newcastle City Council. Additionally, the LED advertising screen shall be made available for use in the event of a 'threat to life' emergency to allow emergency messaging to override the commercial advertising.

39. In its response to the Commission's request for information, Council stated that it "does not wish to be involved with these signs, as recommended by draft condition 26". It went on to state "please delete the reference to Newcastle City Council in draft condition A26-Display of road safety and emergency messages".

40. The Commission has therefore determined not to impose the Department's draft condition A26, noting that the Applicant's RFI Response offer stands as it forms part of the Application.

41. As the Commission is a consent authority other than a council, it is permitted under section 7.13(2) of the *Environmental Planning and Assessment Act 1979* to impose a condition requiring a development contribution other than in accordance with the relevant contributions plan, in this case, the City of Newcastle Section 7.12 Development Contributions Plan (**Contributions Plan**). In determining this Application, the Commission has had regard to the Contributions Plan and, has determined that in order to provide an appropriate public benefit, a condition (A8) is to be imposed requiring the Applicant to pay a levy of 1% of the proposed cost of carrying out the development to Council. This condition is consistent with the conditions proposed by the Department.
42. In consideration of the levy imposed by the Commission via condition A8, the Commission is satisfied that the development satisfies the public benefit test as set out in the Guidelines.

5.5 Other Issues

43. The Commission has considered, and generally accepts (to the extent that assessment is consistent with this Statement of Reasons), the Department's assessment of the other issues associated with the Application (AR section 6.6).

6. The Commission's Findings and Determination

45. The Commission has carefully considered the Material before it as set out in section 4.5 of this Statement of Reasons. Based on its consideration of the Material, the Commission finds that the Project should be approved subject to conditions of consent for the following reasons:
- the Application is permissible with consent and port-related activities are consistent with the zone objectives of the T&I SEPP;
 - the Application is an orderly and economic use of the Site;
 - the Application is consistent with the objectives of the Hunter Regional Plan 2036, Greater Newcastle Metropolitan Plan 2036, Port Master Plan 2040 and the Newcastle Local Strategic Planning Statement;
 - the height and scale of the proposed sign appropriately relates to the existing site context and surrounding features and would not result in any unreasonable amenity impacts;
 - the Application would not result in any significant traffic or safety impacts;
 - the proposed illumination levels are acceptable as the proposal is compliant with the Guidelines, has demonstrated compliance with the relevant Australian Standards and would not result in any adverse illumination impacts;
 - the proposal would result in sufficient public benefit as 1% of the proposed cost of carrying out the development would be contributed in accordance with the City of Newcastle Section 7.12 Development Contributions Plan;
 - impacts on surrounding land uses have been minimised and are capable of being further mitigated through the imposed conditions; and
 - The proposed sign can be removed, with the site made good, at the conclusion of its working life.
46. For the reasons set out in paragraph 45 above, the Commission has determined that the Application should be approved subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance;
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.



Professor Richard Mackay AM (Chair)
Member of the Commission



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**For more information, please contact
the Office of the Independent Planning
Commission NSW.**

ipcn.nsw.gov.au

Phone (02) 9383 2100

Email ipcn@ipcn.nsw.gov.au

Mail Level 15 135 King Street Sydney NSW 2001

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