

Independent Review

DA11/224 City of Botany Bay Bunnings Development, Hillsdale

NSW Department of Planning and Environment

10 July 2015

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 751/15327/80167827

Contents

1.	Executive Summary	1
2.	Introduction & Scope of Review	4
3.	The legal basis for determination of DA11/224 and the Department's role in relation to DA11/224.....	6
4.	The legal basis for the QRA	13
5.	Whether the preparation of the QRA was consistent with legal requirements	18
6.	Whether the Department's involvement in the process of assessing DA11/224 was consistent with the legal basis for its role	24
7.	Whether, in determining DA11/224, the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role	32
	Schedule 1 - Glossary	45
	Schedule 2 - Terms of Reference 19 June 2015	47
	Schedule 3 - Materials Reviewed	48
	Schedule 4 - Section 79C(1) of the Planning Act	50

1. Executive Summary

- 1.1 This Report provides an independent review in relation to the process undertaken in obtaining a Quantitative Risk Assessment (**QRA**) for the proposed development of a Bunnings hardware and building supply centre (**Proposed Development**) at 140-148 Denison Street and 49 Smith Street, Hillsdale.
- 1.2 A development application, DA11/224, for the Proposed Development was lodged with the City of Botany Bay Council on 2 November 2011. It was assessed by the Council and determined by the Sydney East Joint Regional Planning Panel (**JRPP**), which granted development consent on 1 April 2015.
- 1.3 Clayton Utz has been engaged by the Department, on behalf of the Secretary of the Department, to undertake a Review of the process undertaken in obtaining the QRA. The Terms of Reference for our Review are set out in Schedule 2 of this Report. Defined terms are included in Schedule 1 of this Report.
- 1.4 A summary of the results of our Review is as follows:

The legal basis for determination of DA11/224 and the Department's role in relation to DA11/224

- 1.5 In our view, the Proposed Development is regional development under the Planning Act. The JRPP exercises the functions of the Council as consent authority for determining the Proposed Development, however, Council retains certain powers and functions, including for the assessment of the Proposed Development, for undertaking consultation and requesting agency concurrence (if required).
- 1.6 In our view, the Department does not have a formal role in the assessment or determination of DA11/224. Its involvement, if any, would be as a Government agency which is consulted as part of the Council's assessment. There is nothing in the 1995 LEP, the 2013 LEP or the Planning Regulation which gives the Department any particular role with regard to the Proposed Development which would be relevant for the Review.
- 1.7 In considering DA11/224, the JRPP was required to take the matters listed in section 79C of the Planning Act into account, including any relevant DCPs. However, DCPs are not legally binding and there is room for discretion in their consideration. We have considered DCP 2013 as the relevant DCP which applied at the time of determining the Proposed Development. We have also considered DCP No. 30, DCP No. 24 and DCP No. 33 in some detail in our Review, even though it appears that DCP 2013 replaced them before DA11/224 was determined, because that they have been raised in various correspondence relating to DA11/224 and were considered by the Council and JRPP.
- 1.8 DCP 2013 provides a guide for the external notification of development applications and suggests that "approvals, referrals & comments" may be sought from the Department (Manager of Hazards Unit) for development "affected by the provisions of the Botany/Randwick Study; the Port Botany Report...". In our view, DCP 2013 did not create any formal role or obligations for the Department with respect to the risk assessment of any possible hazard relating to the Proposed Development, although it provided a basis for consulting the Department.

The legal basis for the QRA

- 1.9 An independent consultant, Scott Lister, was commissioned by the Department and Council to prepare the QRA Report. The stated purpose of the QRA was to understand the level of risk associated with dangerous goods transport along Denison Street, in order to assist the evaluation of the Proposed Development and other future developments at sites along Denison Street.
- 1.10 The QRA constitutes part of the assessment of the Proposed Development under section 79C of the Planning Act, having regard to DCP 2013 and DCP No. 30 (as it applied), and as a

factor in the consideration of matters such as the suitability of the relevant site for the Proposed Development, submissions made by community members and the Department (as a government agency) and the public interest.

Whether the preparation of the QRA was consistent with legal requirements

1.11 Background regarding the preparation of the QRA is set out in detail in parts 4, 5 and 6 of this Report. There are no strict legal requirements for the QRA. Guidance, but not mandatory legal requirements, is found in the following Departmental papers and guidelines (as defined in in Schedule 1):

- (a) the Risk Criteria Advisory Paper;
- (b) the Hazard Analysis Guidelines; and
- (c) the draft Route Selection Guidelines.

1.12 We have reviewed the QRA process against a series of preferred criteria for the preparation of the QRA, based on the guidance above, in the absence of any express legal requirements. The table in part 5 of this Report sets out each of the preferred criteria we have identified and a comment against each of those criteria following our review of the QRA process. In our view, the QRA process addresses those preferred criteria.

Whether the Department's involvement in the process of assessing DA 11/224 was consistent with the legal basis for its role

1.13 As noted above, the Department did not have a formal role in the assessment of DA11/224 and was not legally required to procure, review or provide guidance on the QRA. The table in part 6 of this Report describes elements of the Department's involvement in the QRA process and addresses this involvement from a legal perspective. In our view:

- (a) Given the Council's continued concerns, it seems to us to be a reasonable course that the Council and the Department commissioned the QRA.
- (b) We have not identified any document or information to give rise to any concerns with regard to the commissioning of Scott Lister to prepare the QRA.
- (c) The Department enabled a wide ranging opportunity for comment on the QRA process and the draft QRA Report. The Department also accepted community comment on the final QRA Report. We consider that it was appropriate that the Department be involved in community consultation in relation to the QRA.
- (d) The Department's interaction with the JRPP was consistent with its informal, advisory role in relation to risk issues.

The Department's responses to Mr Salter (a community member) seek to address queries and comments raised. They form part of general community consultation and the guidance role played by the Department in relation to assessment of risk associated with the Proposed Development.

Whether, in determining DA11/224, the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role

1.14 In our view, submissions made by community members may be relevant considerations which need to be taken into account by the JRPP. In making the decision with respect to DA11/224, the JRPP was also required to afford procedural fairness. We have had regard to these matters as well as the JRPP Operational Procedures and JRPP Code, which provide guidance to the JRPP, including with respect to submissions.

- 1.15 Given the high volume of submissions made in relation to DA11/224, we have not conducted an analysis of each individual submission made. Instead, we have taken the extensive submissions by Mr Salter as an example of the submissions made by community members.
- 1.16 The table in part 7 of this Report describes elements of the JRPP's involvement in relation to submissions made by Mr Salter that are relevant to consider in this Review and addresses this involvement from a legal perspective. Our conclusions in that table are as follows:
- (a) It was the role of the Council to undertake the assessment of DA11/224, including notifying, re-notifying and considering submissions. It appears to us that the submissions made by Mr Salter in accordance with the Planning Act and Planning Regulations were taken into account in that assessment.
 - (b) In our view, it is reasonable to conclude that the JRPP afforded procedural fairness to Mr Salter with respect to his submissions. In particular, we consider that the JRPP provided Mr Salter with numerous opportunities to be heard on the matter, deferred its decision with a view to ensuring it had appropriate evidence to support a decision, and took steps to ensure that there was enquiry into a key matter raised in submissions (ie. transport risk assessment).

2. Introduction & Scope of Review

- 2.1 This Report provides an independent review (**Review**) in relation to the process undertaken in obtaining a Quantitative Risk Assessment (**QRA**) for the proposed development of a Bunnings hardware and building supply centre (**Proposed Development**) at 140-148 Denison Street and 49 Smith Street, Hillsdale (**Development Site**).
- 2.2 The Proposed Development is described in development application (**DA**) no. 11/224, lodged with the City of Botany Bay Council (**Council**).

Background

- 2.3 DA11/224 was lodged on 2 November 2011. It was assessed by the Council and determined by the Sydney East Joint Regional Planning Panel (**JRPP**), which granted development consent on 1 April 2015.
- 2.4 The NSW Department of Planning and Environment (**Department**) had some involvement in the assessment of DA11/224, including in relation to the procurement of a QRA of Dangerous Goods Transport along Denison Street. An independent consultant, Scott Lister, prepared a report entitled "Dangerous Goods Transport QRA, Denison St, Hillsdale" dated 12 February 2015 on behalf of both the Department and the Council (**QRA Report**). An addendum to the QRA Report (**Addendum**) was subsequently prepared to address updated traffic flow data. Information subsequently included in the Addendum was provided to the JRPP before it made its decision. Scott Lister provided the Addendum to the Department on 18 May 2015.
- 2.5 The stated purpose of the QRA was to understand the level of risk associated with dangerous goods transport along Denison Street, in order to assist the evaluation of the Proposed Development and other future developments at sites along Denison Street. It concludes that the risks associated with dangerous goods transport on Denison Street satisfy the adopted risk criteria and should not present a barrier to the Proposed Development proceeding.
- 2.6 The key finding in the QRA Report was that the risks of the Proposed Development satisfy the risk criteria adopted in the QRA, which was based on the criteria set out in the Department's *Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning* (**Risk Criteria Advisory Paper**).
- 2.7 The JRPP had available to it the QRA Report and some of the supplementary advice which was subsequently formalised in the Addendum, in determining to grant development consent.

Scope and purpose of Review

- 2.8 Clayton Utz has been engaged by the Department on behalf of the Secretary of the Department to undertake the Review in relation to the process undertaken in obtaining the QRA for the Proposed Development.
- 2.9 The regulatory regime does not provide an objector or other third party right of merits appeal from the JRPP's determination in respect of the Proposed Development. Judicial review in respect of the determination is available in certain circumstances.
- 2.10 The Terms of Reference for the Review, which the Department provided on 19 June 2015, require an independent review of the following specific matters:
- (a) the legal basis for determination of DA11/224 and the Department's role in relation to DA11/224;
 - (b) the legal basis for the QRA;
 - (c) whether the preparation of the QRA was consistent with legal requirements;

- (d) whether the Department's involvement in the process of assessing DA 11/224 was consistent with the legal basis for its role; and
- (e) whether, in determining DA11/224, the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role.

2.11 The Terms of Reference for our Review are set out in Schedule 2.

Steps undertaken in Review

2.12 In undertaking the Review and preparing this Report, Clayton Utz:

- (a) met with the Department regarding the background to the Review;
- (b) reviewed:
 - (i) the documents provided by the Department from its file;
 - (ii) documents which the Department provided from the JRPP file, to the extent relevant for our brief; and
 - (iii) applicable NSW legislation, regulations, instruments guidelines and policies, studies and key NSW case law
 (a summary list of documents we reviewed is in Schedule 3); and
- (c) provided this Report dated 3 July 2015.

Qualifications

- 2.13 This Report provides a high level independent review on the matters set out in paragraph 2.9 above. The Review is subject to the following qualifications:
- (a) The Terms of Reference deal only with the Department's involvement in DA11/224 and the process of preparing the QRA. Accordingly, this Review does not cover the actions of the Council or the JRPP.
 - (b) Given the focus of the terms of the Review on legal matters, and the fact that DA11/224 has been determined, the Review involved an assessment of the documents described in Schedule 3 and did not extend to interviewing the JRPP, Departmental officers involved, other stakeholders or experts.

Glossary

- 2.14 A Glossary of key terms used in this Report is in Schedule 1.

3. The legal basis for determination of DA11/224 and the Department's role in relation to DA11/224

Nature of the Proposed Development and division of functions between the Council and the JRPP

- 3.1 According to the Council reports for the JRPP on the Proposed Development, the Proposed Development is permissible with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (**Planning Act**), given the operation of *Botany Local Environmental Plan 1995* (**1995 LEP**) and subsequently *Botany Local Environmental Plan 2013* (**2013 LEP**).
- 3.2 In addition, the Proposed Development is "regional development" under clause 20 of *State Environmental Planning Policy (State and Regional Development) 2011* (**SRD SEPP**) and clause 3 of Schedule 4A of the Planning Act as, according to the documents accompanying DA11/224, the capital investment value of the Proposed Development¹ exceeds \$20 million.
- 3.3 The JRPP exercises the functions of the Council as consent authority for determining DAs for regional development.² In exercising that function, it must make an independent evaluation and assessment of those DAs. However, the Council retains certain powers and functions, including for receipt and assessment of DAs³ and for undertaking consultation and requesting agency concurrence (if required) in respect of DAs⁴.

Determination of the DA

- 3.4 In considering the Proposed Development, the JRPP was required to take the matters listed in section 79C of the Planning Act into account. These matters are set out in Schedule 4.
- 3.5 The matters listed in section 79C include the provisions of:
- (a) any relevant environmental planning instrument, including local environmental plans (**LEPs**) such as the 1995 LEP and the 2013 LEP and State environmental planning policies (**SEPPs**) such as the SRD SEPP;
 - (b) any relevant development control plan (**DCP**), including:
 - (i) *Botany Bay Development Control Plan 2013* (**DCP 2013**);
 - (ii) *Botany / Randwick Industrial Area Land Use Safety Study, Development Control Plan No. 30*, February 2003 (**DCP No. 30**);
 - (iii) *Development Control Plan No. 24, Notification of Development Applications, Local Environmental Plans, Development Control Plans & Other Applications*, November 2001 (as amended) (**DCP No. 24**);
 - (iv) *Development Control Plan No. 33 - Industrial Development*, Version 5, February 2003 (**DCP No. 33**); and
 - (v) other relevant DCPs; and
 - (c) the *Environmental Planning and Assessment Regulation 2000* (**Planning Regulation**).

¹ See the definition of "capital investment value" in the *Environmental Planning and Assessment Regulation 2000*.

² clause 21(1) of the SRD SEPP and section 23G(2)(a) of the Planning Act.

³ clause 21(2)(e) of the SRD SEPP.

⁴ clause 21(2)(a) of the SRD SEPP and section 79B of the Planning Act.

- 3.6 The provisions of planning instruments (such as the 1995 LEP, the 2013 LEP and the SRD SEPP) and the Planning Regulation are legally binding on the consent authority, and so it must comply with their terms.
- 3.7 However, DCPs are not legally binding in the same way as planning instruments. Relevantly, they provide statements of policy guidance⁵. When appropriate, they must be given substantial weight in the development assessment process⁶. The actual weight given will depend on the subject matter of the DCP and the nature and extent of the development under consideration⁷.
- 3.8 Accordingly, there is room for discretion on the part of the Council (which retains the functions of assessment, consultation, requesting concurrence) in undertaking its role in relation to a DA, and for discretion on the part of the JRPP in determining the DA.
- 3.9 The matters listed in section 79C also include (among other things) the suitability of the Development Site for the Proposed Development, the likely impacts of the Proposed Development, submissions made by the public or other government agencies during the exhibition period, and the public interest. While the Courts have given some guidance over many years on the content and scope of these matters, the consideration of these matters is largely a matter of discretion for the decision-maker (in this case, the JRPP).

The role of the Department

- 3.10 The Department does not have a formal role in the assessment or determination of regional development under the provisions of the Planning Act. Its involvement, if any, would be as a Government agency.
- 3.11 There is nothing in the 1995 LEP, the 2013 LEP or the Planning Regulation which gives the Department any particular role with regard to the Proposed Development which would be relevant for the Review.
- 3.12 We have considered DCP 2013 as the relevant DCP which applied at the time of determining DA11/224. We have also considered DCP No. 30, DCP No. 24 and DCP No. 33 in more detail below, given that they have been raised in various correspondence relating to DA11/224 and were considered by the Council and JRPP.

DCP No. 30

- (a) City of Botany Bay, *Botany / Randwick Industrial Area Land Use Safety Study, Development Control Plan No. 30*, February 2003 (**DCP No. 30**) states (in clause 3) that it "applies to land within the Council of the City of Botany Bay identified on the plan marked:- 'City of Botany Bay development Control Plan - Consultation Regions - Future Case' ". The plan is Figure 1 in DCP No. 30.
- (b) The plan shows two adjoining areas marked as "Study Area" and "Consultation Region" and bounded by a thick black line. Denison Road is on the edge of the black line. The site of the Proposed Development is shown on the plan, but is located on the other side of Denison Road from the black line (and therefore outside the two marked areas).

⁵ See section 74BA(1) and section 74C of the Planning Act.

⁶ *Goyer v Pengilly* [2015] NSWLEC 54 citing *Zhang v Canterbury City Council* [2001] NSWCA 167.

⁷ *Warkworth Mining Ltd v Bulga Milbrodale Progress Association Inc* [2014] NSWCA 105.

- (c) It is not entirely clear whether DCP No. 30 is intended to apply only to land within those two highlighted areas or to the whole of the land shown on the plan. In our view, there is a reasonable argument that DCP No. 30 is intended to apply only to land within those two highlighted areas. This is supported by the fact that the designated plan has those areas marked, and one of them is labelled "Consultation Region". On that basis, there is a reasonable argument that DCP No. 30 would not apply to the Proposed Development. However, we have examined DCP No. 30 for the following reasons:
- (i) The recommendation in DCP No. 30 to obtain concurrence from the Department regarding hazards is more prescriptive than the corresponding requirement under DCP 2013. This is because DCP 2013 does not specify the Department's papers or guides as relevant documents. We therefore consider that the recommendations in DCP 2013 have been followed if the recommendations in DCP No. 30 were followed.
 - (ii) DCP No. 30 was raised in various correspondence relating to DA11/224 and was the applicable instrument at the time the DA was lodged.
 - (iii) DCP No. 30 was considered by the Council and the JRPP.
- (d) We note that clause 8 of DCP No. 30 states that *"where a site is considered by Council to be located partly within any region or adjacent to a dangerous goods route defined in this plan, any development on the site will be assessed and viewed as though it was located within the area with the more stringent risk-related development controls specified in this plan"*. This is relevant because the Development Site is adjacent to the part of Denison Street which DCP No. 30 designates as a Dangerous Goods Route.
- (e) Accordingly, we have analysed relevant parts of DCP No. 30 for the purposes of the Review in case DCP No. 30 is taken to have applied to the site of the Proposed Development.
- (f) Clause 7.2 of DCP No. 30 provides as follows:

"Council before granting consent to development applications for 'residential intensification', 'sensitive use intensification', and development that will result in increased traffic volumes or access points onto the designated Dangerous Goods Routes must:-

- *consider a transport risk assessment report. The contents and outcomes of a transport risk assessment report are to be in general accordance with the principles outlined in the Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis (Planning NSW, 1992), Hazardous Industry Advisory Paper N° 4: Risk Criteria for § Land Use Safety Planning (Planning NSW, 1992) and draft Route Selection Guidelines (Planning NSW, 1995).*

Note. The report is submitted to Planning NSW for consideration.

- *receive development concurrence for the application from Planning NSW in accordance with Clause 5.11 of Council's Notification of Development Applications - Development Control Plan No. 24."*

- (g) If DCP No. 30 applies to the Development Site, then clause 7.2 applies to the Proposed Development because the Proposed Development will result in increased traffic volumes or access points onto the designated Dangerous Goods Route along Denison Street.

- (h) The implications of this are that the Council (who retains the function of requesting concurrence) and the JRPP (as consent authority) is required to consider what DCP No. 30 says about obtaining the Department's concurrence to the Proposed Development and obtaining a transport risk assessment report.
- (i) The reference in DCP No. 30 to concurrence is potentially confusing. Section 79B of the Planning Act provides for the concurrence of a public authority but only when an environmental planning instrument requires concurrence. The Planning Act defines "environmental planning instrument" to include an LEP (such as the 1995 LEP and the 2013 LEP) and a SEPP (such as the SRD SEPP) but expressly **excludes DCPs**⁸.
- (j) This distinction is important because the regime for environmental planning instruments is very different from the regime for DCPs. For example:
 - (i) only the Governor can make a SEPP and only the Minister for Planning can make an LEP, while the Department and local councils can make DCPs⁹; and
 - (ii) the power to make a planning instrument includes a power to provide for concurrence¹⁰ but the power to make a DCP does not.
- (k) Consequently, in our view, the provision for the Department's concurrence in DCP No. 30 cannot be a legal requirement. At most, it could be a provision for the Council to consult with the Department and take the Department's comments into account. Even then, as we have stated earlier in this Report, the provisions of a DCP are not legally binding.
- (l) Similarly, the content requirement for a transport risk assessment report in clause 7.2 of DCP No. 30 cannot be legal requirements. At most, they could provide guidance for the preparation of such a report.
- (m) A Transport Risk Assessment was initially prepared by SKM dated 7 October 2011, and included with the application for DA11/224. An updated SKM Transport Risk Assessment Report was prepared and is dated September 2012. These reports are separate from the QRA Report which Scott Lister, an independent consultant, prepared.
- (n) It is clear that the Council gave extensive consideration to DCP No. 30. In addition, the Council requested the Department's "comments" or "review" and in a letter to the Department dated 13 January 2012 the Council indicated the matter was being referred to the Department "for assessment". However, we have not seen any formal request for concurrence.
- (o) In engaging with the Department in relation to obtaining a QRA to assess risk associated with dangerous goods transport along Denison Street, and given the Council's references to DCP No. 30, there is, in our view, a reasonable basis for saying that the Council considered the requirements of DCP No. 30 and did not require the formal concurrence of the Department.
- (p) We have also considered the QRA in light of the provision in DCP No. 30 for a transport risk assessment report. Consideration will be given to whether the process of preparing the QRA is in general accordance with the documents referred to in clause 7.2 of DCP No. 30 in part 5 of this Report.

⁸ See section 4 of the Planning Act.

⁹ See Part 3 of the Planning Act.

¹⁰ See section 30 of the Planning Act.

DCP No. 24

- (q) City of Botany Bay, Development Control Plan No. 24, Notification of Development Applications, Local Environmental Plans, Development Control Plans & Other Applications, November 2001 (as amended) (**DCP No. 24**) may be a relevant consideration in relation to the Proposed Development because the Proposed Development is within the area covered by the 1995 LEP.¹¹
- (r) Schedule 3 of DCP No. 24 provides a "guide" for the external notification requirements for DAs. Relevantly, the table in Schedule 3 suggests that "approvals, referrals and comments" from the Department may be required for:
- (i) development which is subject to *SEPP 33 – Hazardous and Offensive Development* – referral or preliminary hazard analysis; and
 - (ii) development which is affected by:
 - A. the Botany/Randwick Industrial Area Land Use Safety Study – 2001 (**Botany/Randwick Study**);
 - B. the Port Botany Land Use Safety Study Overview Report – 1996 (**Port Botany Report**);
 - C. DCP No. 30 – Botany/Randwick Industrial Area Land Use Safety Study; and
 - D. DCP No. 33 – Industrial Development (risk provisions).
- (s) SEPP 33 provides definitions of "potentially hazardous industry" and "offensive industry". In the guideline entitled *Applying SEPP 33* (January 2011), the Department has developed a checklist and a risk screening procedure to assist in determining whether SEPP 33 applies to a development proposal. We understand, based on the Department's letter to Council dated 29 February 2012, that the Department considers the quantities in the SEPP 33 would not be exceeded and SEPP 33 would therefore not apply to the Proposed Development. In letters dated 29 February 2012 and 12 October 2012 to Council, the Department advised that SEPP 33 includes trigger thresholds that must be reached before that SEPP becomes relevant. The Department considered SEPP 33 was not relevant because:
- (i) the quantities of potentially hazardous materials are below that which would trigger SEPP 33, referring to *Applying SEPP 33*, Table 3; and
 - (ii) the number of transport movements of those materials would cause the trigger thresholds in Table 2 of the *Applying SEPP 33* guideline to not be exceeded.
- At the time the Department provided this advice, it had been provided with the documents included in the original application for DA11/224. We have not seen anything to suggest the Council had a different view.
- (t) In addition, while the various studies identified in Schedule 3 of DCP No. 24 may provide for consultation with the Department, it is clear that the Department was consulted at various points during the DA process.

¹¹ We note that *Botany Bay Local Environmental Plan 2013* as gazetted on 21 June 2013 and entered into force on 21 June 2013.

DCP No. 33

- (u) Clause 1.2 of City of Botany Bay, *Development Control Plan No. 33 - Industrial Development*, Version 5, February 2003 (**DCP No. 33**) provides that DCP No. 33 applies to all development in the 4(a) Industrial zone. According to Council reports on DA11/224, the Development Site is zoned 4(a) Industrial, and DCP No. 33 is therefore a relevant consideration in the assessment of DA11/224 pursuant to section 79C of the Planning Act.
- (v) Map 1 of DCP No. 33 contained in clause 2.2 sets out various industrial precincts. We understand that the Development Site falls within the Botany Banksmeadow Industrial Precinct. Controls relating to that precinct are considered in further detail in clause 2.7 of DCP No. 33. The objective in clause 2.7(2) O7 is:

"To ensure that any risk to human health, property or the natural environment arising from the operation of the development is minimised and addressed."

- (w) Control 9 in clause 2.7(3) of DCP No. 33 provides that all applications are to address the risk issues outlined in clause 2.7(4). That clause notes that the Department has released various studies that investigate industrial operations and make land use planning recommendations. Page 55 of DCP No. 33 states that the Council will require a Risk Assessment Evaluation and a Transport Risk Assessment Report to accompany a DA such as DA11/224. However, nothing in DCP No. 33 provides that the Department will have any role in relation to those reports.

DCP 2013

- (x) The *Botany Bay Development Control Plan 2013* (**DCP 2013**) was adopted by the Council on 9 December 2013 and came into effect on 16 December 2013. Clause 1.4 of 2013 DCP 2013 provides that DCP 2013 applies to all land within the Botany Bay Local Government Area as identified in Figure 1 of DCP 2013 with the exception of selected sites. Those excepted sites do not appear to include the Proposed Development. Our interpretation of Figure 1 is that the Proposed Development is identified as being land to which DCP 2013 applies. DCP 2013 was also identified as a relevant matter under section 79C(1)(a) of the Planning Act in the Third Supplementary Report prepared by Council and in the JRPP's decision dated 1 April 2015.
- (y) DCP 2013 is intended to replace all earlier Council DCP's¹². On that bases, DCP No. 30, DCP No. 24 and DCP No. 33 would not apply to the Proposed Development. However, as indicated in paragraph 3.12 above, we have considered those DCPs because they were raised in various correspondence relating to DA11/224 and were considered by the Council and the JRPP.
- (z) The table set out in Part 2, Schedule 3 of DCP 2013 provides a guide for the external notification of development applications. That Table suggests that "approvals, referrals & comments" may be sought from the Department (Manager of Hazards Unit) for development "affected by the provisions of the Botany/Randwick Study; the Port Botany Report...". As a result, DCP 2013 recommended that Council should continue to seek comments from the Department. Unlike DCP No. 30, DCP 2013 does not specify the Department's papers or guides as relevant documents, although it might be assumed that the Department would apply its risk policies in providing any such comment.

¹² See DCP 2013 page 3.

Independent Review: DA 11/224 City of Botany Bay, Bunnings Development, Hillsdale

- (aa) We did not locate any provision in DCP 2013 which created any formal role for the Department with respect to the risk assessment of any possible hazard from the Proposed Development.

4. The legal basis for the QRA

- 4.1 The QRA constitutes part of the assessment of DA11/224 under section 79C of the Planning Act, having regard to DCP 2013 and DCP No. 30, and as a factor in the consideration of the suitability of the Development Site for the Proposed Development, submissions made by community members and the Department (as a government agency) and the public interest.
- 4.2 The background to the preparation of the QRA may be described as follows.
- 4.3 The Council and the JRPP each have the function of assessing DA11/224, and the Council retains the function of undertaking consultation and requesting concurrence if it is required.
- 4.4 As stated in part of this Report, section 79C of the Planning Act requires the Council to consider matters in assessing DA11/224 which include:
- (a) the provisions of environmental planning instruments, DCPs and the Planning Regulation;
 - (b) the likely impacts of the Proposed Development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
 - (c) the suitability of the Development Site for the Proposed Development;
 - (d) any submissions made; and
 - (e) the public interest.
- 4.5 DCP No. 30 provides for the Council to consider a transport risk assessment report.
- 4.6 The applicant for consent prepared and provided the Council with a Transport Risk Assessment report prepared by SKM dated 7 October 2011, when the applicant lodged DA11/224.
- 4.7 When DA11/224 was placed on public exhibition from 22 November 2011 to 21 December 2011, a number of submissions were received in relation to the risks presented by dangerous goods being transported along Denison Street. Following the end of the exhibition period, community members continued to raise concerns regarding these risks. The key issues initially raised by the community may be summarised as follows:
- (a) concerns regarding the underlying traffic forecast, particularly:
 - (i) in light of the anticipated employment generated;
 - (ii) with respect to peaks and troughs in traffic; and
 - (iii) in light of apparently contradicting traffic scenarios in the DA;
 - (b) concerns regarding the limited geographical scope of the study; and
 - (c) concerns generally regarding traffic safety.
- 4.8 In a letter from the Council to the Department dated 13 January 2012, the Council sought various comments from the Department regarding the risk of the Proposed Development. The letter states that the Council is referring the risk assessment report, plans and documents accompanying DA11/224 to the Department for assessment pursuant to the requirements of DCP No. 30. The Department replied by letter to the Council dated 29 February 2012. The Council and the Department then engaged in a series of correspondence about DA11/224, in which the Council would provide the Department with additional information or documents for review and comment. While the Department provided comments on several occasions during

the series of correspondence, the Department stated on some of those occasions that it has no formal, statutory role in the assessment or determination of DA11/224.

- 4.9 In its responses to the Council, the Department expressed the view that there appeared to be a low level of risk from the Proposed Development. The Department's letter to Council dated 19 November 2012 indicates that this view was based on the information provided to the Department. Information available to the Department at that time included the following:
- (a) the updated Transport Risk Assessment Report prepared by SKM for the Applicant and provided to the Department on 27 September 2012. That report took into account a Dangerous Goods Survey undertaken by Council's consultant, which had been provided separately to the Department beforehand. The Department was provided with an initial version of the Transport Risk Assessment Report with the Council's letter dated 13 January 2012;
 - (b) plans and documents accompanying the application in respect of DA11/224 (including the Statement of Environmental Effects appendices which considered risk, traffic and contamination) provided by the Council with its letter to the Department dated 13 January 2012;
 - (c) submissions regarding risk prepared by Huntsman Corporation Australia and provided by Council with its letter to the Department dated 18 July 2012; and
 - (d) various policy documents, studies and instruments including SEPP 33, *Applying SEPP 33* guideline and the Botany/Randwick Study.
- 4.10 The Department's comments and view, including in its letter to Council dated 21 August 2013, remained largely unchanged when the Council provided each of the following:
- (a) submissions from Huntsman Corporation Australia Pty Ltd dated 13 February 2012 which were provided to the Department by the Council on 18 July 2012 for comment. Those submissions requested that the Proposed Development incorporate measures to ensure that risks associated with dangerous goods and traffic in the area, specifically on Denison Street, are addressed;
 - (b) an updated Transport Risk Assessment Report which was provided by the Council with its letter to the Department dated 27 September 2012;
 - (c) a draft of the Bunnings Hillside Preliminary Risk Assessment prepared by SKM was provided to the Department by Council on 1 March 2013 (**PRA**);
 - (d) a review of the draft PRA conducted by Mr P Dryden of Dryden Consulting, whom the Council had engaged to provide it with expert risk advice which was provided to the Department on 4 April 2013. In particular, that review raised concerns that the preliminary risk review did not appear to recognise the potential for impacts of hazardous material incidents involving trucks using Denison Street. That review also criticised the applicant's preliminary risk assessment for failing to adequately address other risks relating to the Proposed Development, including risks from surrounding development (particularly the Botany Industrial Park (**BIP**)). The Department considered that issues for appropriate emergency planning for the Proposed Development could be addressed by an emergency plan in consultation with BIP and noted that the risk assessment for the BIP has been finalised; and
 - (e) the final version of the PRA provided to the Department by Council on 31 July 2013.
- 4.11 In a letter to the Department dated 27 August 2013, the Council raised concerns regarding transport safety and urged the need for a transport risk assessment considering risks imposed on lands from hazardous material transport together with the BIP imposed risk on a cumulative basis. Without such a consideration the Council indicated it, and the JRPP, would not be able to make an informed decision on the risk aspects of the Proposed Development.

- 4.12 The JRPP deferred its decision on determining DA11/224 at its meetings on 4 September 2013 and again on 6 November 2013, in each case requesting further information from the Council. While these requests did not relate to the assessment of risk, they gave the Council and the Department time to commission the QRA. The Council requested the JRPP to hold its determination of the DA in abeyance in light of the Council's and the Department's commitment to undertake the QRA.
- 4.13 In early 2014, the Council and the Department agreed to engage an independent, external consultant to review the risks and prepare a QRA. Scott Lister are indicated on the NSW Government's website¹³ as a pre-approved service provider under the NSW Government's *Pre-qualification scheme: Performance and Management Services* in the area of risk assessment and management for transports projects. The Scope of Works prepared by Scott Lister dated 10 January 2014, also states that:
- Scott Lister is a specialist Risk Management and Safety/Systems Engineering consultancy working primarily in high-risk industries such as oil & gas, chemical and transport sectors.*
- 4.14 The Code of Practice for Procurement prepared by the NSW Government dated 18 January 2005, outlines how the NSW Government will conduct its procurement activities when interacting with the private sector and provides as follows:
- No conflict of interest: A party with a potential conflict of interest will declare and address that interest as soon as the conflict is known to that party.*
- 4.15 The scope of the QRA was to prepare a quantified risk model of the risks of dangerous goods transport along Denison Street and evaluate the risks against risk criteria. It was based on a study of dangerous goods traffic levels in Denison Street commissioned by the Council and was undertaken with the benefit of a survey which had been carried out in June and July 2012 to determine the volume of dangerous goods traffic on Denison Street.
- 4.16 The survey had been carried out by a local committee comprising local residents and business representatives, as well as representatives of the Council. The Council reconvened that Committee before the QRA Report was prepared, and representatives of the Department and Scott Lister attended some of the committee's meetings.
- 4.17 Scott Lister presented its preliminary results of its QRA work to the committee on 30 June 2014. Subsequently, the Department received some submissions from committee members in relation to the preliminary QRA results. The Department stated in its letter to the Council dated 11 September 2014 that issues in those submissions "have been considered carefully and have been addressed in the draft QRA Report which will be circulated to Council and other Committee members shortly for comment".
- 4.18 A summary of the results of the QRA were published on the JRPP website on 17 July 2014 and a number of submissions were made to the Department. A draft QRA Report was issued in September 2014 and a Departmental briefing note to the Secretary dated 19 September 2014 states that "Scott Lister and the Department have reviewed the submissions and considered all relevant comments in preparing the draft QRA Report". The Department made a commitment at a preliminary results presentation made to Council and community representatives in 30 June 2014 to circulate the draft QRA Report for comment to the Council and the Council Committee members for a two week period in September 2014,
- 4.19 Following a presentation of the preliminary results of the QRA, the JRPP resolved in its meeting on 14 August 2014 to defer the determination of the DA until the final QRA Report was published.

¹³ <http://www.procurepoint.nsw.gov.au/before-you-buy/prequalification-schemes-0/performance-and-management-services-0>, "Information for buyers", "list of service providers".

- 4.20 In an email dated 24 November 2014 to the Department, Mr Salter provided comments on the draft QRA. Mr Salter sent further emails to the Department dated 25 November 2014, 4 December 2014 and 5 December 2014 concerning the draft QRA.
- 4.21 The Council's risk consultant, Mr Peter Dryden of Dryden Consulting provided a review of the draft QRA Report dated 25 November 2014 and further comments on the final QRA Report on 5 March 2015. With respect to the final report, Mr Dryden provided the following overview:
- "As indicated in my comments on the draft report, it was and is my view that the study has clearly been carried out in a competent and professional fashion and that the risk results thus appear to provide a broadly reliable input for progressing the consideration of the Bunnings development and other planning and development decisions. This is still my view. Most of the issues and aspects identified in my comments on the draft report have been satisfactorily clarified, although some could have been more clearly explained and justified in the final report."*
- 4.22 We consider further the review by Mr Dryden in part 5 of this Report.
- 4.23 After at least one further meeting of the committee and representatives from the Department and Scott Lister (on 3 December 2014), and further written comments from some committee members to the Department, Scott Lister finalised the QRA Report and issued it in final form on 12 February 2015.
- 4.24 Each time that the JRPP deferred determination of the DA during the DA assessment process, the JRPP requested the Council to prepare a supplementary report to the Council's original assessment report for further consideration by the JRPP. Each of the assessment reports prepared by the Council recommended refusal of DA11/224. The reasons for these recommendations generally related to the risks associated with the Proposed Development. It is clear from the JRPP minutes, in our view, that the JRPP considered each of these reports.
- 4.25 In the JRPP's reasons for its decision dated 1 April 2015, the JRPP noted that it considered the "Council Third Supplementary Assessment" report dated 25 March 2015. In that supplementary assessment report, Council noted that it received the "Final QRA Study" on 13 February 2015 (Issue 03 dated 12 February 2015) and a copy of that study (which was the QRA Report) was provided to the JRPP.
- 4.26 Data on dangerous goods traffic in the QRA Report came from three main sources as follows:
- (a) Appendices to the Sherpa Consulting, Confidential Appendices of the Quantified Risk Assessment, Main Report, Botany Industrial Park, NSW Department of Planning, 2012, documenting plant throughput and tanker deliveries;
 - (b) Roar, Survey of Dangerous Goods Traffic Denison St Hillsdale, June/July 2012; and
 - (c) consultation with Qenos, Huntsman and Orica, as occupiers of premises within the BIP, in March 2014.
- 4.27 In an email dated 16 March 2015 to various recipients including the JRPP and the Department, Mr Salter alleged that data relied upon in the QRA Report was flawed. Mr Salter also alleged that the conclusion in the QRA Report that there were 415 movements northbound was incorrect and that "the actual figure is more like 10 times this amount".
- 4.28 The Addendum states that, prior to the JRPP determining the application for the Proposed Development, the Department was made aware of a concern relating to the volume of "Class 2.1" traffic travelling north on Denison Street past the BIP which was associated with port activities. To address this concern which we understand was raised by Mr Salter, a "sensitivity analysis" was undertaken, as recorded in the Addendum, to calculate the contribution of revised Class 2.1 movements on the overall risk. On our reading of the Addendum, that analysis involved increasing Class 2.1 north bound through traffic from the bulk liquids port from 415 movements to 4,000 movements per year (being approximately 10 times the amount

originally estimated in the QRA Report) and re-calculating the overall risk.

- 4.29 In an email dated 24 March 2015 from the Department to the JRPP Secretariat, the Department provided the JRPP with a copy of Mr Salter's email dated 16 March 2015 and then stated that, if it could be assumed that LPG movements northbound on Denison Street were 10 times the number reported in the QRA Report, such an increase would not increase the overall risk above the Department's risk criteria for commercial development. This email advice appears consistent with the findings in the Addendum which states that "It is evident from Figure 1 that the 5 chances in a million per year (5E-6 yellow line) fatality contour does not encroach onto proposed Bunnings development site". That email was forwarded to the JRPP panel members on 30 March 2015. The Addendum also states at page 2 that the outcome of that analysis was provided to the JRPP prior to its determination of DA11/224.
- 4.30 Prior to sending the Department's email to the Secretariat dated 24 March 2015, the Department emailed Scott Lister on 23 March 2015. In that email the Department provided Scott Lister with a draft version of the email which the Department prepared to send to the Secretariat and asked Scott Lister for its comments. In particular, the Department asked Scott Lister whether the draft email was a fair representation on the relevant process and issues involved in addressing the comments from Mr Salter as outlined above. In an email dated 24 March 2014 to the Department (and before the Department emailed the Secretariat on that day) Scott Lister provided the Department with its revisions to the Department's draft email, including the following revised paragraph:
- In his latest e-mail of 16 March 2015 Mr Salter suggests that the LPG movements northbound on Denison Street are 10 times more than the reported number in the report. Although the reason for this claim is not clear, we would like to clarify that the risk contribution of the LPG movements on the overall risk at Bunnings site is such, that the proposed increase by Mr Salter on movements would not increase the overall risk above the risk criteria for commercial development, (i.e. above 5 chances in a million years).*
- 4.31 The email subsequently provided to the Secretariat on 24 March 2015 by the Department accords in substance with the revised text provided by Scott Lister earlier on that day. Further, we understand that the above revisions provided by Scott Lister also accord substantially with the conclusion in the Addendum.
- 4.32 In an email dated 20 February 2015, the Secretariat requested that a representative of the Department attend the determination meeting on 1 April 2015, in case there were any questions about the QRA Report. In an email dated 23 February 2015, the Department indicated to the Secretariat that it would be worthwhile if someone from Scott Lister also attended the JRPP determination meeting on 1 April 2015. In a further email dated 24 February 2015, the Secretariat agreed and indicated that the proposed attendance by Scott Lister would be "helpful". The Department then emailed the JRPP Secretariat on 25 February 2015, and provided contact details for a representative from Scott Lister.
- 4.33 The Department met with Scott Lister to prepare the Addendum on 15 April 2015.
- 4.34 The Addendum was provided to the Department by email from Scott Lister on 18 May 2015. The Department provided the Addendum to the JRPP and the Council on 18 May 2015.
- 4.35 The Addendum is styled as a document prepared by Scott Lister (when compared with the QRA Report itself), but it does not bear Scott Lister letterhead or specific author names. It is not entirely clear, on the face of the Addendum, who prepared it or what the date of the Addendum is. Given our comments earlier in this paragraph and in paragraph 4.34 below, however, it is reasonable to assume the Addendum was prepared by Scott Lister.
- 4.36 Although we have not seen documentary evidence that the Addendum was provided to the JRPP before it determined DA11/224, the Addendum itself notes that the outcome of the sensitivity analysis presented in the Addendum was provided to the JRPP prior to its determination of DA11/224 (see page 2 of the Addendum).

5. Whether the preparation of the QRA was consistent with legal requirements

Guidance for the QRA

- 5.1 Part 4 of this Report identifies the role of the QRA as informing the matters for consideration by the consent authority in assessing the Proposed Development. There are no strict legal requirements for the QRA.
- 5.2 It would be reasonable for the consent authority, in determining the weight to give to the QRA, to have regard to factors such as the independence (e.g. person who prepared the QRA), accuracy (e.g. treatment of data and results), completeness (e.g. comprehensiveness of matters covered), robustness (e.g. with regard to the underlying data on which reliance was placed) and relevance (e.g. to the site of the Proposed Development) of the QRA.
- 5.3 Further guidance, but not mandatory legal requirements, is found in the following Departmental papers and guidelines. We note that each of these is referred to in clause 7.2 of DCP No. 30.

Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning, Planning NSW, 1992 (current version dated January 2011) (**Risk Criteria Advisory Paper**)

- (a) Key relevant guidance on risk assessment from the Risk Criteria Advisory Paper includes the following:
- (i) The Risk Criteria Advisory Paper recognises that *"the tolerability or acceptability of risk is influenced by factors over and above the physical magnitude of that risk. While risk criteria need to have a sound technical basis, they must take serious account of community concerns."*

There are two dimensions of risk which should be considered separately, individual and societal"
 - (ii) The suggested risk assessment criteria in the Risk Criteria Advisory Paper are relevant when assessing the land use safety implications of industrial development of a potentially hazardous nature but are also relevant and applicable to the consideration of land use planning and development in the vicinity of potentially hazardous facilities.
 - (iii) **Individual Fatality Risk:** The Proposed Development is a Bunnings retail centre. For the purpose of the Risk Criteria Advisory Paper categories, it is a commercial development. The individual fatality risk criterion for commercial developments including retail centres, offices and entertainment centres is 5 in a million per year (see table 4 in section 2.5.2.2 of the Risk Criteria Advisory Paper).
 - (iv) **Individual Injury Risk:** Possible injury and irritation impacts should also be considered for proposed development for residential and sensitive uses. This does not apply to the Proposed Development (see section 2.5.2 of the Risk Criteria Advisory Paper).
 - (v) **Societal Risk:** Societal risk in the context of development proposed in the vicinity of a potentially hazardous facility is relevant where the proposed development involves a significant intensification of population in the vicinity of the facility. The examples provided by the Risk Criteria Advisory Paper are high density residential development, sporting facilities with large numbers of spectators and shopping complexes.

Hazardous Industry Advisory Paper N° 6: Guidelines for Hazard Analysis, Planning NSW, 1992 (current version dated January 2011) (**Hazard Analysis Guidelines**)

- (b) The Hazard Analysis Guidelines describe the type of information to be included in a hazard analysis when assessing development proposals for potentially hazardous development. While the Proposed Development is not a development of this kind and so the Hazardous Analysis Guidelines do not apply to the Proposed Development, the Hazardous Analysis Guidelines can be used to provide general guidance on the preparation of the QRA. Some of the key features noted by the Hazard Analysis Guidelines include the following:
- (i) The objective of hazard analysis is to develop a comprehensive understanding of the hazards and risks associated with an operation or facility and the adequacy of safeguards.
 - (ii) The hazard analysis process may encompass qualitative and quantitative methods, but neither should be pursued for its own sake.
 - (iii) Hazard analysis should be based on the following principles:
 - A. it should be comprehensive, holistic and systematic;
 - B. it should be qualitative, quantitative and site-specific;
 - C. it should be complementary to other safety studies;
 - D. it should use consistent and well-documented methods and data;
 - E. it should review adequacy of safeguards; and
 - F. it should utilise all opportunities for risk reduction.
 - (iv) The main elements of hazard analysis are:
 - A. identification of the nature and scale of all hazards at the facility, and the selection of representative incident scenarios;
 - B. analysis of the consequences of these incidents on people, property and the biophysical environment;
 - C. evaluation of the likelihood of such events occurring and the adequacy of safeguards;
 - D. calculation of the resulting risk levels of the facility; and
 - E. comparison of these risk levels with established risk criteria and an identification of opportunities for risk reduction.

Draft Route Selection Guidelines, Planning NSW, 1995 (current version being *Hazardous Industry Planning Advisory Paper N° 11: Route Selection*, Planning, January 2011) (**Route Selection Guidelines**)

- (c) These guidelines provide an overall integrated framework for the assessment of road transport routes for the transportation of hazardous materials. Where a development involves the transport of significant volumes of dangerous goods and/or hazardous materials, there may be a need to select preferred transport routes from a number of possible alternatives. Since we understand the Proposed Development does not involve the transportation of significant volumes of dangerous goods or hazardous materials, the Route Selection Guidelines do not apply, but they might be used to provide general guidance on the preparation of the QRA.

- 5.4 We have reviewed the January 2011 version of each of these Guidelines, as we understand this is the current version and the version which would be relevant for preparing the QRA. DCP No. 30 was not updated to reflect these versions.

Review of QRA process against preferred criteria

- 5.5 We have reviewed the QRA process against a series of preferred criteria for the preparation of the QRA, based on the guidance matters set out in paragraph 5.2 above, in the absence of any express legal requirements. In our view, the QRA process addresses those preferred criteria.
- 5.6 The table below includes each of the preferred criteria we have identified and a comment against each of those criteria following our review of the QRA process. This analysis is not intended to provide any review or comment on the merits of the QRA.

	Preferred Criteria	QRA process undertaken
(a)	Independence, accuracy, completeness, robustness and relevance	<p>The QRA was commissioned by the Department and the Council. It was prepared by a third party (not internal officers) and was funded by the Department and the Council jointly.</p> <p>The QRA relates specifically to the Proposed Development and the risk resulting from transport of dangerous goods along Denison Street, adjoining the Proposed Development. Its purpose, as identified in the QRA Report, is to:</p> <ul style="list-style-type: none"> • understand the level of risk associated with dangerous goods transport on Denison Street to inform determinations of the Proposed Development as well as other potential future developments around the BIP; and • respond to any potential concern that the number of people attracted to the area by the Proposed Development could result in unacceptable levels of risk due to the volume of dangerous goods traffic. <p>The QRA Report addresses its stated purpose by analysing the risks identified in the Risk Criteria Advisory Paper (see below) which could reasonably be applied to the Proposed Development, and concludes that the risks satisfy the adopted risk criteria.</p> <p>The QRA Report was reviewed by the Council's risk consultant, Mr P Dryden of Dryden Consulting at both a draft and a final report stage. Mr Dryden concluded that the QRA was carried out in a competent and professional fashion and the risk results appear to provide a broadly reliable input for progressing the consideration of the Proposed Development. The report prepared by Mr Dryden dated 5 March 2015 conducted a form of peer review of the QRA Report. That review included a critique of the QRA's underlying data sources and compared conclusions made in the report against risk analysis criteria.</p> <p>The Addendum was prepared to address concern which a member of the public raised in relation to</p>

	Preferred Criteria	QRA process undertaken
		the data used to inform the QRA. The Addendum provides a revised analysis having regard to those traffic movement data.
(b)	<p>Prepared consistently with the Risk Criteria Advisory Paper:</p> <ul style="list-style-type: none"> consideration of individual fatality risk (which is 5 in a million chances per year for commercial developments); and consideration of individual and societal risk; and takes "serious account" of community concerns. 	<p>In our view, the QRA was prepared with regard to the risk criteria set out in the Risk Criteria Advisory Paper.</p> <p>The risk analysis in section 2.4 of the QRA Report has regard to both individual fatality risk contours and societal risk curves.</p> <p>The highest results for both the 2012 worst case scenario and the 2014 scenario was 3.4 chances in a million per year which, in our view, is less than the individual fatality risk criteria of 5 chances in a million per year for commercial development (section 3.1.2 of the QRA Report).</p> <p>In relation to societal risk, the QRA Report concludes that the results for the 2014 current case showed the Proposed Development as falling entirely within the "negligible risk" zone and therefore the Proposed Development should not be precluded based on increased societal risk (section 3.1.3 of the QRA Report). If future proposed developments are considered, the societal risk is within the ALARP ("as low as reasonably practicable") region. This indicates a conclusion in the QRA that the movement of dangerous goods along Denison Street is acceptable provided that all reasonably practicable risk reduction measures have been implemented (section 3.1.4 of the QRA Report).</p> <p>The QRA was prepared in consultation with the local community. The key features of this approach included:</p> <ul style="list-style-type: none"> re-establishment of a local consultative committee on dangerous goods transport risk, for the purpose of several consultation meetings with the Department, the Council and the author of the QRA Report; providing a period of public consultation for the QRA preliminary results and consideration of submissions made during that period; circulating the draft QRA, including to members of the public, for comment; and holding three community meetings to discuss the QRA; <p>The Addendum was prepared in direct response to concerns expressed by a member of the public after the QRA Report had been finalised.</p> <p>The revised analysis included in the Addendum confirmed that the original conclusions in the QRA Report remain valid.</p>

	Preferred Criteria	QRA process undertaken
(c)	<p>Prepared consistently with the main elements of the Hazard Analysis Guidelines:</p> <ul style="list-style-type: none"> • identification of the nature and scale of all hazards at the facility, and the selection of representative incident scenarios; • analysis of the consequences of these incidents on people, property and the biophysical environment; • evaluation of the likelihood of such events occurring and the adequacy of safeguards; • calculation of the resulting risk levels of the facility; and • comparison of these risk levels with established risk criteria and identification of opportunities for risk reduction. 	<p>The Hazard Analysis Guidelines are only indirectly relevant. In our view, they are intended to apply to a comprehensive assessment of risk at a hazardous facility, which the Proposed Development is not.</p> <p>However, we offer the following comments on the preparation of the QRA with regard to the main elements identified in the Hazard Analysis Guidelines.</p> <ul style="list-style-type: none"> • The QRA was undertaken by creating a quantified risk model of the risks from dangerous goods transport in Denison Street. • The QRA is intended to be a quantitative analysis only, and not qualitative. It is clear from the consultant engagement documents on the Department's File that the QRA was intended to be a quantitative assessment. Qualitative assessment was addressed separately, through the consideration of an extensive set of submissions received over a lengthy period of time and the overall assessment of the risks associated with the Proposed Development. In this regard, we note that the Department, from its preliminary review of relevant materials and consistently throughout the DA assessment process, expressed the view that the Proposed Development poses very low levels of risk, which is an element of the qualitative risk assessment which the Hazard Analysis Guidelines propose. • Section 2.1 of the QRA Report deals with hazard identification. This includes identification of hazards and how they could eventuate (possible scenarios). The Addendum introduction and section 1.1.1 then considered information which, if correct, would influence the scale of the hazard. • Section 3.1.3 of the QRA analyses the consequences of hazards on societal risk. Sections 1.1.3 and 1.1.4 of the Addendum also considers societal risk. • Section 2.2 of the QRA Report provides a frequency analysis, part of the evaluation of the likelihood of hazards occurring. The Addendum in section 1.1.1 then provided an updated evaluation on the likelihood of incidents occurring based on Mr Salter's assumed data. • Section 2.3 of the QRA Report provides a consequence analysis. The consequence of hazards with regard to their potential to cause fatality are assessed. An assessment of this nature was also conducted in section 1.1.1

	Preferred Criteria	QRA process undertaken
		<p>the Addendum.</p> <ul style="list-style-type: none"> • Section 2.4 of the QRA Report provides a risk analysis using quantitative methods. The Addendum also adopts a quantitative approach. • Section 2.5 of the QRA Report evaluates the risks against the criteria in the Risk Criteria Advisory Paper. It notes that there is no specific risk criterion available for transport of dangerous goods. • Recommendations (ie. opportunities for risk reduction) are made in section 5 of the QRA Report and no additional recommendations are made in section 1.2 of the Addendum.

6. Whether the Department's involvement in the process of assessing DA11/224 was consistent with the legal basis for its role

- 6.1 As noted above, the Department did not have a formal role in the assessment of the DA and was not legally required to procure, review or provide guidance on the QRA.
- 6.2 The table below describes the particular elements of the Department's involvement in the QRA process that are relevant to consider in this Review and addresses this involvement from a legal perspective.

	Department's involvement	Review
(a)	<p>involvement of the Department in the assessment of the DA before the commissioning of the QRA</p> <p>The Council's letter dated 13 January 2012 states that it is referring the risk assessment report, plans and documents accompanying the DA to the Department for assessment pursuant to the requirements of DCP No. 30. In a letter dated 13 January 2012 from Council, the Department was provided with an initial version of the Transport Risk Assessment Report.</p> <p>The Department reviewed the relevant documents and responded with comments by letter dated 29 February 2012.</p> <p>The Council provided to the Department a submission from Huntsman Corporation dated 13 February 2012. That submission raised concerns about increased traffic on Denison Street. The Department replied in a letter dated 31 July 2012 to Council to the effect that it had no additional comments.</p> <p>The Council provided the Department with further documents in July 2012 and an updated Transport Risk Assessment Report (the SKM Report) in September 2012. The Department stated, following its reviews of those documents, that its view was unchanged.</p> <p>In letter dated 8 November 2012 the Council requested assistance from the Department on the need for a cumulative risk assessment. The Department replied by letter on 19 November 2012 indicating that it was not aware of any information that would warrant a cumulative risk study.</p> <p>In its various responses to the Council, the Department expressed the view that there appeared to be a low level of risk</p>	<p>Given our comments above that we consider compliance with the requirements of DCPs is discretionary, rather than mandatory, and the appropriate course will depend on the circumstances, the Department's involvement in the assessment of the DA can be considered to be consistent with DCP No. 30 because the Department reviewed and provided comments on hazard risk analysis impacting and arising from the Proposed Development on a number of occasions.</p> <p>In our view, the Department's comments (see e.g. its letter dated 21 August 2013) address both individual risk and societal risk in line with the Risk Criteria Advisory Paper referred to above.</p> <p>The Council had concerns with regard to the risk assessment undertaken by the applicant in the SKM Report and considered that the applicant had not provided sufficient information, as noted in the Council's report to the JRPP dated on or around August 2013 recommending refusal of the DA. Given the Council's continued concerns, it seems to us to be a reasonable course that the Council and the Department commissioned the QRA.</p>

	Department's involvement	Review
	<p>from the Proposed Development, particularly because the Department considered that SEPP 33 did not apply.</p> <p>A draft PRA prepared by SKM was provided to the Department by Council on 1 March 2013.</p> <p>Mr Dryden's review of the draft PRA was provided to the Department on 4 April 2013.</p> <p>The Department confirmed its view on 24 April 2013 that the Proposed Development would comply with the risk criteria adopted in NSW and that issues raised could be addressed by an emergency plan in consultation with BIP.</p> <p>The final version of the PRA was provided to the Department by Council on 31 July 2013. The Department provided further comments by letter dated 21 August 2013 generally confirming its prior advice.</p> <p>By letter dated 18 October 2013, the Department reiterated its view that the Proposed Development does not significantly intensify the risk to the surrounding land uses and neither the BIP nor dangerous goods traffic along Denison Street pose an unacceptable risk to the Proposed Development.</p> <p>The Council reconvened a local committee comprising local residents and business representatives, as well as representatives of the Council before the QRA Report was prepared. Representatives of the Department and Scott Lister attended some of the committee's meetings.</p> <p>WorkCover sent the Department, by email dated 13 December 2013 for the Department's information, some correspondence from Mr Salter regarding risk levels that Mr Salter said would trigger a formal risk reduction program.</p>	
(b)	<p>Commissioning the QRA</p> <p>In early 2014, the Council and the Department agreed to engage an independent, external consultant to review the risks and prepare a QRA.</p> <p>In January 2014, the Department and the Council resolved to engage an independent consultant to undertake the QRA.</p> <p>Scott Lister provided a proposal to the Department dated 10 January 2014. The</p>	<p>We have not identified any document or information to give rise to any concerns with regard to the commissioning of Scott Lister to prepare the QRA.</p>

	Department's involvement	Review
	<p>proposal included a description of the scope of services, a schedule, fixed price cost and curriculum vitae for relevant personnel.</p> <p>The Council endorsed Scott Lister on 23 January 2014 and the Department confirmed its acceptance on 2 February 2014.</p> <p>On 21 February 2014, Council wrote to the Department attaching submissions made by P Dryden (at Council's request), Mr Salter and Mr Lewis-Jones regarding the QRA.</p> <p>The Department raised a Request for Services (RfS) dated 3 March 2014.</p> <p>On 21 February 2014, Mr Salter emailed the Council (with a copy to the Department) setting out his views on suggested reference materials for the QRA cumulative risk calculation.</p>	
(c)	<p>Reviewing the draft QRA Report</p> <p>The RfS included, in the description of services, a statement that Scott Lister was to produce a draft study report for the Department's comments and incorporate those comments in the final study report.</p> <p>Scott Lister presented its preliminary results of its QRA work to the committee on 30 June 2014. Subsequently, the Department received some submissions from committee members in relation to the preliminary QRA results.</p> <p>In an email dated 10 September 2014 the Department responded to Mr Salter by providing advice on the regulation of dangerous goods in NSW. Mr Salter then sent further queries to the Department on 10 September 2014 generally regarding the conveyance of dangerous goods along Denison Road.</p> <p>The Department stated in its letter to the Council dated 11 September 2014 that issues in the submissions "have been considered carefully and have been addressed in the draft QRA Report which will be circulated to Council and other Committee members shortly for comment".</p> <p>A draft QRA Report was issued in September 2014.</p> <p>A Departmental briefing note to the Secretary dated 19 September 2014 states that "Scott Lister and the</p>	<p>Although the RfS included only a requirement that Scott Lister incorporate the Department's comments on the draft QRA Report, in practice there was a significant process of community consultation (in which Scott Lister was involved) as well as review of the draft QRA Report by the Council, the Council's risk consultant and Mr Salter.</p> <p>Through community involvement, review by Departmental officers and the Council's risk consultant, Mr Dryden, and community meetings referred to below we consider the review process for the QRA could be viewed as extensive. The final QRA Report and the Addendum take into account a broader range of comments than just comments by the Department.</p> <p>In our view, the Department enabled a wide ranging opportunity for comment on the QRA process and the draft QRA Report. The Department also accepted community comment on the final QRA Report and the Addendum was prepared as a result.</p>

Department's involvement	Review
<p>Department have reviewed the submissions and considered all relevant comments in preparing the draft QRA Report".</p> <p>In September 2014 the draft QRA Report was circulated for comment and a number of submissions were made to the Department.</p> <p>The Council collated public submissions, including submissions from Mr Salter and P Dryden, and provided these to the Department on 17 December 2014.</p> <p>The Council wrote to the Department by letter on 20 March 2015. Among other things, the Council noted that Mr Dryden's review of the QRA Report commented that the QRA Report is based on current levels and mix of dangerous goods but this could change in the future and consequently, there could be increase in risk levels at the Proposed Development which would mean that the relevant land use safety criteria were no longer satisfied.</p> <p>In an email to Scott Lister dated 23 March 2015, the Department provided Scott Lister with an excerpt from a draft email to the JRPP. The excerpt reviewed by Scott Lister was in relation to an assertion by Mr Salter that actual northbound traffic would be about 10 times the amount estimated in the QRA Report. Scott Lister provided its revisions to the Department's draft email to the JRPP on 24 March 2015. The Department then used portions of the Scott Lister revised text in its email to the JRPP dated 24 March 2015. Further information relating to the text revised by Scott Lister is set out in paragraphs 4.29 to 4.31 of this Report.</p> <p>Various email exchanges between the Department and the Secretariat in late February 2015 indicate that a representative from Scott Lister was scheduled to attend the JRPP meeting on 1 April 2015. The Addendum was prepared after concerns were expressed by Mr Salter that some of the traffic data which had been used in the QRA did not incorporate all relevant dangerous goods traffic movements. The Department met with Scott Lister on 15 April 2015 regarding the formal preparation of a written addendum to the QRA.</p> <p>On 18 May 2015 Scott Lister provided the</p>	

	Department's involvement	Review
	Department with the Addendum.	
(d)	<p>Arranging consultation with the community in relation to the QRA, including arranging meetings with the community and Scott Lister</p> <p>The Department and the Council resolved to reconvene a community committee to keep key stakeholders up to date with the progress of the QRA before the QRA was prepared.</p> <p>On 19 February 2014, Council and the Department met with the community and other stakeholders on the QRA.</p> <p>The Department confirmed that it has no statutory role in the assessment or determination of the Proposed Development in letter its letter to Council dated 2 February 2015.</p> <p>On 30 June 2014 a Departmental representative assisted Scott Lister in the presentation of the preliminary findings of the QRA by Scott Lister to the community committee.</p> <p>The Department organised a meeting between Scott Lister and the community to respond to the community submissions on 3 December 2014.</p> <p>See also (a), (b) and (c) directly above and (f) below regarding further consultation with the community in relation to the QRA.</p>	<p>Although the Council retained the responsibility for community consultation and the assessment of the DA, as the Department jointly commissioned the QRA with the Council, we consider that it was appropriate that the Department be involved in community consultation in relation to the QRA.</p>
(e)	<p>Interaction with the JRPP</p> <p>The Department wrote to the JRPP by letter dated 16 July 2014 stating its view that the preliminary results of the QRA provide an adequate level of technical information to enable the JRPP to determine the DA in relation to risk for the Proposed Development. With that letter, the Department provided a summary of the preliminary results of the QRA.</p> <p>On 23 October 2013, the Department forwarded the JRPP a submission made by Mr Salter regarding risk assessment.</p> <p>On 20 March 2014, the Department informed the JRPP that, due to extensive stakeholder consultation, the QRA Report will be delayed. In that letter the Department confirmed that it is the Department's view that the preliminary findings of the QRA should provide an adequate level of technical information to</p>	<p>In our view, the Department's interaction with the JRPP was consistent with its informal, advisory role in relation to risk issues.</p>

Department's involvement	Review
<p>enable the JRPP to determine DA11/224.</p> <p>Following consultation with the Council and by letter dated 16 July 2014 the Department informed the JRPP of the preliminary results of the QRA study and provided the JRPP with a copy of the presentation which Scott Lister had made on 30 June 2014. In that letter the Department advised the JRPP that it is the Department's view that the preliminary results of the Scott Lister study provide an adequate level of technical information to enable the JRPP to determine the application in relation to the proposed risk of the Bunnings Development (i.e. DA11/224). Scott Lister and Departmental representatives presented the preliminary results of the QRA to the JRPP on 22 July 2014.</p> <p>In an email to the Department from the JRPP dated 17 February 2015, the JRPP asked the Department whether the Department had any issue with the QRA Report being published. In an email to the JRPP dated 16 February 2015 the Department did not object to publication and indicated to the JRPP Secretariat that it was not the Department's intention to have the QRA Report published. We did not locate any page on the Department's website relating to DA11/224 that we consider would be appropriate for such publication. Further, we consider that it was more appropriate that the report be published on the JRPP or Council's website, if at all, given their formal and extensive roles in the assessment and determination process, and the Department's less formal and limited role in the assessment process.</p> <p>The Department also wrote directly to the JRPP on 24 March 2015, responding to Mr Salter's submission to the JRPP. In that email the Department advised the JRPP that, if it could be assumed that LPG movements northbound on Denison Street were 10 times the number reported in the QRA Report, such an increase would not increase the overall risk above the Department's risk criterion for commercial development. Information relating to Scott Lister's involvement in the preparation of that advice is set out in paragraphs 4.29 to 4.31 of this Report. We understand that this email advice is consistent with the findings in the Addendum.</p>	

	Department's involvement	Review
	Various email exchanges between the Department and the Secretariat in late February 2015 indicate that a representative from Scott Lister was scheduled to attend the JRPP meeting on 1 April 2015.	
(f)	<p>Responses to questions raised by Mr Salter (community member)</p> <p>Mr Salter emailed the Department on numerous occasions, particularly between September to December 2014.</p> <p>By email dated 10 September 2014 the Department responded to Mr Salter by providing advice on the regulation of dangerous goods in NSW.</p> <p>In an email dated 24 November 2014 to the Department, Mr Salter alleged that the Department refused a meeting with Mr Salter in late November 2014 to discuss the draft QRA Report. We did not locate any record on the Department's File indicating that such meeting was requested or refused or that such a meeting took place, apart from this email.</p> <p>During the course of the preparation of the QRA Report, the Department met with representatives of the community, including Mr Salter, at public meetings on 30 June 2014, 6 November 2014 and 3 December 2014. The primary purpose of the meeting held on 3 December 2014 was to address Mr Salter's questions and those from other members of a committee which the Council had reconvened (after a data collection exercise in 2012) to inform community members about the risk assessment for the Proposed Development.</p> <p>In an email dated 24 November 2014 to the Department, Mr Salter provided comments on the draft QRA. Mr Salter sent further emails dated 25 November 2014, 4 December 2014 and 5 December 2014 concerning the draft QRA.</p> <p>By email on about 4 December 2014, the Department provided copies of the meeting minutes to Mr Salter. In an email dated 11 December 2014 the Department indicated it did not see the need to update the minutes as per Mr Salter's request.</p> <p>The Department responded in writing on 10 December 2014 to various questions raised by Mr Salter at the meeting on 3 December 2014 and in numerous emails</p>	The Department's responses to Mr Salter seek to address queries and comments raised by Mr Salter. They form part of general community consultation and the guidance role played by the Department in relation to assessment of risk associated with the Proposed Development.

	Department's involvement	Review
	<p>sent to the Department.</p> <p>The Department provided a response to the technical questions raised by Mr Salter on 11 December 2014.</p> <p>In an email dated 11 December 2014 to Mr Salter, the Department provided reasons for not publishing guidelines for determining acceptable levels of personal injury risk and confirmed that with respect to the QRA injury risk was not analysed or assessed for the reasons set out in the meeting dated 3 December 2014 and Department's written response dated 10 December 2014.</p> <p>On 19 May 2015, Department provided responses to questions raised by Mr Salter during his meeting with the Office of the Minister for Planning.</p> <p>Further contact the Department had with Mr Salter is also included in (a), (b) and (c) directly above.</p>	

7. Whether, in determining DA11/224, the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role

7.1 Determining whether the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role requires us to consider:

- (a) firstly, what the JRPP's role with respect to submissions was (Part A below); and
- (b) secondly, whether the JRPP acted in accordance with that role (Part B below).

Part A: The JRPP's role with respect to submissions

7.2 As indicated in part 3 of this Report, the JRPP exercised the functions of the Council as consent authority for determining DA11/224, however, the Council retained certain powers and functions, including the assessment of the Proposed Development and undertaking consultation. Relevantly, with respect to submissions it was the JRPP's function to:

- (a) to take into account relevant considerations; and
- (b) to follow the rules of procedural fairness.

7.3 Submissions made by community members may be relevant considerations which the JRPP needs to take into account. In particular, under section 79C of the Planning Act, a submission by a community member will need to be taken into account if, for example:

- (a) it is a submission made in accordance with the Planning Act and Planning Regulations;
- (b) it is relevant to a matter of public interest; or
- (c) the submission is a relevant consideration under any environmental planning instrument.

Submissions as a relevant consideration

7.4 Under section 79C(1)(d), the JRPP was required to take into account any submissions made in accordance with the Planning Act or the Planning Regulation. Under section 79A(1) of the Planning Act and clause 91 of the Planning Regulation, during the relevant submission period for a DA, any person may:

- (a) inspect the DA and any accompanying information; and
- (b) make written submissions to the consent authority with respect to the DA.

A submission by way of objection must set out the grounds of the objection.

7.5 In our view, a communication made by a community member must satisfy the following requirements in order to constitute a submission to which the JRPP must have regard under section 79C(1)(d) of the Planning Act:

- (a) it must be written;
- (b) it must be provided to the consent authority with respect to DA11/224;
- (c) it must set out the grounds of the objection; and

- (d) it must be made within the relevant submission period, which is the submission period specified for DA11/224 in the notice referred to in clause 89(1) of the Planning Regulation.

- 7.6 Accordingly, not all communications made by community members constitute submissions that are relevant considerations for the JRPP to take into account under section 79C(1)(d) of the Planning Act. In particular, queries or requests for further information by community members, by themselves, and communications made outside the submission period may not constitute such submissions.

Matters of public interest raised as a relevant consideration

- 7.7 In determining DA11/224, the JRPP was required to take the public interest into account under section 79C(1)(e) of the Planning Act. The public interest may include community responses to adverse effects of a development proposal where those responses reflect more than unjustified fear or concern and where they are based on logically probative evidence.¹⁴
- 7.8 In taking into account matters of public interest, the decision-making process will be relevant. The JRPP must have acted reasonably and there must have been adequate material considered by the JRPP to ensure that the discretionary power vested in it had been properly exercised.¹⁵ To some extent, this overlaps with the requirement to take into account public submissions under section 79C(1)(d), as discussed above.
- 7.9 In our view, the public interest consideration is not confined to public submissions which are made formally under the Planning Act and are required to be considered as a result of section 79C(1)(d), but instead it refers to community responses in other contexts as well. In this regard, informal issues raised by community members have the potential to raise relevant public interest considerations which the JRPP was required to take into account.
- 7.10 However, the requirement to take into account submissions as part of the public interest has limits.¹⁶ It does not impose an endless obligation to take into account all submissions, whenever and however they are made. The "public interest" has many elements, including an interest in the finality of decision-making. Consequently, at some reasonable point in the process of considering DA11/224, the JRPP would need to make a determination of DA11/224 and, for this purpose, the JRPP would need to end the time for receiving submissions. This is not inconsistent with the requirement for procedural fairness, which we have addressed below.

Requirements under SDR SEPP as a relevant consideration

- 7.11 Section 79C(1)(a)(i) mandates that relevant environmental planning instruments be considered by the JRPP in determining DA11/224. This will include the SRD SEPP which sets out the functions to be exercised by the JRPP. We did not locate any provision in the SRD SEPP which requires the JRPP to consider submissions made to the JRPP or Council by community members.

Procedural fairness

- 7.12 In making the decision with respect to DA11/224, the JRPP was required to afford procedural fairness. Following the rules of procedural fairness in the context of determining DA11/224 essentially involves not making a decision on a matter until persons with a legitimate expectation to be heard in relation to the matter have, in fact, been heard.¹⁷

¹⁴ *Bulga Milbrodale Progress Association Inc v. Minister for Planning and Infrastructure and Warkworth Mining Limited* [2013] NSWLEC 48 - regarding concerns on amenity.

¹⁵ *Parramatta CC v Hale* (1982) 47 LGRA 319 - considering former section 90.

¹⁶ *Parramatta CC v Hale* (1982) 47 LGRA 319 - generally setting out the test for whether a consent authority gave proper consideration.

¹⁷ *Kioa v West* (1985) 159 CLR 550.

- 7.13 The rules of procedural fairness generally require a fair hearing of a person's comments or position (if appropriate in the circumstances), lack of bias, evidence to support a decision and inquiry into matters in dispute. Relevantly, this duty does not attach to every decision of an administrative character.
- 7.14 The duty to afford procedural fairness has no fixed content and will depend upon the particular circumstances of each case.¹⁸ In particular, the nature of the duty to afford procedural fairness will depend on the statutory framework under which the administrative decision was made. Accordingly, since there is no requirement in the Planning Act or Planning Regulation requiring a consent authority to engage in correspondence with a person making submissions, we consider a failure to do so is not, therefore, a denial of procedural fairness.

Other functions or obligations on the JRPP relevant to the consideration of submissions by community members

- 7.15 We have reviewed the Planning Act and the Planning Regulation for any additional functions or obligations on the JRPP which might create obligations on the JRPP with respect to submissions made by community members. In particular, we note that the JRPP has the functions as set out in section 23G(2) of the Planning Act.
- 7.16 We did not identify any additional legal functions or obligations on the JRPP relating to the consideration of submissions made by community members. Further, we did not locate any obligation on the JRPP which would require the JRPP to respond to all queries made with respect to DA11/224.
- 7.17 We have reviewed some JRPP guidance documents which are available on the JRPP website,¹⁹ and we have provided below some comments on those documents.

Guidance from the JRPP Operational Procedures

- (a) The *Joint Regional Planning Panels Operational Procedures (JRPP Operational Procedures)* have been developed by the JRPP to explain the way in which joint regional planning panels operate and to clarify the roles of various parties in the process. The JRPP Operational Procedures state that those procedures "are provided for general guidance and information only" and do not create any legal role for the JRPP. However, the Operational Procedures confirm (in section 2.5) that Councils are responsible for the "preparing of assessment reports (including the consideration of submissions)".
- (b) According to the JRPP Operational Procedures, the role of the JRPP with respect to engagement with the community and response to submissions is "hands off". The JRPP Operational Procedures confirm that all written submissions must be sent to the Council directly, and the JRPP will not normally accept information provided in confidence that is not also provided to the Council. Relevantly, clause 4.2 of the JRPP Operational Procedures provides that:

"If a panel member is approached by any person about a DA that is to be determined by the regional panel, the panel member must not discuss the development."

The context of clause 4.2 clearly indicates, in our view, that this is a reference to members of the public and not to other government agencies, such as the Department.

- (c) The JRPP Operational Procedures also confirm that any decision by a joint regional planning panel to hold public meetings is at the discretion of the panel chair.

¹⁸ *Kioa v West* (1985) 159 CLR 550.

¹⁹ <http://www.jrpp.nsw.gov.au/>.

Accordingly, there is no legal requirement for the JRPP to convene a public meeting in relation to DA11/224.

Guidance from the JRPP Code of Conduct

- (d) The JRPP Operational Procedures should be read in conjunction with the Joint Regional Planning Panels Code of Conduct (**JRPP Code**). The JRPP Code applies to all members of the JRPP and outlines the standards of conduct expected of regional panel members. The JRPP Code sets out the minimum requirements of behaviour for the JRPP members in carrying out their functions. We did not locate anything in the JRPP Code which we considered created any relevant additional legal requirements on the JRPP with respect to submissions made by community members.

Part B: Whether the JRPP acted in accordance with that role

- 7.18 In light of the volume of submissions made on DA11/224, we have not conducted an analysis of each individual submission made. Instead, we have taken the extensive submissions by Mr Salter as an example of the submissions made by community members.
- 7.19 The table below describes the particular elements of the JRPP's involvement in relation to submissions made by Mr Salter that are relevant to consider in this Review and addresses this involvement from a legal perspective.

	JRPP's involvement	Review
(a)	<p>Whether the JRPP received and took into account submissions made by Mr Salter</p> <p>DA11/224 was placed on public exhibition from 22 November 2011 to 21 December 2011. The Council subsequently received an amended traffic report and amended plans in relation to the proposed intersection and re-notified DA11/224 for a further 30 days from 10 January 2012 to 9 February 2012.</p> <p>The Council undertook a further notification period for a period of 30 days from 12 March 2013 to 11 April 2013. This notification period was to publicly exhibit amended plans, reference documents and amended reports. It appears that there was an error in this exhibition of DA11/224, because incorrect reference documents were placed on the Council's website. Notwithstanding that oversight, the Council received a further 28 submissions.</p> <p>We have identified the following submissions by Mr Salter as being submissions in accordance with the Planning Act and Planning Regulations:</p> <ul style="list-style-type: none"> • submissions by various members of the public dated December 2011 which Mr Salter signed as a petitioner; and • a volume of submissions made 	<p>It was the role of the Council to undertake the assessment of DA11/224, including notifying, re-notifying and considering submissions.</p> <p>In our view, not all queries raised and comments provided by Mr Salter constitute submissions which must be taken into account under section 79(1)(d) of the Planning Act.</p> <p>Under the Planning Act and Planning Regulations a submission must be made within the relevant submission period. It appears to us that the submissions made by Mr Salter in accordance with the Planning Act and Planning Regulation were taken into account in that assessment. It also seems that submissions made by Mr Salter which were not made in accordance with the Planning Act and Planning Regulations were also taken into account.</p>

	JRPP's involvement	Review
	<p>by Mr Salter to the Council dated 9 February 2012 comprising 119 pages (as indicated in the contents page prepared by Mr Salter for those submissions).</p> <p>Although the following submissions fell outside the relevant submission periods, they were included on the JRPP's file:</p> <ul style="list-style-type: none"> • submissions attached to an email from Mr Salter to the JRPP dated 23 October 2013; • five separate submissions by Mr Salter to the Council dated 11 December 2013, including one submission which reattached Mr Salter's original volume of submissions dated 9 February 2012; and • submissions made by Mr Salter (on behalf of Matraville Precinct) in a letter to Council dated 11 May 2014. <p>In addition to the submissions identified above, the Council accepted extensive comments from Mr Salter between the date on which DA11/224 was lodged and the date on which it was determined. Further information relating to those extensive comments is considered in paragraphs 7.19(b) and (c) of this Report.</p> <p>In a meeting dated 14 August 2014, and after being provided with the Council's second supplementary report, the JRPP resolved that, provided that the QRA finds that the risk posed by DA11/224 is within acceptable limits (and subject to conditions), the JRPP is minded to approve DA11/224.</p> <p>The minute of the JRPP's decision dated 1 April 2015 relevantly referred to its earlier resolution (as set out above) and indicated that Council's third supplementary report (which included detailed consideration on the final QRA) and "written submissions during public exhibition (30)" were taken into account.</p>	
(b)	<p>Whether the JRPP received and took into account any other submissions by Mr Salter (as part of the public interest)</p> <p>From the date of the first exhibition of DA11/224 until the date of the JRPP's determination on 1 April 2015, Mr Salter made numerous and extensive submissions</p>	<p>In determining DA11/224, the JRPP was required to take the public interest into account.</p> <p>Mr Salter raised numerous issues in his extensive submissions. In our view, not all issues raised by community members</p>

	JRPP's involvement	Review
	<p>and comments including those relating to the assessment of risk arising from DA11/224. These submissions and comments were in addition to the submissions referred to in paragraph 7.19(a) of this Report.</p> <p>In response to concerns raised in relation to risk assessment the Council, together with the Department, commissioned the QRA. Further details relating to processes regarding the QRA is set out in section 7.19(c) of this Report. In particular, in a letter dated 12 February 2014 to Council, the JRPP agreed to postpone the determination of DA11/224 until the QRA was completed.</p> <p>Relevantly, the following information was included on the JRPP's file:</p> <ul style="list-style-type: none"> • a summary of the Transport Risk Assessment which was initially prepared by SKM dated 7 October 2011, which was included with the application for DA11/224 and is referred to in the Council's first assessment report; • a summary, in the Council's first assessment report, of the Department's advice in its letter dated 29 February 2012 which confirms a low level of off-site risk which is included in the Council's first assessment report; • a description of the traffic survey undertaken by Roar Data on Denison Street and a summary of the conclusion from that survey; • a summary in the Council's first assessment report of the updated SKM Transport Risk Assessment Report dated September 2012 which took into account the Dangerous Goods Survey carried out in June and July 2012; • a copy of the Department's letter to the Council dated 19 November 2012 regarding risk which was included on the JRPP's file and is discussed in paragraph 4.9 of this Report; • a summary of the comments 	<p>will be relevant to the public interest.</p> <p>However, we have identified the issue of risk assessment as potentially being a matter of public interest to be taken into account by the JRPP.</p> <p>It appears that the JRPP had before it voluminous material from Mr Salter and others in relation to risk assessment. Further, it appears to us that the JRPP took extensive measures to address risk issues in its assessment of DA11/224, including delaying its decision until the final QRA report was prepared, holding meetings with community members and risk experts and having before it material from more than one risk expert (eg. Scott Lister and Mr Dryden) relating to the risk issues for DA11/224.</p>

	JRPP's involvement	Review
	<p>from the Council's Risk Consultant (P Dryden) dated 9 August 2013 on the draft PRA included in the Council's first assessment report;</p> <ul style="list-style-type: none"> • a summary of the Department's letter to the Council dated 24 April 2013 containing advice with respect to the PRA included in the Council's assessment report; • other documents and information included in the Council's various assessment reports to the JRPP; • a copy of the Department's letter to the Council dated 21 August 2013 which was included on the JRPP's file and is discussed in paragraph 4.10 of this Report; • submissions made by community members and other stakeholders, including the submissions referred to in section 7.19(a) of this Report and other submissions relating to dangerous goods traffic and risk; • copies of various submissions made to the Department, including email submissions made by Mr Salter by email to the Department on 23 October 2013 which were included in the JRPP's file; • submissions attached to the email from Mr Salter to the JRPP dated 23 October 2013; • a copy of the Department's letter to the Council dated 18 October 2014 confirming the Department's view that DA11/224 does not significantly intensify risk and dangerous goods traffic does not pose an unacceptable risk which was included on the JRPP's website; • meeting minutes indicating that oral submissions were made to the JRPP on 4 September 2015 by community members, including submissions made by Mr Salter; • advice from the Department in its letter to the JRPP dated 20 	

	JRPP's involvement	Review
	<p>March 2014 confirming the sufficiency of the QRA preliminary results to determine DA11/224 with respect to risk assessment;</p> <ul style="list-style-type: none"> • a letter from the Department to the JRPP dated 16 July 2014 providing the JRPP with the preliminary results of the QRA study and a copy of the presentation by Scott Lister on 30 June 2014; • meeting minutes indicating that oral submissions were made to the JRPP on 14 August 2014 by community members, including submissions made by Mr Salter; • the email from Mr Salter to the JRPP dated 18 August 2014 providing further information regarding risk and expanding on the oral presentation he made to the JRPP on 14 August 2015; • emails from Mr Salter dated 11 March 2015 and 16 March 2015 to the JRPP (and others) (the content of the email dated 16 March 2015 has been considered in paragraph 4.27 above and generally relates to risk assessment); • the email from the Department to the JRPP Secretariat dated 24 March 2015 (which was forwarded specifically to the JRPP panel members on 30 March 2015) setting out the Department's summary of Mr Salter's involvement in the preparation of the QRA (see paragraphs 4.8, 4.29 to 4.31 and 6.2(c) of this Report); • various email correspondence in late February 2015 between the Department and the Secretariat arranging a representative from Scott Lister to attend the determination meeting on 1 April 2015; • the final QRA report which was provided to the JRPP by the Department on 31 March 2015, together with a summary of the key recommendations of the 	

	JRPP's involvement	Review
	<p>final QRA report in the Council's third assessment report.</p> <ul style="list-style-type: none"> advice from the Council in its third assessment report confirming that the final QRA Report incorporates changes made following consultation with community members; and a summary of the review conducted by the Council's risk consultant, Mr Dryden on the final QRA report dated 5 March 2015, which was included in Council's third assessment report. <p>In an email to Mr Salter from the JRPP Secretariat, the Secretariat confirmed that the JRPP had read the submissions made by Mr Salter and had listened to Mr Salter speak about dangerous goods.</p> <p>Further, in an email to Mr Salter dated 24 September 2013, the JRPP Secretariat advised Mr Salter that the JRPP was well aware of issues of transport of dangerous goods that have been raised.</p> <p>Information set out in sections 7.19(a)-(c) of this Report is also relevant when considering whether the JRPP took the public interest considerations raised by Mr Salter into account.</p>	
(c)	<p>Whether procedural fairness was afforded to Mr Salter with respect to his submissions</p> <p>The Council (as the authority responsible for the assessment of DA11/224, including the consideration of submissions) and the Department (as a government agency) took procedural steps including the following which relate to Mr Salter's submissions:</p> <ul style="list-style-type: none"> The Council accepted the submissions referred to in section 7.19(a) of this Report as well as Mr Salter's further comments set out in section 7.19(b) of this Report. Those submissions and comments raised issues relating to risk assessment particular in relation to dangerous goods traffic. The Council engaged Roar Data to conduct a survey of dangerous goods traffic on 	<p>As indicated above, it was the role of Council to assess DA11/224 (including to consider submissions) and the JRPP's role was limited to the determination of DA11/224.</p> <p>In our view, it would have been appropriate for the JRPP, given its role in determining DA11/224, to not accept any submissions made by Mr Salter directly from Mr Salter. We did not locate anything to indicate that the Council, as the authority responsible for assessing DA11/224, did not agree to receive any submission made by Mr Salter. Further, both JRPP and Council representatives met with Mr Salter on various occasions.</p> <p>In our view, it is reasonable to conclude that the JRPP afforded procedural fairness to Mr Salter with respect to his submissions. In particular, we consider that the JRPP provided Mr Salter with numerous opportunities to be heard on the matter, deferred its decision with a view to ensuring it had appropriate</p>

	JRPP's involvement	Review
	<p>Denison Street in 2012.</p> <ul style="list-style-type: none"> • Before the Department and the Council engaged Scott Lister to conduct the QRA, the Council wrote to the Department on various occasions regarding risk assessment, and the Department expressed its views on various aspects of this issue. • In email dated 23 January 2014 to the Department, the Council expressed the view that the determination of DA11/224 should be held in abeyance until the QRA was prepared. • In February 2014 Council reconvened a committee previously established by the Council to quantify dangerous goods movements on Denison Street. • On 19 February 2014, the Council and the Department met with community members, including Mr Salter, to discuss issues relating to the QRA. Representatives from the JRPP did not attend this meeting. • The Council received Mr Salter's comments by email dated 21 February 2014 whereby Mr Salter suggested reference materials that he considered should be used for the QRA. • The Council, the Department and Scott Lister met with community members on 30 June 2014 to discuss issues relating to the QRA. Representatives from the JRPP did not attend this meeting. • In an email to the Council dated 11 September 2014, the Department requested that all submissions relating to the QRA be collated by the Council and provided to the Department. • The Council, the Department and Scott Lister met with community members on 6 November 2014 to discuss the draft QRA report. • On 3 December 2014 the 	<p>evidence to support a decision, and took steps to ensure that there was enquiry into a key matter raised in submissions (ie. transport risk assessment).</p>

	JRPP's involvement	Review
	<p>Council, the Department and Scott Lister again met with community members, including Mr Salter. We understand that the primary purpose of that meeting was to address issues raised by Mr Salter.</p> <ul style="list-style-type: none"> • The Department accepted numerous comments directly from Mr Salter on the draft QRA, including his comments by emails dated 24 November 2014, 5 December 2014 and 9 December 2014. • In a letter dated 17 December 2014, the Council provided the Department with submissions on the draft QRA, including comments from Mr Salter. • The Department provided the final QRA to the JRPP on 31 March 2015. • The Department and the Council accepted numerous comments from Mr Salter on the final QRA, including emails from Mr Salter dated 5 March 2015, 11 March 2015 and 16 March 2015. The emails from Mr Salter dated 11 March 2015 and 16 March 2015 also were provided by Mr Salter directly to the JRPP. • The Department provided advice to the JRPP Secretariat in an email dated 24 March 2014, which was forwarded to the JRPP on 30 March 2014, in response to Mr Salter's involvement in the preparation of the QRA. The Department's email dated 24 March 2014 included text addressing the analysis which subsequently comprised the Addendum, where that text was reviewed and revised by Scott Lister. The Scott Lister revised text related to the impact that a 10 fold increase in northbound traffic would have on the conclusions in the QRA report. • Various email correspondence in late February 2015 between the Department and the Secretariat indicated that the Department 	

	JRPP's involvement	Review
	<p>took positive steps to arrange for a representative from Scott Lister to attend the determination meeting on 1 April 2015.</p> <p>On 4 September 2013 Mr Salter made oral submissions to the JRPP at a JRPP meeting. At that meeting the JRPP determined to defer the determination of DA11/224 and also requested that a survey of existing traffic conditions be undertaken.</p> <p>On 14 August 2014 a further JRPP meeting occurred with respect to DA11/224. Mr Salter attended that meeting and the JRPP resolved unanimously to defer the determination of DA11/224 until the final QRA report was published.</p> <p>In addition to the processes set out above, the JRPP also made a range of information relevant to the submissions made by Mr Salter available on its website, including the following:</p> <ul style="list-style-type: none"> • a summary of the preliminary results of the QRA which were published on the JRPP website on 17 July 2014 and the presentation prepared by Scott Lister explaining the preliminary results; • the final QRA report; • advice provided by the Department to the JRPP, including the Department's letter dated 16 July 2014 to the JRPP regarding the assessment of risk; • JRPP meeting agendas; • the Council's various assessment reports and recommendations; • records of public meetings. <p>The JRPP Secretariat also provided Mr Salter with procedural assistance on numerous occasions. This assistance included:</p> <ul style="list-style-type: none"> • advising Mr Salter regarding JRPP meetings, including in email to Mr Salter dated 20 February 2012 and by telephone on 4 July 2013; • advising Mr Salter regarding the JRPP's role in the determination 	

Independent Review: DA 11/224 City of Botany Bay, Bunnings Development, Hillsdale

	JRPP's involvement	Review
	<p>of DA11/224; and</p> <ul style="list-style-type: none">• advising Mr Salter when supplementary reports would be available on the JRPP's website, including in the Secretariat's email to Mr Salter dated 15 October 2013.	

Schedule 1 - Glossary

This Glossary sets out the key defined terms used in this paper, for ease of reference. Unless the contrary intention appears:

1995 LEP means the *Botany Local Environmental Plan 1995*.

2013 LEP means *Botany Local Environmental Plan 2013*.

Addendum means the addendum to the QRA Report prepared by Scott Lister entitled "Addendum to Dangerous Goods Transport QRA, Denison St, Hillsdale" provided to the Department by email from Scott Lister on 18 May 2015.

Applying SEPP 33 means Hazardous and Offensive Development Application Guidelines: Applying SEPP 33, Planning NSW, January 2011.

BIP means Botany Industrial Park.

Botany/Randwick Study means the Botany/Randwick Industrial Area Land Use Safety Study - 2001.

Cabinet means the NSW Government Cabinet.

Council means the City of Botany Bay Council.

DA means development application.

DCP 2013 means City of Botany Bay, *Botany Bay Development Control Plan 2013*, 9 December 2014.

DCP No. 24 means City of Botany Bay, *Botany / Randwick Industrial Area Land Use Safety Study, Development Control Plan No. 30*, February 2003.

DCP No. 30 means City of Botany Bay, *Botany / Randwick Industrial Area Land Use Safety Study, Development Control Plan No. 30*, February 2003.

DCP No. 33 means City of Botany Bay, *Development Control Plan No. 33 - Industrial Development, Version 5*, February 2003.

DCPs means development control plans.

Department means the NSW Department of Planning and Environment (or such other name as that Department has held from time to time).

Department's File means documents provided to us by the Department from mid June 2015 to 7 July 2015.

EIS means environmental impact statement.

JRPP means Joint Regional Planning Panel, Sydney East Region. **LEP** means local environmental plan.

JRPP Code means the Joint Regional Planning Panels Code of Conduct dated September 2012 prepared by the NSW Government.

JRPP Operational Procedures means the Joint Regional Planning Panels Operational Procedures dated September 2012 prepared by the NSW Government.

Planning Act means the *Environmental Planning and Assessment Act 1979*.

Planning Minister means the NSW Minister for Planning.

Planning Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Independent Review: DA 11/224 City of Botany Bay, Bunnings Development, Hillsdale

Port Botany Report means the Port Botany Land Use Safety Study Overview Report – 1996.

PRA means Bunnings Hillside Preliminary Risk Assessment prepared by SKM and provided to the Department by Council on 1 March 2013

Proposed Development means the Bunnings hardware and building supply centre at 140-148 Denison Street and 49 Smith Street, Hillsdale, described in DA11/224 to the City of Botany Bay Council.

QRA means quantitative or quantified risk assessment, and, where appropriate, the QRA prepared by Scott Lister in relation to the Proposed Development.

QRA Report means the report prepared by Scott Lister entitled "Dangerous Goods Transport QRA, Denison Street, Hillsdale", dated 12 February 2015.

Review means this independent review in relation to the process undertaken in obtaining the QRA for the proposed development of a Bunnings hardware and building supply centre at 140-148 Denison Street and 49 Smith Street, Hillsdale, described in DA11/224 as set out in this report.

Risk Criteria Advisory Paper means Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning, Planning NSW, January 2011.

RMS means Roads and Maritime Services.

Route Selection Guidelines means *Hazardous Industry Planning Advisory Paper N° 11: Route Selection*, Planning, January 2011.

Secretary means the Secretary of the Department.

SEPP means a State Environmental Planning Policy.

SEPP 33 means *SEPP 33 – Hazardous and Offensive Development*.

SRD SEPP means the *State Environmental Planning Policy (State and Regional Development)* 2011.

Terms of Reference means the Terms of Reference provided by the Department on 19 June 2015, a copy of which is at **Schedule 2**.

Schedule 2 - Terms of Reference 19 June 2015**Review of Development Proposal Process****Terms of Reference**

The Secretary of the Department of Planning and Environment requests that Clayton Utz undertakes an independent review in relation to the process undertaken in obtaining a Quantitative Risk Assessment (QRA) for the proposed development of a Bunnings hardware and building supply centre at 140-148 Denison Street and 49 Smith Street, Hillsdale, described in development application no.11/224 to Botany City Council (DA11/224).

DA11/224 was submitted to the Council in November 2011 and the Sydney East Joint Regional Planning Panel (JRPP) determined to grant development consent on 1 April 2015.

Specifically, the Secretary of the Department requests that Clayton Utz address the following matters:

1. The legal basis for determination of DA11/224 and the Department's role in relation to DA11/224.
2. The legal basis for the QRA.
3. Whether the preparation of the QRA was consistent with legal requirements.
4. Whether the Department's involvement in the process of assessing DA11/224 was consistent with the legal basis for its role.
5. Whether, in determining DA11/224, the JRPP's consideration of submissions made to the JRPP or Council by community members was consistent with its role.

The Secretary added Term of Reference 5 on 8 July 2015, having regard to the work required for Terms of Reference 1 - 4.

Clayton Utz should review material on the Department's file and the JRPP file for DA11/224 and relevant regulatory materials.

Outputs

Clayton Utz should provide its report on the independent review to the Secretary of the Department by 10 July 2015.

Schedule 3 - Materials Reviewed

Description	
Documents from the Department's file	
1.	<p>The documents in the Department's File including:</p> <ul style="list-style-type: none"> (a) correspondence regarding the commissioning of the QRA; (b) advice between the Department and Council; (c) the QRA and associated addendum; and (d) email correspondence with Ross Salter and other documents regarding stakeholder consultation.
Documents from the JRPP's file	
2.	<p>Select documents from the JRPP's file including documents in the following electronic folders:</p> <ul style="list-style-type: none"> (a) Corro Folder 1; (b) Dept QRA findings; (c) DA Documents - the development application only; (d) ED Development Assessment Systems and Approvals (DP&E) 04-07-2014 Update of Denison Street QRA; (e) ED Major DA Assessment (DP&I) 05-02-2014 QRA Dangerous Goods Risk Assessment Denison Street; (f) ED Major DA Assessment (DP&I) 18-03-2014 Letter to JRPP Re Denison Street QRA Timing; (g) ED Major DA Assessment (DP&I) 20-02-2014DG QRA Denison Street Bunnings; (h) Late submissions (received after supp report completed); (i) ross salter emails; (j) Salter, Ross 08-10-2014 Transport risk report for Denison Street, Hillsdale; (k) Salter, Ross 20-05-2015 Denison Street dangerous goods report; (l) Salter, Ross 30-08-2014 Sydney East JRPP appointments alias; (m) Secretary (DP&E) 15-09-2014 Release of the Draft Denison Street (Hillsdale) Dangerous Goods Transportation Quantitative Risk Assessment (QRA) Report; and (n) Transport QRA Final Report.
Legislation, regulations and relevant instruments	
3.	<i>Environmental Planning and Assessment Act 1979.</i>
4.	<i>Environmental Planning and Assessment Regulation 2000.</i>
5.	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
6.	<i>SEPP 33 – Hazardous and Offensive Development</i>
7.	<i>Botany Local Environmental Plan 1995</i>
8.	<i>City of Botany Bay, Development Control Plan No. 33 - Industrial Development, Version 5, February 2003</i>
9.	<i>City of Botany Bay, Botany / Randwick Industrial Area Land Use Safety Study, Development Control</i>

	Description
	<i>Plan No. 30, February 2003</i>
10.	<i>City of Botany Bay, Development Control Plan No. 24, Notification of Development Applications, Local Environmental Plans, Development Control Plans & Other Applications, November 2001 (as amended)</i>
11.	<i>City of Botany Bay, Botany Bay Development Control Plan 2013, 9 December 2014</i>
12.	Department of Urban Affairs and Planning, Port Botany Land Use Safety Study Overview Report, 1996
13.	Hazardous and Offensive Development Application Guidelines: Applying SEPP 33, Planning NSW, January 2011
14.	Hazardous Industry Advisory Paper N° 4: Risk Criteria for Land Use Safety Planning, Planning NSW, January 2011
15.	<i>Hazardous Industry Planning Advisory Paper N° 11: Route Selection, Planning, January 2011.</i>
16.	Joint Regional Planning Panels Operational Procedures dated September 2012 prepared by the NSW Government
17.	Joint Regional Planning Panels Code of Conduct dated September 2012 prepared by the NSW Government.
18.	<i>Goyer v Pengilly [2015] NSWLEC 54</i>
19.	<i>Warkworth Mining Ltd v Bulga Milbrodale Progress Association Inc [2014] NSWCA 105.</i>
20.	<i>Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited [2013] NSWLEC 48</i>
21.	<i>Parramatta CC v Hale (1982) 47 LGRA 319</i>
22.	<i>Kioa v West (1985) 159 CLR 550</i>

Schedule 4 - Section 79C(1) of the Planning Act**79C Evaluation****(1) Matters for consideration - general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),

that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.