

21 May 2013

The Hon Barry O'Farrell
Premier
Governor Macquarie Tower
Farrer Place
SYDNEY NSW 2000

NSW Business Chamber
incorporates

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Dear Premier

RE: MAJOR PROJECTS – IMPACT OF BULGA MILBRODALE PROGRESS ASSOCIATION INC V MINISTER FOR PLANNING AND INFRASTRUCTURE AND WARKWORTH MINING LIMITED [2013] NSWLEC 48

On behalf of the NSW Business Chamber, I would like to convey the concerns of the business community regarding the potential impacts of the recent decision of the Land and Environment Court in *Bulga Milbrodale Progress Association Inc v Minister for Planning and Infrastructure and Warkworth Mining Limited* [2013] NSWLEC 48 (“the Warkworth decision”). These concerns relate to both the potential impacts of this decision on the individual project specifically and on the potential impacts on major projects and investment in NSW more broadly.

As you would be aware, the Warkworth decision relates to a planning proposal that was lodged under the former Part 3A of the *Environmental Planning and Assessment Act 1979* (“the Act”). Part 3A had been enacted to provide for particular kinds of development that because of their nature and scale, their potential impacts and state significance required a level of planning consideration beyond the scope of local planning processes. Part 3A allowed the Minister for Planning, or his delegate, to be the determining authority.

In a move supported by the Chamber in early 2011, the Minister for Planning and Infrastructure, the Hon. Brad Hazzard MP delegated approval powers under Part 3A to the Planning Assessment Commission (“the PAC”). This delegation was made in order to address community concerns in relation to the transparency and independence of assessments in relation to state significant projects.

In accordance with these arrangements, on 3 April 2012, Minister Hazzard, by his delegate the PAC, conditionally approved the Warkworth project.

The Warkworth project relates to an expansion of a coal mine in south west Singleton. I am advised that the mine has been in operation since 1981 and that the expansion project would see mining of the reserves to the west and south west of the current operations for the period to 2033.

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I understand that the expansion of operations would lead directly to 150 new jobs as well as help in maintaining the existing workforce of more than 1300. The mine owner spent more than \$600 million in maintaining operations last year, and it provides a significant economic contribution to the economy of both the region and the state.

The decision by Preston CJ to refuse this project, on its merits, is a significant one that will have repercussions for this project directly, and major projects generally, across the state. Overturning three years of planning work and deliberations by the PAC is creating a groundswell of uncertainty for major projects and will, of necessity, impact on the capacity of the Government to meet its state plan target of growing business investment by 4% per year to 2020.

Put simply, without a major projects approval process that provides a modicum of certainty for proponents investment will simply move interstate or overseas. The Chamber has heard from a number of proponents that their willingness to invest in NSW is being significantly constrained by the lack of certainty in the assessment process and are actively seeking opportunities elsewhere.

Accordingly, the Chamber strongly supports the decision of Minister Hazzard to join the appeal proceedings in the Supreme Court of NSW against this decision. However, even if these appeal proceedings were to be successful, a reliable, transparent and effective major project system needs to be developed as a priority to ensure that major projects, investment and jobs can be secured within NSW.

Please feel free to contact me if you wish to discuss this correspondence further.

Yours sincerely



Stephen Cartwright
CHIEF EXECUTIVE OFFICER

CC *The Hon. Andrew Stoner, Deputy Premier, Minister for Trade and Investment*
The Hon. Brad Hazzard, Minister for Planning and Infrastructure
The Hon. Chris Hartcher, Minister for Energy and Resources
The Hon. Mike Baird, Treasurer