

Regulation Committee

**Environmental Planning
and Assessment
Amendment (Snowy 2.0 and
Transmission Project)
Order 2018**

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Chair: Hon. Scott Farlow, MLC.

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Terms of reference

1. That the Regulation Committee inquire into and report on the impact and implementation of the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.
2. That the committee report by 29 June 2018.

The terms of reference were referred to the committee by the Legislative Council on 12 April 2018.¹

¹ *Minutes*, NSW Legislative Council, 12 April 2018, p 2429.

Committee details

Committee members

The Hon Scott Farlow MLC	Liberal Party	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Paul Green MLC	Christian Democratic Party	
The Hon Trevor Khan MLC	The Nationals	
The Hon Shayne Mallard MLC	Liberal Party	
The Hon Mark Pearson MLC	Animal Justice Party	
The Hon Mick Veitch MLC	Australian Labor Party	
The Hon Natalie Ward MLC	Liberal Party	

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Chair's foreword

The Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018 is the first regulation to be referred to the Legislative Council's trial Regulation Committee, and so commenced a new process for the Council's committee system.

The order, signed by the Minister for Planning in March 2018, declared the Snowy 2.0 and Transmission Project as critical State significant infrastructure as it will likely result in substantial economic, environmental and social benefits for New South Wales.

This inquiry was important to conduct, as it provided stakeholders with an opportunity to raise concerns with the order, including stakeholder consultation and the impacts of the staged approval process of the project.

Following this evidence, the committee has recommended that the Department of Planning & Environment ensure to consult with key stakeholders for each stage of the Snowy 2.0 and Transmission Project and ensure to communicate with affected local councils and relevant local State MPs for future critical State significant infrastructure projects once the Minister for Planning has signed the relevant order.

On behalf of the committee, I would like to thank all who participated in the inquiry, and who provided submissions and attended the public hearing. I would also like to thank the secretariat for their assistance, including Teresa McMichael, Samuel Griffith and Georgia Daley.



Hon Scott Farlow MLC

Committee Chair

Recommendations

Recommendation 1

15

That, as standard practice, the Department of Planning & Environment communicate with affected local councils and relevant local State MPs on the Minister for Planning signing an order to declare a project critical State significant infrastructure.

Recommendation 2

15

That the Department of Planning & Environment conduct consultation with key stakeholders for each stage of the Snowy 2.0 and Transmission Project.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 12 April 2018. This followed a resolution of the Regulation Committee that the Chair give notice to commence an inquiry into the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.

The committee received five submissions and held a half day public hearing at Parliament House in Sydney on 21 May 2018.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice. Lists of submission authors and witnesses are included at appendices 5 and 6 respectively.

Chapter 1 Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018

This report considers the impact and implementation of the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018 which was published on the NSW legislation website on 9 March 2018. The order declares that development for the purposes of the Snowy 2.0 and transmission project is State significant infrastructure and critical State significant infrastructure. The report sets out how this decision was made and then analyses concerns that have been raised by inquiry participants.

Snowy Hydro-Electric Scheme

- 1.1 The existing Snowy Hydro-Electric Scheme comprises an integrated network of dams, tunnels, pipelines, aqueducts, power and pumping stations that collects and stores water from a range of rivers, including the Eucumbene and the Snowy. It then diverts and releases these waters into the Murray and Murrumbidgee Rivers to generate electricity and supply water to the western rivers and irrigation areas.²
- 1.2 The scheme is largely located in the Kosciuszko National Park and was constructed between 1949 to 1974, prior to the corporatisation of its managing entity, the Snowy Mountains Hydro-Electric Authority. For many years the scheme was largely not subject to New South Wales planning and environmental laws. However, this changed following the enactment of the *Snowy Hydro Corporatisation Act 1997*.³
- 1.3 Under the Act, the then Snowy Mountains Hydro-Electric Authority became Snowy Hydro Limited and the legislation provides that the company meets the following key requirements necessary for the continued operation of the scheme:
 - the grant of a water licence under the *Water Management Act 2000*, which authorised it to continue to use the water in the scheme to collect, store, divert, generate with and release water notwithstanding the provisions of that Act
 - the grant of a lease to undertake the operation of the scheme inside the National Park notwithstanding the provisions of the *National Parks and Wildlife Act 1974*
 - all necessary planning approvals.⁴
- 1.4 An existing plan of management for the National Park was amended to explicitly acknowledge the continued existence and operation of the scheme. A separate plan of management was also made under the *National Parks and Wildlife Act 1974* to govern the activities of Snowy Hydro Limited in the National Park, known as the Snowy Management Plan Procedures Agreement.⁵

² Submission 5, NSW Department of Planning & Environment, p 1.

³ Submission 5, NSW Department of Planning & Environment, p 1.

⁴ Submission 5, NSW Department of Planning & Environment, p 2.

⁵ Submission 5, NSW Department of Planning & Environment, p 2.

Snowy 2.0 and Transmission Project

- 1.5** Snowy Hydro Limited and TransGrid have proposed augmenting the existing Snowy scheme by carrying out a suite of works known as the ‘Snowy 2.0 and Transmission Project’. The project will expand the generating capacity of the existing Snowy scheme by up to 50 per cent and will generate approximately 2,000 MW (megawatt) of electricity.⁶
- 1.6** The project is to be developed in stages and is expected to be completed within five to seven years. The key stages of the project comprise:
- an exploratory tunnel and portal approximately three to four km in length to gain a greater understanding of the geotechnical conditions at the proposed location of the underground power station
 - construction and operation of a 2,000 MW underground hydro power station, and associated water and access tunnels between the Tantangara and Talbingo reservoirs
 - construction and operation of three major new electricity transmission lines from the portal to three new substations:
 - to the west of the National Park
 - north to Bannaby, near Yass
 - southwest towards the New South Wales-Victorian border.⁷
- 1.7** Mr David Kitto, the Executive Director, Resource Assessment & Business Systems at the NSW Department of Planning & Environment, explained that the project can be split conceptually into two clear components:
- electricity generation
 - transmission of electricity to the broader grid.⁸
- 1.8** This means there will be two separate proponents for the project; Snowy Hydro Limited for the electricity generation components and TransGrid for the transmission components.⁹
- 1.9** Snowy 2.0 primarily involves linking the existing reservoirs of Tantangara and Talbingo through new tunnels and an underground power station. Water will be pumped from Talbingo, which is the lower reservoir, for storage in Tantangara, the higher reservoir. This will be done using excess off-peak power, and then released to generate electricity in times of peak demand.¹⁰
- 1.10** Snowy Hydro Limited indicated that this project will ‘greatly enhance the Snowy scheme’s role as the primary source of stored energy or ‘battery’ for the New South Wales energy market and the broader National Energy Market’.¹¹

⁶ Submission 5, NSW Department of Planning & Environment, p 3.

⁷ Submission 5, NSW Department of Planning & Environment, p 3.

⁸ Evidence, Mr David Kitto, Executive Director, Resource Assessment & Business Systems, NSW Department of Planning & Environment, 21 May 2018, p 15.

⁹ Evidence, Mr Kitto, 21 May 2018, p 15.

¹⁰ Submission 3, Snowy Hydro Limited, p 1.

¹¹ Submission 3, Snowy Hydro Limited, p 1.

- 1.11** The generation component of the project is located almost entirely within the Kosciusko National Park and has a capital investment value of between \$3.8 and \$4.5 billion, with further expenditure required for the upgrades and additions to the transmission network.¹² This means the project as a whole will likely cost approximately \$8 billion.¹³
- 1.12** Mr Roger Whitby, the Chief Operating Officer for Snowy Hydro Limited, noted that the transmission component of the project is essential to Snowy 2.0 as ‘you cannot build a 2,000 MW power station or pumped storage station without the ability to export 2,000 MW and to import 2,000 MW in pumping mode’.¹⁴
- 1.13** However, Mr Whitby explained that the transmission project is also vital to moving New South Wales towards a renewable energy future. The current transmission system is configured for centralised coal-fired energy production. There is now a drive towards renewable sources which are in places such as western New South Wales where there is a large supply of solar energy.¹⁵ The transmission project will allow the power system to become much more flexible, to wheel energy from where it is being produced to where it is being consumed in high demand locations such as Sydney.¹⁶
- 1.14** Snowy Hydro Limited is of the view that Snowy 2.0 is necessary, as the New South Wales energy system is facing unprecedented challenges through rising energy costs, deterioration in energy system security and reliability, and a transition to renewable wind and solar power characterised by intermittency.¹⁷

Declaring the project ‘critical State significant infrastructure’

- 1.15** On 26 October 2017, Snowy Hydro Ltd and TransGrid requested that the NSW Minister for Planning declared the Snowy 2.0 and Transmission Project as critical State significant infrastructure under ss 5.12 (4) and 5.13 of the *Environmental Planning and Assessment Act 1979* (See Appendix 2 to view the sections the Act).
- 1.16** The ability for the Minister of Planning to declare certain projects to be ‘critical’ has been a feature of the planning system since 2005. Since then, a broad range of strategically important projects have been declared critical, a full list of which is available at Appendix 4.¹⁸
- 1.17** The criteria according to the *Environmental Planning and Assessment Act* for declaring a project ‘critical’ is that it needs to be essential to the State for economic, environmental or social reasons. The Minister for Planning determines on a case-by-case basis whether this threshold is met. Administratively, the Minister can declare infrastructure State significant either by order, or by

¹² Submission 5, NSW Department of Planning & Environment, p 3.

¹³ Evidence, Mr Keith Muir, Director, Colong Foundation for Wilderness, 21 May 2018, p 2.

¹⁴ Evidence, Mr Roger Whitby, Chief Operating Officer, Snowy Hydro Limited, 21 May 2018, p 12.

¹⁵ Evidence, Mr Whitby, 21 May 2018, p 12.

¹⁶ Evidence, Mr Whitby, 21 May 2018, p 12.

¹⁷ Submission 3, Snowy Hydro Limited, p 2.

¹⁸ Evidence, Mr Kitto, 21 May 2018, p 15.

setting out the criteria in the State Environmental Planning Policy (State and Regional Development) 2011.¹⁹

1.18 Mr Kitto, noted that the decision to declare a project ‘critical’ sets the strategic context for the assessment of the project as a whole. However, it does not remove the need to carry out a detailed assessment of the merits of that project. For a project to be declared critical State significant infrastructure, it first needs to be State significant infrastructure.²⁰

1.19 The key steps in the process for approving critical state significant infrastructure are set out in the flowchart at Appendix 3.

1.20 In the case of Snowy 2.0, Snowy Hydro Limited submitted that these projects are essential for the following reasons:

- the projects can provide the required replacement capacity and new large scale storage for the New South Wales energy system
- Snowy 2.0 is a less carbon intensive energy source and complements the development of more intermittent renewable generation
- the transmission projects will enable efficient, reliable, high capacity transmission between generation sources and load centres
- the projects are likely to result in substantial economic and social benefits.²¹

1.21 Mr Mike Young, the Director Resource and Energy Assessments for the NSW Department of Planning & Environment, explained that preliminary information about the potential environmental impacts is required when submitting an application for a project to be declared critical State significant infrastructure:

The first stage in any State significant infrastructure or critical State significant infrastructure application process is to lodge the application. ... As part of that application, what we usually require is some information about what the application is about and some preliminary information about the potential environmental impacts. That is usually contained in a preliminary environmental assessment, which is available on our website. It consists of a 40 or 50-page document going through what the project is, some of the statutory elements and also what the environmental impacts might be.²²

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018

1.22 On 7 March 2018, the Minister for Planning signed the order titled Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018. Notification of the order was then given on the NSW legislation website on 9 March 2018.²³

¹⁹ Evidence, Mr Kitto, 21 May 2018, pp 15-16.

²⁰ Evidence, Mr Kitto, 21 May 2018, pp 15-16.

²¹ Submission 3, Snowy Hydro Limited, pp 2-3.

²² Evidence, Mr Mike Young, Director Resource and Energy Assessments, NSW Department of Planning & Environment, 21 May 2018, p 16.

²³ Submission 5, NSW Department of Planning & Environment, p 4.

1.23 The order declares that development for the purposes of Snowy 2.0 and transmission project is State significant infrastructure and critical State significant infrastructure under the *Environmental Planning and Assessment Act*.²⁴ The order is attached at Appendix 1.

1.24 In signing the Snowy 2.0 order, the Minister for Planning determined that the Snowy 2.0 and transmission project is essential to the State for economic, environment or social reasons, including:

Economic

- The project could enhance the existing Snowy scheme and promote energy security and reliability by:
 - generating approximately 2,000 MW of electricity output
 - diversifying the State’s electricity supply
 - dispatching electricity at any time to meet demand in peak periods or to respond to disruptions to the electricity network.
- The hydro power component of the project is forecast to have a capital expenditure of between \$3.8 and \$4.5 billion with the transmission projects to add significant additional expenditure and investment.²⁵

Environmental

- The project could substantially increase the amount of renewable energy and facilitate reduced reliance on other forms of non-renewable electricity generation by:
 - using existing wind and solar power renewable energy
 - ‘storing’ energy for use in peak periods
 - augmenting the transmission network to enable the development of renewable energy hubs in regional New South Wales.²⁶
- The project would be consistent with State and Federal policies and commitments, including:
 - the NSW Renewable Energy Action Plan, which aims to reduce carbon emissions through increased use of renewable energy
 - Australia’s commitments under the Paris Agreement to reduce greenhouse emissions and the NSW Climate Change Policy Framework.²⁷

Social

- The project could contribute to the ongoing social wellbeing of the State by:
 - promoting energy security and reliability
 - creating thousands of construction jobs and associated flow-on social benefits.²⁸

²⁴ Submission 5, NSW Department of Planning & Environment, p 4.

²⁵ Submission 5, NSW Department of Planning & Environment, p 5.

²⁶ Submission 5, NSW Department of Planning & Environment, p 5.

²⁷ Submission 5, NSW Department of Planning & Environment, p 6.

²⁸ Submission 5, NSW Department of Planning & Environment, p 6.

- 1.25** Snowy Hydro Limited noted that while the order does not grant the Snowy 2.0 project approval to proceed, it outlines ‘a transparent process for Snowy Hydro to meet all environmental assessment requirements and provides regulatory certainty for all stakeholders’.²⁹ Mr Whitby, from Snowy Hydro Limited stated that the order ‘gives a clear, robust and well established planning pathway for approval of a project of this significance’ and that the project still has to go through ‘a very robust environmental approval process’.³⁰

Implementation of order

- 1.26** Mr Kitto, from the Department of Planning & Environment indicated that one of the consequences of having two proponents for the project is that there could be up to five separate applications for the project as a whole:

... two for the power generation components, split up into exploratory works and the broader power station; and three for the general transmission infrastructure—one to get the electricity out of the national park and the second to take the electricity down towards the Victorian border and the broader electricity market to the south, and the third one to bring electricity to the north towards the Sydney market.³¹

- 1.27** Snowy Hydro Limited lodged an application for the exploratory works in March 2018, along with a Preliminary Environmental Assessment and request for environmental assessment requirements for the preparation of an Environmental Impact Statement.³²
- 1.28** The NSW Department of Planning & Environment noted that it will shortly be issuing environmental assessment requirements for the exploratory works Environmental Impact Statement, in consultation with relevant stakeholders. The department explained that it expects to receive and publicly exhibit the Environmental Impact Statement later this year, with further statements to be submitted over the next two years for the other stages.³³

Concerns with the order

- 1.29** Yass Valley Council, the National Parks Association of NSW and The Colong Foundation for Wilderness raised concerns during the inquiry with the order. The primary concerns centered around a lack of consultation, that other energy generation options were not considered, that the staged approval process does not holistically consider the impacts of the project on the environment and the lack of legal redress.

Consultation

- 1.30** Yass Valley Council told the committee that although the project will apply to land within the Yass Valley local government area, the Council had not been advised or consulted. Yass Valley

²⁹ Submission 3, Snowy Hydro Limited, p 3.

³⁰ Evidence, Mr Whitby, 21 May 2018, p 8.

³¹ Evidence, Mr Kitto, 21 May 2018, p 15.

³² Submission 5, NSW Department of Planning & Environment, p 7.

³³ Submission 5, NSW Department of Planning & Environment, p 7.

Council is listed as one of six local councils in the order that will be affected by the project (See Appendix 1 for the full list). The council presumed that these works will relate to the new transmission lines.³⁴

1.31 The council also expressed concern that as the project has been declared critical State significant infrastructure, it would not get a role in the approval process under the *Biodiversity Conservation Act 2016* for considering the likely biodiversity impacts of the development. Yass Valley Council stated that it 'hoped that the location of Snowy 2.0 infrastructure will avoid the regional biodiversity corridors identified within the NSW South East and Tablelands Regional Plan'.³⁵

1.32 Further, Yass Valley Council said it was unclear whether Yass Valley and neighbouring councils will be able to request the establishment of a Community Enhancement Fund from the project, or whether Heavy Haulage Development Contributions will be payable.³⁶

1.33 Mr Kitto, from the Department of Planning & Environment advised that at this stage the department is primarily focused on engaging with councils that are directly affected by the stage one exploratory works within the national park:

Our focus at the moment is on the exploratory works, which are principally down in that Lobs Hole Ravine area, which is in the park. We made a judgement at that stage that the primary councils that would have an interest in that would be Snowy Valleys Council and Snowy Monaro Regional Council, because vehicles would come that way or they would come that way and they would arrive this way or that way by the State road network.³⁷

1.34 He further stated that once the transmission project is considered, Yass Valley Council will be consulted:

... when we do get to transmission applications, if transmission applications are going to go through Yass Valley up to that Bannaby area and so on, obviously one of the critical stakeholders in that process will be Yass Valley Council and we will certainly consult with it.³⁸

1.35 However, department officials indicated that while they have not directly consulted with some councils listed in the order, they were happy to brief these councils on the project as a whole, before the related Environmental Impact Statement is released.³⁹

1.36 The department also noted that it did not initially advise local members of Parliament regarding the order, but had recently written to them.⁴⁰

³⁴ Submission 1, Yass Valley Council, p 1.

³⁵ Submission 1, Yass Valley Council, p 1.

³⁶ Submission 1, Yass Valley Council, p 1.

³⁷ Evidence, Mr Kitto, 21 May 2018, pp 19-20.

³⁸ Evidence, Mr Kitto, 21 May 2018, pp 19-20.

³⁹ Evidence, Mr Young, 21 May 2018, p 19; Evidence, Mr Kitto, 21 May 2018, pp 19-20.

⁴⁰ Answers to questions on notice, NSW Department of Planning & Environment, received 31 May 2018, p 1.

1.37 In terms of Yass Valley Council's biodiversity concerns, Mr Young, from the department explained that any transmission line that TransGrid proposes will be comprehensively assessed, and that the council will have an opportunity to comment, 'not just on biodiversity, but any matter that they see is relevant, or where they have raised concerns, both on the exploratory works ... or indeed on any of the subsequent stages'.⁴¹

1.38 Mr Kitto told the committee that the department has so far consulted with the following bodies:

In this instance in issuing the requirements last week, we have carried out consultation with all key State agencies, including National Parks and Wildlife Service, the Office of Environment and Heritage, the Environment Protection Authority, the Department of Lands and Water, parts of the Department of Primary Industries, Roads and Maritime Services, the two councils, Snowy Valleys Council and Snowy Monaro Regional Council. We have been down and briefed both sets of councils and the councillors, and sought to integrate their comments into the project. We have met with some of the community groups in that area, including the progress associations in and around Tumut and Cooma. We have also met with the peak environmental bodies, including the National Parks Association. We have also been down and briefed the advisory committee for the southern ranges, which is responsible for overseeing the plan of management for the Kosciusko National Park.⁴²

1.39 He advised that the department has tried to feed all concerns into the assessment requirements and will continue to consult with these bodies throughout the assessment process.⁴³

1.40 Mr Whitby informed the committee that Snowy Hydro Limited has also undertaken extensive consultation:

We spoke to the Office of Environment and Heritage, the National Parks Association, local councils, the Environment Protection Authority, water stakeholders and, of course, our shareholders across New South Wales, Victoria and the Commonwealth, which are still shareholders until 29 June. Everybody was supportive of that process.⁴⁴

1.41 Ms Cesilia Kim, the Group General Counsel, Corporate Affairs & Procurement for Snowy Hydro Limited noted that they had additionally engaged with the Snowy Monaro Regional Council and the Snowy Valleys Council in the first phase of consultation. She also noted that the Department of Premier and Cabinet has established a regional coordination unit that is consulting widely.⁴⁵

1.42 Ms Kim advised that consultation started as part of Snowy Hydro Limited's feasibility study, as 'we wanted to ensure that we were bringing the community along and ensuring they were adequately informed throughout the process'. The feasibility study for Snowy 2.0 is publicly available on the Snowy Hydro Limited's website.⁴⁶

⁴¹ Evidence, Mr Young, 21 May 2018, pp 20-21.

⁴² Evidence, Mr Kitto, 21 May 2018, p 17.

⁴³ Evidence, Mr Kitto, 21 May 2018, p 17.

⁴⁴ Evidence, Mr Whitby, 21 May 2018, p 9.

⁴⁵ Evidence, Ms Cesilia Kim, Group General Counsel, Corporate Affairs & Procurement, Snowy Hydro Limited, 21 May 2018, p 9.

⁴⁶ Evidence, Ms Kim, 21 May 2018, p 10.

- 1.43 Further, Ms Kim considered that it would be a matter for TransGrid to consult with Yass Valley Council, as the works in that local council area will relate to the transmission component of the project.⁴⁷

Consideration of other energy generation options

- 1.44 Environmental groups expressed concern that other options to improve energy generation in New South Wales did not appear to have been considered. The groups were particularly concerned as Snowy 2.0 is primarily situated in the Kosciuszko National Park.
- 1.45 Mr Keith Muir, Director of the Colong Foundation for Wilderness was highly critical of building infrastructure in a national park:

I cannot be proud of a project that overturns our longstanding practice of avoiding infrastructure in national parks. That era should be over. National parks are set aside for nature. That is what everybody understands. This is an exceptional project that overturns that and sets a precedent. You have to have a very good reason.⁴⁸

- 1.46 Ms Alix Goodwin, Chief Executive Officer, National Parks Association, noted that Kosciuszko National Park is listed as a biosphere under UNESCO's Man and the Biosphere Programme, while Blue Lake and the environments on the main range are listed as wetland of international importance under the Ramsar Convention. Further, the Australian Alps, which include Kosciuszko National Park, are recognised by the World Conservation Union as one of 167 world centres of biodiversity.⁴⁹
- 1.47 Ms Goodwin argued that Kosciuszko National Park is Australia's premier national park, and therefore the NSW Government has a responsibility to assure the community that it has considered all options to address the challenges facing the energy system and that Snowy 2.0 is the best option from economic, social and environmental perspectives.⁵⁰
- 1.48 Ms Goodwin raised concerns that it appears 'that only one option is being considered at the moment for addressing the pressures impacting on New South Wales' energy supply'. She indicated that it does not appear the NSW Government has considered other options to 'deal with the same projected energy demands, but with a lower cost from an environmental perspective and that offer a better social and economic outcome'.⁵¹
- 1.49 The National Parks Association argued that without a thorough assessment of all options available to deliver a clean electricity system, it is not possible to assess whether Snowy 2.0 may become redundant or economically unviable due to technological improvements and changes to the energy market in the future.⁵²

⁴⁷ Evidence, Ms Kim, 21 May 2018, p 9.

⁴⁸ Evidence, Mr Keith Muir, Director, Colong Foundation for Wilderness, 21 May 2018, p 5.

⁴⁹ Evidence, Ms Alix Goodwin, Chief Executive Officer, National Parks Association, 21 May 2018, p 2.

⁵⁰ Evidence, Ms Goodwin, 21 May 2018, p 2.

⁵¹ Evidence, Ms Goodwin, 21 May 2018, p 2.

⁵² Submission 4, National Parks Association of NSW, p 3.

- 1.50** The association stated that it does not know whether the government considered other options, as the business case on the economic, environmental and social impacts has not been publicly released.⁵³ A standard business case would consider a range of options and different supply solutions.⁵⁴ The association therefore called on the committee to recommend that the NSW Government publicly release the business case.⁵⁵
- 1.51** Ms Kim, from the Snowy Hydro Limited, noted that there were a number of options available to the company including ‘bespoke legislation’⁵⁶ or a development application⁵⁷ However, she said that Snowy Hydro Limited requested the Minister make the order ‘on the basis that it is an available pathway under the legislation’ and was appropriate, given that the ‘project is critical not only for the State of New South Wales but for the national electricity market as a whole’.⁵⁸
- 1.52** Mr Whitby advised that other pathways were not pursued by Snowy Hydro Limited, as the critical State significant infrastructure process was deemed ‘the most efficient pathway while retaining that key requirement which is a robust and comprehensive approving process’.⁵⁹

Staged approval process

- 1.53** Both the National Parks Association of NSW and The Colong Foundation for Wilderness raised concerns with the staged environmental impact assessment process, as it is not an integrated approach that examines the effects of the project in its totality. They called for an integrated approach where an upfront Environmental Impact Statement is released so the Minister and the public can consider the entire effects of the project.
- 1.54** Ms Goodwin, from the National Parks Association argued that the difficulty with the approach of assessing five separate stages is that they are being done sequentially and not in aggregate. The total environmental impact of the project will be not known until the final stage is completed.⁶⁰ This ‘piece-meal assessment approach’ avoids a comprehensive examination of all the impacts at one time.⁶¹
- 1.55** Ms Goodwin was of the view that given the clear biodiversity consequences for the national park, it is essential that an integrated environmental impact statement is produced before the project proceeds.⁶² This should consider all five stages, and no stage of the project should be approved to proceed until this has been completed and exhibited for public comment.⁶³

⁵³ Submission 4, National Parks Association of NSW, p 3.

⁵⁴ Evidence, Ms Goodwin, 21 May 2018, p 3.

⁵⁵ Submission 4, National Parks Association of NSW, p 3.

⁵⁶ Evidence, Ms Cesilia Kim, Group General Counsel, Corporate Affairs & Procurement, Snowy Hydro Limited, 21 May 2018, p 12.

⁵⁷ Evidence, Ms Kim, 21 May 2018, p 13.

⁵⁸ Evidence, Ms Kim, 21 May 2018, p 13.

⁵⁹ Evidence, Mr Whitby, 21 May 2018, p 13.

⁶⁰ Evidence, Ms Goodwin, 21 May 2018, p 3.

⁶¹ Submission 4, National Parks Association of NSW, p 2.

⁶² Evidence, Ms Goodwin, 21 May 2018, p 3.

⁶³ Submission 4, National Parks Association of NSW, p 3.

1.56 The National Parks Association stated that the exploratory works alone demonstrate there will be significant environmental impacts.⁶⁴ Further, these impacts are ‘dwarfed’ by the environmental impacts of the project as a whole, including:

- placement of tens of millions of cubic metres of excavated rock from the underground power station and tunnels
- potential changes in underground water flows along the route of the tunnels
- transporting of noxious and non-native fish from Talbingo into the Tantangara Reservoir and its downstream rivers
- transmission towers, lines and easements
- ongoing disturbance from management and maintenance activity, including service roads, and increased visitor numbers.⁶⁵

1.57 Mr Muir from the Colong Foundation asserted that a preliminary environmental assessment process for critical State significant infrastructure projects should take place to assess the triple bottom line – economic, social and environmental factors – to inform the Minister for Planning’s decision:

There has been nothing published, to my knowledge, that enables the decision to be made in an orderly and systematic manner. In forming an opinion that something is critical State significant infrastructure, you need to consider the three factors: economic, social and environmental. Where is it laid out and how is that laid out? And what standard of information is required when a decision is made of this magnitude? ... I believe a preliminary environmental assessment has to occur in some fashion across all the factors of this project so that triple bottom line can be informed, so that the Minister and the Government can be informed of the decision-making process and make a decision based on evidence rather than notion.⁶⁶

1.58 Mr Muir argued that, as a standard procedure, the Minister for Planning should publish reasons for making critical State significant infrastructure orders. He also agreed with the National Parks Association that all five environmental impact assessments should at least have some preliminary basis upon which orders are made so that the Minister can be adequately informed before making a decision.⁶⁷ He suggested that there could be a hearing process and a public inquiry process that reviews this preliminary stage.⁶⁸

1.59 The Colong Foundation viewed that Matters of National Environmental Significance have not been properly considered in the Preliminary Environmental Assessment report. The foundation called for more accountability in declaring a project critical State significant infrastructure so the ‘proponent and their consultants must be obliged to responsibly discharge the legal obligations under the order, and not use the order as a means to circumvent environmental responsibilities of development control’.⁶⁹

⁶⁴ Submission 4, National Parks Association of NSW, pp 2-3.

⁶⁵ Submission 4, National Parks Association of NSW, p 3.

⁶⁶ Evidence, Mr Keith Muir, Director, Colong Foundation for Wilderness, 21 May 2018, p 2.

⁶⁷ Evidence, Mr Keith Muir, Director, Colong Foundation for Wilderness, 21 May 2018, p 3.

⁶⁸ Evidence, Mr Keith Muir, Director, Colong Foundation for Wilderness, 21 May 2018, p 7.

⁶⁹ Submission 2, The Colong Foundation for Wilderness Ltd, p 5.

- 1.60** The foundation considered that the current approach does not allow the department and Minister to gain an overall understanding of the potential impacts of the entire project.⁷⁰ It argued that currently the details for all stages, apart from the exploratory works, are ‘vague and imprecise’.⁷¹ Further, the foundation viewed that the order was made ‘ignorant of the contingent adverse consequences of the project upon Kosciuszko National Park, particularly regarding the powerline easements’.⁷²
- 1.61** In addition, the foundation stated that the making of critical and standard State significant infrastructure orders should be informed by the Preliminary Environmental Assessment of project proposals that are prepared for the Secretary’s Environmental Assessment Requirements (SEARs) before the preparation of an Environmental Impact Statement. Infrastructure orders should follow after the SEARs process and should be limited to the extent of the proposal covered in the SEARs.⁷³
- 1.62** It also argued that the March 2018 Preliminary Environmental Assessment by Snowy Hydro Limited for the exploration works ‘describes activities not usually captured by a common understanding of exploration, but rather describes the initial development stage for this as yet unapproved project’.⁷⁴ It contended that this ‘poor definition of works creates an administrative flaw in the approval of the proposed pump storage project because work will start on the actual project before it is approved’.⁷⁵
- 1.63** Mr Whitby from Snowy Hydro Limited rejected the assertion that the accumulative impacts of the approval process are not being considered,⁷⁶ stating that a holistic approach is being taken, it has just been ‘chunked down into stages, and the cumulative impacts do have to be taken into account in terms of the Environmental Impact Statements’.⁷⁷
- 1.64** Mr Whitby indicated that a staged process is vital and it would be contrary to engineering practice to have a fully developed Environmental Impact Assessment upfront:

First of all, for a project the size and scale of one of this nature, it is important, in my view, that we have a staged process. To have a fully developed Environmental Impact Assessment for the full project up front really is contrary to what is required from an engineering perspective. Basically, we need to go through a process to establish what and how. We will start with a concept design and then move through into a reference design. Obviously, there is a development process that is required around how to go about the work flow and how to make it happen to design how we are going to respond to the challenges. To do all of that upfront is contrary to how we would engineer a project of this scope and nature.⁷⁸

⁷⁰ Submission 2, The Colong Foundation for Wilderness Ltd, p 5.

⁷¹ Submission 2, The Colong Foundation for Wilderness Ltd, p 1.

⁷² Submission 2, The Colong Foundation for Wilderness Ltd, p 5.

⁷³ Submission 2, The Colong Foundation for Wilderness Ltd, p 2.

⁷⁴ Submission 2, The Colong Foundation for Wilderness Ltd, p 4.

⁷⁵ Submission 2, The Colong Foundation for Wilderness Ltd, p 4.

⁷⁶ Evidence, Mr Whitby, 21 May 2018, p 9.

⁷⁷ Evidence, Mr Whitby, 21 May 2018, p 10.

⁷⁸ Evidence, Mr Whitby, 21 May 2018, pp 8-9.

- 1.65** Further, Mr Whitby explained that there is a degree of engineering refinement that is required, particularly in terms of the construction of the underground power station and underground tunnels. That knowledge requires a process which is not available upfront.⁷⁹
- 1.66** Ms Kim, also from Snowy Hydro Limited, confirmed that each separate application will consider the totality of the impacts. Snowy Hydro Limited and TransGrid will be required to undertake ‘a robust and comprehensive environmental impact assessment with respect to the works in question, including the cumulative impacts with respect to those applications’.⁸⁰
- 1.67** Mr Kitto from the department advised that, under the *Environmental Planning and Assessment Act*, the proponents have the ability to break an application up into smaller parts. A proponent can seek approval for a staged infrastructure project or concept approval for the project as a whole. In some cases, proponents may not have all the details and it may take some time for this to be finalised. In the case of Snowy 2.0, the proponents chose to break up the project into a number of separate components, rather than to lodge an application for the project as a whole.⁸¹
- 1.68** Mr Kitto explained that there is an obligation for each stage to assess, at least at a high level, the potential cumulative impacts of the other elements of the project. Each stage therefore cannot be in isolation of the other elements. By way of example, Mr Kitto compared this project with the department’s assessment of wind farms, where different stages of assessment can be contingent upon the satisfactory approval and consideration of subsequent stages:
- We assess a lot of wind farms for example and it is routine that the wind farm proponent will put in an Environmental Impact Statement for the wind farm and there will be a separate process for the transmission line that will be subject to its own merit assessment. However, there are provisions in conditioning any stage of the project whereby you can make the commencement or the operation of that first stage potentially contingent upon the satisfactory approval and consideration of subsequent stages, for example. For a wind farm, you could say you cannot start construction of the wind farm unless and until you have a valid planning approval for your transmission line.⁸²
- 1.69** Mr Kitto further explained that the declaring of a project to be critical State significant infrastructure is a high level, strategic decision and is not a triple bottom line assessment. It sets a strategic context for the project in the full knowledge that what will follow will be a full assessment of the environmental impacts and a triple bottom line assessment.⁸³
- 1.70** He asserted that having ‘a triple bottom line assessment before you can get to a triple bottom line assessment is not what the statute envisages’.⁸⁴

⁷⁹ Evidence, Mr Whitby, 21 May 2018, pp 10-11.

⁸⁰ Evidence, Ms Kim, 21 May 2018, p 11.

⁸¹ Evidence, Mr Kitto, 21 May 2018, p 17.

⁸² Evidence, Mr Young, 21 May 2018, p 17.

⁸³ Evidence, Mr Kitto, 21 May 2018, p 22.

⁸⁴ Evidence, Mr Kitto, 21 May 2018, p 22.

Legal review rights

- 1.71** Mr Muir from the Colong Foundation for Wilderness argued that in practice, the purpose of declaring Snowy 2.0 critical State significant infrastructure ‘is to prevent subsequent review of the NSW Minister for Planning’s final determination decision of the hydro-electricity pump storage and associated electricity transmission proposals’.⁸⁵ He expressed concern that judicial officers of Land and Environment Court will be prevented from reviewing the merits of these proposals once determined by the Minister.⁸⁶
- 1.72** Mr Kitto from the department confirmed that there are a number of constraints on legal action that can be taken against a critical State significant infrastructure project. This is because the project is deemed critical for the State and should be allowed to proceed in a reasonably unconstrained way.⁸⁷
- 1.73** If a project is State significant infrastructure or critical State significant infrastructure there are no third party merit appeal rights. However, there would still be judicial review rights if there was an administrative or law error.⁸⁸
- 1.74** Judicial review rights are maintained in terms of the granting of any approval for the project as a whole, or the various applications that apply, but there are constraints on what sort of action might be taken to prevent or interfere with the carrying out of the project once it has been approved.⁸⁹
- 1.75** Mr Kitto further described the legal limitations once a project has been declared critical State significant infrastructure:
- If you are going to look at some of the provisions in the Act though, they do limit the ability, if you go through that judicial review and it is all ticked off, then in terms of what sort of orders can be granted—for compliance with conditions of approval, breaches of the Act and so on—it does not mean that none of those things can happen but it does require the agreement of the Minister for Planning before those things can happen.⁹⁰
- 1.76** Mr Kitto elucidated that the critical State significant infrastructure process is highly integrated. The idea is that a proponent will not have to go through five or six separate approval processes to get approval for a critical project. Under this process a proponent is exempt from obtaining certain approvals, however some processes are still required, such as licences under the *Protection of the Environment Operations Act 1997* and from the Environment Protection Authority.⁹¹
- 1.77** The issuing of a lease under the *National Parks and Wildlife Act* sits outside of the planning and merit assessment process and is consistent with the broader principal that National Parks are

⁸⁵ Submission 2, The Colong Foundation for Wilderness Ltd, p 1.

⁸⁶ Submission 2, The Colong Foundation for Wilderness Ltd, p 1.

⁸⁷ Evidence, Mr Kitto, 21 May 2018, p 22.

⁸⁸ Evidence, Mr Kitto, 21 May 2018, p 22.

⁸⁹ Evidence, Mr Kitto, 21 May 2018, p 23.

⁹⁰ Evidence, Mr Kitto, 21 May 2018, p 22.

⁹¹ Evidence, Mr Kitto, 21 May 2018, p 21.

for conservation. The Minister for the Environment will consider these matters before granting a lease.⁹²

Committee comment

- 1.78** The committee thanks all inquiry participants for contributing to this inquiry; the first for the Regulation Committee.
- 1.79** The evidence received during the hearing process has ensured that the committee is satisfied that the staged assessment process is appropriate and necessary for a project of this complexity. Declaring a project critical State significant infrastructure does not diminish the fact that environmental assessments must still be made for each part of the project and that cumulative impacts must be taken into account.
- 1.80** However, the committee is concerned that the department did not at least communicate with local councils that have been listed in the March 2018 order. We are pleased that department officials have stated that they will liaise with the local councils shortly. Nevertheless, the committee is of the view that in future, as standard practice, the Department of Planning & Environment should communicate with affected local councils and relevant local State MPs on the Minister for Planning signing an order to declare a project critical State significant infrastructure, and we recommend accordingly.
- 1.81** In addition, given that the project will be partly located within the Kosciusko National Park, the committee recommends that the department conduct consultation with key stakeholders for each stage of the project.

Recommendation 1

That, as standard practice, the Department of Planning & Environment communicate with affected local councils and relevant local State MPs on the Minister for Planning signing an order to declare a project critical State significant infrastructure.

Recommendation 2

That the Department of Planning & Environment conduct consultation with key stakeholders for each stage of the Snowy 2.0 and Transmission Project.

⁹² Evidence, Mr Kitto, 21 May 2018, p 22.

Appendix 1 Snowy 2.0 and Transmission Project Order



New South Wales

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of sections 5.12 (4) and 5.13 of the *Environmental Planning and Assessment Act 1979*, make the following Order.

Dated, this 7th day of March 2018.

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The Snowy 2.0 and Transmission Project is a proposed program of works for the expansion of the generating capacity of the Snowy Mountains Hydroelectric Scheme. Development proposed to be carried out for the purposes of Snowy 2.0 includes exploratory works, the construction of a new hydroelectric power and pump station, the construction of a tunnel between Tantangara Reservoir and Talbingo Reservoir and the construction of additional electricity power lines and substations.

The object of this Order is to declare development for the purposes of the Snowy 2.0 and Transmission Project to be State significant infrastructure and critical State significant infrastructure.

This Order is made under sections 5.12 (4) and 5.13 of the *Environmental Planning and Assessment Act 1979*.

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018
[NSW]

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018

under the

Environmental Planning and Assessment Act 1979

1 Name of Order

This Order is the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.

2 Commencement

This Order commences on the day on which it is published on the NSW legislation website.

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018
 [NSW]
 Schedule 1 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

Schedule 1 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

Schedule 5 Critical State significant infrastructure

Insert at the end of the Schedule, with appropriate clause numbering:

Snowy 2.0 and Transmission Project

- (1) The Snowy 2.0 and Transmission Project is a proposed program of works for the expansion of the generating capacity of the Snowy Mountains Hydroelectric Scheme and for associated upgrades and additions to the electricity transmission network. The object of this clause is to declare development for the purposes of the Snowy 2.0 and Transmission Project that is set out in this clause to be State significant infrastructure and critical State significant infrastructure.
- (2) This clause applies to development on land in any of the following local government areas:
 - (a) Cootamundra-Gundagai Regional,
 - (b) Goulburn Mulwaree,
 - (c) Snowy Monaro Regional,
 - (d) Snowy Valleys,
 - (e) Upper Lachlan Shire,
 - (f) Yass Valley.
- (3) **Snowy 2.0**
 Development for the purpose of pumped hydro and generation works to be known as Snowy 2.0 on land between Tantangara Reservoir and Talbingo Reservoir that involves:
 - (a) the carrying out of exploratory geotechnical works or engineering investigations, and
 - (b) the construction and operation of an underground hydroelectric power and pump station capable of supplying approximately 2,000 megawatts of hydroelectric power, and
 - (c) the construction of water and access tunnels, surge tank and intake and outlet structures at and between the two reservoirs.
- (4) **Transmission works**
 Development that involves:
 - (a) the construction and operation of new electricity transmission lines and an electricity substation to the west of the Talbingo Reservoir to connect Snowy 2.0 to the existing electricity transmission network at Nurenmerenmong, east of Tumbarumba, and
 - (b) the construction and operation of new electricity transmission lines between the new substation at Nurenmerenmong and an existing substation at Bannaby, north of Marulan, and
 - (c) the construction and operation of new transmission lines between an existing substation at Khancoban and a location on the NSW-Victorian border generally south-west of Khancoban, and
 - (d) the augmentation of the existing substation at Bannaby.

Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018
[NSW]
Schedule 1 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

- (5) The development referred to in this clause does not include:
- (a) the carrying out of surveys, sampling, environmental investigations, geotechnical borehole drilling, test drilling, test excavations, or other tests or investigations, for the purposes of feasibility assessment and the preliminary design of the Snowy 2.0 and Transmission Project, or
 - (b) the carrying out of works to upgrade or modify electricity transmission lines, works within existing switchyards, and the installation of communications infrastructure.
- (6) **Ancillary development**
Development that is ancillary to any other development in this clause, including the carrying out of works to upgrade or construct access roads, utilities infrastructure, construction accommodation, construction compounds and construction power supply.

Appendix 2 Environmental Planning and Assessment Act 1979

Current version for 3 April 2018 to date (accessed 24 May 2018 at 15:15)

Part 5 > Division 5.2 > Subdivision 1

Subdivision 1 Preliminary

5.11 Definitions (cf previous s 115T)

In this Division:

approved State significant infrastructure means infrastructure to the extent that it is approved by the Minister under this Division (but does not include any stage of the infrastructure that has not yet been authorised to be carried out by an approval under a staged infrastructure application).

critical State significant infrastructure means State significant infrastructure that is critical State significant infrastructure, as referred to in section 5.13.

development includes an activity within the meaning of Division 5.1.

infrastructure means development for the purposes of infrastructure, including (without limitation) development for the purposes of railways, roads, electricity transmission or distribution networks, pipelines, ports, wharf or boating facilities, telecommunications, sewerage systems, stormwater management systems, water supply systems, waterway or foreshore management activities, flood mitigation works, public parks or reserves management, soil conservation works or other purposes prescribed by the regulations.

proponent of infrastructure means the person proposing to carry out development comprising all or any part of the infrastructure, and includes any person certified by the Secretary to be the proponent.

State significant infrastructure—see section 5.12.

5.12 Development that is State significant infrastructure (cf previous s 115U)

- (1) For the purposes of this Act, *State significant infrastructure* is development that is declared under this section to be State significant infrastructure.
- (2) A State environmental planning policy may declare any development, or any class or description of development, to be State significant infrastructure.
- (3) Development that may be so declared to be State significant infrastructure is development of the following kind that a State environmental planning policy permits to be carried out without development consent under Part 4:
 - (a) infrastructure,
 - (b) other development that (but for this Division and within the meaning of Division 5.1) would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Division 5.1.

Environmental Planning and Assessment Act 1979 No 203 [NSW]

Paragraph (b) does not apply where the proponent is a council, county council or joint organisation under the *Local Government Act 1993*.

- (4) Specified development on specified land is State significant infrastructure despite anything to the contrary in this section if it is specifically declared to be State significant infrastructure. Any such declaration may be made by a State environmental planning policy or by an order of the Minister (published on the NSW legislation website) that amends a State environmental planning policy for that purpose.
- (5) The Independent Planning Commission or Infrastructure NSW may recommend to the Minister that a declaration be made under subsection (4) in respect of particular development.
- (6) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (2) and State significant development, it is not State significant infrastructure despite any such declaration.
- (7) If, but for this subsection, development is both State significant infrastructure because of a declaration under subsection (4) and State significant development, it is not State significant development despite any declaration under Division 4.7.

5.13 Critical State significant infrastructure (cf previous s 115V)

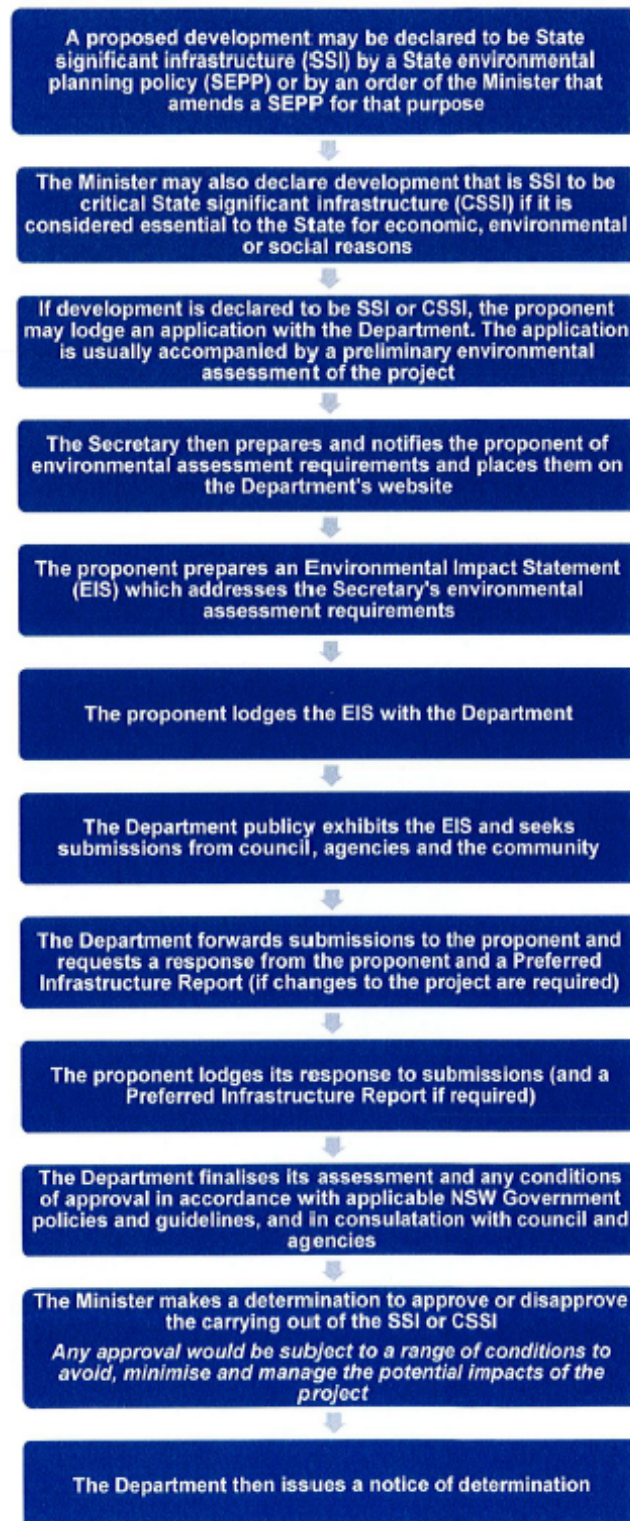
Any State significant infrastructure may also be declared to be critical State significant infrastructure if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons. Any such declaration may be made by the instrument that declared the development to be State significant infrastructure or by a subsequent such instrument.

Note. In the case of critical State significant infrastructure, this Division contains the following additional provisions:

- (a) section 5.22 (4),
- (b) section 5.23 (3),
- (c) section 5.27.

Section 23 (8) also prevents the Minister delegating his or her function under this Division of determining an application for approval to carry out critical State significant infrastructure.

Appendix 3 CSSI and SSI assessment pathway



Appendix 4 Summary of Critical State significant Infrastructure projects

The following summary is provided for consideration;

1. projects that were declared by to be critical infrastructure projects and listed in Schedule 5 to the *Major Development State Environmental Planning Policy (SEPP) 2005*;
2. projects that were declared to be critical state significant infrastructure projects and listed in Schedule 5 of the *State and Regional Development SEPP 2011*; and
3. declarations gazetted under the former 75C of the *Environmental Planning and Assessment Act 1979*.

Major Development SEPP 2005

The following projects were declared to be Critical infrastructure projects for the purposes of the Major Development SEPP and appear in Schedule 5 before its repeal on 1 October 2010:

1. *Kurnell Desalination Plant* - Development carried out by or on behalf of Sydney Water Corporation for the purposes of a desalination plant on the Kurnell Peninsula for the supply of up to 500 megalitres of drinking water per day.
2. *Royal North Shore Hospital Redevelopment* - Development for the purposes of redeveloping the RNSH redevelopment site.
3. *Liverpool Hospital Redevelopment* - Development for the purposes of redeveloping the Liverpool Hospital redevelopment site.
4. *Queensland–Hunter Gas Pipeline* - Development for the purposes of a high pressure natural gas transmission pipeline from the Walumbilla Gas Hub in South Central Queensland to connect with the Sydney to Newcastle pipeline near Newcastle in New South Wales.
5. *Tillegra Dam* - Development carried out by or on behalf of the Hunter Water Corporation for the purposes of a water storage facility with a capacity of approximately 450 gegalitres on the Upper Williams River in the Hunter Region.

State and Regional Development SEPP 2011

The following projects were declared to be critical state significant infrastructure for the purposes of the State and Regional Development SEPP 2011 and appear in Schedule 5 (please note that some are linked to the relevant orders):

1. *Pacific Highway projects* – Development for the purposes of upgrading the following segments of the Pacific Highway, located within the Ballina, Clarence Valley, Coffs Harbour, Newcastle, Port Stephens and Richmond Valley local government areas, to achieve at least four lanes of dual carriageway.
2. *Rail infrastructure projects*:
 - (a) Development for the purposes of the North West Rail Link, being the construction and operation of an electrified passenger rail line between Epping and Rouse Hill; and
 - (b) Development for the purposes of a Sydney light rail extension being the construction and operation of an extension of the light rail network generally on land between Circular Quay and Randwick and Kingsford,
3. *F3 – M2 project* - Development for the purposes of the NorthConnex project being a new multi-lane road link between the M1 Pacific Motorway (formerly the F3 Sydney–Newcastle Expressway) at North Wahroonga and the Hills M2 Motorway at Baulkham Hills, on land in the suburbs of Hornsby, North Wahroonga, Wahroonga, Normanhurst, Thornleigh, Pennant Hills, Beecroft, West Pennant Hills, Carlingford, North Rocks, Northmead and Baulkham Hills.

4. *WestConnex* – A program of works for approximately 33 kilometres of multi-lane roads linking the M4 Western Motorway and the M5 South West Motorway, including the M4 widening project, M4 East project, King Georges Road interchange, new M4 project and ancillary development.
5. *Sydney Metro City and Southwest* - Development for the purposes of Sydney Metro City and Southwest being the construction and operation of new passenger rail infrastructure and the modification of existing rail infrastructure on land in the suburbs referred to in subclause (2), being approximately from Chatswood, through the lower north shore and the central business district of Sydney, to Sydenham and west to Bankstown.
6. *The Northern Road Upgrade project* - the upgrading, widening and realignment of The Northern Road between Mersey Road, Bringelly and Glenmore Parkway, Glenmore Park, to be carried out on land in the local government areas of the City of Liverpool and the City of Penrith, and other ancillary development.
7. *Inland Rail* - proposed program of works comprising the upgrade and construction of railway track over approximately 1,700 kilometres between Melbourne and Brisbane, including works to existing track and the construction of new track between Albury and the Queensland border.
8. *The Parramatta Light rail* - the construction and operation of new passenger light rail infrastructure from Westmead to Parramatta and on to Camellia.
9. *Bayswater Power Station Turbine Efficiency Upgrade* - Development for the purposes of the Bayswater Power Station Turbine Efficiency Upgrade project, being the replacement and upgrade of turbines on the 4 existing generating units. The development is to be carried out on the site of the Bayswater Power Station (being Lot 2, DP 327372 and Lot 2, DP 1095515).
10. *Snowy 2.0 and Transmission Project* - proposed program of works for the expansion of the generating capacity of the Snowy Mountains Hydroelectric Scheme and for associated upgrades and additions to the electricity transmission network.

Declarations gazetted under the former Section 75C of the *Environmental Planning and Assessment Act 1979*

A number of 'classes' of development were declared to be critical infrastructure under the former Section 75C of the EP&A Act, including (see attached for further details):

- *various Pacific Highway Upgrades;*
- *various Hume Highway Upgrades;*
- *M2 Motorway Upgrade;*
- *M5 Motorway Widening;*
- *the Metro Rail Line;*
- *North West Rail Link;*
- *Western Express Line;*
- *Light Rail Extension;*
- *South West Rail Link;*
- *various Sydney Catchment Authority Borefields;*
- *Murrumbidgee to Googong Water Transfer Project;*
- *Newcastle Gas Storage Facility at Tomago;*
- *electricity generation projects with a capacity greater than 250 megawatts;*
- *renewable energy projects with a capacity of greater than 30 megawatts; and*
- *facilities for the production of biofuels with production capacity of at least 50ML/yr.*

Appendix 5 Submissions

No	Author
1	Yass Valley Council
2	The Colong Foundation for Wilderness Ltd
3	Snowy Hydro Limited
4	National Parks Association of NSW
5	NSW Department of Planning & Environment

Appendix 6 Witnesses at hearing

Date	Name	Position and Organisation
Monday, 21 May 2018 Macquarie Room Parliament House	Ms Alix Goodwin	Chief Executive Officer, National Parks Association
	Mr Keith Muir	Director, The Colong Foundation for Wilderness
	Mr Roger Whitby	Chief Operating Officer, Snowy Hydro Ltd
	Ms Cesilia Kim	Group General Counsel, Corporate Affairs & Procurement, Snowy Hydro Ltd
	Mr Mike Young	Director Resource and Energy Assessments, NSW Department of Planning & Environment
	Mr David Kitto	Executive Director, Resource Assessments & Business Systems, NSW Department of Planning & Environment

Appendix 7 Minutes

Minutes no. 1

Thursday 15 February 2018

Regulation Committee

Members' Lounge, Parliament House, Sydney, 1.04 pm

1. Members present

Mr Farlow, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Green (via teleconference)

Mr Khan

Mr Mallard

Mr Pearson (from 1.05 pm)

Mr Veitch

Mrs Ward (from 1.07 pm)

2. Tabling of resolution establishing the committee

The Chair tabled the resolution establishing the committee, which reads as follows:

Appointment

1. A Regulation Committee be appointed, on a trial basis, to commence on the first sitting day in 2018 and conclude on the last sitting day in November 2018.

Functions

2. The committee may inquire into and report on:
 - (a) any regulation, including the policy or substantive content of a regulation, and
 - (b) trends or issues that relate to regulations.

Referral of inquiries

3.
 - (1) The committee is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House.
 - (2) Where a regulation referred to the committee is the subject of a notice of motion or order of the day for the disallowance of the regulation:
 - (a) the notice or order stand postponed until the tabling of the committee report,
 - (b) unless otherwise ordered, the committee must table its report within six weeks,
 - (c) on tabling of the committee report, the Clerk is to place the notice of motion or order of the day on the Notice Paper at the stage it had reached prior to the regulation being referred.

Powers

4. A committee has power to make visits of inspection within New South Wales and, with the approval of the President, elsewhere in Australia and outside Australia.

Membership

5. The committee is to consist of eight members, comprising:
 - (a) four government members,
 - (b) two opposition members, and

- (c) two crossbench members.

Chair

- 6. The Leader of the Government is to nominate in writing to the Clerk of the House the Chair of the committee.

Quorum

- 7. The quorum of a committee is three members, of whom two must be government members and one a non-government member.

Sub-committees

- 8. The committee has the power to appoint sub-committees.

Substitute members

- 9. (1) Members may be appointed to the committee as substitute members for any matter before the committee, by notice in writing to the Committee Clerk.
 - (2) Nominations for substitute government or opposition members are to be made by the Leader of the Government, Leader of the Opposition, Government or Opposition Whip or Deputy Whip, as applicable.
 - (3) Nominations for substitute crossbench members are to be made by the substantive member or another crossbench member.

Electronic participation in deliberative meetings

- 10. (1) A committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:
 - (a) the Chair is present in the meeting room, and
 - (b) all members are able to speak to and hear each other at all times.(2) Notwithstanding paragraph 10(1), a member may not participate by electronic communication in a meeting to consider a draft report.

Conduct of committee proceedings

- 11. Unless the committee decides otherwise:
 - (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
 - (b) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
 - (c) transcripts of evidence taken at public hearings are to be published,
 - (d) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within seven calendar days of the date on which questions are forwarded to the witness, and
 - (e) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

Evaluation of trial

12. The Regulation Committee is to table a report evaluating the effectiveness of the trial by the last sitting day in November 2018.

3. Election of Deputy Chair

The Chair called for nominations for Deputy Chair.

Mr Veitch moved: That Mr Donnelly be elected Deputy Chair of the committee.

There being no further nominations Mr Donnelly was therefore declared elected Deputy Chair of the committee.

4. Conduct of committee proceedings – media

Resolved, on the motion of Mr Khan: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament’s website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair’s Committee in May 2013
- media statements on behalf of the committee be made only by the Chair.

5. Briefing note for Regulation Committee

The committee noted the briefing note for the Regulation Committee prepared by the secretariat.

6. Operation of Regulation Committee

Resolved, on the motion of Mr Veitch: That the secretariat prepare a case study for the committee to provide an example of how the committee might undertake an inquiry into a regulation.

Resolved, on the motion of Mr Khan: That the secretariat inform the committee when a notice of motion for disallowance has been given in the House.

Resolved, on the motion of Mr Veitch: That the secretariat circulate the Statutory Rules and Instruments Paper to the committee as soon as practicable following its publication, which occurs either:

- on the first day of a sitting week
- on the first Tuesday of the month.

7. Next meeting

The committee adjourned at 1.17 pm. *Sine die.*

Sam Griffith
Committee Clerk

Minutes no. 2

Thursday 8 March 2018

Regulation Committee

Members' Lounge, Parliament House, Sydney, 1.01 pm

1. Members presentMr Farlow, *Chair*Mr Donnelly, *Deputy Chair*

Mr Green (from 1.09 pm)

Mr Khan

Mr Mallard

Mr Veitch

Mrs Ward

2. Apologies

Mr Pearson

3. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no.1 be confirmed.

4. Inquiry case studies

The committee noted the case studies and flowchart prepared by the secretariat providing examples of how the committee might undertake an inquiry into a regulation.

Mr Green arrived.

5. Potential inquiries

The committee discussed potential inquiries to conduct.

The committee noted that members should provide any suggestions for inquiries to conduct to the secretariat by 12.00 pm on Tuesday 13 March and that the committee meet again at 10.45 am on Wednesday 14 March to consider these suggestions.

6. Next meetingThe committee adjourned at 1.12 pm until 10.45 am on Wednesday 14 March 2018 (*deliberative meeting*).

Sam Griffith

Committee Clerk**Minutes no. 3**

Tuesday 10 April 2018

Regulation Committee

Members' Lounge, Parliament House, Sydney, 12.45 pm

1. Members presentMr Farlow, *Chair*Mr Donnelly, *Deputy Chair*

Mr Khan

Mr Mallard

Mr Pearson (from 12.48 pm)

Mrs Ward

2. Apologies

Mr Green
Mr Veitch

3. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minute no. 2 be confirmed.

4. Proposed terms of reference

Resolved, on the motion of Mr Mallard: That the Chair move the following motion in the House:

1. That the Regulation Committee inquire into and report on the impact and implementation of the Environmental Planning and Assessment Amendment (Snowy 2.0 and Transmission Project) Order 2018.
2. That the committee report by 29 June 2018.

Mr Pearson arrived.

5. Conduct of proposed inquiry into Environmental Planning and Assessment Amendment Regulation 2018

5.1 Closing date for submissions

Resolved, on the motion of Mr Donnelly: That the closing date for submissions be Friday 4 May 2018.

5.2 Stakeholder list

Resolved, on the motion of Mr Donnelly: That the secretariat circulate to members the Chair's proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.3 Advertising

The committee noted that the inquiry will be advertised via twitter, stakeholder letters and media release distributed to all media outlets in New South Wales.

5.4 Hearing dates

Resolved, on the motion of Mr Donnelly: That a hearing be held in late May, with the date to be determined by the Chair after consultation with members regarding their availability.

6. Adjournment

The committee adjourned at 12.52 pm, *sine die*.

Sam Griffith
Committee Clerk

Minutes no. 4

Monday 21 May 2018

Regulation Committee

Macquarie Room, Parliament House, Sydney, 9.30am

1. Members presentMr Farlow, *Chair*Mr Donnelly, *Deputy Chair*

Mr Green (from 9.35 am)

Mr Khan (from 10.02 am)

Mr Mallard

Mr Veitch

Mrs Ward

2. Apologies

Mr Pearson

3. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 3 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 13 April 2018 – Email from Mr Andrew Lewis, Government and Stakeholder Engagement Manager, Transgrid to secretariat, informing that Transgrid would welcome giving evidence at the Snowy Hydro 2.0 inquiry hearing on 21 May 2018.
- 16 May 2018 – Email from Mr Andrew Lewis, Government and Stakeholder Engagement Manager, Transgrid to secretariat, declining the committee's invitation to give evidence to the Snowy Hydro 2.0 inquiry hearing on 21 May 2018.

5. Inquiry into the Environmental Planning and Assessment Amendment (Snowy Hydro 2.0 and Transmission Project) Order 2018**5.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under authorisation of the resolution appointing the committee: submission nos 1 to 5.

5.2 Answers to questions due date

Resolved, on the motion of Ms Ward: That answers to questions on notice for the Snowy Hydro 2.0 inquiry hearing this day be returned by Friday 8 June 2018.

5.3 Report deliberative

Resolved, on the motion of Mr Donnelly: That the committee hold the report deliberative meeting on Thursday 28 June at 10.00 am.

5.4 Public hearing

Witnesses, the public and the media were admitted.

The following witnesses were sworn and examined:

- Ms Alix Goodwin, Chief Executive Officer, National Parks Association
- Mr Keith Muir, Director, Colong Foundation for Wilderness.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Roger Whitby, Chief Operating Officer, Snowy Hydro Ltd
- Ms Cesilia Kim, Group General Counsel, Corporate Affairs & Procurement Snowy Hydro Ltd.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mike Young, Director Resource and Energy Assessments, NSW Department of Planning and Environment
- Mr David Kitto, Executive Director, Resource Assessments & Business Systems NSW Department of Planning and Environment.

Mr Young tendered the following document:

- SSI and CSSI – Assessment Pathway.

The evidence concluded and the witnesses withdrew.

6. Tendered documents

Resolved, on the motion of Mr Veitch: That the committee accept and publish the following document tendered during the public hearing:

- SSI and CSSI – Assessment Pathway tendered by Mr Mike Young, Director Resources and Energy Assessments, NSW Department of Planning and Environment.

5. Questions for Transgrid

Resolved, on the motion of Mr Veitch: That members propose written questions to Transgrid as part of the supplementary question process, and that responses to these questions be returned by Friday 8 June 2018.

6. Adjournment

The committee adjourned at 11.45 am, until 10.00 am Thursday 28 June (*report deliberative*).

Sam Griffith
Committee Clerk

Draft minutes no. 4

Thursday 28 June 2018

Regulation Committee

Room 1254, Parliament House, Sydney, 10.01 am

1. Members present

Mr Farlow, *Chair*
Mr Donnelly, *Deputy Chair*
Mr Green
Mr Khan (from 10.01 am)
Mr Mallard
Mr Pearson
Mr Veitch
Mrs Ward

2. Previous minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no. 4 be confirmed.

3. Inquiry into the Environmental Planning and Assessment Amendment (Snowy Hydro 2.0 and Transmission Project) Order 2018

3.1 Answers to questions on notice

Resolved, on the motion of Mr Mallard: That the following answers to questions on notice be published:

- Answers to questions on notice from Ms Alix Goodwin, CEO, National Parks Association of NSW, received 7 June 2018
- Answers to questions on notice and supplementary questions from Mr David Kitto, Executive Director, NSW Planning and Environment, received 31 May 2018.

Mr Khan arrived.

3.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled 'Environmental Planning and Assessment Amendment (Snowy Hydro 2.0 and Transmission Project) Order 2018', which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Veitch: That a new paragraph be inserted after paragraph 1.35 as follows:

'The department also noted that it did not initially advise local members of Parliament regarding the order, but had recently written to them. [FOOTNOTE: Answers to questions on notice, NSW Department of Planning & Environment, received 31 May 2018, p 1.]'

Resolved, on the motion of Mr Veitch: That paragraph 1.79 and recommendation 1 be amended by omitting 'affected local councils' and inserting instead 'affected local councils and relevant local State MPs'.

Resolved, on the motion of Mr Mallard: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- That the report be tabled on Friday 29 June 2018.

4. Further inquiries

The committee discussed conducting a new inquiry and noted that it would meet again in early August for further consideration.

Mr Veitch noted that the following regulations could be referred for inquiry and report:

- Cemeteries and Crematoria Amendment Regulation 2018, published on the NSW Legislation Website on 22 June 2018
- Item 4 of clause 13(1) of the Crown Land Management Regulation 2018, published on the NSW Legislation website on 16 March 2018 (currently the subject of a motion for disallowance by Mr Shoebridge).

5. Adjournment

The committee adjourned at 10.18 am, *sine die*.

Sam Griffith

Committee Clerk