



19 August 2008

Our ref: DB/08025

Mr Sam Haddad
Director General
Department of Planning
23-33 Bridge Street
SYDNEY NSW 2000

Dear Mr Haddad,

re: Proposed Southern Highlands Regional Shooting Facility (MP 06_0232)

We write on behalf of the Hill Top Residents Action Group Inc (HTRAGI) in relation to the above project application. Representations have been made to the Department of Planning in response to the exhibition of the project application and to the Panel established by the Minister to assess certain aspects of the project. HTRAGI remains concerned that the project is proceeding to determination without the public being given reasonable opportunity to comment on the project and its impacts. This submission seeks to outline the main concerns of the HTRAGI.

1. Key Environmental Concerns

Environmental Significance of the Site

HTRAGI remain firmly of the view that the site is not suitable for the proposed regional sporting facility (shooting complex) because:

- It is of high conservation significance as it contains threatened fauna species and intact bushland;
- It adjoins the World Heritage listed site and requires approval under the Commonwealth environmental protection legislation;
- It has poor access and has no utility services;
- There will be unacceptable noise impacts on the existing community;
- It relies on access through a small rural village that will be impacted by this incompatible development;
- It does not meet key site selection criteria identified by the NSW Police;
- It poses a bushfire risk;

- It is located in Sydney's drinking water catchment and drains to Warragamba Dam. No adequate measures have been identified to manage lead contamination which can enter the water supply.

Investigations undertaken on behalf of HTRAGI in relation to the flora on the site lead to the conclusion that the site is of environmental significance with the development giving rise to the following key ecological impacts and concerns:

- The project involves clearing and disturbing environmentally significant native bushland which is habitat for a number of threatened fauna species;
- The site comprises intact bushland of a high wilderness quality with no introduced or weed species recorded or observed. It has a high diversity of native plant species and is pristine old growth dry sclerophyll forest;
- The site has a healthy forest understorey with hollows and sandstone outcrops that are ideal nests for a range of native fauna species;
- At least two threatened species will be affected, the yellow bellied glider and the koala. In addition, 12 other threatened species are likely to occur on the site. This site has a rich diversity of native species. Trees show evidence of use by koalas and a range of marsupial gliders;
- The site is centred in an area that has been identified as providing an east-west fauna movement pathway between sandstone plateaux in the Nattai and Nepean areas and the north-south pathway between Blue Mountains and Woronora Plateau. This is recognised in the very significant study undertaken as a joint project between the Sydney Catchment Authority and the Parks and Wildlife Group of the Department of Environment and Climate Change NSW. This study is titled "Terrestrial Vertebrate Fauna of the Greater Southern Sydney Region 2007" ("GSSR");
- The GSSR study area includes the land the subject of the proposed shooting complex yet the Government's environmental consultants failed to make any reference to this study;
- The GSSR identifies the "Bargo Linkage" as a high quality habitat for two key species that are likely to be reliant on the linkage, namely, the powerful owl and the rosenbergs goanna. The Proponents environmental study fails to consider any of these critical issues;
- The site was, until excised by special government legislation, part of a State Conservation Area which adjoins the World Heritage listed Blue Mountains National Park system;
- There is scat and scratching evidence of koalas on the site and koalas have been seen in the immediate locality. Known koala habitat tree species are on the site.

Inadequate Consideration of Alternatives

The DG's environmental assessment requirements issued in August 2007 include a requirement for the consideration of alternatives to the proposal as a key assessment requirement. This aspect has not been adequately addressed. The environmental

significance of the site places added importance on the need to ensure that the search for alternative sites has been thorough and complete.

The decision to locate the facility at this site has already been made with the gazettal of the National Parks and Wildlife (Adjustment of Areas) Act 2006. The site was already excised from the State Conservation Area and thus the outcome of the consideration of alternative locations in the EA has been predetermined.

The consideration of alternatives is limited and does not justify why 1,000 hectares of State Conservation Area adjoining a site listed on the World Heritage Register and available for use by the public of New South Wales was excised and handed over for the use of a few.

There is no reference to a site selection process or reference to any recognised site selection criteria. There is no assessment of whether this site meets any recognised site selection criteria for the location of a regional shooting complex.

No serious consideration has been given to alternatives, including alternatives closer to the main population base for the clubs whose shooting activities will be based at the facility – being Wollongong and the Illawarra. Furthermore the proponent has failed to properly identify and consider alternative sites currently controlled by the Department of Defence (DOD), particularly as the project application includes the use of the regional rifle range by Defence and the use of high powered military rifles.

Given the clearly established environmental importance of the site and its location in relation to the village of Hill Top, there is no evidence to suggest that this site has the best potential to be developed as a regional shooting complex for the clubs nominated in the application.

Inadequate Access Arrangements

The HTRAGI commissioned an independent road safety audit of the access to the site. This audit found significant deficiencies which need to be rectified for the project to proceed. The works include:

- a. Seal Wattle Ridge Road from the village of Hill Top to the entrance to the facility.
- b. Install directional signposting (“Way finding”) for visitor access from the Hume Highway and from the secondary access route from the north (along West Parade) to the Regional Shooting Range through the township of Hill Top. Repeater signs along the route should also be installed, particularly along West Street and where it merges with Wattle Ridge Road.
- c. Provide edge linemarking along Wilson Drive, north of Church Avenue, particularly through the cutting. Improved delineation is also required along this segment with the use of guide posts and retro-reflective raised pavement markers (RRPM’s) and markers along the rock face through the cutting at regular intervals. The incidence of falling rocks through the cutting should also be further investigated and stabilisation works undertaken as required.
- d. Provide barrier and lane separation linemarking along the existing sealed roads within the township of Hill Top in accordance with AS1742. Critical linemarked segments include:

- i. The cutting along Wilson Drive, north of Church Avenue.
 - ii. Barrier lines along Chalker Parade from Wilson Drive to Rosina Street, across the railway overbridge.
 - iii. West Street and Wattle Ridge Road north of Vera Street. Barrier lines required predominantly along the segment.
- e. Erect narrow bridge warning sign at the railway overbridge (Chalker Pde) on both approaches.
- f. Erect crest warning signs in West Street north of Rosina Street and along Wilson Drive north of Chalker Parade.
- g. Erect advance curve warning and advisory speed signs at all bends along the corridor(s) in accordance with AS1742. (Note: All of the bends along the unsealed road segment along Wattle Ridge Road are not signposted and coupled with its narrow segments and general speed limit of 50km/h it is a hazardous corridor. The low traffic flows currently along this segment do not reduce the risk imposed by the corridor. The corridor requires widening to achieve a width of at least 10m at all tight bends where advisory speed signs of 35km/h should be installed with the appropriate curve warning signs. "Steep Descent" signs are also necessary at a point 530m north of the existing sealed section of Wattle Ridge Road. "Crest" warning signs also needed 530m and 1km north of the existing sealed section of Wattle Ridge Road).
- h. Install guide posts at intervals compliant with relevant standards for the segment of Wattle Ridge Road north of Lyrebird Close.
- i. Install hazard markers on all exposed trees and other obstructions that are located at or near bends along the unsealed segment of Wattle Ridge Road, within the required clear zone.
- j. Widen the railway overbridge (Chalker Parade) to comply with the RTA's "Road Design Guide" with a separate footpath width of at least 1.8m clear on one side.
- k. Improve visibility of bridge at night with street lighting and / or delineation measures to include edge lines, RRPM's along centreline and edge line treatment plus additional reflectors and chevron markers on the guard rail to highlight the presence of the bend.
- l. Signpost a 50km/hr speed limit on Fitzroy Street between Wilson Drive and West Street. Note: The current width is too narrow for the safe movement of two-way traffic. .
- m. Erect a "STOP" sign at the Fitzroy Street interface with West Street (both sides).
- n. Install a "STOP" sign at the junction of Emily Street with West Street.
- o. All linemarking should contain 1mm glass beads with a retroreflectivity level of 150mcd/sqm/lx in dry conditions and 100mcd/sqm/lx in wet conditions in accordance with AS/NZS 2009. Linemarking to be calibrated with AccuBrite traceable Secondary Standards.
- p. The lighting of the route shall comply with Council and AS1742 requirements.

Inadequate Utility Services

The site does not have electricity, communications or water as well as inadequate road access. No upgrade of services is proposed as part of the project. These facilities should be available for a regional shooting complex that is of State significance. There are significant concerns regarding provision of emergency services. At the very least there should be:

- A reticulated electricity supply;
- A land line telephone service;
- A reticulated water supply.

Other Environmental Concerns

1. Site is not suitable for a shooting complex - the site fails to meet relevant site selection criteria for rifle ranges as presented in Chapter 2 of the NSW Police Range Users Guide:

Users Guide Requirement	Compliance	Comment
Wherever possible, ranges should be constructed so that the range danger areas are contained fully within the area closed to public use.	No	It would appear that the safety templates applied to the new ranges would not be satisfied by the existing range.
Sites should be studied to select the best two or three options on the basis of access, shape of terrain, availability of services, direction of fire, multiple usage etc.	No	The site has poor access and is virtually inaccessible. There are no services available at all. The shape of the terrain is hilly and unsuitable.
As a general rule, sites should be level or slightly hollow (concave), and preferably dry and above flood lines.	No	The site is not level and is not concave. the ranges are located on a convex slope
Sites on rocky, marshy, uneven, rising or falling terrain create difficulties in both construction and use.	No	As indicated in the EA the site contains Igneous/Metamorphic rock formations.
Rocky ground should be avoided because of the increased danger of ricochets and the cost of removing exposed rocks.	No	As indicated in the EA the site contains Igneous/Metamorphic rock formations.

2. There are potentially significant bushfire impacts caused by sparks. The solution not to shoot on high fire danger days is an indication of the inadequacy of the site for the shooting complex.
3. Poor security - The proponent ignores the only recommendation of the Local Area Command of the NSW Police and failed to make adequate provision for security fencing.
4. The development will have an adverse social impact on the residents of Hill Top as this community would be associated with the shooting range and would suffer because of this stigma.
5. The lead from bullets and other contaminants from the clay shooting can potentially enter the waterways. The site is located in the catchment of Warragamba Dam. Inadequate consideration has been given to means to ensure that there would be no adverse impacts on Sydney's drinking water.

6. There is no evidence that the existing rifle range meets current design standards for safety. Inadequate consideration has been given to the range danger area to the existing range.

Summary

The site is not suitable for the proposed regional sporting facility (shooting complex) because:

1. It is of high conservation significance as it contains threatened fauna species and intact bushland;
2. It adjoins the World Heritage listed site and requires approval under the Commonwealth environmental protection legislation;
3. It has poor access and has no utility services;
4. There will be unacceptable noise impacts on the existing community;
5. It relies on access through a small rural village that will be impacted by this incompatible development;
6. It does not meet key site selection criteria identified by the NSW Police;
7. It poses a bushfire risk;
8. It is located in Sydney's drinking water catchment and drains to Warragamba Dam. No adequate measures have been identified to manage lead contamination which can enter the water supply.
9. Council recognises the environmental significance of the site by proposing to upgrade the environmental zoning of the site which prohibits the use of the site as a shooting complex.
10. The proposal is prohibited development pursuant to Council's current planning controls and by Council's recently exhibited draft Local Environmental Plan which identifies the site as having a high conservation value. The application currently before the Minister, if approved, will be contrary to the Council's own planning control and frustrate the local authority's strategic planning process.

2. Matters of Due Process

Inadequate Opportunity for Public Comment

The following is a summary of the representations made in respect of the process in assessing this application:

1. In December 2007, the HTRAGI requested the Minister declare the use of the subject site as a 'regional shooting complex' as 'designated development' pursuant to *Section 75R* of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This request was to provide third party appeal rights to the Land and Environment Court of NSW in the interest of transparency particularly as the aforementioned use is a 'prohibited use' and the proponent is a Department of the NSW State Government.
2. The HTRAGI requested alternatively that the Minister hold a *Commission of Inquiry* with members of the Commission appointed by the Governor (*Section*

18 EP&A Act). A Commission of Inquiry appointed by the Governor is different to an 'expert panel' appointed by the Minister for Planning pursuant to Section 75G of the EP&A Act. This greater separation of power and independence of a Commission of Inquiry compared with an 'expert panel' was sought by HTRAGI.

3. In the letter from Pikes Lawyers dated 1 July 2008, representations were made on behalf of the HTRAGI requesting that the assessment of the proposal by 'expert panel' be undertaken in an open and transparent manner. In the absence of rights of third parties to appear before a Commission of Inquiry appointed by the Governor or third party appeal rights before the NSW Land and Environment Court, HTRAGI has made representations before the 'expert panel'. It has sought to ensure that the equivalent level of information, transparency and due process would be available to third parties as would be the case before the NSW Land and Environment Court or a Governor appointed 'COI'.

The HTRAGI requests that the Project Application (including all of the information provided to the 'expert panel') or the Director General by the proponent by way of subsequent assessment or information or amendments to the proposal or response to submissions or a preferred project report be re-exhibited. This is considered important and necessary because of the inadequacies in the Environmental Assessment of the project identified by the panel of experts appointed by the HTRAGI and others and the lack of information on the actual impacts of the proposal available to the public for comment.

The HTRAGI submits that, given the significance of the Independent Hearing and Assessment Panel process under the EP&A Amendment Act 2008 (passed by both Houses of Parliament), ensuring the independence and transparency of these bodies which set aside in certain circumstances appeal rights to the NSW L&E Court, it is considered imperative that:

1. the DG and the Minister is seen to act openly and without bias,
2. the DG is fully informed prior to preparing a report and
3. third parties have access to all additional information sought by the Panel or otherwise provided by the proponent prior to the Director General preparing a report to the Minister.

Under Section 75G(1)(a) of the EP&A Act, the Minister directed that a 'panel of experts' be constituted for the purpose of assessment of relevant aspects of the project as defined by the EP&A Act. HTRAGI notes that there are no members of the panel with expertise in flora and fauna assessment, traffic engineering, bushfire risk assessment or contamination assessment which are critical areas of impact of the project.

HTRAGI maintains that the information provided to the public and to the decision makers in the EA is not sufficient to enable the full impacts of the proposal to be identified, assessed and commented on. Public examination of the additional studies and investigations requested by the Panel or Department or undertaken by the proponent together with any response by the proponent to matters raised in the submissions or changes to the project

should be re-exhibited and the public provided the opportunity to make further submissions and for the DG to consider such submissions prior to reporting.

Development Prohibited

Clause 8O(1) of the Regulation states:

For the purposes of section 75J (3) of the Act, approval for the carrying out of a project may not be given under Part 3A of the Act for any project, or part of a project, that:

- (a) is not the subject of an authorisation or requirement under section 75M of the Act to apply for approval of a concept plan, and*
- (b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.*

Our client has no evidence that the project is the subject of an authorisation to apply for approval of a concept plan. The EA states on page 17 that the development of the site in the manner proposed (i.e. recreational shooting complex) is not permissible under the LEP. The lack of such evidence gives rise to the following concerns.

Clause 8O of the Regulation was introduced in 20 July 2007. Clause 8OA of the Regulation was introduced in November 2007. It states:

Clauses 8N and 8O do not apply to a project application if, before the commencement of those clauses, the Director-General had notified the proponent of environmental assessment requirements under section 75F of the Act relating to the project, or part of the project, concerned.

The environmental assessment requirements were notified in August 2007 which was not before the commencement of clause 8O. Thus at the time the project was declared and the DGs EARs were issued, the Director-General had not notified the proponent of environmental assessment requirements under section 75F of the Act relating to the project before the commencement of clauses 8N and 8O and thus the project does not benefit from clause 8OA. The Minister must refuse the application.

No Valid Project Application

Section 75E sets out the procedure for applying for approval of the Minister to carry out a project. An application under Part 3A cannot be made until the development is declared to be a project to which Part 3A applies. This declaration was made after the project application which is the subject of this exhibition was made, rendering the application invalid as it was not made for the project to which the declaration related. Section 75F(2) states that environmental assessment requirements cannot be issued until a project application is made. No such application has been made.

It is submitted that the application has not been duly made and, in accordance with Clause 8D(2) of the Regulation, the Minister should reject the application.

3. Conclusion

HTRAGI considers that the inadequacies of the exhibited EA and the process of project application are of such fundamental importance that any action to complete a report and any decision to proceed to determination based on that report (other than for refusal) would be flawed and subject to challenge.



HTRAGI submits that the Director General should not make a recommendation to the Minister in respect of this application (unless it is a recommendation for refusal) until:

- HTRAGI and the public are given the results of all of the further noise studies which were undertaken by the proponent and the opportunity to comment on those additional studies;
- HTRAGI and the public are given copies of all other supplementary studies undertaken by the proponent and responses to the submissions and the Panel's requests;
- HTRAGI and the public are given the opportunity to consider the proponent's response to submissions received by it during the exhibition period of the proposal and to make further submissions;
- Procedural anomalies with the application are rectified.

We request that these matters be taken into consideration in preparing your report.

Yours faithfully
BBC Consulting Planners

A handwritten signature in blue ink, appearing to read 'Dan Brindle', is written over a light blue horizontal line.

Dan Brindle
Director