

POINTS OF CLAIM

COURT DETAILS

Court	Land and Environment Court of New South Wales
Registry	225 Macquarie Street, Sydney
Case number	40922 of 2010

TITLE OF PROCEEDINGS

Applicant	Hunter Community Environment Centre Inc
First Respondent	Minister for Planning
Second Respondent	Delta Electricity

FILING DETAILS

Filed by	Hunter Community Environment Centre Inc
Legal representative	Kirsty Ruddock, Environmental Defender's Office (NSW) Ltd
Legal representative reference	1015549
Contact name and telephone	BJ BeomJin Kim (02) 9262 6989

THE APPLICANT CLAIMS THAT:

The parties

- 1 The Applicant:
 - (a) is a community environmental and advocacy organisation based in the Hunter Valley;
 - (b) brings this action on its own behalf and in the public interest; and
 - (c) is entitled to bring proceedings by reason of section 123(1) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**); or
 - (d) in the alternative to (c), has standing at general law to bring these proceedings by reason of section 20(2) of the *Land and Environment Court Act 1979* (NSW).
- 2 The First Respondent (**the Minister**) is the approval authority under Part 3A of the EP&A Act.
- 3 The Second Respondent, Delta Electricity:

- (a) is the proponent of the Munmorah Power Station Rehabilitation, major project application number MP 09_0117 (**the Project**); and
- (b) is a wholly State-owned corporation under the *State Owned Corporations Act 1989* (NSW).

The Project

4 The Project comprises:

- (a) rehabilitation and replacement of existing aged and worn out base-load generating components of units 3 and 4 at the Munmorah Power Station, in order to, among other things, extend the operating life of the power station from 2012 for up to another 20 years; and
- (b) two fuel options, namely:
 - (i) a 100% coal option (**the 100% coal option**); or
 - (ii) coal supplemented by a percentage of gas up to a maximum percentage of 75% (**the dual-fuel option**).

5 The Project, if constructed as proposed, and in particular the 100% coal option, will produce substantial greenhouse gas emissions.

Particulars

- (a) The Project would have a 700 MW generating capacity.
- (b) The Project would have an expected economic life of approximately 20 years.
- (c) The 100% coal option would produce approximately 4 million tonnes of carbon dioxide equivalents (**CO₂-e**) each year during operation. This would amount to an annual increase of approximately 2.5% in NSW greenhouse gas emissions from 2007 levels.
- (d) The 75% gas dual-fuel option would produce approximately 3 million tonnes of CO₂-e each year of operation. This would amount to an annual increase of approximately 1.8% in NSW greenhouse gas emissions from 2007 levels.

6 The greenhouse gas emissions produced by the Project, if constructed as proposed, and in particular the 100% coal option, will:

- (a) contribute to anthropogenic climate change which is likely to have environmental, economic and social impacts of a serious and irreversible kind across NSW and throughout and beyond Australia;

Particulars

- i. rises in sea levels, including inundation of large areas of the coast of NSW of less than 2 metres above sea level;
- ii. inundation of and damage to infrastructure close to sea level, including Sydney airport, bridges, rail networks, roads and electricity, sewerage and water works;
- iii. loss of housing within 50 to 100 metres of the low water mark;
- iv. increased annual average temperatures and number of hot days;
- v. more frequent and severe wild fires in south-eastern Australia;
- vi. decreased rainfall in south-eastern Australia;
- vii. more frequent and severe droughts;
- viii. adverse impacts on food production;
- ix. uninhabitability of parts of rural south-eastern Australia;
- x. reduced biodiversity; and
- xi. increased ocean acidification resulting in harm to coral reefs and other marine organisms;

- (b) have or likely have a significant adverse impact upon the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption.

Particulars

- i. The objective of the *NSW Government State Plan – Investing in a Better Future 2010*, dated March 2010, to achieve a 60% cut in greenhouse gas emissions by 2050 in line with the Federal Government targets.
- ii. The objective of the *NSW Government State Plan – Investing in a Better Future 2010*, dated March 2010, to achieve a 20% renewable energy consumption by 2020 in light of the Federal Government's expanded Renewable Energy Target.

The Bayswater B and Mount Piper Projects

- 7 The Bayswater B Power Station, major project (concept plan) application number MP 09_0118 (**Bayswater B Project**), if constructed as proposed, and in particular the coal-fired option, will produce substantial greenhouse gas emissions.
- (a) The Bayswater B Project would have a 2,000 MW generating capacity.
 - (b) The Bayswater B Project would have an expected economic life of not less than 30 years.
 - (c) The coal-fired option for the Bayswater B Project would produce approximately 12.8 million tonnes of CO₂-e each year during operation. This would amount to an annual increase of approximately 8% in NSW greenhouse gas emissions from 2007 levels.
 - (d) The gas-fired option for the Bayswater B Project would produce approximately 6.1 million tonnes of CO₂-e each year of operation. This would amount to an annual increase of approximately 4% in NSW greenhouse gas emissions from 2007 levels.
- 8 The Mt Piper Power Extension, major project (concept plan) application number MP 09_0119 (**Mt Piper Project**), if constructed as proposed, and in particular the coal-fired option, will produce substantial greenhouse gas emissions.
- (a) The Mt Piper Project would have a 2,000 MW generating capacity.
 - (b) The Mt Piper Project would have an expected economic life of not less than 30 years.
 - (c) The coal-fired option would produce approximately 10.8 to 13.1 million tonnes of CO₂-e each year during operation. This would amount to an annual increase of approximately 7% to 8% in NSW greenhouse gas emissions from 2007 levels.
 - (d) The gas-fired option would produce approximately 7 to 7.2 million tonnes of CO₂-e each year during operation. This would amount to an annual increase of approximately 4% in NSW greenhouse gas emissions from 2007 levels.

The combined greenhouse gas emissions

- 9 The combined increase in NSW greenhouse gas emissions for the 100% coal option for the Project, together with the coal-fired option for the Bayswater B and

Mount Piper Projects, for each year of operation would be approximately 17.5% to 18.5% from 2007 levels.

- 10 The combined increase in NSW greenhouse gas emissions for the 75% gas dual-fuel option for the Project, together with the gas-fired option for the Bayswater B and Mount Piper Projects, for each year of operation would be approximately 9.8% from 2007 levels.

The land

- 11 The land on which the Project is located is:
- (a) in the Wyong Local Government Area, close to the Lake Macquarie Local Government Area;
 - (b) approximately 150 kilometres north of Sydney and 40 kilometres south-west of Newcastle;
 - (c) adjacent to the coastal lagoons of Lake Munmorah and Lake Budgewoi which form part of the Tuggerah Lakes System; and
 - (d) in a highly populated area, surrounded by the residential suburbs of Halekulani, Budgewoi, Buff Point, San Remo, Blue Haven, Doyalson and Lake Munmorah to the west, south and north.
- 12 The site location and proposed site location are shown in plans which were attached to Briefing Note 10/08083 entitled "*Determination of a project approval for the rehabilitation of the Munmorah Power Station*" dated 11 October 2010 (**Briefing Note 10/08083**), and which are **Attachment A** to these Points of Claim.
- 13 The land on which the Project is proposed to be located is owned by the Second Respondent.

Critical Infrastructure Declaration

- 14 On or about 26 February 2008, the then Minister for Planning purported to form the opinion that the category of development referred to in the Schedule (**the Schedule**) was essential for the State for economic reasons, and for social reasons, and for environmental reasons (**the Critical Infrastructure Opinion**). The category of development referred to in the Schedule was:

"Development for the purpose of a facility for the generation of electricity, being development that:

- i. has capacity to generate at least 250 megawatts, and

- ii. is the subject of an application lodged pursuant to section 75E or section 75M of the Environmental Planning and Assessment Act 1979 prior to 1 January 2013.”

- 15 On or about 26 February 2008, the then Minister for Planning purported to declare projects within the category of development referred to in the Schedule to be critical infrastructure projects under section 75C of the EP&A Act (**the Critical Infrastructure Declaration**).
- 16 On or about 27 February 2008, the Critical Infrastructure Declaration was published in the NSW Government Gazette.
- 17 The Project was not and has not at any relevant time been validly declared to be a critical infrastructure project pursuant to section 75C(1) of the EP&A Act, or at all.

The development application process

- 18 On or about 19 June 2009¹⁰, the Second Respondent lodged a Part 3A project application with the Department of Planning (**DOP**) pursuant to section 75E of the EP&A Act seeking the approval of the Minister to carry out the Project (**Project Application**).
- 19 On or about 5 June 2009, the Second Respondent submitted a preliminary environmental assessment, prepared by Aurecon, to the DOP.
- 20 On or about 4 July 2009, the Director-General notified the Second Respondent of the Director-General's Environmental Assessment Requirements (**EARs**) for the Project pursuant to section 75F(3) of the EP&A Act.
- 21 On or about 9 September 2009, the Second Respondent provided the environmental assessment in draft form to the DOP.
- 22 On or about 14 October 2009, the Second Respondent provided the DOP with the final Environmental Assessment, prepared by Aurecon.
- 23 Between 21 October 2009 and 20 November 2009, the Environmental Assessment (**EA**) was publicly exhibited.
- 24 The Director-General received 35 written public submissions in response to the exhibition of the EA.
- 25 The main issue raised in the written public submissions concerned greenhouse gas emissions and their likely impact on climate change.

- 26 On or about 24 November 2009, the DOP wrote to the Second Respondent and requested a response to the submissions received by the DOP in response to the exhibition of the EA.
- 27 On or about 22 December 2009, the Second Respondent submitted a final Submissions Report, prepared by Aurecon, to the DOP.
- 28 On or about 1 March 2010, the Second Respondent submitted a supplementary Submissions Report to the DOP.
- 29 In August 2010, the Director-General gave a report to the Minister (**Director-General's Environmental Assessment Report**) pursuant to section 75I of the EP&A Act, for the purposes of the Minister's consideration of the application for approval of the Project Application, to which report was annexed recommended conditions of approval.
- 30 On or about 11 October 2010, the Minister purported to approve the Project pursuant to section 75J of the EP&A Act (**Project Approval**), subject to conditions of approval set out in Schedule 2 (**the conditions of approval**), including conditions in relation to environmental assessment requirements applicable with respect to a project application.
- 31 In purporting to grant Project Approval, the Minister had before him Briefing Note 10/08083 and the attachments thereto, namely:
- (a) plans depicting the site location and proposed site layout (tagged A);
 - (b) key recommended conditions of approval (tagged B);
 - (c) recommended instrument of approval (tagged C); and
 - (d) the Director-General's Environmental Assessment Report (tagged D).

Ground in relation to the Critical Infrastructure Declaration

Ground 1 – No opinion within the meaning of section 75C of the EP&A Act

- 32 In order for the power in section 75C of the EP&A Act to be engaged, the Minister must form an opinion that the project in question is of a category that is essential for the State for economic, environmental or social reasons.
- 33 The formation of the opinion in section 75C(1) was a jurisdictional fact upon which a valid exercise of power is premised.
- 34 The Minister failed to form the opinion in section 75C(1) in relation to the Project.

35 Hence, there was no valid exercise of the power in section 75C(1), and no
 declaration within the meaning of the sub-section.

36 In purporting to grant Concept Plan Approval pursuant to section 75O of the EP&A
 Act, the Minister proceeded on the basis that there had been a valid exercise of the
 power in section 75C(1), thereby misconceiving the nature of the function he was
 performing and/or the extent of his power in the circumstances of the particular
 case.

37 In the premises, there was jurisdictional error, and the Concept Plan Approval was
 made in excess of power and is invalid and of no effect.

Grounds in relation to the Project Approval

Ground 2 – Failure to provide and consider a statement in relation to compliance with environmental assessment requirements

38 Pursuant to section 75I(2)(g) of the EP&A Act, the Director-General was required to
 give to the Minister, for the purposes of the Minister's consideration of the Project
 Application, a report including inter alia "*a statement relating to compliance with the
 environmental assessment requirements under this Division with respect to the
 project.*"

39 The only passage in the Director-General's Environmental Assessment Report to
 the Minister capable of containing a "*statement relating to compliance with
 environmental assessment requirements*" as required by section 75I(2)(g) of the
 EP&A Act is the following:

*"The Proponent submitted an Environmental Assessment with the Director-
 General in October 2009. Pursuant to section 75H and 75I(2)(g) of the Act,
 the Director-General was satisfied that the Environmental Assessment had
 addressed the environmental requirements issued on 4 July 2009."*

(the so-called statement of compliance)

Particular

Page 17 of the Director-General's Environmental Assessment Report under
 the heading "*3.5 Minister's Approval Power*",

40 The so-called statement of compliance was not a statement within the meaning of
 section 75I(2)(g) of the EP&A Act.

- 41 The provision to the Minister of a statement within the meaning of section 75I(2)(g) of the EP&A Act is a jurisdictional precondition to an exercise of the power in section 75J to approve or not to approve the carrying out of a project.
- 42 The requirement that the Minister have before him and consider a statement within the meaning of section 75I(2)(g) of the EP&A Act is a jurisdictional precondition to an exercise of the power in section 75J to approve or not to approve the carrying out of a project.
- 43 In the premises in paragraphs 41 and 42, in deciding whether or not to approve the carrying out of the Project, the Minister failed to consider a statement relating to compliance with environmental assessment requirements, as required by section 75J(2) of the EP&A Act.
- 44 Accordingly, the Project Approval purportedly granted by the Minister was invalid and of no effect.

Ground 3 – Misleading statement of compliance/misapprehension as to material matters of fact

- 45 Further and in the alternative to Ground 2, the so-called statement of compliance was erroneous and misleading insofar as it advised the Minister that the Environmental Assessment had addressed the environmental requirements issued on 4 July 2009, when in fact the Second Respondent failed in a number of material respects to comply with the EARs.

Particulars

- (a) In relation to waste management (specifically coal ash), the EARs required "*identification of ... measures for its management and disposal including options for recycling and reuse where reasonable and feasible*". See the Director-General's Environmental Assessment Report at pages 6 and 23. At no relevant time has the Second Respondent proposed specific "*measures*" for the management and disposal of coal ash.
- (b) In relation to air quality impacts, the independent review undertaken by Heggies Pty Limited, air quality consultants, identified a large number of errors in the Second Respondent's air quality assessment.
- (c) In relation to greenhouse gas assessment, the independent review undertaken by Arup Pty Limited identified numerous issues in the Second Respondent's greenhouse gas assessment.

(d) In relation to thermal efficiency, the report by Arup Pty Limited (at pages 14 to 16) noted: *"The DGRs call for a comparison of the Project's estimated thermal efficiency and emissions intensity to best achievable practice. No comparison to best achievable practice for thermal efficiency or emissions intensity is contained in the GHG Assessment or main body of the EA. Arup considers that this component of the GHG is incomplete"*.

46 In accordance with sections 75I(2)(g) and 75J(2) of the EP&A Act, compliance with the EARs was a material matter requiring the Minister's consideration and was a material matter relevant to his approval.

47 The erroneous or misleading statement of compliance in the Director-General's Environmental Assessment Report was such that the Minister proceeded to approve the Project Application on the misapprehension that the Environmental Assessment had addressed the environmental requirements issued on 4 July 2009.

48 The approval by the Minister of the Project Application founded upon a misapprehension as to a material matter constitutes a jurisdictional error.

49 In the premises, there was jurisdictional error, and the purported Project Approval was invalid and of no effect.

Ground 4 – Failure to consider mandatory relevant considerations, namely ecologically sustainable development

50 Further and in the alternative to Grounds 2 and 3, as at 11 October 2010, when the Minister purported to grant Project Approval under s 75O of the EP&A Act, the Minister was bound to consider the principles of ecologically sustainable development set out in section 6(2) of the *Protection of the Environment (Administration) Act 1991* (NSW) (**the principles of ESD**), being an element of the public interest.

51 In the premise in paragraph 50, in the Minister's determination of the Project Approval, the principles of ESD and the public interest, in particular the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and cumulative impacts of development, were mandatory relevant considerations.

52 The principles of ESD and the public interest also required consideration of all impacts on the environment, including impacts of the proposed specific development, and existing and approved future surrounding development.

- 53 There is a material risk that the Project if constructed as proposed, and in particular the 100% coal option, will contribute to anthropogenic climate change and will have or is likely to have a significant adverse impact on the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption.
- 54 There is a material risk that the Project if constructed as proposed, and the Bayswater B and Mt Piper Projects if constructed as proposed, and in particular the 100% coal options in respect of each, will cumulatively contribute to anthropogenic climate change and will have or are likely to have a significant adverse impact on the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption.
- 55 In the premises, the principles of ESD and the public interest, in particular the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and cumulative impacts of development, were enlivened with respect to the Project and required specific consideration by the Minister with regard to the material risks identified in paragraphs 53 and 54.
- 56 In purporting to grant Project Approval, the Minister failed to consider the principles of ESD, in particular the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and cumulative impacts of development.

Particulars

- (a) Briefing Note 10/08083 merely refers to the principles of ESD, and provides no consideration of their application in this case.
- (b) The Director-General's Environmental Assessment Report (Attachment D to Briefing Note 10/08083) merely refers to the principles of ESD, and provides no consideration of their application in this case.
- (c) There was no other material before the Minister capable of establishing that he considered the identified principles of ESD and the public interest.
- (d) There was no material before the Minister that proposed specific feasible measures for the management and disposal of coal ash, including disposal locations and means for the containment of leakage of contaminants.

- (e) The Minister was advised by the Director-General that it is not the role of the NSW planning system to determine or influence issues such as preferred fuels and renewable energy targets.
- (f) The Minister was advised by the Director-General that in the assessment of the Project Application, the question of whether the coal-fired or dual-fuel option was preferable was not to be addressed.
- (g) The Minister was advised by the Director-General that both fuel options (the 100% coal option and the dual-fuel option) are not contrary to or inconsistent with existing regulations, policies, and standards set by State or Commonwealth Governments.
- (h) There was no material before the Minister capable of establishing that he considered the likely impact of the Project, in particular the 100% coal option, on anthropogenic climate change.
- (i) There was no material before the Minister capable of establishing that he considered the likely impact of the Project, in particular the 100% coal option, on the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption.
- (j) There was no material before the Minister capable of establishing that he considered the likely cumulative impact of the Project together with the Bayswater B Project and the Mt Piper Project.

57 In the alternative to paragraph 56, in purporting to grant Project Approval, there was no evaluation by the Minister sufficient to demonstrate an understanding of the principles of ESD, in particular the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and cumulative impacts of development, or to warrant the conclusion that those principles had been considered.

Particulars

- (a) The Applicant refers to and repeats particulars (a) and (b) to paragraph 56.
- (b) There was no other material before the Minister capable of establishing that there was any evaluation by him sufficient to demonstrate an understanding of the principles of ESD and the public interest, or to warrant the conclusion that those principles had been considered.

- (c) There was no material before the Minister sufficient to demonstrate an understanding of the availability, or lack thereof, of feasible measures for the management and disposal of coal ash, including disposal locations and means for the containment of leakage of contaminants.
- (d) There was no evaluation by the Minister sufficient to demonstrate an understanding of the role of the NSW planning system in providing safeguards against projects likely to have adverse environmental and other impacts, in particular through the regulation of greenhouse gas emissions, and in assisting to meet NSW Government Targets in relation to the reduction of greenhouse gas emissions and renewable energy targets, or to warrant the conclusion that any such role had been considered.
- (e) There was no evaluation by the Minister sufficient to demonstrate an understanding of the likely impact of the Project, in particular the 100% coal option, on anthropogenic climate change, or to warrant the conclusion that such likely impact had been considered.
- (f) There was no evaluation by the Minister sufficient to demonstrate an understanding of the likely impact of the Project, in particular the 100% coal option, on the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption, or to warrant the conclusion that such likely impact had been considered.
- (g) There was no evaluation by the Minister sufficient to demonstrate an understanding of the likely cumulative impact of the Project together with the Bayswater B Project and the Mt Piper Project, or to warrant the conclusion that such likely impact had been considered.

58 The Minister's failure to have regard to mandatory relevant considerations, or to evaluate them in a manner sufficient to demonstrate an understanding of them or to warrant the conclusion that they had been considered, constituted jurisdictional error.

59 In the premises, the purported Project Approval was invalid and of no effect.

Ground 5 – Failure to make inquiries

60 In the alternative to Ground 4, and if the failures complained of in relation to those grounds did not constitute a complete failure to consider the matters pleaded in relation thereto, at the time he purported to grant Project Approval, it was obvious to

the Minister that there was material readily available to him and which was centrally relevant to the decision to be made by him, such as to enliven a duty to make inquiries before coming to a decision to grant Project Approval.

Particulars

- (a) The Minister had before him Briefing Note 10/08083.
- (b) The Minister had before him the Director-General's Environmental Assessment Report (Attachment D to the Briefing Note).

61 The material which was such as to enliven a duty to make inquiries was material in relation to each or all of the following matters:

- (a) the application of the principles of ESD and the public interest, in particular the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and cumulative impacts of development;
- (b) specific proposed measures for the management and disposal of coal ash, including disposal locations and means for the containment of leakage of contaminants;
- (c) the role of the NSW planning system in providing safeguards against projects likely to have adverse environmental and other impacts, in particular through the regulation of greenhouse gas emissions and the identification of preferred fuels;
- (d) the likely impact of the Project, in particular the 100% coal option, on anthropogenic climate change;
- (e) the likely impact of the Project, in particular the 100% coal option, on NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption; and
- (f) the likely cumulative impact of the Project together with the Bayswater B Project and the Mt Piper Project.

62 In the circumstances, the Minister was under an obligation to make inquiries in relation to each or all of the matters pleaded in paragraph 61.

63 The Minister failed to make any such inquiries.

64 In the premises, the Minister acted so unreasonably that:

- (a) there was no real exercise of the power in section 75O to grant Project Approval; and
- (b) the Project Approval was made in excess of power and is invalid and of no effect.

Ground 6 – Misconceiving the nature of the function he was exercising and the extent of his powers

- 65 Further and in the alternative to Grounds 2 to 5, in purporting to grant the Project Approval, the Minister took into account advice of the Director-General that:
- (a) it is not the role of the NSW planning system to determine or influence issues such as preferred fuels and renewable energy targets; and
 - (b) in the assessment of the Project Application, the question of whether the coal-fired option or the dual-fuel option was preferable was not to be addressed.
- 66 In so proceeding, the Minister misconceived the nature of the function he was exercising and the extent of his powers in the circumstances.
- 67 In the premises, there was jurisdictional error, and the purported Project Approval was invalid and of no effect.

Ground 7 – Erroneous and misleading information in the Director-General's Environmental Assessment Report

- 68 Further and in the alternative to Grounds 2 to 6, the Director-General's Environmental Assessment Report states that the Department had "*considered the project (including both dual-fuel and coal-fired options) against existing regulations, policies and standards and considers that both options are not contrary to or inconsistent with existing regulations, policies and standards set by State or Commonwealth Governments.*"
- 69 The Project, in particular the 100% coal option, is contrary to or inconsistent with existing regulations, policies and standards set by the NSW Government.

Particulars

- (a) The objective of the NSW Government State Plan – Investing in a Better Future 2010, dated March 2010, to achieve a 60% cut in greenhouse gas emissions by 2050 in line with the Federal Government targets.
- (b) The objective of the NSW Government State Plan – Investing in a Better Future 2010, dated March 2010, to achieve a 20% renewable energy

consumption by 2020 in light of the Federal Government's expanded Renewable Energy Target.

70 In the alternative to paragraph 69, the Project, in particular the 100% coal option, will have or is likely to have a significant adverse impact on the capacity to meet NSW Government targets in relation to the reduction of greenhouse gas emissions and renewable energy consumption.

71 In the premises in paragraph 69 and/or 70, the Director-General's Environmental Assessment Report was erroneous and misleading.

72 Consistency with the NSW Government State Plan – Investing in a Better Future 2010 was a material matter requiring the Minister's consideration and was a material matter relevant to his approval.

73 The erroneous or misleading statement in the Director-General's Environmental Assessment Report was such that the Minister proceeded to approve the Project Application on the misapprehension that the Project, in particular the 100% coal option, was consistent with the NSW Government State Plan – Investing in a Better Future 2010.

74 The approval by the Minister of the Project Application founded upon a misapprehension as to a material matter constitutes a jurisdictional error.

75 In the premises, there was jurisdictional error, and the purported Project Approval was invalid and of no effect.

Relief

76 The Applicant seeks the relief claimed in the Summons.

SIGNATURE

Signature of legal representative

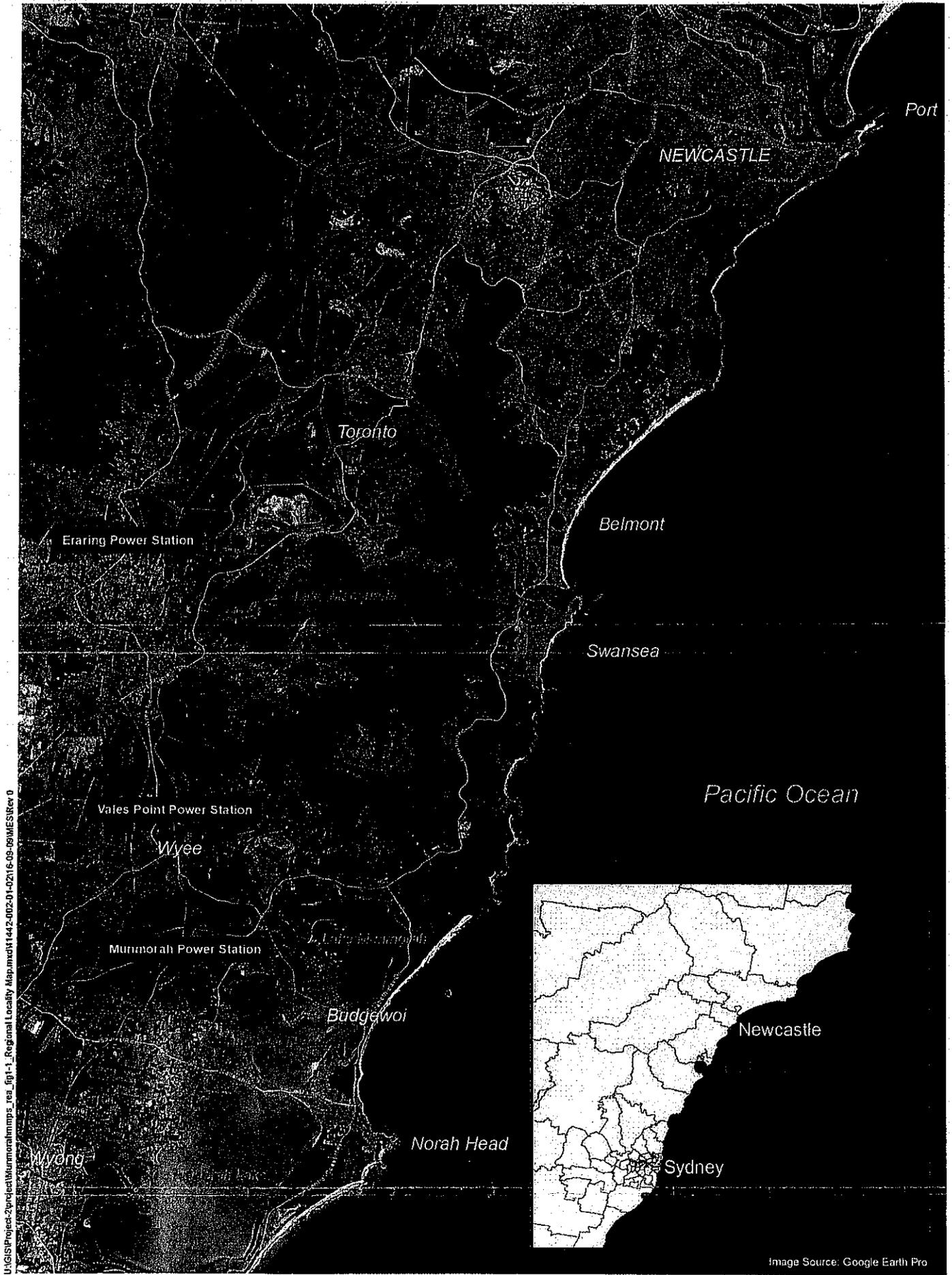


Capacity

Solicitor for the Applicant

Date of signature

11 February 2011



U:\GIS\Project2\project\Munmorah\mmps_res_fig1-1_Regional Locality Map.mxd\1442-002-01-0216-09-09\WEST\Rev 0

Image Source: Google Earth Pro

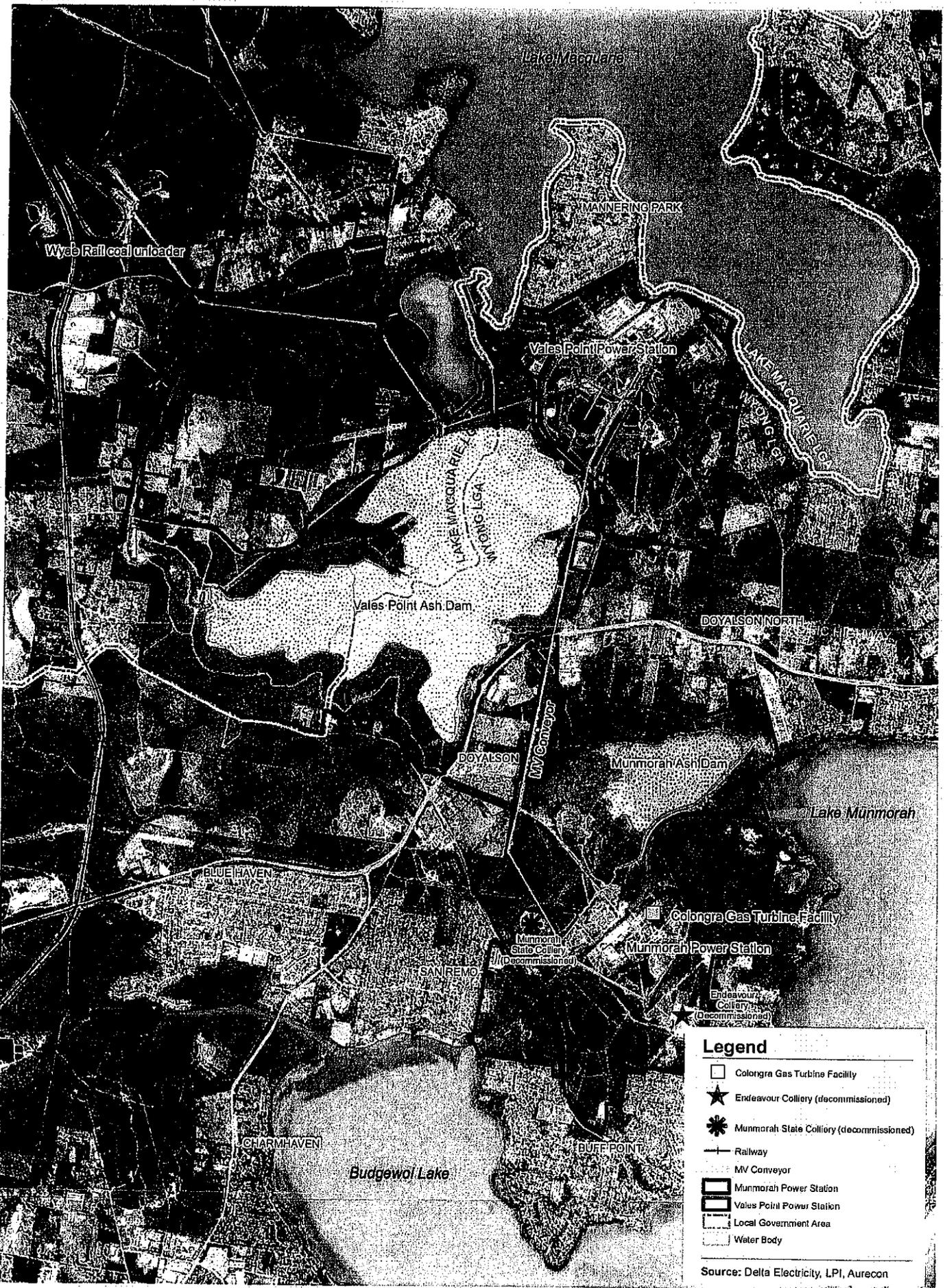


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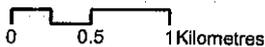
Munmorah Power Station Rehabilitation Environmental Assessment

FIGURE 1.1: Regional Locality Map

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SCALE 1:48,000 @ A4



Projection: MGA

Munmorah Power Station Rehabilitation Environmental Assessment

FIGURE 1.2: Site Plan