

The General Manager
HEZ Nominees
PO Box N817
Grosvenor Place
NSW 1220

Our Ref: LVPL088
Your Ref: HEZ
Contact: Jason Shepherd

Dear Sir,

**Re: Notification of proposed development Hunter Economic Zone (HEZ)-
Environmental Assessment Requirements (EARs)**

Thank you for your letter 5 May 2008, seeking assessment requirements for the proposed development at HEZ. The CMA has reviewed the information and provides the following comments.

1. The EA requirements should specify that – The impacts on native vegetation with regard to the “improve or maintain” principle are assessed.

Rationale:

The CMA seeks demonstration of how the proposal meets the “improve or maintain” principle as tested by the Environmental Outcomes Assessment Methodology (EOAM).

<http://www.nativevegetation.nsw.gov.au/>. The CMA is particularly interested in the vegetation losses proposed and the suitability of like for like offsets at an acceptable ratio.

2. The EA requirements should specify that – Specific assessment should be made of the layout of the native vegetation within the development which should address issues of protection of overcleared landscapes, protection of Endangered Ecological Communities, protection and improvement of native vegetation corridors and riparian corridors.

Rationale:

The CMA considers native vegetation to be a key issue for this site. While the CMA appreciates that the zoning is now industrial, vegetation that should be taken into consideration in the EA requirements. The following factors should be addressed in the EA. The proposal layout design should seek to protect existing native vegetation and improve the connectivity through the provision of corridors.

3. The EA requirements should specify that- The context of the proposal as part of the cumulative impact on the Lower Hunter region should be assessed.

Rationale:

There are a number of other developments in train in the Lower Hunter. The context of this development to cumulative impacts from other developments should be assessed. In particular, vegetation loss and corridor disruption.

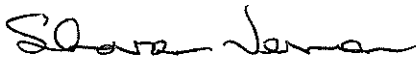
4. The EA requirements should specify that - The contributions to the Catchment Action Plan are assessed and specified.

Rationale:

The CMA expects that its Catchment Action Plan (CAP) which is a statutory plan approved by NSW Cabinet in January 2007, be taken into consideration. The EA should specify the effect of the proposal on the CAP's Management targets in a credit - debit balance for each target. The CAP also contains guiding principles, the EA should specify how those principles are being met through this proposal. The CAP is available at www.hcr.cma.nsw.gov.au.

If you require any further information please do not hesitate to contact David Green, the CMA's Regional Catchment Coordinator on 4337 1207.

Yours faithfully



Sharon Vernon
for Glenn Evans
General Manager
22 May 2008.

In reply please send to: Singleton District Office
Our Reference: FN98-00092S0
Your Reference:
Contact: email jason@hez.com.au
Garry Moore (02) 6572 4344

The General Manager HEZ
PO Box N817 Grosvenor Place
SYDNEY NSW 1220

ATTENTION: JASON SHEPHERD

9 May 2008

Dear Sir

ENQUIRY APPLICATION NO TENQ08-01370S3
PROPOSED LOT 290 (LOT 7 DP 1037092) CESSNOCK RD WESTON

I refer to your letter of 5th May 2008 seeking general terms of approval in accordance with Clause 66 of the *Environmental Planning and Assessment Act Regulation 2000*.

The site is located in a Mine Subsidence District and under Clause 15(2A) of the *Mine Subsidence Compensation Act*, the Mine Subsidence Board's approval is required for subdivision and surface development.

Under Section 67 of the *Environmental Planning and Assessment Act Regulation 2000*, the Board is not able to give proper consideration to the general terms of approval until the applicant provides additional information to indicate how they will remove any risk of mine subsidence by a suitable means, such as grouting. Alternatively, they would need to satisfy the Board by confirming through geotechnical investigations that the workings are long term stable and there is no risk of mine subsidence affecting the site.

Geotechnical investigations may require a sufficient number of boreholes to the floor of the seam and numerical modelling/sensitivity analysis to demonstrate the appropriateness of the strata to support the development given the mine workings. The investigation is to contain confirmation of the depth of coal seam, height of workings, floor conditions and thickness



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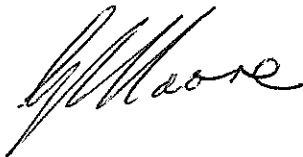
File No: FN98-00092S0

of competent rock, as well as providing details of the pillar dimensions used in any analysis. ISG co-ordinates and the measured deviation from vertical are required for any boreholes. The report must be to the satisfaction of the Mine Subsidence Board.

The investigations may take some time, depending on the complexity of the site, but a response would normally be expected within three months. If the applicant cannot provide the additional information within that time period, and if an extension is not granted, the Board would not approve the application under the *Mine Subsidence Compensation Act*.

Please do not hesitate to contact me if I can be of further assistance.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'G Moore'.

G Moore
District Manager

All communications to be addressed to:

Headquarters
NSW Rural Fire Service
Locked Mail Bag 17
GRANVILLE NSW 2142

Headquarters
NSW Rural Fire Service
15 Carter Street
HOMEBUSH BAY NSW 2127

Telephone: (02) 8741 5555
e-mail: developmentcontrol@rfs.nsw.gov.au

Facsimile: (02) 8741 5550



The General Manager HEZ
PO Box N817
Grosvenor Place
SYDNEY NSW 2001

Your Ref:
Our Ref: D08/000
G08/1435

Attention: Jason Shepard

29 May 2008

Dear Sir,

Re: Notification of Proposed Development for Hunter Economic Zone (HEZ)

I refer to your letter dated 5 May 2008 inviting the NSW Rural Fire Service to make a submission on the proposed concept plan for the preparation of an environmental assessment for submission to the Minister as part of the 3A process.

The RFS notes that the site has significant bush fire issues and has been identified as bush fire prone land. You are advised that this type of proposal should satisfy the broad aims and objectives of *Planning for Bush Fire Protection 2006* and the performance criteria for the various proposed bush fire protection measures.

Specifically to the extent that the concept plan complies with standards regarding setbacks, provision of water supply, access, supply of services, fuel management on the site, relocation/evacuation planning for the occupants and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire. These issues should be addressed in the Environmental Assessment by the applicant.

For any enquiries regarding this correspondence please contact Garth Bladwell.

Yours faithfully,

Nika Fomin
Development Control Co-ordinator

The RFS has made getting additional information easier. For general information on *Planning for Bush Fire Protection 2006*, visit the RFS web page at www.rfs.nsw.gov.au and search under *Planning for Bush Fire Protection 2006*.

Lucy Ison

From: Jenkins, Mark [Mark.Jenkins@environment.gov.au]
Sent: Friday, 9 May 2008 4:09 PM
To: Lucy Ison
Subject: RE: HEZ EA Notification (EPBC Ref 2004/1417) [SEC=UNCLASSIFIED]

Lucy

Thank you for the recent emails. I spoke to Jason and Scott yesterday about the subdivision plans for precinct one. Approval from this Department is required to amend deferred area boundaries.

Please let them know that requests to vary deferred area boundaries will require a variation to the EPBC approval conditions by substituting a new deferred area map in the schedule to the Conservation Management Plan and amending the relevant text in the description of the effected deferred areas.

It would be best to wait for NSW approval of the proposed subdivision before submitting an EPBC variation request.

Mark Jenkins

RECEIVED
28/05/08

Our reference : DOC08/20252, FIL07/12157
Contact : Lucas Grenadier, (02) 49086820

General Manager
Hunter Economic Zone
PO Box N817
Grosvenor Place
SYDNEY NSW 1220

22 MAY 2008

Attention: Jason Shepherd

Dear Mr Barrow

RE: NOTIFICATION OF PROPOSED DEVELOPMENT FOR HUNTER ECONOMIC ZONE (HEZ)

I refer to your letter dated 5 May 2008 requesting comments from the Department of Environment and Climate Change (DECC) on the above matter. The DECC understands that the proposal is being assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*.

The DECC has previously provided comments on the draft environmental assessment (EA) to the Department of Planning (DoP) and I refer you to this previous correspondence (letter dated 22 January 2008, Ref: DOC07/52908). A copy of this letter is provided in Attachment 1. The Department's previous comments remain valid and should be taken into consideration in the preparation of the revised EA.

To assist with your preparation of the EA, we will also provide HEZ with further information in regards to the breeding occurrence of the Regent Honeyeater on the site and revised vegetation mapping which has been recently undertaken by DECC for the Cessnock – Kurri region. These reports will be provided to you in early June 2008.

If you have any queries regarding this matter please contact Lucas Grenadier, Conservation Planning Officer, on 4908 6820.

Yours sincerely

DL Crossdale

DIANE CROSDALE
Head Planning Unit - Hunter
Environment Protection and Regulation

Enclosure: Attachment 1 – DECC letter to DoP, dated 22 January 2008.
cc : Mr Scott Jefferies, Department of Planning GPO Box 39 Sydney NSW 2001

The Department of Environment and Conservation NSW is now known as
the Department of Environment and Climate Change NSW

PO Box 488G, Newcastle NSW 2300
117 Bull Street, Newcastle West, NSW 2302
Tel: (02) 4908 6800 Fax: (02) 4908 6810
ABN 30 841 387 271
www.environment.nsw.gov.au

Department of **Environment and Conservation** NSW



Your reference : S07/01232
Our reference : DOC07/52908, FIL07/12157
Contact : Lucas Grenadier, (02) 49086820

Department of Planning
Major Development Assessment
GPO Box 39
SYDNEY NSW 2001

22 JAN 2008

Attention: Joanna Bakopanos / Scott Jefferies

Dear Ms. Bakopanos

**RE: HUNTER ECONOMIC ZONE, PRECINCT ONE AND ASSOCIATED DEVELOPMENT,
KURRI KURRI (07_0128) – REVIEW OF ENVIRONMENTAL ASSESSMENT**

I refer to your letter dated 24 December 2007 enclosing the Project Application and accompanying information provided for the above mentioned proposal. The Department of Environment and Climate Change (DECC) has reviewed the information provided and considers the draft environmental assessment (EA) to be inadequate for the following reasons:

- 1. The flora and fauna impact assessment does not satisfy the issued Department of Planning Director-General's Requirements with respect to DECC Guidelines for Threatened Species Assessment (2005). In particular, insufficient description and justification of measures to avoid, mitigate and then offset the impacts on areas of high biodiversity value have been provided within the EA; and*
- 2. Insufficient description of how adequate conservation outcomes will be achieved for threatened species and endangered ecological communities within the wider HEZ site. The assessment must include a description of how all outstanding threatened species issues (e.g. as noted in the Ecological Constraints Master Plan (HSO, 2004)) will be resolved within the current assessment framework. The assessment must include any recent ecological information collated from the site or region (e.g. additional records of threatened species, revised vegetation mapping) and be based on current government policies and principles.*
- 3. The DECC does not consider Werakata National Park (lands zoned 8(a)) to form part of the wider HEZ estate. Hence any reference to Werakata National Park as forming part of the offset for the HEZ development or as associated "buffer lands" should be excluded from the EA.*

In addition to the noted assessment deficiencies, the DECC cannot guarantee future support of the project in subsequent approval steps if modifications are not made to:

- 1. Location, design and mitigation / offset measures for the Pelaw Main Bypass;*

The Department of Environment and Conservation NSW is now known as
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Department of **Environment and Conservation** NSW



2. *Proposed development within ecologically significant and sensitive areas, including*
 - *"DECC Deferred Conservation Areas" as identified in the assumed concurrence for the HEZ, issued in March 2005 by the Director General of the former Department of Environment and Conservation (DEC);*
 - *Populations and habitat areas for threatened species and vegetation communities which are not adequately conserved within the HEZ site; and*
 - *Riparian zones / creeklines.*

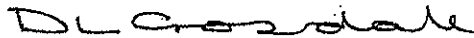
Further information regarding these issues is provided in Attachment 1.

The DECC is willing to work with the proponent, the Department of Planning, and other relevant authorities / landholders to resolve the above mentioned issues. A more streamlined development assessment process that provides greater certainty to development and conservation outcomes within the HEZ site is likely to be achieved through the concurrent State Significant Site Study process.

However, in light of the above request for additional information and project modifications, DECC can not support the public exhibition of the environmental assessment, at this point in time.

If you have any queries regarding this matter please contact Lucas Grenadier, Conservation Planning Officer, on 4908 6820.

Yours sincerely



DIANE CROSDALE
A/Manager Planning and Aboriginal Heritage
North East Branch
Environment Protection and Climate Change

Enclosure: Attachment 1

PART 3A – HUNTER ECONOMIC ZONE, PRECINCT ONE AND ASSOCIATED DEVELOPMENT, KURRI KURRI (07_0128) – DECC ADEQUACY REVIEW

1. Adequacy of Threatened Species Assessment

DECC has identified a number of issues in the draft EA report with respect to threatened species.

The Ecological Assessment Report, Precinct 1 and Components (PRS HSO, December 2007) does not satisfy the issued Department of Planning Director-General's Requirements, with regard to DECC *Guidelines for Threatened Species Assessment*. The DECC considers that insufficient information has been provided in regards to:

- Description and justification of measures to avoid, and where necessary mitigate and then offset the impacts on areas of high biodiversity value, as is required within Step 4 of the Guideline;
- Recent threatened species records from the site, including the Regent Honeyeater which has been recorded breeding on the HEZ site (including within Precinct 1) during November 2007 - January 2008. The DECC has worked with the proponents ecological consultants (Biosis Research Pty Ltd) to document the extent of the breeding and potential habitat for the Regent Honeyeater within the HEZ site. The results of this survey should be incorporated into the EA. Further information on the Regent Honeyeater is provided below in Section 5;
- Consideration and evaluation of direct and indirect impacts associated with the Pelaw Main Bypass, particularly in regards to the endangered ecological community Kurri Sand Swamp Woodland and on lands proposed to be transferred to the DECC estate as part of a compensatory package related to the F3 to Branxton extension. Further information on the issues surrounding the Pelaw Main Bypass is provided below in Section 3;
- Development within Deferred Conservation Area No.1 (as shown in the Precinct 1 concept plan). This area is of high biodiversity conservation value for a number of threatened species and endangered ecological communities (EECs) including *Callistemon linearifolius*, Green-thighed Frog, Swift Parrot, Yellow-bellied Glider and Hunter Lowland Redgum Forest. Its significance and warranted protection has been identified in the assumed concurrence for the HEZ, issued in March 2005 by the Director General of the former Department of Environment and Conservation (DEC). The DECC also notes that the proponent had previously indicated their willingness to accept the retention of Area 1 as a deferred area, in the submission of the project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act) (HEZ Nominees Pty Ltd letter addressed to the Minister for Planning, dated 21st September 2006).

The DECC also advises the proponent that it has recently completed a detailed vegetation survey and mapping report for the Cessnock - Kurri Region. The report highlights the significance of the Hunter Lowland Redgum Forest EEC, which is restricted to approx 130 hectares (ha) within the Cessnock LGA and with the only known large intact occurrence to be within the HEZ site along Chinamans Hollow Creek. It is expected that the report will be made available to the proponent and the Department of Planning in February 2008.

For these reasons it is recommended that the final EA provide further justification for development in Deferred Conservation Area No.1. Where impacts can not be avoided, suitable mitigation / offset measures should be provided.

It is also likely that this information will be required to fulfil conditions specified in the Approval for HEZ under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) (Ref No: 2004/1417). In particular, Condition No.10 (Annexure-1) states that "to ensure

the protection of habitat for EPBC listed species, the lands identified as Deferred Areas within the Development Lands may only be varied or un-deferred with the agreement of the Department".

DECC recommends that these deficiencies be addressed prior to the exhibition of the EA to ensure the nature and extent of impacts of the proposed development on biodiversity values and actions to mitigate impacts are clearly identified.

2. Proposed Mitigation or Compensatory Measures

Whilst DECC acknowledges that compensatory offsets for any potential impacts on flora and fauna were considered during the rezoning of the HEZ, further ecological surveys undertaken over the site by the proponent (e.g. Ecological Constraints Master Plan (HSO, 2004)) have clearly indicated that a number of threatened species and endangered ecological communities were either not adequately protected or occurred primarily within the 4(h) industrial zone. It is on this basis that the former National Parks & Wildlife Service (NPWS) and Department of Environment and Conservation (DEC) worked with the proponent to resolve these outstanding threatened species issues. This culminated in the Director-General of DEC issuing an 'assumed concurrence' for the HEZ in March 2005, which included a number of environmental protection conditions such as 'deferring development' from 89ha of the 4(h) lands for conservation purposes.

The EA does not provide an assessment of how adequate conservation outcomes will be achieved for all known and potentially occurring threatened species and endangered ecological communities within the wider HEZ site. This assessment is required for DECC to evaluate the impacts of the current proposal and the suitability of the proposed mitigation measures. The assessment must include any recent ecological information collated from the site or region (e.g. additional records of threatened species, revised vegetation mapping), and be based on current government policies and principles.

The proposed mitigation / offset regime should also take into consideration how the maintenance of biodiversity values will be achieved through the current Part 3A assessment process and how proposed changes to the HEZ development (eg. requested removal of the pre-emptive subdivision clause within the Cessnock LEP - clause 56(2)) will impact on biodiversity values and the likely final development outcome on the site.

The *Draft Lower Hunter Regional Conservation Plan* provides 'offsetting principles' to guide the establishment of suitable compensatory measures. A copy of the Plan can be obtained at: www.environment.nsw.gov.au/resources/20060538hunter.pdf.

Until a comprehensive conservation framework / outcome for the entire HEZ site is developed through the current Part 3A assessment process, including for the Pelaw Main Bypass, the Department is unlikely to be in a position to support any current or future project applications or concept plans.

3. Pelaw Main Bypass

The DECC is in the final stages of acquiring approximately 336 ha of land directly to the east of the proposed Pelaw Main bypass as part of a compensatory package related to the F3 to Branxton extension. The proposed road either directly abuts the proposed DECC estate or traverses through this land as it joins John Renshaw Drive (as shown in Concept and Project Plan maps L17 & L18, Appendix B).

This addition into the DECC estate will conserve approximately 310ha of Kurri Sand Swamp Woodland (KSSW) EEC, 10ha of Lower Hunter Spotted Gum Ironbark Forest (LHSGIF) EEC, a number of threatened flora and fauna species, and is considered to be a key aspect of the KSSW Recovery Plan. The proposed road also traverses through an 110ha parcel of Crown Land, which

is located directly to the west of the DECC estate. This crown parcel contains approximately 60ha of KSSW and 50ha of LHSGIF.

The DECC is particularly concerned about the range of potential direct and indirect impacts the Pelaw Main Bypass will have on:

- The proposed DECC estate (compensatory package related to the F3 to Branxton extension), including from physical disturbance within the reserve itself (e.g. clearing of native vegetation, road construction, etc), edge effects, changes to drainage conditions and nutrient / pollution levels, and increased human access and disturbance (eg. arson, rubbish dumping, vehicular access, etc). These impacts have the potential to affect the longer-term viability of the reserve and will pose a number ongoing management liabilities;
- Threatened flora species and endangered ecological communities including the fragmentation of the largest remnant of KSSW;
- Wildlife corridors; and
- Isolation of vegetation to the west of the proposed road, including loss of the potential to extend and expand the proposed DECC estate by an additional 25% by the acquisition of the crown land parcel.

The EA does not adequately address the above mentioned issues and the proposed mitigation measures do not adequately offset the likely impacts associated with the proposed Pelaw Main Bypass.

The ameliorative measures described in Appendix E (Species Impact Statement for the Pelaw Main Bypass, HSO 2006, p.110) do not reflect the Department's position and cannot be considered to be either "long term management strategies" or "compensatory strategies" for the current proposal.

To facilitate DECC support for the Pelaw Main Bypass it is recommended that the proponent:

- Modify the location and design of the Pelaw Main Bypass further to the west to an area outside of the proposed DECC estate and/or provide for an alternative route within the EA; and
- Provide an adequate compensatory package, including suitable biodiversity offsets containing KSSW and LHSGIF vegetation communities.

The DECC also notes that the proposal has been determined to be a controlled action under the EPBC Act by Department of the Environment, Water, Heritage and the Arts (DEWHA), hence the EA may require additional assessment to fulfil the requirements under this Act.

4. Werakata National Park

The Department requests that any reference to Werakata National Park as forming part of the wider HEZ estate or associated "buffer lands" be excluded from the EA. This section of Werakata National Park was gazetted in February 1999, as an outcome of the Lower North East Forest Agreement in 1998, from land that had been part of the Cessnock State Forest. This occurred prior to the Cessnock LEP 1989 (Amendment No. 60) which formed the HEZ industrial lands, in March 2002.

Chapter 2 of the *NSW Parliamentary Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands (December 2004)* supports the Department's current position. On these grounds it is recommended that Werakata National Park be excluded from the definition of the HEZ.

5. Regent Honeyeater

The Regent Honeyeater is an endangered species listed under the Commonwealth EPBC Act and NSW *Threatened Species Conservation Act 1995* (TSC Act). The total known population of Regent Honeyeaters is estimated at between 800 and 2000 individuals.

During November 2007 to January 2008, the Regent Honeyeater has been observed breeding within the HEZ site and since this time the DECC has documented the extent of this breeding event. Based on the information currently available to the Department it appears that the majority of the breeding individuals are located within industrially zoned 4(h) lands and that there has been a significant recruitment of juveniles into the population.

Whilst the Regent Honeyeater was considered during previous assessments and approvals for the HEZ, the species has not been previously recorded breeding in this locality. The DECC is continuing to document the extent and significance of this breeding event and it is expected that a more comprehensive report which can be used for impact assessment purposes will be provided to the proponent, Department of Planning, and other relevant authorities in February 2008.

**Department of Environment and Climate Change
January 2008**