





### 2.3 Pelaw Main Bypass (concept application)

The Pelaw Main Bypass is proposed to be constructed from the main entry point to the HEZ estate at the intersection of the HEZ Spine Road and Leggetts Drive (MR 195) and link with John Renshaw Drive (MR 588), a distance of approximately 2.1 kilometres. The proposed alignment is predominantly within Crown land although a small section passes through land owned by Mindaribba Local Aboriginal Land Council.

The proposed alignment of the Pelaw Main Bypass is shown on Figure 6.

Figure 6: Proposed Alignment of the Pelaw Main Bypass



The road corridor is proposed to be 100 metres wide and would include the main carriageway comprising a two lane road with a constructed pavement width of approximately 11.6 metres, associated civil infrastructure and a vegetated buffer on either side. A breakdown bay is proposed to be provided as part of the northbound carriageway approximately half-way along the proposed road alignment. Sediment basins are also proposed to be constructed adjacent to the proposal to collect and treat stormwater runoff from the road.

The preferred road alignment would traverse through a number of vegetation communities including Grey Gum/Scribbly Gum Open Forest (GGSGOF), Freshwater Wetlands on Coastal Floodplains of the



New South Wales North Coast, Sydney Basin and South East Corner Bioregions (FWC), Kurri Sand Swamp Woodland in the Sydney Basin Bioregion (KKSX) and Lower Hunter Spotted Gum-Ironbark Forest in the Sydney Basin Bioregion (LHSGIF), the latter three of which are listed as EEC's under the *Threatened Species Conservation Act 1995*. In its current alignment, the proposal would require the clearing of approximately 9.1 hectares of vegetation. However, the area likely to be directly impacted by the project (taking into account edge effects and other impacts from road construction) would be 18.7 hectares (comprising 5.4 hectares of LHSGIF and 13.3 hectares of KKSX). Further detail on biodiversity impacts is described in Section 5.

## 2.4 Station Street Extension (concept application)

Station Street, located to the north of the study area on the southern side of Weston, is proposed to be extended by approximately 940 metres to provide a secondary access to the HEZ estate. The road is proposed to be 13.0 metres wide and constructed within a 24.0 metre wide corridor, which would allow for the provision of shoulders, services and the construction of a pedestrian footpath/cycleway. The proposed Station Street extension would traverse land zoned 1(a) Rural, 4(h) Hunter Employment Zone, 5(b) Special Uses (railway) and 7(b) Environmental Protection (conservation). All vegetation within the footprint of the corridor will require clearing to facilitate construction of the extension.

The proposed road alignment would traverse two endangered ecological communities, namely Lower Hunter Spotted Gum-Ironbark Forest in the Sydney Basin Bioregion (LHSGIF) and Kurri Sand Swamp Woodland in the Sydney Basin Bioregion (KKSX) as well as existing cleared areas. The proposal would result in the removal of 0.41 hectares of LHSGIF and 0.89 hectares of KKSX. Further detail on biodiversity impacts is described in Section 5.

## 2.5 WIPS Facility (project application)

The proposed development of land by Wall Integrated Panel System (known as the WIPS facility) involves the construction and operation of a large industrial building with associated carparking, landscaping and infrastructure to allow for the manufacture and distribution of pre-fabricated wall and floor panels on Part Lot 7 DP 1037092. The WIPS facility would be located on proposed Lot 290 (measuring a total area of 7.8 hectares) within the proposed Precinct 1 subdivision, as shown on Figure 5.

The WIPS facility would comprise an industrial building with a total floor area of approximately 27,794 m<sup>2</sup>, including 17,809 m<sup>2</sup> for warehousing, 9,241 m<sup>2</sup> for manufacturing and 744 m<sup>2</sup> for associated office space. The proposal includes an initial 105 car parking spaces, with the provision of an additional 103 carparking spaces being constructed once there was a demonstrated demand for such spaces from an increased workforce. The WIPS facility would cover a land area 28,849 m<sup>2</sup> and a hardstand area of 21,921 m<sup>2</sup> encompassing a total area of 50,770 m<sup>2</sup> or five hectares of the site, comprising 65% of the total land area. The Proponent has estimated that the facility would involve capital investment of approximately \$30.5 million.

The proposal would initially employ 75 manufacturing and warehousing staff and ten office staff with the number of employees likely to increase annually as demand for wall and floor panels also increase. The WIPS facility is proposed to operate three shifts (with up to 25 manufacturing/warehousing workers per shift) between Monday and Saturday, 24 hours per day. Office staff and transport drivers would work standard business hours between 9.00 am and 5.00 pm.

### **Hazard and Risk**

The primary output of the facility would be prefabricated acoustic and fire-rated foam composite wall panels for domestic and commercial uses. The manufacture of the foam panels requires five chemicals including Pentane, Supasrec 2085 (Polymeric methylene diisocyanate or PMDI), Daltofoam 33200 (Polyol), Catalyst 1 (Daltofoam TO 33203) and Catalyst 2 (Daltofoam TR 33204). Pentane, Polyol and PMDI would be delivered to the site in bulk isocontainers and stored in bulk storage tanks. The two catalysts would be delivered to the site and stored in 1,000 litre intermediate bulk containers.

The volume of chemicals requiring storage on site and the proposed storage method is outlined in Table 1. The proposed chemical usage and frequency of delivery is outlined in Table 2.

**Table 1: Proposed Chemical Storage**

Product	Class (per ADG)	Total Storage (L or kgs)	No. of Tanks/Packages	Quantity per Tank/Package (L or kgs)	Type of Storage
Pentane	3	110,000	3	55,000	Underground tanks
Catalyst 1	8	5,000	5	1,000	Packaged goods/1,000 L intermediate bulk containers
Catalyst 2	9	5,000	5	1,000	Packaged goods/1,000 L intermediate bulk containers
PMDI	9	150,000	3	50,000	Above ground tank
Polyol	9	150,000	3	50,000	Above ground tank

Source: Chemical Storage and Delivery Risk Assessment (December, 2007) prepared by Parsons Brinckerhoff as Appendix X of the WIPS Project Application EA.

**Table 2: Expected Chemical Usage and Deliveries**

Product	Quantity per Annum (tonnes)	Quantity per Week (tonnes)	Isotainer Deliveries per week	Intermediate Bulk Container Deliveries per Week
Pentane	945	20	1.1	-
Catalyst 1	270	6	-	5.6
Catalyst 2				
PMDI	1,892	39	2.2	-
Polyol	202	4	0.2	-

Source: Chemical Storage and Delivery Risk Assessment (December, 2007) prepared by Parsons Brinckerhoff as Appendix X of the WIPS Project Application EA.

While *State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* does not specifically apply to this project, the proposed volumes of chemicals to be used on the site are below the threshold limits specified in this Policy. Independent consultants (MJS Dangerous Goods Solutions) have also determined that the facility would not be classified as potentially offensive or hazardous.

### **The Site and Proposed Layout**

The site measures an area of 7.8 hectares and is characterised by native vegetation, namely Lower Hunter Spotted Gum-Ironbark Forest (LHSGIF), which is listed as an endangered ecological community (EEC) in Part 3 of Schedule 1 of the *Threatened Species Conservation Act 1995*. The north-west area of the site (comprising an area of 1.3 hectares) is already cleared. The Environmental Assessment identifies that approximately 4.93 hectares of this EEC would require clearing as part of the proposal.

The site slopes from the north down to the south east where two ephemeral drainage lines pass through the site. Road drainage under the HEZ Spine Road is directed to these drainage lines via existing engineered structures installed as part of its construction and include reinforced concrete box culverts.

The proposed layout of the WIPS facility and landscape plan are shown on Figure 7 and 8. In order to provide a level platform for the building, carpark and manoeuvring areas, bulk earthworks will be required. The design of the facility has resulted in an even cut and fill volume thereby eliminating the importation of fill or any offsite spoil disposal. Existing sandstone sourced from the site is proposed to be used as part of landscaping treatments.

The building is proposed to be set-back from the HEZ Spine Road. Existing landscaped set-backs are proposed to all boundaries ranging from 10 metres along the rear boundary to 10 to 20 metres along the side boundaries and a minimum of 10 metres along the HEZ Spine Road. The vegetation within the south-east corner of the site would be retained, including specimens of the threatened species *Grevillea parviflora*. It is noted that the concept plan application includes a 20 metre corridor of retained vegetation supported by a 10 metre re-instatement buffer to all lots, which contradicts the information provided in the WIPS Environmental Assessment.

Stormwater generated on the site is proposed to be recycled through the provision of a rainwater tank located on the eastern side of the building. Stormwater would be collected on site and utilised for the maintenance of landscaping, the flushing of toilets and will also be directed to two dry detention basins, one proposed to the north-west and the other in the south-eastern corner of the site.

**Figure 7: Proposed WIPS Facility - Photomontage**



**Southern Elevation**



**Building Entry Area**





## 2.6 Existing Approvals

A number of development applications lodged with Cessnock City Council have already been approved within the area proposed as part of the Precinct 1 subdivision. The Environmental Assessment states that the layout of the Precinct is consistent with approvals that have been obtained. Table 3 outlines the status of these applications as of December 2008.

## 2.7 HEZ Association

The HEZ Association is proposed to be created as Company Limited by Guarantee established under the *Corporations Act 2001*. The Association would be responsible for the care and ongoing management of the common assets of the estate inclusive of the environment protection areas along the central creekline corridor. Any registered proprietor of a lot within the estate would therefore be required to be a member of the HEZ Association. The functions of the HEZ Association would include:

- estate representation such as promotion, fostering links between firms within the estate, liaison with public authorities;
- data collection and management including maintaining records of background environmental data and undertaking estate wide environmental monitoring;
- property management and services such as marketing, maintenance of 7(b) zoned land, maintenance of asset protection zones outside of private land, maintenance of private estate roads owned by the Proponent and promotion of waste management and energy efficient practices within the estate; and
- development management and services such as assistance with pre-development application liaison with Cessnock Council and assistance with the preparation of applications.

## 2.8 Project Need

The overall development of the HEZ estate (including the first stage known as Precinct 1) is significant to the region and the State because:

- it is expected to involve capital investment in the order of \$2.2 billion;
- it is expected to generate 14,466 direct employment positions, equivalent to 6.6% of current employment in the Hunter Valley;
- it is expected to generate a further 12,170 indirect employment positions;
- it is expected to contribute \$3.3 billion to the annual turn-over of the Hunter Valley; and
- it will address elevated unemployment levels in the Cessnock local government area – which in 2006 was 8.5% compared with a State average of 5.9%.

There is no single, wholly-encompassing masterplan or strategic vision for the entire HEZ. Assessment of development applications has proceeded on a development-by-development basis rather than in the context of clear outcomes for the entire HEZ and this has caused issues with securing interest in the project and attracting industries to the estate. In addition, clause 56(2) of the Cessnock LEP states that "consent must not be granted to the subdivision of land within Zone 4(h) or 5(a) unless the subdivision specifically relates to the use of the land for which consent has previously been or will concurrently be granted". The Proponent has indicated that the effect of precluding subdivision unless related to a specific land use has unacceptably hindered the efficient design of the estate to incorporate best practice design in road layouts, bushfire management initiatives, water management strategies and habitat conservation measures. In addition, some developers of industries in the estate have also indicated that precluding pre-emptive subdivision has affected their ability to obtain financing to fund developments without having the registered title of the land for which the finance is being sought.

The Proponent has also indicated that the market for major industrial development and major employment generating development has changed significantly and it has become increasingly difficult to attract these users particularly as a result of the most recent global economic crisis and its subsequent effect on the local and regional economic climate. The fact that there is no definition in the LEP regarding "major industrial" or "major employment generating development" also results in a subjective assessment being made in relation to development applications.

The Precinct 1 subdivision would allow for the provision and implementation of an internal road layout that would provide access to future industries within the estate. Precinct 1 would also allow for the subdivision of lots such that essential services and utilities such as sewer, water supply, energy and communications could be provided on a precinct-wide basis rather than as developments are approved on a lot by lot basis. Lots within the Precinct have been designed so that they could easily be amalgamated in the future, as required, to facilitate development wishing to locate within the estate.

Table 3: Status of Development Applications within Precinct 1

Lot	Description	Applicant	Development Application	Determined yes/no	Subdivision Application	Determined yes/no	Current Status
90	Wholesale plant and propagation nursery.	Trueleaf Nurseries Pty Ltd	DA 8/2006/298/1	yes	DA 8/2006/431/1	no	Construction has yet to commence. Subdivision approval is being issued.
110	HEZ Village (proposed ancillary shops and facilities including HEZ site office, convenience store, café, and security office)	HEZ Nominees Pty Ltd	DA 8/2007/584/1	no	DA 8/2007/791/1	no	Undetermined. Council is awaiting further information from the Applicant.
130	Regional maintenance facility for heavy equipment such as mining plant. Application includes an access road between Lots 130 and 150.	Laing O'Rourke	DA 8/2008/203/1	no	None at this stage	N/A	Lot 100 is an option for the expansion of this facility. Council has indicated that this application is to be withdrawn.
170	Communications tower.	Optus	DA 8/2005/457/1	yes	DA 8/2005/570	no	Construction has yet to commence.
170	Water reservoir and access road	HEZ Nominees Pty Ltd	DA 8/2006/689/1	yes	None at this stage	N/A	Construction nearing completion.
210	Diesel peak generation power plant.	Infratil Limited	DA 10/2006/1038/2	yes	DA 8/2007/76/1	yes	Construction complete. Interim Occupation certificate has been issued by Council. Subdivision certificate not yet released as HEZ Association remains unresolved.
220	Energised substation	Energy Australia	DA 8/2005/570/1	yes	DA 8/2005/570/1	yes	Construction complete.
290	Helipad	HEZ Pty Ltd	DA 8/2004/422	yes	None at this stage	N/A	Construction has yet to commence. A construction certificate has never been issued and is not being pursued. If WIPS facility is approved, this facility will be constructed instead of the helipad. Helipad consent is due to lapse November 2009.
410	Aluminium extrusion facility.	Ullrich Aluminium Pty Ltd	DA 8/2007/577/1	yes	DA 8/2007/813/1	yes	Construction well advanced with completion scheduled for December 2008. Subdivision certificate has not been released as no Section 50 Certificate has been issued by Hunter Water Corporation and issue of HEZ Association remains unresolved. Lots 420 and 440 are options for the future expansion of this facility.



The Pelaw Main Bypass has been an integral component of planning for the HEZ. Notwithstanding, the existing state and local road network has the capacity to accommodate traffic related to up to 67 hectares of HEZ development without road upgrading works being required, including the Pelaw Main Bypass.

The NSW Roads and Traffic Authority (RTA) is currently preparing a Deed Containing Agreement between the RTA, Cessnock City Council and the Proponent that defines the road infrastructure works on the classified (State) road network that are required to be funded and constructed by the Proponent as a consequence of the development of Precinct 1. The infrastructure improvements stipulated in the Deed have been transferred into the recommended conditions of approval for the concept plan such that a separate Deed is no longer required. This is further discussed in Section 5 of this report.





### 3. STATUTORY CONTEXT

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#### 3.1 Part 3A of the Environmental Planning and Assessment Act 1979

The project is declared to be a Major Project under *State Environmental Planning Policy (Major Projects) 2005* because it is "development that employs 100 or more people with a capital investment value of more than \$20 million for the purpose of the manufacture or reprocessing (excluding labelling or packaging) of polymers, plastics, rubber or tyres" (clause 10(1)(g)).

On 17 July 2007, the Minister, formed the opinion that the WIPS facility meets the requirements of the Major Projects SEPP and thus declared the project to be a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* for the purposes of section 75B of that Act.

The Minister also authorised a Concept Plan under section 75M(1) of the *Environmental Planning and Assessment Act 1979* on the same day for the use and development of land within Precinct 1 for the manufacture of wall and floor panels; associated precinct planning including roads and lot layouts, conservation buffers, bushfire protection measures and habitat retention measures and associated infrastructure in the Hunter Economic Zone, including the Pelaw Main Bypass.

#### 3.2 Director-General's Requirements and Adequacy of Environmental Assessment

Director-General requirements, pursuant to section 75F(2) of the *Environmental Planning and Assessment Act 1979*, for the concept application (Precinct 1) and project application (WIPS facility) were issued on 25 October 2007.

For the purpose of section 75I(2)(g) of the *Environmental Planning and Assessment Act 1979*, the Environmental Assessments complied with the Director-General's requirements and the Proponent was notified of this compliance on 30 June 2008.

#### 3.3 State Significant Site Study

In 2006, the Proponent outlined a number of matters relating to the HEZ site which are constraining the timely realisation of its employment-generating potential, summarised as:

- no strategic vision for the implementation of the employment and environmental outcomes for the project;
- the lack of a cohesive Master Plan and Precinct Plan to guide development of the land and the achievement of desired environmental outcomes;
- a current planning framework that is not appropriately co-ordinated to avoid conflict and delivery of clearly identified outcomes;
- deferral of 32.89 hectares of employment zoned lands by the Department of Environment and Climate Change;
- the management of ephemeral streams on the site;
- the approval process for the Pelaw Main Bypass; and
- future use of the pocket of Rural 1(a) land retained under the Cessnock LEP.

The Department recommended that the most appropriate means to deal with the above issues identified by the Proponent was to consider the HEZ as a State Significant Site (SSS). In this regard, the Director-General issued requirements for the SSS Study on 25 October 2007. As of the date of this report, the Department has yet to receive a SSS Study for the estate. Notwithstanding, the applications described in this report can be determined in the absence of an SSS determination.

#### 3.4 Environmental Planning Instruments

*Cessnock Local Environmental Plan (Amendment No. 60) – Hunter Employment Zone* substantially governs the carrying out of the project. The Zone 4(h) Hunter Employment Zone objectives are:

- a) to encourage sustainable major industrial development or major employment-generating development that is conveniently accessible to urban centres and that has good road and rail access links, and
- b) to encourage ecologically sustainable development by prohibiting development that contributes to the degradation of the Wallis and Fishery Creeks water catchments, and
- c) to permit other development that is complementary, ancillary or related to existing development within the zone, and

- d) to prohibit development that exposes residences and the natural environment to unacceptable levels of pollution or hazard risk, and
- e) to minimise the clearing of native vegetation, and
- f) to facilitate the movement and survival of native fauna and flora by conserving native vegetation corridors.

The Environmental Assessment outlined that the rezoning process sought to

- conserve in perpetuity key strategic parcels of land that complete regional biodiversity conservation corridors and buffer areas;
- provide large intact areas of conserved habitat that will function as regional biodiversity gene pools;
- protect an important array of vegetation communities, flora and fauna species, and natural landscape assets, including threatened species and EECs; and
- achieve additional conservation benefits within the development zones via appropriate design and management practices.

The WIPS facility is a permissible use in Zone 4(h), with consent.

In relation to the subdivision of land, the LEP contains a specific requirement (clause 56(2)) which restricts speculative subdivision within Zone 4(h), Zone 5(a) or Zone 7(b) of the HEZ. The concept plan application seeks to relax the abovementioned provisions of clause 56(2) of the LEP by allowing the subdivision of Precinct 1 prior to the approval of the land use associated with each of the lots within the Precinct.

Section 75(O) of the *Environmental Planning and Assessment Act 1979* provides the requirements for the giving of approval for a concept plan. Section 75(O)(3) states that the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R of the *Environmental Planning and Assessment Act 1979*) apply to the project if approved. Therefore the Minister is not required to take into consideration the provisions of the Cessnock LEP in relation to the concept plan.

However, clause 80 of the *Environmental Planning and Assessment Regulation 2000* states that approval for the carrying out of a project may not be given under Part 3A of the *Environmental Planning and Assessment Act 1979* for any project or part of a project that is prohibited by an environmental planning instrument. Neither the subdivision or the development of Precinct 1, including the construction and operation of the WIPS facility is prohibited under the provisions of the Cessnock LEP. Similarly, the proposed Station Street extension and the Pelaw Main Bypass are not considered to be prohibited uses within their land use zones under the LEP.

### 3.5 Minister's Approval Power

The environmental assessment was placed on public exhibition from 16 July 2008 until 18 August 2008 and submissions invited in accordance with Section 75H of the *Environmental Planning and Assessment Act 1979*. The Department has met all of its legal obligations so that the Minister can make a determination regarding the project.

### 3.6 Commonwealth Legislation

The Proponent determined that the development of the HEZ owned lands for employment-generating purposes may have a significant impact in relation to Matters of National Environmental Significance (listed threatened species and communities as well as listed migratory species) as outlined in the *Environment Protection and Biodiversity Conservation Act 1999* and referred the proposal to the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA). An approval to develop the Hunter Economic Zone industrial estate was granted on 28 May 2007 (EPBC 2004/1417), subject to conditions. The approval did not apply to the Pelaw Main Bypass and therefore a separate referral to the DEWHA will be required for that project as it too, would impact on Commonwealth listed threatened flora and fauna species and/or communities.

The Commonwealth approval (EPBC 2004/1417) states that the Deferred Areas within the development lands may only be varied or un-deferred with the agreement of the DEWHA. Only Deferred Area 1 is relevant to the current application. Any change to the boundaries of Deferred Area 1 will therefore require further approval from the DEWHA.



## 4. CONSULTATION AND ISSUES RAISED

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### 4.1 Introduction

The Department received 17 submissions of which nine were from Government agencies and one from Cessnock City Council, with the remaining submissions received from the public. Of the total number of submissions received, nine submissions objected to the proposal and eight submissions did not state their views on the proposal preferring to provide comments on issues of concern.

### 4.2 Submissions from the Public

The seven public submissions consisted of five submissions from special interest groups, one from an educational facility and one from a local resident. Of these submissions, all objected to the proposal, although one submission specifically indicated support for one aspect of the project being the proposed Pelaw Main Bypass.

The predominant issue raised in public submissions related to the impact the project would have on biodiversity. The key biodiversity issues that were raised are summarised below:

- clearing of significant forest/woodland;
- significant impacts to endangered ecological communities and threatened flora and fauna species;
- unacceptable removal of mature trees (84%) and hollow-bearing trees (87%) leading to significant impacts to habitat and habitat degradation;
- indirect impacts on the adjacent Werakata National Park;
- inadequate offsets proposed for the loss of native vegetation and habitat – offsets should be in accordance with the NSW Government's "maintain or improve" policy;
- inadequate consideration of cumulative impacts to biodiversity as a result of future development proposals within the HEZ estate and cumulative losses of vegetation in the region;
- inadequate consideration of anti-collision measures within Precinct 1 in accordance with *Minimising the Swift Parrot Collision Threat (2008)*;
- unacceptable clearing in an area where there are threatened bird species including nationally endangered species such as Regent Honeyeaters and Swift Parrot – the Regent Honeyeater bred on the site in the summer of 2007/2008 which is considered significant;
- unacceptable clearing associated with the Pelaw Main Bypass. The proposal dissects the largest remaining tract of Kurri Kurri Swamp Woodland EEC;
- the proposal did not include sufficient description and justification of measures to avoid, mitigate and offset impacts on biodiversity;
- strip of vegetation along the front boundary of development lots (20 metre strip) was considered narrow in terms of biodiversity support as it could be punctuated by driveways providing access to individual lots. The buffer would be purely cosmetic and not effective in promoting biodiversity;
- the development of Deferred Area 1 was not supported – this area was set aside to protect Hunter Lowland Redgum, *Callistemon linearifolius*, Yellow bellied Glider, Swift Parrot and Green-thighed Frog habitat as well as *Eucalyptus glaucina*;
- Deferred Area 1 has been relied on as a conservation measure for other development applications at the same time as the Proponent is advocating the clearing of most of the area;
- the proposal would result in significantly more clearing when compared with the concepts on which the original HEZ plans were based; and
- the application should be refused because it is not shown how clearing Deferred Area 1 and associated small lot subdivision will avoid significant impact on threatened species and biodiversity.

Other issues raised in public submissions included:

- refusing those elements of the proposal not directly related to the Pelaw Main Bypass; and
- lack of a SSS Study which would outline the strategic framework for the HEZ.

### 4.3 Submissions from Government Agencies

The Department received submissions from the following government agencies/state owned corporations:

- Department of Environment and Climate Change (DECC);
- NSW Roads and Traffic Authority (RTA);
- NSW Rural Fire Service;
- Hunter Water Corporation;

- Mine Subsidence Board;
- Hunter-Central Rivers Catchment Management Authority;
- Department of Water and Energy;
- Department of Primary Industries;
- Department of the Environment, Water, Heritage and the Arts (Commonwealth) (DEWHA); and
- Cessnock City Council.

While most of the agencies did not state an explicit position regarding the proposal, a number outlined their objections. Most of the agencies identified a number of key issues for further consideration/information including: biodiversity issues and flora and fauna impacts, road network/traffic impacts, fire management, mining impacts, water quality and water management issues, cumulative impacts and comments regarding strategic planning.

Comments made by each agency are summarised below:

- The **Department of Environment and Climate Change** (DECC) objected to all components of the concept and project application until a new strategic planning framework is developed for the entire HEZ site through the SSS process. A new strategic planning framework for the entire HEZ site would deliver a "maintain or improve" outcome in relation to biodiversity.

The DECC considered that there was considerably more clearing proposed with the proposal compared with the original HEZ plans and that the level of clearing will have significant impacts on threatened species. The development of Deferred Area 1 is not supported as this area contains populations and habitat for threatened species and endangered ecological communities, which are not adequately conserved within the HEZ site.

The Environmental Assessment did not contain sufficient description and justification of measures to avoid, mitigate and then offset the impacts on high biodiversity value or that met the requirements of "improve or maintain" thresholds. Of the 129 hectares within Precinct 1, approximately nine hectares had been set aside for conservation without justification of the proposed development versus conservation lands ratio or proposed offset.

Insufficient information was provided in the Environmental Assessment on a significant breeding event of the Regent Honeyeater within the HEZ site and the importance of the site to the Swift Parrot. DECC noted that virtually all of the primary feed trees in the area (mature Spotted Gum) would be removed under the proposal. The assessment did not include recent ecological information collated from the site or region and did not justify the removal of threatened species for which adequate conservation outcomes are yet to be achieved.

The DECC indicated that the Werakata National Park could not be used to assert that adequate conservation outcomes had been achieved as part of the HEZ project. Werakata National Park was established under a separate process, unrelated to HEZ and cannot be used as an offset for the development of HEZ.

The DECC also objected to the Pelaw Main Bypass because it is likely to have a major impact upon the largest remaining stand of Kurri Sand Swamp Woodland EEC – the road would result in direct removal of vegetation within the EEC and sever the remnant stand. The resultant stand to the west of the proposal is highly likely to suffer degradation from its isolation, through edge effects and its location between an urban area and a road. DECC also objected to the bypass as no biodiversity offsets were provided or proposed despite its biodiversity impacts. No consideration had been given to the impacts of the bypass on land earmarked for conservation that abuts the road alignment on the east.

- The **NSW Roads and Traffic Authority** (RTA) outlined that a Deed Containing Agreement (DCA) between the RTA, Cessnock City Council and HEZ is being prepared that defines the road infrastructure works on the state road network that are required to be funded and constructed by HEZ as a consequence of the development of Precinct 1. Cessnock City Council is included as a party to the DCA as part of the required road infrastructure works includes ancillary work on local roads that connect to state roads. The RTA stated that it had no objections to the proposal provided the DCA's road infrastructure requirements were included in the conditions of approval, which obligate the owner to comply with the conditions of the DCA.



- The **NSW Rural Fire Service** identified a number of measures to provide sufficient space and maintain fuel loads to ensure radiant heat levels of buildings on the site would be below critical limits. Comments were made in the submission regarding the required width of asset protection zones within the Precinct.
- The **Hunter Water Corporation** outlined its recent approvals of various water supply and wastewater infrastructure within the site. Hunter Water Corporation also outlined that it is a requirement that an application for a Section 50 "Notice of Requirements" would be required so that it could determine connection points to water and sewer and to nominate actions to be completed by the developer.
- The **Mine Subsidence Board** outlined that the subject proposals are within a Proclaimed Mine Subsidence District and would require Mine Subsidence Board approval prior to any construction commencing. Further investigations such as geotechnical investigations may be required to determine the suitability of the proposal in relation to the existing mining in the area and its impacts.
- The **Hunter-Central Rivers Catchment Management Authority (CMA)** objected to the Precinct 1 concept plan and associated infrastructure. The reasons provided in the submission included the lack of demonstration that the proposal would improve or maintain environmental outcomes with a level of clearing within Precinct 1 representing a 1:2.6 offset to clearing ratio. Site specific values such as mature trees (84% loss), hollow bearing trees (87% loss) and important forage trees (70% loss) had not been improved or maintained. Further, the submission stated that the Werakata National Park could not be considered an appropriate offset for the commercial development of HEZ.

The submission outlined that the proposal would result in significant impacts to endangered ecological communities and the proposed setbacks and reinstated vegetation corridors would not provide biodiversity support as they were considered narrow and would be broken periodically by up to 20 m wide access driveways to industrial lots.

The CMA highlighted that cumulative impact assessment was lacking with no details provided on the loss of native vegetation across the region or an account of the loss and/or reservation status of the numerous threatened species and EECs the proposal could impact on. In terms of the Catchment Action Plan, the assessment did not address the credit-debit balance requested and did not address the guiding principles of the plan, which is to minimise habitat destruction and improve habitat condition.

- The **Department of Water and Energy** required that the Environmental Assessment provide plans/maps that showed all the watercourses in relation to the design and layout of Precinct 1 and the watercourses impacted on by the Station Street extension and the Pelaw Main Bypass. Details should include justification for proposed development that would impact on watercourses and associated riparian areas.
- The **Department of Primary Industries** identified that the subject site is not within any current coal titles, however is within the Tomalpin Mine Subsidence District and therefore any development must be designed to meet building design guidelines established by the Mine Subsidence Board. In terms of fisheries issues, the Department indicated that the development is entirely at the top end of the catchment and no fish habitat would be affected. Management of stormwater in receiving waters was considered to be an issue that could be managed with the implementation of suitable reuse and water sensitive urban design principles.
- The **Department of the Environment, Water, Heritage and the Arts (DEWHA)** noted that the concept plan for Precinct 1 proposed significant alterations to the boundaries of development land and deferred areas that were approved under the *Environment Protection and Biodiversity Conservation Act 1999* on 28 May 2007 and varied on 31 July 2007. The submission outlined that the concept plan proposed more clearing than that resulting from the zoning on which the original HEZ *Environment Protection and Biodiversity Conservation Act 1999* approval was based and that the proposed changes may result in significant impacts on *Environment Protection and Biodiversity Conservation Act 1999* listed threatened species. The DEWHA was concerned that some of these impacts may not have been assessed and approved under the *Environment Protection and Biodiversity Conservation Act 1999*.

The *Environment Protection and Biodiversity Conservation Act 1999* approval states that "to ensure the protection of habitat for *Environment Protection and Biodiversity Conservation Act 1999* listed species, the lands identified as deferred areas within the development lands may only be varied or un-deferred with the agreement of the DEWHA". The Concept Plan proposed significant clearing of Deferred Area 1 and the DEWHA did not agree to the proposed changes due to a lack of supporting information.

The DEWHA was concerned with the lack of information in the Environmental Assessment regarding the recent breeding event by the Regent Honeyeater within the HEZ site and was also concerned with the estimated 600 mature Earp's Gums that would be directly impacted through the construction of the Pelaw Main Bypass. The Department required the Proponent to provide specific details of proposed mitigation/compensatory measures regarding the loss of this species from the construction of the Bypass. The DEWHA did not make any comments on the proposed WIPS facility or the proposed Station Street extension.

#### 4.4 Submissions from Local Government

A submission was received from Cessnock City Council which raised a number of issues relating to the concept application for Precinct 1. Issues raised by Council regarding the concept application are summarised below:

- *Subdivision layout and compliance with objectives of HEZ* – the Proponent seeks approval for pre-emptive subdivision for lots varying between two and five hectares with the average lot being only 2.7 hectares. The current zone objectives allow for major industrial and major employment generating developments and Council did not consider that the Proponent demonstrated that the lot sizes proposed and the allowance of pre-emptive subdivision would facilitate major industrial development within the estate. Council considered that the concept application would result in fragmented ownership preventing lots from being amalgamated or reconfigured to form super lots capable of accommodating major industry types.
- *Extinguishment of watercourses* – major watercourses are proposed to be relocated or removed under the proposal although limited design details were provided to demonstrate how this could be achieved in a sustainable manner without the large scale clearing of existing vegetation, filling operations or adversely affecting Green-thighed Frog habitat. Removal of watercourses that cross the HEZ Spine Road was considered problematic and would require significant construction works.
- *Road design/ layout and ongoing maintenance responsibilities* – direct access from the HEZ Spine Road is discouraged as the road is designed and constructed to a narrow carriageway width with the intention that it would be used only as a through road. Limiting direct access off the Spine Road would also allow the 20 metre vegetation corridor to provide a contiguous link along the road corridor. If direct access is required off the Spine Road, the road would need to be widened to accommodate large vehicles including B-Doubles. A road maintenance agreement would need to be established between Council, the Proponent and the HEZ Association, as it is understood that Council would be responsible for the road (kerb to kerb). Long term maintenance of landscaping and drainage facilities must be the responsibility of the Proponent.
- *Water quality and treatment on site* – the principle of Water Sensitive Urban Design within the subdivision was supported although the sectional details provided in the documentation indicated practical installation and operational difficulties. The landscaped swales are located within the footpath area above proposed services – the likelihood of service providers reinstating landscaping/drainage structures after necessary access or maintenance was of concern. Concern was also raised regarding the establishment and longevity of the HEZ Association to manage and maintain the proposed drainage swales, bio retention areas and landscaping within the road and open space areas.
- *HEZ Association functions and legal longevity in perpetuity* – Council considers the legal framework for the HEZ Association is of paramount importance to achieve the required outcomes on the site. Council agrees with the concept that the HEZ Association should be a company limited by Guarantee under the Corporations Act with every owner required to be a member of the Association. However, it requested that a separate HEZ Deed be entered into between the Proponent, the HEZ Association and Council for estate management functions in the future.
- *Inconsistencies between the Environmental Assessment and specialist studies* – the proposed subdivision plans depict lots of around two hectares while the noise and air management strategies refer to lots of eight hectares. The concept plan application should be consistent in data and approach.
- *Traffic considerations need to take into account the Traffic Deed Containing Agreement* – The Traffic Deed should be signed by the Proponent prior to any approval being issued for the application.

- *Maintenance of the concepts of "industrial ecology" and "sustainability" as primary goals within the estate* – Council considers that given the importance of sustainability this aspect should have been addressed.
- *Section 94 contribution plan* – A section 94 contribution plan has not been completed and Council considers that due to the significant working population in the HEZ, facilities such as upgrading of local roads; provision of external cycleway linkages within the surrounding residential areas and Weston; provision of street furniture such as bus shelters and upgrading of local fire fighting services for the estate should be considered.
- *Footbridge over South Maitland Railway Line at Weston* – The Environmental Assessment indicated that part of the northern ramp of the footbridge be removed and the remaining components of the structure remain. Council requested further discussions with the Proponent with respect to the future management/demolition of the footbridge and that any new crossing over the railway include adequate pedestrian facilities.
- *No social or economic impact assessment* – the application should include a more substantive social and/or economic justification for the downsizing of proposed lots within HEZ and articulate the practical need for removal of pre-emptive subdivision.
- *Strategic framework for future industrial development* – the proposal is inconsistent with both the Lower Hunter Strategy and Council's adopted City Wide Settlement Strategy. The outcomes of a State Significant Site Study should be known prior to any lands within the estate being released for light industrial purposes.
- *Draft Statement of Commitments* – Council considered that the commitments detailed in the Environmental Assessment were too general.

#### 4.5 Submissions Report

On review of the issues identified in the submissions, the Department required the Proponent to prepare a Submissions Report to address each of the issues raised. As part of this process, the Proponent made comment in relation to the issues identified.

The Department provided the opportunity for the DECC, Cessnock City Council and the DEWHA to comment on the Submissions Report. All three agencies provided further comment to the Department regarding the proposal.

The DECC provided a number of recommendations for the Department to consider as conditions of approval specifically relating to biodiversity issues. These are discussed within Section 5 of this report.

Council and the DEWHA also provided recommendations for consideration as conditions of approval. Council's recommendations specifically outlined the requirements for a HEZ Association and the need to provide further assessment regarding proposed subdivision approval.

The DEWHA recommended conditions of approval related to the protection of Commonwealth listed threatened species, particularly in relation to the Pelaw Main Bypass and the unwillingness to allow development within Deferred Area 1. These recommendations are further discussed in Section 5.

Subsequent to the receipt of Response to Submissions, the Proponent requested that the Department review the Station Street extension with a view to providing project approval to allow for its construction and operation. As a result of this, the Department, in consultation with Cessnock City Council and the RTA, requested the Proponent to submit further information and details, including design plans for the proposal for the Department's assessment. The Department reviewed the information submitted to it but considered that it did not provide sufficient information to allow a detailed assessment to be made. The Department has therefore recommended that further environmental assessment be undertaken for this component of the proposal under Part 3A of the *Environment Planning and Assessment Act 1979*.

The Proponent submitted an Addendum to the Response to Submissions in which it sought to change the functions of the HEZ Association as well as a number of its Statement of Commitments. The Department reviewed the Addendum document and did not agree with the changes being proposed by the Proponent and has not accepted the document as part of the Proponent's Response to Submissions.





## 5. ASSESSMENT OF ENVIRONMENTAL IMPACTS

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After consideration of the Environmental Assessment, submissions received from the public exhibition, the Proponents Submissions Report, Government agency responses to the Submissions Report, and the Department's own assessment of the proposals, the following key environmental issues have been identified as part of the assessment process:

- biodiversity impacts;
- strategic planning framework;
- traffic and transport impacts;
- water quality impacts and water management; and
- fire management.

Potential impacts of the proposal on the acoustic environment, air quality, built heritage and Aboriginal heritage are considered to be relatively minor and although adequately assessed, required specific conditions of approval. The Department's consideration of these issues is addressed in Section 5.7.

### 5.1 Biodiversity

#### Issue

As part of the rezoning process undertaken by Cessnock Council in 2002, HEZ owned land generally referred to in this assessment as the HEZ estate (which amounts to a total of 588 ha) was zoned as follows:

- 47.15 hectares Rural 1(a);
- 378.8 hectares HEZ 4(h);
- 16.5 hectares Special Uses 5(a);
- 10.1 hectares Special Uses 5(b);
- 135.5 hectares Environment Protection 7(b) (Conservation).

The objectives related to flora and fauna within the 4(h) zone are to:

- encourage sustainable major industrial development or major employment generating development;
- encourage ecologically sustainable development;
- minimise the clearing of native vegetation; and
- facilitate the movement and survival of native flora and fauna by conserving native vegetation corridors.

The Environmental Assessment outlined the flora and fauna investigations which were undertaken as part of the Ecological Constraints Master Plan in 2004, and which was used to guide the development of the HEZ estate. The study identified the occurrence of three endangered ecological communities (EEC) which are the Lower Hunter Spotted Gum Ironbark Forest, Kurri Sand Swamp Woodland and Hunter Lowland Redgum Forest. A large number of threatened flora and fauna species were also identified as occurring within Precinct 1, the study area for the proposed Station Street extension or in the vicinity of the proposed alignment for the Pelaw Main Bypass. These include:

#### **Threatened Flora**

- *Acacia bynoeana*;
- *Callistemon linearifolius*;
- *Eucalyptus glaucina*;
- *Eucalyptus parramattensis* ssp. *decadens*;
- *Grevillea parviflora* ssp. *parviflora*;
- *Rutidosia heterogama*.

#### **Threatened Fauna**

- *Chthonicola sagittata* (Speckled Warbler);
- *Petaurus norfolcensis* (Squirrel Glider);
- *Meliphreptus gularis* (Black-chinned Honeyeater);
- *Pomatostomus temporalis* (Grey-crowned Babbler);
- *Climacteris picumnus* (Brown Treecreeper);
- *Ninox strenua* (Powerful Owl);
- *Lathamus discolor* (Swift Parrot);
- *Xanthomyza phrygia* (Regent Honeyeater);

- *Litoria brevipalmata* (Green-thighed Frog);
- *Calyptorhynchus lathamii* (Glossy Black-Cockatoo);
- *Petaurus australis* (Yellow-bellied Glider)
- *Petaurus norfolkensis* (Squirrel Glider);
- *Stagonopleura guttata* (Diamond Firetail);
- *Lophoictinia isura* (Square-tailed Kite);
- Various bats including *Mormopterus norfolkensis* (Eastern Freetail-bat), *Miniopterus australis* (Little Bentwing-bat), *Miniopterus schreibersii* (large Bentwing-bat) and *Scoteanax rueppellii* (Greater Broad-nosed Bat).

The Environmental Assessment states that the rezoning process for the HEZ led to significant conservation outcomes for the HEZ estate, the Council area and the region. The Proponent has argued that the design of Precinct 1 was developed to avoid impacts to substantial drainage areas and/or Green-thighed Frog habitat, Hunter Lowland Redgum Forest, *Rutidosia heterogama*, *Callistemon linearifolius* and mature hollow-bearing trees in accordance with the HEZ Habitat Management Strategy, the DECC Assumed Concurrence and Commonwealth approval conditions. The Environmental Assessment consistently identifies that the site has been rezoned for industrial and employment generating development and therefore should be allowed to be developed for such uses.

The Environmental Assessment identified that the proposal would result in the following flora impacts;

#### **Precinct 1 (total area of 129 hectares)**

- modification of 6.8 hectares of Hunter Lowland Redgum Forest EEC (from a total area of 13.4 hectares or 51 per cent);
- clearing of 86 hectares of Lower Hunter Spotted Gum Ironbark Forest EEC (from a total area of 97 hectares or 89 per cent);
- clearing of 404 *Rutidosia heterogama* plants (from a total of 458 plants or 88 per cent);
- clearing of 202 *Callistemon linearifolius* plants (from a total of 314 plants or 64 per cent; and
- clearing of *Grevillea parviflora ssp. parviflora* (no indication of area or number of plants is provided).

#### **WIPS Facility (total area of 7.8 hectares within Precinct 1)**

- clearing of 4.93 hectares of Lower Hunter Spotted Gum Ironbark Forest EEC; and
- clearing of 4.93 hectares of potential habitat for *Grevillea parviflora ssp. parviflora*, although 14 plants identified in the vicinity of the proposal would be retained.

#### **Station Street Extension**

- clearing of 0.41 hectares of Lower Hunter Spotted Gum Ironbark Forest EEC;
- clearing of 0.89 hectares of Kurri Sand Swamp Woodland EEC;
- one *Callistemon linearifolius* was identified and is not likely to be affected;
- clearing of 47 *Eucalyptus parramattensis ssp. decadens*;
- three *Eucalyptus glaucina* plants were identified and are not likely to be affected.

#### **Pelaw Main Bypass**

- clearing of 2.4 hectares of Lower Hunter Spotted Gum Ironbark Forest EEC and further modification of 3.0 hectares of this EEC as a result of edge effects and indirect impacts (representing 8 per cent within the Pelaw Main Bypass study area);
- clearing of 6.7 hectares of Kurri Sand Swamp Woodland EEC and further modification to 6.6 hectares of this EEC due to edge effects;
- isolation of 39 hectares of Kurri Sand Swamp Woodland EEC between the road alignment and Pelaw Main (representing 9.3 per cent of the total amount of Kurri Sand Swamp Woodland EEC in the study area of the proposal).
- clearing of up to 14 *Acacia bynoeana* plants;
- clearing of approximately 16,930 above ground stems of *Grevillea parviflora ssp. parviflora*; and
- clearing of 651 specimens of *Eucalyptus parramattensis ssp. decadens* (Earps Gum).

With the exception of the impacts to *Eucalyptus parramattensis ssp. decadens* from the proposed Pelaw Main Bypass, the Environmental Assessment and supporting ecological assessment indicated that the abovementioned impacts were not significant given that the DECC Assumed Concurrence provided adequate conservation outcomes within the HEZ LEP area and/or representation of the endangered



ecological communities and threatened species were found within secured conservation reserves such as the Werakata National Park.

The impact to *Eucalyptus parramattensis* ssp. *decadens* is considered to be significant in conservation terms due to the large unbroken gene pool that would be impacted as a result of the proposed road alignment. The Environmental Assessment, however stated that, due to existing conservation agreements protecting the majority of the land to the east of the Pelaw Main Bypass alignment (i.e. associated with the compensatory habitat package proposed by the RTA for the proposed F3 Freeway extension), a favourable conservation outcome would be achieved for this species and that the risk of extinction was unlikely to occur as a result of the proposal.

In terms of impacts on threatened fauna, the following summarises the information provided in the Environmental Assessment:

#### **Precinct 1**

- protection of two main riparian areas mapped as providing low-medium quality habitat for the Green-thighed Frog;
- modification of habitat for the Glossy Black-Cockatoo;
- modification of habitat for the Brown Treecreeper, Grey-crowned Babbler and the Black-chinned Honeyeater;
- destruction of 110 out of a total 159 winter flowering mature *Corymbia maculata* (Spotted Gum) and *Eucalyptus tereticornis* (Forest Red Gum) (i.e. 69 per cent) which is used by the Swift Parrot and the Regent Honeyeater;
- modification of habitat for the Powerful Owl (although 87 per cent of the hollow bearing trees are to be removed in the Precinct); and
- modification of habitat for the Yellow-bellied Glider (although 87 per cent of the hollow bearing trees are to be removed in the Precinct);

#### **WIPS Facility**

- no significant impacts would be expected from the proposal.

#### **Station Street Extension**

- no significant impacts would be expected from the proposal.

#### **Pelaw Main Bypass**

- impact to 18.7 hectares of potential habitat for the Speckled Warbler (this species was recorded as occurring within the study area); and direct impact as a result of isolating habitat for this species to the west of the road alignment;
- modification to foraging habitat for the Squirrel Glider; and
- modification of habitat (assessed as not significant) for other potentially occurring threatened species: Black-chinned Honeyeater, Grey-crowned Babbler, Brown Treecreeper, Powerful Owl, Swift Parrot, Regent Honeyeater, Green-thighed Frog, Eastern Freetail-bat, Little Bentwing-bat, Large Bentwing-bat and the Greater Broad-nosed Bat.

The Environmental Assessment also undertook an assessment of the key threatening processes which could potentially be applicable to the proposals, as follows:

- loss of hollow bearing trees;
- clearing of native vegetation;
- human caused climate change;
- infection of native plants by *Phytophthora cinnamomi*;
- invasion of native plant communities by exotic perennial grasses;
- removal of dead wood and dead trees;
- predation by the feral cat;
- alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands; and
- *Lantana camara* invasion.

The Proponent has indicated that higher quality habitat will be secured (by others) as conservation lands elsewhere within the site (on the eastern side of the proposed Pelaw Main Bypass alignment) in addition to extensive lands that have been conserved as part of the rezoning process and that the impacts on threatened fauna from the proposal is unlikely to be significant. Various mitigation measures were

also proposed to minimise potential adverse impacts on flora and fauna. This included a proposal to retain a 20 metre corridor of vegetation along either side of the HEZ Spine Road as a habitat corridor for fauna.

A key thresholds assessment was also undertaken by the Proponent, which concluded that the proposal was likely to result in a maintained if not improved outcome for biodiversity values in the region, taking into consideration the significant conservation of vast areas of endangered vegetation and threatened species habitat, as detailed in the Environmental Constraints Master Plan, the DECC Assumed Concurrence and the measures outlined in the Environmental Assessment. The Proponent has indicated that the threatened species, populations and endangered ecological communities within the affected areas are well represented within the region's conservation lands and are considered unlikely to be placed at risk of extinction.

The Proponent has summarised the conservation outcomes for the development design of Precinct 1, as follows:

- integration and protection of the Hunter Lowland Redgum Forest EEC;
- integration and protection of Green-thighed Frog riparian and aquatic habitat;
- integration and protection of *Rutidosia heterogama* and *Callistemon linearifolius*;
- integration and protection of approximately 16 per cent mature trees, 30 per cent winter flowering mature trees and 13 per cent of hollow bearing trees. The retention of 30 per cent of winter flowering mature trees are of high significance to the nationally and state-listed Swift Parrot and Regent Honeyeater and exceed the minimum 10 per cent retention required under the EPBC approval. This is in addition to the retention of approximately 500 mature *Corymbia maculata* and *Eucalyptus tereticornis* within the 7(b) conservation zones;
- retention of substantial connectivity (terrestrial and aquatic) through proposed 20 metre conservation setbacks from the road system in which existing natural vegetation will be retained, and the integration of substantive drainage areas.

### **Issues Raised in Submissions**

The issue of biodiversity was the most significant issue of concern identified in the submissions received from the exhibition period by both government agencies and the community.

Submissions criticised the fact that much of the flora and fauna impact assessment relied on information from studies undertaken as part of the rezoning process and that a SSS Study was not prepared to provide a strategic framework for the proposal to aid in the understanding of cumulative biodiversity impacts from the development of the HEZ estate. A number of submissions also challenged the conclusions of the Environmental Assessment in stating that the loss of habitat and the impact on EECs and threatened species was not considered to be significant.

DECC raised a number of issues related to biodiversity which can be summarised as follows:

### **Precinct 1**

- the concept plan for Precinct 1 does not show how it will meet its stated objective to: retain and manage environmentally sensitive lands on the site for habitat protection and biodiversity; design and prepare the site in a manner that manages the environmental considerations that apply to the site; and provide a framework to manage the potential impacts of the future use and development of the site;
- the concept plan proposes significantly more clearing than what the concepts upon which the original approvals for the HEZ estate were based (including the DECC Assumed Concurrence);
- the proposed level of clearing is likely to have significant impacts upon threatened species;
- the report does not contain sufficient description and justification of measures to avoid, mitigate and then offset the impacts on areas of high biodiversity value or meet the requirements of the "improve or maintain" thresholds;
- an inadequate justification for proposed development of Deferred Area 1;
- no mention of the highly significantly breeding event by Regent Honeyeaters during October 2007/January 2008 or importance of the site to the Swift Parrot;
- that virtually all of the primary feed trees in the area (mature Spotted Gum) will be removed. DECC considers that 84 per cent of mature trees (with DBH >50 cm) and 87 per cent of hollow bearing trees proposed to be removed is significant, given that the retained trees are proposed to exist only within linear strips along roadsides;
- it does not support the inference that the proposed layout will result in a "bushland industrial estate" given the proposal to clear the majority of the forested area on the site;
- Werakata National Park cannot be used to assert that adequate conservation outcomes were achieved as part of the HEZ project; and

- the development is proposed within ecologically significant and sensitive areas, including Deferred Area 1 which contains populations and habitat for threatened species and EECs which are not adequately conserved within the HEZ estate.

#### ***Pelaw Main Bypass***

- is likely to have a major impact on the largest remaining stand of Kurri Sand Swamp Woodland EEC and will sever the remnant stand;
- the resultant stand to the west is highly likely to suffer from degradation due to isolation from the larger stand, likely edge effects and the lack of responsibility outlined for the long term future management of the area;
- no biodiversity offsets have been proposed for the proposed Pelaw Main Bypass despite its impacts;
- no consideration of impacts on proposed conservation land that abuts the road alignment to the east; and
- no alternative routes have been proposed or identified for the road alignment.

The DEWHA raised similar issues as the DECC, particularly the fact that the concept plan appears to propose more clearing on which the original *Environment Protection and Biodiversity Act 1999* approval was based and therefore could result in potential additional impacts to *Environment Protection and Biodiversity Act 1999* listed threatened species. The DEWHA also raised the issue of proposed development of Deferred Area 1 and reiterated that any development of this area would require the existing *Environment Protection and Biodiversity Act 1999* approval to be varied or the area to be un-deferred. Consequently the DEWHA indicated that it did not agree to the proposed changes to allow development within Deferred Area 1. In addition to these issues, the DEWHA was concerned with the lack of information provided regarding the Regent Honeyeater and the impact of the clearing of more than 600 mature *Eucalyptus paramattensis* ssp. *decadens* (Earp's Gum) associated with the proposed Pelaw Main Bypass and the fact that the Proponent had not specified any specific mitigation or compensatory measures to offset the impact on this species.

The remaining submissions received from other government agencies and the community raised similar issues to those outlined above. No submissions made specific reference to the potential flora and fauna impacts of the proposed Station Street extension.

As a result of the issues that were raised in the submissions, the Proponent prepared a Response to Submissions. This response included a response from the Proponent's ecologists (RPS Harper Somers O'Sullivan) regarding biodiversity issues raised and a report from Biosis Research (in the form of an email) providing an assessment of the significance for the Regent Honeyeater within the HEZ. As a result of recent mapping undertaken by Bell (2008) within the Cessnock LGA, the ecologists report provided information on the updated impacts of the proposal which were slightly less than those outlined within the Environmental Assessment. The Proponent's response is provided in **Appendix C**.

In terms of the impacts to the Regent Honeyeater, the report states that Precinct 1 comprises a relatively small proportion of the overall habitat present within the HEZ estate for this species with all records located outside Precinct 1 despite habitat type and quality being similar to that where the species was recorded. The report also states that there is technically no reason why nesting/breeding of the species might not occur within the habitats of Precinct 1. The report indicates that the clearing of 88 hectares of vegetation within Precinct 1 would not result in any new edge effects for the Regent Honeyeater. The report, however, does state that the cumulative impacts of the HEZ development (taking into consideration the approved development within Precinct 1 such as the HEZ Spine Road and various industries along the northern boundary of the precinct) would result in a total clearing of 151 hectares of vegetation, increase the current disturbance regime on site, lead to fragmentation of habitat, edge effects, increased noise, light and collision hazards and increased predation. The report concludes that Precinct 1 contains potential breeding habitat and the habitat to be impacted by the proposal is considered to be highly important for the long term survival of the species such that the proposal is considered likely to reduce the long term viability of the local population of the species.

#### **Consideration**

The absence of an overarching strategic framework in the form of a SSS Study has complicated the assessment of the concept plan for Precinct 1, particularly in relation to ecological impacts and habitat offsets. When the HEZ was rezoned for development purposes, the DECC issued an Assumed Concurrence to the clearing of land based on the lot size and development types proposed at the time. As part of this process, a number of areas were excluded from the concurrence because they were deemed to



have too high a conservation value to allow clearing. These areas were described as 'Deferred Areas' with Deferred Area 1 located within Precinct 1.

The Department has reviewed the Environmental Assessment, submissions received during the exhibition and the Proponent's Response to Submissions and has significant concerns regarding the extent of development proposed in an area that has been identified as one of the most ecologically significant parcels of remnant bushland on the floor of the Hunter Valley (HSO, 2004). The Precinct 1 subdivision layout is typical of a standard industrial subdivision with the majority of proposed allotments being between 2.0 to 2.8 hectares in size. The Department understands that this is in direct contrast with the original objectives of the HEZ, which sought to cater for major industrial and employment generating facilities that would require larger lots and significant areas of retained bushland as buffer zones. The Department considers that the existing approvals for the HEZ site, such as the Assumed Concurrence issued by the former DECC in March 2005 and the taking of an action by the former DEWHA under the *Environment Protection and Biodiversity Conservation Act 1999* in May 2007 were provided on this understanding.

Broad acknowledgment that the HEZ rezoning had not achieved adequate conservation outcomes for a range of threatened species and vegetation communities was also stated in Section 5.23 of the *NSW Parliamentary Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands* (December 2004), which indicated in relation to the recent records (post rezoning) of the endangered Swift Parrot and noted significance of the HEZ site for the species "Had the rezoning of the land been deferred until this information was available, the current size of the 4(h) zone would not have been approved". In addition, recent breeding by the Regent Honeyeater during October 2007 and January 2008 to the north-west of Precinct 1 represented the most significant breeding event for the species (DECC 2008) and further consolidates the view that the HEZ estate must be considered to support an ecologically significant proportion of the population of the Regent Honeyeater.

The ecological surveys funded by the Proponent, and agreed to by the former DEC, were undertaken across the entire HEZ LEP amendment area, including Werakata National Park, as a means of assessing whether vegetation communities and threatened species were likely to be adequately conserved within the context of the wider landscape. This level of assessment is indicative of the threatened species assessment requirements of the time. For example, prior to amendments in 2005, Section 5A(f) of the *Environmental Planning and Assessment Act 1979* required an assessment of whether a threatened species, population or ecological community, or their habitats, are adequately represented in conservation reserves (or other similar protected areas) in the region. However, this assessment methodology which led to the issuing of an Assumed Concurrence by the former DEC, is not related to statements by the Proponent that the majority of the HEZ LEP area was conserved and can be considered to be an offset for the HEZ estate.

Subsequent amendments to the *Threatened Species Conservation Act 1995* and *Environmental Planning and Assessment Act 1979* have changed this focus back to the local environment as the long-term loss of biodiversity at all levels arises primarily from the accumulation of losses and depletions of populations at a local level. This is the broad principle underpinning the *Threatened Species Conservation Act 1995*, State and Federal biodiversity strategies and international agreements.

The Director General Requirement's for the current Part 3A application, required assessment of the proposal under current legislation and policies, including offsetting requirements in accordance with current DECC *Guidelines for Threatened Species Assessment (2005)*. The Department notes the DECC's concerns regarding the ecological assessment undertaken and the Proponent's Response to Submissions report and considers that insufficient description and justification of measures to avoid, mitigate and then offset the impacts on areas of high biodiversity value were provided.

Whilst it can be argued at a broader regional scale that threatened species/vegetation communities are conserved to some degree by Werakata National Park and other conservation areas, the Department considers that this argument cannot be used as a justification for a lack of appropriate assessment or on-site mitigation measures and offsets resulting from local scale impacts from the proposal.

The Department notes that a section of the Werakata National Park was gazetted in February 1999, as an outcome of the Lower North East Forest Agreement in 1998 from land that had previously formed part of Cessnock State Forest. This occurred prior to Cessnock Local Environmental Plan 1989 (Amendment No. 60) which rezoned HEZ owned land to a number of different zones, including 4(h) industrial.

The land zoned "national park" in the above LEP amendment was an administrative procedure to ensure that the land zoning reflected the existing status and use of this land as part of Werakata National Park. Hence,