

the statement in the Proponents Response to Submissions, “although the impetus for the rezoning of the State Forest may not have been directly attributed to the HEZ rezoning process, the inclusion of that land within the LEP and assessments undertaken by HEZ provided the vehicle for formal conservation of that area” (RPS HSO October 2008, Section 2.2.1)” is not accurate. This position was also confirmed by the NSW Parliamentary Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands (December 2004) and Council’s November 2007 meeting resolution:

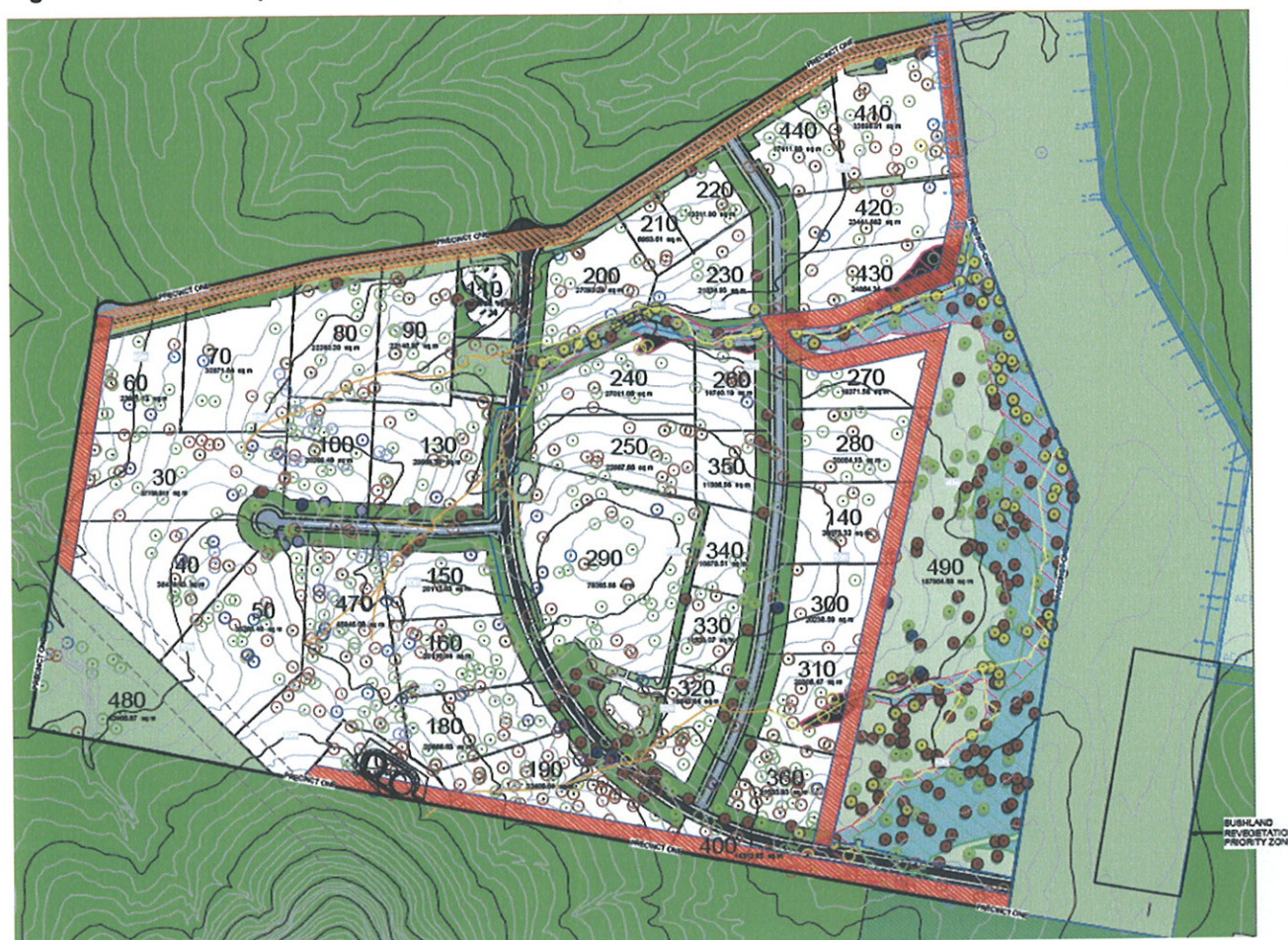
*prior to the exhibition of the draft Cessnock LEP, the HEZ identification area as shown on the draft Local provisions Map and the subject land map in Part E6 HEZ of the Cessnock DCP 2006 be amended to remove the areas associated with the E1 National Park and Nature Reserve Zone as no longer having application to the HEZ area.*

Accordingly, the Department considers that Werakata National Park cannot be used as an offset for the impacts on biodiversity values that would result from the development of Precinct 1 of the HEZ estate.

### **Revised Proposal for Precinct 1**

Further to the issues raised in the submissions, and the Department’s strong concerns regarding the impact of the proposal on biodiversity values, particularly the issue concerning the proposed development of Deferred Area 1 and the impact to species such as the Regent Honeyeater, negotiations were undertaken with the Proponent with the assistance of the DECC to resolve issues related to biodiversity. The results of these discussions were that the Proponent revised its proposal to reduce the area proposed for development within the precinct as shown below in Figure 9.

**Figure 9: Revised Proposal for Precinct 1**



Key features of the revised Precinct 1 layout are as follows:

- realignment of the internal road on the eastern side of the precinct to avoid Deferred Area 1;
- conservation of Deferred Area 1 (Lot 490) comprising an area of 19.09 hectares.
- 297 retained mature trees from a total of 1017 (29.3 per cent);

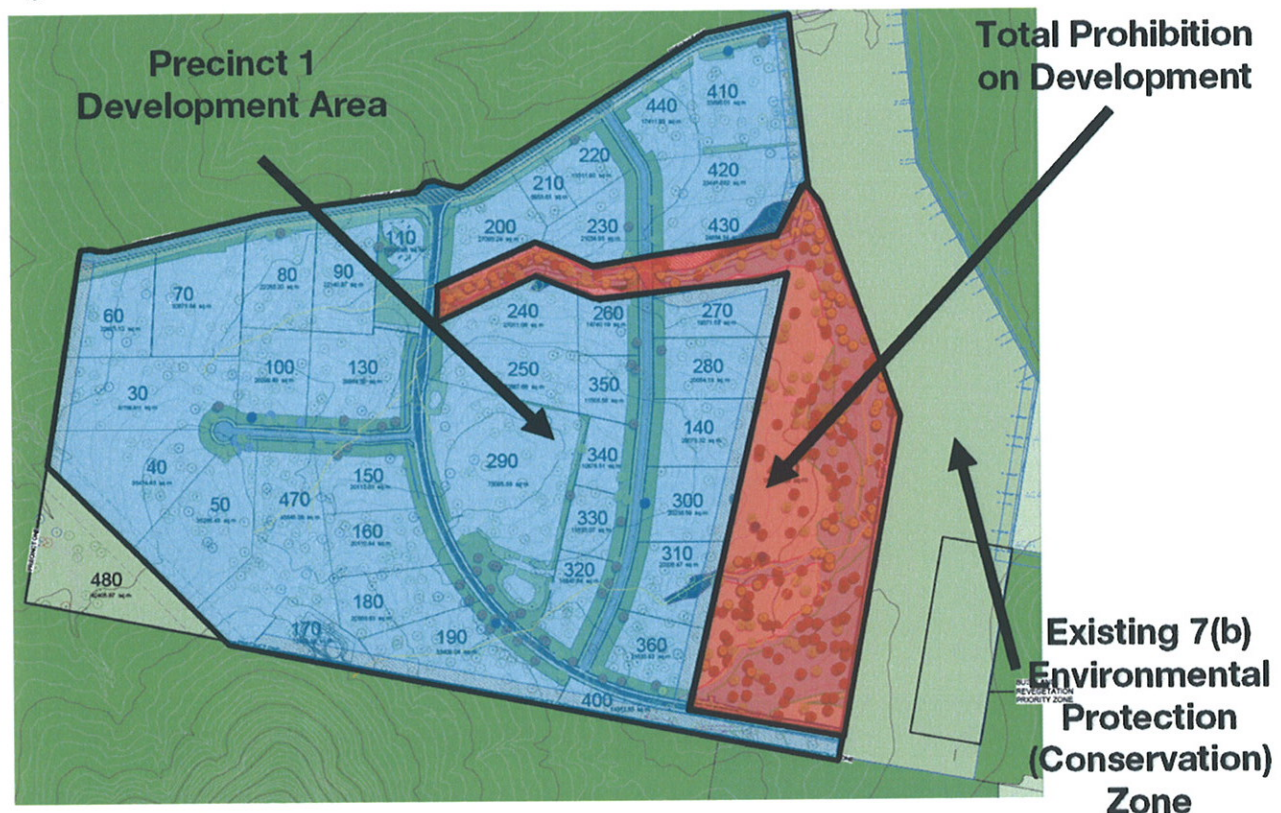


- 79 retained *Corymbia maculata* (Spotted Gum) and *Eucalyptus tereticornis* (Forest Red Gum) from a total of 156 trees (50.64 per cent);
- 199 retained hollow bearing trees from a total of 611 (32.5 per cent);
- 0.98 hectares of Hunter Lowland Redgum Forest EEC to be removed from a total area of 12.6 hectares (7.8 per cent);

The Department has reiterated both the DECC's concerns and its own with the Proponent regarding the impacts of the proposal, particularly the extent of development proposed within Precinct 1. While the Proponent has made some effort in reducing its impact on areas of high biodiversity, the Department does not consider that the revised proposal is adequate for protecting areas of high biodiversity value or sufficiently mitigates or offsets the impacts of the proposal in Precinct 1.

In order to facilitate the progression of the broader Precinct 1 proposal, the Department in consultation with the DECC and DEWHA considered that outstanding issues can be addressed through the implementation of various amendments to the proposed concept plan (as shown on Figure 10) and through specific conditions of approval.

**Figure 10: Recommended Amendment to Precinct 1**



Due to the potential biodiversity impacts associated with the development of Precinct 1, the Department has recommended approval of the revised concept plan subject to a number of specific conditions, related to ecological issues, as follows:

- total prohibition of any development in Deferred Area 1 (an area of 19.09 hectares) which is required to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General;
- total prohibition of any development within the riparian corridor located between the HEZ Spine Road and Deferred Area 1 as indicated by the area shaded red in Figure 10. This area comprises a 30 metre setback on either side of the creekline between proposed Lots 200, 230, 240, 260, 270 and 430 and is to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General;
- allowing for the development of Precinct 1 (as indicated by the area shaded blue in Figure 10) subject to a further biodiversity offset equal to at least 10 hectares of land of equal ecological value to the highest ecological valued lands within Precinct 1 being provided within 18 months of the date of the

- concept approval. The offset land is to be contiguous with conservation lands and is required to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General; and
- allowing the development of Precinct 1 subject to a monetary contribution being received to assist in recovery actions for the Regent Honeyeater within specified timeframes.

The Department considers that the prohibition of development within Deferred Area 1 and the riparian corridor in addition to the requirement to provide an additional biodiversity offset of at least 10 hectares of equal ecological value land contiguous with conservation lands would provide a sufficient offset for the future industrial development of Precinct 1. A contiguous 10 hectare parcel of land is preferable as a biodiversity offset rather than further restricting the development within the Precinct by providing larger setbacks or other piecemeal measures as this would provide a better biodiversity outcome for local flora and fauna in the region. The DECC has indicated that they are able to support the development of Precinct 1 of the HEZ subject to the recommended conditions of approval.

The Department has also strongly reiterated its position regarding the need for a SSS study for the remaining lands within the HEZ estate and understands that the Proponent is progressing this investigation.

With respect to the Regent Honeyeater, the Department has reviewed the Biosis Research report provided as part of the Proponent's Response to Submissions and notes that the Regent Honeyeater is an endangered species listed under the *Threatened Species Conservation Act 1995* and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* with the total estimated population of the species between 1000 and 1500 birds.

The following extracts from the Biosis Research report confirms that the cumulative impact of the Precinct 1 proposal (i.e. development already approved and constructed together with development of the proposed subdivision) is likely to significantly impact on the species, including that:

- the action will adversely affect habitat critical to the survival of the species;
- the removal of potential breeding and foraging habitat within Precinct 1 is likely to reduce the long-term viability of a local population of the Regent Honeyeater;
- the action would lead to a long-term decrease in the size of the Regent Honeyeater population in the locality;
- the proposal would be unlikely to lead to the extinction of the species, however any reduction in breeding success is significant, and could place the species at increased risk of extinction;
- cumulative impacts from the removal of breeding and foraging habitat within Precinct 1 and impacts on breeding and foraging habitat within the HEZ site is likely to disrupt the life cycle (breeding, feeding, migration or resting behaviour) of an ecologically significant proportion of the population;
- taking into account existing edge effects, 151 ha of potential habitat for the Regent Honeyeater would be impacted (directly and indirectly), which represents 2.6% of potential habitat within the locality (a five kilometre radius around Precinct 1), and this is considered likely to reduce the area of occupancy for this species. Regent Honeyeaters are known to be susceptible to aggression from Noisy Miners and Bell Miners along forest edges. Clearing of habitat within Precinct 1 would lead to creation of new edges along which Noisy Miners could invade. These species can colonise up to 300 m in from a forest edge, and may therefore reduce known Regent Honeyeater habitat by this distance. While some vegetation would be retained within Precinct 1, this would mainly be within 20 m buffers of vegetation along each side of the roads and drainage corridors. These vegetation buffers would be considered to provide poor habitat for the Regent Honeyeater, given its preference for vegetation away from forest edges;
- Precinct 1 will increase the current disturbance regime on the site through vegetation clearing, fragmentation of habitat, edge effects, increased noise, light and collision hazards, and from increased predation; and
- within the HEZ Nominees-owned land that the current mitigation and compensatory measures would not be sufficient to maintain biodiversity values.

The Department has consulted with the DECC and understands that it also considers that insufficient targeted surveys were undertaken for the Regent Honeyeater within Precinct 1. The DECC has also raised the issue that reference to several additional Regent Honeyeater records, which have been noted by the Proponent's ecologist and documented for the first time in the Proponent's Response to Submissions is significant in the fact that Regent Honeyeaters were observed in 2005 and 2007 near the northern end of the Stage 2 road, which indicates a level of site fidelity. Also important was that an individual bird was observed south-east of Precinct 1 within the 7(b) corridor on 22 January 2008. From these additional sightings, the



Department cannot discard the fact that there is a possibility that individuals may have utilised and bred within Precinct 1 during the summer of 2007/2008. Due to the potential significant impacts to the Regent Honeyeater from the proposed development of Precinct 1, the Department considers that the Proponent should provide a monetary contribution to the Minister administering the *Threatened Species Conservation Act 1994*, or the Minister's nominee, to enable the DECC to undertake actions to assist in the recovery of the Regent Honeyeater. The Department has discussed the monetary contribution with the DECC and considers that an amount of \$340,000 would be justified given the potential impacts from the proposal. The Department has recommended that this payment be provided in three equal payments staggered over a two year timeframe from the date of the approval of the concept plan.

### **Pelaw Main Bypass**

The Department has also raised the issue of offsets for the Pelaw Main Bypass with the Proponent. While the Proponent has agreed that the proposed Pelaw Main Bypass will result in a significant impact to the largest remaining stand of Kurri Sand Swamp Woodland EEC and many Earp's Gum (as well as other threatened flora and fauna) it considered that an overall offset package was likely to be agreed upon which would result in the permanent protection of the vast majority of the remaining patch of vegetation for conservation. The Department understands that the offset package referred to by the Proponent comprises the proposed offset for the F3 Freeway extension (Seahampton to Branxton) proposal by the RTA and therefore is not considered to be valid as an offset for this particular proposal. At the time of writing this report, a proposed offset for the Bypass had yet to be submitted to the Department for its consideration.

The Department and the DECC also raised concerns regarding the alignment of the proposed Pelaw Main Bypass given the resulting impacts to biodiversity and questioned the assessment of alternative alignments and the selection of the preferred alignment option. The Environmental Assessment stated that the bypass was originally shown to be located further to the north but was moved following comprehensive investigations, "primarily to minimise traffic noise related impacts on the residents of Pelaw Main". The Department disagrees with the discussion in the Environmental Assessment that states that the current location for the Bypass achieves the best conservation outcome for known and potentially occurring threatened species and vegetation communities whilst achieving important economic, social and development outcomes. The Department also notes that a route selection assessment was not provided as part of the Environmental Assessment. The Department considers that the proposed Pelaw Main Bypass should be located closer to the town of Pelaw Main as it would minimise impacts to endangered ecological communities and threatened flora and fauna species and enable a superior land use outcome to be achieved for the portion of Crown Land traversed by the Bypass. As detailed within the evidence provided to the *NSW Parliamentary Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands* (December 2004) it was determined by Council and the RTA that noise and subsidence issues related to a route closer to Pelaw Main could be overcome.

Consequently, the Department has recommended that the Pelaw Main Bypass be realigned closer to Pelaw Main and that an offset be provided to compensate for the biodiversity impact that would result from the Bypass Road. To address this, the Department has recommended a number of conditions to effectively manage these concerns. The Department has recommended that the Proponent provide a Biodiversity Offset Strategy for the proposed Pelaw Main Bypass to detail how the ecological values lost as a result of the road will be offset. The Biodiversity Offset Strategy would be finalised and approved by the Director-General prior to works commencing to ensure the ecological impact of the project can be offset. Consequently, the Department recommends that the Strategy, which would form part of the concept approval, must establish:

- the identification of the extent and types of habitat that would be lost or degraded as a result of the final design of the Pelaw Main Bypass;
- the objectives and biodiversity outcomes that would be achieved through the final biodiversity offset package;
- details of the available land offsets that have been selected to provide compensatory habitat within the region to offset the loss of endangered ecological communities and the loss of habitat for threatened flora and fauna species as a result of the project. Land offsets must satisfy the DECC's *Principles for the use of Biodiversity Offsets in NSW (2008)*. Where land offsets cannot solely achieve compensation for the loss of habitat, additional measures must be provided to collectively deliver an improved or maintained biodiversity outcome for the region, including:
  - funding contributions to research programs for the management of the threatened species, populations and communities;
  - funding contributions towards revegetation programs in the region, such as revegetation programs co-ordinated by the Hunter-Central Rivers CMA; and/or
  - any other accepted form of offset measure(s).

A final Biodiversity Offset Package would need to be provided prior to the commencement of construction of the Pelaw Main Bypass given the lead times associated with selecting the final offset measure and securing the available land to provide the offsets. Both the Strategy and the Package would need to be finalised with the involvement of the DECC and the DEWHA. This has been reflected within the recommended conditions of approval for the concept plan.

### **WIPS Facility**

The Department considers that the information provided for the WIPS facility is such that it can be approved for development within Precinct 1 and has recommended specific conditions regarding biodiversity to be implemented as part of the design and construction phases of the facility. Given that the Swift Parrot occurs within the study area, the Department has recommended as a condition of approval that the building of the WIPS facility be designed to take into account collision protection measures outlined in *Minimising the Swift Parrot Collision Threat* (Pfennigwerth, 2008) and to ensure that the DECC is satisfied that the building will not result in a collision threat for the species. In addition, the recommended conditions of approval provide that all mature trees and hollow-bearing trees not located within the building footprint or within an asset protection zone shall be protected from construction and adequately protected for the life of the project. The recommended conditions also require that thirty (30) nest boxes shall be installed within Deferred Area 1 and the adjacent conservation lands to compensate for the loss of tree hollows on the site.

## **5.2 Strategic Planning Framework**

### **Issue**

#### ***Planning Strategies***

The Director-General required that the proposal be generally consistent with the *Hunter Regional Environmental Plan* (REP), the *Lower Hunter Regional Strategy*, the *Cessnock Local Environmental Plan 1989* and the *Cessnock Development Control Plan 2006 (Chapter 6: HEZ)* and its supporting sectoral environmental management strategies.

The Environmental Assessment states that the proposal is generally consistent with the provisions of the *Hunter REP* and the *Lower Hunter Regional Strategy*. However, the Cessnock LEP specifically restricts speculative subdivision within Zone 4(h) and Zone 5(a) of the HEZ estate. 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 identified that precluding subdivision, unless related to a specific development, unacceptably hinders the efficient design of the estate to incorporate best practice design in road layouts, bushfire management initiatives, water management strategies and habitat conservation management and retention measures, and the planning and provision of essential services such as sewer, water supply, communications and electricity. The Proponent stated that this hinders the provision of employment generating lands which is contrary to the objectives of the LEP. The concept plan application is contrary to clause 56(2) of the Cessnock LEP and therefore seeks to relax these provisions as related to subdivision approval.

Part E of the Cessnock DCP 2006 provides development controls for specific areas within the Cessnock LGA. Part E.6: HEZ was prepared specifically for the HEZ estate and its principal aims are:

- to promote and foster:
  - a) major industrial development or employment generating development that is accessible to urban centres and arterial roads and that retains the potential for rail access;
  - b) employment opportunities; and
  - c) new development that incorporates the principles of ecologically sustainable development.
- to ensure that ecosystems are protected and conserved, including important habitats, plant communities and watercourses within and adjoining HEZ;
- to ensure a high level of environmental protection;
- to ensure that satisfactory measures are incorporated into new development to ameliorate any impacts from noise, air and water pollution, dust, lighting, traffic etc onto surrounding communities;
- encourage innovative development which integrates well with built form, landscaped areas and bushland setting to enhance the character of the HEZ estate;
- provision of adequate infrastructure and facilities to service the development of the site; and
- to promote the conservation of any items of environmental heritage, including Aboriginal heritage and heritage precincts.

The Cessnock DCP reinforces the Cessnock LEP provision which includes the preclusion of pre-emptive subdivision and therefore in this regard the proposed development of the Precinct 1 subdivision is not consistent with the plans. The Proponent, however, has argued that the Precinct 1 design comprises lot modules of generally two hectares or greater which can be amalgamated to provide larger lots if the demand exists. The provision of large parcels for employment generating development can therefore be provided.

The DCP also imposes a front boundary setback of 10 metres in conjunction with five metre setbacks to the side and rear boundaries. The Environmental Assessment proposed that future lot developers be provided with the opportunity to implement this control or the alternative outlined as part of the concept plan application which provided for a 20 metre retained setback at the front of the lots adjacent to the road corridor, supplemented by a 10 metre transitional setback to include site water treatment facilities and similar features and no setbacks to the side or rear boundaries. The Environmental Assessment outlined that the current DCP setback provided for the retention of 13.26% of mature trees compared with 17.68% proposed as part of the original application.

The Proponent has also requested a variation to the DCP for the provision of car-parking within Precinct 1. The Proponent considers that lot developers should be given the option of providing carparking in accordance with the DCP or to determine the minimum number of vehicle parking requirements using appropriate guidelines for parking generation based on development type such as the RTA's *Guide to Traffic Generating Development* or analysis drawn from surveyed data for similar development uses. The Proponent has indicated that this flexibility would preclude low parking generating uses from being required to provide redundant car parking spaces and therefore excessive hard surface areas on development sites.

In terms of the proposed WIPS facility, the Environmental Assessment states that the proposal is permissible within the 4(h) zone, with Council consent. The proposal is also consistent with the objectives of the 4(h) zone as outlined in the Cessnock LEP and complies with the environmental management strategies developed for the HEZ. In relation to the Cessnock DCP, the maximum allowable building height is 12 metres. However, clause 6.3.5.3 of the DCP states that greater heights are allowed where it can be demonstrated that the proposal will have no detrimental impacts on the visual amenity of the locality and view corridors from vantage points and lookouts will not be interrupted. As a consequence of creating a level building surface, the main warehouse proposed as part of the WIPS facility exceeds the 12 metre height limit for a length of approximately 134 metres by between 1.5 and four metres.

Council's car parking controls require the provision of 204 car spaces for the WIPS facility and 208 are proposed to be provided, thereby resulting in four extra car park spaces being provided at full development.

### ***HEZ Association***

The Director-General's requirements outlined the need for the Proponent to establish an environmental management framework for the co-ordinated management of environmental impacts resulting from the future development of Precinct 1, which may include the establishment of an association or body to co-ordinate the environmental management of the HEZ estate in perpetuity. The Environmental Assessment outlined that a HEZ Association is proposed to be created as a Company Limited by Guarantee established under the *Corporations Act 2001*. The HEZ Association will require every registered proprietor of a lot within the HEZ estate to be a member of the HEZ Association with the requirement for membership being implemented via a section 88B restriction on each development lot created in the estate.

The Proponent has stated that the HEZ Association would be responsible for the care and management of common assets and land throughout the estate such as the central conservation lands (zoned 7(b)) along Chinaman's Hollow Creek and for the ongoing environmental performance monitoring and reporting requirements within the estate. The Proponent has also indicated that the role of the HEZ Association would also include estate representation; data collection, management and reporting; property management and services; and development management and services.

### ***Issues Raised in Submissions***

#### ***Strategic Planning***

Four of the 17 submissions received from the public exhibition period specifically raised concern regarding the lack of a SSS Study being submitted for the HEZ estate.

The DECC considers that a more streamlined development assessment process that provides greater certainty to development, conservation and Aboriginal cultural heritage outcomes within the HEZ is likely to be achieved through a SSS Study process and recommends that this process be first followed prior to the

consideration of individual proposals. The DECC indicated in their submission that they were not able to support the Precinct 1 proposal (as exhibited) in the absence of a strategic planning framework provided for the entire HEZ estate.

Submissions also stated that the Proponent had ignored the advice provided by the Department and failed to provide sufficient justification for the HEZ to be classified as a State Significant development and therefore that the application should be refused.

A number of submissions commented on the proposal in relation to relevant local and regional planning instruments and strategies. The current zone objectives allow for major industrial and major employment generating development to establish within the estate. However, Council considers that the proposal to allow pre-emptive subdivision will not encourage major industries to be established and states that the Proponent has not demonstrated how the proposed lot sizes will facilitate major industrial or major employment generating industries. Council and other submitters also consider that the proposed Precinct 1 concept plan is inconsistent with both the Lower Hunter Regional Strategy and Council's adopted City Wide Settlement Strategy, both of which recognise that the HEZ is proposed to cater for major industry and not light industrial uses.

### **HEZ Association**

Council raised concerns regarding the proposed HEZ Association. Its submission states that according to the Master Environmental Management Strategy for the estate, the roles and responsibilities of the HEZ Association must include estate management functions as outlined below:

- management of estate infrastructure such as road verges and drainage structures etc;
- collecting dues from members (that will be applied towards defraying estate-wide costs);
- estate-wide operations including environmental monitoring, modelling and management, bushfire protection, habitat conservation and protection of retained habitats, animal pest control programs, weed eradication programs and bush land revegetation/regeneration programs.

Council has indicated that considerable discussion has occurred over the last four years regarding the legal framework that is required for the establishment of the HEZ Association to ensure that the ecological and environmental management of the estate is ongoing in the long term and does not place an onerous burden on Council. The Department understands that at this point in time, Council and HEZ Nominees Pty Ltd have been unable to agree on the functions and legal mechanism for the HEZ Association. Council considers this aspect of the application of paramount importance given the reliance of various environmental management strategies on the ongoing maintenance and environmental management role of the HEZ Association. Council considers that any approval of the current application must be predicated on the formation of a fully functional HEZ Association whereby its roles and responsibilities are clearly defined and the adopted legal structure requires its operation in perpetuity so as to ensure that the environmental outcomes put forward by the Proponent are achieved.

### **Consideration**

#### **Planning Strategies**

The Lower Hunter Regional Strategy considers HEZ as "special purpose" employment lands that are considered to be unique in the region and not intended for standard industrial estates that could be located elsewhere. These lands are characteristically large sites with access to infrastructure. The Precinct 1 concept plan with lots of between two and five hectares does not appear to be consistent with this strategy. In addition, the Cessnock LEP includes "major employment generating development" in their objectives for the 4(h) zone and it is noted that the term "major" has been removed from the objectives of the concept plan. The Department understands that the market for major industrial uses and major employment generating development has changed in recent times as a result of the effect of the global economic climate

Whilst the Department would have preferred to review a concept plan for the entire HEZ estate to understand what is being proposed for the remaining lands owned by HEZ and other stakeholders as part of a SSS Study, this study has not been submitted and therefore the Department is only able to assess the current concept and project applications before it. The Department has highlighted the abovementioned concerns to the Proponent and understands that if larger lots are demanded by the market the layout of the subdivision is such that lots can be amalgamated to provide larger land areas if required. The Department has recommended that the amalgamation of lots into larger land parcels be considered generally consistent with the concept plan approval and has recommended this as a specific condition of approval. The Department considers that the WIPS facility is fully consistent with current local and regional planning strategies.

The Department has modified the layout of the proposed developable area within Precinct 1 to take into consideration biodiversity concerns as outlined in Section 5.1 of this report. In addition, while the Department agrees in principle to the subdivision of Precinct 1, the information provided to date by the Proponent does not provide sufficient information to provide project approval for subdivision of the land or associated subdivision works and therefore the Department has recommended that further assessment be undertaken and approval sought for this aspect of the proposal under Part 4 of the Act. The Department has also made a recommendation that the Minister direct that Clause 56(2) of the Cessnock LEP not apply to future subdivision applications submitted under Part 4 of the Act within Precinct 1 without the use of the land being previously or concurrently approved. This will allow the Proponent to effectively market the land, provide the required services and infrastructure and enable lots to be amalgamated to create larger land parcels if the demand for larger lots arises.

In relation to car parking, the Department does not consider that the Proponent should be able to determine the number of car parking spaces required based on development type or similar uses. Given that the Precinct is not serviced by public transport, the Department has recommended as part of the conditions of concept approval that subsequent approvals should ensure that car parking is provided generally consistent with the HEZ DCP.

The Department considers that a contiguous area of land to be provided as a biodiversity offset to compensate for the biodiversity impacts of developing Precinct 1 is superior than the provision of 20 metre conservation corridors along the front of each proposed lot and 10 metre bushland reinstatement setbacks incorporating water quality control measures (totalling 30 metres) as originally proposed by the Proponent. While the Proponent indicated that these corridors would questionably provide "significant opportunities for the retention of hollow bearing and mature trees for habitat and foraging potential" the Department considers that these corridors would have provided a significant visual resource and amenity for the estate.

Notwithstanding the development and refinement of the proposal during the assessment process and the intent of the Proponent to develop a "bushland" industrial estate consistent with the original aims of the HEZ, the Department considers that landscaping along the front boundary of each developable lot should be provided as part of the development of Precinct 1. The Proponent has specifically requested that the landscape corridor be reduced to a width of 10 metres. The Department has reviewed the request and agrees to this width subject to no development occurring in this location (with the exception of site access requirements). The Department also considers that side and rear setbacks should be provided consistent with the HEZ DCP and that soft infrastructure could be permitted to be located within this area.

The Department considered that an adequate assessment was prepared for the proposed WIPS facility and therefore it can recommend project approval for the construction and operation of this facility inclusive of the subdivision of land to create Lot 290 within Precinct 1. The Department considers that the Proponent has demonstrated that the exceedance of the building height limit (as outlined in the HEZ DCP) for the WIPS facility is justified and would not result in any detrimental impacts to surrounding visual amenity. The Proponent's Statement of Commitments state that all buildings will be designed to be a maximum of 14 metres above finished ground level. The Department has consulted with a representative from Cessnock Council regarding building heights and a limit of 14 metres is considered to be acceptable for the Precinct.

The Department has, however, recommended appropriate conditions of project approval to prevent and/or minimise adverse environmental impacts associated with the project and to provide for the ongoing environmental management of the facility. In summary, the recommended concept approval outlines the following additional requirements and provides the most suitable planning pathway for approval:

- proposed subdivision and associated subdivision works within Precinct 1, with the exception of the creation of Lot 290, requires further environmental assessment under Part 4 of the Act;
- development on land within Precinct 1 with a capital investment value of less than \$30 million requires further environmental assessment under Part 4 of the Act;
- development on land within Precinct 1 with a capital investment value of equal to or more than \$30 million requires further environmental assessment under Part 3A of the Act;
- utility undertakings by or on behalf of a public authority requires further environmental assessment under Part 5 of the Act; and
- the proposed Pelaw Main Bypass requires further environmental assessment under Part 3A of the Act.

### **HEZ Association**

The establishment of a HEZ Association is fundamentally important to the successful operation and environmental management responsibilities associated with Precinct 1, the WIPS facility and associated



infrastructure. While the Environmental Assessment outlined broad tasks that would be covered by a HEZ Association, a number of additional aspects should also form part of its role and responsibilities, including:

- research into environmental impacts of the estate, including cumulative impacts;
- development of water quality goals and objectives for the watercourses within the estate;
- ongoing co-ordination of environmental monitoring and reporting;
- ongoing maintenance and management of common areas such as road verges (estate landscaping), footpaths and cycleways; and
- ongoing environmental management (weed and feral animal control) of conservation and offset areas.

The concept of the HEZ Association proposed as being a company limited by Guarantee under the *Corporations Act* with every owner within the estate required to be a member of the Association by way of the imposition of an 88B instrument such as a covenant (in relation to the *Conveyancing Act 1919*) is supported by the Department as is the ongoing estate management responsibilities by the HEZ Association until such time as satisfactory arrangements are put in place with the relevant authority.

### 5.3 Traffic and Transport

#### Issue

The Environmental Assessment has taken into consideration the generation of traffic from the development of Precinct 1 and reviewed the infrastructure requirements of the surrounding road network. A comprehensive traffic model was developed which identified the capacity constraints of the existing and future network and resulted in the following upgrades being identified as being required as a result of the proposal:

- Leggetts Drive/Spine Road – this intersection would initially be constructed as a “C” type intersection with appropriate turning lane. The intersection will need to be converted to a signalised intersection (with traffic signals) after the construction and operation of 67 hectares of Precinct 1;
- Cessnock Road/Station Street – the construction of the extension of Station Street to Cessnock Street is required when between 20 and 44 hectares of Precinct 1 is developed;
- Pelaw Main Bypass – the construction of the bypass (two lane, limited access road) will be required when approximately 67 hectares of Precinct 1 is developed. A new roundabout at John Renshaw Drive and the Pelaw Main Bypass will also be required.

The Environmental Assessment stated that the operation of the WIPS facility is not expected to impact significantly on the surrounding road network. The HEZ Spine Road would provide adequate means of access for the facility during its construction and operation without the need for any additional upgrading works or intersection improvements being required.

#### Issues Raised in Submissions

Two submissions raised traffic issues about the proposal, with these being from the RTA and a local resident.

The RTA outlined that it was currently finalising a Deed Containing Agreement between it, Cessnock City Council and the Proponent to outline 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. Cessnock City Council was included as part of the Deed, as part of the required road infrastructure works includes ancillary work on local roads that connect to the state road system. The draft Deed (dated June 2008) obligates the Proponent to fund and undertake agreed road infrastructure works and to have the works completed by specified development thresholds.

A submission from a local resident objected to all aspects of the proposal with the exception of the Pelaw Main Bypass. The basis for the objection related to the fact that the mayor of Cessnock City Council promised (sic) that there would be no development of the HEZ until the Pelaw Main Bypass was constructed. A subsequent Cessnock City Council resolution was made that stated that no development would be allowed to “operate” until the Pelaw Main Bypass had been completed. This differs to what is being currently proposed by the Proponent or identified as part of the draft Deed Containing Agreement.

#### Consideration

The Department has reviewed the Environmental Assessment, supporting traffic and transport investigations, the submissions received and the response provided by the Proponent and considers that certain infrastructure works are required to be funded and constructed by the Proponent to cater for

increased traffic associated with the development of Precinct 1. The Department considers that Precinct 1 can be subdivided without the need for additional improvements to road infrastructure, however, once development reaches specified thresholds, the Proponent will need to fund local and state road improvements to cater for the increased traffic volumes that the estate would generate.

The draft Deed Containing Agreement outlines the timing for the infrastructure works that will be required. The infrastructure works that will be required to be funded and constructed by the Proponent are outlined in Table 4 and have been recommended as part of the conditions of concept approval.

**Table 4: Roadworks to be Funded and Constructed by the Proponent**

Location	Infrastructure Required	Timing
Leggetts Drive/Spine Road (Stage 1)	<ul style="list-style-type: none"> <li>upgrade intersection to a seagull type in general compliance with the <i>Seagull Layout utilised as a Two Stage Right Turn Movement</i> shown in Figure 4.8.18 of the RTA's Road Design Guide.</li> </ul>	Before any further land is developed in Precinct 1.
Leggetts Drive/Spine Road (Stage 2)	<ul style="list-style-type: none"> <li>upgrade intersection to a four leg traffic control intersection.</li> </ul>	Before the Pelaw Main Bypass is completed.
Northcote/Boundary Street	<ul style="list-style-type: none"> <li>upgrade intersection to a channelised right turn intersection.</li> </ul>	Before 20 hectares of Precinct 1 is developed.
Stanford Street/Railway Street/Mulbring Street	<ul style="list-style-type: none"> <li>upgrade the intersection to an appropriate design standard (as determined by the RTA) to provide for priority movement on the classified road (MR 195).</li> </ul>	Before 20 hectares of Precinct 1 is developed.
Pelaw Main Bypass	<ul style="list-style-type: none"> <li>construction of the Bypass as a two lane, two way road with provision for upgrading to a four lane divided carriageway in the future. Associated with the bypass is the provision of a two lane circulating roundabout at its intersection with John Renshaw Drive.</li> </ul>	Before 90 per cent or 90 hectares (whichever occurs first) of the developable land in Precinct 1 is developed.
Station Street connection	<ul style="list-style-type: none"> <li>upgrade the northern access to the HEZ.</li> </ul>	Before 45 hectares of land in Precinct 1 is developed.
Leggetts Road/Lakes Drive	<ul style="list-style-type: none"> <li>construction of a two lane roundabout at this intersection.</li> </ul>	Before 67 hectares of land in Precinct 1 developed.

The Department does not consider that any infrastructure works are required to be undertaken by the Proponent as part of the construction or operation of the WIPS facility as the existing HEZ Spine Road would provide appropriate and adequate access to this facility during its development. As such, no specific traffic conditions have been nominated as part of the recommended conditions of project approval.

The Environmental Assessment did not include detailed description and impact assessment for the proposed Pelaw Main Bypass and therefore the Department has recommended that further assessment also be undertaken for this project.

The Department has reviewed the additional information provided by the Proponent regarding the proposed Station Street extension, in response to a request by the Proponent to consider recommending project approval for this component of the application. Based on the level of information provided, the Department does not consider that it can recommend project approval at this time. The Department considers that the proposed Station Street extension requires further environmental assessment and has recommended that this assessment be undertaken under Part 3A of the *Environmental Planning and Assessment Act 1979*.

## 5.4 Water Quality and Water Management

### Issue

Precinct 1 is crossed by intermittent creeks that drain into Chinamans Hollow Creek which in turn drains into Hebburn Dam and the Swamp Creek catchment. The proposed Pelaw Main Bypass, however, is located within the Wallis Creek catchment. Water quality of the local creeks and intermittent waterways is poor with characteristically high nutrient and sedimentation levels. The Environmental Assessment indicates that there are no obvious point sources of pollutants but high levels of nutrients, turbidity and salinity are presumed to occur from existing urban runoff, the presence of mining wastes in the catchments, historical septic tank use and effluent discharged from the Kurri Kurri Wastewater Treatment Plant. Stormwater runoff from Precinct 1 has the potential to exacerbate local water quality issues. However, the documentation suggests that the risk of poor water quality would be significantly reduced through the proposed stormwater treatment.

The development of the HEZ estate would potentially impact on the natural runoff and flooding regime and groundwater processes and is proposed to be managed through the principals of Water Sensitive Urban Design (WSUD). The Environmental Assessment outlined a program of in-stream channel improvements to halt active erosion of waterways and improve the existing condition of streams protecting habitats from further degradation. Water pollution control within the Precinct is proposed through the implementation of swales and bioretention pods, bioretention with pre-treatment from sedimentation areas, gross pollutants traps and wetlands. Combinations of the above measures are proposed to be incorporated into lot and road designs to meet best practice management pollution reduction targets and water demand is proposed to be managed through stormwater harvesting at the lot scale.

The Environmental Assessment indicated that the HEZ estate is underlain by conglomerate, sandstone and siltstone of the Branxton Formation resulting in subsurface soil conditions that generally comprise hard residual clays and gravelly clays. The surface soils are highly susceptible to erosion once exposed therefore soil erosion during development of Precinct 1 will require appropriate soil erosion management measures to be implemented to minimise any adverse impacts to surrounding water quality, further erosion, flooding and degradation of protected conservations areas.

The impacts and management strategies that are proposed to be implemented in Precinct 1 to protect existing hydrology and water quality is outlined in Table 5 and Table 6.

**Table 5: Hydrologic Effects, Corresponding Ecological Impacts and Management Strategies**

Hydrologic Impacts of Increased Runoff Volumes	Ecological Impacts	Management Strategies
Increased peak low flows(1.5 yr ARI)	Accelerated stream erosion, increased sediment loads to receiving waters, habitat loss.	Attenuation with on-site detention basins.
Increased peak nuisance flows (5-10 yr ARI)	Increased burdens to stormwater infrastructure and disruptions to site activities.	Attenuation with on-site detention basins.
Increased peak flood flows (100 yr ARI)	Increased flood impacts downstream.	Attenuation with on-site detention basins.
Increased frequency of stream flow and erosion events	Accelerated stream erosion, loss of ephemeral ecology and habitat loss.	Stormwater harvesting and reuse.
Prolonged duration of stream flow events	Accelerated stream erosion, loss of ephemeral ecology and habitat loss.	Control of site discharge rates.
Increased stream flow velocities	Accelerated stream erosion, incision of channels, changes to the ephemeral floodplain.	Drainage swales and in-stream works.

Note: ARI – Average Recurrence Interval

Source: Table 1 of HEZ Water Cycle Management Strategy (EDAW, 2008)

**Table 6: Potential Stormwater Pollutants, Corresponding Ecological Impacts and Management Strategies**

Potential Stormwater Pollutants	Ecological Impacts	Management Strategies
Oils, heavy metals, hydrocarbons, and toxicants associated with incidental spills	Ecological impacts and downstream water quality impacts.	Structural isolation of activities and Environmental Management Plans.
Increased nutrient loads (nitrogen and phosphorus)	Eutrophication of downstream waterways, promotion of algal growth, weed growth and changes to soil chemistry.	Bioretention and wetland treatment.
Increase sediment loads	Smothering of benthic organisms.	Sedimentation zones and swales.

Source: Table 1 of HEZ Water Cycle Management Strategy (EDAW, 2008)

Geotechnical investigations identified the local groundwater table being approximately 10-20 metres below the existing ground surface. The increase in impervious area associated with Precinct 1 has the potential to reduce groundwater infiltration rates at the local scale, however, the regional groundwater table is not expected to be altered.



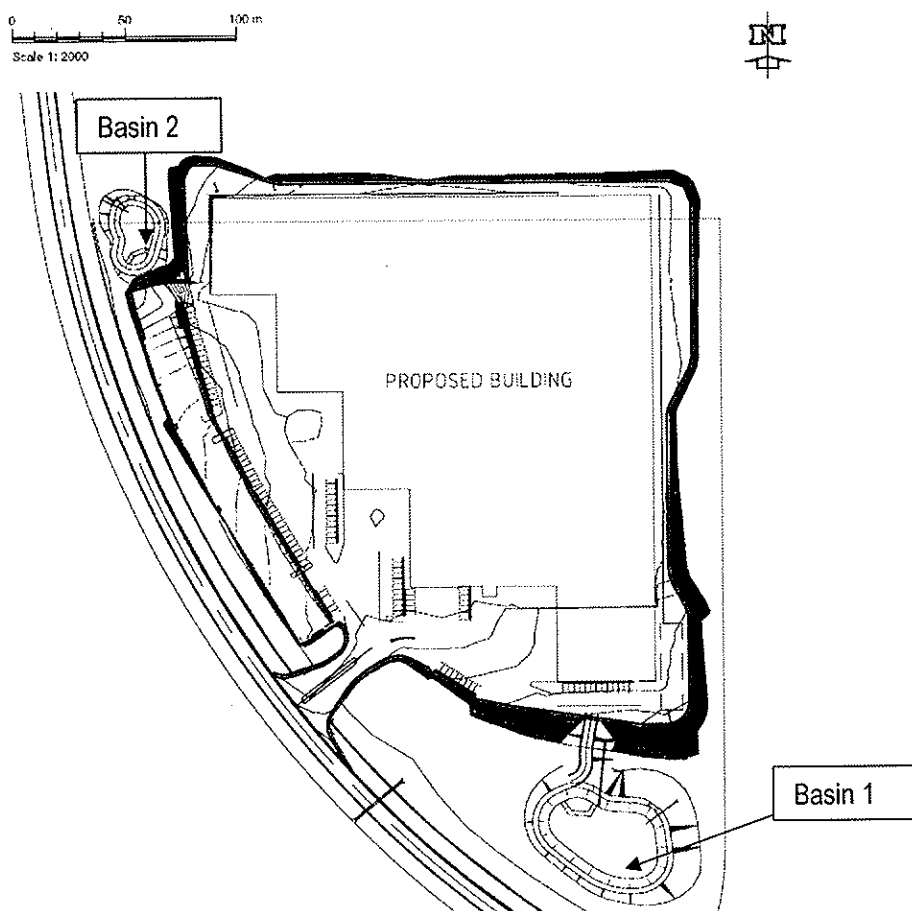
The Environmental Assessment prepared for the WIPS facility identified that the removal of vegetation prior to construction would increase the potential for the occurrence of soil erosion. Erosion and soil management practices to be undertaken during construction include:

- a plan for soil and water management concurrently with engineering design and in advance of any earthworks;
- minimising the area and duration of soil exposure;
- stripped topsoil stockpiles for re-use and protected from erosion;
- stormwater runoff controlled by diverting stormwater from denuded areas, minimising slope gradients, lengths and runoff velocities;
- soil and water pollutant traps using silt traps, sediment basins, perimeter banks, silt fences and nutrient traps as appropriate; and
- the quick rehabilitation of denuded areas.

Levels across the site vary from 50m AHD to 60m AHD with the site located on a crest of a hill with some parts draining to the north-western corner and the remainder to the south-eastern corner. Existing runoff from the north-western corner of the site drains to an existing catch drain constructed as part of the HEZ Spine Road and runoff from the south-eastern corner drains into an existing creekline located to the east. Two existing culverts that drain catchments to the west of the Spine Road discharge water onto the site. The culvert located at the southern end of the site would not affect stormwater management on site, however, the flow from the second culvert is proposed to be diverted through the site via an open channel to be located at the toe of the batter on the southern side of the proposed building platform.

The water management strategy on site is proposed to incorporate a treatment train of at-source and end-of-pipe controls. At-source devices would comprise a rainwater tank connected to roof drainage from the proposed building and end-of-pipe devices comprising bio-retention systems incorporated into the base of Basins 1 and 2 and gross pollutant traps located immediately upstream of each detention basin. Landscaping around hardstand areas would provide additional water quality control. The location and design of the two basins proposed as part of the WIPS facility are shown on Figure 11.

**Figure 11: Location and Configuration of Stormwater Detention Basins for WIPS Facility**



### **Issues Raised in Submissions**

The only submission that raised concerns regarding water quality and water management was that from Cessnock City Council. Council stated that the principle of Water Sensitive Urban Design (WSUD) within the subdivision is supported, however, it considers from the typical sectional details provided in the documentation that practical installation and operational difficulties will result. Council highlighted that the roads within the Precinct are to have a one way crossfall sheeting stormwater away from the landscaped swales and across the cycleway footpath. Also raised was the need to implement bio swales within the road corridor at approximately every 60 metres to maintain kerb and road stormwater flow width to minimum design widths, resulting in a significant number of bioswale structures.

Council has indicated that the water cycle management strategy is a comprehensive approach to the application of best practice water cycle management and is endorsed by Council as a sound approach to the initial development of the HEZ estate. In terms of water quality, the modelling undertaken by EDAW identified that there could be a net export of nutrients from the HEZ development, even with the most optimistic assumptions for on-site detention. Council considers the claim that *"these loads are associated with storm events when increased flushing potential will exist"* is not a valid dismissal of the increased nutrient load that could occur as a result of development of the estate, which could result in adverse impacts to the aquatic environment and eutrophication potential for Hebburn Dam. Council considered that the source of the current poor water quality needs to be established, otherwise attempts to manage water quality within the Precinct will be effectively blindfolded. Claiming that water quality is already poor and unacceptable does not provide adequate grounds for making it worse as a result of the HEZ development. Council has therefore suggested that measures need to be implemented to protect the water quality of streams within the HEZ estate and downstream waterways, supplemented by monitoring to assess the performance of the stormwater management measures proposed as part of the development.

### **Consideration**

The Department has reviewed the Environmental Assessments, supporting information and the Proponent's response to the submissions raised and considers that the Proponent will need to undertake a comprehensive monitoring and stormwater management program within Precinct 1 to ensure that downstream water quality is maintained at existing levels and not worsened as a result of the development of Precinct 1 and associated infrastructure.

The Environmental Assessment claims that the poor water quality characteristics of waterways within the HEZ estate could be a result of effluent from the Kurri Kurri Wastewater Treatment plant but the Department understands that this cannot be the case as the treatment plant is located downstream of HEZ waterways and Hebburn Dam and therefore poor water quality is obviously the result of other sources, which are currently unknown. The Department agrees with Council that baseline water quality monitoring data should be collected prior to development of Precinct 1 and used to assess the performance of stormwater management measures proposed as part of the development of the land. By undertaking baseline monitoring, the Proponent will be able to clearly demonstrate what impacts it will have on the water quality of creeks within the Precinct and downstream in Hebburn Dam and thereby implement additional water quality control measures as required. The Department considers that the monitoring of water quality within the estate should be the responsibility of the HEZ Association.

In relation to the concept plan, the Proponent will need to address water quality and water management issues in future subdivision and project applications.

The Department has recommended that the Proponent be required to prepare a Stormwater Management Plan for the WIPS facility in consultation with Council and for the approval of the Director-General prior to the commencement of site preparation works. As well as outlining the stormwater management measures proposed to minimise downstream water quality impacts, the Proponent is required to undertake baseline water quality monitoring of adjacent and downstream watercourses to enable the impact of the development to be ascertained and therefore the need for the additional stormwater management measures to be identified and implemented as part of the project.

## **5.5 Fire Management**

### **Issue**

The Environmental Assessment states that the design and layout of Precinct 1 has been undertaken in consultation with specialist bushfire risk management advice and in accordance with *Planning for Bushfire Protection* (NSW Rural Fire Service, 2006). A Bushfire Threat Assessment was undertaken to review the

overall bushfire threat to the site and to review the capability of Precinct 1 to provide a safe development environment. A number of bushfire protection measures were outlined to minimise the risk of bushfire and provide protection for emergency services, personnel, occupants and others assisting fire fighting activities, as follows:

- asset protection zones (APZ);
- construction standards and design;
- appropriate access standards for residents, fire fighters, emergency services workers and those involved in evacuation;
- adequate water supply and pressure;
- emergency management arrangements for fire protection and/or evacuation; and
- suitable landscaping to limit fire spreading to a building.

The Environmental Assessment identified the following:

- an APZ 20 metres in width to be established along the northern boundary of Precinct 1 incorporating the existing HEZ Spine Road and road reserve being 20 metres wide;
- an APZ 20 metres in width to be established along the eastern boundary of Precinct 1 where the Precinct abuts the 7(b) Environmental Protection (Conservation) Zone;
- no APZ's along the southern boundary of the site due to the existing HEZ Spine Road and electricity easement;
- an APZ 20 metres in width to be established along the western boundary of the Precinct where the site abuts open forest; and
- the preparation of a Monitoring and Fuel Management Program to ensure the APZ areas are managed and maintained to prevent the spread of fire towards a building.

In terms of the proposed WIPS facility, the Environmental Assessment states that the following would be provided on Lot 290:

- an APZ 20 metres wide between the proposed warehouse and the open forest to the north and east;
- an APZ 20 metres wide between the proposed warehouse and the vegetation to be retained in the southern and western section of the site; and
- any vegetation (with the exception of the conservation area to be retained) within the subject site will be managed as an inner protection area.

### **Issues Raised in Submissions**

The NSW Rural Fire Service submission stated that the intent of APZs is to provide sufficient space and maintain reduced fuel loads so as to ensure that radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. The NSW Rural Fire Service made the following comments regarding Precinct 1:

- a 20 metre minimum APZ will need to be incorporated within the southern boundary of each proposed lot bordering the southern boundary of the Precinct;
- the proposed 20 metre APZ on the eastern and western boundaries will need to be increased to a minimum of 25 metres in consideration of the downslope;
- landscaping within the APZs is to comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006*;
- due to the level of risk associated with a 20 metre wide retained vegetation zone, together with a 10 metre wide reinstatement zone, suitable APZs will need to be incorporated into the design layout of each individual lot; and
- undeveloped lots within the Precinct will need to be managed to Outer Protection Zone standards (i.e. an APZ of a minimum of 25 metres).

Given the extent of the retained and reinstated vegetation immediately adjoining the roads, NSW Rural Fire Service considered that the Proponent failed to demonstrate the performance criteria that access will be safe for fire fighters while occupants are evacuating.

In relation to the fire management associated with the proposed WIPS facility, the NSW Rural Fire Service made the following comments:

- the proposed 20 metre APZ surrounding the proposed building structure is considered to be suitable;
- landscaping within the APZ is to comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006*; and
- there is a greater risk posed to the WIPS facility while the remaining lots within the HEZ are undeveloped therefore a 10 metre temporary APZ is required over the adjoining lots.



### **Consideration**

The Department considers that the Proponent has adequately assessed the bushfire risk associated with the proposed subdivision of Precinct 1 as well as the development of the WIPS facility on Lot 290. The Department, however, does agree with the issues raised by NSW Rural Fire Service and has translated these comments into recommended conditions of approval, as applicable to the concept or project approval. Additional fire management measures may be required as part of subsequent subdivision or project applications.

The Department considers that the reduction of the required front landscape setback to 10 metres and the need to ensure that landscaping in this area comply with the principles of Appendix 5 of *Planning for Bush Fire Protection 2006* has resulted in reduced fire risk associated with the development of Precinct 1 in terms of the evacuation of occupants and associated risk to fire fighters.

## **5.6 Other Issues**

### **5.6.1 Noise**

#### **Issue**

With the exception of the proposed WIPS facility, specific development proposals within Precinct 1 have not been identified and therefore the noise emissions are unknown. A Noise, Vibration, Electrical Interference and Lighting Strategy was prepared by the Proponent with the intention of managing the potential variety of noise emissions that could occur within the Precinct. Precinct 1 was identified as a location that could be suitable for moderately noisy activities. A detailed noise assessment would be undertaken for each proposed land use on a site by site basis under the "umbrella" strategy which would be used to manage cumulative noise impacts.

A noise impact assessment was undertaken to assess the potential noise impacts from the operation of the WIPS facility. It is estimated that the majority of traffic generated from the facility would be during shift changes, with approximately 98 traffic movements expected between 5.00 and 6.00 pm. Other traffic movements during the day were considered to be minimal.

The WIPS facility would be constructed in an area close to the centre of Precinct 1 with the closest residential receiver being in excess of 5 km from the site. Construction noise associated with the facility was assessed as being likely to be below audible levels at these residential receivers. Noise emissions associated with the operation of the facility was assessed as being low and inaudible to the closest residential receivers.

#### **Issues Raised in Submissions**

No specific issues regarding the generation of noise were raised as part of the submissions received.

### **Consideration**

The Department does not have any comments to make regarding the acoustic environment with respect to the proposed concept plan as the proposal, as modified by the Department, does not involve any works, with the exception of the proposed WIPS facility which is considered below. The Department considers that the Noise, Vibration Electrical Interference and Lighting Strategy developed by the Proponent would assist in the appropriate siting of future industrial uses within the Precinct based on their noise emission potential.

The Department is satisfied that the Proponent has provided a sufficiently robust noise impact assessment for the proposed WIPS facility and agrees with the Proponent that the construction and operation of the facility is not expected to result in any adverse noise impacts on the surrounding residential community. The Department considers that an extension to the standard construction hours is warranted given that the nearest residential receiver is at a considerable distance from the proposal. The following construction hours have therefore been recommended as part of the project approval:

- Monday to Friday – 7.00 to 6.00 pm; and
- Saturday, Sundays and public holidays – 8.00 am to 4.00 pm.

Given the low levels of noise emissions expected from the operation of the WIPS facility, the Department does not have any concerns with the facility operating on a 24 hour a day, seven days a week basis, provided the noise levels from the operation of the facility are in line with the predictions made within the Environmental Assessment. The Department has recommended that the Proponent be required to undertake a noise monitoring program within 90 days of the commencement of operations to confirm the

noise emission performance of the project. This is reflected within the recommended conditions of project approval.

### **5.6.2 Air Quality**

#### **Issue**

An Air Quality Management Strategy has been prepared which outlines a framework for the HEZ Association and industries proposing to establish themselves within the estate. Similar to the Noise, Vibration, Electrical Interference and Lighting Strategy, it will be used to site industries where they would have the least impact to the nearest residential receivers. With the exception of existing development within Precinct 1 and current approvals, only the proposed WIPS facility is known as a proposed land use within Precinct 1 with future developments and their potential impact on local and regional air quality unknown at this stage.

In terms of the impacts associated with the proposed WIPS facility, an air quality assessment was prepared which stated that the following risks to air quality could occur as a result of the facility:

- generation of dust during construction activities such as vegetation clearing and earthworks;
- small volumes of vehicle exhaust emissions during construction; and
- generation of vapours and particles as part of the WIPS manufacturing process, including Methylene Diphenyl Isocyanate (MDI), Polyol compounds including catalysts and pentane (which is known to form secondary particulate pollutants in the atmosphere).

The assessment concluded that any pollutants generated from the operation of the facility would be well within relevant air quality criteria and present negligible adverse air quality impacts in Precinct 1 and surrounding areas.

#### **Issues Raised in Submissions**

No specific issues regarding the generation of air pollutants were raised as part of the submissions received.

#### **Consideration**

The Department does not have any comments to make regarding air quality with respect to the proposed concept plan as the proposal, as modified by the Department does not involve any works, with the exception of the proposed WIPS facility which is considered below. The Department considers that the Air Quality Management Strategy developed by the Proponent would assist in the appropriate siting of future industrial uses within the Precinct based on their air emission potential.

The Department considers that dust generation during construction of the WIPS facility can be managed through the implementation of standard controls. The Department has recommended a condition requiring the Proponent to undertake all construction activities with the objective of preventing visible dust emissions and constructing the project in a manner that minimises dust impacts. In addition, it has recommended that the transport of material to and from the site be managed to ensure that dirt is not tracked onto the HEZ Spine Road or the public road network. The recommended conditions of project approval also limits the generation of odours from the site and does not permit the burning of any garbage, vegetation or other combustible material to maintain existing air quality.

### **5.6.3 Aboriginal Heritage**

#### **Issue**

The Proponent commissioned an assessment of Precinct 1, Pelaw Main Bypass and the proposed Station Street extension with the involvement of the Mindaribba Local Aboriginal Land Council and Barkuma Neighbourhood Inc. to outline the potential impacts of the proposal on Aboriginal heritage. As part of the investigation, an isolated find (a silcrete core) was located immediately to the west of the HEZ Spine Road in the north-west of Precinct 1. This find was found in a disturbed context, but nevertheless is protected under the *National Parks and Wildlife Act, 1974*. This site was assessed as being of low archaeological significance and is likely to be impacted on by future development of the Precinct.

A specific walk-over of the site proposed for the WIPS facility was also undertaken with representatives of the Mindaribba Local Aboriginal Land Council and while it was concluded that no items of any significance was discovered, because of the dense vegetation cover, they requested that a representative from the Land Council be present during construction and land clearing works for both the facility and internal roads within the Precinct to ensure no cultural material is destroyed during the works.

### **Issues Raised in Submissions**

No specific issues were raised in the submissions received about the impacts of the proposals on Aboriginal heritage.

### **Consideration**

The Concept Plan in Precinct 1, as modified by the Department does not involve any works (with the exception of the proposed WIPS facility which is considered below) that will have impacts to Aboriginal heritage.

With respect to the WIPS facility, the Department is satisfied that the Proponent's mitigation measures are adequate to protect heritage items and has recommended a requirement for the Proponent to educate on-site personnel and "stop work" should any items be discovered. The Department also agrees that a representative from the Mindaribba Local Aboriginal Land Council be employed to monitor land disturbance during construction and has recommended this requirement.

### **5.6.4 European Heritage**

#### **Issue**

The Environmental Assessment outlined that no items of European heritage occur within Precinct 1 other than a piece of steel wire wrapped between some trees. This was not considered to be significant and no site-specific conservation measures are required.

The proposed Station Street extension would impact on early twentieth-century infrastructure that forms part of the remains of Weston Railway Station. This station was part of a private railway line and the remains are likely to date from 1902-1909. The site is listed on the Cessnock LEP and the Hunter REP but not on the State Heritage Register. As part of the heritage assessment, the consultants identified a water tank to be of potential state heritage significance and other railway items in the vicinity of the site to be of local heritage significance. The Proponent proposes to relocate the water tank and the western stand pipe to allow Station Street to be extended to the south. These two items would be located relatively nearby, where they would continue to provide evidence for the operation of the private railway in the Federation period. The steel-framed northern ramp to the remains of the pedestrian bridge is also proposed to be demolished. It was constructed in a phase after the initial construction of the station. It has been assessed as having low local significance.

A Statement of Heritage Impact and Statement of Heritage Significance was prepared to consider the impact on European heritage of the proposed Pelaw Main Bypass. The proposed location of the bypass would impact on a section of the rail bed known as the Pelaw Main Branch of Richmond Vale Railway which is listed on the Cessnock City Council Heritage Register as being of local importance. The Environmental Assessment indicates that two remnants of the railway would be impacted by the bypass, comprising the rail bed and up to eight remnant fence posts.

### **Issues Raised in Submissions**

No specific issues were raised regarding European heritage, however, Council noted that the northern ramp of the Station Street footbridge is proposed to be removed with the remainder of the bridge left intact even though it continues to deteriorate. Council has requested that further discussions occur between it and the Proponent regarding the future management/demolition of the footbridge and that any new access over the railway line include the provision of adequate pedestrian facilities.

### **Consideration**

The Department considers that a decision about the future of the pedestrian footbridge is unrelated to the current proposal and therefore is outside the scope of the Department's assessment.

The Department considers that some of the heritage impacts from the proposal could be avoided if Station Street was extended in an irregular line, but the Proponent's decision to extend it in a straight line respects the geometry of Weston. The water tank currently stands at the terminus of the Station Street vista as a local landmark and the Department considers that its relocation, together with the stand pipe, would have a minor adverse heritage impact that is acceptable. The demolition of the pedestrian ramp is also considered to have a minor adverse heritage impact and is acceptable. The Proponent has indicated in its Statement of Commitments that it will record and carefully move the water tank and stand pipe a small distance away with professional advice and a suitably qualified contractor. Notwithstanding, further assessment of these issues will be required when the Proponent seeks Part 3A approval for this component of the concept plan.



As stated in Section 5.1, the Department does not consider that adequate background information regarding route selection and justification for the preferred location of the Pelaw Main Bypass, as outlined in the Environmental Assessment, has been provided by the Proponent at this stage and has recommended as part of the concept approval that the road be realigned closer to Pelaw Main. In doing so, the Department has not considered the proposed heritage impacts to the rail bed and fence posts of the heritage listed rail line as it is considered that these impacts may not occur if the road was realigned closer to Pelaw Main. Nevertheless, the Proponent would need to submit a project application for the Pelaw Main Bypass in accordance with Part 3A to allow for its construction and operation and as part of this process, the Department has recommended that the impacts of the proposal on heritage be further assessed at that time.

## 6. CONCLUSIONS AND RECOMMENDATIONS

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Following a detailed assessment of the Environmental Assessments for the concept and project applications, the submissions received during the public exhibition period and the Proponent's Response to Submissions, the Department considers that the proposal would have resulted in adverse impacts to the surrounding environment, particularly biodiversity values within the local area and the Hunter Region. The Department has liaised with the DECC and it supports the Department's position regarding the proposals.

The Department has discussed the potential adverse biodiversity impacts that would result from the proposal with the Proponent throughout the assessment period. However, it has been reticent to provide further land for conservation purposes as it believes that the area of land zoned 7(b) Environmental Protection (Conservation) provided as part of the rezoning process in the Cessnock LEP provides an adequate conservation offset for the impacts from the development of the subject land. The Environmental Assessment proposed the development of a significant portion of Deferred Area 1 and this was not supported by either the DECC, DEWHA or the Department.

The Proponent's views throughout the assessment process is that the rezoning process resulted in the identification of land to be developed for industrial purposes and therefore no further impediment should be imposed in relation to the development of 4(h) zoned land within the HEZ estate. The Proponent has consistently argued that the Werakata National Park, located immediately south of the HEZ estate, contains an adequate representation of all the endangered ecological communities and threatened flora and fauna species that would be impacted by the proposals and therefore no additional land is required to be set aside for conservation purposes. This was not supported by the DECC or the Department.

The Department is not satisfied that the biodiversity impact of the development as proposed can be appropriately mitigated or managed to acceptable levels to achieve an improved or maintained outcome in accordance with current NSW Government policy. Of particular note are the biodiversity impacts that would result on endangered ecological communities and the habitat of a large number of threatened flora and fauna species. The Department undertook discussions with both the Proponent and the DECC with the intention of resolving the biodiversity issues associated with the proposal put forward within the Environmental Assessment. As a result of these discussions, the Proponent amended the proposal to restrict any development of Deferred Area 1. The Department, however, considers that further biodiversity measures are required to be enforced as part of an approval for the concept plan to ensure that the potential environmental impacts can be appropriately mitigated and managed. The Department therefore considers that an approval for the concept plan can be granted to facilitate the development of the HEZ estate, subject to the concept plan being amended, as conditioned. For the future development of the HEZ estate, the Department recommends that a SSS study is undertaken which has the ability to address the broader landuse planning, biodiversity, and landholder equity issues.

As a result of the Department's assessment and the lack of a SSS Study to provide the necessary statutory framework for the entire HEZ estate, the Department has recommended to limit the proposed development of Precinct 1, as follows:

- total prohibition of any development in Deferred Area 1 (an area of 19.09 hectares) which is required to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General;
- total prohibition of any development within the riparian corridor located between the HEZ Spine Road and Deferred Area 1 as indicated by the area shaded red in Figure 10. This area comprises a 30 metre setback on either side of the creekline between proposed Lots 200, 230, 240, 260, 270 and 430 and is to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General;
- allowing for the development of Precinct 1 (as indicated by the area shaded blue in Figure 9) subject to a further biodiversity offset equal to at least 10 hectares of land of equal ecological value to the highest ecological valued lands within Precinct 1 being provided within 18 months of the date of the concept approval. The offset land is to be contiguous with conservation lands and is required to be managed for conservation purposes in perpetuity to the satisfaction of the DECC and the Director-General;
- allowing the development of Precinct 1 subject to a monetary contribution being received to assist in recovery actions for the Regent Honeyeater within specified timeframes; and

- realignment and the requirement for further approval of the Pelaw Main Bypass closer to Pelaw Main, with the Proponent required to fund appropriate noise mitigation (if required) and to provide an offset for vegetation lost as a result of the road.


The Department has also recommended environmental assessment requirements for both the Pelaw Main Bypass and Station Street extension proposals (which can be supplemented at the project application phase if required) as part of the recommended concept approval.

The Department's assessment of the proposed WIPS facility is such that it has no significant concerns in relation to the construction and operation of the facility. The recommended conditions of project approval provide for the mitigation and management of key impacts associated with the proposal during the detailed design, construction and operational phases of the project, such as flora and fauna, air quality, soil and water quality management, site drainage, fire and spill management. The Department believes that the recommended conditions of project approval shall provide for the implementation of best management practices during all phases of the project, and shall ensure that the construction and operational impacts of the project on the surrounding environment are managed to acceptable levels.


Consequently, the Department recommends that the Minister for Planning approve the development of Precinct 1 and associated infrastructure as limited by the attached concept approval and allow for the construction and operation of the WIPS facility on Lot 290 within Stage 1 of Precinct 1 as outlined in the attached project approval.



Scott Jeffries  
Director  
Major Infrastructure Assessments



27.3.09  
Chris Wilson  
Executive Director  
Major Project Assessments



Sam Haddad  
Director-General  
20/3/2009.