

General Purpose Standing Committee No. 5

Hunter Economic Zone and the Tomalpin woodlands

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Terms of Reference

That the General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General and other senior officers of the NSW Premier's Department with particular reference to correspondence and interaction between the Premier's Department and the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process; and
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process.

These terms of reference were self-referred by the Committee.

Committee Membership

Mr Ian Cohen MLC	The Greens	<i>Chair</i>
Hon Richard Colless MLC	The Nationals	<i>Deputy Chair</i>
Hon Tony Catanzariti MLC	Australian Labor Party*	
Hon Amanda Fazio MLC	Australian Labor Party**	
Ms Sylvia Hale MLC	The Greens	
Hon Robyn Parker MLC	Liberal Party***	
Hon Henry Tsang MLC	Australian Labor Party	
Hon Ian West MLC	Australian Labor Party	

* The Hon Tony Catanzariti MLC replaced the Hon Ian West MLC as a member of General Purpose Standing Committee No 5 on 29 June 2004.

** The Hon Amanda Fazio MLC substituted for the Hon Kayee Griffin MLC for the duration of the inquiry.

*** The Hon Robyn Parker MLC substituted for the Hon Don Harwin MLC for the duration of the inquiry.

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Chair's Foreword

The varied positions forwarded by members of this committee reflect the nature of the polarised perspectives of the general community. Conservationists and developers are often perceived as antagonists. Striking an appropriate balance in terms of opposing responsibilities on behalf of the people and environment of NSW is a considerable challenge.

Some members of the committee sought to include minority comments in the body of the report. This was rejected by the majority membership. It is perhaps appropriate to refer to:

Standing Order 228: Member's opinions to be reflected

- (1) The report of a committee is, as far as practicable, to reflect a unanimity of opinion within a committee.**

- (3) Where unanimity is not practicable, a committee's report should be prepared so as to reflect the views of all members of the committee.**

Consequentially I have chosen to append a dissenting statement to this report.

The environmental assessment process associated with the Tomalpin woodlands and the Hunter Economic Zone industrial development has been both strongly criticised and strongly praised as an example of the whole of government approach to the facilitation of major investment projects.

Critics of the process point to what they believe to be the disastrous effect the development will have on the significant biodiversity of the Tomalpin area. Supporters of the development argue that the process adequately provides for environmental protection and that the development provides an opportunity to revitalise a region that has suffered from low employment since the decline in local coal production.

The environmental assessment process commenced in 1999 with the preparation of the first draft Local Environment Plan (LEP). The revised LEP was made by the then Minister for Planning in March 2002. This report primarily focuses on the environmental assessment processes associated with the development applications lodged for the site post the rezoning of the land. In particular the report examines the nature and effect of the interactions between the Premier's Department, the former National Parks and Wildlife Service, Cessnock City Council and the proponent for the site.

The inquiry allowed for an in-depth assessment of all issues and gave interested parties an opportunity to state their case. This proposal has been a catalyst for issues affecting many developments in NSW.

I would like to thank all parties involved in the inquiry. This includes the many local residents and organisations that provided submissions to the inquiry and attended the public hearings, and the various government departments who provided submissions and gave evidence before the Committee.

In particular I extend my thanks to two organisations. Firstly I thank the Friends of Tumblebee for their efforts to highlight this issue; the comprehensive documentation they provided to the Committee and for assisting the Committee in its meeting with residents of Pelaw Main. I also wish to thank the representatives of HEZ Pty Ltd for appearing before the Committee and for providing the Committee with an informative tour of the HEZ site.

I would also like to thank the Committee secretariat for their work on the inquiry and the report

I believe the inquiry provided information and relevant opinion which could have been of considerable benefit for policy makers dealing with issues of appropriate development whilst protecting our fragile environment and unfortunately high common classification of threatened species.

Ian Cohen MLC
Committee Chair

Summary of Recommendations

Recommendation 1

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That the actions of the Director General of the Premier's Department in corresponding with the National Parks and Wildlife Service were proper and in accord with his role as Coordinator General of the Regional Coordination Program. When acting in this role in the future, the Director General should be mindful of any potential for misinterpretation of requests for cooperation by other government agencies.

Chapter 1 Introduction

Terms of Reference

- 1.1 On 11 May 2004 General Purpose Standing Committee No. 5 (the Committee) resolved to adopt the following terms of reference:

That General Purpose Standing Committee No. 5, inquire into and report on the environmental assessment process associated with the Tomaplin woodlands and the Hunter Economic Zone industrial development, and in particular:

- i) the actions of the Director General and other senior officers of the NSW Premier's Department with particular reference to correspondence and interaction between the Premier's Department and the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process; and*
- ii) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process¹*

Call for submissions

- 1.2 The Committee received a total of 65 submissions.² Advertisements seeking submissions were placed in the Newcastle Herald and other newspapers in the lower Hunter region. The Committee also wrote to relevant individuals and organisations including the Premier, the Minister for Planning, Infrastructure and Natural Resources, the Minister for the Environment, the Minister for Roads and the Minister for Energy and Utilities, as well as the Friends of Tumblebee, peak environmental groups, Cessnock City Council, the Mindaribba Aboriginal Land Council and the site developer HEZ Pty Ltd.
- 1.3 A list of all submissions received is contained in Appendix 1.

Public hearings

- 1.4 The inquiry began with a site visit to the Hunter Economic Zone on 15 June 2004. The Committee was provided a tour of the site by representatives of the Hunter Economic Zone, including the site of the proposed Pelaw Main by-pass link road. On the same day the Committee met with representatives of the Friends of Tumblebee at Pelaw Main and visited a site proposed by the group as an alternative to Tomaplin.
- 1.5 A hearing was held at Kurri Kurri on 16 June and at Parliament House on 2 July. A list of witnesses is provided in Appendix 2 and transcripts of the hearings can be found on the Committee's website at www.parliament.nsw.gov.au/gpscno5.

¹ Minutes of Proceedings 22, 11 May 2004. This followed several earlier meetings of the Committee at which the terms of reference were discussed (see Appendix 4).

² The Committee also received 7 supplementary submissions.

- 1.6** The Committee would like to thank all of the people who participated in this inquiry by making a submission, giving evidence or attending the public hearings. The Committee would particularly like to thank representatives of the Hunter Economic Zone and the Friends of Tumblebee for their assistance in providing documentation to the Committee and assisting with site visits.

This report

- 1.7** The Committee adopted this report at a meeting on 1 December 2004. The minutes of this and other meetings held during the inquiry are presented in Appendix 4.

Structure of the report

- 1.8** Chapter 2 discusses the background to the Hunter Economic Zone (HEZ), including a chronology of key events in the approval and development process
- 1.9** Chapter 3 examines the economic benefits and infrastructure costs of the development of the HEZ, particularly the section of the site that is zoned 4(h) which is the subject of the current inquiry. It also examines the role of the Premier's Department in facilitating projects of this nature.
- 1.10** Chapter 4 considers the environmental factors associated with the site, particularly the threatened species found within the site. It examines the role of the former National Parks and Wildlife Service and the Department of Environment and Conservation in protecting threatened species during assessment and approval of development applications.
- 1.11** Chapter 5 examines the environmental assessment process undertaken for the Hunter Economic Zone post the gazettal of the LEP and rezoning of the HEZ site, particularly the interactions between Cessnock Council, National Parks and Wildlife and the Premier's Department and other agencies.
- 1.12** Chapter 6 examines the Pelaw Main link road which is a cause for concern to local residents.

Chapter 2 Background to the Hunter Economic Zone

This chapter considers the history of the area which has been the subject of this inquiry. The area has become known as the Hunter Economic Zone industrial development, and is seen by some as having the potential to rejuvenate an area suffering from economic decline since the closure of local coalmines. Local environmental group the Friends of Tumblebee describe the area as the Tomalpin Woodlands,³ and highlight the environmental diversity of the area and the need to conserve threatened fauna and flora in any development process. A brief chronology of the main events in the creation of the Hunter Economic Zone concludes this chapter, with an explanation of the development approval process. Later chapters examine the different perceptions of the development needs of the area, particularly in relation to the environmental assessment process.

Location

- 2.1 The Tomalpin area is located in the lower Hunter Valley, close to the townships of Weston, Kurri Kurri, and Pelaw Main and is a short drive from Cessnock. It lies within Cessnock City Council LGA.
- 2.2 The area often referred to as the HEZ study area is approximately 3293 hectares. The total area is comprised of the following:
- 877.21 hectares zoned *4(b) special employment*
 - 29.23 hectares zoned *5(a) special uses*
 - 9.61 hectares zoned *5(b) special uses*
 - 286.45 hectares zoned *1(a) rural heritage provisions apply*
 - 809.49 hectares zoned *7(b) environmental protection*
 - a 1280 hectare section of the Werakata National Park that is zoned *8(a) National Parks and Nature Reserves*⁴.

³ During this inquiry the Committee has decided to refer to the area in question as the “Tomalpin woodlands” as there is some dispute whether the “Tomalpin Woodlands” is a geographic location or a generic description of the area.

⁴ The inclusion of a section of the Werakata National Park in the definition of the HEZ has been subject to some debate. This issue is examined at paragraph 2.19.

2.3 The map below shows the location of the area within the surrounding region.

Map 1: Hunter Economic Zone in the Hunter Valley



Source: Provided to Committee during 15 June 2004 site visit by Mr M Somers, General Manager, Hardie Holdings.

2.4 The Committee received quite varying descriptions of the nature and intrinsic value of the woodlands area and in particular the area now zoned 4(h). The area has been variously described as:

... one of the most biodiverse areas left of the Hunter Valley floor⁵

... heavily harvested for pit props...a heavily used industrial area for close to 100 years⁶

... the largest remaining block of bushland on the floor of the Hunter Valley providing a habitat to 31 threatened species⁷

... used for years as a playground for four-wheel drive vehicles and motorcycles, a dumping ground for rubbish⁸

⁵ Submission 30, National Parks Association of NSW, p1.

⁶ Mr Rodney Doherty, Secretary, Kurri Kurri Chamber of Commerce, Evidence 16 June 2004 p34.

⁷ Submission 28, Friends of Tumblebee, p3.

⁸ Submission 2, Phillip Hill, p1.

- 2.5** However no participant to the inquiry disputes that the area is ecologically significant and provides an important habitat for 31 threatened species. Where the opposing parties to the debate do differ is with respect to how much of the area needs to be preserved (and not developed) in order to maintain a viable habitat for those threatened species.
- 2.6** Conservationists have also raised concerns regarding the appropriateness of the conservation boundaries within the HEZ site. The 7(b) conservation areas do not include the dryer woodland habitat that is found within the 4(h) zone.
- 2.7** During this inquiry the main subject of dispute was the area of more than 900 ha (zones 4(h) and 5(a) and (b)) which are zoned for industrial and ancillary development. The principal difference is between those, such as the Friends of Tumblebee, who argue for the developable area to be restricted to a much smaller size, and those, such as Cessnock City Council, HEZ Pty Ltd and the Kurri Kurri Chamber of Commerce, who strongly support the development of the full industrial area. While this debate is considered later, it is important to depict the various land uses of the full estate at present before outlining the way in which these land uses came into effect.
- 2.8** The following map illustrates the developers' outline of the potential development areas within the 3,290 ha estate:

Map 2: Potential Development Sites

Source: Tabled at 16 June hearing by M Somers, Hardie Holdings

2.9 The developable lands are currently owned by the following three separate parties:

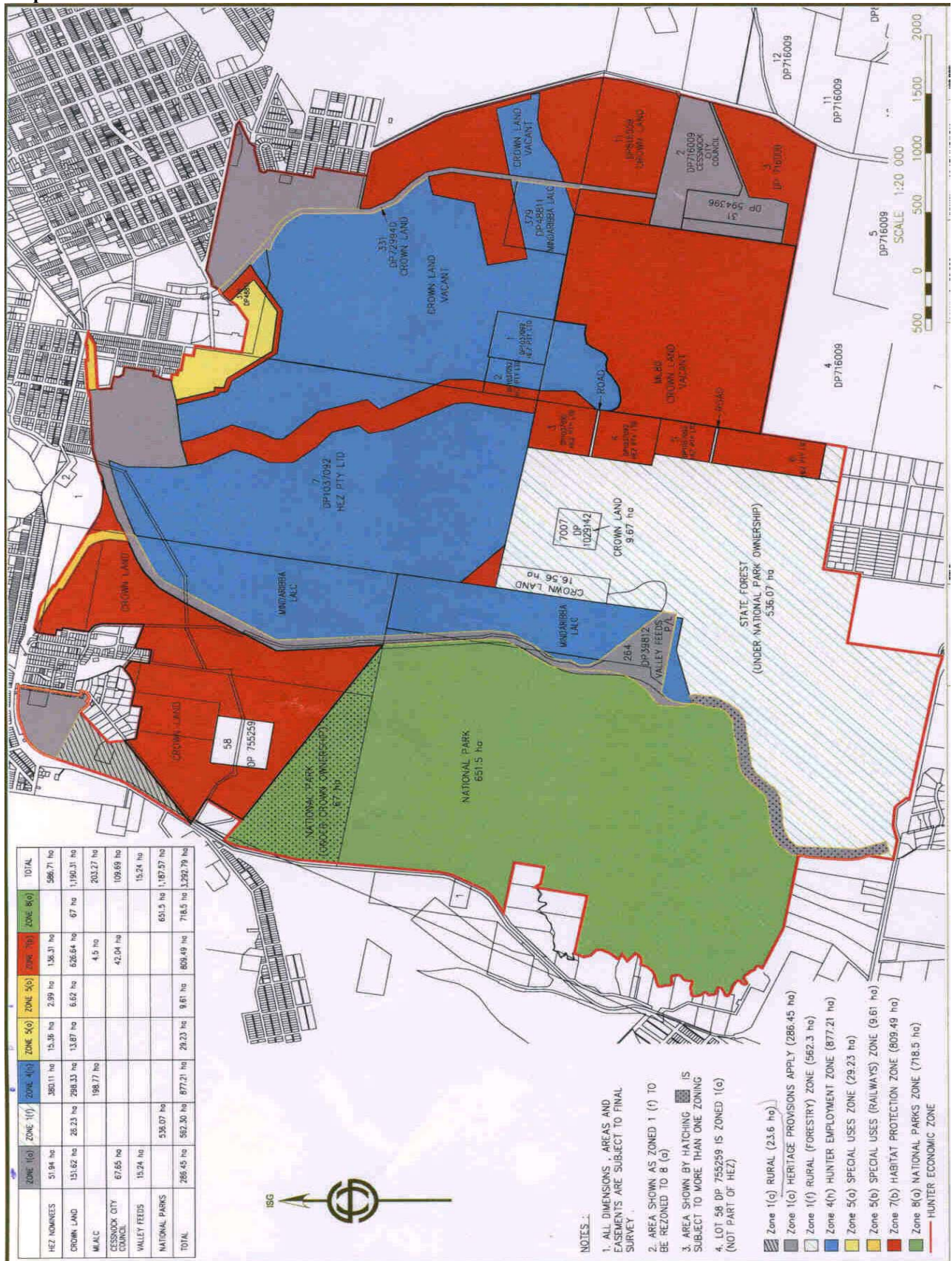
- HEZ Nominees Pty Ltd (the developer) – 447 ha
- The Crown – 298 ha
- Mindaribba Aboriginal Land Council – 198 ha⁹

2.10 The term “Hunter Economic Zone”, as depicted in these maps, represents the land defined in Cessnock Local Environment Plan 1989 (Amendment No. 60) – Hunter Employment Zone, as gazetted on 28 March 2002.¹⁰ The various zonings of the estate are shown in map 3:

⁹ Submission 31, Hunter Economic Zone, p3

¹⁰ NSW Government Gazette No 67, p2075.

Map 3: Land Use Zones



Source: Mr M Somers, General Manager, Hardie Holdings, included in correspondence to Committee Director dated 20 July 2004

History of the site

Aboriginal history

- 2.11** Prior to European settlement the Aboriginal population in the region formed part of the Wanaruah nation. Evidence received from the representatives of the Mindaribba Aboriginal Land Council to this inquiry indicated that elders of the Wanaruah nation who were members of the Land Council were not able to identify any ceremonies, stories or song lines associated with the area of the estate proposed for development.¹¹
- 2.12** The Mindaribba Land Council (MLALC) was formed in 1985. Under the NSW Land Rights Act of 1983 the Council was successful in a claim of approximately 200 ha of the estate which is to be the subject of future development.¹² As discussed in the next chapter, the Committee heard evidence that the majority of members of the Land Council are supportive of the proposed development for economic reasons.

Coal Mining¹³

- 2.13** The area surrounding the Tomalpin woodlands began as a series of small villages settled by coal mining employees in the late 19th century, with Kurri Kurri being founded in 1902. Coal mining was the economic driver until the late 1960s, when mine closures in the region led to high unemployment. This was offset for a time by the establishment of the ALCAN smelter and a short lived textile industry, which moved offshore in the early 1990s.
- 2.14** Evidence was given to the Committee that up to five coalmines were located on the Tomalpin site, and that during the construction and extraction phase the forests surrounding the coalmines were heavily harvested for pit props, railway sleepers and roof trusses.¹⁴ The land was owned by Coal and Allied Rio Tinto until it was sold to Hardie Holdings, the developers of the Hunter Economic Zone in the mid 1990s.
- 2.15** Under the current LEP mining is permissible in the 7(b) zone of the HEZ. The concern that this has caused for local residents is discussed in Chapter Five. The tenure of the 7(b) zone is a mixture of freehold and Crown land. Some of that Crown land is the subject of a current claim by the MLALC.¹⁵

¹¹ Mr Rick Griffiths, East Zone Commissioner, NSW ATSIIC, Evidence 29 July 2004, p56.

¹² Submission 62, Mindaribba Aboriginal Land Council, p1.

¹³ Material for this section was drawn from Submission 1, Kurri Kurri Chamber of Commerce and Industry Inc, p1.

¹⁴ Mr Doherty, Kurri Kurri Chamber of Commerce, Evidence 16 June 2004 p34.

¹⁵ Correspondence from Mr B R Mortomore, A/General Manager, Cessnock City Council, to Committee Director, 19 July 2004.

- 2.16** Map 3 displays the relevant tenure and ownership details: Crown land is comprised of Lot 331/DP 729940; Lot 11/DP 816559 and ML80; Cessnock City Council has title to Lot 3/DP 716009; and HEZ Pty Ltd has title to Lots 2, 3, 4, 5 and 6/DP 1037902.¹⁶

Hunter Valley Wine Country Development and Employment Team

- 2.17** With the closure of the coalmines and other heavy industry there were many concerns in the early 1990s that towns such as Kurri were faced with endemic unemployment and economic decline. As explained in evidence by Mr Toby Thomas, President of the Kurri Kurri Chamber of Commerce:

It needed something to solve the unemployment. The whole area was developing into a handout mentality. It was very reliant on social security. We had all the socioeconomic problems that go with high unemployment. We probably have the highest unemployment in the State, particularly among the youth. My personal feelings were that all of these methods, such as RED schemes and all the other ones, to try to help the unemployment do not do so in the long term. The only way a long-term solution was going to be found was to bring in real industry and get things rolling.¹⁷

- 2.18** In response to this perceived need the City of Cessnock, the Chamber of Commerce and the Premier's Department regional co-ordinator formed the Hunter Valley Wine Country Development Employment Team (the Development Team). The team had representation from local businesses, the Council, the Aboriginal Land Council, developers, and an individual representing environmental interests.¹⁸ From this came the City of Cessnock strategy, with an aim of rezoning and developing a large industrial site within the LGA.

The Hassell Report

- 2.19** In December 1997 Cessnock City Council and the Hunter Economic Development Corporation commissioned the consultant Hassell Pty Ltd to investigate the potential of the Tomaplín site as the desired industrial zone.
- 2.20** When the Hassell report was finalised in June 1998 it concluded that Tomaplín was a potential location for industrial activity, subject to further focussed investigations which it recommended be undertaken. Cessnock City Council accepted the conclusion of the report, and the process of rezoning the land for development began.

Werakata National Park

- 2.21** The Werakata National Park is currently comprised of 3149 hectares. It was originally known as the Lower Hunter National Park and was gazetted on 26 February 1999. The alteration of

¹⁶ Correspondence from General Manager, Hardie Holdings, to A/Committee Director, 20 July 2004.

¹⁷ Mr Toby Thomas, President, Kurri Kurri Chamber of Commerce and Industry, Evidence 16 June 2004 p34.

¹⁸ This representative was subsequently voted off the Development Team by its other members – Evidence 16 June 2004 p41.

its name to Werakata was gazetted on 18 January 2002. The Park was created via an initial transfer of State Forest Land, with a second tranche being added to the Park four years later.

- 2.22** A 1187 hectare section of the Werakata National Park is included within the zoning boundaries of the Hunter Economic Zone. This inclusion has given rise to much debate and criticism from opponents to the development. The primary criticism is that the inclusion of the National Park area gives a false impression of the ecological outcome of the zoning process, and that this impression has been consistently used in public comments and supporting argument for the development.
- 2.23** As an example of concerns raised:- the Hunter Valley Research Foundation conducted a phone interview survey of 300 residents throughout the Cessnock area in September 2003 to gauge the level of community support for the development. After being given a preamble about the HEZ project, respondents were asked whether they agreed or disagreed with the HEZ development and conservation lands project. The preamble includes the statement: *"The site also includes a conservation area 2 1/2 times the size of the business and industrial area."*¹⁹
- 2.24** The results of the survey which showed that 74% of the survey sample agreed (31.5% somewhat agree; 42.3% strongly agreed) were publicly released and commented on as suggesting a high level of support for the project in the Cessnock community.
- 2.25** If the National Park is not included within the definition of the HEZ, the proportion of conservation area as opposed to developable area would be approximately 55% to 45% respectively.
- 2.26** Supporters of the development argue that the inclusion of the National Park is valid as it is linked to, and arguably was dependant upon, the overall zoning process of the HEZ:

...when this process started, when the area was identified in the Hassell report and investigations were commenced, it included that area of State forest which is now gazetted as national park. The rezoning was actually formally lodged with council and the first we knew about the gazettal of the national park was when we held a focus meeting with government agencies. Katherine Sale from the National Parks and Wildlife Service indicated to us that under the forestry agreement, as mentioned earlier, that had been gazetted as national park. However, Mr Chairman, it is worth noting that the national park got its full statutory enforcement with the rezoning of the HEZ. In the rezoning of the HEZ the national park went to 8A national park. Before that it was gazetted as national park but it was still zoned State forest.

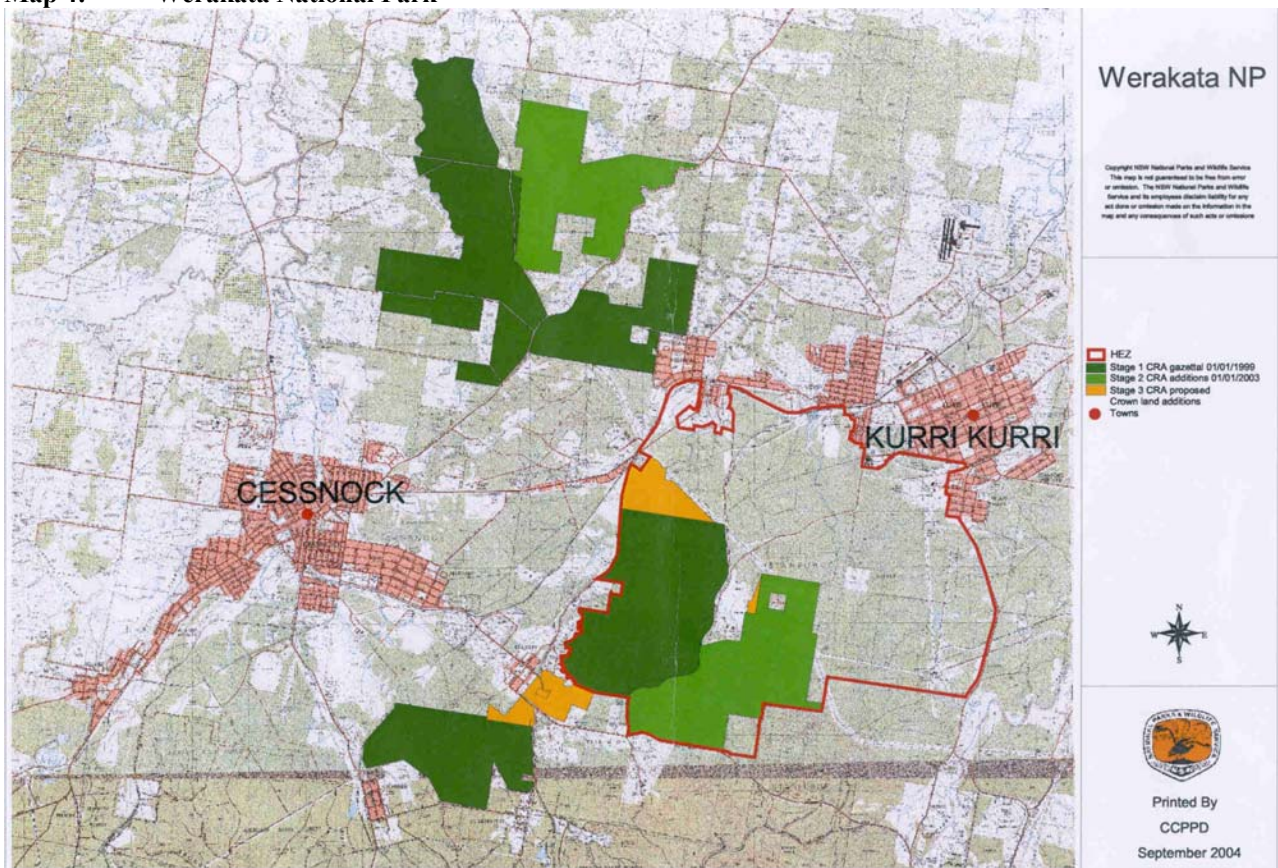
Additionally, I have heard comments today which are new to me about the National Parks and Wildlife Service requesting that the national park be taken out of the HEZ study area or the HEZ area, certainly contrary to the negotiations and discussions we have been having with the National Parks and Wildlife Service which indicate that they want it left within the study component because our ecologist, at great expense to our company, has undertaken significant ecological studies in the area, including the

¹⁹ *Hunter Economic Zone (HEZ) Community attitudes towards the HEZ project: Report from September 2003 Hunter Region Omnibus Survey*, Hunter Valley Research Foundation, document tabled by Mr M Somers on 16 June 2004.

national park, which have added to the knowledge base of the national parks system itself.²⁰

2.27 As is shown in the following map the Werakata National Park is not a single parcel of land and approximately 40% of it is contained within the HEZ boundary.

Map 4: Werakata National Park



Source: Department of Environment and Conservation, included in correspondence to Committee Director 20 September 2004.

2.28 The following timeline depicts the relevant dates for the creation and additions to the Park and the creation of the Hunter Economic Zone:

26 February 1999	Gazettal of creation of Lower Hunter National Park. The 2140 hectares of the Park is comprised of an area of about 1130 hectares being part of Cessnock State Forest No 874 and an area of about 1010 hectares being part of Abedare State Forest No 981, 651 hectares of which fall within the current HEZ boundary.
18 January 2002	Notification in Government Gazette of alteration, under sec 36 of National Parks and Wildlife Act of name of Lower Hunter National Park to Werakata National Park

²⁰ Mr Mathew Somers, General Manager, Hardie Holdings, Evidence 16 June 2004, p55.

28 March 2002	<p>Gazettal of Cessnock City Council LEP 1989 Amendment No 60. The plan includes the new zoning <i>8(a) National Parks, Nature Reserves Zone</i>. The objectives of the zone are to identify land that is reserved or dedicated under the <i>National Parks and Wildlife Act 1974</i> and to allow for the management and appropriate use of land as provided for under that Act.</p> <p>The zoning identifies that Cessnock City Council has no exercise of consent powers within the zone. The development that may occur within the zone (and which does not require Council consent) is development for any purpose authorised by or under the <i>National Parks and Wildlife Act 1974</i>.</p> <p>The Amendment notes that the plan does not apply to land shown hatched on the map which has been excluded from the plan under sec 68(5) of the <i>Environment Planning and Assessment Act 1979</i>. Section 68(5) relates to deferred matters, in this case the pending transfer of ownership to National Park of land within the HEZ boundary.</p>
1 January 2003	<p>Second stage of transfer of approximately 1009 hectares of land to the National Park; 536 hectares of which is the remaining part of Aberdare State Forest within the HEZ boundary.</p>
Pending	<p>A third, as yet incomplete, stage will see the transfer of Crown Land to the National Park. 92.3 hectares of this land falls within the HEZ boundary, while a similar amount sits outside the boundary.</p>

2.29 It is difficult to discern any causative relationship between the creation of the 8(a) zone and the creation of the National Park. This issue was raised in June 2002 in correspondence between the National Parks and Wildlife Service and Cessnock City Council concerning proposed amendments to the LEP:

...The boundary delineating the HEZ includes part Werakata National Park and part Aberdare State Forest, the latter of which is proposed for transfer to the Minister for the Environment. The NPWS acknowledges that there was some utility to the inclusion of these lands within the HEZ boundary during the original rezoning process as it ensured that appropriate land uses for rural-zoned lands be considered in the context of surrounding landuse. However, now that lands have been rezoned for industrial and environmental purposes, the NPWS would suggest that Council consider revising the definition of HEZ in the LEP and associated documents to only include those lands zoned 4(h), 7(b), 5(a) and 5(b). Werakata National Park (zoned 8a) is not available for development or employment purposes, and in large part the provisions of the LEP, DCP and draft EMS do not directly apply to the 8(a) lands. The continuing inclusion of national park in the definition of lands covered by the Hunter Employment Zone is somewhat confusing. For this reason it is recommended that areas zoned 8(a) be excluded from the definition of the HEZ.²¹

²¹ Correspondence dated 19 June 2002 from Ms Lou Ewins, Manager Conservation Planning Unit, Conservation, Programs and Planning Division – Central, NPWS to General Manager, Cessnock City Council, provided in supplementary submission 28a, Friends of Tumblebee.

- 2.30** Although the General Manager of Cessnock Council expressed an opinion that the Werakata National Park was not really part of the development conservation zone and that the gazettal of the Park and the HEZ rezoning were two separate issues,²² the Council has not taken any action to remove the Park from the LEP and associated documents, primarily as it does not view it as an issue of any significance.

The Development Approval Process 1999-2004

- 2.31** The subject matter of the terms of reference for this inquiry began with the rezoning of the Tomalpin estate. The processes of environmental assessment will continue for a long time in the future as specific development applications are made. An explanation is provided below of both the assessment framework and a chronology of the key events to date in the assessment process. Later chapters consider these key events in more detail.

Council's Executive Planner

- 2.32** In mid 2001 Cessnock City Council commenced a recruitment process for the position of an Executive Planner. The formal position objective of the position was to coordinate and manage the strategic planning and development assessment functions associated with the HEZ and large scale development projects. In August 2001, Council contracted the services of Mr Neil Selmon to take on the role of Executive Planner. The cost of the position was funded via a priority processing arrangement between Council and HEZ Pty Ltd whereby HEZ paid Council an amount of money that covered consultancy costs.²³
- 2.33** A number of witnesses to the inquiry were critical of the nature of the contract under which Mr Selmon was employed. The primary concern was that the contract states that the Executive Planner was to ensure the draft LEP and associated instruments were adopted and gazetted in accordance with the timeline for the project.
- 2.34** Cessnock Council confirmed to the Committee that the specific terms of engagement of the Executive Planner were not reported to Council.²⁴ The General Manager of Council told the Committee that Council unashamedly supported the HEZ project from the outset and that was in fact the reason why Council engaged the Executive Planner. Mr Cowan argued that as Council was not the ultimate consent authority there was nothing improper in the nature of the Executive Planner's contract and that any concern regarding a conflict of interest when the Planner assessed any submissions that objected to the proposed industrial estate was irrelevant.²⁵

²² Mr Colin Cowan, General Manager, Cessnock City Council, Evidence, 16 June 2004, p51.

²³ Mr Colin Cowan, General Manager, Cessnock City Council, Evidence, 16 July 2004, p43.

²⁴ Correspondence, from A/General Manager, Cessnock City Council, to Committee Director, 19 July 2004.

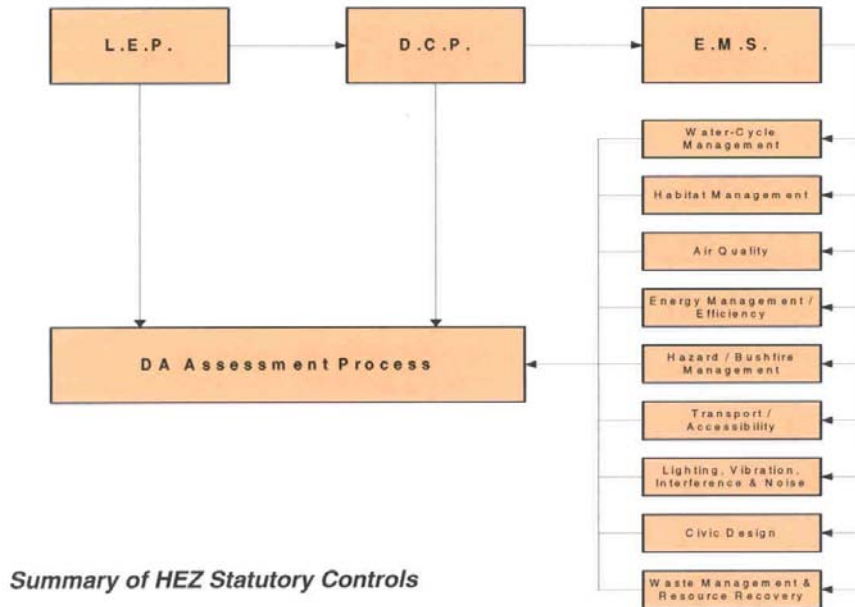
²⁵ Mr Colin Cowan, Cessnock City Council, Evidence, 16 July 2004, p44.

Key Planning Processes²⁶

- 2.35** In the creation of the Hunter Economic Zone the key authority for planning approval was Cessnock City Council, acting through the framework of state planning legislation. Local Environmental Plans (LEPs) prepared by councils guide planning decisions for a local government area. Through zoning and development controls they allow councils to supervise land use, following processes set out in the *Environmental Planning and Assessment Act 1979* (The Act). LEPs must be published in the Government Gazette by the Minister for Planning.
- 2.36** The preparation of a LEP involves a number of steps required by the Act, in particular:
- a. The Council decides to prepare a draft LEP for land within its LGA, and advises the Department of Infrastructure, Planning and Natural Resources (DIPNR, formerly DUAP) of the aims of the draft plan, and whether environmental studies are necessary based on the circumstances (s54 of the Act)
 - b. The Council consults with public authorities or other appropriate persons to formulate the draft plan (s62)
 - c. Council then prepares the draft LEP and submits it to the Director General of DIPNR with a list of those persons and agencies consulted (s64)
 - d. The Director General considers the draft LEP, and whether a certificate should be issued confirming it is suitable for public exhibition under s66 (s65)
 - e. The draft LEP is exhibited for a period of usually 28 days, within which submissions can be made by any person (s66 & 67)
 - f. On the close of submission the Council considers those received and makes any necessary changes to its draft LEP before submitting this and supporting information to the Director General (s68)
 - g. The Director General furnishes a report to the Minister addressing issues of consistency with State and regional planning objectives, public involvement and any other matter the Director General sees fit. This also includes a recommendation as to whether or not the Minister makes the draft LEP(s69).
 - h. The Minister then has the power under s70 to make the plan as submitted, alter the plan based on any issue of State or regional significance, or refuse to make the plan.
- 2.37** Once an LEP has been gazetted by the Minister, the Council becomes the consent authority for development within the LEP. Individual developments must then proceed through a development assessment process and be approved by the Council. Depending on the nature of the individual applications, agency involvement and concurrence may be required. In the case of the Hunter Economic Zone the diagram overleaf demonstrates the development controls which individual projects will need to undergo on the site:

²⁶ Based largely upon Submission 61, Department of Infrastructure, Planning and Natural Resources, pp1-3.

Hunter Economic Zone development controls



Source: Submission 31, HEZ Pty Ltd, p29

Chronology of the Planning Approval Process²⁷

2.38 The LEP for the Hunter Economic Zone was gazetted by the Minister in March 2002. The key events in the lead up to this decision appear in the table below:

Dec 1997	Cessnock City Council and Hunter Economic Development Corporation commission consultants Hassell Pty Ltd to investigate the potential of the Tomalpin site for industrial development.
August 1998	Harper Somers were employed by the Development Team to project manage a rezoning application to Cessnock City Council to rezone for various uses including general and light industrial, rural residential and environment protection. Various studies undertaken, mainly at land owner Duncan Hardie’s expense.
April 1999	Harper Somers presents zoning application to Cessnock City Council, proposing 900 ha general industry, 380 ha light industry, 530 ha environmental protection, 1000 ha forestry and 450 ha rural residential. Also includes link roads to the west and south.
April 1999	First public meeting held at Kurri, discussions with Kurri Kurri Hospital.

²⁷ Chronology is primarily drawn for two similar chronologies prepared by the Department of Infrastructure, Planning and Natural Resources (Submission 61, DIPNR pp6-9), and the developer (Submission 31, HEZ Pty Ltd pp15-26).

May 1999	Council resolves to prepare a draft LEP.
June 1999	Council notifies DUAP under s54 of the Act, initiates consultations with key agencies including Premier's Department, RTA, Hunter Water Corporation, Mine Subsidence Board and NSW National Parks and Wildlife Service.
July 1999	Community advisory panel established by the Development Team to assist Council during the exhibition period for the LEP (disbanded after gazettal of LEP).
Nov 1999	DUAP meets with local groups, including Pelaw Main Residents Group to discuss their concerns.
Jan 2000	Council holds workshop with representatives from NPWS, DUAP, Mineral Resources, Premier's Department, Department of Regional Development and the Development Team.
May 2000	Hunter Economic Development Corporation launches regional economic development strategy (Hunter Advantage Strategy 2000-2002), which includes Hunter Economic Zone as its number one regional priority.
August 2000	Draft LEP delivered to DUAP for preliminary comment. Draft includes requirements to prepare detailed management plans before consents; DUAP requests that areas of rural residential zones be removed from the plan. Council requests s65 certificate.
Sept 2000	Draft LEP certified by DUAP, provides for 1,300 ha of general and light industry and 1350 ha of conservation and national park zones.
Oct 2000	Draft LEP and Development Control Plan put on exhibition for 40 days (exceeding the statutory requirement of 28 days). Public meeting held at Kurri Kurri to discuss proposal; ongoing consultation with government agencies including NPWS.
Nov 2000	Exhibition finishes, 382 submissions received, with 90% containing an objection. NPWS raise nomination of Kurri Sand Swamp Woodland for investigation by Scientific Committee as an issue, Mine Subsidence Board prepare draft mine subsidence district for consultation.
Dec 2000	Preliminary listing of Kurri Sand Swamp Woodland (KSSW) as an endangered ecological community. NPWS provides mapping of KSSW based upon the work of the Scientific Committee.
Jan 2001	DUAP convenes "whole of government" agency meeting with Council to discuss results of exhibition, proposed changes and outstanding issues. Need recognised for new specific conservation zones, increase in buffers to urban areas, review of need for light industrial land, review of southern road link to Elrington.
Jan 2001	RTA formally objects to the draft plan. These concerns were addressed as part of the ongoing consultation process prior to the exhibition of the revised LEP in September 2001.
April 2001	Following complaints from the Development Team, DUAP convenes a meeting to discuss conservation outcomes, particularly riparian zones,

	required by NPWS and Department of Land and Water Conservation. Further discussions held with Premier's Department to assist in timely resolution of outstanding issues.
Jun 2001	Kurri Kurri Swamp Woodland listed as a threatened community.
July 2001	Council prepares revised LEP and DCP with amendments including: reduction of industrial zoning from 1,500 to 900 ha; 4(h) zoning which limits types of industries able to be located and sets out broad environmental objectives for development; provision of buffer zones; protection of significant vegetation, including KSSW, through 7(b) environmental protection zone; removal of road access points at Elrington and Neath; a requirement for a range of environmental management strategies. NPWS supports approach but not proposed route of John Renshaw Drive link road.
Aug 2001	Council formally consults with NPWS under s34A.
Aug 2001	Council engages executive planner with funding provided under an agreement with Hardie Holdings subsidiary to process the rezoning and environmental studies.
Sept 2001	Draft LEP again placed on public exhibition for 28 days and public meeting held at Kurri. 820 submissions received, 85% supporting the revised LEP. Subsequently residents revealed a small number of apparently forged letters of support.
Oct 2001	At request of Council, developer gave commitment to fund the construction of the Pelaw Main by-pass. Council resolves that no development can operate until the John Renshaw Dr link road is in place and funded by developer contributions. Developer subsequently enters deed of agreement with RTA.
Nov 2001	Council resolves to adopt LEP and DCP and forwards it on to DUAP. Request for public hearing deemed not necessary by Council. No in-principle objections to the revised LEP by government agencies. Work on remaining environmental management plans commenced.
Nov 2001	State Forests agrees to transfer part of area to NPWS. This transfer occurs on 1 January 2003.
Feb 2002	DUAP meets with Friends of Tumblebee regarding concerns about the rezoning.
Feb 2002	RTA advises arrangements for road funding are insufficient, suggests clause in LEP to strengthen ability to secure funding. Mindaribba Aboriginal Land Council expresses disappointment to Council re the reduced area of industrial land use zoning.
March 2002	Plan "made" by Minister for Planning and gazetted.

2.39 The gazettal of the LEP signified the end of a five year process that began with the formation of the Development Team and the commissioning of the Hassell report. However the controversy which led to the current inquiry primarily arose from subsequent events with the lodgement of development applications for the stage 1 road, the preparation of an

environmental management strategy and other related events. Many of the objections of opponents of the Hunter Economic Zone, as the Zone is currently proposed, relate back to the process of the LEP and indeed the choice of the site. However, these issues are discussed by the Committee in this report in the context of the difficulties experienced in the relationships between the Council, the Premier's Department and the National Parks and Wildlife Service (NSW) and other agencies.

Chapter 3 **The Premier's Department and economic benefits and costs for the HEZ**

The supporters of the Hunter Economic Zone argue that it provides an opportunity to revitalise a region that has suffered from low employment since the decline in local coal production. The Hunter Economic Zone is an example of how "whole of government" approaches are required to ensure complex projects are able to navigate the various agencies and processes which have a role in NSW. The role of the Premier's Department in the environmental assessment process needs to be understood in this context.

Economic Benefits of the Hunter Economic Zone

Unemployment in the region

- 3.1** The district surrounding the Hunter Economic Zone has been identified as suffering from higher rates of unemployment than the rest of the State. The unemployment rate for the Cessnock LGA in the December quarter of 2003 was 8.1% compared to a NSW rate of 5.8% for the same period.²⁸ Youth unemployment was said by the Chamber of Commerce to be somewhere in the vicinity of 27-30% in actual terms, although not necessarily reflected in official figures.²⁹
- 3.2** The only significant employer in the district is the aluminium industry, with a smelter at Kurri. The closure of textile industries in the 1990s, and the shutdown of BHP in Newcastle in 1999 has hit the area in several ways, with other services leaving the town:

The township of Kurri Kurri today has no banks. Not much more than 10 years ago Kurri Kurri had the State Bank, the St George Bank, the Commonwealth Bank and Westpac. The State Bank opened in Kurri Kurri because we knew the manager and he gained the payroll from the textile industry. The textile industry payroll was valued at \$20 million. When the textile industry closed in Kurri Kurri, the State Bank walked out and left the teller machine, and so did the St George Bank. We lost two banks immediately, just on the textile industry closure.³⁰

- 3.3** It was claimed during the inquiry that the skill base of the workforce of the district also created problems in fitting in to the new growth industries of tourism and viticulture:

This whole area has a history of coalmining, and coalminers have different needs. They have different training skills and things like that. I spent nine years in the underground coalmines myself so I am pretty familiar with the way coalminers think and with what their work requirements are. We have vineyards in this area that are

²⁸ Submission 31, HEZ Pty Ltd, p5 (quoting Federal Department of Employment and Workplace Relations).

²⁹ Mr Rodney Doherty, Secretary, Kurri Kurri Chamber of Commerce and Industry Inc, Evidence, 16 June 2004 p38.

³⁰ Mr Doherty, Evidence, 16 June 2004, p39.

firing pretty well but you just cannot assimilate these coalminers into the tourism industry; they just do not fit. What they assimilate into quite easily is the larger scale industry. When we had mechanisation come into the mining industry back in the mid-fifties, there were a lot of displaced coalminers, but BHP at the time was able to accommodate them because they had industrial skills and they fitted into BHP quite readily. But of course those jobs have gone now too; BHP has closed down. We are still left with quite a coalmining legacy of, if you like, the mentality of coalminers to be quite crude and things like that. They can assimilate into the manufacturing-type industries, so that is what we are looking for—the larger-scale manufacturing industries.³¹

Economic development in the region

- 3.4** Three groups have consistently championed in public the formation of the Hunter Economic Zone since the early 1990s: the Kurri Kurri Chamber of Commerce; the owner of the land, Hardie Holdings, and Cessnock City Council.³² Their reasons for support are diverse but all three believe that the development will bring economic benefits, particularly employment, to the lower Hunter region.
- 3.5** The developer of the land, HEZ Pty Ltd, commissioned a consultant, Econtech, to model the economic benefits of the Zone. The consultant made the following findings based upon its research:
- To develop the site will require \$2.2 billion of capital investment.
 - 14,466 people will be directly employed by business locating at HEZ, equivalent to 6.6% of the employment in the Hunter Valley.
 - Through spending by businesses in the Zone and their employees, an additional 12,170 jobs will be indirectly created in the Hunter Valley.
 - Both directly and indirectly \$3.3 billion will be added to annual turnover in the Hunter Valley.³³
- 3.6** In its submission to the inquiry the Chamber of Commerce argued that the zone provided the opportunity for economic development for the district on a scale not seen since the establishment of the coal mines 100 years ago.³⁴ While not necessarily as optimistic as HEZ's consultant in regard to 15,000 jobs, representatives of the Chamber of Commerce believe that there would be major employment benefits:

Let us not go down the track of thinking that another BHP is going to be built on HEZ. Heavy industry in Newcastle created about 15,000 jobs, at BHP, Tubemakers and Lysaghts. That heavy industry, which has a two-to-one multiplier, was looking at

³¹ Mr Toby Thomas, President Kurri Kurri Chamber of Commerce and Industry Inc, Evidence, 16 June 2004 p36.

³² The Committee would also acknowledge that groups such as the Mindaribba Aboriginal Land Council have also provided consistent support, and that the inquiry also received 11 submissions from local individuals and organisations indicating support for the proposed development.

³³ Submission 31, HEZ Pty Ltd, Annexure E

³⁴ Submission 1, Kurri Kurri Chamber of Commerce p1.

45,000 to 50,000 jobs in Newcastle. When BHP shut, the focus was on BHP; the focus was not on the other 6,000 to 10,000 contractors who lost their work life as a result of the BHP closure. When the Alcan smelter came to Kurri Kurri, it was a stand-alone unit of 22,000 tonnes per annum. It is a 165,000 tonnes per annum plant, and hopefully it will go to 200,000-odd tonnes. When it came to town, it created employment for upwards of 1,500 people through contract services provided to the plant. If a large industry—I do not like the term "heavy industry"—comes to HEZ, I would guarantee you that the multiplier effect would be at least two to one.³⁵

- 3.7** A particular reason for supporting the development was the belief that the type of jobs it would bring to the area – permanent, relatively high paying jobs rather than the casual, lower wage jobs often created by tourism or in parts of the wine industry:

Industry generally employs long-term people. We should be looking at jobs where people have a lifespan or a turnover of, say, three to five years before they want to move onto another job or another lifestyle job. What we are not getting now in the Hunter region in particular in this area is continuity of employment. With that lack of continuity of employment is also a fairly significant downsizing of the salary base.

I enjoy tourism. I enjoy going to vineyards also. But when you start talking to people out there and you talk to people in the industry, their wages are quite low. Sometimes they are holding down two and three jobs to make a reasonable living. When you look at a person who is working, say, at the smelter or in the coal industry currently, coal industry jobs are paying somewhere in the vicinity of \$60,000 to \$80,000 per annum and they are permanent jobs.³⁶

- 3.8** In their submission to the inquiry HEZ Pty Ltd state that when rezoning the land the (then) Minister for Planning said that when fully developed the HEZ site would have up to 15,000 jobs located there.³⁷ When speaking in Parliament to his announcement of the rezoning Minister Refshauge stated that it would kick-start some 10,000 new jobs, he went on to say that several investors had already expressed interest, including a \$300 million enterprise with the potential of some 240 jobs.³⁸ The estimated figure of at least 10,000 jobs (over twenty years) was also cited in the HEZ InSite newsletter.³⁹

- 3.9** In response to the argument that the job-creating potential of the HEZ has been over-stated, the General Manager of Hardie Holdings, in evidence, told the Committee that HEZ was currently in detailed discussions with six users representing investment of \$410 million and 290 jobs:

Without revealing the commercially confidential nature of those discussions, one of them is a large rubber recycling plant which is an investment of approximately \$250 million involving 150 jobs; another is a precast panel manufacturer which represents a \$50 million investment and 50 jobs; another is a mixed industry facility representing 35 jobs and \$25 million; another is a hub and spoke distribution centre representing

³⁵ Mr Doherty, Kurri Kurri Chamber of Commerce, Evidence, 16 June 2004 p40.

³⁶ Mr Doherty, Evidence, 16 June 2004 p37.

³⁷ Submission 31, HEZ Pty Ltd, p9.

³⁸ Legislative Assembly, New South Wales, *Hansard*, 21 March 2002, p989.

³⁹ HEZ Insite, Issue One November 2003, p3.

25 jobs and an investment worth \$60 million; and another is a major heavy vehicle manufacturing plant with about 20 to 30 jobs and a \$25 million investment. There are industries that are ready to come to the HEZ, Mr Chairman.⁴⁰

- 3.10** The Committee received a commercial-in-confidence submission from a company that intends to purchase a site which in part confirms the statements of the General Manager of Hardie Holdings.

Mindaribba Local Aboriginal Land Council

- 3.11** The Committee heard evidence and received a submission from executive representatives of the Mindaribba Local Aboriginal Land Council (MLALC). The MLALC is strongly in favour of the HEZ development as it represents a real opportunity for its membership to achieve economic independence.
- 3.12** The Council's core operation is the acquisition and claim of Crown Land under the Land Rights Act of 1983. MLALC was successful in its land claim for approximately 200 hectares of land. That land is within the 4(h) zone of the HEZ.
- 3.13** As a result MLALC is a joint landowner in the HEZ project, owning approximately 23 per cent of the developable land. MLALC advised that it has been extensively involved in the project since 1997 both pre and post the rezoning. However, in their evidence and submission the MLALC representatives suggested that in future it would be worthwhile to have, as a matter of course, a representative from the NSW Aboriginal Lands Council present at any meetings about a whole of government approach to rezoning/approvals of relevant land.⁴¹
- 3.14** The Committee was advised that over the years of the HEZ project, trust has been built between MLALC and Hardie Holdings. MLALC has now reached a heads of agreement that will see HEZ Nominees (on behalf of Hardie Holdings) develop MLALC land on their behalf. This heads of agreement is to go to the membership of the MLALC for ratification, and then to the NSW Land Council for final sign-off.
- 3.15** At the time of giving evidence the details of the arrangement between the MLALC and HEZ Nominees had not been finalised and the MLALC had not yet decided whether it would sell or lease the land.⁴² The Committee was advised that under the Land Rights Act any such agreement can not be signed off on until it has been put to the members and then forwarded to the State Lands Council and that the agreement must demonstrate that it is of benefit to the community.⁴³
- 3.16** In evidence to the Committee the MLALC Manager indicated that when the final arrangement is put to the members for ratification the details will be informally disseminated to all members notwithstanding how many are present at the meeting:

⁴⁰ Mr Mathew Somers, General Manager, Hardie Holdings, Evidence, 16 June 2004, p57.

⁴¹ Mr Gordon Griffiths, Manager, MLALC, Evidence, 2 July 2004, p58; Submission 62, p2.

⁴² Ms Tamara Macdonald, Secretary, MLALC, Evidence, 2 July 2004, p58.

⁴³ Mr Rick Griffiths, East Zone Commissioner, NSW, Aboriginal and Torres Strait Islander Commission, Evidence, 2 July 2004, p57.

If you go to the meeting and do that, it does not matter how many turn up there, the 250 members know the next day what it is. We have relatives all over New South Wales and further afield. Within two days the grapevine is that good that every black fella knows what the outcome of the deal was. But that is openness and transparency. That ensures that members know what is happening all the time.⁴⁴

- 3.17** As part of the rezoning process the MLALC conceded three hectares of its land to the 7(b) habitat conservation zone. The MLALC currently has a claim on some 400 hectares of Crown Land that is also within the HEZ site but zoned 7(b). The MLALC have expressed their disappointment at this outcome of the rezoning, as, if their claim is successful, this large area of land will no longer be able to economically enhance its peoples' future.
- 3.18** Mr Rick Griffiths told the Committee that the MLALC had checked with one of their members who was an elder of the community from the Wanaruah nation, and, that on the elder's advice, there was no knowledge of any traditional connection to the land that would restrict development of the 4(h) lands.⁴⁵ The MLALC is vehemently opposed to any proposals to reduce the amount of land zoned 4(h) as an anathema to its people and their hopes for the future.⁴⁶
- 3.19** The Committee notes that the MLALC advised in its submission to the inquiry that the heads of agreement developed between MLALC and HEZ Nominees will go to the entire membership of MLALC for ratification, prior to being forwarded to the NSW Land Council for final sign-off.⁴⁷

Economic benefits - conclusion

- 3.20** Given the long time required for the full utilisation of the HEZ site, it is far too early to tell if the projections for employment were overly optimistic. It is obvious that HEZ is attractive to industries and that significant capital investment dollar amounts are already involved.
- 3.21** As is discussed in the next section the threshold that the developer must surpass in order to realise a return on its infrastructure investment is determined by the dollars received for the purchase or lease of lot sites.

Economic Costs

- 3.22** The main costs or disadvantages to the development of the site lie in the area of ecology and the potential impact on flora and fauna, and these are considered in later chapters. However there are economic costs to any development, including the Hunter Economic Zone. There is little opportunity cost in developing the land, as it is currently not put to any economic use and there is still the potential to use the closed coal mines on the site under the new zoning. However to make the area suitable for industrial development certain infrastructure is

⁴⁴ Mr Gordon Griffiths, Evidence, 2 July 2004, p57.

⁴⁵ Mr Rick Griffiths, Evidence, 2 July 2004, p56.

⁴⁶ Submission 62, MLALC, p2.

⁴⁷ Submission 62, MLALC, p2.

required. The two issues that were explored at some length in the inquiry were the funding of road infrastructure and the need for adequate water supplies to support the development.

Road Infrastructure

- 3.23** The proposed Hunter Economic Zone is predicted by the Roads and Traffic Authority (RTA) to be a significant traffic generator. As referred to in the chronology in the previous chapter, the RTA initially made a formal objection to the LEP under s62 of the *Environmental Planning and Assessment Act 1979* on the basis that there needed to be a commitment by the developer to fund road infrastructure to a level to maintain pre-development levels of service in terms of traffic flow and safety.⁴⁸
- 3.24** The LEP finally approved by the Minister for planning incorporated the RTA requirements which were agreed to by the developer as a condition for the RTA withdrawing its objection. To enable these requirements to be met, HEZ has been asked to prepare a traffic/transport study in consultation with the RTA and Cessnock City Council which would assist in identifying works required on the RTA managed road network. In its submission the RTA advised the Committee that:

So far the RTA has received two draft traffic impact reports from the proponent: *Hunter Employment Zone Traffic Impact Assessment – Draft Final Report*, and *Hunter Economic Zone Transport and Accessibility Environmental Management Strategy – Final Draft Report*. However these reports are insufficient and the purposes outlined above and require attention by the proponent...RTA has confirmed with Council and the proponent that it is not in position to approve any works or give concurrence to works on the classified roads [Mulbring Road and John Renshaw Drive] until the proponent provides the required traffic information and an agreed contributions plan is completed. Council is in the process of preparing a developer contribution plan and the traffic information is required to identify works to be included in the plan.⁴⁹

- 3.25** When questioned on this issue by a Committee member, the Regional Manager of the Hunter for the RTA stated:

I am not in a position to go into detail, but there needs to be sufficient information so that the time frame, or the infrastructure needs under various time frames, can be identified. There needs to be a little bit more work done to identify the time frame of the infrastructure needs so that then a funding scenario can be developed.⁵⁰

- 3.26** The Committee did not pursue this issue further. The main concerns regarding the roads issue relate to the environmental issues discussed in later chapters.

⁴⁸ Submission 27, Roads and Traffic Authority, p2.

⁴⁹ Submission 27, Roads and Traffic Authority, p3.

⁵⁰ Mr Robert Sharpe, Regional Manager – Hunter, RTA, Evidence, 16 June 2004 p29.

Water

- 3.27** In their criticism of the selection of the Tomalpin site as an appropriate location for industrial development the Friends of Tumblebee raised the issue of the difficulty of supply and servicing of water and waste-water:

At a very early stage it became clear that the site is difficult to service with water and waste-water. In response to community concerns a study was commissioned from PPK to assess waste-water options from the site. This report concluded 'dry' industries locating in Tomalpin would produce approximately 18,000 EP⁵¹ and that the Kurri Treatment Plant had maximum spare capacity of 4000 EP which would be consumed by natural growth of the Kurri residential population. Environmental concerns would preclude further discharge into Swamp/Fisheries creek.⁵²

- 3.28** Hunter Water is a State Owned Corporation that provides water and waste-water services to the lower Hunter region. In servicing existing and future customers it must comply with the environmental and customer standards outlined in its regulatory framework. Hunter Water had no role in commenting on the merits of the HEZ or the rezoning process. Its role has and continues to be to provide comment with respect to the availability and provision of water and waste-water services and to advise of the requirements that need to be met in order for the development to connect to Hunter Water's infrastructure.⁵³

- 3.29** Hunter Water provided comments on the proposed rezoning prior to the gazettal of the LEP in March 2002. Hunter Water indicated that waste-water treatment was the major issue for the development given its size and location. Hunter Water also indicated that it had available capacity at its Kurri waste-water treatment plant to service the initial stages of HEZ, equivalent to that required to service a population of 3,500 people (ie. 3,500 EP).

- 3.30** At that time representatives of HEZ advised Hunter Water that the ultimate capacity of the development was approximately 18,000 EP based on dry industries. The latest information provided by HEZ representatives to Hunter Water indicates that the ultimate capacity of the development is now estimated to be approximately 37,000 EP, which equates to approximately 8.9 megalitres per day average dry weather flow.⁵⁴

- 3.31** Officers representing Hunter Water were asked if from their perspective there was any restriction on the type of industry that would be able to operate from the HEZ site:

The real issue in terms of capacity from our perspective would be that whatever the developer puts up, as with any other developer, we will then have to look at the options to service it. Our role is not to constrain or otherwise development, it is to look at what development is put in front of us when the land use authorities actually determine that something is going to go ahead and work out the optimal way of

⁵¹ A commonly accepted conversion for EP capacity is 240 litres per EP per day of average dry weather flow. 18,000 EP equates to 4.32 megalitres usage per day average dry weather flow.

⁵² Submission 28, Friends of Tumblebee, p17.

⁵³ Submission 24, Hunter Water Corporation, p1.

⁵⁴ Correspondence from Mr Greg Bone, Planning Engineer, Hunter Water, to Committee Director, 19 July 2004.

actually servicing that. Ultimately, if it requires 18,000 or 30,000 or 40,000 EP-type capacity, the developer would fund the required infrastructure.⁵⁵

- 3.32** Similarly, when asked whether there were any technical difficulties with providing a potable water supply system and network management strategy for a development the size of HEZ, Hunter Water representatives told the Committee that when the quality of the effluent discharge becomes an issue that it then becomes a matter of dollars:

You can polish an effluent to potable water standard if you want to and, depending on what standards are imposed on the development, ultimately the developer will have to fund it. It is up to him to then make the choice as to whether he wants to.⁵⁶

- 3.33** Hunter Water advised HEZ that the initial stages of the development, equivalent to 3500 EP could be serviced at the Kurri Kurri Treatment plant. This would absorb the plant's available EP capacity that was set aside for larger developments. Hunter Water told the Committee that options to treat waste-water from the remainder of HEZ would need to be considered and would require technical and environmental assessment. Any proposed strategy would need to go through a formal environmental impact statement process.

- 3.34** Hunter Water's view is that there is a likelihood of high treatment standards and/or effluent reuse conditions being imposed on the development and they have consistently provided that advice to ensure there was a full appreciation of the potential costs:

Broadly we have flagged right from day one that there will be some major water infrastructure upgrade requirements and that still stands. I guess with regard to waste water, given our own experiences with the upgrade that we have done just recently to the Kurri facility, and as an inland works it was taken to a tertiary treatment level, we flagged to the developer that any requirement for waste water treatment would probably have a high effluent quality standard applied and that they needed to be aware of that. Again, that was from pretty much day one and that is still the case today.⁵⁷

- 3.35** A longer-term waste-water treatment strategy for the remainder of HEZ has not yet been determined. Hunter Water has commenced a regional waste-water treatment strategy study to assess options to service future growth in the Kurri Kurri area, including HEZ and other potential large developments. Hunter Water advised that the study will consider the augmentation of the Kurri Kurri and Farley plants and the option of a new treatment plant. The first step in this process is the completion of a desktop regional strategy, the completion date for which is the end of 2004.

- 3.36** Any longer term strategy and associated works that may be proposed would be assessed through the environmental planning process, including consultation with the community, regulators and other stakeholders. A determination on the issue of effluent disposal to the inland creek system would arise out of this process. Hunter Water further advised that any

⁵⁵ Mr Russell Pascoe, Manager, Planning & Development, Hunter Water Corporation, Evidence, 16 June 2004, p14.

⁵⁶ Mr Pascoe, Hunter Water Corporation, Evidence, 16 June 2004, p16.

⁵⁷ Mr Pascoe, Hunter Water Corporation, Evidence, 16 June 2004, p17.

such works would be licensed by the Department of Environment and Conservation to ensure environmental sustainability, which is an important priority for Hunter Water.⁵⁸

- 3.37** The creek system which runs through the 4(h) zoned land has been acknowledged as being of ecological importance by all parties. This riparian environment was accordingly zoned 7(b) environment protection. In June 2001 the Department of Land & Water Conservation requested that the riparian conservation zone extend 100 metres either side of the main creek line as opposed to 20 metres either side as required under the *Rivers and Foreshores Act*.⁵⁹ HEZ agreed to widen the riparian zone from 40 metres wide to 200 metres wide in order to further improve ecological outcomes.⁶⁰
- 3.38** Given the agreed importance of maintaining as much habitat as possible within the 4(h) zoned land the Committee is of the view that those sections of habitat that are preserved should be afforded the maximum protection from further degradation.
- 3.39** The Committee was advised that Hunter Water have stipulated that the HEZ can not connect to any of the Hunter Water systems until the desktop regional strategy has been completed. At that stage Hunter Water would then be able to specify the developer charges that will apply for the development.⁶¹
- 3.40** The Committee heard that Hunter Water did not make any concessions to the developer HEZ Pty Ltd in terms of their approval process. Hunter Water requested the developer to prepare a whole-of-site water servicing plan. Hunter Water will assess this plan in the context of the regional strategy, and then provide comments and amendments as required. HEZ Pty Ltd did request that Hunter Water consider changes in the design standard for waste-water. Hunter Water did not agree to this request.⁶²
- 3.41** Ultimately Hunter Water will provide the developer with a notice of requirements. HEZ Pty Ltd will have to comply with that notice before Hunter Water will issue a section 50 certificate. It is at that time that the HEZ site can connect to the water supply system.

Conclusion: the need to recover infrastructure costs

- 3.42** It is apparent that there is significant infrastructure costs associated with the development of the HEZ site. Opponents of the current development have suggested that a workable compromise would be to reduce the size of the 4(h) development zone to 200 hectares with the remainder being preserved for conservation. The General Manager of Hardie Holdings advised the Committee that this was not economically possible:

The cost of providing the infrastructure into this development – road, rail, water, sewer and power – is such that you will not get a return at 200 hectares. Two hundred

⁵⁸ Submission 24, Hunter Water Corporation, p2.

⁵⁹ Submission 31, HEZ Pty Ltd, p17.

⁶⁰ Submission 31, HEZ Pty Ltd, p28.

⁶¹ Mr Pascoe, Hunter Water Corporation, Evidence, 16 June 2004, p18.

⁶² Mr Pascoe, Hunter Water Corporation, Evidence, 16 June 2004, p20.

hectares will not cut it; you just cannot do it. There is no return at 200 hectares. It needs to be the size it is to be viable.⁶³

3.43 In their submission HEZ Pty Ltd states that it has, to date, expended over \$7 million on the HEZ project and plans to spend a total of \$35 million on necessary infrastructure, further ecological work, and marketing over the next three year – all with no return on investment to date.⁶⁴ The submission goes on to state that there are more than fifty companies interested in locating on the developable HEZ land, and that stage one of the project comprising 170 hectares is available for sale now. It further expected that all major roads and services will be available to stage one users by mid 2005.

3.44 In evidence, the Director General of the Premier's Department put forward the view that any argument on what the optimal viable size of the developable land may be is largely irrelevant:

It is not a matter of accepting the developer's word [that 200 hectares would not be viable]. That was the amount that was allowed under the zoning proposal.⁶⁵

Whole of government approaches

3.45 The establishment of the Hunter Economic Zone in March 2002 has been the result of a whole of government approach to the approvals process for the rezoning of the land. This whole of government approach was facilitated by the Premier's Department, primarily via the involvement of the Regional Coordinator, Hunter and Central Coast. The Premier's Department was also involved in coordination of the various government departments in various issues post the rezoning. Again, this was facilitated by the Regional Coordinator and also included the direct intervention of the Director General.

3.46 This section provides a brief overview of the role of the Premier's Department in facilitating whole of government approaches in order to achieve sustainable social, economic and environmental benefits for regional and rural areas. It also provides a brief overview of the background that led to the direct involvement of the Director General.

Regional Coordination Program⁶⁶

3.47 In 1994 a two-year pilot Regional Coordination Program commenced in Dubbo, covering the Western Region, and Lismore, covering the North Coast Region. The program was led by the Premier's Department and was intended to enhance government responses to issues impacting upon rural and regional communities. In 1997 the program was extended to cover a number of other regions.

3.48 There are now ten regions serviced by the program across New South Wales. There are eight Regional coordinators in regional/rural areas. In each region there is a Regional Coordination

⁶³ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p58.

⁶⁴ Submission 31, HEZ Pty Ltd, p8

⁶⁵ Dr Col Gellatly, Director General, Premier's Department, Evidence, 2 July 2004, p6.

⁶⁶ The description of the Regional Coordination Program and of the Coordinator General's role in New South Wales is drawn from Submission 32, Premier's Department NSW.

Management Group that is comprised of representatives of agencies with responsibilities within the region. This group is supported by the Regional Coordinator who is an officer from the Premier's Department.

- 3.49** The program operates at a number of levels to facilitate a coordinated regional service delivery system. At its most basic, effective coordination comes about as 'informal' outcome of the Regional Coordinator's role as a central point of information exchange between agencies. At a more formal level, the Regional Coordination Management Group, through its Strategic Management Framework, adopts a systematic and focussed cycle of collaborative planning. At the regional agency cluster level, this approach has the potential to become increasingly focussed and detailed.
- 3.50** The Regional Coordinators act as regional catalysts, providing project support, leadership and coordination. They do not replicate the work of line agencies but work as enhancers to better focus services provided by a range of agencies to meet local needs and provide demonstrable benefits for communities.
- 3.51** State Government agencies are the operational core of the program. The participation of local councils, Commonwealth Government agencies, non-government organisations and business and other community stakeholders is actively promoted.
- 3.52** The program aims to:
- Achieve sustainable social, economic and environmental benefits for regional and rural areas by leading collaboration between government agencies and communities.
 - Enhance government services by coordinating service delivery in ways that better meet the needs of regional communities and making the best use of government resources.

The Coordinator General's role in New South Wales

- 3.53** In addition to the role of the program in ensuring whole of government solutions at the regional level, the Premier has designated the role of Coordinator General to the Director General of Premier's Department. The role of the Coordinator General was established to ensure that there is a coordinated approach to the facilitation of major investment projects or issues in New South Wales that involve a number of agencies.
- 3.54** The adoption of a whole of government approach to major investment projects signal to the community, particularly business and to potential investors, that there was a central point of contact within government for the management of issues and the achievement of an integrated response by State agencies.
- 3.55** The importance of a central coordinating role in government was reinforced by the decision to nominate the Director General of Premier's Department as the first point of contact for unsolicited privately financed projects. The New South Wales Government's "Working with Government – Guidelines for Privately Funded Projects" identifies the Director General of the Premier's Department as the officer who, on behalf of the Government, will advise proponents of:
- The applicability of the PFP guidelines to their proposal.

- Additional information required to facilitate further consideration.
- The process and timetable for preliminary assessment.

3.56 The provision of timely, efficient, cross-agency coordination is an important role that must be effective if New South Wales is to realise opportunities for new investment and job creation, particularly in regional areas.

When did the Regional Coordinator become involved?

3.57 The Director General of the Premier's Department was asked whether he was satisfied that his department had exercised balanced judgement in facilitating this project from day one given that the Hunter representative of the Premier's Department was apparently personally involved in choosing the location without studying an alternative site. The Director General asserted, in evidence, that the Regional Coordinator commenced his involvement after the site had been selected:

Dr GELLATLY:...He was not involved in the process of choosing the site. In 1997 the council had identified the site already. I think a committee was set up in the Hunter Valley. Ben Chard was not part of that. The council asked him, and the process started formally in 1998 because there were a lot of agencies involved – even in the process of setting up the national park. I think Forestry has some issues about that. Ben Chard was asked by Cessnock Council to get involved and to work on this project. The context in which he is involved is exactly the way in which I would expect the regional coordinator to operate: he was asked by the local government body to facilitate and work with the council and other agencies across government.

CHAIR: So this entire development emanated originally from suggestions or recommendations made by Cessnock Council.

Dr GELLATLY: That is my understanding. I also understand that a committee was set up in the Hunter Valley. That is my understanding of the situation.⁶⁷

3.58 However, the Director General's assertion the Regional Coordinator, Mr Ben Chard, was not involved in the selection of the Tomalpin site contradicts earlier evidence given to the Committee by the president of the Kurri Kurri Chamber of Commerce and Industry, Mr Toby Thomas.

3.59 Mr Thomas was the chair of the the Industrial Land Working Party.⁶⁸ This was one of the six working parties that sat under the Hunter Valley Wine Country Development Employment Team (the Development Team), which had been formed in mid 1996 to drive the City of Cessnock strategy document.

3.60 Mr Thomas told the Committee that the objective of the working party was to look at what land was available within the Cessnock LGA to put together a large-scale business park. During the public hearing on 16 June 2004 Mr Thomas was asked who was involved in the

⁶⁷ Evidence, 2 July 2004, p3.

⁶⁸ A membership list of the Industrial Land Working Party and of the other working parties of the HVWCDET was tabled to the Committee on 16 June 2004 by Mr Thomas. The Regional Coordinator of the Premier's Department is not a listed member of the working party.

original selection of Tomalpin as the investigation site for such a development. Mr Thomas told the Committee that he believed the area had been looked at by the State Government prior to the formation of his working party, he then tabled the minutes of the working party meeting held on 2 August 1996 at which the site selection was made.⁶⁹

Present at that particular meeting were myself as chairperson, Ben Chard, Ian Mcleod who was the Land Manager for Coal and Allied, and Bruce Anschau who was the Economic Development Manager at Cessnock council. Also in attendance were Steve Edmunds from Maitland City Council and Bernie Mortomore from Cessnock City Council. We looked at three possible sites to establish this industrial park, one of which was the site where the old Aberdare North Coal Mine used to be on the right-hand side leading into Cessnock, the other was the area surrounding John Brown's Lagoon and the third one is where the industrial park is now going. There was not any rocket science involved, but you just had to have a look at the three different sites to realise that the one that shone out above the other two was the HEZ land.⁷⁰

- 3.61** The Committee accepts the view that the Director General of the Premier's Department did not intend to mislead the Committee with respect to his comments regarding the timing of the involvement of the regional coordinator. The events on which he was asked to comment and to which he was not a direct party occurred more than seven years earlier; while he only became directly involved in the Tomalpin issue five years after that event.
- 3.62** The Committee notes that the Premier's Department does appear to have been directly involved in the selection process for the HEZ site. As such the question asked of the Director General by the Chair in evidence effectively remains unanswered.

Why did the Director General intervene?

- 3.63** In submission to the inquiry the Director General of the Premier's Department provided an overview of and rationale for his intervention in resolving the apparent conflict between the developer and the NPWS:

The Premier's Department facilitated this [rezoning approvals] process through a whole of government approach which is often essential for major or significant economic or social issues impacting on the State.

Following the rezoning of the Tomalpin estate HEZ Pty Ltd commenced discussions with Cessnock City Council in respect of infrastructure for the site.

Premier's Department were first alerted to problems with HEZ's plans at a meeting between Cessnock Council, HEZ management and a Premier's Department officer in mid 2002. The basis of the dispute was a claim that NPWS was providing conflicting advice as to the development of the zone.

Due to the apparent continuing difference of opinion between HEZ and NPWS, the Director General of Premier's Department wrote to the Director General of NPWS on 12 November 2002 requesting clarification of the issue. This was undertaken in the

⁶⁹ *Minutes of the Hunter Valley Wine Country Development and Employment Team – Industrial Land Working Party, Meeting Held in the Offices of T G Thomas & Associates, on August 2 1996 commencing at 8.30am.* Tabled by Mr Toby Thomas, 16 June 2004.

⁷⁰ Mr Thomas, Evidence, 16 June 2004, p35.

capacity as Coordinator General as there was a concern that the State might lose a potential new industrial zone due to misunderstandings and what appeared to be communication difficulties between the parties.

Discussions with NPWS and the subsequent formal response from that agency on 30 December 2002 confirmed that misunderstandings had resulted in the contrary positions apparently adopted by the parties.

There was no further action on this matter by Premier's Department following receipt of this correspondence. Such correspondence was taken well after the terms and conditions for the development were confirmed.

The Director General of the Premier's Department via the Regional Coordination Program, the role of the Coordinator General and the procedures for privately financed projects in NSW has a very clear role in providing whole of government leadership. Importantly, this role does not include any over-riding of the approval processes of Ministers and/or their delegates.

The actions of the Director General and officers of the Premier's Department are in accord with the Coordinator General role designated by the Premier to the Director General and the Regional Coordination Program in NSW. This role requires the Director General to act in the best interests of the State to ensure that there is a consistent approach to the facilitation and management of major projects or issues in this State. It would have been negligent of Premier's Department not to have acted as it did in this matter by addressing the issues raised by HEZ and Cessnock City Council with NPWS.⁷¹

Recommendation 1

That the actions of the Director General of the Premier's Department in corresponding with the National Parks and Wildlife Service were proper and in accord with his role as Coordinator General of the Regional Coordination Program. When acting in this role in the future, the Director General should be mindful of any potential for misinterpretation of requests for cooperation by other government agencies.

Conclusion

- 3.64** Clearly there are major potential economic benefits to the HEZ development, and, as with any major project, there are significant infrastructure costs. In particular, road infrastructure and water services have been identified as future areas where negotiation between the developer and government agencies is required. It is important that the Premier's Department takes its whole of government approach to ensure an optimal outcome to NSW residents. The site has the potential to generate employment for NSW residents. The whole of government approach needs to balance both interests in the continued promotion of the site by the Premier's Department.

⁷¹ Submission 32, Premier's Department NSW, pp6-7.

3.65 Chapter Five contains a detailed examination of the interactions between the Premier's Department and other agencies and organisations with respect to the post-rezoning environmental assessment process for the Tomalpin site.

Chapter 4 **Protection of threatened species within the HEZ site**

This chapter examines the legislative requirements placed on local councils and the National Parks and Wildlife Service (NPWS) when zoning land and assessing development applications (DAs), particularly as they affect biodiversity. The principal requirements in respect of environmental planning and assessment are set out in the *Environmental Planning and Assessment Act 1979* (EP&A Act). During the inquiry, a number of concerns were raised in relation to the environmental planning and assessment process relating to the HEZ development at the Tomalpin site, given the identification of at least 29 threatened species and two endangered ecological communities. In particular, concerns were raised whether NPWS fulfilled its statutory obligations under the EP&A Act and other acts, and, if not, whether this was the result of intervention by the Premier's Department.

The local council planning framework governing land use and biodiversity

4.1 The EP&A Act establishes several major functions for local councils with respect to environmental planning and assessment. Of particular note in the context of this inquiry are the following functions:

- The preparation of LEPs under Part 3 of the Act.
- The assessment and determination of DAs under Part 4 of the Act.

4.2 When preparing LEPs, local council must seek to preserve threatened species, populations and ecological communities, and in doing so may be required to seek the views of the Director-General of the NPWS. When assessing DAs, local councils must determine whether the land in question is critical habitat or is likely to significantly affect threatened species, populations or ecological communities. If that is the case, the council may only approve the DA with the explicit concurrence of the Director-General of NPWS or the Minister administering the *Threatened Species Conservation Act 1995*.

Part 3 Local Environmental Plans

4.3 Part 3 of the EP&A Act establishes the framework for the regulation of land use in NSW, including through LEPs. LEPs are prepared by local councils, and are used to guide planning decisions, usually through the allocation of the area they cover into 'zones' such as residential, industrial and commercial zones.

4.4 LEPs may affect biodiversity and habitat conservation. Accordingly, s.26(1) of the EP&A Act indicates that LEPs may make provision for or with respect to any of the following:

- (e) protecting or preserving trees or vegetation,
- (e1) protecting and conserving native animals and plants, including threatened species, populations and ecological communities, and their habitats,

(f) controlling any act, matter or thing for or with respect to which provision may be made under paragraph (a)⁷² or (e)

4.5 Under the EP&A Act, “threatened species”, “populations and ecological communities” and “population or ecological community” have the same meaning as in the *Threatened Species Conservation Act 1995*.

4.6 Importantly, s.34A of the EP&A Act requires a local council to consult with the Director General of NPWS if the council believes that critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft LEP. Section 34A states in part:

(2) A council must consult with the Director-General of National Parks and Wildlife before preparing:

- (a) an environmental study, or
- (b) a draft local environmental plan,

if, in the opinion of the council, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the environmental study or draft plan.

(3) For the purpose of the consultation, the Director-General of the Department of Urban Affairs and Planning or the council must provide the following information to the Director-General of National Parks and Wildlife:

- (a) the reasons for deciding to prepare the draft environmental planning instrument or the environmental study,
- (b) the proposed aims, objectives, policies and strategies whereby the draft instrument is designed to achieve any of the objects of this Act,
- (c) a description of the land to which the draft instrument or the study is intended to apply,
- (d) the types of matters to be dealt with in the draft instrument or the study.

(4) For the purposes of the consultation, the Director-General of the Department of Urban Affairs and Planning or the council may provide any other information that, in the Director-General’s or council’s opinion, would assist in understanding the draft environmental planning instrument or the environmental study.

4.7 In turn, s.34A(5) of the EP&A Act provides that the Director-General of NPWS may comment to the Director-General of the Department of Urban Affairs and Planning or the council on the preparation of the draft environmental planning instrument or the environmental study within 40 days.

4.8 After consideration of the comments made by NPWS, the obligation on a local council to consult with the Director-General of NPWS is complete under part 3 of the EP&A Act.

⁷² Paragraph (a) refers to protecting, improving or utilising, to the best advantage, the environment.

- 4.9 Finally, the Committee notes that s.51A of the Act deals with the development of Development Control Plans (DCPs) for a site. Under s.51A(1), the Director-General may prepare a DCP, or cause such a plan to be prepared, for land to which a regional environmental plan or a draft regional environmental plan applies, if the Director-General considers it necessary or desirable to provide more detailed provisions than are contained in the plan or draft plan for protection of that land.

Part 4 Development assessments

- 4.10 Part 4 of the EP&A Act establishes the framework for council assessment and determination of development applications (DAs). Section 79D of the Act sets out the matters to be considered by council when evaluating a DA, and s.80 provides for a determination by council on a DA.
- 4.11 Significantly, however, under s.78A(8) of the Act, if a DA is in respect of land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, then it must be accompanied by a species impact statement (SIS) prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995*. As the Committee understands it, deciding whether a DA should be accompanied by a SIS falls to council.⁷³
- 4.12 Under s.5A of the Act, the following eight factors must be considered by council in deciding whether a DA will have a significant impact on threatened species, populations or ecological communities, or their habitats, for the purposes of s.78A of the Act:
- (a) in the case of a threatened species, whether the life cycle of the species is likely to be disrupted such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered population, whether the life cycle of the species that constitutes the endangered population is likely to be disrupted such that the viability of the population is likely to be significantly compromised,
 - (c) in relation to the regional distribution of the habitat of a threatened species, population or ecological community, whether a significant area of known habitat is to be modified or removed,
 - (d) whether an area of known habitat is likely to become isolated from currently interconnecting or proximate areas of habitat for a threatened species, population or ecological community,
 - (e) whether critical habitat will be affected,
 - (f) 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,

⁷³ Mr Simon Smith, Deputy Director General, Department of Environment and Conservation, Evidence, 2 July 2004, p14

(g) whether the development or activity proposed is of a class of development or activity that is recognised as a threatening process,

(h) whether any threatened species, population or ecological community is at the limit of its known distribution.

4.13 Local councils are unable to approve a DA for land that is critical habitat or that is likely to significantly affect threatened species, populations or ecological communities without the concurrence of the Director General of NPWS or the Minister administering the *Threatened Species Conservation Act 1995*. Section 79B(3) of the EP&A Act states:

(3) Consultation and concurrence – threatened species Development consent cannot be granted for:

(a) development on land that is, or is a part of, critical habitat, or

(b) development that is likely to significantly affect a threatened species, population, or ecological community, or its habitat,

without the concurrence of the Director-General of National Parks and Wildlife or, if a Minister is the consent authority, unless the Minister has consulted with the Minister administering the *Threatened Species Conservation Act 1995*.

4.14 When considering whether or not concurrence should be granted under s.79B(3) above, the Director-General of NPWS or the Minister administering the *Threatened Species Conservation Act 1995* must take the following matters into consideration:

(a) any species impact statement that accompanied the development application,

(b) any assessment report prepared by the consent authority,

(c) any submissions received concerning the development application,

(d) any relevant recovery plan or threat abatement plan,⁷⁴

(e) whether the development proposed is likely to reduce the long-term viability of the species, population or ecological community in the region,

(f) whether the development is likely to accelerate the extinction of the species, population or ecological community or place it at risk of extinction,

(g) the principles of ecologically sustainable development (as described by section 6 (2) of the Protection of the Environment Administration Act 1991),

(h) the likely social and economic consequences of granting or of not granting concurrence.⁷⁵

⁷⁴ Threat abatement plans are made under Part 5 of the *Threatened Species Conservation Act 1995* by the Director General of NPWS. Under the Act, the Director General may prepare a threat abatement plan to manage a threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological.

⁷⁵ Section 79B(5) of the EP&A Act

The content and preparation of species impact statements

4.15 Section 110 of the *Threatened Species Conservation Act 1995* (TSC Act) deals with the contents of Species Impact Statements (SIS). Section 110 states in part:

(1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.

(2) A species impact statement must include the following information as to threatened species and populations:

(a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,

(b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,

(c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,

(d) an estimate of the local and regional abundance of those species or populations,

(f) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,

(g) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,

(h) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,

(i) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,

(j) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.

(3) A species impact statement must include the following information as to ecological communities:

- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
- (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
- (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
- (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,
- (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
- (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
- (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.

4.16 In turn, the TSC Act also contains provisions in s.111 relating to the preparation of SISs by the developer, who must request from the Director General of the NPWS the Director General's requirements (DGRs) of what matters must be considered in the SIS. Notably, however, the Director General of NPWS may limit or modify the matters to be included in the SIS – including those matters specified under s.110. The Director General may also dispense with the need to prepare an SIS in some instances where the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible. Section 111 states in part:

- (1) The person applying for the licence (or, if the species impact statement is being prepared for the purposes of the *Environmental Planning and Assessment Act 1979*, the applicant for development consent or the proponent of the activity...) must request from the Director-General and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director-General concerning the form and content of the statement.
- (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them.
- (3) Despite the other provisions of this Division, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify)

the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case.

(4) Despite anything in this Act or the *Environmental Planning and Assessment Act 1979* or the *Plantations and Reafforestation Act 1999*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible.

Section 91 licences

4.17 Under s.91 of the Threatened Species Conservation Act 1995 (TSC Act) the Director General of the NPWS may grant a licence authorising a person to take action likely to result in one or more of the following:

(a) harm to any animal that is of, or is part of, a threatened species, population or ecological community,

(b) the picking of any plant that is of, or is part of, a threatened species, population or ecological community,

(c) damage to critical habitat

(d) damage to habitat of a threatened species, population or ecological community.

4.18 If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by an SIS. If the proposed action is not to be taken on critical habitat the application must include information relating to known records of threatened species and their habitat and the likely effect of the action on the life cycle and habitat of the species.⁷⁶ Section 92(4) allows for the applicant to lodge an SIS even if not required to do so under s. 92(2).

4.19 Section 95 provides that if the application is not accompanied by an SIS the Director General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities. Section 94 sets out the matters the Director General must take into account when making that determination. If the Director General determines that there is likely to be a significant effect the applicant is advised that an SIS is required. If the Director General determines that there is not likely to be a significant effect, the applicant is issued with a certificate to that effect as soon as practicable.⁷⁷

4.20 Section 97 sets out the matters that the Director General must take into account in considering whether to grant or refuse to grant a licence application. Section 98 provides for the Director General to request the applicant provide additional information to support the application. The Director General may refuse an application. If the Director General decides

⁷⁶ Section 92(3) sets out the information that needs to be included.

⁷⁷ Section 95 includes a notation advising: that an action that is not required to be licensed under the TSC Act may however be required to be licensed under the *National Parks and Wildlife Act 1974* if it is likely to affect protected fauna or protected native plants or may otherwise constitute an offence under that Act.

to grant an application the application may be granted unconditionally or subject to conditions or restrictions,⁷⁸ these conditions may include specified modifications to the proposed action for which the licence is being sought.⁷⁹

- 4.21** Following the issuing of a licence, the Director General also has the power, under s.101(2) to attach any conditions or restrictions to the licence after its issue; vary or remove any conditions or restrictions or otherwise vary the licence.

Threatened species and ecological communities at the Tomalpin site

- 4.22** The Committee notes that the Tomalpin site is currently known to support 29 threatened species and 2 endangered ecological communities. The identification of the majority of these species was the result of environmental assessments undertaken by the Hunter Economic Zone. They are as follows:

Endangered Forests

- Kurri Sand Swamp Woodland
- Hunter Lowland Redgum Forest.

Plants

- the Parramatta Red Gum - *Eucalyptus parramattensis decadens*
- the Pink Grevillea - *Grevillea parviflora parviflora*
- the Narrow-leaved Bottlebrush - *Callistemon linearifolius*
- the Little Daisy - *Rutidosis heterogama*
- the Slaty Red Gum - *Eucalyptus glaucina*
- the Little Wattle - *Acacia bynoeana*.

Birds

- the swift parrot – *Lathamus discolor*
- the regent honeyeater – *Xanthomyza phrygia*
- the turquoise parrot – *Nephema pulchella*
- the black-chinned honeyeater – *Melithreptus gularis gularis*
- the brown tree-creeper – *Climacteris picumnus victoriae*
- the black-breasted buzzard – *Hamerostra melanosternon*
- the grey-crowned babbler – *Pomatostomus temporalis*
- the speckled warbler – *Chthonicola sagittate*

⁷⁸ Section 99(1)(a)

⁷⁹ Section 101(1)(a)

- the glossy-black cockatoo – *Calyptorhynchus lathama*
- the masked owl – *Tyto noveahollandiae*
- the sooty owl – *Tyto tenebricosa*
- the powerful owl – *Ninox strenua*
- the square-tailed kite – *Lophoictinia isura*.

Mammals

- the yellow-bellied glider – *Petaurus australis*
- the squirrel glider – *Petaurus norfolcensis*
- the Koala – *Phascolarctos cinereus*
- the common bent-wing bat – *Miniopterus schreibersii*
- the little bent-wing bat – *Miniopterus australis*
- the east coast free-tailed bat – *Mormopterus norfolkensis*
- the eastern false pipistrelle – *Falsistrellis tasmaniensis*
- the greater broad-nosed bat – *Scoteanax rueppellii*
- the large-footed myotis – *Myotis adversus*.

Frogs

- the green-thighed frog.⁸⁰

The Swift Parrot

4.23 Particular concerns were raised during the inquiry in relation to the threat to the Swift Parrot from the development of the Tomalpin site. The swift parrot – *Lathamus discolor* – is listed as endangered under the *Environment Protection and Biodiversity Conservation Act 1999* (Cmth) and the *NSW Threatened Species Conservation Act 1995*. The parrot uses spotted gum – *Corymbia maculata* – for winter foraging.

4.24 On 5 November 2001, Ms Debbie Saunders from the National Swift Parrot Recovery Team (SPRT), a federally funded agency supported by Environment Australia, provided the following advice to NPWS in relation to the HEZ proposal:

A local resident who is familiar with identifying Swift Parrots by sight and call has over 16 years of Swift Parrot records from Spotted Gum habitats in the Tomalpin area between Kurri Kurri and Aberdare SF. Swift Parrots have been recorded in this

⁸⁰ The list of threatened species and endangered forests was provided in the list of attachments to Submission 28, Friends of Tumblebee. The Committee notes that Submission 30, National Parks Association of NSW also provided a list of threatened species- that list accords with that provided by the FoT, except that it also includes the plant *Grevillea montana*, and omits the mammal, the large-footed myotis.

forest every 2-3 years since 1985, with at least 20 but more often 70-80 birds being located each time. This is the longest and most consistent site fidelity ever recorded on mainland Australia for the Swift Parrot.

From these records, the largest flock was recorded last year when over 200 birds were found feeding on Spotted Gum nectar and lerps. With the Swift Parrot population estimate being 2500 birds (Brereton 2001) this site supported 8% of the population. This is the largest flock of Swift Parrots ever recorded within coastal habitats of NSW and the second largest record of Swift Parrots within the state. This record is consistent with numerous other records from the surrounding area last year ...

Therefore the Tomalpin forest area is currently the most significant Swift Parrot site in NSW.

... Given the significance of this site for the Nationally Endangered Swift Parrot, it is recommended that alternatives be sought for the proposed Tomalpin Estate and that this site be given conservation status for the long term survival of Swift Parrots.⁸¹

4.25 Subsequently, in October 2002, the SPRT published a report entitled *Assessment of Swift Parrot Sites near Cessnock, Lower Hunter Valley Region, NSW – including the Hunter Employment Zone*.

4.26 This report found that the proposed 4(h) industrial development zone would be unacceptable in its impact on the Swift Parrot. The report acknowledges that not all of the Tomalpin Woodlands stood to be lost under the development, but stated:

... over 37% of the Swift Parrot sites in the study area occur within the proposed HEZ, including the largest record of this species in Spotted Gum habitats in NSW. None of the [seven sites] supporting over 80 Swift Parrots were within conservation reserves. Five of these sets were within HEZ.

... the Swift Parrot Recovery Team is therefore opposed to the proposed development of the HEZ and recommends that all Lower Hunter Spotted Gum/Ironbark Forests be conserved.⁸²

4.27 The findings of the SPRT report and the reaction to the release of the report on the part of the various parties involved in negotiations regarding the development of the HEZ site is further discussed in Chapter Five.

Did NPWS/DEC meet its statutory obligations?

4.28 NPWS was established under the *National Parks and Wildlife Act 1974* (NPW Act). NPWS has responsibility for the management of NSW conservation reserves, native fauna and flora protection, protection of Aboriginal sites, and administration of the NPW Act. The role of the Department of Environment and Conservation (formerly the NPWS) was in an advisory capacity to Cessnock Council on biodiversity, threatened species and cultural heritage matters. The DEC's roles as a statutory authority under the *Threatened Species Conservation Act* and the

⁸¹ Advice from Ms Debbie Saunders, National Swift Parrot Recovery Team to NPWS, 5 November 2001, cited in Submission 41, Mr Steven Phillips, Attachment 1.

⁸² Cited in submission 41, Mr Phillips, pp7-8

National Parks and Wildlife Act were triggered during the development of the LEP and at the development application (DA) stage.

- 4.29** In its written submission, the DEC indicated that the NPWS was advised by Cessnock Council in April 1999 that Council was proposing to prepare a LEP for the Tomalpin site. The NPWS worked closely with the Council, Premiers Department, Planning NSW and other key stakeholders over the next two years to develop the LEP.
- 4.30** The NPWS, in this instance, were required to provide a greater level of assistance than usual due to the difficulties Cessnock Council confronted when dealing with a development of this scope. The following sections examine the role of NPWS/DEC in the development of the LEP and the approval of the DAs for the HEZ site.

The Ecotone Reports

- 4.31** The first study assessing the ecosystem at the Tomalpin site was the *Flora and Fauna Investigations and Planning Assessment for the Tomalpin Employment Zone, within Cessnock Local Government Area* – the first Ecotone report – dated February 1999, undertaken by Ecotone Ecological Consultants Pty Ltd for Harper Somers O’Sullivan Pty Ltd (HSO), acting on behalf of HEZ Nominees Pty Ltd.⁸³
- 4.32** The Committee received a submission from Mr Steven Phillips, that was particularly critical of the environmental assessment process that led to the approval of the LEP. In his written submission, Mr Phillips states that this report found one threatened species of flora and five threatened species of fauna at the Tomalpin site, but identified as ‘potential inhabitants’ a further two threatened flora and 25 threatened fauna species. Ecotone considered that additional threatened species would be likely to be discovered. The report described the site as ‘regionally significant’, with a ‘very large, structurally intact area of predominantly remnant vegetation, or derivatives of such’, containing ‘good quality habitat for a diverse range of fauna species, including threatened species’.⁸⁴
- 4.33** The submission from the DEC states that the initial surveys for the LEP undertaken by Ecotone in 1999 identified the presence of one endangered ecological community (Kurri Sand Swamp Woodland), two species of threatened flora and at least seven threatened fauna species.⁸⁵ The submission further notes that in response to Council’s 1999 request for comment on the flora/fauna and Aboriginal heritage studies undertaken for the proposed rezoning, the NPWS noted that these studies were at a fairly coarse scale and provided only a broad indication of the constraints to development that existed across the site.⁸⁶
- 4.34** In 2000, Ecotone released the *Additional Fauna and Flora Investigations within Tomalpin Employment Zone, Supplementary Report* – the Second Ecotone Report. This report included the results of a number of stansects and quadrats within the Tomalpin area, designed to map threatened flora

⁸³ Cited in Submission 41, Mr Phillips, p2

⁸⁴ Cited in Submission 41, Mr Phillips, p2

⁸⁵ Submission 35, Department of Environment & Conservation (DEC), p2.

⁸⁶ Submission 35, DEC, Attachment C, p3.

and fauna. The report concluded that ‘no additions to the extent of the conservation zone appear to be required’.⁸⁷

4.35 In its submission the DEC states that it strongly supports the overall outcomes that have been achieved in the process of preparing the LEP. The submission further states that the configuration of the zones that comprise the LEP was based on initial flora and fauna assessments by Ecotone environmental consultants engaged by Council; preliminary vegetation mapping undertaken as part of the Lower Hunter Central Coast Regional Environmental Strategy (LHCCREMS); and data from the Lower North East RFA/CRA process. The LEP protects:

- A representative sample of the three vegetation communities present at the site (Kurri Sand Swamp Woodland, Hunter Lowland Redgum Forest and Lower Hunter Spotted Gum Ironbark Forest).
- Habitat for those threatened fauna known to be present [at the time].
- Evidence of Aboriginal occupation
- Wildlife linkages east-west and north-south across the site.⁸⁸

4.36 In evidence the Deputy Director General confirmed the DEC’s confidence in the process and outcome notwithstanding the acknowledgement that the process was not ideal:

Our experts have been involved in assessing the information that has been provided in terms of the assessment of the presence of various species and ecological communities over a number of years. It is fair to say that information has come over time through the process, rather than as I guess we would have preferred it to be done, of being based on an initial comprehensive assessment. But notwithstanding that, we are confident that we have ensured that representative samples of flora and fauna are going to be protected in 70 per cent of the land that has been set aside for conservation.⁸⁹

The gazettal of the LEP

4.37 The draft Cessnock Local Environmental Plan (Amendment No 60) – Hunter Employment Zone was gazetted in March 2002. It rezoned approximately 870ha of the HEZ site for industrial development, 855ha for habitat protection, and 1273ha as National Park. The land zoned as National Park included the existing portion of the Lower Hunter National Park, adjacent Crown Land and part of Aberdare State Forest.⁹⁰

4.38 In its written submission, DEC noted that during the finalisation of the LEP, new information came to light about threatened species in the HEZ. This included

- important swift parrot records for the site dating back 15 years

⁸⁷ Cited in submission 41, Mr Phillips, p4

⁸⁸ Submission 35, DEC, p2.

⁸⁹ Mr Smith, DEC, Evidence, 2 July 2004, p13.

⁹⁰ Submission 35, DEC, p1

- the discovery of a large population of the vulnerable *Grevillea parviflora* plant
- the identification of green-thighed frog at the site (beyond the previous known range of this species)
- sightings of three newly-listed woodland birds – the brown treecreeper, grey-crowned babbler and black-chinned honeyeater.

4.39 The Committee notes that in its written submission, DEC acknowledged that these threatened species occurred in areas zoned for industrial development and were not adequately protected by the LEP.⁹¹ However, as the Committee understands it, NPWS had already provided comments on the LEP to Council, as per s.34A of the EP&A Act, and was not in a position to prevent the making of the LEP based on these concerns.

4.40 The former Director General of the NPWS told the Committee that the discovery of threatened species at a location after the approval of an LEP did not automatically trigger consternation within the Department. Mr Gilligan told the Committee that in his experience the Department always had to operate with an imperfect knowledge base and that if new issues arose the Department would address them at that time:

The point I am making is that the department's response should be well short of apoplexy. It does not mean that we are not going to properly consider the issues that are raised and make sure that the threatened species requirements are appropriately considered as you move forward.⁹²

4.41 The actions taken by the NPWS/DEC as the focus on the HEZ site moved forward beyond the LEP stage is discussed in the section below.

The HEZ development applications⁹³

4.42 In May 2002, HEZ submitted a development application to Cessnock Council for combined rail and road access to the HEZ site. Cessnock Council determined that an SIS would be required to accompany the proposal. In June 2002, NPWS issued Director General's Requirements (DGR) for the SIS. The development application was subsequently amended and resubmitted to Council in July 2002 as the development application for the Stage 1 road infrastructure for the HEZ.

4.43 In September 2002 Cessnock Council requested comments from the NPWS on the DA and the accompanying SIS. In its written submission, DEC indicated that the NPWS reviewed the SIS, and provided comments to Council in November 2002. That advice also noted the impact the proposed road would have on the Hunter Lowland Redgum Forest, which had been preliminarily listed as an endangered ecological community. Accordingly, NPWS

⁹¹ Submission 35, DEC, Attachment C, p1

⁹² Mr Brian Gilligan, former Director General, NPWS, Evidence, 2 July 2004, p43.

⁹³ The events discussed in this section are based on the information provided in Submission 35, DEC, Attachment C: Chronology of DEC involvement with HEZ Pty Ltd.

recommended to Council that it give ‘careful consideration in determining whether or not to grant consent to the road proposal’.⁹⁴

4.44 The advice also noted that the NPWS considered that the DA proposal, as described and amended in the accompanying Statement of Environmental Effects (SEE) and Species Impact Statement (SIS) would not have a significant impact on threatened species provided that all of the recommendations relating to minor amendments of the road contained in the SIS were included as conditions in any consent issued by Council and implemented in line with the Environmental Management Strategy /Habitat Management Strategy for the HEZ site.

4.45 The Committee’s understanding of the EP&A Act is that a council cannot approve a DA that is likely to significantly affect threatened species, populations or ecological communities without the concurrence of the Director General of NPWS or the Minister administering the *Threatened Species Conservation Act 1995*. On the information provided by NPWS in its written submission, it appears that the NPWS only provided comment on the DA – it did not grant or withhold concurrence.

4.46 During the inquiry the Committee was not specifically or clearly advised of when the requirement for concurrence from the Director General under s.79B(3) is, in practice, brought into play. At one point it was implied that if Council decides that an SIS is required, then that would trigger the need for concurrence from the NPWS:

Under the current law the council is the decision-making body. If the council forms the view that a significant impact on threatened species is likely to occur, it triggers the need for a species impact statement and concurrence from the NPWS.⁹⁵

4.47 However, it was also indicated to the Committee that it was up to the Council to review the SIS and then if Council still had the view that there was a likely significant impact on threatened species it was obliged to seek concurrence from the NPWS.

... in general terms, when assessing development applications it is the responsibility of the local council to assess the impact on threatened species. So the council decides whether a particular DA before it is likely to have a significant impact on threatened species and if it decides that it is, then it is council’s job to seek the proponent to prepare a species impact statement [SIS], and in preparing a species impact statement the council is to seek the views of the Director-General who will help shape up the request and design the questions that need to be answered by the species impact statement. Then again, it is the council’s job to manage that process to see that the study is done adequately, and then to make a decision.

If the council believes the statement shows that a particular DA would have a significant impact on threatened species, then the council is bound to seek the concurrence of the Director-General of the National Parks and Wildlife Service in making its decision if it is going to approve something.⁹⁶

4.48 The Committee presumes that in this instance the Council was obliged to seek the DGRs for the SIS that Council had decided was required for the DA. Council was then obliged to seek

⁹⁴ Submission 35, DEC, Attachment C, p4

⁹⁵ Mr Smith, DEC, Evidence, 2 July 2004, p24.

⁹⁶ Mr Smith, DEC, Evidence, 2 July 2004, p14.

the concurrence of the NPWS only if, on its own review of the DA and SIS, it came to the belief that there would be a significant impact. And in this instance the Council ultimately came to the view that there would not be a significant impact.

- 4.49** Further, the Committee is not clear whether the comments sought by the Council from the NPWS on the DA and SIS was an informal process not specifically provided for under the legislation. If it was, this allowed the NPWS to provide what might be termed a de facto concurrence without bringing into play the related legislative requirements upon which a concurrence is contingent.
- 4.50** In this instance the only statutory obligation of the NPWS was to provide the DGRs for the SIS – which it did. However, as it turned out the development application for the Stage 1 road infrastructure was withdrawn following a challenge mounted in the Land and Environment Court.
- 4.51** In March 2003, Cessnock City Council received a modified application for Stage 1a of the road infrastructure for HEZ Nominees Pty Ltd comprising part of the original access road from the entrance to the HEZ to the centre creekline. Based on the information provided by DEC in its written submission, the Committee understands that Council granted consent to this development, without formally consulting with NPWS,⁹⁷ and that there was no statutory requirement for them to do so.
- 4.52** Construction of the road commenced in July 2003. However, in August 2003, groups opposing the development took out an interlocutory injunction against further construction following the identification of new populations of the threatened plant *Rutidosia heterogama* on the road alignment. This injunction was ultimately withdrawn in December 2003.
- 4.53** In September 2003, HEZ Pty Ltd applied to the DEC (formerly the NPWS) for a section 91 licence to ‘pick’ (ie remove) *Rutidosia heterogama* in order to continue construction works. Following legal advice, the DEC granted a licence to pick 160 individuals provided that the proponents could demonstrate that they had a valid consent (from Council) to construct the road.⁹⁸
- 4.54** In June 2003, Cessnock Council received a development application for Stages 1b and c of the road infrastructure together with a Statement of Environmental Effects and an 8-part test for the Hunter Lowland Redgum Forest, which concluded that construction of the remainder of the access road would not have a significant impact on the forest. Again, Council sought the comments of DEC.⁹⁹ In its written submission, DEC indicated:

The DEC responded to this request by explaining how the relevant legislation operated and noting that the road on its own was unlikely to have a significant impact. In addition, the DEC letter reiterated previous advice about the need to deal strategically with the cumulative impacts of the development at the HEZ; the importance of ecological constraints mapping in filling information gaps across the

⁹⁷ Submission 35, DEC, Attachment C, p5.

⁹⁸ Submission 35, DEC, Attachment C, p5.

⁹⁹ Submission 35, DEC, Attachment C, pp3-4.

sits; and the need for Council to build in-house capacity to deal with threatened species matters.¹⁰⁰

- 4.55** In April 2004 Cessnock Council made a concurrence request to DEC with respect to the DA to construct Stage 1c of the road infrastructure. In its written submission, DEC indicated that this development application represented a modification of the stage 1b and 1c road infrastructure proposal outlined above. DEC indicated that its response was as follows:

The development application had not been exhibited nor had Council indicated whether it intended to grant consent to the proposal. Consequently, the DEC wrote to Council citing examples of previous correspondence between the DEC and Council regarding the concurrence process and summarising Council's responsibilities as the consent authority in this process.¹⁰¹

- 4.56** The Committee received no information regarding the current status of this development application.

'Deemed' concurrence for the development

- 4.57** The Department of Environment & Conservation (formerly the NPWS) advised that most of the threatened species and their habitat recorded at the HEZ site occur to some extent on the 7(b) lands or in Werakata National Park. However there are nine species of threatened flora and fauna which occur largely on the 4(h) lands that are not adequately represented within protected lands or which have important habitat within the 4(h) lands.
- 4.58** In May 2004, the DEC held several meetings with HEZ Nominees Pty Ltd and their consultants, HSO, to discuss conservation techniques for threatened species on 4(h) zoned land, as identified through the ECMP process.
- 4.59** While these discussions are ongoing, the DEC has advised that if an additional 60ha (approximately) of 4(h) land were either permanently or temporarily set aside to protect these threatened species, the DEC would be in a position to grant a 'deemed' concurrence for development of the remaining industrial lands at the HEZ, as provided for under s.64 of the *Environmental Planning and Assessment Act 1979*.¹⁰²

Conclusion

- 4.60** Considering the NPWS/DEC was involved in lengthy, protracted and often quite tense negotiations regarding development of the HEZ site post the gazettal of the LEP it is somewhat surprising to discover that it had a statutory role in determining an outcome on so few occasions. According to the submission from the DEC, the successor to the NPWS, its only statutory duties post the rezoning was the issuing of DGRs in June 2002 and a section 91 licence in September 2003.

¹⁰⁰ Submission 35, DEC, Attachment C, p5.

¹⁰¹ Submission 35, DEC Attachment C, p6.

¹⁰² Submission 35, DEC, Attachment C, p6.

- 4.61** The Tomalpin site is a very biologically diverse natural environment, supporting a large number of threatened species and endangered ecological communities. As such it is an area that should have and continue to be of significant interest to the NPWS and the DEC.
- 4.62** The legislative responsibility to manage the DA process clearly rested with Council. However, in recognition of the biodiversity of the site Council constantly sought the input of the NPWS and the DEC. Up until November 2002, NPWS officers were comprehensively involved in providing departmental advice and expertise.
- 4.63** The Committee heard from senior departmental officers that the department, at least at the senior level, while critical of the capacity of Council, was comfortable with possibly inappropriate decisions being made as long as statutory requirements were met:
- I am not sure I see our role as to prevent inappropriate decisions being made. We have specific statutory duties to provide information to perform certain functions and that is what we did.¹⁰³
- If they [council] reached a conclusion that is in accord with the provisions of the legislation. Whether you or I might agree with the conclusion they reached is immaterial as to whether they followed due process.¹⁰⁴
- 4.64** The Committee heard from the former Director General of the NPWS that the idea of the *Threatened Species Conservation Act* was always that the NPWS would get involved with the big and significant decisions and the relatively more minor decisions would be left at the local government level.¹⁰⁵

¹⁰³ Mr Smith, DEC, Evidence, 2 July 2004, p20.

¹⁰⁴ Mr Brian Gilligan, former Director General, NPWS, Evidence, 2 July 2004, p44.

¹⁰⁵ Mr Gilligan, Evidence, 2 July 2004, p45.

Chapter 5 **The environmental assessment processes applied to development within the Hunter Economic Zone**

This chapter examines the environmental assessment process undertaken for the Hunter Economic Zone. It focuses on events post the rezoning of the land,¹⁰⁶ and primarily those relating to the development application lodged by the proponent relating to road infrastructure. This chapter examines the interactions, particularly correspondence,¹⁰⁷ between Cessnock City Council, HEZ Pty Ltd, National Parks and Wildlife Service, the Premier's Department and other agencies, which have given rise to these claims.

Cessnock City Council Local Environment Plan (Amendment No 60)

- 5.1** In order to examine the interactions among the various parties relating to the environmental assessment process applied to the development applications it is first necessary to review the nature of the LEP gazetted on 28 March 2002 and its relationship to the subsequent development applications for the site.
- 5.2** Many participants in the inquiry argued, in submission and evidence, that the decision by the Minister for Planning to make the Local Environment Plan in respect of the (Tomalpin) Hunter Employment Zone (HEZ), and particularly the zoning of 877 hectares for industrial development, was flawed from the outset as there was insufficient information available at the time to properly assess the ecological significance of the site.
- 5.3** The Department of Planning Minute¹⁰⁸ that recommended the Minister make the plan, itself, at a number of points, recognised the need for further information that would most likely affect subsequent development on the site.
- 5.4** The Minute refers to the development, above and beyond the normal LEP provisions, of the (Environmental) Management Strategies (EMS) system as providing further detailed frameworks and responses to particular issues, such as the management of issues including

¹⁰⁶ A number of submissions to the Inquiry argue that the pressure on government departments to ensure the HEZ development proceeded was also evidenced in the process for the rezoning of the land. Submission 41 in particular is critical of the actions of the NPWS in the assessment of the rezoning application.

¹⁰⁷ During the Inquiry the Committee received a comprehensive set of departmental correspondence and documents relating to the environmental assessment process for the HEZ. The Friends of Tumblebee gained access to many of these documents via a Freedom of Information application and provided them to the Committee as part of their submission to the Inquiry. The Premier's Department and the Department of Environment and Conservation also provided copies of correspondence and relevant documentation as part of their respective submissions.

¹⁰⁸ Department of Planning Minute, *Cessnock City Council: Submission pursuant to section 69 of the Environmental Planning and Assessment Act 1979 to make a local environmental plan in respect of the (Tomalpin) Hunter Employment Zone (HEZ)*, 7 March 2002: Copy of document provided with Submission No 28, Friends of Tumblebee.

Habitat, Water Cycle, Air Quality, Energy, Bushfire, Transport, Lighting and Noise, Urban Design and Waste Management. The Minute noted that Council cannot grant a consent for at least six months after the plan is gazetted, to enable time for these strategies to be finalised.¹⁰⁹ The Minute further advised that preparation of the management strategies was progressing well and it was expected that they would be finalised prior to the six-month default, which was 28 September 2002. The Environmental Management Strategies were ultimately completed and adopted in November 2002.

- 5.5** The Minute advised that the six-month default reflected an executive decision of the Department of Planning to ensure that such provisions were not used to indefinitely defer the consideration of development applications pending the completion of certain action. Notwithstanding that this was a standard clause generally insisted upon by the Department, this appears to be a somewhat puzzling decision given that the EMS were specifically included, above and beyond the normal LEP provisions, to guide satisfactory environmental outcomes for the site
- 5.6** The Minute also noted that on-going investigations would be required and that this could conceivably lead to an amendment to the size of the zoned areas:

The DCP and draft Habitat Management Strategy have already identified the need for further targeted investigations, such as for the Swift Parrot species, which may lead to a refinement of the conservation outcome on the site or particular responses to proposed developments. *Detailed investigations and assessments of threatened species will also occur on a site by site basis, in accordance with current legislation.* Ongoing management of areas identified as significant for habitat reasons will be dealt with by way of mechanisms within the Management Strategies.¹¹⁰

- 5.7** The Minute concluded with the acknowledgement that the site possesses a high environmental and biodiversity value, which, the Minute argued, has been reflected in both the proposed zoning framework and the ongoing monitoring and management regime.
- 5.8** With hindsight it appears reasonable to argue that approval of the Plan should have been deferred until the expected completion of the Management Strategies. If this had occurred additional information particularly with respect to Swift Parrot usage of the site would have been available.

Coal mining within the 7(b) zone

- 5.9** The LEP allows for coalmining to occur with consent in the 4(h) and 7(b) zones within the HEZ area. This aspect of the LEP has generated some concern among the local community, including the residents of Pelaw Main who live across from the border of the HEZ. These concerns were raised directly with the Committee during its site visit to Pelaw Main and during the public hearing at Kurri.¹¹¹

¹⁰⁹ Department of Planning Minute, 7 March 2002, p6.

¹¹⁰ Department of Planning Minute, 7 March 2002, p6.

¹¹¹ Mr James Ryan, President, Friends of Tumblebee, Evidence, 16 June 2004, p4.

- 5.10** In particular the residents of Pelaw Main were concerned at the possibility of open cut mining occurring at the edge of the 7(b) zone within a few hundred metres of their homes and the effect that this would have on their amenity of life.
- 5.11** In 2001 the draft amended LEP included that underground mining remain permissible with consent. However, in its comment on the draft plan, the Department of Mineral Resources (DMR) requested that all mining activity (including open cut mining) remain permissible with consent in the 4(h) and 7(b) zones. While Cessnock Council preferred that the 7(b) zone remain free from potential mining, it agreed to the request from the DMR.
- 5.12** The DMR generally objects to any LEP that intends to prohibit mining. The general position of the DMR is that mining should remain permissible everywhere, due to the importance of some mineral deposits, and that proposals should be considered and determined on their merits.¹¹²
- 5.13** During the public hearings the Committee sought to address the likelihood of such mining occurring and to determine the approval process that would apply to any such proposal. The Deputy Director General of the Department of Infrastructure, Planning and Natural Resources told the Committee:
- ...I must be careful as I am not familiar with all the details. From the description you have given me it would be very difficult to pass the test, but obviously that would depend on the size of the operation. Usually mining, particularly open-cut, but also underground mining, is subject to quite extensive amenity criteria and rules and regulations in relation to dust, noise, water, visuals and all the rest of it. Most of the coalmines that I am aware of that went through the department's assessment involved residual risks outside the boundaries, which may involve the acquisition of properties as a way of managing impacts.¹¹³
- 5.14** The Deputy Director General also advised the Committee that the DMR would obviously put forward very early proposals for mining resources throughout the State, many of which might not progress further in that form. While the DMR has the potential to propose mining it still has to pass the relevant tests.¹¹⁴
- 5.15** Obviously because the LEP expressly allows for mining to occur with consent, the Committee cannot offer any guarantee to the residents of Pelaw Main that mining will never occur in the 7(b) zone. However, on the evidence provided to it, the Committee does note that there is no current proposal, and any proposal that may occur in the future would be subject to assessment.

¹¹² Cessnock City Council, *Agenda of the Strategic & Community Services Committee Meeting*, 21 November 2001.

¹¹³ Dr Sam Haddad, Deputy Director General, Department of Infrastructure, Planning and Natural Resources, Evidence, 2 July 2004, p52.

¹¹⁴ Dr Haddad, Evidence, p52.

Swift Parrot habitat within the HEZ

- 5.16** The seasonal presence of large numbers of the nationally endangered species Swift Parrot within the 4(h) zoned lands of the HEZ site is one of the rallying points of opponents to the current size of the 4(h) zone of the HEZ.
- 5.17** The Swift Parrot is a species that is listed on the National Register of Endangered Species. The Swift Parrot Recovery Team (SPRT) was established as part of a Commonwealth funded exercise to prepare a recovery plan for the species. This exercise was implemented across multiple jurisdictions. The swift parrot recovery officer for New South Wales, Ms Deborah Saunders was located within the Queanbeyan offices of the NPWS.
- 5.18** The Swift Parrot is a small, fast-flying nectarivorous parrot which breeds in Tasmania and migrates to the mainland searching for suitable food resources such as nectar from winter flowering trees. The National Swift Parrot Recovery Program objectives include the identification and protection of habitat priority areas in order to manage such habitat for the long term viability of the swift parrot population. Priority habitat areas are those that contain winter foraging resources such as nectar from Spotted Gum and Forest Red Gum trees. Swift Parrots are known to prefer foraging in mature trees and have a high level of site fidelity whereby they regularly return to the same sites.
- 5.19** There has been much contention regarding the level of information available to the NPWS regarding the Swift Parrot habitat within the HEZ prior to the zoning of the land. Opponents have argued that the knowledge of the presence of Swift Parrots that was available prior to the rezoning should have prompted the entire process to be halted until information was completely available. Representatives of the DEC told the Committee that confirmed information was not available to the NPWS until after the LEP had been gazetted.¹¹⁵
- 5.20** The Department of Environment and Conservation (DEC) provided the Committee with the following timeline with respect to the level of information available regarding swift parrots at the HEZ:

The former NPWS was first advised of the specific presence of Swift Parrots at the HEZ site on or about 23 November 2001. This was a telephone call from a local resident, a Mr G Masters, who provided some general advice that he had observed Swift Parrots foraging within the HEZ lands over the past 15 years.

The NPWS forwarded this information to the National Swift Parrot recovery program officer for information and advice. A meeting was held between the Swift Parrot project officer and the NPWS on 7 December 2001 and it was agreed to engage the project officer to undertake some additional studies at the HEZ site during the next winter foraging season (ie. June-July 2002). At this stage the draft LEP was already on exhibition (July 2001) and it was this that most likely prompted Mr Masters to contact the Department about his observations. Due to the seasonal nature of Swift Parrot movements on the mainland, the information provided by Mr Masters could not be verified until after the LEP was gazetted in March 2002.¹¹⁶

¹¹⁵ Ms Deborah Stevenson, Senior Threatened Species Officer, Department of Environment and Conservation, Evidence, 2 July 2004, p18.

¹¹⁶ Correspondence from Mr Simon Smith, Deputy Director General, Environmental Protection and Regulation Division, DEC, to Committee Director, 20 September 2004, p1.

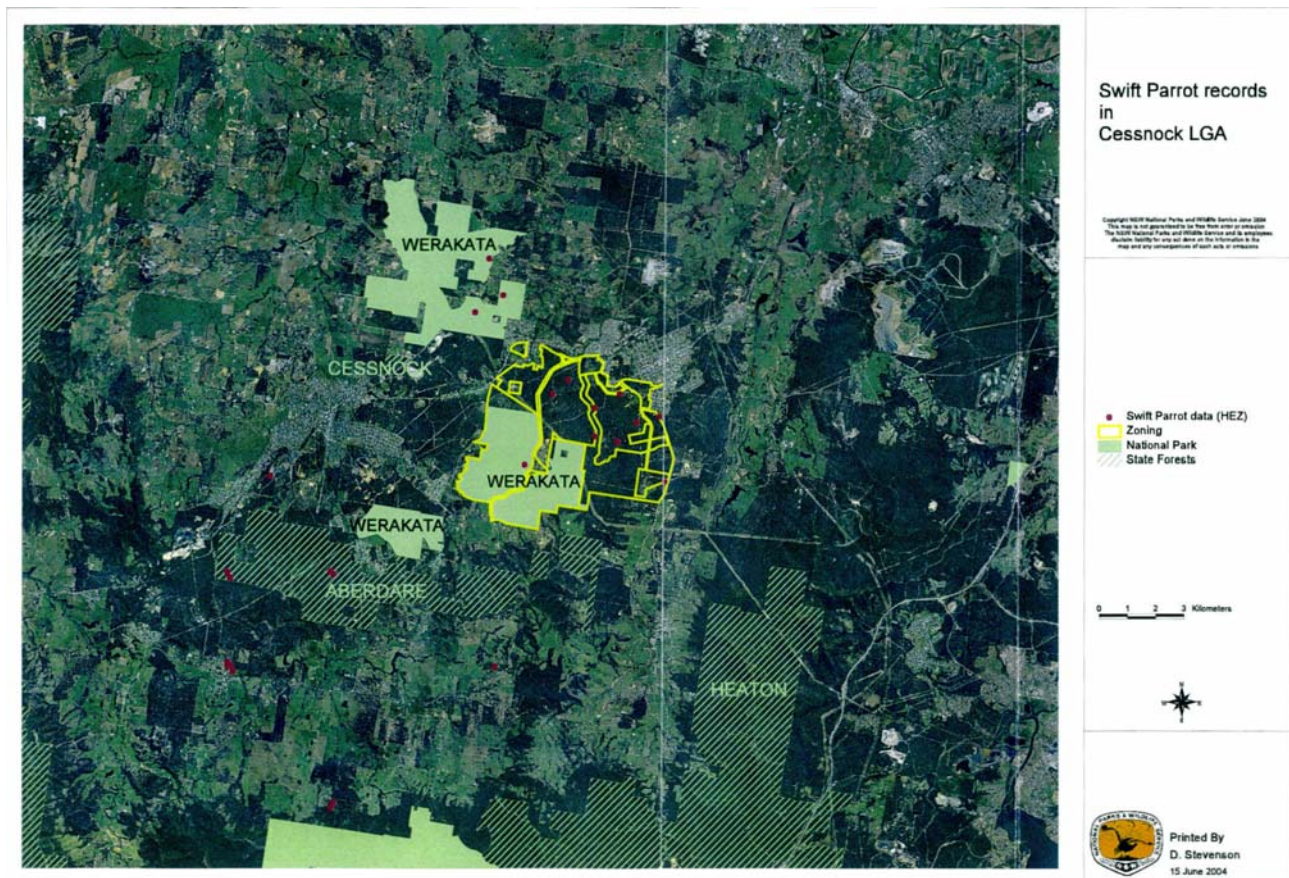
- 5.21** However, the Mr Stevn Phillips submitted to the Committee that the swift parrot recovery officer in fact provided a brief advice to the NPWS on the 5th of November 2001 which stated that the Tomalpin forest area is currently the most significant Swift Parrot site in NSW and went on to recommend that alternatives be sought for the proposed Tomalpin Estate and that the site be given conservation status for the long term survival of Swift Parrots.¹¹⁷ The Committee was provided a copy of this advice, which was obtained via a Freedom of Information application made by the Friends of Tumblebee.
- 5.22** The document in question is one page long and appears that it could possibly be an extract from a larger document. It is listed in the Freedom of Information schedule (application No. 458) as being dated 5 November 2001, with D Saunders (National Swift Parrot Recovery Team, Environment Australia) as the author, and the subject being ‘Advice – Major Swift Parrot site details – Tomalpin Forest, Hunter Region’. Unfortunately it is impossible to determine to whom exactly in the NPWS this advice was sent as it is unsigned and unaddressed. As the Committee did not hear evidence from Ms Saunders,¹¹⁸ the swift parrot recovery officer, it is therefore unable to absolutely resolve the contradiction between the evidence supplied to it by the DEC and the advice supplied by Mr Phillips.
- 5.23** While this contradiction must remain somewhat unresolved, it is beyond question that the subsequent investigation and report from the SPRT confirmed the significance of the 4(h) lands to the survival of the Swift Parrot. 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.
- 5.24** The SPRT report *Assessment of Swift Parrot Sites near Cessnock, Lower Hunter Valley Region, NSW – including the Hunter Employment Zone* was released in October 2002. The aim of the report was to assess the significance of swift parrot habitat in the Cessnock area of the Lower Hunter Valley Region, in relation to the habitats within the HEZ. The report concluded that:
- Given the status of the Swift Parrot at the national level all known sites for this species within the Lower Hunter Valley region are of significance and the loss of habitat in areas such as the HEZ can only further endanger the species. The HEZ proposal would have a significant impact on this endangered species and is contrary to several actions in the National Swift Parrot Recovery Plan. That is development of the HEZ would result in the removal of Swift Parrot habitat within a priority area that is known to support 10% of the total population in suitable seasons....The Swift Parrot Recovery Team is therefore opposed to the proposed development of the HEZ and recommends that all Lower Hunter Spotted Gum/Ironbark forest be conserved.¹¹⁹
- 5.25** The report found that the HEZ is currently the most significant Spotted Gum site in Australia and one of the most significant Swift Parrot sites in NSW. And that within the HEZ the core areas used by Swift Parrots occur within the 4(h) zone. The significance of the 4(h) lands is illustrated in the following map:

Map 5: Swift parrot sites

¹¹⁷ Submission 41, Mr Steven Phillips, p5.

¹¹⁸ The Committee was advised by the DEC that as a Commonwealth employee, Ms Saunders was not available as a witness.

¹¹⁹ *Assessment of Swift Parrot Sites near Cessnock, Lower Hunter Valley Region, NSW – including the Hunter Employment Zone*, National Swift Parrot Recovery Team, October 2002, p9.



Source: Mr Simon Smith, Deputy Director General, Department of Environment and Conservation.

- 5.26** The Department of Environment and Conservation advise that Swift Parrots have been observed/recorded at a number of localities in the Lower Hunter representing 24 sites over the past twenty years. However, only a few of these sites have supported a large number of birds (ie. greater than 80).¹²⁰ There are seven such sites overall, five of which occur within the HEZ boundary. Of those five sites, four occur within the 4(h) lands.¹²¹
- 5.27** The SPRT report went on to recommend that if the HEZ development should proceed that in order for the area to provide at least limited habitat there would need to be an overall retention of at least 75% of the Lower Hunter Spotted Gum/Ironbark Forest and Hunter Lowland Red Gum Forest within the area zoned for industrial development, 60% in priority habitats and 15% in landscaped areas, fire protection zones and car parks.¹²² As most of the 4(h) zone consists of these communities this would in effect result in a 75% reduction in the size of the 4(h) zone. In terms of hectares this would mean retaining 657 hectares and leaving the remaining 219 hectares for development.
- 5.28** The Swift Parrot recovery officer wrote to Cessnock City Council on the 15th October 2002 advising the Council of the findings and recommendations of the report This letter also

¹²⁰ Correspondence, from Mr Smith, Deputy Director General, DEC, to Committee Director, 20 September 2004, p4.

¹²¹ Swift Parrot Recovery Team report, p3.

¹²² Swift Parrot Recovery Team report, p10.

included additional recommendations for amendment to a number of the draft Environmental Management Strategies for the HEZ. The consternation and interaction that this letter initiated between Cessnock City Council, the developer, Premier's Department and the NPWS is discussed later in this Chapter.

- 5.29** The Committee was advised that the Commonwealth Department of Environment and Heritage (DEH) required that a master plan be prepared by HEZ Pty Ltd for the 4(h) lands to assist them in assessing the potential impacts of development on nationally listed species such as the swift parrot. This was completed and will be used by the Commonwealth in conjunction with a Public Environment Report to determine the proposal under the *Environment Protection and Biodiversity Conservation Act 1999*.¹²³ The Committee was further advised that HEZ Pty Ltd has had a number of meetings with the DEH and is currently preparing a Public Environment Report, which is required before the DEH determines the application.
- 5.30** In May 2004, the DEC had several meetings with HEZ Pty Ltd and their consultants to discuss potential conservation outcomes for threatened species on 4(h) lands which were identified as part of the Ecological Constraints Master Plan (ECMP) mapping process and are not adequately protected by the LEP. The two parties discussed a number of options including setting aside additional conservation areas within the 4(h) lands; offsetting for those species which subsequent surveys show are well-represented in lands adjacent to the industrial zone; and/or site specific controls consistent with the Environmental Management Strategies (EMS). These discussions are ongoing. The DEC advised HEZ Pty Ltd that if an additional 60 hectares (approximately) of 4(h) land were either permanently or temporarily set aside to protect these threatened species, the DEC would be in a position to grant a 'deemed' concurrence for development of the remaining industrial lands.¹²⁴

Adequacy of the LEP (Amendment No. 60) - conclusion

- 5.31** The Department of Environment and Conservation advised the Committee that most of the threatened species and their habitat recorded at the HEZ occur to some extent on the 7(b) lands or in Werakata National Park. However, there are nine species of threatened flora and fauna which occur largely on the 4(h) lands that are not adequately represented within the protected lands or which have important habitat within the 4(h) lands.
- 5.32** It is upon this fact that opponents to the HEZ development have called for the rezoning to be formally reviewed and that the 4(h) zone be amended to around 200 hectares. As noted previously at paragraph 3.42 the representatives of HEZ told the Committee that a 200 hectare industrial park was not viable given the costs of infrastructure.
- 5.33** As noted earlier, the DEC advised the Committee that they would have preferred that the rezoning exercise had been based on a comprehensive flora and fauna assessment.
- 5.34** The Committee believes that if the zoning decisions of the LEP had been based on a thorough and comprehensive information base then the prolonged difficulties that plagued the subsequent development applications would not have occurred.

¹²³ Submission 35, DEC, p4.

¹²⁴ Submission 35, DEC, p4.

Development controls of the HEZ post the LEP gazettal

5.35 The gazettal of the LEP in March 2002 was merely the first stage in the environmental assessment process related to the development of the HEZ site. The LEP zoned the land and identified the types of development allowed within those zones. Individual applications for development within those zones are then subject to specific assessment.

5.36 This is acknowledged by those parties, such as Cessnock City Council and government departments, who were routinely involved in these processes:

...when all of the environmental issues have been dealt with, they in fact will determine what activities are permissible because they are recognised and are identified as potential constraints. Those constraints will govern what, if anything, happens in that area...each and every one of those developments will be subject to its own assessment, and the individual assessment will determine what is possible, what is permissible, and what is not.¹²⁵

...the decisions about what changes will occur on the ground can be dealt with through the strategic planning process or they can be dealt with through the development assessment process...the strategic planning process does not lead to trees being chopped down because it is at the stage of when someone wishes to take an action on the ground there is assessment at that point.¹²⁶

Detailed investigations and assessments of threatened species will also occur on a site by site basis, in accordance with current legislation.¹²⁷

The LEP is the big picture decision making about a good outcome for different areas and the second stage is moving into the little picture detail of the assessment.¹²⁸

5.37 The significant number of ecological features of the site that require assessment prior to development and the fact that the LEP was an imperfect planning instrument in that it identified there was a need for further targeted investigations, understandably led to longer than normal timeframes for assessment of development applications. This was alluded to by the DEC:

My summary of the whole process is that nothing improper was going on, no influence from Premier's Department or elsewhere, but the process shows all the signs of frustration as a result of complexity and an unclear framework that did not require a proper information base to be established at the beginning of the process.¹²⁹

5.38 This frustration was compounded by the fact that the nature of the HEZ site meant that individual development applications could not properly be assessed for their impact on some species in isolation, but needed to be assessed in terms of the overall development of the site.

¹²⁵ Mr Colin Cowan, General Manager, Cessnock City Council, Evidence, 16 June 2004, p46.

¹²⁶ Mr Smith, DEC, Evidence 2 July 2004, p21.

¹²⁷ Department of Planning Minute, 7 March 2002, p6.

¹²⁸ Mr Smith, DEC, Evidence 2 July 2004, p17.

¹²⁹ Mr Smith, DEC, Evidence 2 July 2004, p26.

Ms Deborah Stevenson of the Department of Environment and Conservation commented on this, in reference to the development application for the stage 1a road infrastructure:

In relation to that SIS in my comments about the green-thighed frog and other species, I referred to the ecological constraints master plan. I said that we would have to wait until that was finished and finalised. I was talking about cumulative impacts. I was trying to make the point that although the road itself would not have a significant impact on those species, they had not really been surveyed to the extent that they could have been. Subsequent development would rely very heavily on an ecological constraints master plan and a much more detailed survey.¹³⁰

Environmental Management Strategies (EMS) and Development Control Plan No 47

5.39 In his public announcement of his decision to approve the LEP the then Minister for Planning made reference to the development of the EMS for the site:

For the first time in an industrial zone, I have asked that detailed management plans be submitted outlining how the environmental qualities of the site will be protected into the future. These plans must be lodged prior to any development application.

Stringent management plans and ongoing monitoring of the site will cover matters such as water cycle, biodiversity, transport, bushfire planning, air quality, noise, lighting, energy efficiency, waste management and urban design.¹³¹

5.40 The decision to develop the EMS arose from the revision of the original draft LEP and DCP that was exhibited in October 2000. The original draft LEP and DCP were significantly altered as a result of the public and government agency submissions received during the exhibition period and through subsequent extensive consultation with some agencies. The amendments to the draft Plan included:

A range of environmental controls through the LEP and DCP, centred around a requirement for a range of Environmental Management Strategies (EMSs) to be completed, approved and adopted prior to any individual development application being approved on the site.¹³²

5.41 Cessnock City Council engaged J D Court and Associates Pty Ltd in June 2001 to prepare the briefs for the EMS.¹³³ The draft EMSs were completed in September 2002 and placed on public exhibition along with the revised DCP for the HEZ. The explanatory notes accompanying the exhibited documents provided the following context:

Cessnock LEP now requires that Environmental Management Strategies (EMSs) be prepared, exhibited, and adopted by Council, in the same manner as a Development Control Plan under the provisions of the Environmental Planning and Assessment

¹³⁰ Ms Stevenson, DEC, Evidence 2 July 2004, p26.

¹³¹ Hon A Refshauge, MP, Deputy Premier, Minister for Planning, 'Hunter Employment Zone Heralds Thousand of New Jobs', *Media Release*, 21 March 2002 - included as attachment to Submission 32, Premier's Department NSW.

¹³² Submission 31, HEZ Pty Ltd, pp18-19.

¹³³ Submission 61, Department of Infrastructure, Planning and Natural Resources, p7.

Act. The LEP requires that the strategies are adopted prior to approving any development applications on the Hunter Employment Zone site, and that Council must take them into consideration when assessing development applications.

The EMSs do not remove the obligations of any developer/applicant to address and comply with the requirements of relevant legislation. That is, if a development would normally require an Environmental Impact Statement or Species Impact Statement to be prepared, that is still the case even though considerably more work has been done through the EMSs. The aim of the EMSs is to provide more detailed information to assist developers, Council and the general public to understand the site, and to achieve more consistency in preparation, assessment and monitoring of development applications on the site.

The DCP, previously advertised, has been amended also. It contained a lot of information about what should be addressed in the EMSs. Now that they are prepared, this information is not required. The DCP is a shorter, more concise document than previously, as much of the detail is now in the EMSs themselves.¹³⁴

5.42 The Environmental Management Strategy is comprised of three components: an overall Environmental Management Master Strategy; nine environmental sectors for which specific strategies were developed; and site-specific environmental management plans which will be developed by each corporation (factory or facility) establishing within the HEZ. The nine environmental strategies are:

- Water-cycle Management Plan
- Habitat Management Strategy
- Air Quality Measures
- Bushfire Management Strategy
- Transport/Accessibility Strategy
- Lighting, Vibration, Interference and Noise Attenuation Strategy
- Civic Design Plan
- Waste Management and Resource Recovery Strategy
- Energy Management and Energy Efficiency Strategy.

5.43 The NPWS provided detailed input to the Habitat Management, Bushfire Management and Aboriginal Heritage components of the EMS. Cessnock City Council adopted the EMSs and amended DCP in November 2002.¹³⁵

5.44 The President of the Friends of Tumblebee, Mr James Ryan, voiced that organisation's concern that the EMS was not ensuring a high standard of environmental management of the site for the community's benefit, despite the consistent claim by the government, the Council

¹³⁴ Hunter Employment Zone, Exhibition of the Revised Development Control Plan, Environmental Management Strategies and Master Strategy – Explanatory Notes.

¹³⁵ Submission 35, Department of Environment and Conservation, p8.

and the developer to the contrary. Mr Ryan concluded by summarising the Friends of Tumblebee's concern:

What we are saying is that this environmental constraints master plan is useless if you are not going to implement it. These management plans are also useless; they have not protected the community one little bit.¹³⁶

5.45 The Committee notes that the estate-wide requirements for road corridor design and geometry contained within the exhibited Development Control Plan includes the following guidelines:

- Speed controls shall be designed into the HEZ road system through the use of meandering horizontal geometry, minimal road widths and visually narrow road corridors to achieve the desired speeds.
- Road verges and corridors should be appropriately planted with vegetation native to the local area, focusing on the retention of existing mature trees and areas of bush and through the planting of trees and shrubs native to the area particularly those of food value to fauna.
- Road design shall aim to achieve an interconnecting tree canopy along and across road corridors with roads and driveways spanned by mature native trees.
- (And a road standard of) Two-way single-carriageway roads with 3.5m lane-widths.¹³⁷

5.46 The Committee heard evidence from representatives of the developer that they regarded the EMS as allowing some flexibility:

The environmental management strategies are not set in stone; they are meant to be guiding principles of how this development will work, and they will adapt and change over time. For someone to say they have not complied with a management strategy, it may be true, but it is just one factor in a whole range of factors needing consideration.¹³⁸

5.47 Mr Craig Anderson, the ecologist working on the HEZ project echoed this view:

Again, I refer to Mr Somers' comments in regard to the role of the EMSs and the fact that they are not statutory documents.¹³⁹

5.48 Mr Anderson told the Committee of his negotiations with the NPWS regarding a current road development application that was before Council and the range of initiatives that were being proposed to facilitate fauna crossing in lieu of an interconnecting tree canopy:

Bearing in mind that we cannot retain large, mature trees immediately adjacent to significant earthworks, we will use other potential mechanisms to facilitate movement, such as the erection of glider poles, which are virtually like telegraph poles without the

¹³⁶ Mr Ryan, Evidence, 16 June 2004, p5.

¹³⁷ Cessnock City Council, *Draft Development Control Plan No. 47, September 2002*, p22.

¹³⁸ Mr Mathew Somers, General Manager, Hardie Holdings, Evidence, 16 June 2004, p58.

¹³⁹ Mr Craig Anderson, Ecologist, Harper Somers O'Sullivan, Evidence, 16 June 2004, p60.

wires, because literally all a glider needs is a structure to get from A to B. They can be put in place until the trees around there mature.¹⁴⁰

5.49 Mr Somers explained to the Committee his view on how the EMS sat within the planning regime for the HEZ:

The top of the planning regime...is the LEP. The LEP sits at the top and it can only be changed by consent, by a formal process, by a rezoning being run through both local government and the State Government before it can be changed. That sits at the top of the pecking order. Below that is a development control plan which says that we have now rezoned the land and this is the way we would like to generally see it happen. Below that again sits the environmental management strategies.¹⁴¹

5.50 It is on this basis that Mr Somers put forward that the EMS were not set in stone and that they will adapt and change over time. It is the understanding of the Committee that the acknowledged necessity in the EMS documentation that the EMS would adapt and change over time was so that it could incorporate and reflect new environmental information and site-specific monitoring data as that became available.¹⁴² For example it was always envisaged that the Habitat Management Strategy would be updated to incorporate the results of the ecological constraints mapping and be modified as required in response to those constraints.

Ecological Constraints Master Plan (ECMP)

5.51 The LEP for the HEZ did not require the development of an ECMP. However, during the preparation of the Habitat Management Strategy component of the EMS it became clear that detailed ecological data would need to be incorporated into the Habitat Management Strategy to allow for the protection of threatened species that occurred within the 4(h) zone of the HEZ.¹⁴³

5.52 At a June 2002 meeting between Cessnock City Council, HEZ, NPWS, and NSW Department of Land and Water Conservation regarding Habitat Management Plans, the NPWS suggested¹⁴⁴ that a detailed constraints map be prepared to assist in configuring future development of the 4(h) lands. It was further agreed that HEZ's ecological consultant, Harper Somers O'Sullivan, would undertake the requisite surveys and mapping as part of an ECMP for the site. This was commenced in July 2002 and was timetabled to take several months to complete.¹⁴⁵

¹⁴⁰ Mr Anderson, Evidence, 16 June 2004, p60.

¹⁴¹ Mr Somers, Evidence 16 June 2004, p58.

¹⁴² Cessnock City Council, Draft *Development Control Plan No 47 –September 2002*, p11.

¹⁴³ Submission 35, DEC, Attachment C p2.

¹⁴⁴ The Committee notes that in its submission at p8, HEZ Pty Ltd advises that it was HEZ who proposed the ECMP, and that it was a concept and initiative of HEZ designed to deploy the latest practices in ecological science.

¹⁴⁵ Mr Smith, DEC, Correspondence to Committee Director, 22 July 2004, p1.

- 5.53** The aim of the ECMP is, through intensive surveys and mapping, to provide accurate identification/location of flora and fauna and their habitats on the HEZ site. The stated goals of the ECMP are:
- To ensure balance of ecology and development giving a transparent, sustainable development outcome.
 - To provide a detailed level of baseline ecological data so as to streamline the DA Approval process for all potential users at the HEZ.¹⁴⁶
 - To develop and run a GIS modelling program to allow planning, sequencing and conservation outcomes in the development of HEZ to better satisfy determining authorities and the public.¹⁴⁷
- 5.54** The methods used in the development of the ECMP were:
- Detailed surveys within development zones including mature and hollow bearing trees, threatened flora and fauna species based on 150m x150m grid pattern habitat investigations.
 - Revised vegetation survey and mapping across the HEZ study area.
 - Threatened species surveys within the conservation zones.
 - Computerised survey technology enabling users to drill down to a small scale for assessing the environmental impact of a specific site.¹⁴⁸
- 5.55** The ECMP for the HEZ was finalised in February 2004. The ECMP identified a further 15 species of threatened fauna and four species of threatened flora at the site which had not been recorded during the LEP process, a number of which occur predominantly within the 4(h) lands. As discussed earlier at paragraph 5.30 the identification of these threatened species via the ECMP has led to discussions between the DEC and HEZ Pty Ltd regarding the setting aside of approximately 60 hectares of the 4(h) zone for conservation purposes.
- 5.56** The ECMP work has won three industry awards including the “Sir Thomas Mitchell Excellence in Surveying Award” at the NSW Excellence in Surveying and Mapping Awards, which recognise outstanding achievements of survey and spatial information professionals. Harper Somers O’Sullivan who developed the ECMP believe that it involved one of the most intensive ecological survey and mapping exercises undertaken on a site of this size in NSW, if not Australia.¹⁴⁹
- 5.57** The president of the Friends of Tumblebee told the Committee that while the premise of the ECMP was sound he believed its information gathering was flawed. In particular he was critical that the ECMP did not record any trees less than 50 centimetres diameter at breast

¹⁴⁶ The Habitat Management Strategy requires that development applications be supported by site specific and more targeted flora and fauna field surveys and threatened species impact statements.

¹⁴⁷ Submission 31, HEZ Pty Ltd, p30.

¹⁴⁸ Submission 31, HEZ Pty Ltd, p31.

¹⁴⁹ Submission 25, Harper Somers O’Sullivan, p2.

height. However, his greatest concern was that the information contained in the ECMP would ultimately be ignored and used only to justify rather than constrain development.¹⁵⁰

- 5.58** In submission¹⁵¹ and in evidence¹⁵² HEZ Pty Ltd stated that they were expecting imminent approval and ‘sign-off’ from the DEC regarding the ECMP. However, in response to a request for information from the Committee Chair, the DEC advised that it has no approval role for the ECMP. The ECMP was prepared in order to provide additional information on the presence and distribution of threatened species and ecological communities at the development stage so that they may be strategically considered as various DAs are submitted for the development of the 4(h) lands.¹⁵³ The ECMP, while providing essential information, is not, in itself, a formal element of the required process.
- 5.59** The Committee commends the developer HEZ Pty Ltd for undertaking at its own expense the development of the ECMP. The General Manager of Hardie Holdings pointed out to the Committee that their ecologist, Harper Somers O’Sullivan, at great expense to their company has undertaken significant ecological studies in the HEZ area including the National Park, which have added to the knowledge base of the national parks system itself.¹⁵⁴
- 5.60** However the Committee also notes that the purpose of the ECMP is to provide adequate information in order to expedite the required assessment of environmental factors at the development application stage. Further, since the finalisation of the draft ECMP in February 2004, further targeted studies have been undertaken to satisfy concerns raised by the DEC. These studies have been primarily aimed at gathering sufficient field information to demonstrate that (as opposed to determining whether) adequate populations of key threatened species and their habitats occur within the conservation areas in the locality.¹⁵⁵
- 5.61** The General Manager of Hardie Holdings told the Committee that the methodology used in the development of the ECMP was the benchmark now adopted by the Minister for the Environment for the proposed changes to the Threatened Species Act.¹⁵⁶ In his introduction to the second reading of the Threatened Species Legislation Amendment Bill, the Minister for the Environment referred to the zoning outcome of the Hunter Economic Zone as illustrating how the proposed new system will work.¹⁵⁷
- 5.62** However, the system foreshadowed by the Minister for the Environment is based on the collection of all current knowledge about the biodiversity values of an area under assessment at the beginning of the process:

¹⁵⁰ Mr James Ryan, President, Friends of Tumblebee, Evidence 16 June 2004, p5.

¹⁵¹ Submission 31, HEZ Pty Ltd, p31.

¹⁵² Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p58.

¹⁵³ Mr Smith, DEC, Correspondence to Committee Director, 22 July 2004, p1.

¹⁵⁴ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p55.

¹⁵⁵ Submission 25, Harper Somers O’Sullivan, p2.

¹⁵⁶ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p58.

¹⁵⁷ Hon Bob Debus, MP, Legislative Assembly, *Hansard*, 1 September 2004, p10623.

In other words, threatened species conservation will be considered, and even more importantly satisfactorily resolved, at the beginning of the planning process when the local environment plan, regional environmental plan or other planning instrument is being prepared.¹⁵⁸

- 5.63** Under the new system where a LEP has land appropriately zoned for various development purposes, any subsequent proposals for development will not require a separate site-specific assessment for threatened species as is currently required under the Environmental Planning and Assessment Act or a further approval from the DEC.

Interaction, intervention and pressure

- 5.64** Opponents to the HEZ development have claimed that the entire process has been characterised by pressure being applied to government agencies to ensure that the development was approved and then progressed despite the existence of legitimate concerns and legislative requirements. They claim this pressure was most evidently manifested in late 2002 when the developer and Cessnock City Council were liaising with the NPWS regarding the development application for the stage 1a road infrastructure of the site.
- 5.65** The Friends of Tumblebee argue that the NPWS changed their position with regard to concerns they held about the development application in the space of eleven days. The Friends of Tumblebee argue that this change of position was due to the Premier's Department exerting pressure on the NPWS.¹⁵⁹ A letter dated 12 November 2002 from the Director General of the Premier's Department to the Director General of the NPWS is cited by many participants to this Inquiry as clear evidence that pressure was applied.
- 5.66** Representatives of all the government agencies who gave evidence to the Committee were asked if they had been subjected to pressure to change their advice with respect to the HEZ development or if they had made any concessions to the HEZ in terms of their role in any approval process. The response from all departments was that no officer had been directed to change their advice; no concessions had been granted; and all statutory requirements were fulfilled.
- 5.67** It is clear that from March 2002 onwards there was an extraordinary amount of interaction between the developer, Cessnock City Council, the NPWS and the Premier's Department regarding the finalisation of the EMS and ECMP and the progress of road infrastructure development applications. Participants to the inquiry provided the Committee with numerous copies of relevant correspondence and with references to relevant meetings. Very often, inquiry participants have drawn quite starkly different inferences from the content of these items of correspondence. During the public hearings the Committee sought to determine as best as it could the actual impact of these interactions.
- 5.68** It is beyond dispute that the developer and Cessnock City Council were frustrated with the lack of progress in the approval of development applications, and that they constantly sought to expedite the process; initially via negotiation with the NPWS and ultimately, through their request, via the intervention of the Premier's Department:

¹⁵⁸ Hon Bob Debus, MP, Legislative Assembly, *Hansard*, 1 September 2004, p10623.

¹⁵⁹ Supplementary submission 28a, Friends of Tumblebee, p4.

As Mr Cowan indicated earlier, we were suffering some significant frustration and significant delays in the latter part of 2002 and into 2003 by the actions of certain officers of the National Parks and Wildlife Service. We had inconsistent advice, given that we were given assurances at a senior management level of the parks service that certain things would be done in an agreed methodology. That never filtered down to the officers who were dealing with it. It was of great concern to us. The frustration was quite high. As you heard Mr Cowan and other speakers such as Mr Thomas say, we in the Hunter Valley Wine Country Development Employment Team and the council's project manager at that time, Mr Selmon, had this frustration. Council had that frustration and the wine country team had that frustration, so we thought it appropriate to go and see the regional co-ordinator of the Premier's Department in Newcastle, Mr Ben Chard, and explain to him our frustrations.¹⁶⁰

- 5.69** In evidence to the Committee the General Manager of Hardie Holdings indicated that the HEZ's satisfaction with the performance of the NPWS had improved:

In fact, in the last year or so it has been a pretty good organisation to deal with, compared with what it was two years ago when we made the complaint through the Premier's Department.¹⁶¹

- 5.70** In order to examine whether there is any evidence of pressure being improperly applied the Committee believes it is also necessary to examine whether the frustration at the delays in granting approval were legitimate. The Committee acknowledges that public officers are required to work under pressure and to meet the reasonable service expectations of the public. At the same time it is incumbent upon public officers to ensure that they uphold their statutory obligations and fulfil their obligations to the wider community.
- 5.71** In the following sections this chapter reviews a range of meetings and correspondence which give the background to and which culminate with the exchange of letters between the Director General of the Premier's Department and the Director General of the NPWS.

26 March 2002 NPWS provides comment on draft EMS¹⁶²

- 5.72** On this date the NPWS sent a letter to Mr Neil Selmon, at Cessnock City Council. Mr Selmon was appointed by the Council to the position of Executive Planner. The role of the executive planner was to coordinate and manage the strategic planning and development assessment functions associated with the HEZ.
- 5.73** In the 26 March 2002 letter the NPWS provided comment on the draft Environmental Management Strategies. As discussed earlier, the LEP stipulated that no development consent could be granted until either the EMSs were adopted or until six months after the making of the LEP-if the EMSs had not been adopted by that date. At the time of the making of the LEP, both the DUAP and the Council anticipated that the EMSs would be adopted prior to the six month sunset clause.

¹⁶⁰ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p64.

¹⁶¹ Mr Somers, Evidence, 16 June 2004, p67.

¹⁶² The Committee was not provided with a copy of this correspondence. The date and subject matter of this correspondence was referred to in later correspondence, a copy of which was provided to the Committee.

March 2002: HEZ lodge initial road infrastructure development application

- 5.74 HEZ Pty Ltd advised that they lodged a road infrastructure development application with Cessnock City Council in March 2002.¹⁶³
- 5.75 The Committee understands the eagerness of the proponent to commence development of the site following the lengthy process leading to the finalisation of the LEP. However, the Committee notes that the EMSs, which were to guide the preparation of development applications, had not been adopted by this very early stage and the sunset clause in the case of their non-adoption by Council did not fall due until the 28 September 2002.

2 May 2002: Cessnock Council advise NPWS of need for SIS¹⁶⁴

- 5.76 On this date Council's Executive Planner sent an e-mail to Ms Katherine Sale at the NPWS regarding the Stage 1 DA for the HEZ site. The e-mail advises that the Council had reached a decision that it could not accept the Stage 1 infrastructure DA from the proponent without an accompanying Species Impact Statement (SIS).
- 5.77 The DEC provided the Committee with a description of the requirements of Council to determine the need for an SIS:

Council, as consent authority, must review all development applications that come before it and take into account threatened species matters as per the heads of consideration under s. 79C of the *Environmental Planning & Assessment Act 1979*. If Council determines that the development is likely to have a significant impact on threatened species, they must require that the proponent prepare a SIS which takes into account matters outlined under s. 110 of the *Threatened Species Conservation Act 1995*. This was the situation at the time that development application for the Stage 1 road infrastructure was submitted and this is the situation as it currently exists under NSW legislation.¹⁶⁵

Mid 2002 Premier's Department alerted to concerns of Council and HEZ

- 5.78 The submission from the Premier's Department notes that the Department was first alerted to problems with HEZ's development plans at a meeting between Cessnock Council, HEZ management and a Premier's Department officer in mid 2002. The basis of the dispute was a claim that NPWS was providing conflicting advice as to the development of the zone.¹⁶⁶
- 5.79 The submission states that Council and HEZ believed the development application process should have been straightforward given the involvement of government agencies, in particular NPWS, in the rezoning of the Tomalpin land. Council would have been well aware of the

¹⁶³ Submission No. 31, HEZ Pty Ltd, p11. The Committee notes the HEZ submission has a typographical error which incorrectly lists this item in the timeline as March 2003.

¹⁶⁴ The content of this e-mail and the subsequent actions taken by the NPWS were raised in evidence during the public hearing on 2 July 2004 at p14.

¹⁶⁵ Mr Smith, DEC, Correspondence to Committee Director, 22 July 2004, p3.

¹⁶⁶ Submission 32, Premier's Department NSW, p6

requirements, such as the EMS, built into the LEP and of the fact that normal legislative requirements still applied to development applications notwithstanding the LEP.

18 June 2002 Planning focus meeting held at Cessnock City Council¹⁶⁷

5.80 On 18 June 2002, Mr Ben Chard the Regional Coordinator from the Premier's Department chaired a planning focus meeting at Cessnock City Council. Present at the meeting were representatives from the developer, the developer's ecological consultant, Council, and relevant government agencies including the NPWS.

5.81 In later correspondence the General Manager of Cessnock City Council referred to the context for the discussion that took place at this meeting:

The LEP requires that a range of Environmental Management Strategies (EMS) be prepared to guide development on the site. One of these is a Habitat Management Strategy. Council and the Developer have agreed with NPWS that the DECM [the ECMP] is required. However, the sheer size of the site means that this work will take approximately 12 months to complete. At many meetings and discussions involving Council, NPWS and various consultants, it has been agreed that the Habitat Management Strategy must necessarily, at this point, be a broad document, with the DECM feeding more detail into it as the information becomes available.¹⁶⁸

5.82 According to both HEZ Pty Ltd and Cessnock City Council those present at the meeting reached an agreement:

At the focus meeting...on June 18 2002, the relationship between the EMS, the ECMP and consideration of development applications for infrastructure (particularly the main internal access road) was discussed, and the agencies at the meeting, including NPWS, agreed that the approach being taken was reasonable and acceptable.¹⁶⁹

5.83 The Committee infers that the approach reportedly agreed to included the assessment by the NPWS of development applications and associated documentation prior to the adoption of the Habitat Management Strategy and with the benefit of whatever information was available from the ECMP process at the time. The Committee does note that this *understanding of the relationship between the EMS and the ECMP* is a phrase often quoted (but never explained) in subsequent conciliatory correspondence from the NPWS.

5.84 According to the General Manager of Cessnock City Council the parties at the 18 June meeting also agreed to timelines for determination of the Stage 1 road infrastructure DA.

¹⁶⁷ This meeting is cited at page 21 of Submission 31, HEZ Pty Ltd, and in correspondence dated 22 October 2002 from the General Manager of Cessnock City Council to the Regional Coordinator, Hunter and Central Coast, Premier's Department.

¹⁶⁸ Correspondence, from General Manager CCC to Regional Coordinator, Premier's Department, 22 October 2002, p1.

¹⁶⁹ Correspondence, from General Manger, CCC to Regional Coordinator, Premier's Department, 22 October 2002, p1.

5.85 Throughout the following months the most continual source of complaint on the part of Cessnock Council and the developer was their view that this agreement with the NPWS about completion of detailed ecological constraints mapping and its relationship to the Habitat Management Strategy for the site, and for consideration of infrastructure development applications was not reflected in the advice they received from individual NPWS officers.

5.86 The Friends of Tumblebee provided the Committee with a copy of a file note (which was provided to them under an FOI application), from Ms Katherine Sale of the NPWS who was present at the meeting.¹⁷⁰ The file note presents a somewhat different overview of the meeting. The file note lists the following points:

- The purpose of the meeting, in essence, was to check all agencies involved in progressing the DA and to sort out any problems.
- Council advised that they hoped to put the EMSs on exhibition within the week. They would have to be on exhibition for 28 days and then any comments received would need to be reviewed. It was noted that the LEP required that the EMSs go on exhibition and be approved by Council before DA consent could be issued.
- Mr Ben Chard sought commitment from all agencies to respond in a timely manner to the EMS once they were put on exhibition. NPWS indicated it would attempt to meet the 28 day timeframe but noted that it was a lengthy and complex document.
- Reference was made to a previous meeting where options for realignment of the proposed road so as to lessen ecological impacts were discussed.
- NPWS provided an overview of the DGRs for the SIS. The NPWS have 28 days from receipt of request in which to issue the DGRs. Despite only recently receiving the request NPWS undertook to issue the DGRs within two days.
- There was a general discussion about timeframes.
- The Mindaribba Aboriginal Land Council expressed their desire that the DA process be expedited.
- Mr Duncan Hardie expressed his surprise at how bogged down the DA was becoming, and also expressed a desire to see the process speeded up. Mr Hardie's prime concern was to have the DA issued so HEZ could start marketing the space. There was pressure from financial backers to get the road in so that the site could be shown to potential users.
- Mr Mathew Somers indicated that he saw the SIS requirements and the NPWS had been a factor in holding things up.
- It was anticipated that the DA would be lodged by the end of July.
- Neil Selmon raised the issue of need to meet archaeological requirements of the LEP, and noted that NPWS would be involved in this. This was apparently of some surprise to the developer.

¹⁷⁰ The file note in question is dated 20 June 2002. However, it notes the meeting was convened by Mr Ben Chard and the list of attendees accords with those present at the 18 June meeting.

- The meeting concluded with agreement on various subsequent meetings to be held including a meeting between NPWS, Council, Harper Somers, Ecotone and the swift parrot recovery officer regarding the Habitat Management Strategy and the ECMP.

June 2002: NPWS issue Director General's requirements (DGRs) for SIS

- 5.87** The submission from the DEC provides the following background to the issuing of the DGRs:

In May 2002, Hardie Holdings Pty Ltd submitted a development application to Cessnock City Council for a combined rail and road access into the HEZ. This was subsequently amended and resubmitted as a development application for the Stage 1 road infrastructure. Cessnock Council requested a SIS for the proposal and in June 2002 NPWS issued DGRs for the SIS.¹⁷¹

- 5.88** Ms Deborah Stevenson, Senior Threatened Species Officer, DEC told the Committee that on receipt of the advice from Mr Selmon the NPWS provided Cessnock Council with the Director General's requirements (DGRs) in relation to that development application. In this case it was survey requirements for threatened species that occurred within the vicinity of the proposed development. Ms Stevenson described the process:

What we normally do is a search of the Wildlife Act to see what threatened species occur within ten kilometres of the proposed development and we put those species in the director-general's requirements for the species impact statement as the subject species for which the impacts of the development need to be investigated. We include that information in the director-general's requirements.¹⁷²

- 5.89** The Deputy Director General, Environment Protection and Regulation Division, DEC elaborated:

The director-general's requirements are essentially the spelling out of the work that is to be done in order to ensure that the council has proper information upon which to base its decisions, and then the work gets done, essentially, by the proponent and the people who he or she employs to assist them in developing the impact statement.¹⁷³

- 5.90** Under s. 111 of the Threatened Species Conservation Act the Director General is allowed to limit or modify (or limit and modify) the matters outlined under s. 110 to be included in an SIS.

- 5.91** According to a statement made by the General Manager of Cessnock City Council in correspondence to the Regional Coordinator of the Premier's Department, the DGRs for the SIS stated that it was understood that the ECMP and infrastructure planning would occur 'in parallel'.¹⁷⁴

¹⁷¹ Submission 35, DEC, Attachment C, p4.

¹⁷² Ms Stevenson, DEC, Evidence, 2 July 2004, p14.

¹⁷³ Mr Smith, DEC, Evidence, 2 July 2004, p15.

¹⁷⁴ Correspondence from General Manager, Cessnock City Council, to Regional Coordinator, Premier's Department, 22 October 2002, p2.

19 June 2002 NPWS provide comment on proposed amendments to LEP

- 5.92** On 19 June 2002 the Manager, Conservation Planning Unit, NPWS wrote to the Council's Executive Planner providing comments on proposed amendments to the LEP. This was in response to a letter dated 29 May 2002 seeking input from the NPWS.
- 5.93** The proposed amendments were intended to amend minor errors and operational difficulties identified in the LEP. The NPWS provided comment on the proposal to remove the requirement for development consent for clearing related to, inter alia, geo-technical or similar investigation.
- 5.94** The NPWS acknowledged that the amendment would streamline the process and considered that the included caveats would assist in minimising potential impacts on flora and fauna, including threatened species. The NPWS provided some suggestions to tighten the relevant amended clause.
- 5.95** However, the letter did advise that a Section 91 licence under the *Threatened Species Conservation Act 1995* would still be required if such clearing would result in harm (fauna) or picking (flora) of a threatened species, population or ecological community, damage to critical habitat or damage to habitat of a threatened species, population or ecological community.
- 5.96** The letter also touches on the confusion caused by the continued inclusion of National Park in the definition of lands covered by the Hunter Employment Zone. It concludes by recommending that areas zoned 8(a) be excluded from the definition of HEZ.¹⁷⁵

July 2002 – HEZ lodge development application for Stage 1 road infrastructure

- 5.97** HEZ Pty Ltd advised that they lodged their development application for the Stage 1 road infrastructure with Cessnock City Council in July 2002.¹⁷⁶ The proposal involved the construction of 5.7km of internal 'spine road' extending from the intersection with Main Road 195 on the eastern boundary of the HEZ to a point approximately 1km short of the northern boundary. The alignment beyond that point was still to be determined and to be addressed in a separate DA. The DA proposal included the carriageway of the road, associated earthworks and stormwater infrastructure.¹⁷⁷
- 5.98** Cessnock Council formally requested comments from the NPWS on this development application and the accompanying SEE and SIS on the 23 September 2002. In reviewing the SIS, the NPWS noted, inter alia, that the Hunter Lowland Redgum Forest had been preliminary listed by the NSW Scientific Committee as an ecologically endangered community (EEC) and recommended that Council give it careful consideration in determining whether or not to grant consent to the road proposal as the forest was likely to be formally listed.¹⁷⁸

¹⁷⁵ Correspondence, from Manager, Conservation Planning Unit, NPWS, to General Manager, Cessnock City Council, 19 June 2002.

¹⁷⁶ Submission 31, HEZ Pty Ltd, p21.

¹⁷⁷ Correspondence, from Manager, Threatened Species Unit, NPWS, to Executive Planner, Cessnock City Council, 1 November 2002.

¹⁷⁸ Submission 35, DEC, Attachment C: p8.

July 23 2002: Meeting re Aboriginal archaeology retrieval¹⁷⁹

- 5.99** The LEP requires that certain Aboriginal archaeology retrieval investigations be completed prior to any development application being approved on the HEZ site. A permit issued by the NPWS was required to undertake the investigation work. On 23 July 2003 a meeting was held at NPWS offices to discuss a brief for the work to be undertaken.
- 5.100** According to the General Manager of Cessnock City Council the meeting was convened to also raise concerns about the proposed method of investigation, which was grader scrapes five metres by 100 metres in various parts of the site. The primary concern of Council was that such a method would necessitate a DA for the vegetation clearing. The preparation and then review and approval of a DA would naturally extend the timeframe for this activity.
- 5.101** Again, according to the General Manager it was agreed at this meeting to amend the brief to allow archaeological consultants to suggest alternative methodologies. Council selected a consultant who then prepared a work proposal to accompany the application for the required permit. The consultant reportedly discussed this with NPWS staff and was advised that grader scrapes were still the preferred method.
- 5.102** The consultant rewrote the proposal. However, Council was concerned at the time delay that the DA process would cause and arranged a meeting, to be held in October, with a view to progressing the matter. In the correspondence in which reference to this meeting is made the General Manager voices his frustration at what he saw as uncertainty over what methods were and would not be acceptable to NPWS.

2 August 2002: Developer meets with Director General, Premier's Department

- 5.103** In its submission to the inquiry the Premier's Department advise that the Director General, in response to a request from the Chairman of HEZ Mr Duncan Hardie, met with executives of HEZ management on 2 August 2002. Mr Hardie reportedly sought the meeting to express HEZ's concern at the slow pace of progress of the project and the problems being encountered in negotiations with NPWS.
- 5.104** Mr Hardie reportedly stated his belief that the NPWS and the NSW Scientific Committee had 'adopted a stance of frustrating the project'.¹⁸⁰
- 5.105** The Premier's Department submission does not indicate that any undertakings were made or that any outcome was agreed to at this meeting. The submission infers that the meeting was held to allow HEZ management to voice their concerns. The submission notes that Mr Hardie listed the problems he raised at this meeting in a subsequent letter sent some twelve weeks later. It was on receipt of this letter that the Director General of Premier's Department was prompted to take action.

¹⁷⁹ Details of this meeting are included in correspondence dated 22 October 2002 from the General Manager Cessnock City Council to the Regional Coordinator Premier's Department.

¹⁸⁰ Submission 32, Premier's Department NSW, p6.

8 August 2002: Discussion of link road and light vehicle access

- 5.106** It is worth noting that while the negotiations continued regarding infrastructure development applications and finalisation of the EMS and ECMP there were also other aspects of the HEZ development that were also subject to interaction between the Council, the developer and relevant agencies.
- 5.107** On 8 August 2002 a meeting, attended by the RTA, Council, NPWS and Harper Somers, was convened to discuss the Pelaw Main bypass road and light vehicle access to the HEZ site.
- 5.108** The Committee was provided with a copy of an internal NPWS e-mail regarding this meeting.¹⁸¹ The meeting considered four options for the route of the proposed bypass road. The issue of the location of the bypass road is examined in Chapter Six.

September 2002: Exhibition of revised Development Control Plan, Environmental Management Strategies and Master Strategy

- 5.109** Cessnock City Council exhibited the revised DCP, EMSs and Master Strategy for public comment in September 2002. Council was required to place them on exhibition for a minimum of 28 days.
- 5.110** As noted previously, the LEP required that Council could not issue consent for any development work until either the EMSs had been exhibited and adopted by Council or until six months after the gazettal of the LEP.
- 5.111** Council had initially hoped to have the EMSs ready for exhibition towards the end of June 2002. The longer than expected time taken to prepare the draft EMSs was no doubt a factor in the increasing tension between the parties.

13 September 2002: Council seeks comment from NPWS on EMS¹⁸²

- 5.112** On the 13 September the executive planner from Cessnock City Council wrote to the NPWS inviting comment on the nine sectoral Environmental Management Strategies. In line with its statutory responsibilities, the NPWS reviewed and provided comment primarily on the Habitat Management Strategy and the Bushfire Management Strategy. The NPWS provided its comment to Cessnock City Council on 25 October 2002.

28 September 2002: sunset clause for adoption of EMS

- 5.113** The LEP included a clause allowing development to proceed if the EMS were not prepared within a certain time limit, namely six months. This standard provision was inserted at the

¹⁸¹ A copy of the e-mail was secured by the Friends of Tumblebee via a Freedom of Information application and included as an attachment to its submission to the inquiry.

¹⁸² This correspondence is referenced in the 25 October 2002 letter of response from the NPWS. A copy of the 25 October 2002 correspondence was provided to the Committee.

insistence of the Department of Urban Affairs and Planning to ensure that a council cannot stall development by never preparing any Environmental Management Strategies.

- 5.114** At the time of considering the amended LEP Council's view was the clause should not be included in the LEP, as it only served to undermine their commitment to having the EMSs in place. Council was also confident at this time that the EMS would be in place well before any time limit set by this clause and therefore saw it as redundant.
- 5.115** Cessnock Council did not seek to stall development on the HEZ site, but rather sought to progress development despite the EMS being incomplete.
- 5.116** Ultimately council did not grant its first development consent for the HEZ site until December 2002, nine months after gazettal of the LEP and by which time it had adopted the EMSs for the site.

23 September 2002: Council seeks NPWS comments on DA for Stage 1 road infrastructure¹⁸³

- 5.117** On this date the Cessnock Council Executive Planner, Mr Neil Selmon wrote to Ms Lou Ewins, Manager, Conservation Planning Unit, NPWS seeking comments on the DA proposal. The NPWS subsequently provided their comments in a letter on 1 November 2002. The signatory to the NPWS letter was Mr Robert Humphries, Manager, Threatened Species Unit.

15 October 2002: Swift Parrot Recovery Team writes to Cessnock City Council

- 5.118** In early October 2002 the Swift Parrot National Recovery Team released its report titled: *Assessment of Swift Parrot Sites near Cessnock, Lower Hunter Valley Region NSW – including the Hunter Employment Zone*. The relevant findings and recommendations of this report were discussed earlier at paragraph 5.24.
- 5.119** On 15 October, Ms Debbie Saunders, on behalf of the Swift Parrot Recovery Team (SPRT) wrote to the General Manager of Cessnock City Council to express the SPRT's concern about the impact of the HEZ on the Swift Parrot. The letter contained information about the significance of the site to the continued existence of the parrot as well as providing specific comments on the Habitat Management, Bushfire Management, Civic Design and Transport Accessibility components of the EMS.
- 5.120** The letter indicated that the SPRT was opposed to the development of the HEZ lands. It went on to recommend that, should the development proceed, that there should be an overall retention of at least 75% of the Lower Hunter Spotted Gum/Ironbark Forest and Hunter Lowland Redgum Forest within the 4(h) lands.
- 5.121** The findings of the SPRT report raised new, or as some would argue confirmed, information that then had to be considered when assessing environmental impacts for proposed development. The letter sparked concern among Cessnock Council and the developer and was

¹⁸³ This correspondence is cited in the subsequent letter of response from the NPWS dated 1 November 2002. A copy of the 1 November 2002 correspondence was provided to the Committee.

the catalyst for requests from them for intervention and assistance from the Premier's Department.

- 5.122** Ms Saunders, while located at NPWS offices in Queanbeyan, was a member of the National SPRT and was a Commonwealth employee. The letter to Cessnock Council was written on Swift Parrot National Recovery Team letterhead and in no way does it mention or imply that the recommendations contained within were supported by, or those of, the NPWS.
- 5.123** As will be discussed later HEZ Pty Ltd could not disassociate the SPRT and its work from the NPWS. This misconception that the SPRT report was a NPWS document was contained in a subsequent letter from the developer to the Director General of the Premier's Department, who then relayed them in a letter of his own to the Director General of the NPWS in which he was asked to review his Department's position with regard to the HEZ.

21 October 2002 NPWS meets with Council, Developer and consultant archaeologist

- 5.124** This meeting was primarily held to progress the issue of the preferred method for conducting investigative work for Aboriginal archaeological retrieval. However other issues raised by NPWS officers at this meeting, particularly the availability of new detailed information regarding the swift parrot and the regent honeyeater prompted Cessnock Council and the developer to seek the intervention of the Premier's Department. This in turn set in train the exchange of correspondence between the Premier's Department and the NPWS that has drawn the focus of those who claim that pressure was exerted on NPWS to stifle any concerns that it held.

Aboriginal archaeological retrieval

- 5.125** The meeting was convened because Council was concerned that the NPWS preferred method of clearing for retrieval investigation work – grader scrapes – would necessitate the approval of a DA and this would lengthen the timeframe for the work. This issue had previously been raised at an earlier meeting on 23 July. According to the General Manager of Cessnock Council, after lengthy discussions it was agreed that alternative methods would, after all, be accepted. As a result the archaeological consultant commenced rewriting the permit application for the third time.¹⁸⁴
- 5.126** Notwithstanding the successful outcome of these negotiations, the General Manager subsequently cited this issue as an example of the frustration caused by the uncertainty over what methods would be acceptable to the NPWS.

Requirement to complete the EMS and the ECMP

- 5.127** At the meeting the Executive Planner advised that the completed ECMP would not be available for twelve months and expressed his surprise that NPWS had waited this long to raise this issue with respect to the ECMP.

¹⁸⁴ Correspondence from General Manager Cessnock City Council to Regional Coordinator, Premier's Department, 22 October 2002.

5.128 In response to this, Ms Deborah Stevenson advised at the meeting: that detailed information on the Regent Honeyeater and Swift Parrot was now available; that a ‘first letter’ (presumably from NPWS to Council) suggested the importance of constraints mapping; and that the NPWS was itself surprised that the EMS and in particular the Habitat Management Strategy currently then on exhibition had not incorporated previous detailed comments provided by the NPWS.

5.129 In a letter to the Regional Coordinator of the Premier’s Department, the General Manager of Cessnock Council, summarised what he viewed as the position put forward by NPWS officers at this meeting:

Meetings held with NPWS staff this week have focussed on new information from the National Swift Parrot Recovery Team and have suggested that the DECM [ECMP] is required to be completed before NPWS can adequately comment on, and make decisions about, the Habitat Management Strategy, the Stage 1 infrastructure DA currently on exhibition, and even the location of test digs for vital aboriginal archaeology retrieval investigation.¹⁸⁵

5.130 During the public hearing on 2 July 2004, the Committee questioned representatives of the DEC about the advice provided by NPWS officers at this meeting. The DEC took that question on notice and subsequently advised:

... [The ECMP] was commenced in July 2002 and was timetabled to take several months to complete. The meeting on 21 October 2002 between Council, the proponent’s consultant archaeologist and NPWS staff primarily was to discuss proposed excavation works and the likely impacts of these works on threatened species. At the meeting, the NPWS reiterated the need for constraints mapping of the HEZ site and requested an update on the status of the ECMP.¹⁸⁶

5.131 From the sources and advice provided to it the Committee can not determine whether NPWS officers at this meeting either stated or suggested that the ECMP had to be completed prior to any development proceeding further, or merely restated the need for constraints mapping.

22 October 2002: Council, Developer and Land Council meet with Regional Coordinator Premier’s Department

5.132 In the morning of 22 October 2002, Mr Ben Chard, the Regional Coordinator, Hunter and Central Coast, Premier’s Department met with Cessnock Council’s Executive Planner, Mr Neil Selmon, Mr Matt Somers from Hardie Holdings, Mr Rick Griffiths from Mindaribba Local Aboriginal Land Council, and Mr Lucas Grenadier from Harper Somers O’Sullivan.

5.133 The meeting discussed impediments to the progress of development of the HEZ, and in particular the view of the developer and Council that agreements with the NPWS about completion of the ECMP and its relationship to the Habitat Management Strategy for the site,

¹⁸⁵ Correspondence from General Manager, Cessnock City Council to Regional Coordinator, Premier’s Department, 22 October 2002.

¹⁸⁶ Correspondence from Mr Smith, DEC, to Committee Director, 22 July 2004.

and for consideration of infrastructure development applications, were not being reflected in advice being received from individual NPWS officers.¹⁸⁷

- 5.134** The Committee notes that while no NPWS officer was present at the meeting, later on that day the Manager of the Conservation Planning Unit contacted Council's Executive Planner to advise that the NPWS understood the relationship between the LEP, EMS and ECMP.

22 October 2002: General Manager, Cessnock City Council writes to Regional Coordinator

- 5.135** Later in the same day as the meeting referred to in the above section, the General Manager, Cessnock City Council wrote to the Regional Coordinator to restate Council's primary concerns regarding its interaction with the NPWS.
- 5.136** The letter first refers to previous meetings held with the NPWS including the 21 October meeting where NPWS officers referred to the information now available following the release of the Swift Parrot Recovery Team report, and the reported suggestion that the ECMP would need to be completed prior to NPWS being able to provide comment on a number of issues.
- 5.137** The letter gives an insight into Council's view of what is entailed in the oft cited agreement between Council and the NPWS regarding the relationship between the EMS and the ECMP:

The LEP requires that a range of Environmental Management Strategies (EMS) be prepared to guide development on the site. One of these is a Habitat Management Strategy. Council and the Developer have agreed with NPWS that the DECM [ECMP] is required. However, the sheer size of the site means that this work will take approximately 12 months to complete. At many meetings and discussions involving Council, NPWS and various consultants, it has been agreed that the Habitat Management Strategy must necessarily, at this point, be a broad document, with the ECMP feeding more detail into it as the information becomes available.

- 5.138** And then later after noting that NPWS officers had raised the issue of the SIS reflecting newly available information on the swift parrot:

This advice appears to Council to be contradictory to agreements reached with NPWS over many months. The ECMP is progressing, more information is available to Council and the developer every week, and the work done so far was included in the SIS prepared for the Stage 1 Infrastructure DA. Indeed, the NPWS Director-General's requirements for the SIS state that it is understood that the ECMP and infrastructure planning will occur 'in parallel'.

- 5.139** The letter concludes that notwithstanding previous assurances, including one made that very day, from senior NPWS officer, Council believed that further attention at a senior level was required:

...Council acknowledges that there is legislation that must be adhered to, and processes and protocols that agencies must follow to achieve consistency across the

¹⁸⁷ Correspondence, from General Manager, Cessnock City Council to Regional Coordinator Premier's Department, 22 October 2004.

State. There is no argument with these processes. Council's concern is that advice being received from individual NPWS Officers does not seem to reflect:

i. The 'whole of Government' approach and attitude to this important, employment generating development; or

ii. The advice from very senior NPWS Officers that there will be no impediment to the successful completion of the project from the Service.

I note that since your meeting with the Developer and Council's HEZ Executive Planner this morning, Lou Ewins, Manager, Conservation Planning Unit NPWS, has contacted Council advising that NPWS supports the rezoning as reflected in the LEP of March 28, 2002, understands the relationship between the LEP, EMS and DECM, and is supportive of the approach being taken by Council and the Developer, and that comments of the National Swift Parrot Recovery Team are not comments from NPWS, nor should they be inferred to reflect NPWS policy. While this advice reflects Council's understanding of the agreements with NPWS, our concern is that this position is not reflected in the opinions and advice received from individual Officers, and this is a matter that Council feels needs the urgent attention of Officers at the highest level of the Service.¹⁸⁸

25 October 2002: NPWS provide comment on exhibited EMS

5.140 On this date Ms Lou Ewins, Manager, Conservation Planning Unit, NPWS wrote to Mr Neil Selmon, Council's Executive Planner providing comment on the EMS strategies that were on exhibition. This was in response to a 13 September letter from Mr Selmon inviting comment. The letter primarily provided comment on the Habitat Management Strategy and the Bushfire Management Strategy as these areas aligned with the statutory responsibilities of the NPWS, it also provided comment on the overall master strategy.

5.141 In the letter Ms Ewins states that earlier comments provided by the NPWS had not been acted upon:

I refer you to the NPWS previous correspondence dated 26 March 2002, which provided detailed comment on the draft strategies. It is apparent that issues raised in the NPWS' earlier advice on the draft EMS have not been comprehensively addressed in the exhibited EMS. Council is asked to consider the following comments in combination with those made previously.

5.142 At the 21 October meeting, other NPWS officers noted that the exhibited EMS had not taken into account previous comments from the NPWS, even though as early as the 18 June 2002 planning focus meeting the Premier's Department had encouraged agencies to assist in the timely finalisation of the EMS.

¹⁸⁸ Correspondence, from General Manager, Cessnock City Council, to Regional Coordinator, Hunter and Central Coast, Premier's Department, 22 October 2002.

28 October 2002 Developer writes to Director General, Premier's Department

- 5.143** On 28 October 2002, Mr Duncan Hardie, Managing Director, HEZ Pty Ltd, wrote to the Director General of the Premier's Department seeking the assistance of the NSW Government to ensure the progress of development of the HEZ. In his correspondence, Mr Hardie makes serious allegations regarding the NPWS:

We write to express our grave concern as to the progress of the [HEZ] development especially with respect to the lack of integrity shown by officers of the Department of National Parks & Wildlife (NP&WS) who, in our opinion, have adopted a stance of frustrating this project to ensure it's [sic] ultimate failure.

...

Whilst the senior officers of the NP&WS have indicated Departmental support of the project this does not seem to be the attitude of the individual officers handling the day to day issues. This is not only our opinion, but also that of Cessnock City Council (see enclosed letter).

- 5.144** Mr Hardie then proceeded to list some specific instances of deliberate non-support by NPWS officers. These instances concerned officers not wanting to reassess their previous advice with respect to aboriginal archaeological and ecological issues, despite undertakings given by the NPWS at the June 18 planning focus meeting as to the process moving forward; and their advice that they could not issue a response to the infrastructure road DA as they required more information. He concluded:

With respect to NP&WS our overwhelming impression based on this project and others is that at the mid-level officer strata there is a culture of:

Inconsistent advice

Change of attitude once issues are agreed

Continual delays and frustration of important economic activity

Being more closely aligned to the green groups rather than a collaborative whole of government approach.

- 5.145** Mr Hardie incorrectly attributes the Swift Parrot report to the NPWS. He notes that the recommendation of the report that 75% of the 4(h) lands be conserved reflected the long standing call from the Friends of Tumblebee that the estate be restricted to 200 hectares, and questions the scientific rigour of the officers who prepared the report.

- 5.146** Mr Hardie also sought the intervention of the Director General with respect to the NSW Scientific Committee, notwithstanding that it is an independent statutory body. Mr Hardie was concerned at what he termed the ongoing threat to the project posed by the actions of the Scientific Committee. In particular he appeared perplexed that environmental issues could continue to be raised post the LEP rezoning:

To date the Scientific Committee have listed two ecological [communities] which have impacted on the project, not withstanding the conservation outcomes of the initial

study and rezoning....The Scientific Committee continue to list flora and fauna [communities] without regard to the economic impact of doing so.

5.147 The letter concludes with a request for the assistance of the Government to:

Expedite the [road infrastructure] DA

Ensure NP&WS and the NSW Scientific Committee recognise the environmental and conservation outcomes achieved to date at HEZ and prevent further sterilisation of land which will jeopardise the development.

5.148 In response, the Director General wrote to the Director General of the NPWS on 12 November 2002. This is the correspondence that has been the subject of a significant amount of interest during the inquiry. Dr Gellatly summarised the background leading to his 12 November correspondence:

I met with the proponents [2 August 2002]. There was a letter from the council [22 October 2002]. I asked the proponents to put their issues in writing, which they did in October. On the basis of that and the issues they raised the letter was sent to the National Parks and Wildlife Service.¹⁸⁹

5.149 The Premier's Department held discussions with the NPWS and the developer prior to the subsequent formal response from that agency.¹⁹⁰ Throughout the submissions and evidence to the inquiry there was no reference to any formal response from the Director General of the Premier's Department to Mr Hardie's letter.

5.150 The Committee notes that only four days after Mr Hardie's letter and eleven days prior to the Director General of the Premier's Department writing to the Director General of the NPWS, Cessnock Council received comments from the NPWS regarding the DA for the road infrastructure.

1 November 2002: NPWS provide comment on development application and accompanying SEE and SIS or Stage 1 road infrastructure

5.151 Cessnock City Council sought comments from the NPWS on the DA and accompanying SEE and SIS on 23 September 2002. That letter had been addressed to Ms Lou Ewins, Manager, Conservation Planning Unit, who had been the primary contact with Council regarding the HEZ development. The 1 November 2002 letter of response, however, was signed by Mr Robert Humphries, Manager, Threatened Species Unit.

5.152 As the Committee understands it, it was the responsibility of Council to review the DA and accompanying SEE and SIS and then come to a determination whether the DA was likely to have a significant effect upon threatened species. If the Council determined that the development would have a significant effect it would then require the concurrence of the Director General of the NPWS in order to approve the application.

¹⁸⁹ Dr Col Gellatly, Director General, Premier's Department NSW, Evidence, 2 July 2004, p2.

¹⁹⁰ Submission 32, Premier's Department NSW, p7.

- 5.153** As such the request by Council for, and the provision of, comment from the NPWS on the DA, SEE and SIS is not a formal part of the process as required under the relevant legislation.¹⁹¹ Rather, it appears Council was seeking the assistance of the NPWS in making a valid determination.
- 5.154** The letter advises that the NPWS has no formal objection to the DA and leaves the decision to grant consent entirely to Council:
- The NPWS considers that the proposal, as described and amended in the SEE and SIS, will not have a significant impact on threatened species provided that all of the recommendations relating to minor realignments of the road contained in the SIS are included as conditions in any consent issued by Council and that they are implemented in line with the EMS/HMS for [the] HEZ site.¹⁹²
- 5.155** The letter also notes that a recent clearing of a three-metre width along three kilometres of the proposed roadway had been undertaken without a Section 91 licence under the Threatened Species Conservation Act. The letter notes that the NPWS had instructed that the clearing cease until the appropriate approvals had been obtained.
- 5.156** The Committee asked the Deputy Director General of the Department of Environment and Conservation if he could indicate why NPWS officers changed their advice of 21 October 2002 that the ECMP needed to be completed prior to proceeding, to having no objections on the 1 November 2002. The Deputy Director General took that question on notice and subsequently provided the following response:
- NPWS officers did not change their advice in relation to the timeframes for completion of the ecological constraints mapping at the HEZ....At the [21 October] meeting, the NPWS reiterated the need for constraints mapping of the HEZ site and requested an update on the status of the ECMP. Similarly, in a response to Cessnock Council on the SIS for Stage 1 Road Infrastructure dated 1 November 2002, the NPWS noted that further information was required about a number of newly-recorded or recently-listed threatened species at the HEZ and stressed the importance of undertaking site-wide surveys of these species as part of the ECMP process. Neither I, nor another officer of the NPWS, directed staff dealing with the HEZ to change their advice on the road DA or any other matters.¹⁹³
- 5.157** The Committee notes assessment procedures that existed at the time were very complex for under-resourced councils in areas of high growth and have subsequently been changed. In future cases, the DEC will have the ability to require appropriate up-front assessment before decisions are made. The new biodiversity certification mechanism provided in the reformed *Threatened Species Act* provides the means for this.

¹⁹¹ See Chapter Four for a discussion on the legislative requirements placed on Council in these circumstances.

¹⁹² Correspondence, from Manager, Threatened Species Unit, Central Directorate, NPWS, to Mr Neil Selmon, Cessnock City Council, 1 November 2002, p6.

¹⁹³ Correspondence, from Mr Smith, DEC, to Committee Director, 22 July 2004.

November 2002: Adoption of revised Development Control Plan and Environmental Management Strategies

- 5.158** Following their exhibition in September 2002, the Environmental Management Strategies for the HEZ were adopted as a Development Control Plan in November 2002.

8 November 2002: NPWS Divisional Manager writes to General Manager of HEZ

- 5.159** In November 2002 the General Manager, HEZ Pty Ltd, Mr Matt Somers met with the Manager, Threatened Species Unit, Central Directorate, NPWS, Mr Robert Humphries to discuss the developer's continued concerns with the NPWS involvement in the HEZ project.
- 5.160** Following this meeting, Mr Humphries wrote to Mr Somers in a letter dated 8 November 2002:

At that meeting you made a number of claims regarding the conduct of NPWS officers in association with your project. These claims generally concerned:

- a. the inconsistency of NPWS positioning and advice in relation to HEZ issues since the project's inception
- b. delays in NPWS officers responding to your telephone calls;and
- c. the imputation that NPWS officers are in some way involved in the unauthorised release of information regarding this project to external community members who are generally opposed to this project.

You are aware that I am extremely concerned at the nature of these claims. I maintain the position I expressed at the meeting, ie. that I believe that NPWS officers have operated and will continue to operate in a timely and professional manner in assisting the progress of the HEZ project. Despite some internal staff changes, NPWS has maintained a consistent overall position with respect to the planning processes at HEZ, which reflects our statutory responsibilities. NPWS reiterates its support for the rezoning of the HEZ site, and will continue to work constructively with Council and the proponents. For this to succeed, though, a climate of trust needs to be maintained between all parties, and the claims you made therefore need to be dealt with.¹⁹⁴

12 November 2002: Director General, Premier's Department writes to Director General, NPWS

- 5.161** This letter from the Director General of the Premier's Department to the Director General of the NPWS has been the primary subject of interest during the inquiry. Those participants in the inquiry who oppose the HEZ development generally believe this letter is an example of the Premier's Department exerting pressure on the NPWS to change its position with respect to the environmental assessment issues relating to the HEZ site.
- 5.162** In particular the concluding paragraph of the letter has been the focus of allegations:

¹⁹⁴ Cited in Submission 31, HEZ Pty Ltd, p22.

I urge you to review your Department's position to ensure that there can be no credible claim that a large scale industrial park in close proximity to a large modern deep water port is put at risk. The people of the Hunter and New South Wales have supported this project as the region requires such development to ensure economic prosperity and job creation.

I would appreciate your assistance in ensuring this development proceeds.¹⁹⁵

- 5.163** Opponents to the development have interpreted this as being an all-encompassing directive to the NPWS to not raise any objection to the development. During the public hearing the Director General of the Premier's Department denied that his letter was in fact asking that NPWS officers change their position so that the development could proceed:

No, I was not asking them to go against any of the statutory obligations...Often in these projects there are issues between the agencies. That is probably where we [Premier's Dept] add some value in bringing the agencies together. But it is always done within a framework – and obviously within the general bounds of probity – and we would never attempt to override their statutory obligations. That is clearly their matter and we would not try to override it.¹⁹⁶

- 5.164** The Director General was asked whether his request that the NPWS review its position to ensure that there could be no credible claim that the development is put at risk was likely to stop the NPWS from reviewing the development dispassionately or according to its statutory obligations:

As I said before, there is no way that we would attempt to override the independence of the National Parks and Wildlife Service. But clearly there were issues raised by the proponents and by the council. They were concerned about the actions of the NPWS. That is the issue I was raising: [that] there was no credible claim about the way things were being done. But there was no attempt to override what NPWS decides or what its final advice is. It must clearly be objective and subject to its statutory independence.¹⁹⁷

- 5.165** The Director General told the Committee that neither he nor his Department gave any direction to the NPWS to change their opinion. The Director General said that the purpose of the letter was to raise issues that had been raised with him by the developer and the local council and to ask the NPWS to in turn have a look at those issues that had been raised as concerns.
- 5.166** There is always the potential for the intent of what is stated in a letter by its author to be interpreted in a different manner by its recipient. The Director General was asked to consider whether the authority of his position was such that if he wrote to any department head on any matter that that department head would be likely to comply with the desired outcome expressed in the letter. The Director General considered this to be an overstatement of his position; he went on to note that he and the then Director General of the NPWS had a history of liaison:

¹⁹⁵ Correspondence, from Director General, Premier's Department NSW, to Director General, National Parks and Wildlife Service, 12 November 2002.

¹⁹⁶ Dr Gellatly, Premier's Department NSW, Evidence, 2 July 2004, p2.

¹⁹⁷ Dr Gellatly, Evidence, 2 July 2004, p2.

Brian Gilligan, who was director general, and I have worked together for years on these sorts of issues. It was not as if it was a sudden intervention. Projects like this are often in consultation with senior officers of those departments so I do not think it is anything out of the ordinary.¹⁹⁸

5.167 This view was endorsed on a number of occasions by the former Director General of the NPWS when giving evidence before the Committee. Mr Gilligan recalled that the context of the letter was simply to confirm that there had not been any change in position by the NPWS and that it was comfortable with the outcome that had been agreed previously. Mr Gilligan did not believe there was anything inappropriate in the letter,¹⁹⁹ and considered it to be the sort of letter that would come periodically as an exchange of letters between the head of the Premier's Department and the head of the NPWS or another agency.

5.168 Mr Gilligan also rejected any assertions that the letter in any way intimidated him or caused directions to be given within the NPWS to change position with respect to HEZ. Mr Gilligan went on to describe his view on why the letter was sent:

There is no way I felt intimidated by the letter. The letter was not substantially different from any number of other letters that may have come. If there was some question about the service's positioning on a particular issue, often what would happen would be that the Premier's Department co-ordinator in a region would receive some representations or transmit to Dr Gellatly that some concern seemed to be expressed by people in the development community or elsewhere about some positioning. Most often that would have been the subject of face-to-face or telephone discussion between Dr Gellatly and me. But as a matter of putting something on the record that sought to get a response from me that Premier's Department co-ordinator could then pass on to the people concerned that gave a definitive National Parks position, just to try to clarify any confusion at the local level, that was the purpose of that sort of exchange of letters...But no, I was not intimidated and it did not change anything I was doing in exercising my responsibility under the relevant legislation.²⁰⁰

5.169 During Dr Gellatly's evidence Members of the Committee returned to the question of the interpretations that could be placed on his words: *'I urge you to review your department's position to ensure that there can be no credible claim that the large-scale industrial park is put at risk'*. It was put to Dr Gellatly that it was difficult to place any interpretation upon his word other than he was directing the department. Dr Gellatly disagreed:

When that letter was signed that was not the interpretation I was placing on it. Basically, it is saying there were issues raised by HEZ, the company, and the local council...I was raising them [with NPWS] and asking them to look at their position in the context of those claims, that there was not anything going on in terms of those actions of National Parks officers that could lead to claims that there had been uncertainty.²⁰¹

5.170 Later Dr Gellatly did concede that the letter was open to interpretations other than his own:

¹⁹⁸ Dr Gellatly, Evidence, 2 July 2004, p5.

¹⁹⁹ Mr Brian Gilligan, former Director General, NPWS, Evidence, 2 July 2004, p37.

²⁰⁰ Mr Brian Gilligan, Evidence, 2 July 2004, p40.

²⁰¹ Dr Gellatly, Premier's Department NSW, Evidence, 2 July 2004, p6.

Probably with the benefit of hindsight I would have spelled out some of the implicit assumptions underlying it, about not overturning National Parks statutory obligations. But the intent of the letter would stay the same.²⁰²

5.171 As discussed earlier in this Chapter the Director General of the Premier's Department's letter was based on the issues raised with him by the developer via a meeting on 2 August and a subsequent letter on 28 October, and the issues raised by Cessnock Council in a letter dated 22 October.

5.172 In his 12 November letter, after briefly noting the background to the rezoning of the HEZ site and its importance in terms of regional development the Director General relays the issues raised with him by the developer:

HEZ have now made applications to Cessnock Council for development approval for the provision of some of the infrastructure required for the zone. The company plans to eventually spend up to \$20 million on infrastructure which is required to attract major industry to the area.

I was surprised by HEZ's claim that NPWS has raised a number of objections to the lodgement of the Development Application for the infrastructure for the zone. While some of the issues may be manageable, HEZ is concerned about the level of inconsistency. If there is substantial inconsistency with past processes then, I too, would be concerned.

As you know I am very conscious of the need to strike a balance between the environment and economic development in the Hunter. It is for this reason that I have strongly supported some of the proposals put forward by NPWS for the region. However HEZ's concerns that some of the proposals may in practice restrict the zone to little more than 200 hectares appear to HEZ to be untenable. This area of industrial land would not support the type and scale of investment in infrastructure required by an industrial estate.

13 December 2002: Hunter Lowland Redgum Forest listed by Scientific Committee

5.173 As foreshadowed by its issuing of a preliminary determination earlier in the year, on the 13 December, the NSW Scientific Committee listed the Hunter Lowland Redgum Forest (HLRF) as an Ecologically Endangered Community (EEC).

5.174 The NSW Scientific Committee stated that only about 27% of the pre-1750 extent of HLRF remains and that this is highly fragmented. The Scientific Committee also indicated that the community is likely to become extinct unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

²⁰² Dr Gellatly, Evidence, 2 July 2004, p8.

November 2002: Senior departmental and Ministerial officers meet with Council and Developer²⁰³

- 5.175 In early November 2002, presumably between the 12th and the 19th, a senior NPWS representative met with the office of the Minister for Hunter Development, the Premier's Department, Cessnock Council and HEZ Pty Ltd. The local member, Mr Kerry Hickey MP, was also present. The meeting was convened to assure those present that the Swift Parrot Recovery Team report was not a NPWS report, that it did not reflect the views of the NPWS, nor did the NPWS release it to the community.

19 December 2002: Council grants consent to Stage 1 road infrastructure

- 5.176 On 19 December 2002 Cessnock Council granted consent to the Stage 1 road infrastructure development application. The proposed road alignment traversed a Hunter Lowland Redgum Forest (HLRF) community over a length of 400 metres.
- 5.177 As noted earlier, on the 13 December 2002 the NSW Scientific Committee listed the Hunter Lowland Redgum Forest as an Ecologically Endangered Community. However, Cessnock Council issued its consent for the DA without first requiring an 8-part test for this EEC.
- 5.178 In March 2003, the Hunter Ecologically Sustainable Employment Group (HESEG), an incorporated association also known as the Friends of Tumblebee, commenced proceedings in the Land and Environment Court seeking a declaration that the development consent granted by Council was invalid and an order that HEZ be restrained from carrying out any work pursuant to the development consent.²⁰⁴ It is understood that the challenge was mounted on the basis that inadequate consideration was given to the Redgum Forest community. As a consequence, the development application for the access road was withdrawn.²⁰⁵

19 December 2002: Director General NPWS responds to Director General Premier's Department

- 5.179 As noted at paragraph 5.172, the Director General of the Premier's Department raised two specific issues in his letter of 12 December to the NPWS. His first concern was whether the NPWS had been substantially inconsistent with past processes in their position with respect to the HEZ development; the second was his concern regarding any proposals being put forward by the NPWS that would in practice restrict the size of the 4(h) lands to little more than 200 hectares.
- 5.180 In his letter of response, the Director General of the NPWS dismissed both concerns as unfounded. The Director General stated that he was aware of claims made by HEZ Pty Ltd that NPWS officers had taken inconsistent and adverse positions in relation to their road infrastructure development application and the general area available for industrial development. He went on to state that the NPWS had previously agreed and committed itself

²⁰³ This meeting is cited in correspondence from the Director General, NPWS, to the Director General, Premier's Department, 19 December 2002.

²⁰⁴ Submission 31, HEZ Pty Ltd, p23.

²⁰⁵ Submission 35, DEC, Attachment C, p5.

to the final rezoning plan for the site; and that NPWS officers had in fact consistently maintained a supportive and constructive attitude to the subsequent detailed planning for the site.

5.181 The Director General acknowledged the inherent difficulty associated with some of the threatened species and Aboriginal heritage issues encountered in the detailed planning stages, but he stated his confidence that NPWS officers had provided professional and technical appropriate advice to the developer and Cessnock Council to assist their planning and approval responsibilities.

5.182 The Director General then went on to suggest that the claims and concerns of HEZ Pty Ltd were all rooted in the release of the Swift Parrot Recovery Team report and the incorrect attribution of the recommendation contained within the report as being the position of NPWS:

I understand that Cessnock Council has received a submission from the [Swift Parrot] Recovery Team suggesting that 75% of the industrial lands at Tomalpin be set aside for conservation. HEZ Ltd and Cessnock Council appear to have incorrectly attributed the Recovery Team's position to the NPWS. I acknowledge that this may have arisen as a result of inappropriate attribution of authorship to the NPWS. We have quickly sought to clarify the relevant protocols to avoid future confusion. I can assure you that the Recovery Team's report is not a NPWS report and does not reflect the views of NPWS, nor did the NPWS release it to the community.

A senior NPWS representative met with the office of the Minister for the Hunter Development, the Premier's Department, Cessnock Council and the proponent in early November 2002 to correct this misinformation. The local member, Mr Kerry Hickey MP, was also present.²⁰⁶

5.183 The issue of the inappropriate attribution of authorship of the Swift Parrot Recovery Team report was examined during the public hearing on 2 July 2004. Both the Deputy Director General of the DEC and the former Director General of the NPWS gave evidence suggesting that the confusion in the mind of the developer over this matter was due to inappropriate behaviour on the part of an officer from within NPWS offices. Mr Simon Smith, the Deputy Director General, DEC told the Committee that his understanding was that investigations within the NPWS following receipt of the letter from Dr Gellatly indicated there was a 'stuff-up' on the part of NPWS. He elaborated:

At one point the officer who had been involved in the swift parrot recovery process prepared a letter that went to council setting out aspirations for protection of swift parrot habitat, which was received by council as if it was a communication from NPWS, which it was not because it was coming from the national swift parrot recovery team.²⁰⁷

5.184 The former Director General of the NPWS provided more detail to the Committee:

²⁰⁶ Correspondence, from Director General, NSW National Parks & Wildlife Service, to Director General Premier's Department NSW, 19 December 2002.

²⁰⁷ Mr Smith, DEC, Evidence, 2 July 2004, p19

I was aware that there was a very unfortunate mix-up in terms of some communications out of the swift parrot recovery team system, which I think confused the issue as to the NPWS position compared with the position of either the recovery team or Environment Australia. I do not know how familiar the Committee is with some of that, but the essence is that the Commonwealth appointed a co-ordinator for that recovery team and, for administrative convenience, that person – a relatively junior officer – happened to be located in the NPWS Queanbeyan office. That officer used National Parks letterhead quite inappropriately to distribute some draft material, which gave the understandable impression that it was a National Parks position being presented. We were very quick to clarify that that was not the case, but I think at the time it served some people's purposes to leave that perception in the arena and to have a bit of a go at National Parks. It was simply an unfortunate error that we corrected as quickly as possible.²⁰⁸

- 5.185** During the public hearing a member of the Committee suggested that the appropriate behaviour would have been for the officer in question to have written the letter on national swift parrot letterhead or the Department of Environment and Heritage. Mr Gilligan agreed:

Or blank paper or something but not New South Wales National Parks letterhead. I made that point very clear once I found out.²⁰⁹

- 5.186** The Committee is perplexed by the evidence that was given in relation to this matter. The Committee was provided with a copy of the 15 October 2002 letter from the Swift Parrot Recovery Officer to Cessnock Council. That letter is written on Swift Parrot National Recovery Team letterhead, and not on NPWS letterhead. The only reference to the NPWS in that letter is the e-mail address of the author. As stated previously when Cessnock Council wrote to the Premier's Department on 22 October they were quite clear in their understanding that the National Swift Parrot Recovery Team was a federally funded body.

- 5.187** The Committee concedes that there may have been an earlier draft document that was distributed and which was on NPWS letterhead, and, if this was the case, that would have caused confusion for Cessnock Council at that time. However, by the time that the Director General of the Premier's Department wrote to the NPWS in December 2002 it is absolutely clear that there was no need to investigate this matter as it was by then no longer a matter that required resolution.

- 5.188** However, the Director General of the Premier's Department understandably accepted the advice from his colleague as it provided a convenient sense of resolution to the issue:

The issue that had been raised specifically and was answered in Brian Gilligan's letter was about who prepared the national swift parrot recovery team report and he made it clear that that was [not] the NPWS.²¹⁰

- 5.189** In evidence and submission to the inquiry the Director General of the Premier's Department advised that on receipt of the letter from the Director General of the NPWS that he regarded

²⁰⁸ Mr Brian Gilligan, Evidence, 2 July 2004, p37.

²⁰⁹ Mr Gilligan, Evidence, 2 July 2004, p40.

²¹⁰ Dr Gellatly, Premier's Department NSW, Evidence, 2 July 2004, p6.

that as the end of the matter at that stage.²¹¹ No further action was taken on this matter by the Premier's Department as HEZ Pty Ltd did not write back to challenge or question the NPWS response and it was therefore assumed that HEZ was satisfied with the outcome.²¹²

- 5.190** The Committee notes that the outcome that was being sought by HEZ Pty Ltd when it wrote to the Premier's Department on 28 October, namely the expediting of the road infrastructure development application and an assurance that the findings and recommendations of the Swift Parrot report would not be applied to the industrial lands, were in effect achieved on 1 November 2002 when the NPWS provided its comments to Cessnock Council on the Stage 1 road infrastructure development application and accompanying SEE and SIS.
- 5.191** The change in the position of the NPWS was from suggesting it required the ECMP to be completed before it could provide adequate advice to then providing that advice notwithstanding that the ECMP was not complete. Allowing the DA to proceed based on incomplete information allowed the NPWS to remove itself as an impediment to the development of the site.
- 5.192** The Committee further notes that neither letter from the two Director Generals make any reference to the concerns raised by the developer and Cessnock Council regarding the agreements given by senior officers within the NPWS regarding the assessment of development applications and completion of the ECMP in parallel.

Conclusion

- 5.193** From March 2002 onwards there was interaction between the developer, Cessnock City Council, the NPWS and the Premier's Department regarding the involvement of the NPWS in the finalisation of the EMS and ECMP and approval of the road infrastructure development application. This project was being dealt with under a whole of government approach.
- 5.194** The evidence demonstrates that NPWS officers were encouraged to provide advice that supported the development and to provide that advice quickly. That encouragement primarily came from the developer and Cessnock Council both directly and through their representations to the Premier's Department. In its efforts to coordinate the effective input of the various government agencies with a view to progressing the development the Premier's Department supported the concerns of the developer and Council including most notably their concerns regarding the NPWS.
- 5.195** The issues confronted by the NPWS were complex and compounded by the eagerness of the developer and Council to commence development almost immediately following the gazettal of the LEP despite the EMS being incomplete; and the failure on the part of Council to both meet its own timeframes with respect to the EMS and to incorporate earlier advice that had been provided to it by the NPWS. In this context the Committee believes that the complaints of tardiness on the part of the NPWS must be considered unjust.
- 5.196** The fact that the NPWS was under pressure to assist in ensuring that the development proceeded is not the issue. That the information requirements of the NPWS changed prior to

²¹¹ Dr Gellatly, Evidence, 2 July 2004, p6.

²¹² Submission 32, Premiers' Department NSW, p8.

providing comment to Council is also not the issue. It is quite proper for an agency to review its position with respect to any matter, either independently or as a result of representations and negotiation.

- 5.197** The position ultimately decided upon by an agency may vary from that which it first adopted but it must fall within a set of parameters. In the case of the NPWS involvement in the HEZ development those parameters were its statutory obligations. The Committee was advised that the NPWS role was to provide information at the stage when its involvement was legislatively required:

I am not sure I see our role as to prevent inappropriate decisions being made. We have specific statutory duties to provide information to perform certain functions and that is what we did.²¹³

- 5.198** The central issue confronting the inquiry was encapsulated in a discussion on whole-of-government approaches during the public hearing on 16 June 2004:

The Hon. RICK COLLESS: But surely in situations such as this where it is quite a complex development, is it not essential that agencies put their heads together and sort out some of their differences. At the end of the day, is there not going to have to be some flexibility in the decisions that are made by the various agencies? Do you see that as a problem –that those agencies should have the power and the responsibility to make flexible decisions in some cases?

Mr RYAN: No. I think the first idea about the whole of government approach in terms of cutting red tape, increasing co-ordination and focus on a project is great, but when it turns into a process which puts pressure on government departments not to fully take into account their own legislative requirements-

The Hon. RICK COLLESS: I do not know whether that occurred or not, and the inquiry will attempt to determine that...²¹⁴

- 5.199** The question arose whether the ultimate position taken by the NPWS regarding the Stage 1 road infrastructure was in accord with its statutory duties. However, the Committee did not receive sufficient evidence or information to enable it to resolve this question.
- 5.200** All departmental submissions and departmental representatives who appeared before the Committee stated that no officer had been directed to change their advice or improperly asked to do anything other than what they would normally do with respect to their assessment of the HEZ. In addition, the Committee did not receive any evidence to the contrary from any individual departmental officer who was involved in the HEZ development.
- 5.201** While it is openly acknowledged that the Director General of the Premier's Department did urge the NPWS to review its position, the inquiry process did not reveal any conclusive evidence that either it was the intention of the Premier's Department to override any position that the NPWS had that was consistent with its statutory duties, or that the NPWS believed that that was the intention of the Premier's Department.

²¹³ Mr Smith, DEC, Evidence, 2 July 2004, p20.

²¹⁴ Evidence, 16 June 2004, p10.

- 5.202** In the absence of evidence to the contrary the Committee finds that the ultimate position taken by the NPWS with respect to development at the HEZ was in a large part influenced by the concerted lobbying and interaction to which the Department was subjected, but that there was nothing improper with that process.
- 5.203** However, the Committee is of the view that while there was apparently nothing improper with the lobbying and intervention to which the NPWS was subjected, the environmental assessment process may have suffered as a consequence.

Chapter 6 The Pelaw Main by-pass (link) Road

The location and construction of the Pelaw Main by-pass (link) road is an issue of concern to local residents and has not yet been finalised.

The Pelaw Main by-pass (link) road

- 6.1** The developer, HEZ Pty Ltd, is funding the construction of the Pelaw Main by-pass road. The purpose of the road is to ensure that heavy traffic travelling into and out of the main entry to the HEZ site does not travel through the township of Pelaw Main. The approximate location of the proposed by-pass is shown on the map at paragraph 2.8.
- 6.2** The issue of the exact route of the by-pass road is of great concern to the residents of Pelaw Main. Residents are concerned that if the road is located too close to the edge of the township their historical amenity of life will be drastically affected. Also of concern is the issue of vibrations from heavy vehicles that may exacerbate the problem of land slippage from mine subsidence which affects parts of the town. Residents are worried that their concerns will be outweighed by the development imperatives for the site.
- 6.3** Cessnock City Council has made a commitment that the by-pass road would be in place before any development commenced operation at the HEZ.²¹⁵
- 6.4** During the inquiry the Committee attempted to discover what negotiations had already taken place and what form the ongoing process would take, in an attempt to confirm that the disturbance to the local community would be minimised however possible. However, representatives from the Roads and Traffic Authority (RTA) and from Cessnock City Council who gave evidence before the Committee did not provide detailed information on this matter.
- 6.5** Mr Robert Sharpe, Regional Manager, Hunter, RTA summarised the RTA's involvement:
- The RTA's primary concern here relates to the adjacent State road network and the junctions from the development to that State road network. We are looking at the junction from the main access road within the development to Mulbring Road. We are also looking at adjacent junctions as to what are the impacts of the additional traffic flow.²¹⁶
- 6.6** Mr Sharpe was asked if the RTA was satisfied that the residents of Pelaw Main would not be disturbed by the development of the by-pass road:
- Our involvement relates more to the traffic impacts as opposed to the environmental impacts of the traffic flow through Pelaw Main, that is something that council would have considered as part of the consent for the development as it comes through.

²¹⁵ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p58.

²¹⁶ Mr Robert Sharpe, Regional Manager, Hunter, Roads and Traffic Authority, Evidence, 16 June 2004, p22.

The situation here is that the link road is a matter for Cessnock council in terms of any environmental assessment and design, so matters to do with traffic noise and so forth are up to council to determine. It is not a State road. We look after State roads in regard to traffic noise, but not local roads.²¹⁷

- 6.7** Considering that a whole of government approach was taken with respect to the HEZ development, the Committee sought to clarify if the RTA had any involvement in terms of providing advice in discussions on the link road, given the expertise of the RTA. Again the RTA representative emphasised that Council was the consent authority for this road.²¹⁸ However, after further questioning the RTA conceded that it could provide comment and advice:

We provide our comments to the consent authority and to the proponent. We do not have an approval role.²¹⁹

- 6.8** When asked to consider whether Cessnock Council had the expertise to design a local road that would be acceptable to the local community, given that while it was a local road it was primarily going to be a heavy vehicle traffic road, the RTA then indicated that it had discussed the matter with Council:

Yes, I believe they do. I was there this morning taking to their people and I am quite convinced that they are quite capable of doing the environmental assessment and design, and overseeing the development.²²⁰

- 6.9** The Committee was advised that the RTA did have a representative on the Cessnock Council Traffic Committee. However the representatives from the RTA could not advise whether the by-pass road issue had come before that committee.²²¹

- 6.10** The Committee was unable to elicit any information from the RTA representatives regarding the department's involvement or any advice that it may have provided regarding the by-pass road. However, the Committee was provided with a copy of an internal NPWS e-mail²²² relating to a meeting held in August 2002 to discuss the by-pass road and light vehicle access to the HEZ site.

- 6.11** The meeting was attended by representatives from the NPWS, Cessnock Council, Harper Somers, and the RTA. According to the e-mail, at that meeting the RTA advised that there were four options for the route of the bypass road. The e-mail refers to the option that Council and the developer were keen to investigate in more detail:

The top option which skirts around the southern edge of Pelaw Main. There would be issues associated with this option in relation to noise as well as subsidence, however,

²¹⁷ Mr Sharpe, RTA, Evidence, 16 June 2004, p23.

²¹⁸ Mr Sharpe, RTA, Evidence, 16 June 2004, p23.

²¹⁹ Mr Philip Mahoney, A/General Manager, Environment, RTA, Evidence, 16 June 2004, p24.

²²⁰ Mr Mahoney, RTA, Evidence, 16 June 2004, p25.

²²¹ Mr Sharpe, RTA, Evidence, 16 June 2004, p32.

²²² A copy of the e-mail was included as an attachment to Submission 28, Friends of Tumblebee. The FoT gained access to the e-mail via its Freedom of Information application.

Council were of the view that subsidence issues could be dealt with and were not of a nature to prevent road construction. The RTA confirmed that sound barriers would also be required for this option.²²³

6.12 The e-mail also states that the link (bypass) road from the HEZ to John Renshaw drive will be a two-lane road but it will eventually be upgraded from a local road to part of the State road network. The Committee is not aware if this upgrade is still intended to take place. In either case the Committee is disappointed with the approach taken by the representatives of the RTA who gave evidence.

6.13 The Committee also sought to gather details on the by-pass road from the General Manager of Cessnock City Council. Again the Committee was not assisted by the approach adopted by the witness:

CHAIR:..Could you detail for the Committee the process in council and where it is up to? The RTA was unable to answer a number of matters raised by Committee members in terms of noise amelioration to reduce the impact of traffic noise on local residents. As the RTA has indicated clearly, it is a local council issue because it is a council road.

Mr COWAN: The answer to that is very simple, there is no development consent because it is still under consideration. Until that is finalised I am not in a position, and nobody is, because, clearly, the assessment process has to occur on its merits.

CHAIR: There has been no assessment of this particular road?

Mr COWAN: No approval has been given.

Ms SYLVIA HALE: Was there no DA lodged either, is that correct?

Mr COWAN: That is correct.²²⁴

6.14 The General Manager of Cessnock City Council did not volunteer any information on the consideration being given to the bypass road other than to assure the Committee that the Council had the capability and competency to take into account environmental considerations when designing and constructing the bypass road.²²⁵ Unfortunately, Cessnock City Council also declined the invitation to make a submission to the inquiry.

6.15 The representatives from HEZ Pty Ltd were more forthcoming in their evidence to the Committee. Unlike the Council and the RTA, HEZ Pty Ltd were willing to at least give an indication of the type of issues that were being considered:

To put in a link road to take traffic out of Pelaw Main is an expensive exercise. I think our last budget cost for that is about \$4.5 million. Our traffic study indicates that on a typical 15-year development phase, that [completion of the road] does not need to be until about year seven. But we have given a commitment, and the council has given a

²²³ E-mail from D Stevenson (NPWS) to K Sale (NPWs) dated 8 August 2002. Included in attachment to Submission 28, Friends of Tumblebee.

²²⁴ Evidence, 16 June 2004, p42.

²²⁵ Mr Colin Cowan, General Manager, Cessnock City Council, Evidence, 16 June 2004, p47.

commitment, to the people of Pelaw Main that it will go in prior to any development commencing operation on HEZ.²²⁶

6.16 Later in evidence Mr Somers gave further insight into the likely route of the by-pass road and the processes still to be undertaken:

Our first proposal was that that [link] road would not come out at Leggets Drive at that point but would come out coincident with the road into HEZ. So the road would be some 450 metres further into the bush than the current proposal, away from Pelaw Main. However, the National Parks and Wildlife Service said that it would not agree to that, because it says that the road would traverse some Kurri Kurri Sand Swamp woodland, which is an endangered ecological community. So National Parks' purview on the matter is that it does not care about the people of Pelaw Main; it wants to save the bush. Yet National Parks has directed us to move the road closer to the village of Pelaw Main.

We have taken into account the necessary ecological and subsidence studies to come up with the road proposal, which is not yet complete, which will be lodged with Cessnock Council for a development application, which will address the issues of undermining, which will address the issues of ecological impact, and which will address the issues of noise and visual amenity. They will be lodged with Cessnock City Council as a development application for the people of Pelaw Main to comment on. We are looking at those issues.

I cannot give you the answers to those issues, because that proposal is still being worked on in conjunction with our consultants. But it does include ecological abatement measures, noise abatement measures, visual abatement measures, and measures to cope with the undermining. But I would stress that if we had had our way, it would be another half a kilometre away from Pelaw Main.²²⁷

6.17 During the public hearing on 2 July 2004, the Committee took up, with representatives from the Department of Environment and Conservation, Mr Somer's claim that actions of the NPWS had forced the link road to be situated a lot closer to the village of Pelaw Main that would otherwise have been the case:

The area that it is proposed to go through is endangered ecological community – Kurri Sand Swamp woodland. The NPWS has had some discussion with the council about the proposed route of that road. As far as we know, it is the council's decision. It is discussing that with the Roads and Traffic Authority so you will need to refer that to the RTA and Cessnock Council.²²⁸

6.18 As the Committee had already taken evidence from the RTA and Cessnock Council, the Committee wrote to the DEC and requested that it clarify the position with reference to Mr Somers' assertion. The DEC responded:

Officers of the DEC have had a number of discussions with Cessnock Council and staff of HEZ regarding the location and impact of the proposed link road. Following a determination by consultants acting on behalf of HEZ, the DEC issued the Director

²²⁶ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, p58.

²²⁷ Mr Somers, Hardie Holdings, Evidence, 16 June 2004, pp66-67.

²²⁸ Ms Deborah Stevenson, Senior Threatened Species Officer, DEC, Evidence, 2 July 2004, p16.

General's requirements for a species impact statement (SIS) in February 2003 as it was determined that the road was likely to have a significant impact on the Kurri Sand Swamp Woodland [KSSW] endangered ecological community. In this context, which is a normal part of the planning and assessment process, the DEC advised HEZ to look at alternative options for the location of the link road in order to consider alternatives that may reduce these impacts.

The assertion by Mr Somers that the "National Parks" directed HEZ to move the road is not correct. I understand that HEZ has now completed the SIS but is yet to submit it to Cessnock Council for determination due to the proceedings of this inquiry. Ultimately, it will be a matter for Cessnock Council, the consent authority, to determine the proposal in accordance with the provisions of the EP&A Act, which may or may not require the concurrence of the Director General of the DEC.²²⁹

- 6.19** The evidence from Mr Somers implies there are only two possible options for the location of the link road. This appears to have become the accepted view among most parties. A representative from the Department of Infrastructure, Planning and Natural Resources saw it as a need to balance the impact of the two options:

There is no argument that the link road is needed. It is an issue of detail. I think it is a consent matter for Cessnock Council to make judgements about the impact on threatened species versus the impact on local residents. That is one of those fundamental planning decisions that must be made whereby you are balancing one competing need against the other.²³⁰

- 6.20** As indicated at paragraph 6.11 at the 8 August 2002 meeting regarding the link road the RTA reportedly advised there were four options. However, based on the evidence provided to the Committee, only two of those options are still under consideration.
- 6.21** Of the four options discussed at the 8 August 2002 meeting two traversed the remnant patch of KSSW. Both of these are therefore subject to the same environmental constraints. The first of these options bisected the KSSW while the second was just to the south. The first option is the one referred to by Mr Somers in his evidence as their preferred option. From a traffic perspective this option has the advantage of requiring the construction of only one intersection – opposite the HEZ access road.
- 6.22** Another option was for the link road to skirt around the southern base of the KSSW and come back up to the east of it. Of the four options this one took the link road the furthest away from Pelaw Main. The NPWS e-mail summarising the outcomes of this meeting note that this option was dismissed as being too long and circuitous. At the meeting the NPWS requested that this option be retained as an option for further discussion, however it appears this option is no longer being considered.
- 6.23** The final option is the one that skirts around the southern edge of Pelaw Main. At the meeting it was noted that there would be issues in relation to noise as well as subsidence; Council were of the view that subsidence issues could be dealt with and were not of a nature to prevent

²²⁹ Correspondence, from Mr Smith, DEC to Committee Director, 20 September 2004, p1.

²³⁰ Mr Simon Kempnich, Acting Team Leader-Local Planning for the Hunter Region, Department of Infrastructure, Planning and Natural Resources, Evidence, 2 July 2004, p52.

road construction, while the RTA confirmed that sound barriers would be required. This is the current proposal referred to by Mr Somers in his evidence.

- 6.24** The Committee notes the advice from the RTA that Cessnock Council is capable of doing the environmental assessment and design and overseeing the development of the link road. Further, that the RTA considers that sound barriers would be required for this road.

Appendix 1 Submissions

No	Author
1	THOMAS Mr Toby (Kurri Kurri Chamber of Commerce & Industry Inc)
2	HILL Mr Philip (Philip W Hill & Associates)
3	RENEWICK Ms Ilona
4	GREEN Ms Alison
5	COUSINS Ms Judith
6	SHEEHY Ms Helen
7	VAUGHAN Ms Josephine
8	COURTNEY Ms Fay
9	REVILL Ms Danute
10	PALMER Mr Michael
11	YOUNG Mr K R (A W Meadows Pty Ltd)
12	AMBROZY Mr and Mrs Csaba and Lilla (A C Office Equipment)
13	WILESMITH Mr Bob
14	TARRANT Mr Harold
15	SUWALD Mr Kerry
16	SUWALD Mr Kerry (Mulbring Valley Landcare)
16a	SUWALD Mr Kerry (Mulbring Valley Landcare) – <i>Supplementary Submission</i>
17	PAGAN Ms Kim (Cessnock Wine Country Chamber of Commerce)
18	WOODS Ms Georgina
18a	[Partially Confidential] – <i>Supplementary Submission</i>
19	RICHARDSON Mr Karl and FORDE Ms Delores
20	GLOVER Mr Alan
21	MULHERIN Ms Merri
22	MORRIS Mr Peter
23	GRIFFITHS Mr Barrie (North East Forest Alliance)
24	PASCOE Mr Russell (Hunter Water Corporation)
25	ANDERSON Mr Craig (Harper Somers O'Sullivan)
26	THORNTON Mr Glenn (Hunter Business Chamber)
27	MAHONEY Mr Phil (Road and Traffic Authority)
28	RYAN Mr James (Friends of Tumblebee)
28a	[Partially Confidential] – <i>Supplementary Submission</i>
29	COSH Ms Claire

No	Author
30	COX Mr Andrew (National Parks Association of NSW)
31	TASKER Mr Brian (HEZ Pty Ltd)
32	GELLATLY Dr Col (Premier's Department NSW)
33	HODGSON Ms Nasmi
34	WINN Mr Paul
34a	[Confidential] - <i>Supplementary Submission</i>
35	SMITH Mr Simon (Department of Environment and Conservation)
36	MORRISON Mr Ken (Property Council of Australia)
37	BAILEY Mr Christopher
38	[Confidential]
39	HILLMAN Mr Mick
39a	[Confidential] - <i>Supplementary Submission</i>
40	COOK Ms Nicole (Department of Human Geography, Macquarie University)
41	PHILLIPS Mr Steven
41a	[Confidential] - <i>Supplementary Submission</i>
42	FITZSIMONS Mr Colin
43	MONKLEY Ms Alison
44	BOUSTEAD Mr Tristram
45	SMILES Ms Bev
46	HEMBRY Ms Bronwyn
47	DAVIS Ms Jan (Hunter Environment Lobby)
48	[Confidential]
49	GRIFFIN Mr Bernard
50	MARTIN Mr Christopher
51	CALDERWOOD Mr Barry
52	BROWN Mr Colin (Col Brown Electrical)
53	TATE Mr J S (Hunter Economic Development Corporation)
54	ELLIS Mr Mitra
55	KRIEGER Mr Andreas
56	MCKENZIE Mr and Mrs Peter and Lumine
57	[Partially Confidential]
58	JONES Mrs Claire
59	ROBINSON Ms Sue (NSW Urban Taskforce)
60	KING Mr Brennan

No	Author
61	HADDAD Dr Sam (Department of Infrastructure, Planning and Natural Resources)
62	PRESTWICH Ms Tara (Mindaribba Local Aboriginal Land Council)
63	FENECH Mr Michael
63a	FENECH Mr Michael – <i>Supplementary Submission</i>
64	RUSHOFF Miss Chelsea
65	NAGLE Mrs Angela

Appendix 2 Witnesses/Site Visit

Witnesses

Kurri Kurri Workers Co-Operative Club, Lang Street, Kurri Kurri

Date	Name	Position and Organisation
16 June 2004	Mr James Ryan	President, Friends of Tumblebee
	Mr Barry Calderwood	Vice-President, Friends of Tumblebee
	Mr Gregory Bone	Planning Engineer, Hunter Water Corporation
	Mr Russell Pascoe	Manager, Planning and Development, Hunter Water Corporation
	Mr Philip Mahoney	Acting General Manager, Environment, Roads and Traffic Authority
	Mr Robert Sharpe	Regional Manager, Hunter, Roads and Traffic Authority
	Mr Toby Thomas	President, Kurri Kurri Chamber of Commerce and Industry Inc
	Mr Rodney Doherty	Secretary, Kurri Kurri Chamber of Commerce and Industry Inc
	Mr Colin Cowan	General Manager, Cessnock City Council
	Mr Mathew Somers	General Manager, Hardie Holdings
	Mr Craig Anderson	Senior Ecologist, Harper Somers O'Sullivan
	Mr Duncan Hardie	Chairman, HEZ Nominees

Parliament House, Sydney

Date	Name	Position and Organisation
2 July 2004	Dr Colin Gellatly	Director General, Premier's Department NSW
	Mr Simon Smith	Deputy Director General, Environmental Protection and Regulation Division, Department of Environment and Conservation
	Ms Katherine Sale	Conservation Planning Officer, Department of Environment and Conservation
	Ms Deborah Stevenson	Senior Threatened Species Officer, Department of Environment and Conservation
	Ms Claire Cosh	former Councillor, Cessnock City Council
	Mr Brian Gilligan	former Director General, National Parks and Wildlife Service
	Dr Sam Haddad	Deputy Director General, Department of Infrastructure, Planning and Natural Resources
	Mr Shane Kempnich	Acting Team Leader – Local Planning for the Hunter, Department of Infrastructure, Planning and Natural Resources
	Mr Rick Griffiths	East Zone Commissioner, New South Wales, Aboriginal and Torres Strait Islander Commission
	Mr Gordon Griffiths	Manager, Mindaribba Local Aboriginal Land Council
	Ms Tamara McDonald	Secretary, Mindaribba Local Aboriginal Land Council

Site visit

Tuesday, 15 June 2004

Hunter Economic Zone

Driving tour of HEZ site and then to location of proposed road link.

- Mr Matthew Somers, General Manager, Hardie Holdings
- Mr Howard Morris, Director, Estate Management, Hunter Economic Zone
- Mr Brian Tasker, Managing Director, Hunter Economic Zone
- Ms Gillian Summers, Marketing Manager, Hunter Economic Zone
- Mr Craig Anderson, Ecologist, Harper, Somers & O'Sullivan

27 Abedare St, Pelaw Main

Vantage point to view the HEZ site from the village of Pelaw Main.

- Mr James Ryan, President, Friends of Tumblebee
- Mr Barry Calderwood, Deputy President, Friends of Tumblebee
- 12 other local residents and other members of Friends of Tumblebee

Boundary of Bloomfield mine site

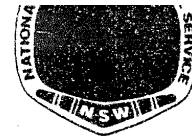
- - Mr James Ryan, President, Friends of Tumblebee
 - Mr Barry Calderwood, Deputy President, Friends of Tumblebee
-

Appendix 3 Historical correspondence relating to the environmental assessment process

No	Author-recipient
1	Letter dated 19 June 2002, from Manager, Conservation Planning Unit, Conservation, Programs and Planning Division – Central, NPWS to General Manager, Cessnock City Council.
2	File note, dated 20 June 2002, from Ms K Sale, NPWS.
3	E-mail, dated 8 August 2002, from Ms D Stevenson, NPWS, to Ms K Sale, NPWS.
4	Letter, dated 15 October 2002, from Ms D Saunders, Swift Parrot National Recovery Team, to General Manager, Cessnock City Council.
5	File note, dated 21 October 2002, NPWS.
6	Letter, dated 22 October 2002, from General Manager, Cessnock City Council, to Regional Coordinator, Hunter and Central Coast, Premier's Department.
7	Letter, dated 25 October 2002, from Manager, Conservation Planning Unit, NPWS, to Mr N Selmon, Cessnock City Council.
8	Letter, dated 28 October 2002, from General Manager, HEZ Pty Ltd, to Director General, Premier's Department NSW.
9	Letter, dated 1 November 2002, from Manager, Threatened Species Unit, Central Directorate, NPWS, to Mr N Selmon, Cessnock City Council.
10	Letter, dated 12 November 2002, from Director General, Premier's Department NSW, to Director General, National Parks and Wildlife Service.
11	Letter, dated 19 December 2002, from Director General, National Parks and Wildlife Service, to Director General, Premier's Department NSW.

12002/7175.
DE 118/11/17.

FAXED
19/6/02

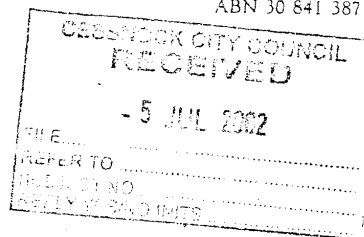


General Manager
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

**NSW
NATIONAL
PARKS AND
WILDLIFE
SERVICE**

ABN 30 841 387 271

Our ref: 01/00478(3)
Your ref: 92/21/1



Attention: Neil Selmon

Dear Mr Selmon

**RE: Proposed amendments to Cessnock LEP 1989 (Amendment No. 60)
- Hunter Employment Zone**

Thank you for your letter dated 29 May 2002 in which you consult with the National Parks and Wildlife Service (NPWS) on proposed amendments to Cessnock LEP 1989 (Amendment No. 60) - Hunter Employment Zone.

It is understood that the amendments are proposed to amend minor errors and operational difficulties identified in the LEP.

The NPWS has no objection to proposed amendments regarding 1) advertisements, and 2) replacement of 'management plan' with 'environmental management strategy'. Point 3) proposes removing the requirement for development consent for clearing related to air navigation safety, bushfire hazard reduction, land survey, geotechnical or similar investigation or fencing on land within zone 4(h) or 5(a), providing that work is confined to underscrubbing, a maximum 3 metre width and is undertaken in the presence of a suitably qualified ecologist. The NPWS acknowledges that this amendment is proposed to streamline the process, and considers that the caveats will assist in minimising potential impacts on flora and fauna, including threatened species. It is suggested that the clause be tightened with respect to underscrubbing, such that:

- 1) a definition of underscrubbing be included in the clause such that the preferred method is slashing no less than xcm from the ground and that major ground disturbance is not permitted (eg: using a bulldozer). This will allow retention of ground cover, minimise risks of soil erosion and enable regrowth; and
- 2) that the definition of tree removal be refined, such that trees over a certain dbh must be retained. At present 'mature / large' trees is too broad a description, and realistically may result in removal of all trees along a transect, given the extent of regrowth vegetation within the 4(h) lands. Advice from

Conservation Progra
& Planning Division
Central Directorate
Level 6
43 Bridge Street
P.O. Box 1967
Hurstville NSW
2220 Australia
Tel: (02) 9585 6678
Fax: (02) 9585 6442
www.npws.nsw.gov

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Ecotone Consultants could be sought regarding an appropriate slashing height and dbh, to ensure consistency with the aims and objectives of the draft Habitat Management Strategy.

The NPWS advises that a Section 91 licence under the *Threatened Species Conservation Act 1995* will be required if such clearing will result in harm (fauna) or picking (flora) of a threatened species, population or ecological community, damage to critical habitat or damage to habitat of a threatened species, population or ecological community.

On a separate matter, the NPWS wishes to take this opportunity to raise an issue regarding the definition of the HEZ. The boundary delineating the HEZ includes part Werakata National Park and part Aberdare State Forest, the latter of which is proposed for transfer to the Minister for the Environment. The NPWS acknowledges that there was some utility to the inclusion of these lands within the HEZ boundary during the original rezoning process as it ensured that appropriate landuses for rural-zoned lands be considered in the context of surrounding landuse. However, now that lands have been rezoned for industrial and environmental purposes, the NPWS would suggest that Council consider revising the definition of HEZ in the LEP and associated documents to only include those lands zoned 4(h), 7(b), 5(a) and 5(b). Werakata National Park (zoned 8a) is not available for development or employment purposes, and in large part the provisions of the LEP, DCP and draft EMS do not directly apply to the 8(a) lands. The continued inclusion of national park in the definition of lands covered by the Hunter Employment Zone is somewhat confusing. For this reason it is recommended that areas zoned 8(a) be excluded from the definition of the HEZ.

Please do not hesitate to contact Katharine Sale, Conservation Planning Officer on (02) 9585 6920 if you wish to discuss this further.

Yours sincerely

 19/6/02

Ms Lou Ewins
Manager, Conservation Planning Unit
Conservation, Programs and Planning Division - Central

MEMORANDUM

FROM K. Sale

TO file

DATE 20/6/02

meeting convened by B. Chard, Premier's Ct
discuss progress on HEZ DA for road.

K. Sale, CPU + R. Humphries, Mgr TSU → NEWS attend
other attendees

Alison Pepper - SARD | Ben Chard - Premier's

Had Stockholm, Peter Johns, Mark Mignarelli - DLWC

Craig Gola, Colin Nunn - RTA

Shane Kempnich - PINSW

Matt Somers, Lucas Wendler, Craig Anderson - Horpes Somers

John Curt - consultant for Council

Rich Griffiths - MCAAC

Duncan Hardie - Hardie Holdings

Neil Selman, Bernie Mortimore, G. Mgr - Council (+ ?)

• purpose of meeting to check all agencies progressing DA +
sort out any problems (in essence)

update from Council on EMS - hope to get an exhibit
w/in the week, an exhibit then for 28 days, review
of comments etc. Neil S noted CEP requirement 4/1

EMS go on exhibit + be approved by Council before
DA consent can be issued.

→ go to agencies abt their ability to respond in a

friendly manner to EMS. I indicated NAWS has seen
draft, will attempt to meet therefore but lengthy, complex
doc. 4 hrs rel. short therefore, addit. time would be
welcome. RTA noted they still have concerns w/ DA +

need further info. Dave noted they will want response

to the time frame. Both agencies noted 4/1 it would consist
of them to see early drafts of these docs.

②

M E M O R A N D U M

FROM _____

TO _____

DATE _____

- I briefly outlined blford of where we're come from - broad consens. outcomes, commitment to do ecolog. constraints mapping next - we support the DA orig. had major impacts on th. sp + at last meeting we discussed options for realign. Council has decided SIS reg, we want to ensure all landowners involved + alignment in in most strategic locat for HEZ, not just driven by land ownership

- matt S. indicated that that had been done, + NPWS' job + consens. was, w/ respect, to issue SIS reg, not take on the strat. planning issues

- I indicated it was now apparent th/ th/ process had been d + we could proceed to issue

- Rob outlined SIS reg + why they cover all species + ~~not~~ Craig A indicated th/ the Act circulars NPWS have state ~~the~~ something diff. to Act re re who can apply for SIS DC's. Rob advised must be app. or proponent (this thingframe issue - we have 28 days, only got request from Hardie recently).

- matt S asked what will be the them - Rob indicated likely requirements, seasonal but can be met in this current survey period, + clarified why it doesn't just cover to per-viffora (as per Act), + need to be strategic.

- BS - when do we issue - we undertake to issue w/in 2 days - by Thurs. Rob noted th/ SIS reg weren't a key issue in thingframes.

- general discussion of thingframes - Craig brought DC to the case of DC's, rest of thingframe

- BC - qu. landholders on any issues of concern. ^{agencies}
- RTA - issues re infrastructure DA still to be resolved - still awaiting info
 - DLWC - altho' they issued landowners consent for clearing for geotech DA, haven't for the current DA.
 - noted current land claims, need to take into act + deal w/ before give landowners consent - timeframe of this unknown.
 - read DA will be integrated for DLWC
 - PNW / SARD - no major issues
 - MLALC - want process expedited wrt DA
 - perceive tht diff gov agencies are cutting across each other (giving conflicting advice)
 - mlalc want process speeded up → not trying to use outstanding land claim as a wedge in the process (or be a wedge themselves?)

wrt land claim, Matt Savers indicated one option might be to excise road corridor from claim. MLALC indic they'd need to discuss w/ full council + poss NSW ALC.

→ no apparent concerns w/ process to date
 - Duncan Hardie - ~~had~~ seen process simplistically - surprise at how bogged down the DA is becoming
 - prime concern to have the road DA issued so can start marketing the space → under pressure by financ. backers etc to get road in so can show potential users - users will take 1-2 yrs before on-site
 - wants to speed up process
 - Peoples Farmers - ^{Matt Savers} indicated it saw the way in which they're holding things up (also relevant. EMS timeframe)

- outlined by HS - J. flight.
- HS hoping to lodge DA by end July.
 - Neil raised issue of need to meet orch. require in LEP, Matt advised was in hand + wd discuss late of Council - Neil noted tht NPWS wd be involved also, Matt appeared surprised? at this.
 - general pt re road + RTA - noted issue of Pelaw Main By-pass still to be resolved, RTA noted needs to involve NPWS re KSSW
 - B. Chord expressed view tht agencies shd be conf. themselves to matters they are respons. for - Rob H noted tht RTA, as a det-wth, was req'd to consider issues such as KSSW as part of its decision-making.
 - wrap up of meeting - various subseq. meetings to be held
 - RTA, HS + Council
 - NPWS, Council, HS + Ecotone + D. Sanders re HMS/ecolog. constraints mapping etc

KS subsequent call tht day to Matt Somers re where orch. was up to. Matt advised Ien Roberts + other orch had been at on site, were preparing a report + Matt cdnt say more at this stage. I requested a copy of report, + noted tht exc wd require a permit from NPWS + tht needed to be factored into time frame - Matt said he saw no problem w/ this.

NB. primary purpose of meeting appeared to be to put pressure on NPWS in order to apparently delaying the process wh/ we havent.

A Handbook for for Supporting Submission p.11

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Deborah Stevenson

08/08/02 10:09

To: Katharine Sale/HEADOFFICE/NPWS@NPWS
Subject: Outcomes of HEZ meeting to discuss the link road and light vehicle access

Kath

A summary for your information, which I will place on file:

- Meeting was attended by the RTA, Council staff, NPWS and Harper Somers. Mindaribba ALC and DLWC sent their apologies (Neil undertook to meet with both Mindaribba and DLWC within the next week to discuss landowner issues).
- Council has made a commitment in the past that the link road would be in place before any development proceeded at the HEZ, hence the hurry to commence work on the link road.
- Key issues associated with the link road are:
 1. possible fragmentation of the largest patch of intact KSSW
 2. residential amenity in the village of Pelaw Main
 3. mining subsidence which occurs around Pelaw Main, due to the shallow workings in this area
- The link road would connect Main Road 195 to John Renshaw Drive. It will be funded by Hardie Holdings initially and refunded through HEZ developer contributions.
- There are 4 options for the link road according to the RTA:
 1. The middle option which bisects the remnant patch of KSSW
 2. An option just to the south of the middle option
 3. The top option which skirts around the southern edge of Pelaw Main. There would be issues associated with this option in relation to noise as well as subsidence, however, Council were of the view that subsidence issues could be dealt with and were not of a nature to prevent road construction. The RTA confirmed that sound barriers would also be required for this option.
 4. The bottom option which skirts around the base of the patch of KSSW and comes back up to the east of it. This route was dismissed as being too long and circuitous, but NPWS asked that it be retained as an option for further discussion.
- Council and Harper Somers were keen to know if there was a possibility that the F3 to Branxton link road would be constructed in stages and what this might mean for the funding and construction of the HEZ link road. The RTA reiterated that the C'wealth had only agreed to fund the F3 to Branxton road as single-stage project and that there would therefore be no need to build a cross-route from it to John Renshaw Drive.
- The link road from the HEZ to John Renshaw drive will be a 2 lane road but it will eventually be upgraded from a local road to part of the state road network. (Not sure what the implications of this are).
- Harper Somers have investigated the tenure of the land to the east of the HEZ and found that there is some Crown land, a large area of land owned (?) by Hunter Water (Sharon thinks this is probably Crown land vested in Hunter Water for special purposes), freehold land owned by Rick Griffiths and land owned by Mindaribba ALC.
- Council and Hardie Holdings were keen to investigate the top option in more detail. This option will require the construction of a dual intersection (one at the intersection of main road 195 and the HEZ access road and another below Pelaw Main at the intersection of main road 195 and the new link road) and the preparation of an SIS, as well as an EIS(?)
- Hardie Holdings, as the proponent, would be responsible for acquiring land for the construction of the road and for negotiating and purchasing any compensatory habitat. (Do they have compulsory acquisition powers c.f. the RTA?) They will undertake ecological surveys of the route for the top option as well as archaeological investigations as part of a constraints mapping exercise which would also incorporate subsidence and noise issues.
- Hardie Holdings and Council talked about approaching the landholders within the next week to discuss landholder consent.

Is NPWS prepared to support the top option without further investigation of the bottom option? Should we insist that the proponent carry out a similar constraints mapping exercise for the bottom option?

- The light vehicle route into the HEZ west of Kurri Kurri hospital was also discussed, particularly the

issue of needing to cross the South Maitland railway line a second time. Various options were discussed to see if there was a more direct route into the site. One of the options is via Boundary and Mulbring Sts. The other was through cultural heritage area at the top of the HEZ which is zoned 1a and into Station St, Weston. Either way, a more direct route will have EEC implications.

Happy to discuss further

Deb

Deb Stevenson
Threatened Species Officer
Conservation Planning and Programs Division
Central Directorate
NSW National Parks & Wildlife Service
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Hurstville 2220 NSW
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15th October 2002

General Manager
Cessnock City Council
PO Box 152
Cessnock NSW 2325

COPY

**Swift Parrot
National Recovery Team**

Debbie Saunders
Swift Parrot Recovery Officer
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Fax (02) 6299 4281
debbie.saunders@npws.nsw.gov.au



Re: Comments on the Draft HEZ Environmental Management Strategy

Dear Sir/Madam,

We are writing to express our concern about the impact of the Hunter Employment Zone (HEZ) on the Swift Parrot *Lathamus discolor* and to provide comments on the proposed Environmental Management Strategy (EMS) for this site.

The Swift Parrot is listed as **endangered** under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* as well as the NSW *Threatened Species Conservation Act 1995*. The Swift Parrot Recovery Team (SPRT) is concerned about the fate of habitats within the HEZ given that it is currently the **most significant Spotted Gum *Corymbia maculata* site for Swift Parrots in Australia**.

Information about the significance of this site as well as specific comments on the habitat management, bushfire management, civic design and transport/accessibility components of the EMS are provided below.

Yours Sincerely,

Debbie Saunders

for the
National Swift Parrot Recovery Team

HEZ EMS Submission

1

Swift Parrots and significance of habitats within the HEZ

The National Swift Parrot Recovery Program objectives include the identification and protection of priority areas across the over-wintering range of this species in order to manage such habitat for the long term viability of the Swift Parrot population. Priority areas are those that contain habitats providing winter foraging resources for this species, such as nectar from Spotted Gum and Forest Red Gum. The program has made significant gains in protecting key habitats in Tasmania and Victoria and has made a major contribution to our understanding of the importance of habitats within NSW.

It has only been in recent times that the coastal and coastal plain habitats of NSW have been recognised as of especial importance to the species particularly in periods of drought. In any given year the NSW population of the Swift Parrot is dependent on the foraging resources within a given region such as the Lower Hunter Valley. Although there may be extensive areas of Spotted Gum and Forest Red Gum forests in other areas of coastal NSW the flowering patterns differ substantially and therefore only specific areas provide the necessary foraging resources in any one season. In addition, Swift Parrots are known to prefer foraging in mature trees and have a high level of site fidelity whereby they return to the same sites on a seasonal basis (Kennedy and Tzaros in press, and Kennedy and Overs 2001). The Lower Hunter Valley region is of particular importance given that large numbers of Swift Parrots are known to use habitats within the region (including HEZ) on an ongoing basis.

The Swift Parrot is the only member of the genus *Lathamus*, and therefore is of high conservation significance. The Swift Parrot population estimate is 2000 mature birds (Swift Parrot Recovery Team 2001) and therefore the HEZ has been recorded as supporting 10% of the total population. This is the largest number of Swift Parrots (200) ever recorded within Spotted Gum habitats of NSW and one of the largest records of Swift Parrots within the state. Records from the proposed development area within the HEZ also represent the longest (17 years) and most consistent site fidelity ever recorded on mainland Australia for the Swift Parrot (SPRT database and NPWS Atlas). **The HEZ is therefore currently the most significant Spotted Gum site in Australia and one of the most significant Swift Parrot sites in NSW.** Given this, statements that this species is unlikely to rely on the site for any essential lifecycle processes and likely to infrequently visit the site (Ecotone 1999) are now known to be incorrect. That is, we now know that Swift Parrots return to the HEZ site on a regular basis and heavily utilise foraging resources within the site.

Swift Parrot habitats within the Lower Hunter Valley are poorly conserved with 96% of the Swift Parrot sites occurring outside conservation reserves. The majority of these sites are therefore not adequately protected from vegetation clearance and degradation, which are key threats to Swift Parrot habitat (Swift Parrot Recovery Team 2001). In addition, areas within conservation reserves contain substantial regrowth vegetation and have supported fewer Swift Parrots than the surrounding areas. In this region the HEZ and private properties were found to support more mature trees and more Swift Parrots than any surrounding conservation reserves. Although the proposed HEZ development includes the provision of a Habitat Protection Zone, this does not provide protection for eight of the nine sites used by Swift Parrots in the HEZ. The core areas used by Swift Parrots occur within the development area of the HEZ (zoned 4h). The habitat protection zone predominantly conserves the threatened Kurri Sand Swamp Woodland Endangered

Ecological Community which does not provide the necessary foraging habitat for Swift Parrots.

Management and protection of habitat for the Swift Parrot within the HEZ development area has benefits for a range of threatened species and vegetation communities that also occur within this area. The HEZ has records of 21 threatened fauna species (amphibians, mammals and birds), three threatened flora species, two endangered ecological communities (one preliminary listed) and one nominated endangered ecological community (Harper Somers O'Sullivan/PPK 2002). The majority of these threatened species and communities would benefit from the conservation of habitat for the Swift Parrot within the development zone.

Previous comparisons of mature trees within the conservation and development areas of the HEZ found that the conservation areas contained equal or more abundant mature trees and a higher average DBH (Ecotone 2000). However this is based on random locations whereas Swift Parrots are selective in their use of habitat and have predominantly been recorded foraging in mature trees within the development area. Ninety percent of Swift Parrot foraging sites containing mature Spotted Gum trees were located outside conservation reserves. This does not necessarily mean that the conservation areas do not contain mature trees, rather Swift Parrots select habitats at low elevations, such as those within the HEZ, since they tend to contain more fertile soils and therefore produce a greater quality and quantity of foraging resources (Kennedy and Tzaros *in press*). Therefore conservation of the Lower Hunter Spotted Gum/Ironbark Forest and Hunter Lowland Forest Red Gum Forest habitats within the development zone is essential.

Given the status of the Swift Parrot at the national level all known sites for this species within the Lower Hunter Valley region are of significance and the loss of habitat in areas such as the HEZ can only further endanger the species. Contrary to the National Recovery Plan, the HEZ would result in the removal of Swift Parrot habitat within a priority area that is known to support at times over 10% of the total population (contrary to Action 1a). It would also involve clearance and disturbance of poorly conserved habitat (contrary to Action 2b) and the construction of industrial developments likely to cause fatal Swift Parrot collisions (contrary to Action 3).

The HEZ proposal would have a significant impact on this endangered species.

The Swift Parrot Recovery Team is therefore opposed to the proposed development of the HEZ and recommends that all Lower Hunter Spotted Gum/Ironbark Forest be conserved.

However, should development of the HEZ go ahead contrary to this recommendation, there are some important measures that need to be incorporated into the Habitat, Bushfire, Civic Design and Transport/accessibility components of the EMS. These measures then need to be implemented in order to reduce the both direct and indirect impacts on this species as detailed below. Such impacts include initial habitat loss and fragmentation as well as the long term cumulative impacts within the region.

Habitat Management Strategy (HMS)

The Habitat Management Strategy needs to provide the following information:

- Updated information about the amount of National Park zoned within the HEZ site (approx 650ha) needs to be provided. The existing NP area (1273ha) includes areas of existing National Park and therefore is incorrect.
- Detailed constraint maps for all threatened species and communities that are known and/or likely to occur on the site in order for the most effective planning decisions to be made for such a large scale development. Maps should also be provided for all records of threatened species and communities on the site so that it is clear where these species occur in relation to all habitats and zones within the HEZ.
- Updated profile information for all threatened species, including the Swift Parrot. Such information is available from published reports, recovery plans as well as the relevant recovery teams. The Swift Parrot information used in the HMS is 10 years old and therefore preceeds the National Recovery Plan for this species and all associated work that has been undertaken since 1995.
- Information about the confirmed presence of the Swift Parrot and Regent Honeyeater (may also apply to other species) within the HEZ (4h and 7b) and NP (8a) needs to be corrected in Table 4. The Swift Parrot has been recorded within the NP (8a) zone and the Regent Honeyeater has been recorded within the HEZ (4h) zone (NPWS Wildlife Atlas and SPRT Database).
- Information regarding the amount of each vegetation community within the development and habitat protection zones of the HEZ. A map showing this information together with allotment details (if avail) should also be provided so that it is clear which areas/allotments would be subject to the various components of the HMS.

In addition, the HMS schedules are confusing and appear to have a degree of overlap. Therefore it is not immediately obvious when each schedule needs to be applied and the purpose of each schedule. This section would benefit from some rearrangement to make the timing, purpose and outcome for each schedule clearer.

HEZ - Swift Parrot Habitat Management

Although it is clearly stated in the HMS that impacts from the cumulative loss of many small areas of habitat may be severe, the HMS needs to provide more specific goals and targets for the site as a whole. Suggestions of such targets and goals for the conservation of habitat for the Swift Parrot are provided below.

In order for the HEZ to continue to provide at least limited habitat for the Swift Parrot there needs to be an overall retention of at least 75% of the Lower Hunter Spotted Gum/Ironbark Forest and Hunter Lowland Forest Red Gum Forest within the area zoned 4h for industrial development. Therefore it is recommended that the following information be incorporated into the HEZ Habitat Management Strategy and implemented as part of the overall Environmental Management Strategy for the site:

At least 60% of this habitat needs to be retained as priority habitats consisting of intact forest connected with surrounding bushland or as habitat patches with a minimum size of 20 hectares.

These priority habitats need to include all sites with:

- Swift Parrot records and/or
- Lower Hunter Spotted Gum/Ironbark or Lowland Hunter Forest Red Gum habitats with mature trees 60cm DBH or greater

All of these priority habitats within the 4h zone need to be maintained in both the short and long term to avoid weed encroachment, promote natural regeneration and allow natural flowering events to occur. For habitat patches, the edge to area ratio needs to be minimised so that ongoing impacts from the surrounding environment are reduced. Where bushland fire management requires buffer zones around any patches, these buffers need to be additional to the area retained for habitat purposes.

The remaining 15% of this habitat being retained within the 4h zone may be located in areas similar to the priority habitats or amongst the development such as in landscaped areas, fire protection zones and car parks. Throughout all stages of the development (planning, construction and use) the following conditions need to be adhered to:

- Retain and protect 75% of all Spotted Gum and Forest Red Gum trees 40cm DBH or greater within the zone 4h development area
- Protect all habitat (being trees retained regardless of DBH) from damage (including trunk damage and compaction of roots)
- For every Spotted Gum or Forest Red Gum tree removed (any DBH) three more trees of the same species need to be grown from local seed stock and then planted and maintained to ensure successful establishment.

In addition to protecting habitat within the HEZ, there is an urgent need to secure long term protection of habitat for Swift Parrot throughout the Lower Hunter Valley region given the significance of this area for this endangered species.

Other impacts from the HEZ are likely to have a significant cumulative impact on the long term viability of the Swift Parrot population in the region. These impacts include collisions with man-made structures, disturbance from bushfire hazard reduction measures and public safety measures as discussed below. There is also likely to be increased levels of competition with aggressive generalist species such as Noisy Miners that tend to increase in abundance in a fragmented landscape.

Bushfire Management Strategy (BMS)

In order to minimise the impact of future bushfire management on Swift Parrot habitat it is recommended that the following be incorporated into the BMS:

- All priority habitat areas for Swift Parrots (as defined above in habitat management strategy section) retained within the 4h zone need to have no development, infrastructure and/or fire protection measures imposed on them. Such measures may be implemented in the areas adjacent to these habitat areas.
- Control burns during the budding and flowering of Spotted Gum and/or Forest Red Gum needs to be avoided since this is likely to result in a reduction in the quality and quantity of flowering for these tree species hence limiting the foraging resources available for Swift Parrots. The adverse effects of fire during the breeding season was mentioned for threatened species, however it should also be noted that fire during a flowering (hence foraging) period for migratory species such as the Swift Parrot and Regent Honeyeater would also have adverse effects on these species.
- Control burns within Lower Hunter Spotted Gum/Ironbark or Lowland Hunter Forest Red Gum habitats should not be undertaken too often since this is likely to place stress on these habitat types and reduce the regularity and abundance of flowering.
- Spotted Gums and Forest Red Gums are both tall, smooth-barked trees and therefore should be retained within both the Inner and Outer Protection Areas of the fire Asset Protection Zones.

The BMS clearly states that inappropriate fire regimes are the greatest danger to biodiversity and threatened species (section 5.13 Biodiversity Conservation). However the issues raised in this regard are not related back to other requirements and recommendations for fire management within the strategy. The strategy needs to specify how each of these concerns for threatened species are being addressed given other requirements for fire control.

In addition, the BMS fails to provide the following information:

- Appropriate fire regimes for each vegetation community (Table 10)
- Fire management guidelines for all threatened species and communities (Table 11)
- Vegetation community and threatened species plans (Schedules 3 and 4)
- Fire responses of threatened species and the potential effects of fire on these species (Appendix 2).
- Impact of the strategy on threatened species in Appendix 2.

Therefore the BMS is incomplete and comments can not be made regarding the accuracy or adequacy of these sections. All information missing from this and other components of the EMS should be made available for public comment when available. Once the BMS is complete it needs to be subject to further public exhibition before the EMS is approved.

Civic Design Strategy (CDS)

The Civic Design Strategy needs to incorporate more detailed information in regard to the prevention of Swift Parrot collisions. Fatal collisions with man-made structures (such as windows, wire mesh fencing and cars) have a major impact on this species and therefore it is essential that any proposed developments in the vicinity of known habitat have comprehensive anti-collision measures incorporated into the design (Swift Parrot Recovery Team 2000). The following measures are designed to reduce bird strike and therefore reduce the ongoing impact of collisions for the Swift Parrot. It is essential that these anti-collision measures be fully implemented within the HEZ given that it is one of the most important foraging sites for Swift Parrots in NSW.

- Ensure all windows and walls are non-reflective. This needs to be incorporated into all developments within the HEZ without exception. This is an essential design feature that minimises fatal collisions by Swift Parrots and therefore must not be used on a selective basis as suggested in the CDS.
- Avoid windows being placed on opposite sides of the room, creating the illusion of a flight path for birds
- Avoid placing windows so they appear to extend the garden or sky through reflection
- Avoid having windows with large panes (greater than 2m²) near the ground or greater than three metres in height
- Prohibit the use of wire mesh/chain-link fencing (similar to fences used for tennis courts/golf courses) in addition to the other fencing types indicated within the CDS.

The importance of such measures has been highlighted this season whereby large numbers of Swift Parrots have been found dead/injured on the mainland as a direct result of collisions with man-made structures. Unfortunately these are likely to represent only a portion of the total number of birds impacted by collisions. Collisions are noted in the recovery plan as a key threat to the Swift Parrot and as habitat for this species becomes increasingly fragmented by the human environment and associated structures such threats will have an increasing impact on this endangered species.

The BMS states that there would be a minimum 40m buffer around all areas of Habitat Protection Zone (7b) however the CDS states that the minimum setback of all works and buildings can be as close as 10m. Such close setback distances would result in increased impacts on habitats within this protected zone and would also pose a fire hazard. The EMS must therefore clearly define how each of the strategies can be made consistent for effective overall management of the site.

The objectives of the landscaping section of the CDS should include the protection of threatened fauna species and their habitats. In addition, the Landscape Concept Plan should provide detailed information and a map of all existing trees 40cm DBH or greater, including species, size (DBH), location and height.

Transport and Accessibility Strategy (TAS)

The TAS states that development of the HEZ is likely to result in 6700 people accessing and using the HEZ site on a daily basis for work purposes. By providing greater access to the HEZ for such purposes there would also be increased pressure placed on the habitats within and surrounding the site as outlined below:

- Such access would result in a corresponding increase in the level of disturbance to these habitats, however this should be reduced through the maintenance of locked gates on all fire trails as suggested in the BMS.
- Such a large scale industrial development is also likely to result in increased pressure for residential developments in the surrounding area and therefore may have further implications for Swift Parrots in the City of Cessnock as well as within the Lower Hunter Region. In order to address this issue, the CDS needs to include planning strategies for incorporation into the Cessnock City Council LEP currently being reviewed.
- Public access to priority habitat areas and habitat protection zones (7b zone) should be avoided or restricted to passive recreation. Where trees retained within public access areas (such as fire protection zones, buffer zones and areas of landscaping) are considered a risk to human safety due to the potential for limbs to fall and cause injury and/or damage, tree surgery (rather than tree removal) should be undertaken. This would enable the retention of healthy trees and the provision of protection for people in these areas.

Environmental Management Strategy (EMS)

All of the above recommendations need to be fully incorporated into the relevant sections of the EMS in order to reduce the detrimental impacts of the HEZ development on the Swift Parrot.

PHONE NO. .

MEMORANDUM

FROM _____
 TO _____
 DATE 21 October 2002

ATTACHMENT (1)

50
101

- Vivian Baker (ERM) (Ecotone - LEP + HMS)
- Neil Salmon Horak Somers - survey for road
- Margaret Koetting
- Dorcas Stevenson - Constraints mapping for whole site
- Meredith Newton (John Curt - EMO)

LEP has been amended to allow more clearing for survey
 Need to clear to allow scrapes for investigation, Ab. archaeology. would require DAs.
 → Constraints map needed to inform more sensitive & less sensitive areas. from FoF point of view. Project very close back-to-front.
 NO - constraints map not available for 12 months

Horak Somers - meeting early November.
 Ecotone - do not use REMS common descriptions.

NO - Mr. [unclear] NPWS waited this long to raise these issues.
 NPWS (D) - detailed info. re Report H. + Staff P. now available.
 - first letter suggested constraints mapping
 - suspended ERM + HMS on exhibition without covering NPWS previous detailed comments.
 - woodland birds listed this year.
 - info. re NSW

MEMORANDUM

FROM _____
 TO _____
 DATE _____

Write - general description / ~~of~~ ~~for~~ ~~approach~~
 of site for archaeological explanation
 - 10 areas of interest

~~etc~~

Below Heaven Dam

- colluvial deposits along Heaven Creek - c of i.
- also alluvial sands (will clarify with geomorphic testing)
- both support KSW but Stephen Bell suggests different types (6 or so) of KSW.
- scrapes will be in opportunistic

Access.

Proposed New Road - E. edge

- ridge line = area of interest
- spotted green / (unfilled. fr. Report M. Duff)
- ~~down to stream~~ ^{down to stream}

continuous scrapes *Gemilla parvifera*

5 x 5 meters

- continuous scrapes in cleared area
- have walked over site with ecologist - ^{MM} need to agree
- * on criteria of ~~if~~ whether area "suitable" to clear
- ^{scrapes} not propose along creek N of access road

Approvals needed for scrapes

- scrape of area occupied by *Gemilla parvifera*

DA for Road

- DA advised ^{do} not ^{request} ~~request~~ ~~approval~~ ^{approval} as *Gemilla parvifera* would prevent issue of approval

FILE No. 955 22.10. '02 22:25 ID:PREMIERS/DEPARTMENT FAX:+61249278798 PAGE 2
 FROM : CESSNOCK COUNCIL PHONE NO. : 02 4993 4100 Oct. 22 2002 04:59PM P2



Mr. B. Chard,
 Regional Coordinator, Hunter and
 Central Coast,
 Premier's Department of NSW,
 Level 4, 251 Wharf Road,
 NEWCASTLE. 2300

Contact: Mr. Neil Salmon
 Our Ref: 92/21
 Your Ref:

Dear Mr. Chard,

HUNTER EMPLOYMENT ZONE

I refer to the above and your meeting this morning with Mr. Neil Salmon, Council's HEZ Executive Planner, attended also by Mr. Matt Somers from Hardie Holdings, Mr. Rick Griffiths from MindaRibba Local Aboriginal Land Council, and Mr. Lucas Grenadier from Harper Somers O'Sullivan. At that meeting you discussed impediments to the progress of development of the Hunter Employment Zone and in particular the view of the Developer and Council that agreements with the NSW National Parks and Wildlife Service (NPWS) about completion of detailed ecological constraints mapping (DECM) and its relationship to the Habitat Management Strategy for the site, and for consideration of Infrastructure development applications, are not being reflected in current advice being received from individual NPWS Officers.

1. Environmental Management Strategy and Detailed Ecological Constraints Mapping

The Local Environmental Plan (LEP) for the HEZ site was gazetted by the State Government on March 28 2002. The LEP requires that a range of Environmental Management Strategies (EMS) be prepared to guide development on the site. One of these is a Habitat Management Strategy. Council and the Developer have agreed with NPWS that the DECM is required. However, the sheer size of the site means that this work will take approximately 12 months to complete. At many meetings and discussions involving Council, NPWS and various consultants, it has been agreed that the Habitat Management Strategy must necessarily, at this point, be a broad document, with the DECM feeding more detail into it as the information becomes available.

At the focus meeting you chaired at Council's offices on June 18, 2002, the relationship between the EMS, the DECM and consideration of development applications for infrastructure (particularly the main internal access road) was discussed, and the agencies at the meeting, including NPWS, agreed that the approach being taken was reasonable and acceptable. Meetings held with NPWS staff this week have focussed on new information from the National Swift Parrot Recovery Team and have suggested that the DECM is required to be completed before NPWS can adequately comment on, and make decisions about, the Habitat Management Strategy, the Stage 1 Infrastructure DA currently on exhibition, and even the location of test digs for vital aboriginal archaeology retrieval

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23/10 '02 WED 10:50 ITX/RX NO 64491

FROM : CESSNOCK COUNCIL PHONE NO. : 02 4993 4188 Oct. 22 2002 04:59PM P3

FILE No. 955 22.10.02 22:25 ID:PREMIERS/DEPARTMENT FAX: 61249276798 PAGE 3

Page 2

investigation, discussed in more detail below. The report by the Swift Parrot Team recommends that the HEZ development not occur but that if it does, 75% of the land zoned for employment generating/Industrial development will need to be protected. Clearly, the proposal as supported by the State Government and reflected in the LEP gazetted in March this year would not proceed if these recommendations were implemented.

This advice appears to Council to be contradictory to agreements reached with NPWS over many months. The DECM is progressing, more information is available to Council and the developer every week, and the work done so far was included in the Species Impact Statement prepared for the Stage 1 Infrastructure DA. Indeed, the NPWS Director-General's requirements for the Species Impact Statement state that it is understood that the DECM and infrastructure planning will occur "in parallel".

If clear and firm advice cannot be provided by NPWS with regard to the Habitat Management Strategy and current Infrastructure applications, the proposal will be significantly delayed, and investment finance lost.

While it is understood that the National Swift Parrot Recovery Team is federally funded, Council is concerned that:

- i. The report was made available to local political and community groups the same day that it was released to Council;
- ii. The recommendations of the report appear to match the stated sentiments of the political opponents to the HEZ project.

It is not Council's understanding that the report is a public document, and there appears to be collusion amongst various groups intent on impeding the project.

2. *Aboriginal Archaeology Retrieval*

The LEP gazetted in March requires that certain aboriginal archaeology retrieval investigations are complete prior to any development application being approved on the HEZ site. A meeting was held at NPWS on July 23, 2002 to discuss a brief for the work and to raise concerns about the proposed method of investigation, viz: grader scrapes 5 metres by 100 metres in various parts of the site. The concern relates to the need for a DA for the vegetation clearing that such grader scrapes would necessitate. At the July 23 meeting, it was agreed to amend the brief to allow archaeological consultants to suggest alternate methodologies that would not cause such impacts on important vegetation on the site. All respondents to the brief recommended alternatives that would yield results as successful as grader scrapes, in their view.

A consultant was selected and a work proposal to accompany an application for the necessary NPWS permit to undertake the work prepared. The consultant discussed this with NPWS staff and was advised that scrapes were still the preferred method. The proposal was rewritten. However, given the time delays that a clearing DA would cause, a meeting was held with the relevant staff on October 21, where, after lengthy discussion about the difficulties of disturbing vegetation, even that vegetation occurring outside current conservation zones, it was agreed that alternate methods would, after all, be accepted. The consultant is rewriting the permit application for the third time.

There will be several weeks work involved in completing the work required to satisfy the LEP and the uncertainty over what methods will and will not be acceptable to NPWS, despite advice from several highly qualified and regarded aboriginal archaeologists, has caused more delay to the work, and will delay the timelines agreed at the June 18 Focus Meeting for determination of the Stage 1 Infrastructure DA.

FROM : FILE No. 955 22.10.02 22:26 ID:PRENTERS/DEPARTMENT FAX:+61249278798 PAGE 4
PHONE NO. : 02 4993 4100 Oct. 22 2002 05:00PM P4
FROM : CESSNOCK COUNCIL

Page 3

In advising you of these issues, Council acknowledges that there is legislation that must be adhered to, and processes and protocols that agencies must follow to achieve consistency across the State. There is no argument with these processes. Council's concern is that advice being received from individual NPWS Officers does not seem to reflect:

- i. The "whole of Government" approach and attitude to this important, employment generating development; or
- ii. The advice from very senior NPWS Officers that there will be no impediment to the successful completion of the project from the Service.

I note that since your meeting with the Developer and Council's HEZ Executive Planner this morning, Lou Ewins, Manager, Conservation Planning Unit NPWS, has contacted Council advising that NPWS supports the rezoning as reflected in the LEP of March 28, 2002, understands the relationship between the LEP, EMS and DECM, and is supportive of the approach being taken by Council and the Developer, and that comments of the National Swift Parrot Recovery Team are not comments from NPWS, nor should they be inferred to reflect NPWS policy. While this advice reflects Council's understanding of the agreements with NPWS, our concern is that this position is not reflected in the opinions and advice received from individual Officers, and this is a matter that Council feels needs the urgent attention of Officers at the highest level of the Service.

I would be happy to discuss any aspect of these comments with you at any time.

Yours faithfully,



C.L. COWAN,
GENERAL MANAGER

October 22, 2002
gm:tre78/2002

APPENDIX 4

FAXED
18/25/02



Mr Neil Selmon
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

CESSNOCK CITY COUNCIL RECEIVED	
30 OCT 2002	
FILE	ST 92/21/3/1
REFER TO	NSelmon
SUBJECT NO.	
REPLY YES/NO/INITS	

NSW
NATIONAL
PARKS AND
WILDLIFE
SERVICE

ABN 30 841 387 271

Our ref: 01/478 mm
Your ref: 92/21/3

Dear Mr Selmon

Re: Hunter Employment Zone – Environmental Management Strategies

I refer to your letter dated 13 September 2002 inviting comment from the National Parks and Wildlife Service (NPWS) on the nine sectoral Environmental Management Strategies that have been referred to the NPWS for comment.

In light of recent discussions on the Hunter Employment Zone between Council, National Parks and Wildlife (NPWS) and Premier's Department staff, the NPWS affirms its support for the rezoning as reflected in the LEP of March 2002 and its understanding of the relationship between the LEP, Environmental Management Strategy and Ecological Constraints Mapping. In future, I trust that if you or other officers within Council have concerns in relation to issues raised by officers within the Conservation Planning Unit that you exercise the professional courtesy of raising those matters directly with me. The history of the NPWS' working relationship with Council on this project demonstrates that the NPWS has a track record of working with Council to resolve difficult and challenging issues.

Of the nine strategies prepared as part of umbrella Environmental Management Strategy (EMS), the NPWS has focussed its review on the Habitat Management Strategy and the Bushfire Management Strategy, consistent with its statutory responsibilities. The following advice is provided to Council in order to assist Council improve the utility of the EMS and progress the finalisation of the EMS.

I refer you to the NPWS' previous correspondence dated 26 March 2002, which provided detailed comment on the draft strategies. It is apparent that issues raised in the NPWS' earlier advice on the draft EMS have not been comprehensively addressed in the exhibited EMS. Council is asked to consider the following comments in combination with those made previously.

Environmental Management Strategy (EMS) – Master Strategy

- Section 1 – What is the Hunter Employment Zone? - a map should be provided to show the boundaries of the HEZ. Maps are generally under-utilised throughout the suite of strategies and would make for more readily understandable documents. The NPWS also noted some inconsistencies between the various strategies in terms of defining the HEZ and stresses that it should not include Werakata National Park and Aberdare State Forest;
- Section 4.1 Sustainability refers to "habitat planning for the HEZ involving the Lower Hunter National Park and a Habitat Protection Zone". As habitat planning on NPWS estate is a matter for the NPWS the reference to the

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NSW
NATIONAL
PARKS AND
WILDLIFE
SERVICE

ABN 50 841 367 271

Mr Neil Selmon
Cessnock City Council
PO Box 152
CESSNOCK NSW 2325

Our ref: Q1/478 MM
Your ref: 8/2002/838/1

Dear Mr Selmon

**Re: Development Application (DA) for Stage 1 Road Infrastructure,
Hunter Employment Zone, Tomalpin**

I refer to your letter dated 23 September 2002 seeking comments from the National Parks and Wildlife Service (NPWS) on this proposal.

The NPWS has statutory responsibilities for the protection and care of native flora, native fauna and Aboriginal objects and places, and for the management of NPWS lands. Accordingly, the NPWS has an interest in ensuring that potential impacts on these features are appropriately assessed and managed.

The NPWS understands the proposal involves construction of 5.7km of internal "spine road" extending from the intersection with Main Road 195 on the eastern boundary of the Hunter Employment Zone (HEZ) to a point approximately 1km short of the northern boundary. The alignment beyond this point is yet to be finalised and will be addressed in a separate DA. It is further understood that this DA includes the carriageway of the road, associated earthworks and stormwater infrastructure.

The NPWS has reviewed the Statement of Environmental Effects (SEE) and Species Impact Statement (SIS) prepared for this proposal and provides the following comments:

- Overall the SIS has adequately addressed most of the matters raised in the DGRs and the additional targeted surveys for threatened species known to occur at the site has been thorough. Consequently, the material contained within the SIS adds significantly to the results of previous broad brush survey work undertaken for the HEZ rezoning proposal and provides a good information base for subsequent work associated with the ecological constraints mapping. The NPWS advises that matters that have not been addressed adequately in the

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SIS will need to be dealt with through the ecological constraints mapping process, the EMS and at the individual DA stage.

- The SIS recognises the significance of the site with respect to threatened species and provides a sound assessment of both the direct and indirect impacts that the road will have on these species. However, as previously indicated to Council, it does not deal with the incremental impacts associated with this proposal, and the subsequent developments that will flow from it. The adoption of a precautionary approach to the proposed development through the incorporation of minor adjustments to the alignment of the road to avoid threatened species or minimise indirect impacts on them is supported, but these gains may not be sustainable in the longer term given the likelihood of subsequent development in the vicinity of the road. This highlights the need for strategic impact assessment so that the **cumulative impacts** of development on threatened species within the 4(h) lands at the HEZ can be effectively managed and minimised. Such an approach is supported in theory within the EMS, but in practice small scale, incremental development proposals such as this one will make strategic impact assessment very difficult to implement. Consequently, the ecological constraints mapping discussed in the SIS will play a critical role in guiding future development at the site. Once this fine-scale site-wide mapping is completed, it should form the basis for a review of the conservation significance of sites across the HEZ to ensure that those species which were not identified as being present prior to rezoning and which were not catered for in the LEP, are adequately protected. There are a number of mechanisms which could be used to achieve this and the NPWS would be happy to discuss these in more detail with Council and the proponent once the results of the ecological constraints mapping have been finalised.
- The NPWS acknowledges that additional **survey work** was undertaken which was beyond the scope of DGRs for the SIS and that these resulted in some significant incidental observations, which were subsequently included in the SIS. However, the SIS also relies heavily on the ecological constraints mapping to fill gaps in the survey work for some threatened species for which there were specific survey requirements in the DGRs. While this may not be an issue for those species and ecological communities which will not be impacted by the road (*Eucalyptus parramattensis subsp. decadens*) or which are adequately protected under the LEP (Kurri Sand Swamp Woodland, Hunter Lowland Redgum Forest and *Grevillea parviflora subsp. parviflora*), it is particularly important for those species which do not fit either of these categories and for whom there is limited site-specific habitat information (Green-thighed Frog, Swift Parrot, Regent Honeyeater, *Callistemon linearifolius* and to a lesser extent the woodland birds). Without this information it is very difficult to make

decisions about whether or not the proposal will have a significant impact on these species (see the references to these species below).

- Much of Ecotone's earlier work forms the basis for the vegetation community descriptions, habitat assessment and some of the threatened flora information in the SIS. Consequently the **methodology** they used should have been outlined in the SIS so that it was possible to ascertain whether it is consistent with the survey requirements contained within the DGRs. More detailed information could also have been provided about the methods used to target threatened flora, particularly *Callistemon linearifolius*, and to assess habitat at the site. The habitat assessment survey does not appear to have included an evaluation of its relative condition across the HEZ. Habitat condition was reported to be important with respect to use of the site by Swift Parrot and it is likely to influence how other threatened species use the HEZ in view of its disturbance history.

The following threatened species were adequately addressed by the SIS:

- The survey work for *Grevillea parviflora subsp. parviflora* was comprehensive and followed the specific survey requirements for this species outlined in the DGRs. There is some doubt as to the correct identity of the *G. parviflora subsp. parviflora* plants located by the consultants at the HEZ and in the Cessnock locality and this is acknowledged in the SIS. This species occurs across the HEZ site and is well-represented in the conservation reserves and habitat protection areas.
- Surveys for the **woodland birds** (Brown Treecreeper, Black-chinned Honeyeater, Grey-crowned Babbler and Speckled Warbler) were comprehensive and met the specific survey requirements of the DGRs. The information contained within the SIS indicates that the site is important for these threatened species, particularly the Lower Hunter Spotted Gum-Ironbark Open Forest community, and further survey work at the HEZ associated with finalising the ecological constraints mapping should aim to define particular areas within this community that are of conservation significance for these species and require protection.

A number of threatened species were not adequately assessed in the SIS and will need to be addressed in more detail through the ecological constraints mapping process:

- The occurrence of **Green-thighed Frog** at the HEZ is extremely significant and, as the SIS notes, the extant population is of very high conservation value. The DGRs required an assessment of the extent and distribution of Green-thighed Frog habitat across the HEZ in order to accurately assess the likely impacts of the road on this species, but

it appears that these specific habitat surveys were not undertaken because of the proponent's timeframe for lodging the DA. Without this information, it is difficult to assess the impacts of the road, and any subsequent development, on the Green-thighed Frog because it is unclear how much suitable habitat exists for the species elsewhere on the site and whether any of this habitat is already protected either within Werakata National Park or the 7(b) conservation zone. In addition, overland flow/flooding is important with respect to Green-thighed Frog habitat, but there is no discussion in the SIS about the changes that the flood mitigation measures (retention storages) proposed along the road embankments may have on the current pattern of overland flow at the site. Consequently, the NPWS advises that while the road proposal may not significantly affect this species, any decisions relating to future developments at the site will need to be based on more comprehensive information derived from the ecological constraints mapping process.

- The SIS acknowledges that the HEZ site is a significant one for the **Swift Parrot** due to the number of birds that have been recorded there over the years and the fact that this species demonstrates high site fidelity. The DGRs required that specific trees and habitat patches, which represent important foraging habitat for these species, be identified and mapped in the SIS. Identification and mapping of key habitat trees or patches was not provided in the SIS, but the NPWS understands that it will be undertaken at a later date as part of the ecological constraints mapping. However, the SIS does recognise that the removal of at least 40 mature forage trees will lead to the incremental loss of habitat for these species in the locality and that the longer term security of habitat for these species in the region is inadequate due to its lack of representation in conservation reserves. The NPWS recommends that if information becomes available regarding sites of significance for this species at the HEZ, that this information be incorporated in to the ecological constraints mapping. The NPWS would like to take this opportunity to state that the recommendations contained within the assessment report prepared by the Swift Parrot Recovery Program project officer reflect the views of the recovery team and are not those of NPWS.

The SIS notes that further survey work is required to accurately determine the magnitude of the impacts of the road on ***Callistemon linearifolius***. It is not clear exactly how much of the HEZ site beyond the road corridor was surveyed for this species. Stephen Bell has recorded *C. linearifolius* in Werakata National Park, but there is no specific information in the SIS about its location elsewhere within the HEZ. In the absence of this additional survey work, which will occur as part of the ecological constraints mapping, the NPWS supports the need to take a cautious approach and avoid impacting on what appear to be significant populations of this species along the road alignment.

Once more is known about the extent, size and condition of the *C. linearifolius* populations at the HEZ, a more informed decision can be made in relation to the long term protection of this species. The potential indirect impacts of the road on this species should also be considered when finalising the alignment for the road given the proximity of these populations to the road.

- The road appears not to require clearing of **Kurri Sand Swamp Woodland** as the result of trialing several best-fit alignments. However, 1.89ha of intergrade vegetation would need to be cleared, and Council is asked to ensure that appropriate mitigation measures are included as part of a development consent to address potential indirect impacts from edge effects such as weed invasion and stormwater runoff. The variants of Kurri Sand Swamp Woodland, as described by Stephen Bell, should be regarded as part of this EEC as per the Scientific Committee's Final Determination which notes that not all species which are characteristic of an EEC will always be present. This is particularly important since these variants are even more restricted in their occurrence than KSSW. Similarly, ecotonal or intergrade areas represent important buffers and a precautionary approach would be to treat them as part of the EEC.
- Since the SEE and SIS were prepared, the Scientific Committee has issued a preliminary determination to list **Hunter Lowland Redgum Forest** as an EEC under the Threatened Species Conservation Act. This community has been depicted on Figure 2-3 of the SIS as Forest Red Gum/Grey Gum and the road alignment will traverse the community over a length of approximately 400m. The SIS has noted the regional significance of this community, and the role of this riparian vegetation, which forms an important north-south wildlife corridor. The NPWS supports the recommendation in the SIS that clearing of the community should be minimised. The determination states that only about 27% of the pre-1750 extent of Hunter Lowland Redgum Forest remains and that this is highly fragmented. The Scientific Committee also indicates that the community is likely to become extinct unless the circumstances and factors threatening its survival or evolutionary development cease to operate. Hence, the preliminary listing is further evidence of the conservation significance of this vegetation community and Council is asked to ensure that appropriate attention is given to this issue in identifying protective measures should development consent be granted for the road.
- A number of regionally significant **vegetation communities** occur on the HEZ site, some of which have now been preliminarily listed (Hunter Lowland Redgum Forest) while others have been nominated for listing (Lower Hunter Spotted Gum-Ironbark Forest). For the sake of consistency with broader scale vegetation mapping and to ensure that the significance of the vegetation on the HEZ site can be understood

from a regional perspective, the LHCCREMS map units should have been used to describe vegetation at the site in preference to Ecotone's community descriptions.

- With regard to **Aboriginal cultural heritage**, the location of the road alignment is through the area targeted for further archaeological investigation as defined in Clause 57 (5) (b) of the LEP. Should development consent be granted, it is not appropriate for any works to be undertaken prior to completion of that further investigation, as required by the LEP.
- The **recommendations** proposed in the SIS relating to the control of access to the site; landscaping with native species; implementation of strict water quality controls; minimisation of edge effects; clearing restrictions in sensitive area; and local route realignments are all supported and the NPWS would like to see these reflected in the final layout of the road infrastructure. However, any translocation experiments using threatened flora must be viewed as a last resort where direct losses cannot be avoided and not as an ameliorative measure to reduce the level of impact of the proposal since threatened flora are notoriously difficult to translocate. The NPWS notes comments to this effect at the end of the SIS in relation *Grevillea parviflora subsp. parviflora*.

The NPWS considers that the proposal, as described and amended in the SEE and SIS, will not have a significant impact on threatened species provided that all of the recommendations relating to minor realignments of the road contained in the SIS are included as conditions in any consent issued by Council and that they are implemented in line with the EMS/HMS for HEZ site.

The NPWS reiterates its support for the rezoning of the HEZ site and will continue to work with Council to ensure that the conservation outcomes achieved through this process are informed by the ecological constraints mapping and consolidated through the implementation of the EMS.

In relation to the recent clearing on the site, Council has indicated in recent correspondence that a 3m width has been cleared along 3km of the proposed roadway pursuant to recent amendments to Cessnock LEP 1989. Notwithstanding the provisions of the LEP, the NPWS is concerned that clearing of the route has been undertaken without a Section 91 licence under the Threatened Species Conservation Act. Advice about the need to obtain a licence was communicated to Council earlier this year at the time the draft LEP was in preparation. The NPWS is also aware of concern in the local community that the clearing pre-empted determination of the Development Application. The NPWS has instructed that the clearing cease until the appropriate approvals have been obtained.

PHONE NO. :

Jul. 20 2004 05:14PM P14

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and will be investigating the circumstances of the clearing with Council and the proponent.

Should you require any additional information please contact Deb Stevenson, Threatened Species Officer on (02) 9585 6821.

Yours sincerely

Robert Humphries
Manager
Threatened Species Unit
Central Directorate

**Head Office:**

HEZ Pty Ltd ABN 72 084 052 595
 Level 2, 106 King Street
 Sydney NSW Australia
 GPO Box 2557 Sydney 2001
 Phone (61 2) 9233 2588
 Fax (61 2) 9233 6599
 www.hez.com.au

28th October, 2002

The Director General
 Premiers Department
 Level 41, GMT
 1 Farrer Pl
 Sydney NSW 2000

Attention: Col Gellatly

Dear Sir,

RE: HUNTER EMPLOYMENT ZONE (HEZ)

We write to express our grave concern as to the progress of the above development especially with respect to the lack of integrity shown by officers of the Department of National Parks & Wildlife (NP&WS) who, in our opinion, have adopted a stance of frustrating this project to ensure it's ultimate failure.

You will recall that our company has been instrumental in rezoning the area (871 Ha) to allow for a large scale industrial estate which will attract significant development, relieve congestion within the Sydney metropolitan area and generate significant employment in an area that has above average adult unemployment and youth unemployment running at nearly 33%.

To date we have we have had tremendous support from all levels of government with the exception of NP&WS and The NSW Scientific Committee. The NSW Scientific Committee at least do not appear to be overtly targeting HEZ, however their actions and listings will ensure the project fails in due course.

Our specific concerns include the following 3 issues:

1. Current Development Application
2. Role of The National Parks and Wildlife Service
3. The NSW Scientific Committee and the project's viability.

1. CURRENT DEVELOPMENT APPLICATION

We currently have before Cessnock City Council (CCC) a development application (DA) for the estate infrastructure.

This DA was scheduled to go before Council on 6th November for determination, however it appears it will now be delayed due to outstanding Aboriginal Archaeology issues. The delays have been brought about by the attitude of NP&WS.



HARDIE HOLDINGS

Member of Hardie Holdings Group of Companies

Due to action last week by Mr Ben Chard, of your office, it appears the issues (which we will address later in this letter) have now been resolved.

We will, however, require assistance to ensure that the Excavation Permit is issued expeditiously when it is applied for later this week to ensure no further delay in DA approval.

2. NATIONAL PARKS AND WILDLIFE SERVICE

As stated above all levels of government have been supportive of the above project with the exception of NP&WS.

Whilst the senior officers of NP&WS have indicated Departmental support of the project this does not seem to be the attitude of the individual officers handling the day to day issues. This is not only our opinion, but also that of Cessnock City Council (see enclosed letter). Specific instances of this attitude include:

- The original rezoning study area encompassed some 3,300 Ha, of which 871 Ha has been rezoned to allow for industrial development. This means some 2,400 Ha have been set aside for conservation reasons of one sort or another. NP&WS acknowledges this in their letter dated 11.07.01 (See enclosed letter). However, notwithstanding this conservation outcome NP&WS have an agenda to quarantine more of this industrial land. There is no recognition that significant environmental outcomes have been achieved, and the remaining land is needed for development – even if that means land will be cleared.
- At a focus meeting held in June 2002 and chaired by Premiers Department certain undertakings were given by NP&WS officers as to the process moving forward. These undertakings were, until last week, being ignored with officers now wanting to reassess their previous advice with respect to both aboriginal archaeology and ecological issues. NP&WS staff show no commitment to process and lack integrity.
- NP&WS have had referred to it by Cessnock City Council a Development Application for the infrastructure spine road. As a government agency they have a statutory time period in which to respond, or it can be assumed they do not have any issues. As late as last Monday NP&WS officers admitted to Council's development officer that they had not yet even read the DA, but said they couldn't issue a response because they required additional information. Upon checking with our consultant ecologist it is apparent that the additional information requested is largely contained in the DA document. This leads us to the conclusion that NP&WS are either too busy to deal with our DA and thus request more information to make us leave them alone or they have a hidden agenda to frustrate, delay and ensure this project fails.
- NP&WS have developed a Swift Parrot recovery action plan which focuses heavily on the importance of the HEZ site. The local green group have for at least 12 months been saying that the HEZ site is too big and should only be about 200 Ha in size. When NP&WS release to us an extract of the recovery plan it recommends that only 25% of the zoned land be developed, which equates to

about 200 Ha. This begs the question, Who is influencing the outcome? – is it the green agenda? and do NP&WS officers lack scientific rigor?

- With respect to the above report, notwithstanding that we are the landowner, and in support of a collaborative approach to resolving issues we gave our permission for NP&WS officers to undertake ecological surveys on our land, NP&WS officers were aware we were spending hundreds of thousands of dollars in progressing this matter – not once did they contact us to discuss the findings – but we believe they were at the same time passing their findings on to the green groups. Again who is setting the agenda?, and why can't NP&WS be an agency of support to economic growth rather than always retarding it?
- With respect to NP&WS our overwhelming impression based on this project and others is that at the mid-level officer strata there is a culture of:
 - Inconsistent advice
 - Change of attitude once issues are agreed
 - Continual delays and frustration of important economic activity
 - Being more closely aligned to the green groups rather than a collaborative whole of government approach.

All of the above lead us to feel that having NP&WS as part of the consent process leads to an unworkable situation.

3. NSW SCIENTIFIC COMMITTEE

Once the DA for the estate infrastructure is approved our company proposes to expend approximately \$20,000,000 on construction of the spine road and necessary services. We are, however, loathe to expend the money and create the ensuing construction jobs with the ongoing threat to the project posed by the NSW Scientific Committee.

To date the Scientific Committee have listed two (2) ecological committees which have impacted on the project, notwithstanding the conservation outcomes of the initial study and rezoning.

Our specific concerns include:

- The Scientific Committee continue to list flora and fauna committees without regard to the economic impact of doing so.
- Last week we attempted to obtain from the Scientific Committee information in relation to their preliminary listing of the *Hunter Lowlands Red gum Forests* so that we could make a submission. We were told that we could not have the information upon which they had made their decision. One wonders how we are to respond when we cannot have access to the base data.
- We understand that the Scientific Committee is also considering a listing of *Lower Hunter spotted gum/ironbark Forest*. If this happens this will have the effect of totally preventing HEZ from being developed.

To date this company has expended some \$4,000,000 in pursuing the rezoning of not only our own lands but those owned by the Government and the local aboriginal community, please advise us now before we spend in excess of \$20,000,000 on infrastructure that the combined efforts of NP&WS and the Scientific Committee will not kill this project and that the whole of government view will prevail.

If this project does fail due to the above two agencies it will be to the collective embarrassment of this company, Cessnock Council and the NSW Government. It will also send a strong message to the business sector that you cannot undertake large scale industrial investment in NSW unless your site is completely clear of vegetation.

In conclusion we need the assistance of Government to:

- A. Expedite the DA
- B. Ensure NP&WS and the NSW Scientific Committee recognize the environmental and conservation outcomes achieved to date at HEZ and prevent further sterilisation of land which will jeopardise the development.

We would be happy to further address these issue with you at any time.

Yours truly,
HEZ PTY LTD



Duncan Hardie
Managing Director



COPY

PREMIER'S DEPARTMENT
NEW SOUTH WALES

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GOVERNOR MACQUARIE TOWER
1 FARRER PLACE
SYDNEY NSW 2000

12 NOV 2002

Mr Brian Gilligan
Director General
National Parks and Wildlife Service
Level 4, Park View House
43 Bridge St
Hurstville NSW 2220

Dear Mr *Brian* Gilligan,

I recently met with executives of the Hunter Employment Zone Ltd (HEZ). They requested the meeting to relay their concerns about the approach taken by NPWS to the development of their zone.

As you are aware the Hunter Employment Zone was rezoned earlier this year after protracted negotiations and discussions over a period of some four years. During this period your agency was involved in these negotiations including the Planning Focus and Development Approval processes.

The rezoning has seen a significant portion of the original land area, 2400 hectares of the 3300 hectares set aside as an environmental buffer zone for local fauna and flora. Only some 26 percent of the area (871 hectares) will be utilised for industrial development. This area is known as the Hunter Employment Zone.

You will recall that one of the major reasons for proceeding with the rezoning of the land in the first instance was the scarcity of industrial land in the Hunter and the need to provide investment and employment opportunities in the region.

HEZ have now made applications to Cessnock Council for development approval for the provision of some of the infrastructure required for the zone. The company plans to eventually spend up to \$20 million on infrastructure which is required to attract major industry to the area.

I was surprised by HEZ's claim that NPWS has raised a number of objections to the lodgement of the Development Application for the infrastructure for the zone. While some of the issues may be manageable, HEZ is concerned about the potential level of inconsistency. If there is substantial inconsistency with past processes then, I too, would be concerned.

As you know I am very conscious of the need to strike a balance between the environment and economic development in the Hunter. It is for this reason that I have strongly supported some of the proposals put forward by NPWS for the region. However HEZ's concerns that some of the proposals may in practice restrict the zone to little more than 200 hectares appear to HEZ to be untenable. This area of industrial land would not support the type and scale of investment in infrastructure required by an industrial estate.

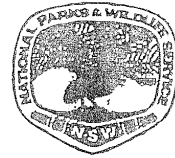
I urge you to review your Department's position to ensure that there can be no credible claim that a large scale industrial park in close proximity to a large modern deep water port is put at risk. The people of the Hunter and New South Wales have supported this project as the region requires such development to ensure economic prosperity and job creation.

I would appreciate your assistance in ensuring this development proceeds.

Yours sincerely,



Col Gellatly
Director General

RECEIVED
30 DEC 2002NSW
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PARKS AND
WILDLIFE
SERVICE

ABN 30 841 387 271

Dr Col Gellatly
Director General
Premier's Department
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Col
Dear Dr Gellatly

FN	
LN	PP03/00009

RE: HUNTER EMPLOYMENT ZONE

I refer to your letter dated 12 November 2002 in relation to your meeting with representatives of Hunter Employment Zone (HEZ) Ltd.

I am aware of the claims made by HEZ Ltd that National Parks and Wildlife Service (NPWS) officers have taken inconsistent and adverse positions in relation to their road infrastructure development application and the general area available for industrial development at Tomalpin.

I am very concerned that not only HEZ Ltd incorrectly attributes this adverse positioning to the NPWS, but that other stakeholders involved with the HEZ, including the Premier's Department, might now also hold this view. I have made enquiries regarding these claims and can assure they are unfounded.

As your letter rightly reflects, the NPWS has been working co-operatively with Cessnock Council, your department and other government agencies since 1999 to plan for the site to ensure an appropriate balance of both economic and conservation outcomes. The NPWS has previously agreed and committed to the final rezoning plan for the site. NPWS officers have consistently maintained a supportive and constructive attitude to the subsequent detailed planning at Tomalpin.

I acknowledge the inherent difficulty associated with some of the threatened species and Aboriginal heritage issues encountered in the detailed planning stages, but am confident that NPWS officers have provided professional and technically appropriate advice to the proponent and Cessnock Council to assist their planning and approval responsibilities.

I suspect that the root of HEZ Ltd's misconception lies in the release of a report prepared for the National Swift Parrot Recovery Team. This is a Commonwealth Government funded project, for which the Project Officer working on the program is answerable to Environment Australia.

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30 DEC 2002
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Fax: (02) 9585 6555
www.npws.nsw.gov.au

I understand that Cessnock Council has received a submission from the Recovery Team suggesting that 75% of the industrial lands at Tomalpin be set aside for conservation. HEZ Ltd and Cessnock Council appear to have incorrectly attributed the Recovery Team's position to the NPWS. I acknowledge that this may have arisen as a result of inappropriate attribution of authorship to the NPWS. We have quickly sought to clarify the relevant protocols to avoid future confusion. I can assure you that the Recovery Team's report is not a NPWS report and does not reflect the views of NPWS, nor did the NPWS release it to the community.

A senior NPWS representative met with the office of the Minister for Hunter Development, the Premier's Department, Cessnock Council and the proponent in early November 2002 to correct this misinformation. The local member, Mr Kerry Hickey MP, was also present.

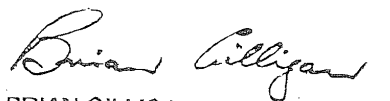
I too would be concerned if inconsistent advice or unauthorised information releases were being provided by NPWS officers to Council or to HEZ Ltd and I treat such allegations very seriously. In this instance, HEZ Ltd has been asked to provide the NPWS with further detail regarding these claims to enable a more thorough investigation to proceed. This detail has not yet been provided.

I trust that the above explanation clearly outlines the NPWS position in relation to the HEZ project and helps to dispel any concerns you may have regarding NPWS involvement.

Finally, I thank you for bringing this matter to my attention and I would appreciate any support your department's officers can provide in correcting any continuing misrepresentation of NPWS' position by other stakeholders in the project.

I have asked NPWS Director Central Mr Bob Conroy (phone: 02 9895 7744) to continue to monitor this issue and to further report if any new information comes to hand.

Yours sincerely


BRIAN GILLIGAN
Director-General 19.12.2002

Appendix 4 Minutes of proceedings

Minutes No 19

Thursday 1 April 2004

Room 1108, Parliament House at 1.06pm

1. Members present

Mr Ian Cohen (Chair)

Ms Sylvia Hale

Mr Rick Colless

Ms Griffin

Mr Primrose (West)

Mr Catanzariti (Tsang)

2. Substitute members

The Chair informed the Committee that the Government Whip had advised in writing that he would be substituting for Mr West and that Mr Catanzariti would be substituting for Mr Tsang.

3. Confirmation of Minutes

Resolved, on the motion of Mr Colless, that minutes No 18 be confirmed.

4. Inquiry into the Tomalpin Woodlands

Correspondence to the Clerk of the Committee from Mr Cohen, Ms Hale and Mr Lynn dated 30 March 2004 requesting that a meeting of the Committee be convened to consider proposed terms of reference for an inquiry into the Tomalpin woodlands, having been previously circulated was taken as being read.

The Committee deliberated.

Resolved, on the motion of Mr Primrose, that sections 1(a) and 1(b) of the proposed terms of reference be amended by omitting the words:

and whether undue pressure was applied to the outcome of the process from the end of each section.

Resolved, on the motion of Mr Colless, that the Committee adopt the following terms of reference:

- 1 That General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin Woodlands and the Hunter Economic Zone industrial development, and in particular:
 - (a) the actions of the Director General of the NSW Premier's Department in the process,
 - (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process,
 - (c) the economic, social and environmental impact of the rezoning of the land to form the Hunter Economic Zone industrial development,
 - (d) alternative sites for the Hunter Economic Zone industrial development that do not impact upon the Tomalpin Woodlands, and

- (e) any other relevant matter.

Resolved, on the motion of Mr Primrose that the timing of the placement of advertisements calling for submissions and the closing date for submissions be left in the hands of the Chair.

Resolved, on the motion of Mr Colless, that the Chair be authorised to place advertisements calling for submissions in the Newcastle Herald and other newspapers in the Lower Hunter region.

5. Adjournment

The Committee adjourned at 1.15pm *sine die*.

John Young
Clerk to the Committee

Minutes No 20

Wednesday 21 April 2004

Room 1108, Parliament House at 8.30am

1. Members present

Mr Ian Cohen (Chair)

Mr Rick Colless

Ms Fazio (Tsang)

Ms Griffin

Ms Sylvia Hale

Mr Harwin (Lynn)

Mr West

2. Substitute members

The Chair informed the Committee that he has received advise in writing that Mr Harwin would be substituting for Mr Lynn and that Ms Fazio would be substituting for Mr Tsang.

3. Confirmation of Minutes

Resolved, on the motion of Ms Hale, that minutes No 19 be confirmed.

4. Motion of rescission relating to the terms of reference for Inquiry into the Tomalpin Woodlands

The Chair noted the correspondence, which had been circulated, from Mr Colless advising of his intention to move a motion to rescind the terms of reference adopted by the Committee on 1 April 2004.

Mr Colless moved a motion to rescind the resolution of the Committee on 1 April 2004 adopting the following terms of reference:

That General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin Woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General of the NSW Premier's Department in the process,
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process,
- (c) the economic, social and environmental impact of the rezoning of the land to form the Hunter Economic Zone industrial development,
- (d) alternative sites for the Hunter Economic Zone industrial development that do not impact upon the Tomalpin Woodlands, and
- (e) any other relevant matter.

Question put.

Ayes: Mr Colless
Ms Fazio
Ms Griffin
Mr Harwin
Mr West

Noes: Mr Cohen
Ms Hale

Question resolved in the affirmative.

Mr West left the meeting.

5. Proposed new terms of reference for Inquiry into the Hunter Economic Zone

The Chair noted the correspondence dated 14 April 2004 signed by Mr Colless, Mr West and Ms Griffin requesting that the Committee reconsider terms of reference for inquiry.

The Committee deliberated

Mr Colless moved that the Committee adopt the following terms of reference:

That General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin Woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General of the NSW Premier's Department in the process,
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process.

Question put.

Ayes: Mr Colless
Mr Harwin

Noes: Mr Cohen
Ms Hale
Ms Fazio
Ms Griffin

Question resolved in the negative

Ms Hale moved that the Committee adopt the following terms of reference:

That General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin Woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General of the NSW Premier's Department in the process,
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process,
- (c) the economic, social and environmental impact of the rezoning of the land to form the Hunter Economic Zone industrial development,
- (d) alternative sites for the Hunter Economic Zone industrial development that do not impact upon the Tomalpin Woodlands, and
- (e) any other relevant matter.

Question ruled out of order.

Resolved, on the motion of Ms Fazio, that the Committee adjourn and reconvene at the earliest possible opportunity.

6. Adjournment

The Committee adjourned at 9.30am *sine die*.

Steven Reynolds

Clerk to the Committee

Minutes No 21

Monday 3 May 2004

Room 1108, Parliament House at 9.06 am

1. Members present

Mr Cohen (Chair)

Mr West

Mr Colless

Ms Griffin

Ms Fazio (Tsang)

Mr Harwin (Lynn)

Ms Hale

2. Substitute members

The Chair informed the Committee that he had received written advice from the Government Whip that Ms Fazio would be substituting for Mr Tsang; and written advice from the Opposition Whip that Mr Harwin would be substituting for Mr Lynn.

3. Confirmation of Minutes

The committee deliberated.

Resolved, on the motion of Mr Colless, that minutes No 20 be confirmed.

4. Correspondence from Hunter Economic Zone requesting replacement of Chair for duration on Inquiry into the Tomalpin Woodlands

Correspondence to the Clerk of the Committee from the Chairman of HEZ Pty Ltd, dated 14 April 2004, having been previously circulated was taken as being read.

The Committee deliberated.

Resolved, on the motion of Ms Fazio, that the Clerk to the Committee, on behalf of the Committee, write to the Chairman of HEZ to express the Committee's confidence in the Chair and to inform HEZ of the relevant parliamentary procedure and practice with respect to the issue of bias and the responsible participation of members in inquiries.

5. Unauthorised disclosure of committee proceedings

Press release, dated 21 April, issued by the Leader of the Opposition in the Legislative Council having been previously circulated was taken as being read.

The Committee deliberated.

Resolved, on the motion of Mr Colless, that the unauthorised disclosure be noted, and, as the significance of the disclosure did not justify further inquiry, no further action be taken.

Resolved, on the motion of Mr Colless, that the Chair, on behalf of the Committee, write to the Clerk of the House recommending that educational material be prepared to remind all Members of the Legislative Council of the guidelines concerning unauthorised disclosures and their responsibilities regarding the importance of maintaining the confidentiality of committee proceedings.

6. Adjournment

The Committee adjourned at 9.40am *sine die*.

Robert Stefanic
Clerk to the Committee

Minutes No 22

Tuesday 11 May 2004

Room 1108, Parliament House at 6.40pm

1. Members present

Mr Cohen (Chair)

Mr West

Mr Colless

Mr Tsang

Ms Hale

Mr Lynn

Ms Fazio for items 1-6(Griffin)

Mr Catanzariti for items 7-8(Griffin)

2. Substitute members

The Chair informed the Committee that he had received written advice from the Government Whip that Ms Fazio would be substituting for Ms Griffin for the duration on the inquiry into the Hunter Economic Zone and the Tomalpin woodlands; and that Mr Catanzariti would be substituting for Ms Griffin for the duration of the inquiry into the Murrumbidgee College of Agriculture.

3. Confirmation of Minutes

Resolved, on the motion of Ms Fazio, that minutes No 21 be confirmed.

4. Correspondence

The Committee noted the correspondence signed by the Clerk-Assistant Committees and the Committee Director and sent on behalf of the Committee to the Chairman, HEZ Pty Ltd.

5. Motion of rescission relating to previous resolution of the committee

The Chair noted the correspondence, which had been previously circulated, from Mr Colless advising of his intention to move a motion to rescind the resolution of the Committee at the 21 April 2004 meeting not to proceed with a proposed terms of reference that was moved at that meeting.

The relevant motion that was resolved in the negative at the meeting of 21 April 2004 is as follows:

That General Purpose Standing Committee No. 5 inquire into and report on the environmental assessment process associated with the Tomalpin Woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General of the NSW Premier's Department in the process,
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process.

Mr Colless moved a motion to rescind the resolution of the Committee.

Question put.

Ayes: Mr Colless

Mr Lynn

Mr Cohen
Ms Hale

Noes: Ms Fazio
Mr West
Mr Tsang

Question resolved in the affirmative

6. Proposed new terms of reference for Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands

The Chair noted the correspondence dated 4 May 2004 signed by Mr Colless, Mr Lynn and Ms Hale requesting that the Committee consider a draft terms of reference for inquiry.

The Committee deliberated

Resolved, on the motion of Mr West, that the draft terms of reference be amended by changing the uppercase first letter of the word "Woodlands" to lowercase.

Mr Colless moved that the Committee adopt the following amended terms of reference:

That General Purpose Standing Committee No 5. inquire into and report on the environmental assessment process associated with the Tomalpin woodlands and the Hunter Economic Zone industrial development, and in particular:

- (a) the actions of the Director General and other senior officers of the NSW Premier's Department with particular reference to correspondence and interaction between the Premier's Department and the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process; and
- (b) the role of the Parks Services Division of the Department of Environment and Conservation (formerly the National Parks and Wildlife Service) in the process.

Question put.

Ayes: Mr Colless
Mr Lynn
Mr Cohen
Ms Hale

Noes: Ms Fazio
Mr West
Mr Tsang.

Question resolved in the affirmative.

Resolved, on the motion of Mr Colless, that the Chair be authorised to place advertisements calling for submissions in the Newcastle Herald and other papers in the Lower Hunter region.

Resolved, on the motion of Ms Fazio, that Friday 11 June 2004 be the closing date for submissions.

Resolved, on the motion of Mr Colless, to hold a day of public hearing in Sydney at Parliament House and a day of public hearing at a regional centre and to conduct a site visit.

Resolved, on the motion of Mr Colless, to hold the public hearing at Parliament House on either Monday 21 June 2004 or Friday 2 July subject to the availability of witnesses.

Resolved, on the motion of Mr Colless, to conduct a site visit on Tuesday 15 June and a public hearing at a regional centre on Wednesday 16 June 2004.

Resolved, on the motion of Mr Lynn, that Members would advise the secretariat of persons and or organisations to whom should be sent invitations to make submission to the inquiry.

Resolved, on the motion of Mr Tsang, that arrangements for the site visit and public hearings be left in the hands of the secretariat.

Resolved, on the motion of Ms Fazio, that the Committee present a report to the House by Thursday 2 September 2004.

Resolved, on the motion of Mr West, that the title for the inquiry be the Inquiry into the Hunter Economic Zone and the Tomalpin woodlands.

7. Inquiry into the Murrumbidgee College of Agriculture

8. Adjournment

The Committee adjourned at 7.35pm *sine die*.

Robert Stefanic
Clerk to the Committee

Minutes No. 23

15 June 2004

Hunter Economic Zone, Kurri Kurri at 12:30 pm

1. Members Present

Mr Ian Cohen (Chair)

Ms Sylvia Hale

Ms Amanda Fazio (Griffin)

Mr Ian West

Mr Rick Colless

Ms Robyn Parker (Lynn)

2. Inquiry into Hunter Economic Zone and Tomalpin Woodlands***Site Visit – Hunter Economic Zone***

The Committee were taken on a driving tour of the Hunter Economic Zone and the proposed road link by the following representatives of the Hunter Economic Zone:

- Mr Matthew Somers, General Manager, Hardie Holdings
- Mr Howard Morris, Director, Estate Management, Hunter Economic Zone
- Mr Brian Tasker, Managing Director, Hunter Economic Zone
- Ms Gillian Summers, Marketing Manager, Hunter Economic Zone
- Mr Craig Anderson, Ecologist, Harper, Somers & O'Sullivan

Site Visit – Pelaw Main

The Committee met Mr James Ryan, President, and Mr Barry Calderwood, Deputy President, Friends of Tumblebee, and 12 other members of Friends of Tumblebee at Pelaw Main at 2:30 pm, and viewed the site from several vantage points.

Subsequently the Committee were taken by Mr Ryan and Mr Calderwood to the Bloomfield mine site, proposed as an alternative development site.

3. Adjournment

The Committee adjourned at 4:00 pm until 9:30 am, 16 June 2004.

Steven Reynolds

Clerk to the Committee

Minutes No. 24

Wednesday, 16 June 2004

Kurri Kurri Workers Club, Lang Street, Kurri. at 9:30 am

1. Members Present

Mr Ian Cohen (Chair)

Ms Sylvia Hale

Ms Amanda Fazio (Griffin)

Mr Ian West

Mr Henry Tsang

Mr Rick Colless

Ms Robyn Parker (Lynn)

2. Inquiry into Hunter Economic Zone and Tomalpin Woodlands***Confirmation of Minutes***

Resolved, on the motion of Ms Hale, that minutes of meeting no 21 be made confirmed.

Correspondence Sent

- Letter from the Committee Chair to Hon C Knowles MP, Minister for Planning requesting a submission to the inquiry from his Department (17 May 2004).
- Letter from the Committee Chair to Hon K Hickey MP, Minister for Mineral Resources, requesting a submission to the inquiry from his Department (17 May 2004).
- Letter from the Committee Chair to Hon C Scully MP, Minister for Roads, requesting a submission to the inquiry from the RTA (17 May 2004).
- Letter from the Committee Chair to Brian Tasker, Managing Director, HEZ, requesting a submission to the inquiry (17 May 2004).
- Letter from the Committee Chair to Hon F Sartor MP, Minister for Energy and Utilities, requesting a submission to the inquiry from the Hunter Water Authority (17 May 2004).
- Letter from the Committee Chair to Hon R Debus MP, Minister for the Environment, requesting a submission to the inquiry from his Department (17 May 2004).
- Letter from the Committee Chair to Hon Bob Carr MP, Premier requesting a submission to the inquiry from his Department (17 May 2004).
- Letter from the Committee Chair to Mr A Cox, Executive Officer, National Parks Association of NSW requesting a submission to the inquiry (17 May 2004).
- Letter from the Committee Chair to Ms B Flanagan, Executive Officer, NSW Nature Conservation Council, requesting a submission to the inquiry (17 May 2004).
- Letter from the Committee Chair to Clr J Clarence, Mayor, Cessnock City Council, requesting a submission to the inquiry (17 May 2004).

- Letter from the Committee Chair to Ms F Andreoni, NSW Campaign Manager, Wilderness Society, requesting a submission to the inquiry (17 May 2004).
- Letter from the Committee Chair to Mr J Ryan, President, Friends of Tumblebee, requesting a submission to the inquiry (17 May 2004).
- Letter from the Committee Chair to Clr John Clarence, formally inviting a Council representative to the hearing of 16 June (7 June 2004).
- Letter from the Committee Chair to Hon C Knowles MP, Minister for Planning, formally inviting Mr Selmon and Mr Kempnich from his Department to the hearing of 16 June (8 June 2004).

Publication of Submissions

Resolved, on the motion of Ms Fazio, that submissions numbers 1 –32, which had been circulated, be published by the Committee.

Hearing on 2 July

Resolved, on the motion of Ms Parker, that a representative of the Mindaribba Aboriginal Land Council be invited to make a submission or appear before the Committee on 2 July 2004.

Public Hearing

The public and the media were admitted.

The Chair made an opening statement regarding the broadcasting guidelines and other matters.

Mr James Ryan, President, and Mr Barry Calderwood, Vice President, Friends of Tumblebee, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Gregory Bone, Planning Engineer, and Mr Russell Pascoe, Manager, Planning and Development, Hunter Water Corporation, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Philip Mahoney, Acting General Manager Environment, and Mr R Sharpe, Regional Manager – Hunter, Roads and Traffic Authority, were sworn and examined.

Evidence concluded and the witnesses, the public and the media withdrew.

Deliberative

The Committee considered a request from Mr Duncan Hardie that he not be filmed or photographed during his appearance later in the day.

Resolved, on the motion of Ms Fazio, that the media be requested to refrain from filming or photographing Mr Hardie during his appearance.

Public Hearing

The media and the public were readmitted

Mr Toby Thomas, President, and Mr Rodney Doherty, Secretary, Kurri Kurri Chamber of Commerce, were sworn and examined.

Mr Thomas tendered minutes of the meeting to select the location for HEZ development .

Resolved, on the motion of Mr Colless, that the document be accepted by the Committee.

Evidence concluded and the witnesses withdrew.

Mr Colin Cowan, General Manager, Cessnock City Council, was sworn and examined.
Mr Cowan tendered documentation regarding the contract of employment of the executive planner by the Council.

Resolved, on the motion of Mr Colless, that the documentation be accepted but that the remuneration details not be published by the Committee.

Evidence concluded and the witness withdrew.

The Chair made a statement that the next witnesses were not to be filmed or photographed in accordance with a request made.

Mr Matthew Somers, General Manager, Hardie Holdings, Mr Craig Anderson, Senior Ecologist, Harpers Somers O'Sullivan, and Mr Duncan Hardie, Chair, Hunter Economic Zone, were sworn and examined.

Mr Somers tabled the following documents:
LEP creating the 7B zone at the HEZ site ,
questions asked by Hunter Valley Research Foundation, and
Documents relating to the Bloomfield site

Resolved, on the motion of Ms Fazio, that the documents be accepted by the Committee.

Evidence concluded and the witnesses withdrew.

3. Adjournment

The Committee adjourned at 4:57 pm, until Monday 21 June 2004.

Steven Reynolds
Clerk to the Committee

Minutes No. 26

Friday, 2 July 2004

Room 814/815, Parliament House at 10:00 am

1. Members Present

Mr Ian Cohen (Chair)
Ms Sylvia Hale
Ms Amanda Fazio (Griffin)
Mr Henry Tsang
Mr Tony Catanzariti
Mr Rick Colless
Ms Robyn Parker (Harwin)

2. Committee membership

The Chair noted Minutes of the House No 64, item 10, 29 June 2004 regarding changes to membership of General Purpose Standing Committee No 5:

Government: Mr Catanzariti (in place of Mr West)
Opposition: Mr Harwin (in place of Mr Lynn).

3. Substitute members

The Chair noted advice received from the Opposition Whip that the Hon Robyn Parker MLC will substitute for the Hon Don Harwin MLC for the duration of the inquiry.

4. Correspondence***Correspondence Received***

- Letter from Mr S Smith, Deputy Director General, Department of Environment and Conservation, regarding an attachment to the Department's submission (29 June 2004)
- Letter from Ms Claire Cosh, requesting to give evidence at 2 July hearing (21 June 2004)
- Email from Ms Gillian Summers, Marketing Manager, Hunter Economic Zone, raising objections to the appearance of former Councillor Claire Cosh for the hearing of 2 July 2004 (30 June 2004)
- Fax from Ms Gillian Summers, Marketing Manager, Hunter Economic Zone, raising objections to an article in the Cessnock Independent regarding the Inquiry (1 July 2004)
- Letter from Mr James Ryan, President, Friends of Tumblebee, providing further attachments to the supplementary submission (1 July 2004)
- Letter from Hon C Knowles MP, Minister for Planning, Infrastructure and Natural Resources, declining invitation to make staff available for hearings of the inquiry (10 June 2004)

Correspondence sent

- Letter from Chair to Hon Bob Carr MP, Premier, informing him of the invitation to Dr Col Gellatly to appear as a witness to the hearing on 2 July (24 June 2004)
- Letter from Chair to Dr Col Gellatly, Director General, Premier's Department, inviting him to appear as a witness to the hearing on 2 July (24 June 2004)
- Letter to the Hon Bob Debus MP, Minister for the Environment, inviting Departmental officers to appear at the hearing on 2 July 2004 (24 June 2004)
- Letter from Committee Chair to Hon Craig Knowles MP, Minister for Infrastructure, Planning and Natural Resources inviting witnesses to attend the hearing on 2 July 2004 (22 June 2004)
- Letter from Chair to Chair, Mindaribba Aboriginal Land Council, inviting the Council to make a submission and appear as a witness to the hearing on 2 July (23 June 2004)
- Letter from Chair to Ms Claire Cosh, former councillor, Cessnock City Council, inviting her to appear as a witness at the hearing on 2 July 2004 (28 June 2004).

5. Inquiry into the Hunter Economic Zone and the Tomalpin Woodlands***Public Hearing***

The public, the media and witnesses were admitted.

The Chair made an opening statement drawing attention to the broadcasting guidelines and other matters.

Dr Col Gellatly, Director General, Premier's Department, was sworn and examined.

Evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Colless, that the Committee deliberate on a matter raised in correspondence.

The public and the media withdrew

Deliberative

The Committee deliberated.

Resolved, on the motion of Mr Colless, that any person who had made a submission to the inquiry be provided the opportunity to make a supplementary submission responding to any issues raised in evidence during today's hearing, but that no further submissions would be accepted after 14 days from the date of today's transcript being posted on the Committee's website.

Ms Hale moved that all submissions received by the Committee up to 2 July be published, with the exception of those for whom confidentiality had been requested.

Ms Fazio indicated that as she had received her copy of the submissions on the morning of the hearing she was not able to support publication of material which she had not read.

Question put.

Ayes: Mr Cohen, Ms Hale, Mr Colless, Ms Parker, Mr Tsang, Mr Catanzariti

Noes: Ms Fazio

Question resolved in the positive.

Public Hearing

The public and the media were readmitted.

Mr Simon Smith, Deputy Director General, Ms Katherine Sale, Ms Deborah Stevenson, Department of Environment and Conservation, were sworn and examined.

The Chair indicated that answers to questions taken on notice would be required 14 days from the transcript being made available.

Evidence concluded and the witnesses withdrew.

Ms Claire Cosh, former councillor, Cessnock City Council, was sworn and examined.

Evidence concluded and the witness withdrew.

The public and the media withdrew following a break in proceedings.

Deliberative

The Committee deliberated.

Resolved, on the motion of Ms Hale, that the Committee request from HEZ a copy of the economic assessment of the impact of the development, as referred to on their website.

Public Hearing

The media and the public were readmitted.

Mr Brian Galligan, former Director General, National Parks and Wildlife Service, was sworn and examined.

The Chair indicated that answers to questions taken on notice would be required 14 days from the transcript being made available.

Evidence concluded and the witness withdrew.

Mr Sam Haddad, Deputy Director General, and Mr Shane Kempnich, Department of Infrastructure, Planning and Natural Resources was sworn and examined.

Mr Haddad tendered a submission from the Department

Resolved, on the motion of Mr Colless, that the submission be accepted by the Committee.

Evidence concluded and the witnesses withdrew.

Mr Gordon Griffith, Regional Commissioner, ATSIIC, Mr Rick Griffith CEO, and Ms Tamara MacDonald, Secretary, Mindaribba Aboriginal Land Council, were sworn and examined.

Evidence concluded and the witnesses withdrew.

6. Adjournment

The Committee adjourned at 4:15 pm until 9.45am Monday 5 July 2004 (Murrumbidgee College of Agriculture public hearing).

Steven Reynolds

Clerk to the Committee

Minutes No 34

Wednesday, 1 December 2004

Room 1108 Parliament House at 2:00 pm

1. Members Present

Mr Ian Cohen (Chair)

Mr Rick Colless

Ms Amanda Fazio (Tsang)

Ms Kayee Griffin

Ms Sylvia Hale

Ms Robyn Parker

Mr Ian West (Catanzariti)

2. Substitutions

The Chair informed the Committee that he had received written advice from the Government Whip that Ms Fazio would substitute for Mr Tsang for the meeting, and that Mr West would substitute for Mr Catanzariti for the meeting.

3. Minutes

Resolved, on motion of Mr Colless: That Minutes 33 be amended by replacing “Mr Tsang” with “Mr Catanzariti” at the top of page 3.

Resolved on motion of Mr Colless: That Minutes 28, 29, 30, 31, 32, (Estimates) and 33 (Murrumbidgee) be confirmed.

4. Correspondence

The Committee noted the following items of correspondence sent:

- 2 September 2004 – Committee Secretariat, on behalf of the Chair, to Mr Simon Smith, Deputy Director General, Environment Protection and Regulation Division, Department of Environment and Conservation requesting answers to questions taken on notice at 2 July 2004 public hearing and requesting advice regarding issues arising from evidence given before the Committee

The Committee noted the following items of correspondence received:

- 19 July 2004 – from Mr B R Mortomore, Acting General Manager, Cessnock City Council to Committee Director containing answers to questions taken on notice at 16 June 2004 public hearing
- 19 July 2004 – from Mr Greg Bone, Planning Engineer, Hunter Water Corporation, to Committee Director containing answers to questions taken on notice at 16 June 2004 public hearing
- 20 July 2004 – from Mr Matt Somers, General Manager, Hardie Holdings to A/Committee Director containing answers to questions taken on notice at 16 June 2004 public hearing
- 22 July 2004 – from Mr Simon Smith, Deputy Director General, Environment Protection and Regulation Division, Department of Environment and Conservation containing answers to questions taken on notice at 2 July 2004 public hearing

- 14 September 2004 – e-mail from Ms Gillian Summers, Hunter Economic Zone to Committee Director requesting clarification of the inquiry process and a response to a number of questions
- 20 September 2004 – from Mr Simon Smith, Deputy Director General, Environment Protection and Regulation Division, Department of Environment and Conservation containing answers to questions taken on notice at 2 July 2004 public hearing and responses to questions contained in 2 September 2004 correspondence from Committee Secretariat
- 7 October 2004 – from Mr James Ryan, President, Friends of Tumblebee to the Chair, General Purpose Standing Committee No 5 submitting further information for consideration of the Committee during the inquiry
- 12 October 2004 – from Mr Paul Winn to Chair, General Purpose Standing Committee No 5 regarding outcome of police charges relating to alleged death threat against Mr D Hardie (ie that the charges were withdrawn) which was raised during the public hearing on 16 June 2004.

Resolved, on motion of Ms Fazio: That the minutes record that the charges against Mr Paul Winn referred to in his correspondence dated 12 October 2004 (cited above) were withdrawn.

5. Budget Estimates 2004-2005

6. Inquiry into Hunter Economic Zone and Tomalpin Woodlands

Publication of submissions

Ms Fazio moved: That the Committee accept submissions 15a, 18a, 28a, 34a, 39a, 41a, 60, 61, 62, 63a, and 57 (partially confidential), and publish all submissions except 34a, 39a and 41a.

Ms Hale moved: That the question be amended to publish submissions 34a, 39a and 41a.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Hale, that submission 28a be amended by the Secretariat to delete comments that may adversely reflect on others.

Consideration of Chair's Draft Report

The Chair tabled his draft report, which had been previously circulated.

Chapter One read.

Resolved, on motion of Ms Fazio: That consideration of paragraph 1.12 in Chapter One be deferred until after Chapter Six had been considered.

Chapter Two read.

Ms Fazio moved that the following final sentence be removed from paragraph 2.6:

'There is an obvious conflict between some threatened species and heavy industry in that both require a flat and dry landscape.'

Question put.

The Committee divided

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

The Chair read Standing Order 228 requiring the Committee to attempt to achieve unanimity within its report.

Resolved on motion of Mr Colless: That reference be included after paragraph 2.10 indicating the land title(s) of the HEZ land.

Ms Fazio moved: That the following paragraphs 2.18 to 2.22 be deleted:

- 2.18** A major concern of the Friends of Tumblebee during the inquiry was that consideration of alternative sites to Tomalpin did not occur at any stage in the process of the creation of the Hunter Economic Zone.
- 2.19** There is some conflicting evidence as to whether consideration was given to other alternative sites or whether the Council was already set on rezoning the Tomalpin site prior to the commissioning of the Hassell report. The President of the Chamber of Commerce appeared to place this decision as prior to the Hassell report:

Present at that particular meeting were myself as chairperson, Ben Chard, Ian Mcleod who was the Land Manager for Coal and Allied, and Bruce Anshaw who was the Economic Development Manager at Cessnock Council. Also in attendance were Steve Edmunds from Maitland City Council and Bernie Mortimer from Cessnock City Council. We looked at the three possible sites to establish this industrial park, one of which was at the site where the old Aberdare North Coal Mine used to be on the right-hand side leading into Cessnock, the other was the area surrounding John Brown's Lagoon and the third one is where the industrial park is now going. There was not any rocket

science involved, but you just had to have a look at the three different sites to realise that the one that shone out above the other two was the HEZ land.

- 2.20** The General Manager of Cessnock City Council, Mr Colin Cowan, indicated that the Hassell report did consider other options, although not in as much detail as the Tomalpin site.
- 2.21** It was submitted to the Committee that the very title of the Hassell report – “Tomalpin Employment Zone – Opportunity Appraisal” underlines the targeted focus of the study objectives provided to the consultants: To place the Tomalpin site in the context of other development sites throughout NSW; to determine opportunities for development that this site could satisfy; and to determine a strategy for bringing the land on line for development.
- 2.22** It appears to the Committee that the purpose of the Hassell report was to investigate the suitability of the Tomalpin site for industrial development, and that as a result other sites were not considered to the same extent. However the opportunity for consideration of alternatives, if any suitable alternatives existed in 1997, is now a historical issue rather than a current option.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 2.18 to 2.22.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

The Committee noted that as a result of the above amendment, the heading prior to paragraph 2.17 titled ‘The Hassell Report and alternative sites’ would need to be amended to read ‘The Hassell Report’.

Mr Colless moved: That paragraph 2.33 be amended to read:

- 2.33** Although the General Manager of Cessnock Council expressed an opinion that the Werakata National Park was not really part of the development conservation zone and that the gazettal of the Park and the HEZ rezoning were two separate issues, the Council has not taken any action to remove the Park from the LEP and associated documents, primarily as it does not view it as an issue of any significance.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information originally cited in paragraph 2.33.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Mr Colless moved: That the following paragraph 2.34 be deleted:

- 2.34** There does appear to be a case for the removal of the Werakata National Park land from the definition of the Hunter Economic Zone. The Committee believes that the continued inclusion of a section of Werakata National Park within the HEZ boundary is confusing. This will become even more confusing once the proposed Crown Land additions take place at which time the HEZ boundary will bisect a contiguous section of the Park.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 2.34.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Mr Colless moved: That the following paragraph 2.35 and Recommendation 1 be deleted:

2.35 The Committee is also mindful that while it was Cessnock City Council who submitted the draft LEP it was the Minister who made the plan and gave credence to the inclusion of National Park within a zone of the HEZ study area. The Committee is of the view that it was a decision of little practical utility and one that should not be repeated in future LEP approvals.

Recommendation 1: That New South Wales government agencies henceforth do not include the Werakata National Park lands in formal or public statements or descriptions regarding the conservation areas of the HEZ site.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 2.35 and Recommendation 1.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio:

That 'HEZ' be deleted from the heading 'Council's HEZ Executive Planner' prior to paragraph 2.37, and wherever else it appears in the report.

Mr Colless moved: That the following paragraphs 2.39 and 2.40 be deleted:

2.39 The Friends of Tumblebee and Ms Claire Cosh, who was an elected councillor at the time in question, both argue that the nature of the contract prevented Mr Selmon from conducting a fair and objective assessment of the submissions relating to the draft LEP.

2.40 In her submission former councillor Cosh advises that she did not become aware that Mr Selmon was in fact a contracted consultant rather than a substantive employee of Council until July 2002:

As a councillor I assumed that the reports being provided to Council were unbiased assessments of information received. I now know this was not the case. The cost of the consultant [was] billed by Cessnock Council to the developer...If I had been aware of Mr Selmon's contractual obligations prior to the Council voting to support the rezoning I would have been more diligent in reading the submissions received and addressing them personally.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 2.39 and 2.40.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on a motion of Mr Colless: That the following footnote to the July 1999 entry in the table headed 'Chronology of the Planning Approval Process' be deleted:

The Committee received a submission from a community member of this panel, Mr Michael Fenech (submission 63a) who advised that there has never been any notification to members, formal or otherwise, that the panel was being disbanded.

Resolved, on motion of Mr Colless:

That reference to the Hassell Report be included at the beginning of the table in paragraph 2.45.

Resolved, on motion of Ms Fazio: That Chapter Two, as amended, be adopted.

Chapter Three read.

Ms Fazio moved: That the following paragraphs 3.8 to 3.10 be deleted:

3.8 The Friends of Tumblebee, in contrast, argue that the some of the economic benefits have been over-stated:

We believe HEZ lobbied to have the rezoning expedited in 2001/2002 using the information that a large company was interested in locating there. There is no sign of this large company two and a half years later. In all our FOI searches we have not found any letterhead from this company or any other.

3.9 This was developed further in evidence:

They often claim that 10,000 jobs will be created by this, and that it is good for the local area. We applaud the creation of jobs in the local area; it is a really good thing. This advertisement makes the claim that 15,000 jobs will be created. Where that comes from, I do not know. Our point is that this estate is very unlikely to create jobs. The manufacturing sector is actually employing less

of the work force as time goes by, whereas the services sector is employing more. It is really not such a terrific strategy for Cessnock.

- 3.10** In their submission the Friends of Tumblebee note that the five weeks after the land was rezoned the developer made a \$100,000 donation to the ALP.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 3.8 to 3.10.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That paragraph 3.13 be amended to read:

The Committee received a commercial-in-confidence submission from a company that intends to purchase a site which in part confirms the statements of the General Manager of Hardie Holdings.

Question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 3.22 be deleted:

- 3.22** The Committee received a submission from a non-executive member of the MLALC. The author of the submission claims that normally there is a maximum of 15 members present at Council meetings, and that the MLALC executive does not consult widely with the membership when they make decisions about the HEZ. The author also claimed that there are sites in the HEZ that are important to Aboriginal people and there are local stories of the area.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 3.22.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved on motion of Mr Colless: That the following final sentence of paragraph 3.24 be deleted:

‘In the short term the direct economic beneficiaries of the development will be the 4(h) landholders.’

Resolved on motion of Mr Colless: That the following words at the end of paragraph 3.25 be deleted:

‘however, there is no similar threshold for the developer in terms of the number of jobs that are created.’

Resolved on motion of Mr Colless: That the following words be deleted from paragraph 3.37:

‘There may be potential constraints associated with the discharge of treated effluent to the inland creek system and that ultimately’, and that the final sentence of paragraph 3.37 read ‘Any proposed strategy would need to go through a formal environmental impact statement process’.

Ms Fazio moved: That the following Recommendation 2 be deleted:

Recommendation 2: That in the development of its regional strategy for the Kurri Kurri area, Hunter Water Corporation proceed on the premise that there be no allowance for effluent disposal or discharge to the inland creek system within the HEZ site. That the Department of Environment and Conservation ensure that no license is issued which allows for effluent disposal or discharge into the inland creek system within the HEZ site.

Ms Hale moved: That the question be amended to indicate in a new paragraph that the Committee minority (Mr Cohen and Ms Hale) supported recommendation 2, but that the Committee majority believed a recommendation to be inappropriate.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 3.49 be deleted:

3.49 However, Committee members are of the view that the current size of the 4(h) zoned lands within the HEZ development does not provide a satisfactory environmental outcome. To the Committee, the stated necessity to develop such a large portion of ecologically sensitive land in order to make a profit on the development does indicate that the selection of this site was flawed and did not provide an optimum balance between the environment and economic development in the Hunter.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 3.49.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following recommendation be inserted after paragraph 3.68:

That the actions of the Director General of the Premier's Department in corresponding with the National Parks and Wildlife Service were proper and in accord with his role as Coordinator General

of the Regional Coordination Program. When acting in this role in the future, the Director General should be mindful of any potential for misinterpretation of requests for cooperation by other government agencies.

Question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved:

That the words 'it also has the potential for significant infrastructure costs which may be borne by the taxpayer' be deleted from the fourth sentence in paragraph 3.69.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information originally cited in the fourth sentence of paragraph 3.69.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin, Ms Parker, Mr West

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That Chapter Three, as amended, be adopted.

Chapter Four read.

Resolved, on motion of Ms Fazio, that the following sentence be inserted into paragraph 4.22 after the first sentence:

The identification of the majority of these species was the result of environmental assessments undertaken by the Hunter Economic Zone.

[Ms Parker left the meeting for another appointment]

Resolved, on motion of Mr Colless: That the secretariat insert in paragraph 4.22 the common names of the plants cited.

[Mr West left the meeting for another appointment]

Ms Fazio moved: That the first sentence of paragraph 4.30 be deleted and replaced with the following:

The NPWS, in this instance, were required to provide a greater level of assistance than usual due to the difficulties Cessnock Council confronted when dealing with a development of this scope.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information originally cited in the first sentence of paragraph 4.30.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio:

That the words 'an environmental activist' be deleted from paragraph 4.32.

Resolved, on motion of Ms Fazio: That the following paragraph 4.33 be deleted:

4.33 NPWS responded to the First Ecotone Report in the NPWS Submission on the Proposed Rezoning of lands within the Tomalpin Employment Zone. The Committee does not have a copy of this submission. However, in his written submission, Mr Phillips indicates that NPWS's submission referred to the Tomalpin site as of 'conservation significance', requiring 'a more constraints-based approach'.

Ms Fazio moved: That the following paragraph 4.36 be deleted:

4.36 In his comment on this outcome, Mr Phillips criticises NPWS for supporting the Ecotone assessment process:

This is an unacceptable approach and quite obviously used in order to justify the development of the site regardless of the habitat quality present there. To

say that a 900ha development is tolerable is an area which it was known may contain 30 threatened species, merely because there was a 'representative sample' of vegetation community types that would be protected, and without conducting any targeted threatened fauna surveys, is a ridiculous methodology, and another prime example of the bias of the assessment process that allowed the Tomalpin Woodlands to be rezoned for industrial development. The NPWS supported this assessment process.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 4.36.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 4.42 be deleted:

4.42 In his comment on this rezoning, Mr Phillips argued:

In March 2002 the Tomalpin Woodlands were rezoned for industrial development. At that time, it was known that the area had up to 30 threatened species of flora and fauna, including 2 species, Swift Parrot and Regent Honeyeater, that are listed as national Endangered. On the strength of the two Ecotone studies, the NSW Government decided that the ecological values of the Tomalpin Woodlands were not high enough to prohibit the development there, and that rezoning could occur without further investigations. This was a flagrant failure of duties by the NPWS. The findings of the Ecotone studies warranted the outright rejection of the development proposals. This did not occur, however, because the decision had already been made by the approval authorities that development would proceed there.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 4.42.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraph 4.57 be deleted:

- 4.57** Unfortunately, the DEC did not advise why it felt it needed legal advice prior to granting the licence, or what was the nature of the legal advice it received. Similarly the DEC submission does not advise whether the department required an SIS to accompany the application.

Resolved, on motion of Ms Fazio: That the following paragraph 4.59 be deleted:

- 4.59** Again, the DEC provided informal advice only as no statutory duties on their part were triggered.

Ms Fazio moved: That the following paragraphs 4.65 and 4.66 be deleted:

- 4.65** The Committee understands that s.64 of the EP&A Act deals with the submission of copies of draft LEPs to the DEC. Section 64 states:

When a draft local environmental plan has been prepared, the council shall submit a copy of the draft plan to the Director General, together with a statement specifying the names of the public authorities, bodies and other persons the council has consulted with pursuant to section 62.

- 4.66** As such the Committee believes that this reference to s.64 is incorrect. The Committee is unable to find reference to deemed concurrence in the EP&A Act.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 4.65 and 4.66.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin
Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 4.70 be deleted:

- 4.70** However, as will be seen in Chapter Five, it appears to the Committee that from November 2002 onwards the position of the NPWS/DEC became one of disengagement wherever possible from the process. Chapter Five examines how the NPWS/DEC seemed content to leave development decisions entirely to Cessnock Council, notwithstanding that those decisions appeared likely to be decisions that the NPWS/DEC would not itself take if it was the responsible body.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 4.70.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale
Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin
Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 4.72 be deleted:

- 4.72** The Committee is concerned that the DEC now appears to be seeking to even further distance itself from any involvement with development of the HEZ site. Up until April 2004 the department appeared to avoid becoming statutorily responsible for granting concurrence to any development application. Now, however, the department is seeking a basis from which it could grant a 'deemed' concurrence for all development on the 4(h) lands. This would presumably result in even less involvement of the department in terms of providing informal advice and assistance to Council and the developer on future DAs.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 4.72.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following last sentence of paragraph 4.73 be deleted:

The Committee believes that importance of the 4(h) lands to threatened species is such that no decision regarding development in that area can be considered minor.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in the last sentence of paragraph 4.73.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That Chapter Four, as amended, be adopted.

Chapter Five read.

Ms Fazio moved: That the following third and fourth sentences be deleted from the introductory paragraph:

Opponents to the HEZ development have claimed that the entire environmental assessment process has been debased in order to ensure that the development proceeds. They claim this is due

to the Premier's Department, using a whole of government approach to apply pressure on other government departments and that this has seen some of those departments, particularly the National Parks and Wildlife Service withdraw or fail to raise valid environmental objections

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in the third and fourth sentences of the introductory paragraph.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Colless moved:

That the words 'and this information, events have subsequently shown, would have affected the zoning outcome' be deleted from the final sentence of paragraph 5.8:

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in the last sentence of paragraph 5.8.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraphs be inserted prior to paragraph 5.9:

Coal mining within the 7(b) zone

- 5.9** The LEP allows for coalmining to occur with consent in the 4(h) and 7(b) zones within the HEZ area. This aspect of the LEP has generated some concern among the local community, including the residents of Pelaw Main who live across from the border of the HEZ. These concerns were raised directly with the Committee during its site visit to Pelaw Main and during the public hearing at Kurri.
- 5.10** In particular the residents of Pelaw Main were concerned at the possibility of open cut mining occurring at the edge of the 7(b) zone within a few hundred metres of their homes and the effect that this would have on their amenity of life.
- 5.11** In 2001 the draft amended LEP included that underground mining remain permissible with consent. However, in its comment on the draft plan the Department of Mineral Resources (DMR) requested that all mining activity (including open cut mining) remain permissible with consent in the 4(h) and 7(b) zones. While Cessnock Council preferred that the 7(b) zone remain free from potential mining, it agreed to the request from the DMR.
- 5.12** The DMR generally objects to any LEP that intends to prohibit mining. The general position of the DMR is that mining should remain permissible everywhere, due to the importance of some mineral deposits, and that proposals should be considered and determined on their merits.
- 5.13** During the public hearings the Committee sought to address the likelihood of such mining occurring and to determine the approval process that would apply to any such proposal. The Deputy Director General of the Department of Infrastructure, Planning and Natural Resources told the Committee:
- ...I must be careful as I am not familiar with all the details. From the description you have given me it would be very difficult to pass the test, but obviously that would depend on the size of the operation. Usually mining, particularly open-cut, but also underground mining, is subject to quite extensive amenity criteria and rules and regulations in relation to dust, noise, water, visuals and all the rest of it. Most of the coalmines that I am aware of that went through the department's assessment involved residual risks outside the boundaries, which may involve the acquisition of properties as a way of managing impacts.
- 5.14** The Deputy Director General also advised the Committee that the DMR would obviously put forward very early proposals for mining resources throughout the State, many of which might not progress further in that form. While the DMR has the potential to propose mining it still has to pass the relevant tests.
- 5.15** Obviously because the LEP expressly allows for mining to occur with consent, the Committee cannot offer any guarantee to the residents of Pelaw Main that mining will never occur in the 7(b) zone. However, on the evidence provided to it, the Committee does note that there is no current proposal, and any proposal that may occur in the future would be subject to assessment.

Resolved, on motion of Ms Fazio:

That word 'major' be deleted from paragraph 5.9:

Resolved, on motion of Ms Fazio: That the following second and third sentences of paragraph 5.26 be deleted:

It is apparent that the original rezoning decisions contained within the LEP (Amendment No 60) did not adequately protect threatened species. The subsequent negotiations between the DEC and the developer have in effect acknowledged this and will, if successful, result in a de-facto rezoning of the 4(h) lands.

Resolved, on motion of Mr Colless: That the following paragraph 5.27 be deleted:

5.27 It is open to Cessnock City Council, under sec 71 of the Environmental Planning and Assessment Act to review and amend their environmental planning instruments. The majority of the Committee is of the view that it is not in a position to recommend that such action be taken.

Resolved, on motion of Mr Colless:

That the words 'However it does believe' in paragraph 5.28 be deleted and replaced with the words 'The Committee believes'.

Ms Fazio moved: That the following paragraphs 5.33 to 5.39 be deleted:

5.33 However, two senior government departmental officers appear not to have been aware that at the time of the gazettal of the LEP it was known there was quite a large amount of survey and investigation work still to be done. In evidence and submission to the Inquiry both the Director General of the Premier's Department and the former Director General of the National Parks and Wildlife Service assumed that all relevant information had been finalised at the LEP stage.

5.34 The former Director General of the NPWS, Mr Brian Gilligan told the Committee he recalled feeling quite a deal frustrated, when this issue was current some time ago, that we could not manage to get Cessnock Council to get on with making the determinations and making the decisions that as far as we were concerned, were in its court at the DA stage and that we were entirely comfortable with because we had signed off on the LEP stage.

5.35 Mr Gilligan then went on to make a number of statements in evidence to the Committee that displayed his assumption regarding the level of threatened species data that was available prior to the consideration of the development applications. In response to a question regarding the development of the ECMP for the site, Mr Gilligan recalled:

...I can only assume that probably the ecological constraints master plan was associated with the LEP stage and was the overview document...Certainly my knowledge of it and my recollection is not so detailed that I can give you the tags or respond to the titles of documents, but certainly I was aware that there was a very comprehensive overall master planning process that had addressed the issues pretty thoroughly.

I think the approach that was being taken here in terms of trying to deal with these things up front and get them into a comprehensive master planning exercise was a worthwhile initiative and the way to go. It is a shame that it has turned out to have dragged through a fairly protracted process when the intent was so sound in the beginning.

5.36 Mr Gilligan's recollection regarding the ECMP is not accurate as the agreement between Cessnock City Council, the NPWS, the Department of Land and Water Conservation, and the developer and its ecological consultant to develop the ECMP was not made until June 2002, and the draft ECMP was not finalised until February 2004. Mr Gilligan told the Committee that at the time he was exploring ways and means of trying to develop a

streamlined development process with respect threatened species which could be put to government:

...a process that had one-stop consideration of these things early in the exercise that then sorted them out once and for all, rather than having them being recurrent issues as things went through the DA stage.

- 5.37** However that ideal process was not implemented for the HEZ LEP at the time of its gazettal, and as such environmental assessments did have to be made at the DA stage. This situation was acknowledged by the Deputy Director General of the Department of Environment and Conservation:

I guess we would have wished that a comprehensive survey could have been done from the start but we were unable to have that occur. If a comprehensive survey had been done we would have had all the information on the table we needed in order to get a single outcome for the site fairly quickly.

- 5.38** The Director General of the Premier's Department also indicated that he had assumed that all environmental issues were resolved at the LEP stage. On 28 October 2002 the Managing Director of HEZ Pty Ltd wrote to the Director General raising a number of concerns regarding the NPWS including the claim that the NPWS had requested Cessnock City Council provide additional ecological information regarding the road infrastructure DA. As a result the Director General wrote to the Director General of the NPWS relaying those concerns of HEZ Pty Ltd. In that letter the Director General of the Premier's Department wrote that he was surprised by HEZ's claims that NPWS has raised a number of objections to the lodgement of the DA for the infrastructure of the zone. The Director General was asked what was the basis for his surprise:

The surprise was about the planning process for the LEP approval and that is when all the environmental issues should have been raised, and they were as far as I understand. The issue that HEZ was facing was what it saw as a changing position; with the road infrastructure DA being considered, new environmental issues were being raised.

- 5.39** This apparent misconception on the part of the two Director Generals that comprehensive ecological data had been compiled during the LEP planning process and therefore that there would be no need for 'new' environmental issues to be assessed at the DA stage is of some concern to the Committee. It was the interaction and correspondence between these two heads of Departments that has given rise to the claim by opponents to the development that pressure was applied to officers of the NPWS to not raise any legitimate objections they might hold with respect to the development of the site. The question of whether or not pressure was applied from the top is examined later. That examination must take into account the apparent disparity between the heads of departments and their officers on the ground in their respective understanding of the details of the process.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.33 to 5.39.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following last sentence in paragraph 5.45 and ensuing quotation be deleted:

Mr Ryan drew the Committee's attention to the road construction within the site and what he saw as the disparity between what was contained within the EMS and what was happening on the ground:

These environmental management strategies say that the road will be winding, that it will not be straight. It will be of one lane in either direction. It will have the vegetation coming right up to it, and the canopy will meet over the top. That is for the purpose of letting the gliding possums and so on go over the top, because this is a major site for yellow-bellied gliders. That is what this says. It does not say that the developer should think about that; it says that is how the roads will be done.

You have been on that road. Is it winding? Does the canopy meet over the top? It is very clear to everybody that these environmental strategies were not followed in the least.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in the last sentence in paragraph 5.45 and ensuing quotation.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraph 5.48 be deleted:

- 5.48** The Committee notes that these guidelines allow some practical latitude with respect to achieving the interconnecting tree canopy referred to by Mr Ryan.

Ms Fazio moved: That the following paragraphs 5.54 to 5.57 be deleted:

- 5.54** Further, the Committee understands there is a strong documented presumption that the EMSs will carry considerable weight as they are identified adjuncts to the LEP and DCP. This is explained in the introduction to the DCP No. 47 when it was exhibited:

The LEP requires that Council must not grant consent to development on land zoned 4(h), 5(a) or 7(b) without taking into consideration the requirements of this DCP and the Environmental Management Strategies prepared pursuant to it.

...some aspects of this DCP will be implemented through the development application process whereas the longer-term monitoring will be addressed using: (a) a section 94 Development Contribution Plan, and (b) a series of Environmental Management Strategy documents directly linked to this DCP.

The key part of the integration process has been achieved by linking the DCP to the Cessnock LEP 1989, thereby giving greater legal weight to the DCP through specific clauses in the LEP. This will require development proposals to comply with the requirements of the DCP when preparing Environmental Management Strategies.

- 5.55** The Committee does not therefore support the developer's view that the fact that a development might not comply with a management strategy is of minor consequence. The Committee believes that the development should seek to comply with the EMSs to the greatest degree possible unless, and until such time as, the relevant EMS has been formally amended.
- 5.56** Parties in support of the HEZ development have referred to the existence of the EMSs as ensuring a balanced development and environmental outcome for the site. The Committee agrees that the comprehensive EMS documents do provide guidance for appropriate development within the HEZ. However, there appears to be some veracity to the concerns of the Friends of Tumblebee that some aspects of the EMSs have been disregarded by the developer in the past. The statements made by HEZ representatives in evidence will have done nothing to dispel the concerns of opponents to the development that the EMSs were not likely to be as stringent in guiding development as they had been promoted as being.
- 5.57** The Committee notes that it is incumbent upon Cessnock City Council as the consent authority to assess and approve development applications in accordance with the guidelines that it itself has instituted.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.54 to 5.57.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 5.71 be deleted:

- 5.71** Strictly speaking if the development of the HEZ had followed the process proposed by the Minister then no development of the area, let alone the making of the LEP, would have occurred until the ECMP had been completed. Indeed it was the requests by NPWS officers for updates on the progress of the ECMP to enable informed comment on the road infrastructure development applications that prompted the developer and Cessnock City Council to claim that the process was becoming bogged down.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.71.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following last sentence from paragraph 5.87 be deleted:

- It is therefore surprising that the issues raised by NPWS reportedly appear to have been unexpected and to have caused such consternation.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.87.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraphs 5.95 to 5.97 be deleted:

5.95 The file note concludes with the frustrated postscript:

NB primary purpose of meeting appeared to be to put pressure on NPWS for again apparently delaying the process –[when] we haven't .

5.96 In contrast to the recollection of the General Manager of Cessnock Council, the file note does not make any mention of the agreement on the approach to be taken with respect to development applications, nor of the understanding of the relationship between the EMSs and ECMP. In fact the file note states that it was hoped that, at the time, Council would have the EMS ready for exhibition within the week. If this was the case, it would have been strange that the meeting would agree that the Habitat Management Strategy would need to be considered as a broad document.

5.97 The Department of Environment and Conservation did not make any reference to any such agreed approach or timeframes in its submission or correspondence to the inquiry, nor did its departmental officers who gave evidence. The Department did advise that NPWS officers did not change their advice in relation to the timeframes for completion of the ECMP.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.95 to 5.97.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following last sentence in paragraph 5.102 be deleted:

As with the 'relationship between the EMS and ECMP, the Department of Environment and Conservation did not, in evidence or submission, allude or refer to any such statement or understanding being incorporated into the DGRs.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in the last sentence of paragraph 5.102.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 5.114 be deleted:

5.114 The Committee notes that the 23 July meeting reportedly agreed that alternative methodologies could be suggested. This does not mean that they would necessarily be accepted. This issue illustrates the evident sense of urgency to commence development of the site and the desire to negotiate progress through requirements of the LEP and DA just four months after the gazettal of the rezoning.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.114.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Mr Colless:

That paragraph 5.127 be amended to delete the words 'The inclusion of the clause is somewhat ironic as' and to replace the words 'certainly never sought a means by which' with the words 'did not seek to'.

Ms Fazio moved: That the following paragraph 5.137 be deleted:

5.137 The Friends of Tumblebee in particular argue that the fact that the legitimate issues raised by NPWS officers at this meeting are mysteriously absent only eleven days later when the NPWS provided comments on the Stage 1 Road Infrastructure DA is the clearest demonstration that pressure was applied to NPWS staff.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.137.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraph 5.140 be deleted:

5.140 The NPWS file note indicates that NPWS raised the issue of the ECMP and how it was needed to provide information on the location of sensitive and less sensitive flora and fauna. It was noted that, without this information, from a flora and fauna point of view, the project was being done back to front.

Ms Fazio moved: That the following paragraph 5.146 be deleted:

5.146 Nevertheless, the issue remains the same – in order for the NPWS to adequately comment on an SIS or SEE accompanying a development application those documents themselves need to contain adequate and current information. And, ultimately, if consent

is granted on the basis of those documents, then the consent authority should itself be certain of the adequacy of them.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.146.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraph 5.149 and ensuing quote be deleted:

5.149 The Committee was not provided with any information on what, if any, where the outcomes or actions agreed to at this meeting. However a letter, a copy of which was provided to the Committee, dated one week later from the Managing Director of HEZ to the Director General of the Premier's Department regarding the road infrastructure development application includes the comment:

Due to the action last week by Mr Ben Chard, of your office, it appears the issues (which we will address later in this letter) have now been resolved.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.149 and the ensuing quote.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraph 5.156 be deleted:

- 5.156** As has been shown Council's concerns were given further attention at the highest levels of the NSW Public Service.

Resolved, on motion of Mr Colless: That paragraph 5.159 be amended to read as follows:

- 5.159** **At the 21 October meeting, other NPWS officers noted that the exhibited EMS had not taken into account previous comments from the NPWS, even though as early as the 18 June 2002 planning focus meeting the Premier's Department had encouraged agencies to assist in the timely finalisation of the EMS.**

Ms Fazio moved: That the following paragraphs 5.160 to 5.163 be deleted:

- 5.160** The opening section of the letter also provides an insight into the interactions that ensued following the 22 October meeting where the developer and Council had put their concerns to the Premier's Department Regional Coordinator:

In light of recent discussions on the HEZ between Council, National Parks and Wildlife and Premier's Department staff, the NPWS affirms its support for the rezoning as reflected in the LEP of March 2002 and its understanding of the relationship between the LEP, Environmental Management Strategy and Ecological Constraints Mapping.

- 5.161** The above comment is virtually identical to that which, according to the General Manager of Cessnock Council, Ms Ewins conveyed in conversation to Mr Selmon three days earlier. In that conversation Ms Ewins reportedly, in addition to affirming the understanding of the EMS/ECMP relationship, also stated that NPWS was 'supportive of the approach being taken by the Council and the Developer'. However, for whatever reason, that statement was not included in this correspondence.

- 5.162** The letter also gives a fair indication that Council's approaches to the Premier's Department to resolve matters in their favour was causing some frustration at the NPWS:

In future, I trust that if you or other officers within Council have concerns in relation to issues raised by officers within the Conservation Planning Unit that you exercise the professional courtesy of raising those matters directly with me.

- 5.163** Three days later, however, intervention at the highest level of the Premier's Department was being sought.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.160 to 5.163.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio:

That the words 'on conjecture' be deleted from paragraph 5.169.

Ms Fazio moved: That the following paragraph 5.173 be deleted:

5.173 The Friends of Tumblebee argue that this letter represents a dramatic change of position on the part of the NPWS in only eleven days, and that this change must necessarily be due to pressure having been applied on NPWS officers. In particular the Friends of Tumblebee point to the fact that the NPWS no longer advise that the DA should not proceed without the finalisation of the ECMP or taking into account the information contained within the SPRT report.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraph 5.173.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Ms Fazio moved: That the following paragraphs 5.177 to 5.183 be deleted:

5.177 While the letter does not contain any formal objection to the proposal it is extremely qualified advice. Throughout, the letter raises issues that it states Council will need to address or consider, and infers that consideration of these issues could lead to Council withholding consent

- 5.178** At a number of points the letter notes the accompanying SIS has not satisfied all of the DGRs that were issued, and that this has diminished the ability to fully assess the impact of the development on threatened species:

Overall the SIS has adequately addressed most [emphasis added] of the matters raised in the DGRs...The NPWS advises that matters that have not been addressed adequately in the SIS will need to be dealt with through the ecological constraints mapping process, the EMS and at the individual DA stage.

...the SIS also relies heavily on the [not yet complete] ecological constraints mapping to fill gaps in the survey work for some threatened species for which there were specific survey requirements in the DGRs...Without this information it is very difficult to make decisions about whether or not the proposal will have a significant impact on these species.

The DGRs required an assessment of the extent and distribution of Green-thighed Frog habitat across the HEZ in order to accurately assess the likely impacts of the road on this species, but it appears that these specific habitat surveys were not undertaken because of the proponent's timeframe for lodging the DA. Without this information, it is difficult to assess the impacts of the road, and any subsequent development on the Green-thighed Frog...Consequently, the NPWS advises that while the road proposal may not [emphasis added] significantly affect this species, any decisions relating to future developments at the site will need to be based on more comprehensive information derived from the ecological constraints mapping process.

The SIS notes that further survey work is required to accurately determine the magnitude of the impacts of the road on *Callistemon linearifolius*...In the absence of this additional survey work, which will occur as part of the ecological constraints mapping, the NPWS supports the need to take a cautious approach and avoid impacting on what appear to be significant populations of this species along the road alignment.

- 5.179** The Friends of Tumblebee also note that this letter does not refer to the information contained in the Swift Parrot Report. Indeed, the only reference to the report is where the author takes the opportunity to state that the recommendations contained within the report reflect the views of the Swift Parrot Recovery Team and not those of the NPWS.
- 5.180** The letter does recommend that if information becomes available regarding sites of significance for this species at the HEZ, then this information should be incorporated into the ECMP. The Swift Parrot Report itself was the most recently available source on precisely this information, yet this letter from the NPWS does not advise consultation of that report in any form.
- 5.181** The letter does note that the SIS did not meet the DGR for identification and mapping of important foraging habitat for the Swift Parrot. Again, NPWS says this should be completed later as part of the ECMP process.
- 5.182** The letter advised Council that, following the preparation of the SEE and SIS, the Scientific Committee had issued a preliminary determination to list the Hunter Lowland Redgum Forest (HLRF) as an EEC under the Threatened Species Conservation Act. The road alignment in the DA traversed the Redgum Forest community over a length of 400 metres. It is at this point in the letter that the author begins to emphasise that the decision to grant consent is one that Council will still need to consider notwithstanding no overt objection from the NPWS:

Hence, the preliminary listing [of the HLRF] is further evidence of the conservation significance of this vegetation community and Council is asked to ensure that appropriate attention is given to this issue in identifying protective measures should development consent be granted for the road [emphasis added].

5.183 This caution is repeated later in the letter:

With respect to Aboriginal cultural heritage, the location of the road alignment is through the area targeted for further archaeological investigation as defined in Clause 57 (5) (b) of the LEP. Should development consent be granted, it is not appropriate for any works to be undertaken prior to completion of that further investigation, as required by the LEP.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.177 to 5.183.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio:

That the words 'concludes by noting' in paragraph 5.184 be replaced with the words 'also notes'.

Resolved, on motion of Ms Fazio: That the following new paragraph be inserted before paragraph 5.186:

The Committee notes assessment procedures that existed at the time were very complex for under resourced councils in areas of high growth and have subsequently been changed. In future cases, DEC will have the ability to require appropriate up-front assessment before decisions are made. The new biodiversity classification mechanism provided in the reformed Threatened Species Act provides the means for this.

Ms Fazio moved: That the following paragraphs 5.186 to 5.189 be deleted:

5.186 The Committee considers the response provided by the Deputy Director General to be inadequate. It was certainly the view of Council that the NPWS officers at the 21 October meeting advised that they could not provide adequate comment on the DA without the

ECMP being finalised – and therefore they could not provide that comment. As has been shown, on the 1 November a NPWS officer provided comment on the DA while simply noting that it was based on inadequate information.

- 5.187** It appears to the Committee that 1 November letter indicates that the NPWS was seeking to extricate itself from the process so that it could no longer be charged with being obstructionist to the development of the HEZ.
- 5.188** The frustration on the part officers within the NPWS at being drawn into issues concerning the HEZ site was raised with the Committee:

I think one of the issues that has occurred at this site is, without wishing to be unkind, that Cessnock Council has not had within its capability the resources to fully deal with its responsibilities as the decision-maker. So sometimes it has appeared as if it has really been the National Parks and Wildlife Service's job to get involved in decision making on the individual DAs, but the legislation makes clear that that is the council's function.

- 5.189** The NPWS apparently believed it was not obliged to advise Council that consent for the development should be delayed until sufficient information, including information that it specified in its own DGRs, was available to determine with some certainty whether there would be a significant impact on threatened species. The Committee believes that it was an abrogation of responsibility on the part of the NPWS to leave it entirely to Council to make a consent determination in these circumstances.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.186 to 5.189 .

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the following paragraph 5.191 be deleted:

- 5.191** The Committee notes that if the development process for the HEZ site had conformed to the spirit of its own concept and to the comments made at the time of the announcement of the rezoning then no development application would have been lodged until this date. Unfortunately this was not the case.

Resolved, on motion of Ms Fazio:

That the words ‘and conjecture’ be deleted from paragraph 5.194, and that the words ‘a clear and definitive’ be replaced by the word ‘an’.

Resolved, on motion of Ms Fazio:

That the words ‘It is the concluding paragraph of the letter that has convinced many opponents to the development that the NPWS was being coerced into silencing any objections that it held regarding the development’ in paragraph 5.195 be replaced with the words ‘In particular the concluding paragraph of the letter has been the focus of allegations’.

Ms Fazio moved: That the following paragraphs 5.206 to 5.211 be deleted:

- 5.206** The Director General’s surprise that the NPWS had raised objections relating to the Development Application may perhaps be explained by his apparent belief that all relevant environmental issues had been resolved at the LEP stage. This misconception of the part of the Director General was examined earlier at paragraph 5.39.
- 5.207** In essence the Director General raises two specific issues: firstly whether the NPWS has been substantially inconsistent with past processes; and, secondly, his concern regarding any proposals that would in practice restrict the size of the HEZ to little more than 200 hectares.
- 5.208** As noted previously in his 28 October letter to the Director General, the developer wrongly attributed the Swift Parrot Recovery Team report as a NPWS document. This 12 November letter strongly implies that the Director General was then also of the belief that the recommendation to restrict the size of the HEZ site was a NPWS recommendation.
- 5.209** It is surprising that the Director General relayed the developer’s incorrect assumption that the Swift Parrot Recovery Team report was a NPWS document. The Director General was also in possession of the 22 October letter from Cessnock Council; that letter clearly distinguishes that the National Swift Parrot Recovery Team is federally funded and further notes that NPWS officers only raised the issue of the report in terms of the new information it contained with respect to the presence of the swift parrot within the HEZ site.
- 5.210** Unfortunately this issue of ‘mistaken identity’ subsequently came to be considered as the root of the problem in the relationship between the developer and the NPWS, when in fact it was not – the real problem being the absence of adequate environmental information. And the clearing up of this case of mistaken identity has subsequently been used as explanation for the resolution of the interaction between the Premier’s Department and the NPWS.
- 5.211** The response from Mr Gilligan was prepared and signed one week after the letter from Dr Gellatly had been dispatched. In that short interim a number of key events occurred.

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 5.206 to 5.211.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio:

That paragraph 5.232 be amended to delete the words 'an extraordinary amount of', and to add the following sentence at the end of the paragraph 'This project was being dealt with under a whole of government approach'.

Resolved, on motion of Ms Hale: That paragraph 5.233 be amended to read:

5.233 The evidence demonstrates NPWS officers were encouraged to provide advice that supported the development and to provide that advice quickly. That encouragement primarily came from the developer and Cessnock Council both directly and through their representations to the Premier's Department. In its efforts to coordinate the effective input of the various government agencies with a view to progressing the development the Premier's Department supported the concerns of the developer and Council including most notably their concerns regarding the NPWS.

Resolved, on motion of Ms Hale, that the first sentence of paragraph 5.234 be amended to read:

5.234 The issues confronted by the NPWS were complex and compounded by the eagerness of the developer and Council to commence development almost immediately following the gazettal of the LEP despite the EMS being incomplete; and the failure on the part of Council to both meet its own timeframes with respect to the EMS and to incorporate earlier advice that had been provided to it by the NPWS.

Resolved, on motion of Ms Fazio:

That the word 'However' be deleted from the first sentence of paragraph 5.235, and that the second sentence be deleted and replaced with the following sentence:

That the information requirements of NPWS changing prior to providing comment to Council is also not the issue.

Resolved, on motion of Ms Fazio: That the following paragraph 5.236 be deleted:

5.236 At this point the Committee must note that the response it received from the DEC did not satisfactorily address nor explain why a NPWS officer provided comments on the Stage 1 road infrastructure DA on 1 November 2002 despite the earlier advice given by NPWS officers at the 21 October 2002 meeting that such advice could not adequately be provided until the completion of the ECMP.

Resolved, on motion of Ms Fazio: That the following paragraphs 5.239 and 5.240 be deleted:

5.239 The question that the Committee sought to determine was whether the NPWS did fulfil its statutory duties with respect to its involvement in the environmental assessment of the HEZ site post gazettal of the LEP; and then, if that was found to be the case, whether

that failure was due to pressure being applied to the Department and/or individual departmental officers.

- 5.240** As discussed in Chapter Four the specific statutory duties of the NPWS with respect to the development of the HEZ during this period was the provision of Director General's Requirements for the SIS that Council determined was necessary for the Stage 1 road infrastructure. Based on the evidence and information provided to it, the Committee is unsure whether the NPWS was also required to grant concurrence to consent for that development.

Resolved, on motion of Ms Fazio: That paragraph 5.241 be amended to read:

- 5.241** The question arose as to whether the ultimate position taken by the NPWS regarding the Stage 1 road infrastructure was in accord with its statutory duties. However, the Committee did not receive sufficient evidence or information to enable it to resolve this question.

Resolved, on motion of Ms Fazio:

That the word 'technically' be deleted from paragraph 5.244.

Resolved, on motion of Ms Fazio:

That the words 'did suffer' be replaced with 'may have suffered' in the first sentence of paragraph 5.245, and that the following second sentence of paragraph 5.245 be deleted:

The Committee believes this was due to firstly, the impatience of the developer and Cessnock Council with the assessment processes that were developed for the site, despite these two parties often promoting the development on the basis of the safeguards these very processes were supposed to provide, and secondly to the NPWS eventually seeking to limit its involvement in the decision-making process.

Resolved, on motion of Ms Fazio: That Chapter Five, as amended, be adopted.

Chapter Six read.

Ms Fazio moved: That the following paragraphs 6.1 to 6.13 and accompanying recommendations 3 and 4 be deleted:

Granting of 'deemed' concurrence for development of industrial lands

- 6.1** The Department of Environment and Conservation (DEC) advised that it is involved in discussions with the developer regarding the Department's role in assessment of all future development on the HEZ 4(h) lands. These discussions commenced following the completion of the ECMP which presented the results of detailed surveys across the 4(h) lands as well as additional targeted survey work within the 7(b) land and Werakata National Park.
- 6.2** In May 2004, the DEC had several meetings with HEZ Pty Ltd and their consultants to discuss potential conservation outcomes for threatened species on 4(h) lands which were identified as part of the Ecological Constraints Master Plan (ECMP) mapping process and are not adequately protected by the LEP.
- 6.3** The DEC advised that most of the threatened species and their habitat recorded at the HEZ site occur to some extent on the 7(b) lands or in Werakata National Park. However there are a number of threatened flora and fauna which occur largely on the 4(h) lands that are not

adequately represented within protected lands or which have important habitat within the 4(h) lands. These are:

- Acacia bynoneana
- Callistemon linearifolius
- Eucalyptus glaucina
- Grevillea parviflora parviflora
- Rutidosis heterogama
- Green-thighed frog
- Swift Parrot
- Brown Treecreeper
- Black-chinned Honeyeater.

6.4 The options discussed in negotiations between DEC and the developer included:

- setting aside additional conservation areas within the 4(h) zone
- offsetting for those species which subsequent surveys show are well-represented on lands adjacent to the industrial zone
- site-specific controls consistent with the EMS

6.5 While these discussions are ongoing, the DEC has advised that if an additional 60ha (approximately) of 4(h) land were either permanently or temporarily set aside to protect these threatened species, the DEC would be in a position to grant a 'deemed' concurrence for development of the remaining industrial lands at the HEZ, as provided for under s.64 of the Environmental Planning and Assessment Act 1979.

6.6 The Committee understands that s.64 of the EP&A Act deals with the submission of copies of draft LEPs to the DEC, as such the Committee believes that this reference to s.64 is incorrect. The Committee is unable to find reference to deemed concurrence in the EP&A Act.

6.7 The Department elaborated on these negotiations, particularly as they related to protection of swift parrot habitat, in evidence:

We would have preferred that the rezoning exercise was based on a comprehensive flora and fauna assessment before the decisions were made. The decisions were made on the information that had been made available to us, and more information became available after that about the swift parrot habitat. That is the reason that we have been involved in subsequent negotiations to identify additional areas that should be protected.

I wanted to mention that we have done some further work and in looking at the areas that have been zoned for industrial purposes or for habitat protection we know that the trees that are most important are forest red gum and spotted gums. In fact, the survey work is so detailed that we know that, for example, there are 493 forest red gum trees in those areas that are over 50 centimetres in diameter at waist height and 434 spotted gums so it is a very precise level of survey that has been done. In working with the developer, we believe they will be able to agree to add an additional 60 hectares that will ensure the significant proportion of those trees remain available to the swift parrot.

6.8 Members of the Committee sought clarification as to what proportion of these trees the DEC considered to be significant. The DEC advised that 17% of mature spotted gums will be protected by the creek corridor running through the 4(h) lands and the additional

approximately 60 hectares of land identified by the DEC for further protection. This additional 60 hectares includes areas containing high densities of spotted gums.

- 6.9** The DEC further advised that the 60 hectares does not include those areas of spotted gum in the Werakata National Park and the habitat protection zone, that provide habitat now and will, the DEC believe, age over time to provide better foraging habitat. The DEC referred to the EMS for the site that includes provisions to protect, where practical, large individual spotted gums in each of the development precincts. The DEC did note that the exact number of trees to be protected will depend on the eventual footprint of future developments. Notwithstanding the inability to forecast the exact number of trees that would be protected, it was the opinion of the DEC that these provisions will protect a significant proportion of spotted gums at the HEZ site.
- 6.10** The Committee notes that the creek corridor referred to by the DEC is part of the existing 7(b) habitat protection zone. In effect the additional 60 hectares represents a protection of 7% of the 4(h) zoned lands. The Committee is not persuaded that the objective of the negotiations being conducted by the DEC can result in a significant conservation outcome, particularly when the figure of 7% is compared to the figure of 75% recommended by the Swift Parrot Recovery Team.
- 6.11** The Committee is also concerned with the position taken by the DEC that all or part of the additional 60 hectares might be set aside only on a temporary basis. The October 2002 Swift Parrot Report stated that records from the proposed development area within the HEZ represent the longest (17 years) and most consistent site fidelity ever recorded on mainland Australia for the swift parrot.

Recommendation 3: That the Department of Environment and Conservation in its negotiations with HEZ Pty Ltd insist that any 4(h) lands set aside for conservation purposes in exchange for granting of a deemed concurrence for development of the remaining industrial lands, be set aside on a permanent basis.

- 6.12** Notwithstanding the stance of the former NPWS that the recommendations contained within the assessment report prepared by the Swift Parrot Recovery Program project officer did not reflect the views of that Department, the Committee believes there should be room for liaison between the DEC and the Swift Parrot Recovery Team to investigate whether the additional 60 hectares represents a meaningful outcome for that species.
- 6.13** In addition the Committee is also concerned at the small size of the conservation area that the Department of Environment and Conservation's is apparently willing to accept in exchange for a 'deemed' concurrence for all remaining development. Almost one third of the identified threatened species in the area are currently dependant upon the 4(h) lands.

Recommendation 4: The Department of Environment and Conservation liaise with and seek the views of the Commonwealth Swift Parrot Recovery Team regarding the proposed setting aside for conservation purposes of an amount of the 4(h) lands. The Department of Environment and Conservation, in their negotiations with the developer, seek to increase this amount of land to be set aside for conservation purposes beyond the currently proposed 60 hectares

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the information cited in paragraphs 6.1 to 6.13 and the accompanying recommendations 3 and 4.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That the title of Chapter 6 be amended to 'The Pelaw Main by-pass (link) Road', and that the introduction to the chapter be amended to read:

The location and construction of the Pelaw Main by-pass (link) Road is an issue of concern to local residents and has not yet been finalised.

Resolved, on motion of Ms Fazio: That the following sentences be added to the end of paragraph 6.15:

Also of concern is the issue of vibrations from heavy vehicles that may exacerbate the problem of land slippage from mine subsidence which affects part of the town. Residents are worried that their concerns will be outweighed by the development imperatives for the site.

Resolved, on motion of Ms Fazio: That the following paragraph 6.16 be deleted:

6.16 Residents are worried that their concerns will be outweighed by the development imperatives for the site. The view expressed by the President of the Kurri Kurri Chamber of Commerce and Industry would have done little to allay their concerns:

There is little doubt that there will be some level of noise generated from an industrial park, but people live in the middle of Sydney with traffic going past them all the time, and they get used to it. It has to be a balance—a balance between high unemployment and some of the slight inconveniences that some people are going to suffer.

Resolved, on motion of Ms Fazio:

That the words 'appeared reluctant to provide any insight into' be deleted from paragraph 6.18, and replaced with the words 'did not provide detailed information on'.

Resolved, on motion of Ms Fazio:

That the words 'and found them unwilling to shed light on the matter' in paragraph 6.32 be deleted.

The Committee requested the Secretariat to redraft paragraphs 6.34 to 6.39 to simplify reference to the road options being considered for the HEZ development, and to circulate the revised paragraphs to the Committee.

Resolved, on motion of Ms Fazio: That the following new paragraph be inserted at the end of Chapter six:

The Committee notes the advice from the RTA that Cessnock Council is capable of doing the environmental assessment and design and overseeing the development of the link road. Further, that the RTA considers that sound barriers would be required for this road.

Resolved, on motion of Ms Fazio:

That Chapter Six, as amended, be adopted, subject to the requested changes to paragraphs 6.34 and 6.39 being circulated to the Committee and found acceptable.

The Committee resumed discussion of Chapter One.

Ms Fazio moved:

That paragraph 1.12 be amended to delete 'Chapter 6 examines continuing and future environmental assessment issues for the development of the site' and to insert 'Chapter 6 examines the Pelaw Main Link Road, which is a cause for concern to local residents.'

Ms Hale moved: That the question be amended to indicate that the Committee minority (Mr Cohen and Ms Hale) supported the provision of the information originally cited in paragraph 1.12.

Question put.

The Committee divided.

Ayes: Mr Cohen, Ms Hale

Noes: Mr Colless, Ms Fazio, Ms Griffin

Amendment negatived.

Original question put.

The Committee divided.

Ayes: Mr Colless, Ms Fazio, Ms Griffin

Noes: Mr Cohen, Ms Hale

Question resolved in the affirmative.

Resolved, on motion of Ms Fazio: That Chapter One, as amended, be adopted.

Dissenting Report

The Chair indicated that the deadline for the provision of dissenting reports to the Secretariat would be 12 noon on Monday, 6 December 2004.

Tabling of Report

Resolved, on motion of Ms Hale: That the Committee table its report by Thursday, 9 December 2004.

Chair's Foreword

Resolved, on motion of Ms Fazio: That under Standing Order 229, the Chair distribute his Chair's Foreword to the report to members of the Committee prior to the tabling of the report.

Adoption of the Report

Resolved, on motion of Ms Fazio: That Pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Orders 223 and 224, the Committee authorises the Clerk of the Committee to publish the report, correspondence, submissions, transcripts and tabled documents, excepting those documents which the Committee has determined remain confidential.

Publication of submissions

Resolved, on motion of Ms Fazio: That submissions 18a be amended by the Secretariat to delete comments that may adversely reflect on others.

7. Adjournment

The Committee adjourned at 7.10pm.

Steven Reynolds

Clerk to the Committee

Appendix 5 Dissenting statement

Given the economic decline of the hunter region and resulting loss of jobs it is clear that HEZ has an important role to assist in rejuvenating the Hunter economy and create jobs for the future. The inquiry by this committee has attempted to assess an appropriate balance between development and conservation.

It is the belief of a minority of the committee that the majority report has been edited to fit within very narrow confines. Whilst the terms of reference clearly indicated the need for a close examination of the role of the Premier's Department, NPWS and DEC, there is, in the introductory paragraph, an opportunity to examine broader issues of the environmental assessment process. Confining such an inquiry does not serve the interests of all parties be they government officials, local council staff or conservationists.

Much valuable material was gained. Narrowing the parameters of the Inquiry has impacted on the potential to gain a balance between development and our fragile environment. Most disappointing are the revelations of the former director of NPWS who was at pains to clarify that endangered species classification has never meant full protection of those species under threat. In the realm of politics and development it is the voice of reason. For those concerned with the fragile state of our ecosystems and the perilous condition of endangered species in NSW, the comments were a loud reminder that we in our zeal to protect the living standards of the current generation and encourage sectional profits, may be robbing from future generations.

Perceived economic benefits have driven the project yet the perception may have been overstated. Regarding jobs, there have been figures of ten to fifteen thousand jobs banded about, yet while the services sector is moving forward on job creation the manufacturing sector is employing less workers. Stories of companies with large employment requirements relocating there have not materialised. As was raised in the original report the developer made a substantial donation to the ALP five weeks after the land was rezoned.

The question of responsibility for infrastructure development is largely an unresolved issue. This minority report raises issues of imbalance that could see a potential for significant infrastructure costs being borne by the ratepayers of NSW.

Minority members oppose the inclusion of the Werakata National Park in the HEZ rezoning. We believe the inclusion in the HEZ boundaries is inappropriate and the problem will be compounded by the proposed Crown Land additions. The Government should not include the National Park in formal statements when discussing conservation areas of the HEZ site.

There is concern about the discharge of effluent to the local creek system. It would be reasonable to expect an assurance that any discharge to the local creek go through a formal environmental impact process. Conditions from DEC should ensure that no licence is to be issued that allows for effluent discharge into the creek system in the HEZ site.

Many of the environmental issues have been downgraded to the advantage of the developers. Threatened Species have not received their deserved attention. It is a reasonable frustration of many community groups that there has been an ongoing downgrading of threatened species protection in the term of this government from early advances with the first Threatened Species Bill of 1996. This development will not enhance opportunities for the survival of threatened species on a regional basis. There are concerns that the protections will not be enough to halt the decline of threatened species either locally or regionally. The minority on the Committee are strongly of the opinion that DEC should seek the views of the Commonwealth Swift Parrot recovery team with the intention of a thorough investigation of the appropriateness of reserving a portion of 4(h) lands and that this process be undertaken with the developer with a view to substantially increase the sixty hectares currently proposed for protection.

Evidence submitted to the inquiry acknowledged that Cessnock Council was not instituting environmental safeguards that were integral to the original rezoning of the land. The Minister's original rezoning was on the grounds of adequate environmental safeguards. There was acknowledgement of high environmental and biodiversity values which the Planning dept minute detailed has been reflected in both the proposed zoning framework and the ongoing management and monitoring regime (Planning Dept Minute 7/3/02 p6). This is integral to the rezoning yet there is no evidence Cessnock Council is properly implementing all of the environmental protections laid down by the Minister.

Mr S Phillips has referred to the Tomalpin site as 'a site of conservation significance' requiring 'a more constraints based approach'. (Submission 41 p3-4). Despite this recognition and concern in the local and broader conservation community it has been argued that issues raised were not properly identified by NPWS staff as there was considerable pressure brought to bear through the Premier's Department to facilitate progress.

A case in point was the October 22nd meeting with Council, developer and consulting archaeologist. Whilst significant issues were raised at that meeting there was no evidence of such concerns when the NPWS provided comments on the stage 1 Road Infrastructure DA.

Evidence provided to the Committee indicates that NPWS changed their advice which coincided with advice and representations provided by the Premier's Department which amounts to an extraordinary amount of 'encouragement':

Due to the action last week of Mr Ben Chard, of your office, it appears the issues have now been resolved." (Managing director HEZ to DG Premier's Department 28/10/04)

This Inquiry is a disappointment to the undersigned members. Such an inquiry, designed to investigate a significant development with huge social and environmental implications, the opportunity to properly answer questions presented by a number of community organisations, develop conclusions and recommendations has been effectively denied by the vote of major party representatives on the committee.

Mr Ian Cohen MLC

Ms Sylvia Hale MLC