

# DEPARTMENT OF PLANNING & INFRASTRUCTURE

## *Development Assessment*

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### **SUBJECT: HEXHAM SWAMP REHABILITATION PROJECT**

#### **PURPOSE**

To determine a modification request for the Hexham Swamp Rehabilitation Project (MP 05\_0193).

#### **BACKGROUND**

The Hexham Swamp Rehabilitation Project involves the reintroduction of tidal waters to the Hexham Swamp to facilitate rehabilitation to an estuarine wetlands system.

The project application was approved with conditions on the 30 November 2006 under Part 3A of the *Environmental Planning and Assessment Act 1979* (Tag A). Since then, the project has been modified to allow the construction of a concrete rather than a virgin excavated natural material (VENM) bund. This modification was approved on the 23 May 2007.

To rehabilitate the wetlands HRCMA identified land to be inundated with estuarine water. The original project anticipated a possible impact on the Wallsair airstrip due to raised groundwater levels at some stage during the project. The original project identified land where inundation was to occur and the need to acquire easements over the identified land. These properties are also identified in Appendix 1 of the approval. Part of Wallsair land was to be inundated and an easement was acquired through the compulsory acquisition process.

Following the compulsory acquisition process Wallsair Pty Ltd commenced legal proceedings claiming compensation under the *Land Acquisition (Just Terms Compensation) Act 1991*.

The Proponent, Hunter-Central Rivers Catchment Management Authority (HRCMA) has requested changes to the conditions relating to or referring to the Wallsair Land or Wallsair Pty Ltd (Tag B). The request is supported by Wallsair Pty Ltd and is the result of the settlement of proceedings in the Land and Environment Court under the *Land Acquisition (Just Terms Compensation) Act 1991*.

#### **PROPOSED MODIFICATION**

The HRCMA requests that condition 1 be varied as set out below, a new condition 1A be inserted and condition 17 be revoked (additional wording identified by underline and removed wording by strikeout).

- 1 The Proponent must carry out the project generally in accordance with:
  - (a) the Environmental Assessment (EA) for the project comprising:
    - (i) Environmental Assessment Supplement Hexham Swamp Rehabilitation Project, prepared by WBM Oceanics Australia and dated April 2006;
    - (ii) Environmental Assessment Supplement Hexham Swamp Rehabilitation Project; Volumes 1 and 2, prepared by WBM Oceanics Australia and dated August 2005;

but only to the extent that the EA in relation to Requirements refer or relate to matters other than the Wallsair Land or Wallsair Pty Ltd;

- (b) the Submissions Report prepared by the Hunter–Central Rivers Catchment Management Authority and dated 24 August 2006 but only to the extent that the Submissions Report in relation to Requirements refer or relate to matters other than the Wallsair Land or Wallsair Pty Ltd;
- (c) the e-mail to the Department dated 18 October 2006 and letter to the Department dated 1 November 2006 from Hunter–Central Rivers Catchment Management Authority in relation to altering the timing of mitigative works, but only to the extent that the e-mail and letter (including the attachments thereto) in relation to Requirements refer or relate to matters other than the Wallsair Land or Wallsair Pty Ltd; and
- (d) the conditions of this approval but only to the extent that the conditions in relation to Requirements refer or relate to matters other than the Wallsair Land or Wallsair Pty Ltd.

1A In condition 1:

- (a) "Requirements" means any matter to be performed or undertaken by the Proponent or for which the Proponent is responsible;
- (b) "Wallsair Land" means the land at 59 Creek Road, Maryland being Lot 102 DP 606506 including the Wallsair airstrip and any other part or parts of that land.

17. ~~The Proponent must design, construct, operate and maintain the project to protect the Wallsair airstrip (Lot 102 DP 606506) from impacts from elevated groundwater levels, including degradation of the airstrip surface.~~

## **CONSULTATION**

Wallsair Pty Ltd wrote to the former Minister for Planning on the 4 November 2010 confirming it unconditionally consents to any application by HCRCMA to vary the conditions of approval by revoking any condition (including in particular, condition 1 and 17) to the extent to which it relates to the land and works in respect to the runway or to raising the runway (Tag C).

The Department wrote to Wallsair Pty Ltd advising of HCRCMA's application to vary the conditions of approval on the 15 June 2011. To date, no response has been received from Wallsair Pty Ltd.

In accordance with section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the modification request was made available on the Department's website. Due to the minor nature of the proposed modification the Department did not specifically consult with Newcastle City Council and the modification request was not exhibited by any other means.

## **DELEGATED AUTHORITY**

On 25 January 2010, the former Minister delegated his powers and functions under section 75W of the EP&A Act to the Deputy Director-General in cases where there are less than 25 public submissions (not including submissions from public authorities) in the nature of objections in respect of the modification request. The Minister for Planning and Infrastructure has confirmed this delegation subject to the local Council not objecting to the proposal. As no public submissions were received and the local Council does not object, the Deputy Director-General may determine the modification request under delegated authority.

## CONSIDERATION

The Department has not been made aware of the details of the confidential settlement reached between the HCRCMA and Wallsair Pty Ltd as part of the proceedings brought by Wallsair Pty Ltd in the Land and Environment Court.

The Department notes the letter from Wallsair Pty Ltd regarding the requested changes to the conditions removing the requirement for the Proponent to design, construct, operate and maintain the Project to protect the Wallsair airstrip (Lot 102 DP 606506) from impacts from elevated ground water levels, including degradation of the airstrip surface.

The Department considers that the proposed modification is acceptable on the basis that any potential impacts and mitigation measures to maintain the Wallsair airstrip have been addressed to the satisfaction of both parties through the proceedings in the Land and Environment Court.

## RECOMMENDATION

It is RECOMMENDED that the Deputy Director General:

- note the information provided in this briefing;
- approve the modification request, subject to conditions; and
- sign the attached modifying instrument (Tag D).



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3.7.11

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NY 28/6/11

Approved by:



Richard Pearson  
**A/ Deputy Director General**  
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