



Your reference : n/a  
Our reference : 1093893; DOC08/28480 (NEHU013); File No.: LIC08/1506 s91  
Date : 24-Dec-2008  
Contact : Steve Lewer – (02) 4908 6814

CALMJOY PTY. LIMITED,  
ABN 97 063 780 843,  
5/10 Lincoln Crescent,  
WOOLLOOMOOLOO NSW 2011  
STANDARD POST

Attention: Mr Guy Walker  
cc.: Mr David Robertson (Cumberland Ecology)

Dear Sir

**Licence Application under Section 91 of the Threatened Species Conservation Act 1995: Lots 41 and 42 in DP 1070195 located at Boomerang Drive, Pacific Palms**

I refer to your licence application under section 91 of the *Threatened Species Conservation Act* 1995 (the TSC Act) dated 16 June 2008 to harm threatened species and an endangered ecological community (namely foraging habitat for Glossy Black Cockatoo, Grey headed Flying-fox, Little Bent-wing Bat, Greater Broad-nosed Bat and Masked Owl) and an endangered ecological community ('river flat eucalypt forest on coastal floodplains of the NSW North Coast, Sydney Basin and South East Corner bioregions') on Lots 41 and 42 in Deposited Plan (DP) 1070195, Boomerang Drive, Pacific Palms, NSW (the licence application).

The licence application was received by the Department of Environment and Climate Change (DECC) on 24-Jun-2008.

I also refer to your two letters to DECC, both dated 25 November 2008.

**Species Impact Statement**

In relation to your letter of 25 November 2008 regarding the Species Impact Statement (SIS), DECC notes that Mr Steve Lewer has no recollection of making a statement to the effect set out in your letter.

DECC is of the view that there is no need for submission of a further SIS in relation to the licence application at this time.

**Deemed approval of licence application**

DECC notes that the clearing which is the subject of this licence application relates to a development consent granted by the Land and Environment Court of NSW on 25 October 2007 (*Nash v Minister administering the Environmental Planning and Assessment Act 1979* [2007] NSWLEC 624). Consent was granted subject to the development consent conditions specified in Annexure A to that judgment. DECC considers that all works must be carried out in accordance with the 'conditions of consent' of this judgement.

I note that section 107(2) of the TSC Act states that:. .. 'If the Director-General fails to grant, but does not refuse, a licence application by the expiry of the period of 120 days referred to in section 99 (2) or of any extension of that period agreed to by the Director-General and the applicant for the licence, the application is taken to have been granted'.

Unfortunately DECC's consideration of the licence application has exceeded the 120 day period. DECC is of the view that the licence application is now a "deemed approval" under s 107(2) of the TSC Act.

The above represents DECC's view on these matters. Should you have any concerns regarding the validity of any of the statutory instruments, licences or other approvals in relation to the proposed project you should consider obtaining your own legal advice on these matters.

If you have any questions concerning this letter, please contact Steve Lewer on (02) 4908 6814.

Yours sincerely

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Mr Grahame Clarke

Manager

North East - Hunter