



Mr Steve Barry
Planning Director
NSW Independent Planning Commission

By email: stephen.barry@ipcn.nsw.gov.au

12 August 2022

Dear Mr Barry,

**Mount Pleasant Optimisation Project (SSD 10418)
Identification of Legless Lizard**

MACH Energy Australia Pty Ltd (MACH) has recently brought information to the Department's attention regarding the identification of the Legless Lizard which has been recorded on-site at Mount Pleasant Operations.

MACH Energy Australia Pty Ltd (MACH) has provided the Department with a research paper (published on 11 July 2022 in *Zootaxa*) confirming that the Legless Lizard recorded at Mount Pleasant is not the Striped Legless Lizard (*Delma impar*) as previously thought, but is in fact a new species not previously identified. Importantly, this species is not yet listed as threatened under the *Biodiversity Conservation Act 2016* (BC Act).

The Department notes that the Biodiversity Assessment Report (BDAR) prepared for the Mount Pleasant Optimisation Project (SSD 10418) considered the species recorded on site to be the Striped Legless Lizard and determined that MACH would be required to retire species credits should the project be approved.

In its email to the Department (**Attachment 1**), MACH also suggested an approach to updating the relevant consent conditions to ensure the species is appropriately offset if it is listed as threatened under the BC Act.

The Department has sought advice from the Biodiversity Conservation Division (BCD) regarding the process for listing the new species (including likely timing), the likely conservation status of the species (should it be listed), and the appropriateness of MACH's suggested condition. The BCD's advice is provided in **Attachment 2**.

Following its review of the advice, the Department recommends that reference to *Delma impar* be removed from the conditions of consent, should the project be approved, and the following additional condition be included:

*If the Legless Lizard, *Delma vescolineata*, is listed as a threatened species under the BC Act within 2 years of the date of commencement, or otherwise agreed by the Planning Secretary, the Applicant must retire the applicable biodiversity credits (consistent with the applicable Biodiversity Risk Weighting as per the relevant row in Table 9) within 2 years of the species being listed as a threatened species under the BC Act.*

The retirement of credits must be carried out in consultation with BCD and in accordance with the Biodiversity Offsets Scheme of the BC Act, including the application of Ancillary Rules: Biodiversity conservation actions that may be relevant to Delma vescolineata published under clause 6.5 of the Biodiversity Conservation Regulation 2017.

Table 9 - Biodiversity credit requirement alternatives – Legless Lizard *Delma vescolineata*

Biodiversity Risk Weighting	Credits Required Stage 1	Credits Required Stage 2	Northern Link Road Option 1	Northern Link Road Option 2
1.5	4,060	352	293	225
2	5,413	469	391	300
3	8,120	704	586	450

If you have any questions, please contact me on [REDACTED]

Yours sincerely



Steve O'Donoghue
Director
Resources Assessments

Attachments

Attachment 1: Email from MACH Energy regarding legless lizard identification

Attachment 2: Advice from Biodiversity Conservation Division within the Department

[REDACTED]
[REDACTED]
Sent:

[REDACTED]
Monday, 18 July 2022 1:03 PM

Subject:

[REDACTED]
Optimisation Project - New Legless Lizard Species

Attachments:

Delma vescolineata_Mahony_July2022.pdf; MPO_Striped Legless Lizard_Figure 1.pdf

Dear Steve and Clay,

It has come to MACH's attention that a new species of Legless Lizard has been identified in the Hunter Valley with potential relevance to MACH's Mount Pleasant Optimisation Project that is currently before the IPC, as it may have some bearing on DPE's associated draft Consent Conditions for the Project.

The material below provides some background, and our suggested solution to categorically address the matter and facilitate rapid resolution.

Ideally, we would like to discuss via an online Meeting today or Tuesday, if you are available?

Kind regards,

CHRIS LAURITZEN

GENERAL MANAGER – RESOURCE DEVELOPMENT


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Background

Two legless lizards were recorded by Future Ecology during the survey work for the Mount Pleasant Optimisation Project (the Project). One record was made within the existing approved disturbance footprint of the Mount Pleasant Operation, and the other was recorded outside of the Mount Pleasant Operation mining lease.

The legless lizards were identified as the Striped Legless Lizard (*Delma impar*) listed as 'vulnerable' under the NSW *Biodiversity Conservation Act 2016* (BC Act) and Commonwealth *Environment Protection Biodiversity Conservation Act 1999* (EPBC Act) on the basis of other nearby records of the same species. In the *Mount Pleasant Optimisation Project Baseline Fauna Survey Report*, Future Ecology (2020) also noted that the records of the species in the Hunter appeared to be disjunct from other recorded populations which occur greater than 200 km to the south.

Subsequently, species credits for the Striped Legless Lizard were calculated in the *Mount Pleasant Optimisation Project Biodiversity Development Assessment Report* (BDAR) (Hunter Eco, June 2021). The BDAR described that the population of this species would persist in the surrounding locality due to the amount of known habitat and the wider occurrence of records.

The Project Biodiversity Impact Reduction and Offset Report (Hunter Eco, 2021a) also gave consideration as to the relative habitat provided for the legless lizard (*Delma impar*) by the Project Relinquishment Area and Project Additional Disturbance Area. This report concluded that the Project Relinquishment Area had a greater area of legless lizard habitat (approximately 485ha), than the Project Additional Disturbance Areas (approximately 470-475ha).

The Department of Planning and Environment subsequently proposed draft Consent Conditions for the Project that included the requirement to retire biodiversity credits for the Striped Legless Lizard (*Delma impar*) in accordance with the requirements of the BC Act (and also addressing the Project Action under the EPBC Act).

New Information

This week, on 11 July 2022, an independent scientific paper was published in the periodical *Zootaxa* which described that the two legless lizards recorded by Future Ecology at the Project site were not the Striped Legless Lizard (*Delma impar*), but in fact a new species of legless lizard (*Delma vescolineata*) which is not listed under the BC Act or the EPBC Act.

The scientific paper published on 11 July 2022 (attached) provides the results of a genetic study on the legless lizards and concludes that all Striped Legless Lizard (*Delma impar*) records in the Hunter Valley region should be classified as the new Legless Lizard species *Delma vescolineata*. The paper also notes that the new Legless Lizard species (*Delma vescolineata*) also extends into the Liverpool Plains region.

The scientific paper also states: '*further surveys and more information on the abundance and distribution is required to inform the conservation status of the species*'.

The BioNet records in the Hunter Valley region that are currently assigned to *Delma impar* are shown on Figure 1.

Addressing the New Information in the Project Determination Process

Since the threatened Striped Legless Lizard (*Delma impar*) does not occur in the Project area (i.e. it only occurs ~250 km south of the Project, based on the new information) and the new legless lizard (*Delma vescolineata*) is not listed under the BC Act or EPBC Act, the default position of the Department could be removal of reference to the Striped Legless Lizard (*Delma impar*) from the Department's BC Act and EPBC Act assessments and associated draft Consent Conditions.

Notwithstanding the above, MACH is also cognisant that the new species of legless lizard (*Delma vescolineata*) has only recently been identified as a separate species, and in time, it could also potentially be listed as a threatened species under the BC Act. On this basis, MACH is prepared to volunteer a new Consent Condition that would require MACH to provide biodiversity offsets for the new species of legless lizard (*Delma vescolineata*) should it be listed under the BC Act in the 12 months following determination of the Project.

MACH also notes that any future change to the status of the legless lizard (*Delma vescolineata*) under the EPBC Act would not be relevant to the Project Action (EPBC 2020/8735), due to the function of section 158A of the EPBC Act.

Derivation of the Proposed Draft Condition

Under the NSW Biodiversity Offset Scheme, the Biodiversity Risk Weighting (a score from 0.5 to 3) is used to calculate the number of species credits required for a particular threatened species. The Striped Legless Lizard (*Delma impar*) has a Biodiversity Risk Weighting of 1.5 as it is listed as 'Vulnerable' under the BC Act and has a 'moderate' Sensitivity to Gain.

Given the same habitat requirements, if the new legless lizard species (*Delma vescolineata*) was to be listed under the BC Act and have the same Biodiversity Risk Weighting (1.5), the Project would have the same quantum of species credit requirements as currently specified in the draft Development Consent for the Striped Legless Lizard (*Delma impar*). However, if the legless lizard (*Delma vescolineata*) was apportioned a higher Biodiversity Risk Weighting of 2 or 3, the credit requirements would be correspondingly higher.

To account for the fact that the new species has only recently been identified and there is uncertainty as to whether the new species will be listed under the BC Act, (and the Biodiversity Risk Weighting if listed), MACH proposes the following draft Consent Condition that would facilitate a suitable biodiversity offset for this species being provided, should it be listed under the BC Act within 12 months of determination of the Project.

Proposed Draft Condition:

Biodiversity Credits Required – Legless Lizard (*Delmar vescolineata*)

B61A. If the Legless Lizard, *Delmar vescolineata*, is listed as a threatened species under the BC Act within 12 months of the date of this approval, the Applicant must retire the applicable biodiversity credits (consistent with the applicable Biodiversity Risk Weighting as per the relevant row in **Table X**) within 2 years of the species being listed as a threatened species under the BC Act, unless otherwise agreed by BCD. The retirement of credits must be carried out in consultation with BCD and in accordance with the Biodiversity Offsets Scheme of the BC Act.

Table X - Biodiversity credit requirement alternatives – Legless Lizard *Delmar vescolineata*

Biodiversity Risk Weighting	Credits Required Stage 1	Credits Required Stage 2	Northern Link Road Option 1	Northern Link Road Option 2
1.5	4,060	352	293	225
2	5,413	469	391	300
3	8,120	704	586	450



Our ref: DOC22/665390-2

Your ref: SSD-10418

Mr Stephen O'Donoghue
Director Resource Assessments
Planning and Assessment Group
Department of Planning and Environment
Stephen.ODonoghue@planning.nsw.gov.au

Dear Mr O'Donoghue

Mount Pleasant Optimisation Project (SSD-10418) – Advice in relation to the newly-described legless lizard, *Delma vescolineata*

Thank you for your letter of 2 August 2022 in which the Planning and Assessment (PA) Division of the Department of Planning and Environment (the Department) asked the Biodiversity and Conservation Division (BCD) of the Department for advice in relation to the Mount Pleasant Optimisation Project (SSD-10418). The proponent for this project is MACH Energy Australia Pty Ltd (MACH).

Draft consent conditions B52 and B53 for the project refer to the offset obligation for impacts to the habitat of the striped legless lizard (*Delma impar*), which is listed as a 'Vulnerable' species under the *Biodiversity Conservation Act 2016* (BC Act). However, this species is no longer recognised as occurring in the Hunter Valley. Instead, those lizards are now recognised as a new species. *D. vescolineata*, which is currently not listed as a threatened species under the BC Act – but likely soon will be. Given that the Mount Pleasant Optimisation Project is currently being assessed by the Independent Planning Commission, with a determination expected before 16 August 2022, PA have asked BCD for advice about the process of listing the new species as threatened, the likely conservation status, and any potential recommended conditions for the Independent Planning Commission to ensure that impacts to this new species are appropriately managed.

In answer to your questions:

Question 1: What is the process in listing the new species, including timing around any potential emergency listing?

Answer 1: BCD has been advised that the species has been nominated for listing as a threatened species under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Commonwealth Threatened Species Scientific Committee follows guidelines [www.agriculture.gov.au/sites/default/files/documents/seap-manual-appendix-1.pdf] when assessing the conservation status of native species under the EPBC Act, which are summarised below:

1. A species is assessed against five factors:
 - a. imminent likelihood of a reduction in numbers
 - b. geographic distribution
 - c. any suggested decline of the number of mature individuals

- d. an estimate of total number of mature individuals, and
- e. the probability of extinction in the wild

For whether it may be eligible for listing as ‘critically endangered’, ‘endangered’ or ‘vulnerable’

2. When assessing a species against the five factors, the Commonwealth Threatened Species Scientific Committee considers information in the nomination form, and the International Union for the Conservation of Nature (IUCN) Guidance Documents, to answer the questions posed for each of the factors.
3. The EPBC Act does not have any provision for an emergency listing.

The Commonwealth, States and Territories have agreed to implement a Common Assessment Method (CAM) for the assessment and listing of threatened species. This is established through the Intergovernmental Memorandum of Understanding: Agreement on a common assessment method for listing species and threatened ecological communities.

Section 4.14 of the BC Act provides a framework for addressing assessments for listing by the Commonwealth or another State or Territory under a common assessment method agreed between the Commonwealth, States and Territories. The NSW Threatened Species Scientific Committee (the Committee) is not required to re-assess a proposal for listing by the Commonwealth or another State or Territory if it is satisfied that the proposal has been duly assessed under any such common assessment method.

the Committee is established as an independent body under Part 4, Division 7 of the BC Act. A key role of the Committee is to determine which species are to be listed under the BC Act as threatened species. The listing process (other than for provisional listing) is described under Part 4, Division 3 of the BC Act and comprises:

1. A species may be nominated for listing as a threatened species by anyone, or may be raised by the Committee itself, or be requested for consideration from the Minister for the Environment
2. The Committee assesses all nominations and is required to prioritise the assessment of nominations on at least an annual basis
3. Nominations can be rejected by the Committee, such as because of insufficient evidence
4. The Committee makes a preliminary determination to support or reject the listing of a species (except for species covered by a common assessment method agreed the Commonwealth, States and Territories: see above)
5. As soon as possible after a preliminary determination has been made, the Committee must publish notice of the preliminary determination and invite public submissions
6. The Committee must consider written submissions received in accordance with the published notice
7. For nominations captured by a common assessment method, the Committee must give due consideration to the assessment criteria and procedures agreed between the Commonwealth, States and Territories
8. The Committee must either accept or reject a proposal for listing a species, and must give reasons for its determination
9. The Committee must make a final determination within six months after the closing date for public submissions on the preliminary determination of that species. If needed, the Minister for the Environment may grant an extra two years for this process.

In some circumstances, the Committee can provisionally declare a species to be 'endangered' or 'critically endangered' in NSW, without going through the public consultation process. The process is described in Part 4, Division 4 of the BC Act. A determination for provisional listing on an emergency basis can only be made if the species:

- is believed on current knowledge to be native to NSW, even though it was not previously known to have existed in NSW, or
- is subject to an immediate and significant threat of extinction, or
- was presumed to be extinct or extinct in the wild but has been rediscovered.

After provisional emergency listing the Committee must place a preliminary determination on display for public consultation and must make a final determination about the species within two years of the date of the provisional listing.

Question 2: What is the likely conservation status of the new species should an emergency listing be made?

Answer 2: A determination of the conservation status of the new species is a matter for the Commonwealth and NSW Threatened Species Scientific Committees. Whether it is given a threatened conservation status, or not, will be based on such factors as its currently known restricted range (calculated by extent of occurrence and area of occupancy); lack of records from protected tenure (e.g., NSW National Park estate); and key threats, such as land clearing and fragmentation of habitat.

If the species was given a provisional emergency listing under the BC Act then its status would either be 'endangered' or 'critically endangered'. If it were given 'vulnerable' status then it would go through the standard listing process that includes public consultation.

Question 3: What potential conditions could be recommended to the Independent Planning Commission to ensure impacts on the species are managed appropriately? This includes a review of MACH's suggested approach to updating the current draft consent conditions.

Answer 3:

BCD recommends that impacts to the habitat for *Delma vescolineata* are offset in accordance with the Biodiversity Assessment Method, because it may be listed as a threatened species under the BC Act in the future. This will mean removing the rows for *Delma impar* in Table 7 'Biodiversity credit requirement – Project excluding Northern Link Road' in draft condition B52 and in Table 8 'Biodiversity credit requirement –Northern Link Road' in draft condition B53'

BCD does not know what conservation status *Delma vescolineata* may receive when listed under the BC Act. As MACH has identified, threatened species in the BC Act have one of three biodiversity risk weightings in the Biodiversity Assessment Method Calculator (BAM-C), which are based on the threat status and 'level of biodiversity concern'. *Delma vescolineata* is not currently listed as a threatened species and so is not within the BAM-C's linked databases, however the credit obligation for impacts to the species can be estimated using the area of habitat for *D. impar* affected by the project and applying the three different biodiversity risk weightings in Equation 2 'Determine the number of fauna species credits, or flora species credits required for the impact of development, activity, clearing or biodiversity certification'. This equation is presented in Section 10.1.3 'Calculate the required species credits for direct impacts on candidate species' in the BAM 2020 manual.

BCD has reviewed 'Table X Biodiversity credit requirement alternatives – Legless Lizard *Delma vescolineata*' from MACH in your letter and agrees that the *Delma* credits for the biodiversity risk weighting of 1.5 for all components of the project are correct. They come from the Revised Biodiversity Development Assessment Report for the project dated June 2021. BCD also agrees that

the estimated credits for the biodiversity risk weightings of 2 and 3 are correct, using Equation 2 in the BAM 2020.

BCD recommends that some of the offset obligation for impacts to this species could be met by funding a conservation strategy for the species under the Saving our Species program. This is because little is known about the species and its conservation needs such that land based offsets made not be sufficient to mitigate impacts. Based on the information available to date it is apparent that further surveys and research are needed to effectively manage and protect the species in the wild. This could be effectively achieved through the funding of a PhD scholarship (or similar) through the University of Newcastle to undertake widespread surveys, refine survey methods and provide further information on the species management needs. Estimated costs for the funding of a PhD scholarship are \$250,000. Clause 6.2 (2)(cc) of the Biodiversity Conservation Regulation 2017 allows for the funding of a biodiversity conservation action that would benefit the relevant threatened species to the equivalent cost of acquiring the required like-for-like biodiversity credits.

BCD does not support the proposed 12-month limit suggested by MACH for when impacts to this species must be offset. This is because of the uncertainty about if, and when *D. vescolineata* may be listed as a threatened species. Instead, BCD recommends a two-year period from the date of any consent is applied to allow for uncertainties in the consideration for listing.

If you have any questions about this advice, please contact Robert Gibson, Senior Regional Biodiversity Conservation Officer, via huntercentralcoast@environment.nsw.gov.au or [REDACTED].

Yours sincerely



STEVEN CRICK
Senior Team Leader Planning
Hunter Central Coast Branch
Biodiversity and Conservation Division

11 August 2022