

Reply to: Georgina Woods  
NSW Coordinator  
PO Box 290  
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21 September 2018

The Hon Melissa Price  
Minister for Environment  
PO Box 6022  
House of Representatives, Parliament House  
Canberra ACT 2600  
by email: [Melissa.Price.MP@aph.gov.au](mailto:Melissa.Price.MP@aph.gov.au)

Dear Minister,

**RE: Request for reconsideration of decision under s78 of the EPBC Act 1999**

Further to our letter of 3 September, we are writing with a formal request under s78A of the *EPBC Act 1999* that you reconsider your referral decision on the Bylong Coal Project (EPBC 2014/7133), made on 12 March 2014.

Section 78 1a) provides the Minister with a limited power to vary or substitute referral decisions on the basis of substantial new information. Specifically, it allows that:

**Reconsideration of decision**

Limited power to vary or substitute decisions

*(1) The Minister may revoke a decision (the **first decision** ) made under [subsection](#) 75(1) about an [action](#) and substitute a new decision under that [subsection](#) for the first decision, but only if:*

*(a) the Minister is satisfied that the revocation and substitution is warranted by the availability of substantial new information about the [impacts](#) that the [action](#):*

*(i) has or will have; or*

*(ii) is likely to have;*

*on a [matter protected](#) by a provision of Part 3; or.....*

S78A allows third parties to request the reconsideration of a decision, as follows:



## **Request for reconsideration of decision by person other than State or Territory Minister**

(1) A person (other than a Minister of a State or [self-governing Territory](#)) may request the Minister to reconsider a decision made under [subsection](#) 75(1) about an [action](#) on the basis of a matter referred to in any of [paragraphs](#) 78(1)(a) to (ca).

Note: [Section 79](#) deals with requests for reconsideration by a Minister of a State or [self-governing Territory](#).

(2) A request under [subsection](#) (1) must:

- (a) be in writing; and
- (b) set out the basis on which the person thinks the decision should be reconsidered; and
- (c) if the regulations specify other requirements for requests under [subsection](#) (1)–comply with those requirements.....

The Bylong Coal Project is proposed by KEPCO Bylong Australia Pty Ltd to develop a coal mine in the Bylong Valley, north-east of Mudgee. KEPCO proposes to use both open cut and underground mining methods to extract up to 6.5Mtpa of thermal coal for 25 years<sup>1</sup>.

The Bylong proposal adjoins the Wollemi National Park which is part of the Greater Blue Mountains Area World Heritage Area (GBMWA). The Greater Blue Mountains World Heritage Area is made up of eight conservation reserves across a million hectares of spectacular sandstone plateaux, escarpments and gorges dominated by temperate eucalypt forest. Attachment 1 to this letter provides a copy of the project map provided by KEPCO in their referral documents.

In the referral decision made on 12 March 2014, the proposed action was identified as a controlled action. However, there were only two controlling provisions identified: listed threatened species and communities, and a water resource in relation to coal seam gas development or large coal mining development. World Heritage properties was not considered a controlling provision.

In its referral, KEPCO acknowledged that potential indirect impacts to the GBMWA could occur, including through ‘*alteration to hydrological regimes surrounding the project boundary due to underground mining effects.*’ However, it then blithely concludes that World Heritage values are not a controlling provision for the project without providing any evidence for reaching that conclusion.

However, new information has recently come to light about the potential impacts of the proposed Bylong coal mine on the GBMWA.

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<sup>1</sup> See for example, the Development Application for the project dated 22<sup>nd</sup> July 2015  
<https://majorprojects.accelo.com/public/a34b3bd446ae427027bbe55c0b90bc17/Bylong%20Coal%20Project%20Application%20Form.pdf>



This new information includes:

1. Regional modelling of the hydrological impacts of mining contained in the Bioregional Assessment for the Hunter sub-region of the Sydney Basin bioregion, which was conducted by the Department of the Environment and Energy, Bureau of Meteorology, CSIRO and Geoscience Australia and was published in June 2018;
2. Noise modelling contained in the Environmental Impact Statement produced by KEPCO, published in September 2015;
3. Heritage assessments undertaken or commissioned by the Heritage Council of NSW and the NSW Planning Assessment Commission (now Independent Planning Commission), with specific reference to
  - a. Heritage Council meeting minutes of February 2018 which discuss a paper prepared for them about the heritage issues at stake as a result of the mine, including World Heritage elements.
  - b. A paper prepared for the Heritage Council and discussed at its February 2018 meeting, subsequent report prepared by a sub-committee of the council and provided to the NSW Department of Planning and Environment, which is not yet published.

At the same time, expert research has revealed the negative indirect impact that five other coal mines are now having on the GBMWhA.

### **New Information – Bioregional Assessment**

For the Hunter subregion, the Bioregional Assessment found that *‘There are 137 km<sup>2</sup> of the Greater Blue Mountains Area World Heritage Area within the zone of potential hydrological change in the Hunter subregion’* from new mining proposals<sup>2</sup>, and the maps they provide show that the vast majority of this is in Wollemi National Park and is likely to occur as a result of the proposed Bylong coal mine which is planned for an area adjoining the Park.

Attachment 2 to this letter provides the relevant map from the Bioregional Assessment outlining the extent of the potential hydrological changes predicted in the GBMWhA. This identifies a large area of the GBMWhA adjoining the eastern edge of the Bylong project as potentially experiencing hydrological change.

With regards to the likelihood and significance of the predicted impact, the Bioregional Assessment identified that Wollemi National Park is an asset that is *“more at risk of hydrological changes”* (Impact and Risk Analysis page 186) which is defined as *“those assets associated with higher probabilities of larger hydrological changes”*. This includes areas of forested wetland in Wollemi National Park that are identified as groundwater dependent ecosystems.

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<sup>2</sup> Herron NF, Macfarlane C, Henderson BL, Post DA, O’Grady A, Rachakonda PK, Wilkins A, Peeters L, Dawes WR, McVicar TR, Hosack G, Ickowicz A, Hayes KR, Dambacher J, Barry S, Brandon C, Zhang YQ, Crosbie R, Viney NR, Sudholz C, Mount R, Tetreault-Campbell S, Marvanek S, Buettikofer H, Gonzalez D, Crawford D, Schmidt RK and Lewis S (2018) *Impact and risk analysis for the Hunter subregion. Product 3-4 for the Hunter subregion from the Northern Sydney Basin Bioregional Assessment*. Department of the Environment and Energy, Bureau of Meteorology, CSIRO and Geoscience Australia, Australia.  
<http://data.bioregionalassessments.gov.au/product/NSB/HUN/3-4>



The “zone of potential hydrological change” identified in the Bioregional Assessment combines “the area with at least a 5% chance of exceeding 0.2 m drawdown due to additional coal resource development, and the area with at least a 5% chance of exceeding changes in specified surface water characteristics that arise due to additional coal resource development.” (Section 5 Outcome Synthesis). We believe this indicates that significant impact is considered ‘likely’.

Specific values of the World Heritage Area are also highlighted by the Bioregional Assessment as experiencing impact as a result of this change. There is 134km<sup>2</sup> of the Blue Mountains Important Bird Area in the affected zone (see Impact and Risk Analysis page 182-3). There is also habitat for several EPBC listed species, including Spotted tailed Quoll habitat (see Impact and Risk Analysis page 180) and Swift parrot habitat (see Impact and Risk Analysis page 179). There is also an EPBC listed plant, *Philothea ericifolia*, with habitat in the affected area of Wollemi National Park.

The Assessment is clear that the limitations of its work means there may be further impact not identified “Given the limited interpolation from surface water modelling results to the wider stream network, it is possible that there are other assets that are ‘more at risk of hydrological changes’ associated with potentially impacted streams that have not been identified.” (Impact and Risk Analysis page 177).

The purpose of the bioregional assessment was to provide regional scale modelling to identify risks, and the next step identified by the assessment was to apply local-scale modelling to better inform planning decisions (Section 5 Outcome Synthesis). We believe that given the results of this regional model, finer scale assessment of the likely impacts on the GBMWA is now required.

### **New Information – Noise Assessment**

The noise assessment conducted for KEPCO’s Environmental Impact Statement also provides new information which raises concerns about impacts on the GBMWA from the Bylong coal mine. The noise contours produced for the Noise Assessment in the Environmental Impact Statement by KEPCO indicates incursion of noise of between 35-40 dB(A) into Wollemi National Park in the day and night<sup>3</sup>.

To set project noise limits, the Noise Assessment applied the “amenity criteria” under the Industrial Noise Policy (2000) criteria for “passive recreation areas” which is 50-55 dB(A), and therefore did not find a significant impact on Wollemi National Park. But this criteria is for assessing the impact of noise on people using National Parks, not wildlife.

The Ecological Assessment of the EIS admitted that “The noise created by the construction and operation of the Project is likely to affect native species and affect the value of the habitats that remain” (EIS Appendix J 6.17). But there is no assessment that quantifies this impact, and its significance is dismissed by the proponent in the EIS. Without providing any

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<sup>3</sup> Bylong Coal Project, September 2015. *Environmental Impact Statement*. Appendix Q E5-E10. <https://majorprojects.accelo.com/public/1b9dbd2bf27cf6d3f2aa6380578f2e9e/29.%20Bylong%20Coal%20Project%20EIS%20-%20Appendix%20Q%20Noise%20and%20Blasting.pdf>



evidence, the EIS stated that the impacts from noise emissions would be *“likely to be localised close to the active mining area and are not likely to have a significant, long-term, impact on wildlife populations.”* (Appendix J 6.17). There is no discussion of the impact on noise on the wildlife of the Wollemi National Park and the Greater Blue Mountains World Heritage Area.

### **New Information – Heritage Assessment**

There is also new information available on the risks which the Bylong coal mine poses to the heritage values of the area, including the World Heritage area. At its meeting on [5<sup>th</sup> October 2016](#), the NSW Heritage Council State Heritage Register Committee considered an Interim Heritage Order and State Heritage Register nomination for the properties on which the Bylong coal project is proposed to occur. The Committee concluded that *‘an independent review to investigate significance’* was required.

The NSW Planning Assessment Commission (PAC), which is tasked with considering approval of the Bylong coal project under the NSW Environmental Planning and Assessment Act 1979, then commissioned an independent review of the heritage significance of the properties. After receiving the review report, the PAC concluded in its [July 2017 Assessment Report](#) for the Bylong Coal Project that the *‘properties have greater heritage significance than has been previously documented by the applicant’*. The PAC further noted that KEPCOs *“assessment of the values of, impacts to and mitigation measures for the setting of the properties, which is currently part of the proposed disturbance area, is largely absent”*.

They went on to state that *“The importance of the landscape setting is moreover elevated by the value placed on it by the community, and the designation of a Bylong Landscape Conservation Area by the National Trust. As the natural beauty of the area is widely recognised, the extent of its interruption by the project requires evaluation”*

Following the PAC report, on the [4<sup>th</sup> October 2017](#), the Heritage Council of NSW resolved to:

- *“Undertake a heritage assessment of Tarwyn Park and the Bylong Valley as a cultural landscape and assess significance value.....*
- *The heritage assessment will be used to provide advice to DPE and the PAC regarding the KEPCO Bylong Coal Project and to inform the Heritage Council regarding the potential inclusion of the valley, including Tarwyn Park and Iron Tank, on the State Heritage Register”*.

Whilst the heritage assessment noted above has not yet been publicly released, at its [February 2018 meeting](#) the Council discussed a number of issues associated with it and noted that the *‘Significance of the site’s proximity to the western side of the World Heritage Listed Blue Mountains was raised’*. The Council also noted that *“The Aboriginal cultural context is fundamental and needs more consideration. The forms discussed are significant to the Wiradjuri people and cutting in to them could be extremely significant”*.



This new information indicates substantial risks to the aesthetic values of the World Heritage area and to the heritage significance of the entire landscape where the Bylong coal mine is proposed adjoining the GBMWH. We ask that you access the paper prepared for the Heritage Council and discussed at its February 2018 meeting, and a report prepared subsequently by a sub-committee of the council and provided to the NSW Department of Planning and Environment so that the risk this mine poses to World Heritage values can be fully assessed and properly considered by the Federal Environment Minister under the EPBC Act.

### **New Information – Other Mining Impacts on the GBMWH**

In addition to this, further new information has come to light about the negative impacts of five other coal mines on the GBMWH, highlighting serious cumulative and indirect impacts that need to be properly considered.

It is notable that the most recent [state of conservation report](#) available on the World Heritage Committee's website for the GBMWH states that mining and surface water pollution are particular threats to the World Heritage Area. However, the last report is from 2004, and it appears that Australia's reports on the site are well overdue, given we are required to submit a periodic report every six years. This raises major concerns, particularly in light of the number of coal mining projects currently causing indirect impacts to the site and the threat of the Bylong coal project. We note that after the 2004 report, the World Heritage Committee [adopted a decision](#) encouraging '*the State Party to prevent any developments that could have adverse effects on the World Heritage property*'. We contend there is no doubt that the Bylong coal mine will have adverse effects on the property.

We summarise the new information available now on the impacts of five existing coal mines on the GBMWH below. They are as follows:

1. The Thirlmere Lakes are a chain of five natural freshwater lakes in the eastern part of the GBMA, near the town of Thirlmere. Two recent research papers have highlighted the likely link between nearby underground coal mining and the drying up of the Thirlmere Lakes, with significant implications for the ecological character of the site<sup>4</sup>. For at least 50 years, up to about 2008, the lakes were used for recreation by the community; including swimming, water skiing and canoeing. Then the water levels started to drop rapidly, and most of the lakes have been effectively dry since about 2011<sup>5</sup>. The activities of the Tahmoor Colliery, adjacent to Thirlmere Lakes National Park, is posited in this recent research as the likely cause of the loss of water in Thirlmere Lakes. The Colliery completed mining of 29 longwall panels by 2010, the closest only 600m from the lakes. One of the reports concludes that '*the only reasonable scientific conclusion is that extraction of an average of 1200ML/year of*

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<sup>4</sup> Schädler, S. and Kingsford, R.T. (2016). Long-term changes to water levels in Thirlmere Lakes – drivers and consequences. Centre for Ecosystem Science, UNSW, Australia. <https://www.ecosystem.unsw.edu.au/files/Thirlmere%20Lakes.pdf>

<sup>5</sup> Philip Pells and Steven Pells. 2016. The water levels of Thirlmere Lakes – where did the water go, and when will it return? Accepted for publication into IAHR APD 2016: 20th Congress of the Asia Pacific Division of the International Association for Hydro Environment Engineering & Research, August 28 – 31 Colombo, Sri Lanka. [http://www.pellsconsulting.com.au/downloads/Pellsetal\\_Thirlmere\\_IAHR2016.pdf](http://www.pellsconsulting.com.au/downloads/Pellsetal_Thirlmere_IAHR2016.pdf)



*groundwater by the mine since about 1995 has impacted on the water levels in the lakes’.*

2. The Clarence Colliery is permitted to discharge waste water to the upper Wollangambe River, which flows into the GBMWA<sup>6</sup>. Wastewater is generated through underground coal mining operations, coal washing and stockpiling at the mine surface. In 2014, research found that this discharge caused water pollution and ecological degradation in the Wollangambe River<sup>7</sup>. In addition to the regular discharge of water from the Clarence Colliery, in July 2015 more than 2,300 tonnes of coal material escaped from a coal storage area at the Clarence mine and caused significant impacts on the Wollangambe River and the GBMWA<sup>8</sup>. Fine coal particles affected a 10 kilometre stretch of the river, turning the water black in places. The company was prosecuted and found guilty of serious environmental offences<sup>9</sup>.
3. The Springvale coal mine was given approval to extend its operations in 2015, including allowing the mine to continue to discharge large amounts of mine water into the Cocks River, which flows into the GBMWA. The approval allowed the proponent, Centennial Coal, to extract 4.5 million tonnes of coal from the Springvale mine every year for a further 13 years. It permitted millions of litres of highly saline mine water to be discharged every day into the Cocks River<sup>10</sup>. Water discharged from the mine also contains nitrates, phosphates, zinc, nickel and other contaminants<sup>11</sup>. A legal challenge against the approval argued that it was unlawful because the decision maker could not be satisfied the development would have a ‘neutral or beneficial’ effect on water quality in the catchment. The challenge was successful on appeal<sup>12</sup>, but the NSW Parliament passed a new law to retrospectively validate the original approval<sup>13</sup>.
4. In the north of the GBMWA, the South Bates extension of the Wambo coal mine in the Hunter Valley (EPBC ref 2016/7816) consists of seven new longwall panels approved under the EPBC Act in May this year, one of which will come within 120m of the Wollemi National Park in the northern end of the Greater Blue Mountains World Heritage Area. There are eight escarpment cliffs associated with the National Park ranging in length from 20 to 200 metres that are within 300 metres of the longwall operations. The company has admitted that some of these could experience cliff instability as a result of the new longwalls.<sup>14</sup>

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<sup>6</sup> Belmer, N., Tippler, C., Davies, P., and Wright, Ian. 2014. Impact of coal mine waste discharge on water quality and aquatic ecosystems in the Blue Mountains World Heritage Area. [https://www.bluemountains.org.au/documents/campaigns/wollangambe/7ASM-67%20Belmer%20et%20al%20%20Coal%20mine%20\(Final%2025%20July%202014\).pdf](https://www.bluemountains.org.au/documents/campaigns/wollangambe/7ASM-67%20Belmer%20et%20al%20%20Coal%20mine%20(Final%2025%20July%202014).pdf)

<sup>7</sup> Ibid

<sup>8</sup> Environment Protection Authority v Clarence Colliery Pty Ltd; Chief Executive, Office of Environment and Heritage v Clarence Colliery Pty Ltd [2017] NSWLEC 82 (14 July 2017) <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWLEC/2017/82.html>

<sup>9</sup> Ibid

<sup>10</sup> [https://www.edonsw.org.au/springvale\\_mine\\_extension](https://www.edonsw.org.au/springvale_mine_extension)

<sup>11</sup> [https://www.edonsw.org.au/springvale\\_mine\\_extension](https://www.edonsw.org.au/springvale_mine_extension)

<sup>12</sup> <https://www.caselaw.nsw.gov.au/decision/597ec259e4b074a7c6e1780e>

<sup>13</sup> [https://www.edonsw.org.au/changes\\_to\\_water\\_protections\\_hard\\_to\\_swallow](https://www.edonsw.org.au/changes_to_water_protections_hard_to_swallow)

<sup>14</sup> See Peabody’s Land Management Plan

<https://peabodystorage.blob.core.windows.net/assets/files/operations/australia/wambo/sb%20lw11-16/appendix%20b%20-%20land%20management%20plan.pdf>



5. In February this year, the NSW Independent Planning Commission granted consent to re-open the Invincible Colliery with an expanded open cut operation called Southern Extension. This will bring open cut mining to within 210m of the pagoda rock formations of Ben Bullen State Forest.<sup>15</sup> Though not part of the World Heritage Area, Ben Bullen is contiguous with it and the mine will mar the aesthetic values of the forest and impact on biodiversity.

### **Recommendation**

We believe this new information satisfies the requirements of s78 1a of the *EPBC Act 1999*.

It is clear that:

1. The Bioregional Assessment of the Hunter subregion has identified substantial new information that the Bylong coal project is likely to have a significant impact on the GBMWhA due to potential hydrological impacts.
2. Noise assessments conducted for the EIS indicate that there will be noise impacts that affect wildlife in the GBMWhA.
3. Heritage assessments commissioned by the PAC and considerations by the Heritage Council of NSW have identified substantial new risks to the landscape heritage values of the site, including issues associated with the GBMWhA.

These impacts are particularly significant in light of the five other coal mines that are leading to negative impacts on the GBMWhA.

**In light of this new information, we are asking you to reconsider the decision made under s75 1) for the Bylong project and to amend the decision to make World Heritage properties a controlling provision. This should then trigger a detailed assessment of the likely impacts of the project on the GBMWhA.**

We would also recommend that Australia acts urgently to produce an updated state of conservation report for the GBMWhA which thoroughly outlines and properly characterises the extensive risks posed to it by the coal mining projects outlined above.

We would appreciate a prompt response to the concerns raised in this letter.

Yours sincerely,

Georgina Woods

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<sup>15</sup> NSW IPC Determination Report. February 2018 [http://ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2017/11/invincible-colliery-southern-extension-modification-07\\_0127-mod-5/departement-of-planning-and-environments-assessment-report/assessment-report.pdf](http://ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2017/11/invincible-colliery-southern-extension-modification-07_0127-mod-5/departement-of-planning-and-environments-assessment-report/assessment-report.pdf)



## Attachment 1



BYLONG COAL PROJECT



Locality Plan

**FIGURE 1**



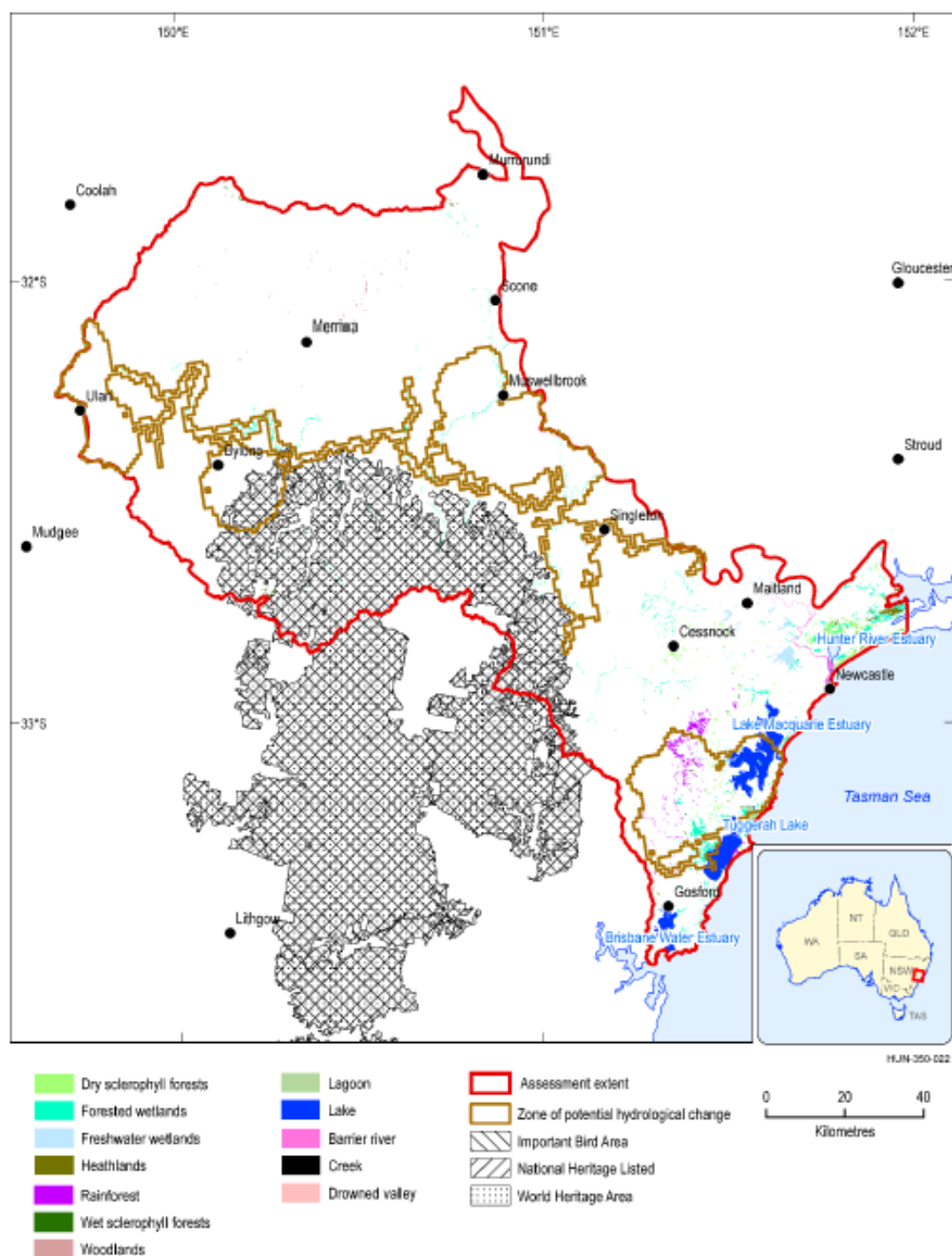


Figure 74 Distribution of selected National Heritage-listed, World Heritage-listed and the Important Bird Area assets associated with the Greater Blue Mountains Area in the zone of potential hydrological change, overlaid with groundwater-dependent ecosystem (GDE) and coastal lakes and estuaries landscape classes

Data: Bioregional Assessment Programme (Dataset 4, Dataset 6, Dataset 7, Dataset 8, Dataset 9)