



UNCLASSIFIED

To Minister for the Environment

From Director-General *5/3/15*
Executive Director, Environment. *Done 4/3/15*

Subject Minister Hodgkinson correspondence regarding yabby fishing in Googong Dam.

Critical Date The NSW Government "caretaker conventions" take effect on 6 March 2015. It is not anticipated that this matter will be limited by the caretaker conventions however the Minister may choose not to sign correspondence in this time.

Purpose

1. To provide advice and a response to recent correspondence from the NSW Minister for Primary Industries, Katrina Hodgkinson MP, regarding yabby fishing in Googong Dam.

Background

2. On the 26 November 2014, you wrote to the NSW Minister for Primary Industries, Katrina Hodgkinson MP, requesting a reversal of the NSW Government decision to allow the use of yabby traps in Googong Dam.

3. Ministerial Brief (14/26148) (Attachment A) outlines the concerns and rationale for requesting the NSW Minister to rescind her decision. These can be summarized as follows.

4. Water quality and associated health risks. Icon Water is concerned that the revised fishing rules allowing the use of yabby traps, and the possible associated practice of baiting, has the potential to increase the level of pathogenic microorganisms. This is the primary risk to be controlled in order to provide safe drinking water.

5. Increased operational costs. The Territory and Municipal Services Directorate (TAMS) is concerned that the revised fishing rules have the potential to spread viruses through fish stock, increase maintenance costs due to additional activity and increase compliance costs, as TAMS rangers are responsible for enforcement of recreational fishing rules.

6. Googong lease. Ministerial Brief (14/26148) outlines the complex legislative and policy framework covering Googong Dam. The pertinent points are that in 2008 the Commonwealth leased Googong Dam to the ACT Government for a period of 150 years. Section 5.2 of the lease requires the preparation of a Land and Conservation Management Plan (Googong Foreshores Plan of Management 2014). The Googong Dams Act, the lease and the management plan are consistent in their objects that the prevention of water pollution is the highest priority of values. The lease (Clause 4.1(e)) and management plan s5.3 are specific that the management plan

Performance Assessment

DUE DATE:/...../..... DATE RECEIVED:...../...../.....

SATISFACTORY ☐UNSATISFACTORY ☐

According to criteria specified in ACT Government Policy Performance Measures

Signature / ... / ...

should maintain the established types and patterns of recreational use at Googong foreshores as per the date of signing of the lease (2008).

Issues

7. Lack of intergovernmental consultation. Minister Hodgkinson's reply refers to "...extensive consultation..", "...relevant staff of your department were specifically consulted.." and "...no objection to the proposal being received from the ACT Government during the consultation phase". There is limited information available regarding the consultation strategy for the Bag and Size Limit Review however TAMS, Icon Water and the EPD all confirm that they did not receive formal notification of the proposed changes nor were they offered any formal briefing sessions. The only evidence of specific staff consultation appears to be a phone call at an officer level that included a general catch-up conversation on a number of issues.

8. Water Quality and associated health risks. Icon Water has reiterated its concerns regarding water quality. See email response at Attachment B. In particular, concerns are:

- The consequence of pathogenic contamination in potable water is serious, realistic and may result in hospitalisation and potential death.
- Icon Water employs a multi-barrier approach to the water supply chain in which the first step is catchment management. Icon provides considerable resources in understanding and controlling risk across the supply chain and views the introduction of yabby nets as an additional, and as yet, unassessed risk.
- Icon Water has over the last 5 years worked with local landholders to raise the awareness of pathogenic contamination. A comprehensive audit and rectification program of all onsite sewage management systems in this catchment has been completed. More than 145 landholders have undertaken training and industry accredited education programs. Landholders have been funded to fence cattle out of creek lines through 10 year contractual arrangements. Restoration and bank stabilisation works have also been conducted in this catchment. The proposed action to expand yabby fishing is in conflict with the intent of these programs.

9. Googong Lease. EPD and Icon Water are of the opinion that the proposed rule change is an additional type and pattern of recreational use and therefore contrary to the Googong lease. A fact sheet titled "*Changes to recreational salt water and freshwater fishing rules*" on the NSW Fisheries website states "...minor rule adjustments will be made that provides additional fishing opportunities for recreational fishers, by allowing the use of hoop nets (five per person) to take yabbies in the three additional impoundments."

10. Options

Option One.

The Bag and Size Limit Review clearly did not include adequate consultation with materially affected stakeholders, being Icon Water and TAMS. The possible impact of the rule changes is contrary to the objectives of the Googong Dam Act, Googong Lease and the Googong Foreshores Management Plan. There may be a case that the recreational fishing rule change was *not* made with due legal process. Advice is currently being sought from the ACT Government Solicitor on this matter.

Option Two.

Both Icon Water and TAMS are unable to estimate the extent to which they may be affected as both organisations contend that they are not experts in recreational fishing and do not have sufficient data to ascertain the level of risk. Icon Water, however, maintains that the possible consequences to human health are substantial.

The ACT and NSW Memorandum of Understanding for Regional Collaboration (MoU) outlines a process for dispute resolution which states that in the case of a dispute, the respective governments will act expeditiously to resolve the dispute initially at an officer level, then head of agency, then Minister and finally at a First Minister level.

In accordance with this provision, EPD will work in consultation with Ms Sara Burns, Senior Manager CMTEDD and the officer leading the revision of the MoU, to request the establishment of an inter-jurisdictional officer level working group to undertake a risk assessment to confirm, or otherwise, the NSW Government conclusion that *"...it does not believe that yabby fishing causes a high level of risk to the ACT water supply."*

The outcome of the risk assessment, and advice from the ACT Government solicitor, will inform a decision on any requirement to review the Googong lease.

EDP has been in consultation with Icon Water and anticipates that the abovementioned risk assessment will be completed by the end of March 2015.

Greens/Labor Parliamentary Agreement

11. Not applicable.

Financial Implications

12. There is the potential for significant financial impact due to increased management and compliance costs for TAMS and water quality costs to Icon Water.

Directorate Consultation

13. Ministerial Brief (14/26148) outlines the previous consultation with TAMS.

External Consultation

14. Icon Water has provided additional information (Attachment B) to reiterate its position. Icon Water has confirmed that it would be satisfied with Option Two above.

15. The Commonwealth Finance Department has been contacted regarding their interpretation of the Googong Lease but has not yet provided a response.

Benefits/Sensitivities

16. This is a sensitive issue as the recreational fishing rule change was brought into effect without formal reference to the ACT. This action is not in the spirit of the ACT and NSW Memorandum of Understanding for Regional Collaboration (currently under review), nor the ACT and Region Catchment Management Coordination Group (currently being established).

Media Implications

17. The issue is likely to attract media attention pending the results of the proposed risk

assessment. A communication strategy will be prepared at that time for your consideration.

Recommendation

That you:

- Note the information contained in this brief.

AGREED/NOT AGREED/PLEASE DISCUSS

- agree to Option Two.

AGREED/NOT AGREED/PLEASE DISCUSS

- agree to sign the attached letter at Attachment C.

AGREED/NOT AGREED/PLEASE DISCUSS

Simon Corbell MLA

17.3.15

Minister's Comments

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