



BirdLife Australia Statement to the Planning Assessment Commission regarding the Newcastle Coal Infrastructure Group Coal Export Terminal Modification 2 Kooragang Island, Newcastle (MP06_0009 MOD2)

7th May 2013.

BirdLife Australia, the peak national ornithological body, is a highly respected, science-based, not-for-profit conservation organisation. We have specialised avian knowledge and the commitment of our Australia-wide network of 10,000 members, and more than 25,000 supporters. We thank the Commission for the opportunity to provide our expert advice at this meeting.

BirdLife Australia is strongly opposed to the Newcastle Coal Infrastructure Groups proposed rail flyover modification because it is likely to have a significant impact on migratory bird species by destroying important habitat at Swan Pond, a site of **International** significance.

I would first like to talk about the significance of the site, so that the Commission is aware of its uniqueness and importance to migratory shorebirds, before outlining BirdLife's concerns with the Environmental Assessment Report.

Significance of the Site

Swan Pond supports thousands of waterbirds. It is a key component of the Hunter Estuary system, which is the only site in NSW that has been designated as internationally important for migratory shorebirds¹. The Hunter Estuary is also an internationally recognised Important Bird Area (IBA). An IBA is a site that meets internationally agreed criteria, based on the occurrence of key bird species that are vulnerable to global extinction or whose populations are otherwise irreplaceable. Australia is signatory to several international agreements which underpin our obligations to protect the nine migratory shorebird species that occur on Swan Pond. As well as being listed under the EPBC Act, two of these species (The Black-tailed Godwit and Curlew Sandpiper) are also listed under the NSW Threatened Species Conservation Act 1995 as Vulnerable and Endangered respectively. Swan

¹ Bamford M, Watkins D, Bancroft W, Tischler G and Wahl J. 2008.



Pond also supports more than 1% of the East Asian Australian Flyway population of Sharp-tailed Sandpiper, making it an internationally important site for this species. Although they are not yet listed under the EPBC Act, The 2010 Action Plan for Australian Birds nominates a further three² of these species to be listed as vulnerable to extinction. The Hunter Estuary functions as a single, highly interactive ecological system. The ecosystem is already severely impacted by commercial development and incremental loss of habitat.

The proposed rail flyover modification will remove an irreplaceable area of important migratory shorebird roosting and foraging habitat within Swan Pond. In fact it could not be worse placed. The area of Swan Pond that will be destroyed has biophysical characteristics found nowhere else within the Hunter Estuary: a shallow shoreline with intermittent mudflats according to tidal conditions particularly favoured by migratory shorebirds and many species of waterfowl. Swan Pond is **the only brackish wetland of its type remaining on the Ash Island/Kooragang Island complex** and indeed in the lower Hunter Estuary. What makes Swan Pond **so** unique is that its ecological attributes are governed by the limited tidal transfer which occurs only during the high part of the tidal cycle. As a result, mudflats are exposed for longer periods than at most other areas of the Estuary providing high-quality roosting and tidal foraging habitat. The importance of Swan Pond has been increased by the **progressive destruction** of habitat in other areas of the Hunter Estuary. The foraging habitat at Swan Pond is particularly important immediately prior to migration when the shorebirds must rapidly accumulate fat reserves to fuel long-distance flight. If they do not accumulate this fat, they cannot undertake the thousands of kilometres journey to their breeding grounds in the northern hemisphere. The decline of the smaller short-legged shorebird species in the Hunter Estuary during recent decades highlights the extent to which these non-tidal and tidal areas have disappeared.

The cumulative impact of the destruction of small areas of habitat of a similar nature to Swan Pond is reflected by the alarming decline in the Hunter.

- The Black-tailed Godwit is listed as Vulnerable with visiting numbers now less than 25% of the counts in the 1970s and 1980s.
- The Bar-tailed Godwit, Eastern Curlew & Common Greenshank show a 50%

² Bar-tailed Godwit, Far Eastern Curlew, Red Knot



decline in the maximum numbers over the past 13 years.

- In 2011, the Curlew Sandpiper was listed as Endangered due to a 94% decline in maximum annual counts of the New South Wales population between 1982 and 2010.

Comments on the Environmental Assessment Report

With regard to the Director-General's 2013 Environmental Assessment Report, we do not believe that the amendments and additions to the conditions will ensure that "the proposal will be undertaken in a manner that is acceptable to the environment or the Community" as stated in the executive summary on page 3. As evidenced by the community response, in which the overwhelming majority of submissions objected to the modification, as did the two public agencies concerned with environmental matters, on the ground that it will have an unacceptable impact on biodiversity.

We are particularly concerned that on page 17 of the report the Department states that 'the assessment undertaken by the proponent has concluded that the impacts on biodiversity would not be significant and the Department accepts this position'.

BirdLife Australia does not accept this position. Quite simply, the development will result in the destruction of a site of International significance to global biodiversity.

To blindly accept the proponent's position in the absence of expert information is naïve. To continue to accept it despite evidence to the contrary from respected scientists and migratory bird experts, is negligent in the extreme.

Further, on page 17 the report goes on to state that 'The Department considers that ... the impacts are relatively minor when compared to the benefits that the proposal would provide and are able to be offset such that a maintain or improved biodiversity outcome is achieved'.



Firstly, we argue that the impact of destroying a site of international significance and the killing of birds is not a minor thing.

This is especially true when one considered the benefits are a flyover that may or may not be needed to reduce congestion on a rail line. If the flyover was so essential to operations, why was it not included in the original application?

Secondly, we have serious doubts that impacts can be offset such that 'a maintain or improved biodiversity outcome is achieved'. Specification of a raw figure for hectares of compensatory habitat will not, in and of itself, 'offset' the impact of lost habitat. What matters is that any new habitat is equivalent in a functional sense.

Without knowledge of the proposed offset site and its characteristics we are unable to comment on the likelihood of the offset site to provide equivalent habitat in the future. However, what we can comment on is the proposed milestones for implementation. Given that these do not specify that works need to be undertaken to provide habitat for Swan Pond birds **before** the current habitat is destroyed it is extremely unlikely that the conditions will result in a positive biodiversity outcome.

In fact, given that birds using this site will likely die, or at the very least, not be able to fatten up enough to migrate to breeding grounds for several years as a result of the development, it will almost certainly lead to a decline in migratory shorebird numbers. As described earlier, we have already seen that destruction of small areas of habitat of a similar nature to Swan Pond has resulted in the alarming decline of shorebird species in the Hunter.

We argue that, in order to address time lags that will pose a threat to the persistence of the affected populations, compensatory habitat works must be completed before construction proceeds. If development goes ahead before compensatory habitat comes 'on-line' birds will die.



Finally, given that it is likely to be extremely difficult to find or create equivalent habitat in the Hunter Estuary, and the uncertainties and complexities involved in providing true ecological counter-balance to development, we need a mechanism in place to ensure the proponent is truly accountable to the population level effects of this impact. A true offset must provide direct benefit for the populations (not just the species) being affected by the impact, meaning the creation or management of equivalent habitat must fully counterbalance the calculated impact on the populations.

Despite our opposition to the proposed modification, BirdLife is willing to provide expert advice to the Director-General on the updated Compensatory Habitat Ecological Monitoring Plan.

Similarly, if the Commission does approve the modification, we urge you to instruct the Department to add a condition similar to that for the bell frog such that if the offset fails the onus is on the proponent to fulfill its offset obligations.

Specifically we suggest the following revisions to the conditions:

1.6 a) replace '**is being**' with original phrase '**has been**' as per the earlier version.

2.20 b) ii) remove '**within 6 months of construction**' and replace with '**at least 12 months prior to construction**' to ensure habitat is available for individuals to refuel either before or after their international journey.

2.20 i) ii) If December 2014 is the date for the proponent to have completed habitat works, then destruction of the Swan Pond habitat must not occur before December 2015

2.20 i) include new sub-condition similar to the frog condition **2.20 b) i)**

If the offset fails the proponent should be required to find an alternative site to fulfill its offset obligations for the project. (see pg 20 of the EAR).



2.20 include a new condition that the offset must provide direct benefit for the populations (not just the species) being affected by the impact.

BirdLife Australia would also like to table the criteria that need to be met for an offset to be considered a true and valid biodiversity offset. The criteria have been developed with the input of scientists and policy makers with expertise in the field of biodiversity offsets. If the Department is serious about achieving their stated objective of conserving biodiversity, the offset must meet these robust criteria and ensure 'no net loss'. Anything less will amount to the facilitation of habitat destruction at the expense of environmental protection.

In summary, independent published expert advice demonstrates that Swan Pond is a unique site of International importance to migratory shorebirds. The Environmental Assessment Report fails to acknowledge the significant impact the proposed modification will have and is over reliant on the assumption that the proponent will effectively offset this impact.

BirdLife Australia do not believe the conditions in the report are adequate to ensure a maintain or improve outcome. We urge the Commission not to approve the proposed modification as it will destroy a site of international significance and contribute to the decline of a number of listed bird species.

Thank you.

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