

The Sorry Saga of Development Proposals in the Hunter Estuary

Max Maddock
1 March 2004

A Sydney Morning Herald article by Elisabeth Sexton on 24 February 2004 (“Developer sues after giant mill project stalls”) released news on the legal conflict between Austeel and the NSW Government. It reported the possibility of Austeel suing the Government for at least \$500million, claiming damages for hindering the project, alleging fraud and bad faith.

Since then there have been a number of interviews concerning the issues on ABC Radio 2NC Newcastle. Although Morning Show presenter Paul Bevan raised the environmental issues associated with the project, there still has been no real public focus on the seriousness of these issues and the way the government has been avoiding its responsibilities to them.

It was astounding to hear the Lord Mayor in his interview with Paul Bevan on 2NC reiterating the myth that the Project could go ahead without any significant environmental problems. It was indicative of a major lack of understanding of the serious ecological issues involved and of Federal and State legislation requirements governing assessment and management of the proposals. A large section of the community is completely ignorant of the serious and complex nature of the issues. The myth has been perpetrated through Government statements in the media and the failure of the Newcastle Port Environs Concept Plan to elaborate on their significance.

STATUTORY REQUIREMENTS

The relevant legislation consists of:

- Federal *Environment Protection and Biodiversity Conservation Act* (1999), especially those parts concerning threatened species, migratory species, Ramsar sites and international treaties;
- NSW *Protection of the Environment Administration Act* (1991);
- NSW *Environmental Planning and Assessment Act* (1979);
- NSW *Threatened Species Conservation Act* (1995).

The Government’s proposals have violated all of the requirements of the fundamental principles governing the operations of these Acts:

- Ecologically Sustainable Development;
- Conservation of Biodiversity;
- Conservation of Ecological Integrity;
- Prevention of significant negative impact on threatened species, populations, ecological communities or their habitats;
- Prevention of significant negative impacts on the ecological character of wetlands listed under the Ramsar Convention for Protection of Wetlands of International Importance and their catchments;
- Prevention of significant negative impacts on migratory species listed under the EPBC (1999) Act, the Bonn Convention, JAMBA and CAMBA Treaties;
- Application of the Precautionary Principle in decision making; and
- Community consultation.

ECOLOGY

To satisfy statutory requirements, thorough evaluation of the effects of proposals on the **ECOLOGY OF THE TOTAL ECOSYSTEMS** must be carried out. This requires expertise in Ecology and a thorough examination of historical expert studies, reports and databases, as well as recent literature and field assessment.

Evaluation of the ecology of a system does not depend only on simple short-term studies ticking off presence or absence of features on or in the neighbourhood of a specific site. It requires examination through time of a highly complex set of interdependent and interactive physical, chemical and biological processes which extend far beyond arbitrary boundaries drawn on a map.

For example, there is continuous movement by bird species in, out and through estuary sites. Some species have specialised requirements, some are more cosmopolitan and use different sites and different parts of a site at different times. Saving bits of the system in isolation does nothing to support Ecological Integrity.

The estuary ecological system has to be evaluated holistically. As pointed out in the Healthy Rivers Commission Final Report (2003):

- **the properties of natural systems are different from the sum of their constituent parts;**
- **there is ample evidence that attempts to manage the whole by managing each part in isolation are almost certain to fail;**
- **planning must assess the capability of the river to withstand the impacts of inappropriately developed or poorly managed land;**
- **doing small things in many places will not resolve big problems.**

HISTORICAL DEGRADATION

A continuous process of serious loss and degradation of habitat and species decline in the estuary over nearly 200 years has been identified by historical expert reports. Early mistakes can probably be put down to ignorance. This is not a valid excuse now.

In 1983, Moss recommended **treating Hexham Swamp and Kooragang Island as a single ecological unit** as the ideal for maximising the conservation value of the Hunter Estuary. Recent studies, including ones commissioned by the Government, have confirmed that the trend of decline and degradation is still continuing and have identified unsuitable development as a major cause of the problems. Past Governments and the present Government have continued to disregard these warnings.

The Healthy Rivers Commission (2001) gave a dismal report on the health of the Hunter River, blaming **neglect, inadequate inter-department cooperation and poor management, stressing the need for management based on an understanding of key ecosystems and not just ecological components. It reinforced the requirements in the Acts for Conservation of Ecological Integrity.** Fragmentation of ecological systems reduces their capacity to adapt and to recover from losses and degradation. **The inevitable end point of such fragmentation is system collapse and extinction of species.**

The Healthy Rivers Commission (2003) Final Report also stated that:

System based approaches can assist the community to accept the very real limits to which both land and rivers can be pushed.

When the Minister for the Hunter Michael Costa was asked in State Parliament on 14 October 2003 **“what recommendations of the Healthy Rivers Commission Hunter Report has the government accepted, and what funding has been allocated”** he replied that **the Government**

was still thinking about it !! What will it take to get politicians and bureaucrats to accept the need for system-based approaches and acknowledge the **“very real limits”**?

Nobody disputes the need to provide more jobs in the Hunter. However, promotion of industries incompatible with the fragile nature of the ecology of the estuary is highly counterproductive. It is the same old tired recipe for loss and degradation of remaining land of high conservation value, leading to species decline or extinction. To be Economically Sustainable, an industry in, or adjacent to the wetlands of the estuary has to be, at the same time **Ecologically Sustainable**. It must:

- **represent a Wise Use of the Estuary as defined by the Ramsar Convention;**
- **be compatible with ecology of the estuarine system;**
- **not cause further degradation, habitat destruction and species decline;**
- **not push the river system beyond its “very real limits”.**

In its Referrals to the EPBC Act (1999) and in reports in the media, Austeel has demonstrated that it has little concept of the legislation, the Ramsar Convention and environmental issues. There is strong evidence that the Government has either failed to properly evaluate the environmental and legislative constraints and the recommendations of expert reports or has deliberately flouted them. **The proposal should never have been promoted in the first place. The Government strategy of signing an MOU with Austeel and making the promises it did was seriously flawed. It was done without properly assessing the fundamental conditions required for sustainability and provided no hope of delivering its promises without disastrous consequences to the estuary. Two hundred years of neglect and mismanagement has squandered the available ecological capital, leaving no hope of achieving a balance between industry and the environment.**

Examples of Government Claims Compared with the Reality of What it Does

- **COASTAL PROTECTION:** *In a speech to the Brisbane Institute in April 2000 Premier Carr stated that councils have to be forced to take account of wetland zonings and powerful State Departments of Planning are needed to see that they cannot bowl up zoning proposals that contravene the goals of coastal protection. There should be a total ban on canal estates.*

The reality is that zonings compatible with coastal protection in the LEPs of Port Stephens Council for the Tomago Buffer Land and Newcastle City Council for Ash Island, all ecologically sensitive wetland areas, were removed by the government with no consultation with either council or with community organisations. In their place SEPP 74 was “bowled up” to facilitate infrastructure for the movement of raw materials or finished products and port facilities for the proposed steel mill, clearly in violation of coastal protection principles.

The Honeysuckle concrete monstrosity, industries in the Kooragang Industrial Site, dredging the South Arm from an average depth of 1.5m to deepen it to 15 m (in a supposedly natural deep water port !), constructing a South Arm Port near the Tourle St Bridge for large ships, an infrastructure corridor across Ash Island and over the North Arm, a steel mill and other industries at Tomago and excising land near Stockton Bridge from the Ramsar site for industry, will have a cumulative effect of producing a gigantic, ecologically destructive “canal estate” on the banks of an ecologically sterile drain.

- **COMMUNITY CONSULTATION:** *The Newcastle Port Environs Concept Proposal, released in 2003, stated that it was a starting point for a consultation process on which future strategies will be addressed and would set up a template from which a Locality Plan could be fashioned in association with THOROUGH COMMUNITY CONSULTATION.*

The reality is that negotiations with Austeel were conducted in secret from at least 2000 and probably earlier. The community first became aware of the scale of the projects from the media in January 2002. No community consultation was instituted in 2000, as required by the EPBC (2000) Regulations Schedule 6 concerning actions, whether within a Ramsar site or not, that are likely to have a significant impact on the ecological character of the Ramsar site. After 2002, attempts by the community to initiate consultation were rebuffed. Letters and technical submissions to Government were not answered, were shuffled between ministers, or answered by meaningless “bureaucratic speak”. The consultation process set up by the Port Concept Plan was not open and transparent, with no allowable impact on decision-making on the Austeel and associated projects. The SEPP 74 decision was taken without consultation, despite the proclaimed process in the Port Concept document.

In 1999, the Premier’s Department, without explanation or consultation, directed the Kooragang Wetland Rehabilitation Project to withdraw its EIS undertaken for a project proposed for salt marsh regeneration on the Tomago Buffer Land and adjacent Ramsar site. No changes to tidal flow were to be instituted. In 2001, the Premier’s Department refused endorsement for the Hunter Ramsar Committee to include Ash Island in the nomination for expansion of the estuary Ramsar site, again without explanation or consultation.

- **PIECEMEAL DEVELOPMENT PROJECTS: DIPNR Minister Knowles released a media statement on 19 February 2004, in which he attacked the subterfuge used by “a fringe element in the development industry” to by-pass the coastal protection intentions of State Environmental Planning Policy 71 (SEPP 71). They were “splitting projects up and by stealth getting big scale developments approved under the guise of multiple small scale applications”. A loophole in the Policy has been closed to block this type of practice.**

The Government has used the same type of subversive strategy for the development proposals for the estuary. There is significant conflict of interest involved in the Government’s role. It provided the land for the Protech Steel Project, purchased the land for the Austeel Project, signed a MOU with Austeel, the contents of which remain secret, but is known to involve the Government providing the necessary infrastructure such as the Ash Island corridor and South Arm port. It is acting as landholder, sponsor, proponent and ultimate assessor and judge of the EIS process!

Despite inevitable significant cumulative negative impacts on the ecological integrity of the estuary system, violating obligations under the Ramsar Convention, the environmental assessment has been divided into five separate studies – the Protech Steel Mill, the Transmission Line to the Protech Mill, the Austeel Mill site, the Ash Island Corridor and the South Arm Dredging and Port Facilities.

The EIS for the South Arm dredging and port works, released in December 2003, and a statement in Parliament in 2001 by Treasurer Egan, provide clear indication that the Austeel-related components represent an integrated development, with interdependent funding and approval conditions. The EIS failed to adequately assess cumulative environmental effects. It recommended options for disposal of dredge spoil for port works, filling for the Ash Island corridor and the Austeel Tomago site and transport of the spoil across Ash Island to Tomago by a 900mm diameter pipeline. However, it disclaimed any responsibility for assessment of the environmental impact of spoil disposal.

As in the case of the SEPP 71 subterfuges, valid assessment of the impact of the development proposals in the estuary cannot be determined by a series of site-specific EISs for components of the total project, assessed in isolation. The assessment

processes represent worst case examples of the tyranny of small decisions which Minister Knowles is attempting to correct by changes to SEPP 71 legislation.

CONCLUSION

The evidence is overwhelming that the proposed developments will cause major ecological impacts with additional damage to the health of the estuary, likely collapse of the ecological system and further decline or even extinction of threatened species and migratory waders protected under State and Federal legislation, international conventions and treaties.

Approval will ignore an international rebuke to Australia, passed without dissent at the 1996 Ramsar Convention Conference, calling for reconsideration of proposed developments within and in the catchment of Ramsar sites. It will confirm an already strongly held perception that Australia cannot be trusted to carry out its international obligations.

Any form of approval accompanied by statements implying that the developments will have minimal or no significant impacts on the ecology of the estuary and that impacts can be offset by mitigation projects or trade off against habitat rehabilitation or creation projects elsewhere, will represent **ECOLOGICAL FRAUD OF MONUMENTAL DIMENSIONS.**

JOBS AT ANY COST IN PURSUIT OF SHORT TERM FINANCIAL GAIN IS FAR TOO HIGH A PRICE FOR INEVITABLE ECOLOGICAL DEGRADATION.

SHORT SIGHTEDNESS OF DECISION-MAKERS OF THIS GENERATION IN FAILING TO PROTECT NOW WHAT REMAINS OF OUR PRECIOUS NATURAL HERITAGE, WILL BE BITTERLY CRITICISED BY FUTURE GENERATIONS.