

CRITICAL EVENTS AND DEVELOPMENT AFFECTING THE HUNTER ESTUARY SINCE 1970

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During January – February 2002, the community was made aware of proposals for industrial development in the Hunter Estuary by a series of articles in the Newcastle Herald. The proposed developments have the potential to destroy the estuary as a migratory wader habitat and as a Wetland of International Importance listed as a Ramsar site under the Ramsar Convention. They will have serious adverse effects on the complex ecology of the whole of the estuary and associated flood plain wetlands, resulting in changes to flood regime and damage to the fishing industry.

In February 2003, during a pre-election visit by the Premier of NSW to Newcastle a concept plan for development of the port environs of the Hunter Estuary (KBR 2003), with even worse potential impacts, was released. Community consultation on the plan was promised.

This document gives an analysis of historical events and documents relevant to developments and proposals for developments in the Hunter Estuary for the period 1970-2003. A summary of critical landmarks leading up to the recent industrial development proposals and the Newcastle Port Environs Concept Proposal and subsequent events, is given in the Appendix. The list is by no means exhaustive, but provides an insight into critical issues associated with the proposals.

Government Environmental Policies, Acts and Legislation

Both the NSW and Federal Governments have developed a set of key policies, Acts and legislation governing decision making on development proposals in wetland settings. In issues associated with wetlands of international importance, the State Government is bound to comply with the Federal requirements in addition to its own requirements, ensuring **Ecologically Sustainable Development** has been accepted by both governments as the fundamental underlying principle guiding assessment of development proposals. To be ecologically sustainable a development within the estuary must **be compatible with estuarine ecology** and **comply with the “Wise Use” provisions of the Ramsar Convention**.

The controlling requirements are the Federal *Environmental Protection and Biodiversity Conservation Act (EPBC) 1999* and the EPBC Regulations (2000), the *NSW Protection of the Environment Administration Act 1991*, *Environmental Planning and Assessment Act 1997*, *NSW Threatened Species Conservation Act 1995* and Wetlands Management Policy (1998).

In the case of the recent proposals for the Estuary and in the choice of industrial land in the Newcastle Port Environs Concept Plan, State Government has failed to fulfil requirements under:

- obligations in the *EPBC Act 1999* on the Ramsar Convention, migratory species, Bonn Convention, JAMBA and CAMBA Treaties;
- the *NSW Environment Planning and Assessment Act 1997*;
- the *NSW Threatened Species Conservation Act 1995*;
- the EPBC (2000) Regulations Schedule 6 on managing wetlands of international importance;
- the New South Wales Wetland Management Policy (1998);
- the NPWS Plan of Management (1998) for Kooragang Nature and Hexham Swamp Nature Reserves.

Ecological Sustainability

The developments already proposed and the type of development implied in the Concept Plan are clearly not ecologically sustainable. Numerous expert reports have been released which have documented the nearly 200 years of degradation in the ecological health of the estuary. They issued warnings against developments which would cause further degradation and recommended measures to ensure that ecological integrity of the estuary system is restored and maintained. They have been ignored.

The lack of ecological sustainability and impacts on migratory waders, particularly Latham's (Japanese) Snipe, also abrogate obligations under the Sister Wetlands Affiliation Agreement signed in 1994 between Kushiro City in Japan and Newcastle and Port Stephens Councils, Kooragang Wetlands Rehabilitation Project (KWRP), and the Wetlands Centre.

Lack of Community Consultation

There has been no satisfactory open and transparent community consultation concerning the Austeel and associated infrastructure developments, the Newcastle Port Environs Concept Proposal nor State Environmental Planning Policy No. 74 (SEPP 74) gazetted in August 2003.

It has become evident that planning for developments in the Hunter Estuary and the Newcastle Port Environs Concept Proposal has been in train since at least 1999, but has been concealed from the community, with no opportunities for community input. This contravenes the Federal Environment Protection and Biodiversity Conservation Regulations (2000) Schedule 6, Managing wetlands of international importance (i.e. Ramsar wetlands). **Special provision should have been made from year 2000 onwards for “continuing community input” by organisations such as the Wetlands Centre, Hunter Bird Observers Club, Kooragang Wetlands Rehabilitation Project, Professional Fishermen and Recreational Angler organisations.**

The community first became aware of the magnitude of the proposals and the serious nature of the negative impacts on the ecology of the estuary and its catchment from articles in the Newcastle Herald early in 2002. Consequent attempts by concerned community members, wetland experts, conservation organisations, professional fishermen and the Lord Mayor of Newcastle were then made to try and establish meaningful community input.

A Forum initiated by a community member in February 2002, attended by a representative of the Premier's Department and the CEO of Austeel, obtained no satisfactory information addressing community concerns. Meetings organised by the Lord Mayor obtained some information, but the overwhelming impression was that conservation concerns about negative impacts on the ecology of the estuary and the failure of the development proposals to comply with Australia's obligations under international treaties were being discounted.

Many letters by community members and organisations were sent to the Premier and relevant departments. Replies received, some of which are included in the Appendix, avoided dealing with the issues raised. Some disclaimed responsibility, despite the fact that the issues are obviously a matter for a “whole of government approach”, and passed the letters on to other ministers and departments, who have failed to reply. This has also extended to questions raised in Parliament concerning many issues related to the estuary developments. For example, a Question on Notice consisting of 38 part questions was asked on 14 October 2003 in the Legislative Council of the Minister of the Hunter, Michael Costa concerning a range of important issues. His reply was that only part 34 of the question (concerning recommendations in the Healthy Rivers Commission Report) “relates to my portfolio and the answer is: The Government is still considering this report”. Replies to at least 12 letters sent by the Hunter Bird Observers Club were similar to those reported in the Appendix (A. Lindsey pers. comm.).

The Tomago Land is classified as Flood Plain. Any development on that land will require filling to elevate it above flood level, therefore changing Natural Flow and flood regime. This, in turn, will affect the ecological integrity of the adjacent Ramsar site. No flood studies and the required public consultations carried out under the provisions of the NSW Flood-prone Lands Management Policy and the guidelines in the Floodplain Management Manual and no consultations under the requirements of the Federal Environment Protection and Biodiversity Conservation Regulations (2000) Schedule 6 have been undertaken. No EISs for Tomago and associated proposals had been released for public scrutiny until the EIS for the proposed extension of the Port of Newcastle shipping channel (GDH 2003) was released in November 2003.

Until the release of the Port Environs Concept Plan there was no recognition of the requirement for a community consultation process in the planning process. However, the process set up by the Concept Pan was far from satisfactory.

The Port Environs Concept Plan acknowledged the importance of the estuary as a Ramsar site and migratory wader habitat. However, it provided no information on the implications of the State and Federal Acts and International Treaties to enable community members with limited or no relevant knowledge of the issues to make a reasoned judgement for input into the consultation process on the potential consequences. Media reports and inquiries to Planning NSW reveal that the Concept Proposal Community Consultation process carried no weight in relation to Austeel and associated projects.

The Regional Land Management Corporation Board was established to oversee leasing arrangements, development issues, day to day management, EIS processes and remediation measures on 5 industrial sites

adjacent to or very close to the Ramsar site. No people, or organisations with appropriate expertise and interests in wetlands, waterbird ecology, or management of Ramsar wetlands are represented on the Board, despite the statement made during the Premier's visit in February 2003 that a new board would be created to "drive the community consultation" for the concept plans.

The NSW Government, although on record of being in favour of an airport development in the Hunter Region, stated opposition to Kooragang Island as the site because of the need for protection of the Ramsar site and its migratory waders. However, statements in letters of reply to inquiries from community members during 1999 – 2000 (see Appendix) now can be interpreted as pointing to plans for industrial development as a hidden agenda.

Instructions issued by the Premier's Department in 1999 required altering the 1998 EIS for saltmarsh rehabilitation in the estuary to exclude the Tomago Buffer land from the project. This was despite findings that the project was essential for realisation of the Nature Reserve Plan of Management and for fulfilling international treaties, and was recognised by NSW Fisheries as one of the most important efforts for fish habitat in coastal NSW.

This action was followed in 2001 by withdrawing endorsement of Ash Island and Pambalong Nature Reserve from the Hunter Ramsar Committee's program for listing additional estuary wetlands under the Ramsar Convention, on the grounds of "significant issues related to future developments on adjoining land". A geo-technical survey was carried out under the direction of the Premier's Department on the Tomago Buffer Lands. There had still been no community consultation process instituted and the geo-technical survey had been undertaken without the knowledge of Tomago Aluminium.

In August 2003, the Government released State Environment Planning Policy No. 74 – Newcastle Employment Lands (NSW Government 2003), before any results of the community consultation process for the Port Environs Concept Plan had been made public. In doing so, the Government overruled, without consultation, the zonings in the Port Stephens LEP 2000 (KBR 2003, Figure 3.10) and the Newcastle Draft LEP 2003 (KBR 2003, Figure 3.9).

The Plan showed a corridor of width up to 0.7 km. The corridor stretched from about 2 km east of the Tourle St Bridge westwards along the shore of the South Arm of the Hunter River to 4 km west of the bridge and then northwards across Ash Island, over the North Arm to incorporate the Tomago Buffer Land. The land was earmarked for the purpose of a steel-making facility, including earthworks associated with site preparation. The Plan allowed for infrastructure (including bridges, conveyors, railways) and port facilities (including ancillary dredging). The corridor does not coincide with, and is far wider, than the corridor shown in the *EPBC Act 1999* Referral for Austeel. Any development within it is certain to create serious negative impacts on the ecology of the island.

Community consultation has been ignored since the planning process began and is still unsatisfactory. The "ecological capital" of the Hunter Estuary has been progressively destroyed by incompatible industrial development and mis-management over nearly 200 years, and has lost its capacity to achieve any genuine balance. The current proposals represent a continuation and expansion of that process. Destruction of more "green field" land for industry is analogous to "insolvency trading" in a financial capital context. Protecting a few remnant pieces of "ecological components" without complying with the underlying fundamental "ecological functions of key ecosystems" can never achieve genuine balance.

APPENDIX

Some Critical Events Since 1970 Relevant to the Hunter Estuary: Ecological Degradation, Government Secrecy, Warnings and a Few Positive Steps

Max Maddock (30 December 2003)

- 1970s A levee and drain system and associated floodgates were installed in mangrove and saltmarsh habitat in the Tomago area to drain stormwater and protect agricultural land from tidal inundation and flooding. The western half of this land came to be owned by Tomago Aluminium, designated in the Concept Plan (KBR 2003) as port-related industrial land, and the eastern half by National Parks and Wildlife.
- 1971 Australia signed the Ramsar Convention on Protection of Wetlands of International Importance.
- 1971 The floodgates on Ironbark Creek were completed, accelerating the change from a predominantly salt water, to a fresh water regime in Hexham Swamp and starting the process of mangrove dieback upstream in the creek.
- 1971 Stockton Bridge was completed, mangrove forest was destroyed in the process and the bridge footings caused changes in the tidal flow.
- 1972 Kendall and van Gessel (1972) reported that in the 1960s there was an abundance of egret species and Nankeen Night-Herons nesting in mangroves on Kooragang Island. By 1970, there had been rapid decline (60%), with the colony site threatened by reclamation. The colony was then abandoned due to destruction of mangroves (van Gessell and Kendall 1972).
- 1973 The Coffey Report on an inquiry into pollution from Kooragang Island, although set up to focus on pollution issues, was very critical of the lack of planning in the strategy for development on the island and stated:
- The present development of Kooragang Island reflects not only the absence of a comprehensive regional plan, but also a total plan for the island itself. Basically, the Island has developed as a land reclamation project at a rate and fashion dictated by demands for industrial land made from time to time by organisations desirous of establishing there. This was the way it was conceived after the Newcastle Harbour Improvement Act was passed in 1953 and so it has proceeded. The time is now ripe to take a new look at the whole exercise so that future actions will conform to a plan which takes into account the pertinent social, economic and environmental aspects and ensures the best use of the land in the public interest.* (Coffey 1973, p.72)
- 1977 Reclamation work, begun in 1951 on what has been known since 1968 as Kooragang Island, was completed (Williams *et al.* 2000). The 20 original islands in the Hunter River estuarine delta had finally been reduced to 4 (Kingsford and Ferster Levy 1997).
- 1979 Kooragang Island was included on the Interim Register of the National Estate.
- 1979 The *NSW Environmental Planning and Assessment Act* 1979 became the basis for assessment of development proposals affecting environmentally important land.
- 1981 The egret breeding colony was established in the melaleuca woodland swamp at what is now the Wetlands Centre.
- 1983 A Department of Environment and Planning report on an investigation of the natural areas of Kooragang Island (Moss 1983) recommended the location of the site for the Kooragang Nature Reserve. The concept of a **single ecological unit linking both Kooragang Island and Hexham Swamp was considered as the ideal way to maximise the conservation value of the Hunter Estuary.**

1983 An important study for the NSW Department of Environment and Planning (Clark and van Gessel 1983) stressed the importance of the Ramsar Convention and the JAMBA International Treaty on migratory waders:

by signing the agreements, the Australian Government has tacitly agreed that wetlands used extensively by migratory waders should be subject to more than local and state considerations;

high priority must be given to maintaining the proposed nature reserve in a state which will always offer sufficient roosting areas for waders.

1983 Kooragang Nature Reserve was formally gazetted.

1983 The National Parks and Wildlife Act (1983) was established to list endangered fauna and flora to be taken into account in development assessments and conservation efforts.

1984 Kooragang Nature Reserve was listed as a **Wetland of International Importance** under the Ramsar Convention because of its importance as habitat for migratory waders. By listing the site, the Federal and State governments are thus bound to comply with the commitments of Contracting Parties, including:

to formulate and implement planning so as to promote the wise use of wetlands;

to increase waterfowl population through management of appropriate wetlands.
(Davis 1994).

Obligations under the Ramsar Convention of specific relevance to the Kooragang Ramsar site include a commitment to the Wise Use Principle and where wetlands form an integrated part of a wider coastal zone or catchment wise use must ***“take into account the problems of the surrounding zone or catchment”***.

1985 The Wetlands Centre was established on the former Marist Brother’s land at Shortland. It began programs to rehabilitate the wetlands on the site and develop and promote education, research, conservation and passive recreation programs in the context of wetlands.

1991 An important study of the status of migratory wader populations in coastal NSW (Smith 1991):

found that the management of waders in NSW should be ***to prevent and reverse long-term decline of their populations due to habitat degradation and disturbance of the birds;***

recognised that major issues for conservation of waders were ***poor representation in reserves, habitat degradation and increasing pressure from further development, excessive disturbance at nesting, intertidal feeding and high tide roosting sites, pollution of wetlands;***

reported that ***forty two species were listed on Schedule 12 , Endangered Fauna under the NSW National Parks and Wildlife Act (1983);***

listed the Comb-crested Jacana, Painted Snipe, Pied Oystercatcher and Sooty Oystercatcher as Priority 2 for conservation, Pacific Golden Plover, Double-banded Plover, Eastern Curlew and Latham’s Snipe as Priority 3, Mongolian Plover, Greater Sand Plover, Terek Sandpiper, Black-tailed Godwit, Great Knot, Sanderling and Broad-billed Sandpiper as Priority 4 and Grey Plover, Wood Sandpiper, Wandering Tattler, Common Sandpiper and Ruff as Priority 5, ***all species which have been recorded in the Hunter Estuary;***

found that the Hunter Estuary was ***“by far the most important wader site for NSW, with 16 species having maximum counts of over 1% of their estimated Australian populations”;***

classified the Hunter as the only Priority 1 site for conservation of the 23 coastal NSW wetlands investigated.

- 1993 A National Plan for Shorebird Conservation in Australia (Watkins 1993) classified 10 migratory wader species in the Hunter Estuary as Internationally Important and 3 species as Nationally Important. (Note: Maddock (2003) subsequently found that the decline recognised by Kingsford and Ferster Levy (1997) has worsened and that 60% of the Internationally Important species in the Watkins (1993) list are declining in the Hunter Estuary).
- 1994 The Kooragang Wetland Rehabilitation Project (KWRP) Strategic Landscape Plan identified Tomago Aluminium Buffer lands and the adjacent former BHP land within the Kooragang Nature Reserve as sites for rehabilitation by re-introduction of the tidal regime.
- 1995 The *NSW Threatened Species Conservation Act 1995* replaced the *National Parks and Wildlife Act 1983* as a basis for assessing development proposals for impacts on species and ecological communities. The Act produced lists under Schedule 1 (Endangered Species, Populations and Ecological Communities), Schedule 2 (Vulnerable Species) and Schedule 3 (Key Threatening Processes). As at March 2001, the Act listed 338 endangered species, 21 endangered populations, 77 species presumed extinct, 373 vulnerable species, 39 endangered ecological communities and 8 key threatening processes for NSW.
- 1996 The KWRP Management Plan (Svoboda 1996, p. 7) included as a major activity the introduction of a **“tidal regime to former tidal creeks and saltmarshes to restore the area as a high tide roost for migratory shorebirds as well as to enhance fish, prawn and crab habitat”** in the Tomago Aluminium Buffer Land.
- 1996 The Lower Hunter Floodplain Management Study (Patterson Britton and Partners 1996) classified the Tomago floodplain as a **floodway with high hazard rating**. The study suggested that filling of the Tomago land could be undertaken to 1 km south of Tomago road, based on a hydraulic perspective alone, but noted that there would be potential ecological effects on the rehabilitation proposed by KWRP which would require further investigation.
- 1996 Kooragang Nature Reserve was included as a reserve in the East Asia – Australasia Migratory Bird Flyway Network.
- 1996 At the 6th Conference of Contracting Parties to the Ramsar Convention on Wetlands of International Importance held in Brisbane, two resolutions were passed which have specifically high relevance to the issues surrounding the current industrial development proposals affecting the Hunter Estuary Ramsar site:

Australian authorities were requested to consider **prudent and feasible alternatives to proposed developments within a number of Australian Ramsar sites or their catchments, where those developments would have significant impacts on the Ramsar sites concerned;**

Australian authorities were invited to consider **inclusion of sites in the Montreux Record, where this would assist substantially in monitoring, maintaining or restoring the ecological character of Ramsar sites under serious threat.** (Ramsar Convention 1996)

- 1996 At the Brisbane Ramsar 6th Conference referred to above, two important case studies in South Africa of the decision making process for siting heavy industrial projects affecting Ramsar sites were presented (Heydorn 1996). Issues for one case are highly similar to those associated with the siting of Austeel, its associated infrastructure, and any future heavy industrial development on the Tomago land:

the steel mill was proposed for land immediately adjacent to the Langenbaan Lagoon System Ramsar Site for migratory waders at Saldanha, on the west coast of South Africa;

siting the mill at the proposed location would damage the coastal processes and water resources needed for the ecological integrity of the Ramsar site;

because of the high risk of failing to honour obligations to the Ramsar and the Bonn Conventions concerning migratory birds, there were fears that South Africa's image would suffer internationally;

a delegation and monitoring team from the Ramsar Bureau was invited to inspect the site and investigate the issues;

as a result, a compromise was reached, the mill location was moved further from the Ramsar site, a 4 km buffer zone was established between the steel mill site and the Ramsar site, stringent conditions were imposed on the mill's operations and all associated industries had to be established on the inland side of the mill;

it was regarded as essential that the Ramsar site should be listed on the Montreux Record to ensure that Ramsar Management Guidance Principles are applied to a system which will inevitably be subjected to considerable stress from heavy industrial development in the vicinity.

The other case study was of a proposal to establish a mining operation within the listed Ramsar Site in the estuary at St Lucia in South Africa, involving similar issues to the Newcastle Port Environs Concept of alienation of part of the Hunter Ramsar site for industrial projects. In this case:

the project would have detrimental effects on the ecological character of the estuary;

the site was placed on the Montreux Record;

a Ramsar Bureau monitoring team visited the site and recommended that the proposal be disallowed;

the recommendation was supported at a Conference of Contracting Parties of the Ramsar Convention, which requested South Africa to consider rejecting the proposal;

the South African Government followed the suggestion and refused approval.

- 1996 The NSW Wetland Management Policy (Department of Land and Water Conservation 1996) came into effect, with its purpose **to halt and wherever possible reverse declining natural productivity and biological diversity** (p.10). It specifically states that "**wetlands of regional or national significance will be accorded special protection**. The criteria of significance include **use by migratory species, presence of threatened species and habitat of plants and animals at a critical stage of their biological cycle**" (p.24).
- 1997 A Memorandum of Understanding (MOU) was drafted to implement the carrying out of the tidal rehabilitation on the Tomago land, by KWRP, National Parks and Wildlife Service (NPWS), Tomago Aluminium, Department of Land and Water Conservation (DWLC) and Port Stephens Council (PSC), as set out in the KWRP (1996) management plan.
- 1997 The Lower Hunter flood plain management study rejected filling Tomago as a development option and noted strong community opposition to filling or increased levee construction within the floodplain due to the increasing risks it caused elsewhere (Patterson Britton and Partners 1997).
- 1997 Kingsford and Ferster Levy (1997) released a report to KWRP analysing changes to the Hunter River Estuary, 1801-1996. It showed that:
- the number of islands in the estuary had been reduced from 20 to 4;
 - shoreline where waders could feed had been reduced from 118 km to 51 km;
 - sand and mud flats were dredged;
 - a population of 7900 birds in the 1970s from 33 migratory wader species had reduced to 5300 in the 80s and then 3700 in the 90s;
 - nine of the 33 species had not been seen in the estuary in the ten years preceeding the study;
 - eleven migratory and one local wading species showed significant population declines;

reclamation of Kooragang Island for the present industrial site removed 616 ha of wetland habitat and resulted in the disappearance of cryptic birds such as bitterns, which had nested exclusively in the wetlands which had been reclaimed to form the industrial area.

The study clearly documented the negative impacts on migratory waders of siting a port city in an estuary. It recommended that there be **no development in the Hunter River Estuary which would lead to further destruction of migratory wading bird habitat and no development which could cause upstream pollution.**

It should be noted that the Australasian Bittern, one of the cryptic species which the report stated had “disappeared”, is currently listed as **Vulnerable** under the *NSW Threatened Species Conservation Act 1995*, **Globally Endangered** by the International Union for Conservation of Nature and **Globally Critically Endangered** by the Wetlands International Heron Specialist Group. It has recently been recorded on the proposed Tomago Austeel site and on Ash Island in the area proposed for the materials transport corridor.

- 1998 Kooragang Nature Reserve and Hexham Swamp Nature Reserve Plan of Management (NSW NPWS 1998) was adopted and signed by the NSW Minister for the Environment on June 17. The Plan (p.2) accepted that management of the reserves requires fulfilling obligations under the Ramsar Convention on Wetlands of International Importance, the Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their Environment (JAMBA) and the Agreement between the Peoples Republic of China and the Government of Australia for the Protection of Migratory Birds and their Environment (CAMBA).

The Plan accepted the Ramsar Principle of Wise Use, the adoption of a whole of catchment approach, inclusion of wetland concerns in land use and water management, and provision of buffer zones. It also specifically referred to the importance of re-flooding the Tomago Buffer lands and the former BHP land within the Nature Reserve as a rehabilitation project in order to reintroduce saltmarsh, as a measure to provide roosting habitat for migratory waders. It stated that a MOU between Tomago Aluminium and NPWS was in preparation by KWRP to outline the management of the former tidal areas behind the Tomago Levee (pp.27-28).

- 1998 The KWRP (Svoboda 1996) management plan was declared. The MOU was signed by Tomago Aluminium, KWRP, DLWC and PSC. **NPWS did not sign.**

- 1998 An EIS on the restoration of tidal regime on the Tomago site was carried out (Patterson Britton and Partners 1998). It stated that by **not** proceeding with the proposal **“the realization of objectives and management guidelines for wetlands set out in the Kooragang Nature Reserve Plan of Management, as well as international treaties cannot be fulfilled.”** (p. 24). A supporting letter in Appendix G from the Manager (Central) of NSW Fisheries stated **“NSW Fisheries considers that this proposed action is one of the most important efforts for fish habitat in coastal NSW”.**

- 1999 A pre-feasibility study on a proposal to establish an international airport on Kooragang Island was released by Abigroup *et al.* (1999). The proposal required runways and terminal facilities to occupy a large area of the Kooragang Industrial area and KWRP land on Ash Island, and dredging of the North Channel of the Hunter River to obtain fill to raise the land above flood level. It showed future runway development intruding on the Kooragang Nature Reserve Ramsar site. An alternative proposal for siting on Hexham Swamp, adjacent to Beresfield, showed the runway intruding on Hexham Swamp Nature Reserve.

The claim by the study that the proposal was “environmentally neutral” was clearly not supported by the environment evaluation section of the report. It failed to even mention the impact on threatened species and the impacts on the complex ecology of the migratory wader population in the estuary or that the North Channel of the Hunter was part of the Ramsar site.

- 1999 In May, the Premier’s Department instructed the Kooragang Wetlands Rehabilitation Project to exclude Tomago Aluminium Buffer Lands from the scope of rehabilitation and prepare a new EIS confining tidal change to the ex-BHP lands in the adjacent Kooragang Nature Reserve (KWRP 1999a).

- 1999 In July, a directive from the Premier’s Department to KWRP required no increased tidal flow on Tomago land (KWRP 1999b).

- 1999 A letter dated May 25 from the NSW Premier's Department stated that the Abigroup proposal for an airport on Kooragang "**would directly affect the internationally recognised wetlands and does not take account of the competing land use issues for major industrial developments.**" (Gellatly 1999). A letter from the NSW Deputy Premier dated October 25 included an identical statement (Refshaug 1999). A letter dated 2 December from the Minister Assisting the Minister for the Environment (Tebutt 1999) stated that the "NSW Government has not supported the Kooragang Island airport proposal and **will continue to conserve the valuable estuarine wetlands within the existing Kooragang Nature Reserve under the management of the National Parks and Wildlife Service**".
- 1999 The Straw (1999) Hunter Estuary wader habitat investigation report to NSW NPWS re-iterated the importance of the estuary as an important habitat for migratory waders. It stressed that although construction of artificial compensatory habitat for loss due to development is "technically feasible", success of such ventures in providing habitat that will completely compensate for loss cannot be assured. It pointed out that the few successes reported were the result of accident, rather than design.
- 2000 In an address to the Brisbane Institute in April (Carr 2000a, p. 44), the Premier of NSW made a number of statements concerning coastal protection policies that reveal major inconsistencies with the NSW Government's actions in the Hunter Estuary, an area especially critical to coastal protection:
- Zonings that protect coastal wetlands are very important. Yes, they do impose a restraint on what a private landowner can do. A farmer can argue that it is unfair that he is not allowed to fill a wetland on his property. But the point is, if these wetlands are destroyed, so is the fishing industry in the area because wetlands are the nurseries for most of the fish we catch.**
- We have got to protect coastal wetlands and the policy that was hugely controversial when I introduced it as Minister for Planning and Environment in the 80s, but which is now accepted and is part of any zoning. Zoning is the next instrument of coastal protection. Councils should be forced to take account of coastal forests, of wetland zonings, when they put together their shire-wide plan. It should be forced on them and you need powerful state departments of planning to see that they cannot bowl up zoning proposals that contravene the goals of coastal protection.**
- So national park declaration, littoral rainforest protection, a total ban on canal estates, protection of coastal wetlands, even on private property and strong State involvement in zoning policy, these are the tools of coastal protection.**
- In other statements to the Brisbane Institute on 19 April (Carr 2000b) the Premier stated that the Darling River is **a grudging stream, it is overused, it is over extended** and that "**I just want us thinking differently, and I think aiming to have the best educated, the most productive, the smartest nation in the world, with a population derived from carrying capacity, a sensible recognition of our environmental limits, is going to answer a lot of our problems**".
- 2000 A letter dated 23 August from NSW Premier's Department stated that the Abigroup proposal for an airport on Kooragang "**would directly affect the internationally recognised wetlands and does not take account of the competing land use issues for major industrial developments.**" (Gellatly 2000).
- 2000 In October, the revised EIS on the Tomago site rehabilitation was released (Patterson Britton and Partners 2000). The statements in Patterson Britton and Partners (1998), referred to above, were still included.
- 2000 A Department of Fisheries Report (Williams *et al.* 2000) confirmed conclusions on the degradation of the Hunter Estuary in the Kingsford and Ferster Levy (1997) report. They also reported that the impacts have modified the flow of water within the wetlands, resulting in a loss of 13% of open water and 67% of saltmarsh. Dredging, levee construction, reclamation, and installation of industrial infrastructure have combined to modify tidal flow.

- 2000 The **Hunter Ramsar Committee** was set up to investigate the integration of management of Lower Hunter Wetlands and to define candidates for listing as Ramsar wetlands. The Wetlands Centre, Pambalong Nature Reserve and Ash Island were identified as having the required qualifications and the Committee began the necessary work for lodging the nominations.
- 2000 The Federal Environment Protection and Biodiversity Conservation Regulations (2000), Schedule 6, require that:
- wetland management should provide for *public consultation on decisions and actions that may have a significant impact on a wetland*;**
- wetland management should make *special provision*, if appropriate, for involvement of *people who have a particular interest in, and may be affected by, management of the wetland*;**
- wetland management should provide for *continuing community and technical input*.**
- an action *should not be approved* if it would be *inconsistent with maintaining the ecological character or providing for the conservation and sustainable use of a wetland*.**
- 2001 The October meeting of the Hunter Ramsar Committee was informed that ***“Ash Island has some significant issues relating to future developments on adjoining land and until these issues are resolved, the Premier’s Department and National Parks and Wildlife Service would not endorse the inclusion at this stage”***. (Hunter Ramsar Committee 2001). No explanation of the issues relating to future developments on adjoining land was given. Pambalong Nature Reserve was ultimately also withdrawn.
- 2001 In the period March to September, Geo-technical survey work commissioned by the Premier’s Department was carried out by Soil and Rock Engineering Pty Ltd of Perth WA on the Tomago buffer land site, now known to be earmarked for the Austeel Project and shown in the Concept Plan (KBR 2003) as port-related industrial land. It appears that no EIS was carried out for the study, there was no release of information to the community and Tomago Aluminium was not notified. The results of the study have not yet been released.
- 2001 During 2001, major international review studies on programs for restoration or creation of habitat as compensation for loss of wetland habitat through development in the USA (National Research Council 2001) and in the UK (Atkinson *et al.* 2001) were released. Both studies found that there was a high failure rate in such projects. The science of habitat creation and restoration is poorly understood, a vast majority of projects failed to address loss of wetland functions, design and monitoring procedures have been inadequate and the time frame allowed for such projects has been inadequate. The findings of these reports are supported by the limited literature available in Australia (see analyses in Straw 1999 and Maddock 2002).
- 2001 Referral 2001/231 under the *EPBC Act 1999* for the Austeel mill was lodged on 3 April. The main features of the Referral were:
- a steel mill is to be erected on the Tomago site;
 - raw material will be shipped in Cape size vessels to a port on Kooragang Island and transported by conveyor to the site;
 - the NSW government is to be the proponent of all port works and infrastructure;
 - the Newcastle Port Corporation will supply the tugs and pilotage;
 - a new port is to be built on the southern side of the mill, requiring dredging of the North Arm;
 - construction of the mill will involve clearing and filling to elevate the site above flood level;
 - the claim is made that potential changes to drainage and sedimentation patterns can be managed so as not to adversely affect the Ramsar wetlands, but the change to natural flow which will be inevitable when the area is filled and its potential impact was ignored;

the claim is made that no species listed as threatened under the *EPBC Act 1999* are likely to occur on the land, but fails to mention that a species listed as Vulnerable under the *NSW Threatened Species Protection Act 1995*, and declared Critically Endangered by Wetlands International, has been recorded and an Endangered Species has been recorded in the close vicinity.

2001 Referral 2001/242 under the *EPBC Act 1999* was lodged by Austeel on 11 April for port facilities and materials transport corridor. Main features were:

two port sites (North Arm and South Arm), with the options of one or both being used;

dredging, channel widening, building of retaining walls, disposal of dredge spoil and clearing of vegetation would be necessary;

a materials handling corridor, in the order of 50 - 100m wide, to be built across Ash Island.

2001 Referral 2001/249 under the *EPBC Act 1999* was lodged on 18 April by the Newcastle Port Corporation on dredging the South Arm of the Hunter River to provide for future port facilities. The Referral stated that the proposal ***“is not related to other actions or proposals in the region. It is understood that several other projects are planned for Newcastle including upgrading of Port facilities and infrastructure and a proposal to develop a steel mill on a site to the north of the South Arm.”***

However, the Referral did make specific reference to providing facilities for Cape size and Panamax class vessels, both of which were specified in the Referral for the Austeel Project.

2001 Referral 2001/274 under the *EPBC Act 1999* was lodged by Protech Steel for a Cold Mill Facility steel mill on Kooragang Island, situated on land within the industrial zone.

2001 Referral 2001/419 under the *EPBC Act 1999* was lodged on 29 August by the NSW State Government on port construction and construction of a transport corridor. No documentation was included on the EPBC web site with the referral. It is assumed that this referral is the replacement for 2001/242, in which the Government has taken over responsibility for the Austeel infrastructure as foreshadowed in Referral 2001/231. Because of the lack of documentation, it is not known whether there are any differences in what is proposed from that given in Referral 2001/242.

2001 Referral 2001/457 was lodged by National Parks and Wildlife Service on 3 October for rehabilitation works on wader habitat within Kooragang Nature Reserve. The referral stated that ***the NSW Government had established the Lower Hunter Environmental Rehabilitation Program (LHERP) to mitigate for potential impacts of options for future industrial development in the Hunter Region, with projects that have been in the planning stage for a number of years, designed to be significantly positive to the ecology.***

It should be noted that these rehabilitation projects **were originally proposed to compensate for damage done to the estuary during the previous nearly 200 years of degradation and NOT for compensation for new degradation.** The record of failure of most compensatory projects referred to in the report to NSW NPWS in 1999 (Straw 1999) and in major international reports on such projects in 2001 (Atkinson 2001 and National Research Council 2001) was not acknowledged in the Referrals and should be noted in the context of this referral.

2001 An article on the ferret web site (Austeel 2001) stated :

Austeel has announced the site for its \$2.5bn steel mill complex, confirming the Tomago buffer zone, just south of Tomago Road on the North Arm of the Hunter River in Port Stephens as the final choice for the Austeel project.

Arrangements are in place with the government for the site to be delivered on a commercial basis for the Austeel project, which follows the Premier's comments of last Thursday 4th October 2001.

The site will cover approximately 175 ha and extensive geo-technical work has been performed to ensure suitability for the planned steel mill.

- 2001 The Healthy Rivers Commission (2001) gave a dismal report on the health of the Hunter Estuary due to neglect, inadequate inter-departmental cooperation and poor management, which the current industrial proposals within the estuary still fail to address. It stressed the need for maintaining ecological integrity, with **management based on the understanding of key ecosystems and not just ecological components:**
- ecological Sustainable Development remains and ideal rather than a reality of the Hunter River and its Catchment;**
 - government and community goals for ecological sustainability are not being met;**
 - there has been marked decline in shorebird numbers and habitat;**
 - there is instability in stream channels;**
 - diversity of estuarine habitat has declined;**
 - continuous loss of ecological integrity is a serious threat to long term ecological sustainability;**
 - if ecological sustainability is to be a realistic goal, current management must address ecological integrity directly, based on an understanding of functions of key ecosystems;**
 - to address ecological integrity requires management and performance monitoring based on an understanding of key ecosystems, not just protection of ecological components;**
 - further impacts on ecological features and functions must fall within the capacity of the ecosystems to tolerate such changes.**
- 2001 The EIS for the Protech Steel Mill was released (GDH Pty Ltd 2001). Its analysis of the status of threatened species on the site:
- acknowledged that the Australasian Bittern, listed as a Vulnerable Species under the NSW *Threatened Species Conservation Act 1995*, will be significantly impacted by the proposed development unless local compensatory habitat is created locally;
 - stated that it is unlikely that the species is adequately protected in the region;
 - recommended creation of compensatory habitat;
 - failed to note** that the species was also listed as ***Endangered*** globally by IUCN and ***Critically Endangered*** by Wetlands International (Kushlan and Hafner 2000);
 - failed to acknowledge** that compensatory habitat projects have been recognised as highly unreliable and that the time frame needed for producing such habitat for the bittern would be far too long to benefit the species in its current precarious situation in the Hunter;
 - stated incorrectly** that there were very few local records of the Black-necked Stork, listed as Endangered under the NSW *Threatened Species Conservation Act 1995* and Endangered globally by IUCN;
 - failed to recognise** that because of the recent significant presence of the species on nearby Ash Island, the Wetlands Centre and at Tomago, the possibility of it using the Protech site could not be categorically discounted.
- 2001 The Lower Hunter Floodplain Management Study (Patterson Britton 2001) recommended no filling or levees more than 500 m south of Tomago – Cabbage Tree Road. The majority of the Tomago Buffer Land is shown as declared floodplain (Figure 6) under the *Hunter Valley Flood Mitigation Act 1956*, a status which was retained under its replacement, the NSW *Water Management Act 2000*.

- 2001 The NSW Flood-prone Lands Policy and the NSW Floodplain Management Manual (NSW Government 2001) set out the requirements for undertaking flood studies relevant to development. Specific mention is made of the necessity for assessing the probable impacts of sea level rise due to climate change and for community consultation involving people likely to be affected by changes in flood regimes. The 2001 manual is even more specific in referencing sea level change related to climate change than its predecessor, the 1986 Flood Plain Development Manual (NSW Government 1986), which referred to taking account of elevated sea levels. No flood studies or community consultation based on the specifications of the 2001 manual have yet been undertaken within the estuary.
- 2002 The first real indication to the community of the scale of developments in the estuary, (now obviously recognised as having been in the planning stage at least since 1999), was provided by an article in the Newcastle Herald in January (Kirkwood 2002). The article revealed that one of the options being considered was raising the Stockton Bridge and dredging the North Arm Channel of the Hunter, part of the Ramsar site.
- It should be noted that the Kooragang Nature Reserve Plan of Management (NSW NPWS 1998) recognised the rights of shipping interests to continue to use the north arm in a **sustainable way**. The land under the water in the KNR section of the arm is dedicated reserve under the control of NPWS (NSW NPWS 1998). Hence, dredging of a scale to allow loaded Cape size vessels to travel to Tomago would have to be re-assessed and treated under the *EPBC Act 1999* as **an expansion, enhancement or intensification of dredging operations, which must have no unacceptable or unsustainable impacts**.
- 2002 As there had been a complete lack of public information or open and transparent community consultation on proposed developments in the estuary, local professional fisherman Darrel Harris convened a community forum on 14 February. It was attended by the Austeel CEO and a representative of the Premier's Department. The forum was informed that no decisions had been made on transport corridors, but if the Tomago mill went ahead and the river was chosen, more industrial development would eventuate at Tomago. When the participants pressed for more specific information, no satisfactory responses were forthcoming (Lindsey 2002).
- 2002 The Protech Steel mill received approval to go ahead from the NSW State Government on 18 May.
- 2002 The NSW Scientific Committee (2002) brought down its **Final Determination** listing ***Alteration to natural flow regimes of rivers and streams and their floodplains and wetlands as a KEY THREATENING PROCESS on Schedule 3 of the NSW Threatened Species Conservation Act 1995***. It determined that alteration to the natural flow regimes of rivers and streams and their floodplains adversely affect threatened species, populations or ecological communities, or could cause species, populations or ecological communities not already listed as threatened to become threatened. Change of drainage patterns, construction of levee banks, roads and bridges on floodplains and dredging, (likely outcomes of the proposed developments in the Hunter Estuary) were identified as acts which include or would result in alteration to flow regimes. These issues are critical in the assessment of the development proposals.
- 2002 Referral 2002/794 under the *EPBC Act 1999* was lodged by Transgrid on 16 September for construction and operation of a 132kV double circuit transmission line to connect the Protech Steel site on Kooragang Island to existing 132kV assets and associated works on the Steel River Industrial Estate. In a notice dated 25 September, the Assistant Secretary, Policy and Compliance Branch, Environment Australia advised that the proposed action is not a controlled action, but specifically required surveys of the Green and Golden Bell Frog and associated protection measures for the frog. Environmental induction was required to ensure that site workers are familiar with frog site issues and the significance of habitat areas identified.
- 2002 The listing of the Wetlands Centre as a Ramsar site (as part of the Hunter Estuary Wetlands Ramsar Site along with Kooragang Nature Reserve) was announced at the 8th Conference of Contracting Parties of the Ramsar Convention in Spain in November. **By endorsing the nomination, the NSW Government tacitly re-affirmed its commitment to obligations under the Ramsar Convention.**
- 2002 A report on coastal management (Umwelt Australia 2002) provided further evidence of habitat degradation in the Lower Hunter, with predictions of accelerated beach erosion on Stockton Beach

during heavy storms. The cause of sand loss from Stockton Beach was linked to the effects of dredging near the harbour entrance, with resulting change of tidal current patterns and bed stability.

2002 Stuart (2002) released a major report on the birds of Ash Island. It clearly demonstrated the importance of the island as a key habitat. The habitat is used by migratory waders for feeding and especially night roosting and is used by important species listed under the NSW *Threatened Species Conservation Act 1995*, dependent on key habitat on the island, such as the **Endangered** Black-necked Stork and **Vulnerable** (globally **Critically Endangered**) Australasian Bittern.

2002 National Parks and Wildlife Service released a draft Lower Hunter Conservation Issues Paper (NSW NPWS 2002), which adds further support to the existing literature on the state of continued degradation of habitat in the estuary, the importance of maintaining the remnants for conservation of biodiversity and acknowledges the importance of compliance with the Ramsar Convention, international treaties on wetlands and their species and the *EPBC Act 1999*. Some of the key findings are:

historically, large areas of estuary and floodplain have been modified, resulting in habitat clearance, changes in hydrology and water quality;

construction of levees, bunds, drains and floodgates since the 1960s has caused a substantial shift from saltmarsh to freshwater wetlands

Ramsar listing constitutes an undertaking to **maintain the ecological character of listed wetlands and to prepare a management plan which implements “wise use”, consistent with the management plan guidelines;**

The JAMBA and CAMBA Treaties require **special protection of migratory species** and acknowledge that there are a number of species dependent on conservation of habitat in both countries;

a range of negative environmental impacts have resulted from development;

the majority of threatened species in the area are dependent at some stage of their life cycle on Lower Hunter Plain wetlands;

there has been a substantial decline since the mid 1980s in the number of species of waders recorded in the Lower Hunter;

a number of Lower Hunter freshwater wetlands are most important drought refuges for inland waterbirds, especially those from west of the Great Divide and are reliant on the maintenance of these refuges;

the creation of compensatory habitat **should not be used as a justification for the removal of existing habitat, the protection of existing habitat is extremely important in the long-term conservation of wader and other species and creation of compensatory habitat should be taken in advance to allow ecological processes to establish.** (Note: the report made no mention of the fact that processes of providing compensatory habitat have been discredited by major international studies as unreliable, nor of the long time frame needed for compensatory projects to achieve ecological viability. See National Research Council (2001) and Atkinson *et al.* (2001).

The Report stated that the NSW Government’s Environment Statement of June 2001 details a range of reforms, which emphasise a **“whole of government approach to ecologically sustainable development”**.

2002 In May, Maddock (2002) released an analysis of environmental issues and international treaty obligations related to the Austeel and associated development proposals in the estuary. The document was given wide circulation and was specifically distributed to the Premier, the Newcastle office of the Premier’s Department, NSW Planning, Newcastle and Port Stephens Councils, Environment Australia and NSW NPWS.

Key findings were that the proposals violated the most important principles of:

the Ramsar Convention;

the CAMBA and JAMBA Treaties;

the 1994 Affiliation Agreement on sister wetlands between Port Stephens Council, Newcastle City Council, KWRP, the Wetlands Centre and Kushiro City in Japan;

the New South Wales Wetland Management Policy (1998);

the Federal *EPBC Act 1999*;

the NPWS Plan of Management (1998) for Kooragang and Hexham Swamp Nature Reserves;

the report of the Healthy Rivers Commission (2001) inquiry into the Hunter Estuary;

inclusion of the estuary in the Shorebird Site Network of the East Asian-Australasian Flyway;

key findings of a range of expert reports into migratory waders and their habitats in the Estuary.

A reply from the NSW Cabinet Office (Wilkins 2002) to the letter accompanying the document, sent to the Premier dated 30 May, did not address any of the specific issues raised and stated that:

the views had been noted and the comments would receive “close attention” but as the matter “primarily concerns the administration of the Deputy Premier, Minister for Planning, Minister for Aboriginal Affairs, and the Minister for Housing” it would be referred to them. (Note: No further response had been forthcoming as at 10 June 2003).

Note: Maddock (2002) has since been updated to Maddock (2003).

2002 A NSW Wetland Advisory Committee (2002) discussion paper under the NSW Wetlands Management Policy on compensatory wetlands, which was circulated for comment, stated:

In using social and economic imperatives to set standards of development and compensatory action in wetlands, there must be a limit applied. That is, there are some wetlands that are highly valuable and impossible to replace and cannot, under any circumstances be subject to development. This means that a no net loss really refers to no loss of significant wetlands. All wetlands are important but there are some that are of extremely high value (e.g. Ramsar wetlands)

The comments were tabled at a May 2003 meeting of the Committee. The final paper is expected to be submitted to the NSW Government for implementation by the end of 2003.

2002 A very comprehensive major study on the Hunter Estuary (Manly Hydraulics 2002), reaffirmed the long history of alteration to the natural process suffered by the estuary from clearing of flats and catchment, grazing in the riparian zone, construction of groynes, levees and dredging, construction of floodgates and drainage channels, bank stabilisation works and urban development. Flora and fauna biodiversity has decreased and biodiversity has been threatened. The effects of climate change are not well known but are expected to lead to extreme daily rainfall, frequent heavy rainfall events, with consequent increased flooding. **Possible climate change should be taken into account in planning for future developments, especially for foreshore sites.**

Some examples of important findings include:

the South Arm of the river is contaminated with metals and it is likely that **“some level of adverse biological impact is occurring”**;

bank stability in the South Arm was generally in decline and unstable, with signs of undercutting and lack of riparian vegetation for protection and vulnerability to wave action and flood events;

much of the native fauna has been destroyed as a result of habitat destruction and the introduction of new species;

the Hunter is the **only** place in NSW providing habitat for significant populations of the Black-tailed Godwit, Broad-billed Sandpipers, and Terek Sandpipers;

in general, open saline water bodies, tidal mudflats, saltmarsh, open freshwater bodies and high diversity freshwater and brackish wetlands support the greatest number of individuals and species (note: which implies that development in the estuary must not lead to a further degradation of this suite of habitats);

wader feeding and roosting habitat has been seriously degraded since 1970, for example the number of shorebird roosts in the estuary has been greatly reduced to only three key sites;

open saline habitat in the estuary, important as feeding habitat for a variety of bird species and feeding and nursery fish habitat, has been dramatically reduced;

habitat loss includes Casuarina forest (77%), saltmarsh (85%), open water (37%), Kooragang Island estuarine wetlands (10 square kilometres);

threats to aquatic biota include run-off from factories, farms and seepage of ground water.

2003 Referral 2003/950 under the *EPBC Act 1999* was lodged on 5 February by Newcastle Port Authority for dredging of the South Arm, construction of a swing basin, remediation of contaminated sediments on land and associated activities. No associated documentation was given on the website. Controlling provisions are **wetlands of international importance, listed threatened species and communities and listed migratory species**.

2003 After a long period of time out of sight since January 2002, during pre-election fever in February 2003, the Hunter Estuary, Austeel and associated infrastructure projects resurfaced. In a Newcastle Herald article on 5 February (Kirkwood 2003a), the Lord Mayor of Newcastle was reported as preferring a site near the dykes at the Stockton Bridge.

The Lord Mayor stated that the "idea of opening Stockton bridge had long been dispensed with" and that "putting Austeel on Kooragang would **save building a lot of expensive and potentially environmentally damaging infrastructure**". On 6 February the idea was expanded with a front page article entitled "Our Kakadu" (Kirkwood 2003b), which foreshadowed a master plan for the estuary to be released by the Premier before the election. A green strip stretching from Stockton to Mount Sugarloaf could make the Hunter Estuary "another Kakadu".

Unfortunately, although aware that Kooragang land was an international bird reserve, the Lord Mayor did not address the complex issues of having to excise part of the site from the Ramsar reserve to allow for development. He also did not address the critical ecological problem that siting the steel mill so close to the remaining Ramsar site and the key high-tide roost sites on the Kooragang Dykes could cause such further serious decline in the wader population that the Kakadu analogy could not be achieved.

2003 An article in the Newcastle Herald on 12 February (Kirkwood 2003c) reported that the Austeel CEO had announced that the company was about to lodge an EIS on the Tomago proposal. The EIS had been finished for about a year but "**the State Government had asked Austeel to sit on it while it worked on supporting studies**". Deadline after deadline had passed without movement and "we can't keep stalling like this, we've run out of time". He further stated "**that will mean a haul road and a conveyor belt across Kooragang Island to the plant, and a berth on the south arm of the river, which will have to be dredged**".

2003 The Newcastle Herald on February 20 (Price 2003) reported that during a pre-election visit to Newcastle by the Premier:

concept plans for development of Newcastle's port and former BHP lands were unveiled;

the State Government had finalised the purchase of more than 450 ha of land at Tomago for the site of the proposed Austeel mill;

a Minister for the Hunter would be appointed;

a new board would be created to “drive the community consultation” for the concept plans.

Another article in the Herald on the same day (Tucker 2003) reported that:

the KBR (2003) consultants report on the concept plan had painted a difficult picture for emerging port-related industries because much of the land available is constrained by a range of issues;

the news of the plans, including Government plans for development of the South Channel of the Hunter, was welcomed by the Austeel CEO, who re-iterated that the mill would go ahead at Tomago, **there would be a transportation corridor across Kooragang Island and a port near the Tourle St Bridge;**

the master plan will have the twin aims of securing ecologically significant habitats while promoting sustainable economic growth for the port and Newcastle Airport precincts.

2003 In February, a document analysing the impacts of the proposed developments within the estuary and its catchment on migratory waders and other waterbird species (Maddock 2003) was released and widely circulated. It included:

a detailed assessment of the local habitat used by the species;

population trends from the 1970s to 2003;

conservation status of each species and the likely impacts of development proposals on the viability, as required by the NSW *Environmental Planning and Assessment Act 1979*.

Forty-six species subject to serious negative impacts by the developments were identified of which:

20 were listed under the NSW *Threatened Species Conservation Act 1995* (**3 Endangered and 17 Vulnerable**);

26 were **Near Threatened** in the context of the NSW Scientific Committee's Threatening Process of Alteration to Natural Flow (NSW Scientific Committee 2002);

one is **Critically Endangered** under the Wetlands International Heron Specialist Group global classification;

6 are **globally in Decline**;

3 are **probably already Extinct** in the Hunter;

5 of the Threatened Species are at or very close to the **Southern Limit of their Ranges**;

4 of the Near Threatened species are at risk of **Extinction** in the Hunter;

13 of the Near Threatened Migratory species are in **Decline** or have precariously small populations at risk of being **pushed to Threatened**;

none are **adequately represented** in other protected areas in the region.

Thirty-five migratory shorebird species occurring in the estuary, of which 7 are classified as **Vulnerable** on the NSW *Threatened Species Conservation Act 1995*, and are protected under one or more of the Bonn Convention, Ramsar Convention, JAMBA and CAMBA Treaties. The progressive decline in the population of waders, first noted by Smith (1991) and confirmed by Kingsford and Ferster Levy (1997), is still evident, but is **worse than previously reported**.

The document was specifically sent to the Premier, Newcastle and Port Stephens Councils, the Premier's Office Newcastle, NSW Planning (Newcastle Office), NSW NPWS and Environment Australia.

Copies of the letter to the Premier and the document summary were also sent to the Government members in the Hunter Region. Mr John Price MP referred the matter to the Minister for the Environment. A letter to Mr Price dated 4 April (O'Gorman 2003), sent on behalf of the Minister by the Director Northern of NPWS, provided the following information, none of which addressed the specific concerns raised:

Dr Maddock's concerns were noted;

NPWS has been involved in ongoing investigations into the development proposals and in the development of options that will minimise the ecological impact and maximise the conservation outcomes;

The Newcastle Port Environs Concept Proposal covers the Hunter Estuary and Hexham Swamp and aims to achieve balance between further development, environmental conservation and protection of cultural heritage;

In addition to the Concept Proposal, investigations by local and state government agencies will continue into such areas as the Tank Paddock;

Dr Maddock should send his comments to NSW Planning;

NSW Planning and Newcastle City Council are responsible for final zoning decisions.

Note: NSW Planning has confirmed that the Tomago site earmarked for Austeel is in the Port Stephens Council area and re-zoning of that land is currently a matter for that council. The Manly Hydraulics (2002) report, Figure 3.3 shows the Tomago Buffer Land Zoning as Rural and Figure 3.10 of the Port Stephens LEP zoning in KBR (2003) shows it as Rural 1a.

2003 The Wetlands Centre Australia presented a submission to the State Government (Prietto and Duff 2003) for a Hunter Wetlands Conservation Park, as a new green initiative for integrated development within the Hunter Estuary. Key features in the proposal are:

establishment of a 6000 hectare conservation park consisting of gazetted reserves and complementary lands as a sanctuary for fish, migratory shorebirds and threatened wildlife;

providing a management authority consisting of existing wetland management organisations in the estuary, a mix of government agencies and community groups;

a Stage One integrating the management of the Hunter Estuary Ramsar site (Kooragang Nature Reserve and the Wetlands Centre) and the development of the Wetlands Centre as a gateway, housing the management authority and providing education, access and interpretive services for visitors;

transferring tenure of the Wetlands Centre to NPWS, appointing the Centre as the Management Authority and directing part of the Austeel compensatory wetlands package to the project;

integrated planning for sustainable development that mitigates industrial impacts on surrounding wetlands;

stakeholders should include NPWS, The Wetlands Centre, Hunter Catchment Management Trust, Newcastle and Port Stephens Councils, Department of Land and Water Conservation, Fisheries NSW, Newcastle University and community representatives.

2003 The Concept Proposal for Newcastle Port Environs (KBR 2003) stated that it is ***“the starting point for a consultation process on which future strategies of conservation and development in the area will be based”*** and will accept submissions up till 30 June. It purports to set up a “template from which a Locality Plan can be fashioned in association with thorough community consultation”.

A major concern is that submissions will apparently not have any effect on the Austeel and associated infrastructure proposals (see below), which makes the whole concept and its community consultation process highly suspect.

The Concept Plan acknowledged the significance of the wetlands, its migratory wader population and the presence of international treaties. However, no information was given concerning what national and international obligations these treaties entail, nor the underlying ecological principles which the NSW Government has enshrined in its policies and legislation and likely consequences if these are violated. **The average community member, with little or no knowledge of these constraints, has not been provided with a basis on which to make reasoned judgements.** The new Land Corporation has no representatives on it from the environmental community.

There is ample evidence that the proposals for the Austeel projects and future additional projects are **not ecologically sustainable**. Projects that are not ecologically sustainable cannot be economically sustainable in the long term. No EISs have yet been released to demonstrate that the projects are ecologically sustainable and yet the foregoing history of events give strong indications that the outcome is a foregone conclusion. Land purchase has been finalised at Tomago and is shown in the concept plan as port-related industrial land. Public statements by Austeel show confidence that the Project will go ahead at Tomago

Although the concept plan acknowledges the difficulties posed by the migratory waders, the allocation of components of environmental and industrial land is not based on addressing ecological integrity as specified by the Healthy Rivers Commission (2001), which requires an "understanding the functions of key ecosystems". Rather it is on a plan for protecting some "ecosystem components" (Healthy Rivers Commission 2001).

The ecology of the estuary and its catchment is complex and there is interdependent interaction between components. The concept plan shows the Ramsar site almost completely surrounded by industrial land and the proposed conservation land on Ash Island cut in two by an infrastructure corridor, which must cause changes to the ecology in its construction phase and by daily usage. Adding further industry on the Tomago site and other sites surrounding the Ramsar wetlands will add cumulative effects and produce even worse negative impacts on the ecology.

Dr Bridgewater, the new Director-General of Ramsar, who addressed a public meeting at the Regional Museum on 3 April made it quite clear that if a Ramsar site is surrounded by development right up to the boundaries it is no longer a Ramsar site. He stressed the importance of providing buffer zones (as was done with the Saldanha Steel mill site in South Africa). He stated that inappropriately planned infrastructure should use alternative routes.

- 2003 An article on the Regional Land Management Corporation (RLMC) in the Opinions page of the Newcastle Herald on 14 April (Robson 2003), stated that the Corporation would be a "guiding hand for development", managing day to day activities such as **leasing arrangements, EIS processes, remediation** and associated matters. Four of the five parcels of land under its control were the old BHP main steelworks site, the former BHP waste dump site on Kooragang Island, the Kooragang Island 253 hectare industrial site and 545 hectares of land adjacent to the river at Tomago, which includes the proposed Austeel site.

It should be noted that, although all of these are adjacent to or very close to the estuary Ramsar site for migratory waders, and any developments on the lands would potentially impact on the site, the Board of the Corporation has no representatives from conservation interests with expertise in wetland ecology, waders or the Ramsar Convention.

- 2003 In answer to the question submitted by Darrel Harris "***As the Austeel proposal is presently located and reliant on elements of the Newcastle Port Environs Concept Proposal, will Austeel be delayed until after the close of submissions on June 30th 2003, or will Austeel proceed regardless of any community comment?***", Planning NSW, Newcastle Regional Office replied "***no this process does not mean a delay to Austeel or any other project. The NPECP is about land use balance in the port area, existing safeguards under the EP&A Act apply to development occurring prior to the locality plan being finalised and incorporated into local planning instruments.***"
- 2003 A Public Announcement in the Newcastle Herald of 20 May (Australian Heritage Commission (2003a) gave notice that about 6500 ha of Hunter Estuary Wetlands at Kooragang (Newcastle City

and Port Stephens Shire) is to be entered in the Register of the National Estate. This represents a re-listing of the sites registered in 1979 (G460) and 1985 (S92) to take advantage of improved statutory protection of wetlands through the creation of the Ramsar site and State protection measures (Cray Rowan pers. comm., see Australian Heritage Commission 2003b).

2003 In August, the State Government released State Environmental Planning Policy No. 74 (SEPP 74) (NSW Government 2003). The Policy, under Schedule 1 declared as development permissible without consent, development undertaken by a public authority:

for infrastructure (including roads bridges, conveyors and railways) required for the movement of raw materials or finished products associated with developments in Schedule 2;
port facilities (including ancillary dredging) associated with developments listed in Schedule 2.

Under Schedule 2 (State Significant Development), 25 parcels of land stretching westward from just south of Tourle St Bridge on the South Arm of the Hunter to just west of the Kooragang Rail Bridge, then northwards across Ash Island, over the North Arm to include the Tomago Buffer land.

The SEPP 74 lands clearly violate habitat of Threatened and Near Threatened waterbird species, migratory waders and the Green and Golden Bell Frog. The construction and operation of the Austeel Mill proposed for the Tomago Buffer Land and the Ash Island infrastructure corridor will produce negative impacts on the nearby Kooragang Nature Reserve Ramsar site.

2003 On 14 October a question concerning the development proposals in the Hunter Estuary in 38 parts was asked of the Minister for the Hunter, Michael Costa in the Legislative Council of State Parliament. The questions, posed by Ms Sylvia Hale (Greens), covered various aspects of the following topics (NSW Legislative Council 2003):

funding to and staff costs for the Regional Lands Management Corporation;

status and funding of the decontamination and /or rehabilitation of lands in the Lower Hunter;

status and partitioning of the \$240million funding from the Government for infrastructure for Austeel;

future of the "flooding problems" as a consequence of the "cumulative impacts" of filling the Tomago lands and infrastructure works and consequences of climate change;

costs of flood mitigation works;

whether a flood study had been undertaken in accordance with the NSW Flood Prone Land Policy before purchase of the Tomago Land;

projected costs for lifting span bridges over the North Arm;

compensation for Hunter prawn trawler operators and commercial fisheries for impact of the works on their industry;

compensatory works for destroyed habitats;

recovery of costs from Austeel for the works and infrastructure carried out primarily for them;

problems from siltation in the Hunter River;

what recommendations from the Healthy Rivers Commission Hunter Report had been implemented and funded;

what additional future works and costs emanated from required maintenance of ecological integrity in the Ramsar site;

additional costs associated with a heavy industry estate on the Tomago Land and infrastructure.

The reply from the Minister was:

Only part 34 of this question relates to my portfolio and the answer is “the Government is still considering the report”. All other questions should be referred to the appropriate Ministers (NSW Legislative Council 2003).

Part 34 stated:

What recommendations of the Healthy Rivers Commission, Hunter River, Final Report has the government accepted, and what funding has been allocated to carry out those recommendations?

The Minister's reply was in keeping with the NSW Government culture of side-stepping provision of any meaningful information on the progress of the industrial proposals, well illustrated elsewhere in this document. The reply is far from the stated Government policy of a “whole of government” approach.

2003 In November the EIS of 5 volumes on the proposed extension of shipping channels for the Port of Newcastle was released for public consultation. Key features of the report were:

the South Arm of the Hunter river to be dredged to provide future expansion of port facilities;

the proposed dredged area to extend approximately 3 km from the end of the shipping channel to the Tourle St Bridge and provide a swing basin to allow large ships to turn;

options for disposal of usable dredge spoil depending on land-based developments and their construction schedules included fill for the proposed Tomago Industrial Area, fill for the transport corridor to the proposed Tomago Industrial Area through a temporary pipeline, fill at the Protech Steel and other industrial sites and potential nourishment of Stockton Beach;

removal and treatment of highly contaminated sediments.

The EIS dismissed any significant impact on flora and fauna “from a local or regional perspective” but failed to investigate such effects resulting for disposal of spoil activities. The Flora and Fauna investigations had many shortcomings.

2003 The Final Report “**Healthy Rivers for Tomorrow**” (Healthy Rivers Commission 2003), released in November, was prefaced by the following statement, which is, unfortunately, still reflected in the NSW Government's approach to the proposed developments in the estuary:

Many of the concerns expressed by citizens reflect the fact that institutional arrangements have been fragmented to an extent that seriously limits the effectiveness of management efforts. River problems have rarely been treated in terms of the needs of the river system. Instead, problems have usually been treated as isolated issues, and the river system has not been thought of holistically. The result has been that the significant efforts devoted to the parts have overlooked the needs of the whole. If we continue to overlook the inter-relationships between river vegetation, the instream channel, the habitat it provides to fish and other aquatic life, the water quality and river flows all of which make up the natural river **system**, we will **always** be hard-pressed to achieve and maintain healthy rivers (p.1).

Other key findings were:

It is less costly and thus often more realistic, to focus on protecting the **remaining** natural parts of the rivers than to attempt full rehabilitation **after** they have been significantly affected by clearing, dredging, erosion or by concrete lining or other forms of channelisation (p.4).

Attempts to resolve local problems or manage a specific element of the system will generally fail to improve the health of the river as a whole. For long-term and sustainable results, river management must focus on the needs of the whole system, even when specific issues are the subject of review or action (p.6).

The properties of **natural systems** are different from the sum of the properties of their constituent parts (p.6).

There is ample evidence that attempts to manage the whole by managing each part in isolation are almost certainly to fail (p.6).

Effective management of river health cannot simply target symptoms, but must focus on the causal relationships, which are invariably embedded on the workings of the broader system. That requires a good understanding of each river, its degree of modification and how it currently operates and the causes of the main river problems.

Analysis of each river must not be fettered by existing commitments or programs, nor influenced by a particular operation or technical bias. Success or failure should be measured in terms of system outcomes, including securing of critical values, and not just the results of implementing narrowly defined strategies to deal with local symptoms (p.7).

When integrated or system management does not occur, the **cumulative impacts** of actions are seldom assessed or acknowledged to the detriment of the river (p.7).

The longer term protection of a river system requires that land use planning consider not only the land capability but also the **capability of the river to withstand the impacts of inappropriately developed or poorly managed land** (p.8).

System based approaches can assist the community to accept the very real limits to which both land and rivers can be pushed (p.8).

A whole of government effort is fundamental to effective river management. The management efforts of all relevant state agencies and authorities and local government councils must be concerted towards securing whole system goals through common and complementary strategies (p.10).

Doing small things in many places will not resolve big problems (p.10).

The most significant characteristic of the Government's approach to the development proposals for the estuary has been the degree in which it has ignored or side-stepped the critical findings of both the Hunter River Report (Healthy Rivers Commission 2001) and the Healthy Rivers (2003) Report.

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