



Hunter Bird Observers Club

Affiliated with BirdLife Australia

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Hunter Bird Observers Club Inc. statement to Planning Assessment Commission regarding NCIG Coal Export Terminal Modification 2 Newcastle (MP06_0009 MOD2)

Basis of Hunter Bird Observers Club's (HBOC's) objection

HBOC's objection to the NCIG (Newcastle Coal Infrastructure Group) rail flyover modification proposal in 2012 is based on opposition to the building of infrastructure on Ash Island west of the Kooragang Island Main Line (KIML) irrespective of land zonings. Swan Pond immediately west of the KIML provides unique habitat in the Hunter Estuary for threatened and migratory species protected by law, both state and federal. This is accepted by all parties involved: NCIG, the NSW Planning Department, Office of Environment and Heritage and the Hunter-Central Rivers Catchment Management Authority. Swan Pond is highly valued by bird observers clubs in NSW and interstate and is an internationally Important Bird Area. This project is not removing just any old duck pond which has a few ducks settling on it occasionally. It plans to remove unique land with high conservation values which include the number of species it supports, 85, and the congregations of more than 3000 water birds roosting and or foraging on a regular basis.

HBOC's opposition remains despite the provisions made in the Director-General's Assessment Report and the Recommended Modifying Instrument for the following reasons:

1. Newcastle Port Planned Coal Loading Capacity: The justification for the current planned increase in coal handling infrastructure capacity at Newcastle Port is no longer valid.

Forecast coal tonnages for the Hunter Valley Coal Chain (HVCC) were developed in 2011 by the Rail Coordination Group (RCG). Forecast capacity in 2012 was 160 million tonnes per annum (Mtpa), increasing to 290 Mtpa by 2018, an increase of 81% over 6 years. Australian Rail Track Corporation (ARTC) has based their 2012 - 2021 Hunter Valley Corridor Capacity Strategy on this forecast.

The index price for Newcastle thermal coal has fallen by 44% from \$130/tonne to \$90/tonne. The Australian Bureau of Resource and Energy Economics (BREE) in December 2012 forecast the price will still be around this level in 2018.

In the past 12 months most HVCC participants have announced cancellation or reduction of expansion plans for producing mines or new developments.

Actual coal deliveries to Newcastle Port in 2012 were 134 Mtpa vs the RCG forecast of 160 Mtpa. The PWCS T4 expansion with an additional 120 Mtpa capacity has been deferred indefinitely.

It is evident the proposed expansion of rail infrastructure at Kooragang is no longer required, the justification for the expansion no longer exists, and the development proposal should be rejected accordingly.

2. The cumulative impacts on shorebirds have not been taken into account

The NCIG approval 2007 did not involve any land and habitat destruction to the west of the KIML (i.e. Swan Pond). The Director-General's Environmental Assessment Report states that ARTC has confirmed that a grade separated flyover is necessary to ease congestion on the KIML. However, it is not clear why this was not apparent when the original development application was lodged. The net effect of approving the development in multiple stages is that the initial approval was granted without the full environmental impact being apparent and is a breach of the principle that assessments should take into account cumulative impacts.

The proposal to put infrastructure on Swan Pond increases cumulative impacts. NCIG has been granted approval to build a high rail embankment dividing Swan Pond's sister wetland, Deep Pond into two unequal portions thus enclosing the wetland and making it more than likely that shorebirds will cease to utilize the site. Shorebirds use Deep Pond which is fresh water and Swan Pond which is brackish interchangeably depending on conditions prevailing at the time. The cumulative impact on shorebirds will be compounded by the contemporaneous disturbance and destruction of both habitats and clearly will be much greater than the disturbance of the approved project which was limited to Deep Pond.

This determination sets a precedent by condoning an application strategy which sequentially requests the destruction of environmentally sensitive habitat in stages. Irrespective of whether this has occurred as a consequence of issues of inadequate preliminary design or lack of consultation between companies with related infrastructure requirements, it is totally unacceptable.

3. Offsets

HBOC supports the expert evidence presented by BirdLife Australia dealing with offset criteria relating to risk, compensation ratios, monitoring and maintenance of the offset and consequently we limit our comments to pointing out that:

A) The Determination presents a package of offsets and provisions for their implementation "to ensure that positive biodiversity outcomes are realized". The package and provisions outlined do not ensure a positive biodiversity outcome. An example of this is the case of Big Pond where although compensation was allocated to offset its destruction, habitat with similar ecological functions was not created and no positive biodiversity outcomes were achieved.

B) Without knowing the key details of the offset such as the location and environmental values of the compensatory land it is impossible to comment on whether it is adequate. HBOC expects, however, that any compensatory habitat for this project, should it be approved, will be in the Hunter Estuary.

C) Habitat modification to compensate for habitat loss on Ash Island must be completed before habitat destruction occurs. The time line outlined in the Determination suggests this is impossible and should be changed. Compensatory habitat must be functioning before the project starts otherwise how will its success be measured? If the compensatory offset fails to attract shorebirds, existing habitats at Swan and Deep Ponds will have been destroyed and the outcome is the loss of habitat for shorebirds and a further decline in numbers with no ameliorating factors.

4. The new location of the electrical transmission lines will cause harm to birds

The realignment of the Ausgrid 33 kV electrical transmission line westwards into Swan Pond will destroy additional habitat during the construction stage and create the potential for bird-strike events. It is our understanding that if Port Waratah Coal Services (PWCS) builds its Terminal 4, then these transmission lines will have to be moved again which is patently ridiculous. Bird strike on Ash Island has been an issue for many years and in the recent past, HBOC has asked Ausgrid to address this problem. The necessary relocation of these lines presents an opportunity to place them underground and away from wetlands where there is high usage by bird species including migratory shorebirds which are known to fly at night. HBOC keeps a database of bird-strike incidents involving power lines. If the transmission lines remain above ground, their installation must include high visibility devices which give bird species the opportunity to avoid them in all lighting conditions, including darkness.

5. The resolution and the nature of any conditions set by the Federal Government are an essential precursor to any Determination by the NSW Planning Department or the Planning Assessment Commission.

The original 2005 development application triggered the *Environment Protection and Biodiversity Conservation Act* (EPBC Act). It was deemed not a controlled action if undertaken in accordance with Particular Manner requirements including those for shorebirds. The Director-General's Assessment Report

(pp.16 & 17) and the Recommended Modifying Instrument both acknowledge that migratory shorebird habitat will be lost on Swan Pond. In view of these acknowledgements together with the inclusion of additional land not assessed in the original application, the EPBC Act should have been triggered and the Modification Project referred. HBOC realized this and at the time of the exhibition period in July 2012 HBOC wrote to the Compliance and Enforcement Branch, Department of Sustainability, Environment, Water, Population and Communities indicating that the project did in fact impact on matters of National Environmental Significance (NES): migratory shorebirds, threatened species and Ramsar wetlands. This is contrary to NCIG's opinion which stated that its Environmental Assessment concluded that the Modification would not result in significant impacts on any flora and fauna listed under the EPBC Act. How would NCIG know whether there was a significant impact or not as no bird surveys on Swan Pond had been undertaken for its Environmental Assessment? HBOC on the other hand has been surveying Swan Pond monthly since 1999 and has 14 years of data which it made available to NCIG in September 2012.

After 10 months of investigation it remains unresolved as to whether this Modification should have been referred which HBOC finds extraordinary. This Modification should have been referred, if not by NCIG, then by authorities in a position to do so and this should be done now.

Concluding Remarks

HBOC appreciates that the recommendations by the Planning Department are an attempt to rectify the inadequate Environmental Assessment submitted by NCIG. HBOC also recognises that the Hunter Region requires infrastructure. In view of the downturn in the coal market from which it may never recover as alternative energy sources are developed, increased capacity is not required to the extent previously forecast and congestion on the KIML will dissipate as a consequence. Land west of the KIML has long been earmarked for conservation to offset the extensive destruction of estuarine land to the east for industry. It is no coincidence that migratory shorebird numbers have decreased by more than 50% in the last 3 decades during a period of incessant encroachment on the estuary by industry. It is time to halt that encroachment in an estuary which is the most important site in NSW for migratory shorebirds.