



# Hunter Bird Observers Club

Affiliated with BirdLife Australia

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Mr Drew Mclean  
Acting Director  
Compliance and Enforcement Branch  
Department of Sustainability, Environment, Water, Population and Communities  
GPO Box 787  
CANBERRA ACT 2601

Sent by email to [compliance@environment.gov.au](mailto:compliance@environment.gov.au)

Dear Mr Mclean,

## **RE: Newcastle Coal Infrastructure Group Rail Flyover Modification**

The Hunter Bird Observers Club Inc. (HBOC) is writing a submission opposing the proposed Newcastle Coal Infrastructure Group (NCIG) Rail Flyover Modification (RFM) currently on exhibition with the NSW Department of Planning and Infrastructure (MP 06\_0009). HBOC has been monitoring avian populations on Swan and Wader Ponds (identified in some documents as "Area E") on the south eastern side of Ash Island, near Newcastle, NSW, monthly since 1999. HBOC believes the RFM should be declared a 'controlled action' as the RFM includes wetland additional to land included in the original NCIG approval, namely Swan Pond, on which migratory shorebirds are regularly present. We also believe that the NCIG environmental assessment is totally inadequate and that, by the omission of highly relevant facts, it is duplicitous.

HBOC makes the following comments:

The Environmental Assessment (EA) does not name the wetland known as Swan Pond (part of which NCIG plan to destroy) but refers to it variously as "Rail Flyover Modification area on the western side of the existing rail embankment" (EA p.39) or "additional lands" (EA p. 29) or "1.4 ha of land adjacent to the existing Kooragang Island Main Line Embankment" (EA p. 14). Swan Pond was recognised for its high conservation value in the 1970s, was identified as important shorebird foraging habitat in the 1980s and was named in the early 1990s.

The RFM will destroy Swan Pond migratory shorebird habitat parallel with the Kooragang Island Main Line (KIML) for 790 metres x approximately 50 metres. The shape of the wetland to be impacted is particularly relevant as it provides a shallow shoreline with intermittent mudflats according to tidal conditions particularly favoured by migratory shorebirds and many species of waterfowl, often involving thousands of birds. Swan Pond regularly supports more than 1% of the Australian populations of Sharp-tailed Sandpiper *Calidris acuminata* and Chestnut Teal *Anas castanea*.

During the construction stage the footprint for works will be much larger and will cause further destruction of Swan Pond.

Existing power poles and lines parallel with KIML will be relocated; HBOC understands that the owner, Ausgrid, has instructed that they be re-erected further west into Swan Pond and closer to existing power lines and poles along Wagtail Way. The Wagtail Way power lines cause bird injury and mortality and HBOC has approached Ausgrid in the past to take measures to prevent this. Additional lines in the one location can only increase the risk for bird strike and is completely unacceptable.

No field surveys for Swan Pond have been undertaken at all; the EA relies on desktop studies which are totally inadequate. There has been no investigation of which species forage and roost in the area to be destroyed as opposed to their use of the total area of Swan Pond. Such studies are imperative in order to judge the true impact of habitat destruction (i.e. the destruction and disturbance of a small area of Swan Pond could render the entire area unsuitable for many species).

The EA does not acknowledge that Swan Pond is important habitat for migratory shorebirds which are ‘matters of national environmental significance’ under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* and is apparently unaware that the Australian Government has obligations to protect migratory shorebirds and their habitat under international agreements with the People’s Republic of China for the Protection of Migratory Birds and their Environment (CAMBA), the Government of Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and their Environment (JAMBA), and the Government of the Republic of Korea on the Protection of Migratory Birds (ROKAMBA); the Bonn Convention for the protection of migratory wild animals.

Past and present decisions by successive federal and state governments have failed to protect migratory shorebird populations and their habitat in the Hunter Estuary. Despite this, Hunter Estuary remains the most important site in NSW for migratory shorebirds and more species and numbers of birds continue to migrate to the Estuary than to any other site in NSW. The feature which makes **Swan Pond** unique in the Hunter Estuary is that its ecological attributes are governed by the limited tidal transfer which occurs only during the high part of the tidal cycle. As a result, mudflats are exposed for longer periods than at most other areas of the Estuary thus providing high-quality roosting and secondary foraging habitat. This type of habitat has all but disappeared from the Estuary other than at Swan Pond. Similar habitat at the former Big Pond on Cormorant Road, Kooragang Island, was destroyed by NCIG to provide for their coal-dump site and was not replaced. All the shorter-legged species, those showing the greatest decline, utilise Swan Pond including Red-necked Stint, Red Knot, Sharp-tailed Sandpiper, Curlew Sandpiper, Marsh Sandpiper and Common Greenshank. Projects to restore intertidal habitat at Hexham and Tomago are in progress, but water levels are too high for shorebird use.

HBOC database shows that nine species of migratory shorebirds regularly use Swan Pond:

- Latham’s Snipe *Gallinago hardwickii*
- Black-tailed Godwit *Limosa limosa*
- Bar-tailed Godwit *Limosa lapponica*
- Common Greenshank *Tringa nebularia*
- Marsh Sandpiper *Tringa stagnatilis*
- Red Knot *Calidris canutus*
- Red-necked Stint *Calidris ruficollis*
- Sharp-tailed Sandpiper *Calidris acuminata*
- Curlew Sandpiper *Calidris ferruginea*

Other migratory shorebird species occur on a less regular basis:

- Pacific Golden Plover *Pluvialis fulva*
- Double-banded Plover *Charadrius bicinctus*
- Grey-tailed Tattler *Tringa brevipes*
- Lesser Yellowlegs *Tringa flavipes*
- Long-toed Stint *Calidris subminuta*
- Pectoral Sandpiper *Calidris melanotos*
- Buff-breasted Sandpiper *Tryngites subruficollis*
- Broad-billed Sandpiper *Limicola falcinellus*
- Ruff *Philomachus pugnax*

The cumulative impact of the destruction of small areas of habitat of a similar nature to Swan Pond is reflected by the alarming decline in both species diversity and population numbers. The precautionary principle should be applied. The following are a few examples of decline:

- The Black-tailed Godwit is listed as Vulnerable under the *NSW Threatened Species Conservation Act 1995 (TSC Act)*. "...visiting numbers now less than 25% of the counts in the 1970s and 1980s and the decline seemingly continuing" (Roderick and Stuart 2010).
- Data for the Bar-tailed Godwit show a 50% decline in the maximum numbers over the past 13 years (Herbert 2007; HBOC data unpublished).
- Data for the Eastern Curlew show a 50% decline in the maximum numbers over the past 13 years (Herbert 2007; HBOC data unpublished).
- Data for the Common Greenshank show a 50% decline in the maximum numbers over the past 13 years (Herbert 2007; HBOC data unpublished).
- In December 2011, the Curlew Sandpiper was listed as Endangered under the *TSC Act*. "Fitting a linear regression to the 29 years' data collected by the Australian Wader Study Group indicates that there has been a 94% decline in maximum annual counts of the New South Wales population between 1982 and 2010. This is equivalent to a decline of 89% over three generations, the period recommended by IUCN (2010) for calculating population reduction" (NSW Scientific Committee).
- The Terek Sandpiper, listed as Vulnerable under the *TSC Act*, has declined drastically from 600 birds in 1970 to 24 in 2010 (Roderick and Stuart 2010).
- Broad-billed Sandpiper is listed as Endangered under the *TSC Act*. Numbers have fallen from 180 birds in 1972 to the point where this species is approaching extinction in the Hunter Estuary (Roderick and Stuart 2010).

The above examples of decline in the Hunter Estuary reflect the gravity of the situation and the NSW Government and the NSW Planning Department are ignoring this decline.

The EA does not acknowledge that shorebirds are mentioned in the Particular Manner Requirements (2006/2987) for the original project's being 'not a controlled action' other than by reference to "condition 7" (EA p. 14).

The White-fronted Chat *Epthianura albifrons*, a small passerine species which favours habitats with saltmarsh, is listed as Vulnerable under the *TSC Act*. "Comparison of Atlas reporting rates in New South Wales indicate that there has been a 52% decline between 1977-81 and 1998-2002 (Barrett *et al.* 2007), equivalent to a 35% decline in reporting rate over 10 years" (NSW Scientific Committee). It occurs in small numbers at four locations in the Hunter Region (Jenner 2011; Stuart 2011) including Ash Island. It occurs on the edges of Swan Pond where saltmarsh provides habitat for this species.

Despite NSW Government rezonings of Swan Pond as Special Purposes 1 & 2, Swan Pond was originally earmarked for inclusion in the NSW national parks estate and is of high conservation value.

Swan Pond is part of the Hunter Estuary which is recognised as an Important Bird Area in accordance with the criteria set out by Birdlife International due to the existence of threatened and migratory birds and significant numbers (>1% of the world population) of other bird species.

Swan Pond is nationally and internationally famous as a destination for birdwatchers and other people interested in wetlands.

The Green and Golden Bell Frog listed as 'vulnerable' under the *TSC* and *EPBC Acts*, lives on land to be destroyed immediately adjacent to the Kooragang Island Main Line.

Since proposed rail tracks for the NCIG Rail Flyover project will be constructed adjacent to the Port Waratah Coal Services Terminal 4 Coal Loader Project's (T4) proposed rail tracks on Swan Pond and T4 was declared a 'controlled action' in August 2011, HBOC believes that the RFM must also be deemed a 'controlled action'.

HBOC is referring the RFM to you for the above reasons and we request that the Minister deem this Project a 'controlled action' taking into consideration the Precautionary Principle (*EPBC Act*).

Yours faithfully,

Ann Lindsey  
For and on behalf of HBOC

## References

*Environment Protection and Biodiversity Conservation Act 1999*

Herbert, C. (2007). Distribution, Abundance and Status of Birds in the Hunter Estuary. *Hunter Bird Observers Club Special Report No. 4*. (Hunter Bird Observers Club Inc.: New Lambton, NSW, Australia).

Hunter Bird Observers Club database - monthly surveys of the shorebirds in the Hunter Estuary since April 1999.

Jenner, B., French, K., Oxenham, K. and Major, R. (2011). Population decline of the White-fronted Chat (*Epthianura albifrons*) in New South Wales, Australia. *Emu* **111**, 84-91.

Newcastle Coal Infrastructure Group Rail Flyover Modification Environmental Assessment 2012

NSW Scientific Committee website

<http://www.environment.nsw.gov.au/determinations/curlewsandpiperfd.htm>

Roderick, M. and Stuart, A. (2010). The Status of Threatened Bird Species in the Hunter Region, *The Whistler* **4**. (Hunter Bird Observers Club Inc.: New Lambton, NSW, Australia).

Stuart, A. (Ed.) (2011). Hunter Region Annual Bird Report Number 18 (2010). (Hunter Bird Observers Club Inc.: New Lambton, NSW, Australia).