

31 July 2012

Hunter Branch

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The Director-General
NSW Department of Planning & Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Ingrid Ilias

Dear Sir/ Madam,

**NEWCASTLE COAL INFRASTRUCTURE GROUP COAL EXPORT TERMINAL -
RAIL FLYOVER MODIFICATION (PROJECT APPLICATION MP 06_0009 MOD 2)**

This submission is made by the Hunter Branch of the National Parks Association of NSW (NPA), in relation to the Newcastle Coal Infrastructure Group's Rail Flyover Modification application (MP 06_0009 MOD 2), located on Kooragang Island near Newcastle. NPA is a non-profit community organisation that promotes protection of the integrity and diversity of natural systems throughout the State and beyond. It has a particular interest in the protection of the State's biodiversity.

In this submission, we wish to raise strong objections to the above project in view of direct impacts and the contribution it will make to the continuing incremental degradation of wetlands in the Hunter River estuary and their associated biodiversity values. Our particular concerns relate to the area commonly known as 'Swan Pond', which is situated immediately adjacent to and is within the scope of proposed modification works area. We believe that the Environmental Assessment does not reasonably address or reflect the impact that the proposed project modification, particularly realignment of the Kooragang Island Main Line and grade separation, is likely to have on significant environmental features and matters of national environmental significance, namely:

- listed threatened species and ecological communities
- listed migratory species
- Ramsar wetlands of international significance

We also call for these impacts to be considered within the context of cumulative impacts from other projects within the Kooragang Island industrial area, including the PWCS Terminal 4 proposal (MP 10_0215).

Wetlands

Specifically, the proposed project modification to realign the Kooragang Island Main Line will encroach upon very important estuary wetland habitats in the Swan Pond, including two EECs listed under state legislation and habitat for fauna listed under both state and commonwealth legislation and international treaties to which Australia is a signatory party. While the declared

Hunter Estuary Wetlands Ramsar boundary is several hundred metres to the north of the NCIG rail flyover modification project area, wetlands in the project area broadly retain the same values and support the same individuals and populations of species that utilise habitats in the declared Ramsar wetland so the project will indeed impact on the Ramsar wetlands by removing additional natural wetland habitat. The Environmental Assessment is dismissive of the additional impacts from the proposed modification works and we believe is misleading in its conclusion of removing a further 1.5ha of natural wetland habitat and associated disturbance impacts as minor. The proportionate impact of the proposed additional project works on natural habitats in the modification application alone is approximately 60%, which is surely significant in relation to the proposal, let alone likely indirect impacts.

Birds

The Hunter Estuary remains the most important site in NSW for migratory shorebirds. Swan Pond is of particular significance because its mudflats are exposed for longer periods than at most other parts of the estuary, thus providing high-quality roosting and secondary foraging habitat. Other habitat of this type has all but disappeared from the Hunter estuary and the cumulative loss to date has had dire impact on significant species, such that any further loss of wetlands and threatened species habitats in this location is considered significant. Swan Pond also provides foraging habitat for large numbers of other waterbird species. Birds utilising Swan Pond include species listed under both state and commonwealth legislation, as well as migratory species subject to four international treaties. We therefore do not agree with the statement that *“An assessment on migratory species listed under the EPBC Act is outside the scope of this assessment...”*

The Environmental Assessment acknowledges that alteration to surface water flows is a potential impact from the proposed modification works. We consider there to be a high likelihood that earthworks and alteration of drainage on the eastern margin of Swan Pond associated with both the rail line realignment and the grade separation will have a significant effect on the local hydrology (surface and sub-surface) and therefore impact on the habitat values provided in the wetland. This has neither been adequately assessed nor suitable management controls proposed in the Environmental Assessment and this may have adverse implications for shorebird and waterbird habitat utilisation more broadly in the vicinity of the project area. The assertion in the Environmental Assessment that *“As the Rail Flyover Modification would be constructed adjacent to the existing rail line there would be minimal alteration of the natural flow regime in the area”* is simplistic and is not accepted. The proposal that *“A culvert would be installed under the rail embankment crossing the wetland habitat. Culverts would allow surface waters to continue to flow from Deep Pond in a similar manner to the existing conditions.”* and *“The proposed Rail Flyover Modification would have negligible additional impact on the surface water flows or quality as to affect surrounding wetland areas. Culverts would be installed as necessary”* downplays the potential significance of impacts on the wetland and does not consider the important wetland margin habitat currently provided in the Swan Pond.

Green and Golden Bell Frog

Areas that will be directly and indirectly impacted by the proposed project modification are also identified as habitat for the Green and Golden Bell Frog, which is listed as ‘endangered’ under the TSC Act and ‘vulnerable’ under the EPBC Act. The proposal to establish additional compensatory offset measures in light of the proposed project modifications is simplistic and not an acceptable approach to project planning given the plight of this species in the Hunter region and its importance in a national context. This especially the case whilst ever existing compensatory programs are not proven and the rate of population loss is greater than the rate

of gain. This approach in no way meets the objects of the TSC or EPBC Acts or the principles of ecologically sustainable development espoused in the objects of the EP&A Act.

Compensatory Offsets

Condition 1.6a of the NCIG project approval states *“The Proponent may only proceed to construct the infrastructure marked as “High Capacity Optional Inlet Rail Spur and Rail Sidings” in Figure 2-1 of the document referred to under condition 1.1b) of this approval upon receipt of the Director-General’s satisfaction that: a) the Compensatory Habitat and Ecological Monitoring Program required under condition 2.20 has been implemented to the extent agreed by the Director-General...”*. The Environmental Assessment discusses the aims and objectives of the Compensatory Habitat and Ecological Monitoring Program (CHEMP) and indicates that approval for stage 1 works was expected from NPWS in May 2012. There is no indication in the Environmental Assessment that the CHEMP has progressed and we infer from the information supplied that the opposite is the case. Surely this does not constitute compliance with the approval condition, such that the rail spur construction (let alone any modification to the plans) cannot proceed until the program is implemented in accordance with the condition.

Mitigation Measures

Should the project modification be considered favourably by the department and approved, we recommend the application of new conditions in relation to the modification works, as follows:

- requiring the use of inert fill materials in the works to ensure no adverse runoff (sediment and/or nutrients) into the wetland where standard erosion and sediment controls are not considered suitable in this sensitive situation;
- submission of detailed works plans to ensure drainage is not adversely impacted; and
- preparation and submission of detailed site rehabilitation plans for wetland margin habitats for approval prior to commencement to ensure these habitats are restored to their pre-existing condition so that significant fauna species are not adversely impacted.

Thank you for considering our submission.

Yours faithfully



Ian Donovan

President, Hunter Branch

National Parks Association of NSW