

13 May 2013

**DETERMINATION OF MODIFICATION APPLICATION (MP06_0009 MOD 2)
FOR GRADE SEPARATION AND REALIGNMENT OF THE RAIL SPUR
SERVICING THE NCIG COAL EXPORT TERMINAL, KOORAGANG ISLAND**

1. Delegation to the Commission

The above modification application (MP06_0009 MOD 2) has been submitted under section 75W of the *Environmental Planning and Assessment Act 1979* (the Act).

The modification application was referred to the NSW Planning Assessment Commission (the Commission) for determination under Ministerial delegation dated 14 September 2011. The delegation applies as the Proponent has made a reportable political donation and more than 25 public submissions were received.

The Commission received the referral from the Department of Planning and Infrastructure (the Department) on 12 April 2013.

The Commission constituted to determine the application consists of Garry Payne AM (chair) and Brian Gilligan.

2. Background

On 13 April 2007 the then Minister for Planning granted approval for Newcastle Coal Infrastructure Group (NCIG) to construct and operate a coal export terminal on Kooragang Island (application reference MP06_0009). Construction of the project has commenced in stages and the terminal is currently operational.

The approval allowed for construction and operation of an optional high capacity inlet rail spur and rail sidings from the Kooragang Island Main Line across Deep Pond to connect with the existing rail loop on the site. The rail spur was proposed and assessed as an at-grade connection with the Kooragang Island Mail Line.

The Department's assessment of the original project MP06_0009 noted there was uncertainty as to whether or when the rail link would be required, and also that there may be potential impacts on Deep Pond.

As a result the Department imposed Condition 1.6 stating that the rail spur must not be constructed until the Compensatory Habitat and Ecological Monitoring Program (CHEMP) has been implemented to the extent agreed by the Director General. In addition Condition 2.40 required consultation with the owner/operator of the Kooragang Coal Terminal (currently Port Waratah Coal Services (PWCS)) and the Australian Rail Track Corporation (ARTC).

3. Proposal

The current modification application seeks approval to construct and operate a rail flyover in lieu of the previously approved at-grade rail spur for the inbound track of the NCIG northern rail spur.

To accommodate the NCIG flyover, realignment of the inbound (western) track and realignment and lowering of the outbound (eastern) track of the Kooragang Island Main Line are required. The existing electricity transmission lines would also be relocated to the west of the rail tracks.

The works would require expansion of an existing embankment further west into the wetlands.

4. Department's Assessment Report

The Department publicly exhibited the Environmental Assessment (EA) between 17 July and 1 August 2012. The Department received 60 submissions on the proposal, consisting of six submissions from public authorities and 54 from the community including special interest groups.

The Director General's Environmental Assessment Report (the Assessment Report) considered the proposal and the project's background, statutory context and submissions received. This Report also provided an assessment of the project in relation to the following key issues:

- biodiversity; and
- contaminated soils and groundwater management.

Other issues addressed included Aboriginal Heritage, noise, utilities and services, double stacked trains and lighting.

The Department concluded that the construction and operation of the rail flyover can be undertaken in an environmentally responsible manner. Its recommendation therefore is to approve the modification, subject to amendments to existing conditions and proposed new conditions.

5. Site Visit and Consultation

Both Commission members carried out an unaccompanied site visit.

5.1 City of Newcastle

As the site is within the area administered by the City of Newcastle, the Commission invited the Council to meet. The Council declined to meet, however the Commission notes it made a submission which has been duly considered.

5.2 Office of Environment and Heritage (OEH)

The Commission met with OEH on 7 May 2013 where the following matters were discussed:

- history of the project including offset arrangements;
- compliance with previously imposed conditions;
- general support for the proposal, subject to conditions and monitoring/compliance with the conditions;
- inability of Ash Island to accommodate further offsets and alternative options;
- breadth of offsets (e.g. foraging and high-tide roosting for shorebirds);

- incursion of electricity transmission line into the wetland and how maintenance could be accommodated; and
- potential for contamination and need to manage soil and sediment erosion.

5.3 Proponent

The Commission met with the Proponent on 7 May 2013 where the following matters were discussed:

- history of the site and of the proposal;
- the Proponent described the proposed modification, and identified the site boundary within the context of the wetlands and the delineated western boundary of the industrial area referred to as the 'proposed T4 boundary' as it has the potential to accommodate rail access requirements for a future 4th Newcastle Coal Terminal (T4);
- proposed alignment of the electricity transmission lines, the interface between the western edge of the embankment and the wetlands, and future maintenance access;
- rail clearance requirements;
- clarification of the construction timeframe (circa 18 months) and NCIG's future responsibility being from the flyover exit from the Main Line;
- previous biodiversity work including existing frog enclosures and vegetation mapping; and
- biodiversity offsets including requirements for species groups and timeframes.

5.4 Public Meeting

More than 25 public submissions were received objecting to the proposal and therefore a public meeting was held on 7 May 2013. Eight parties spoke both for and against the proposal and a list of the speakers is available as Appendix 1 to this report.

The matters raised in objection to the proposal are summarised as:

- cannot justify application on the basis of greater efficiencies, noting other opportunities to increase efficiencies (e.g. loading processes);
- if critical the flyover should have been considered as part of the original project application;
- proposal is not 'minor' and beyond the scope of a modification with a new application required;
- prior urgency has abated and should reconsider proposal;
- interrelationship with T4;
- effect of coal dust from mining and uncovered trains on air quality and health, and need further ARTC dust study;
- need to consider coal mining and cumulative impacts from the pit through to international waters, and not just within the application site;
- noise impacts;
- design will not accommodate double-stacked trains;
- contamination and need to remediate;
- location of electricity transmission lines impacting on wetlands and potential increase in bird strikes;
- detrimental and cumulative impact on Swan Pond and wetland habitats which are unique and have high conservation values in terms of the range and number of birds supported;
- need to protect migratory birds, their numbers, and their foraging and roosting habitats noting the current cumulative decline in bird numbers across a range of species;
- EA, the Department's report, and draft conditions are based on limited evidence, are inadequate, and contrary to submissions;
- requires Commonwealth approval under EPBC Act;

- in principle objection to offsetting;
- offset amounts and locations not specified and as such cannot comment on whether these would provide comparative or appropriate habitat;
- need for compensatory habitat to be secured prior to construction; and
- suggested improved criteria and conditions in relation to offsets for bird habitat.

The matters raised in support of the proposal are summarised as:

- demonstrated need for increased capacity on the rail line (exclusive of T4 proposal) to reduce delays, reduce costs and improve the flow-through and efficiency of the rail and coal transport networks;
- likelihood of future capacity increases and need to invest in infrastructure to support expansions; and
- job generation from project, and jobs at the mines and within the mining industry are secured through improvements to rail infrastructure.

6. Commission's Conclusions

The Commission has carefully considered the Department's assessment, written submissions, and matters raised by OEH, the Proponent and speakers at the public meeting.

At the public meeting stakeholders in the coal industry, including the ARTC and the PWCS, expressed a view there is a need for the rail flyover and realignment to improve the efficiency of the coal transportation network and to cater for future increases in capacity. This position has been accepted by the Department as satisfying current Condition 2.40 of project approval MP06_0009, and the Department deemed the proposal a modification under s75W of the Act. The Commission also understands there are different opinions as to the relevance of the T4 proposal, however there is no approval in place nor certainty about its future, and the Commission has considered the proposal independent of T4.

The Commission accepts the need for the proposal has been demonstrated, and notes that the expansion impinges on a SEPP 14 Wetlands Area but has been deliberately excluded from the Nature Reserve to facilitate its use to support industrial development and related infrastructure.

From visiting the site it is evident that the site has high conservation values, and the Department has identified potential biodiversity impacts to Coastal Saltmarsh, Freshwater Wetland, the habitat of the Green and Golden Bell Frog and migratory bird species.

The key issue to the Commission is whether the biodiversity impacts have been minimised and whether any impacts can be satisfactorily mitigated, managed or offset. Biodiversity impacts and offsets have also clearly been a primary concern for the Department, OEH and members of the local community and special interest groups.

The Commission met with OEH to discuss the proposal and the Department's assessment and recommendation. The OEH expressed support for the proposal, subject to the proposed draft conditions and future monitoring/enforcement of conditions of consent. Broad support for early identification of specific species and area offsets and for the proposed conservation bond was also expressed.

The Commission agrees that the draft amended/added conditions are very specific in terms of the species, offset sizes and timing. The draft amended/added conditions appropriately strengthen the project's biodiversity management and offset provisions and include the need to consult with OEH and require a conservation bond. Birdlife Australia at the public meeting tabled suggested revisions to the draft conditions of consent. These were carefully

considered, however the Commission is satisfied on balance that the Department's recommended conditions are suitably stringent to deliver the relevant biodiversity outcomes. Although in the Commission's opinion the Department's draft conditions are appropriate, there is legitimate agency and community concern about the need to ensure conditions are complied with in a timely manner to secure the offsets and other environmental outcomes.

On balance, the Commission considers that the proposal would provide economic and public benefits, and that the conditions are suitably stringent to protect biodiversity outcomes. Therefore the Commission has approved the modification in accordance with the Department's recommendation and its draft condition amendments and additions.

A stylized, handwritten signature in black ink, appearing to be 'G Payne'.

Garry Payne AM (chair)
Member of the Commission

A handwritten signature in black ink that reads 'Brian Gilligan'.

Brian Gilligan
Member of the Commission

Appendix 1 – Speakers at Public Meeting

Newcastle Coal Infrastructure Group Coal Export Terminal Modification 2 Kooragang Island, Newcastle (MP06_0009 MOD2)		
Planning Assessment Commission Public Meeting Schedule of Speakers		
Date & Time: Tuesday, 7 May 2013 from 4pm Venue: Mulubinba Room, Newcastle City Hall, 290 King Street, Newcastle		
Time	Ref.	Speakers
4pm		Mr Garry Payne AM (Chair) – Opening Statement
	1	Mr Rick Banyard - Maryville Community Group
	2	Mr Shaun Sears – Port Waratah Coal Services
	3	Mr Jonathan Vandervoort – Whitehaven Coal
	4	Mr Mike Newman on behalf of Ms Samantha Vine - Birdlife Australia
	5	Mr Michael Dowzer – Newcastle Port Corporation
	6	Mr John L Hayes – Correct Planning & Consultation for Mayfield Group
	7	Ms Ann Lindsey – Hunter Bird Observers Club
	8	Mr Martin Jones – Australian Rail Track Corporation
Meeting Close		