

COMMONWEALTH OF AUSTRALIA
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

**DECISION THAT ACTION IS NOT A CONTROLLED ACTION
PROVIDED IT IS UNDERTAKEN IN A PARTICULAR MANNER**

I, ALEX RANKIN, Assistant Secretary, Environment Assessment Branch, Department of the Environment and Heritage, a delegate of the Minister for the Environment and Heritage for the purposes of section 75 of the *Environment Protection and Biodiversity Conservation Act 1999*, decide that the proposed action, set out in the Schedule, is not a controlled action. Provided that the proposed action is taken in the manner described in the Schedule, the provisions of Part 3 of the EPBC Act set out in the Schedule are not controlling provisions.

SCHEDULE

The proposed action to develop a Coal Export Terminal, including associated rail and coal handling infrastructure and wharf/shiploading facilities on the south arm of the Hunter River, Kooragang Island, Newcastle, NSW, and as described in the referral received under the Act on 9 August 2006 and additional information received 11 September and 3 October 2006 (EPBC 2006/2987).

Provisions of Part 3

The relevant provisions of Part 3 are:

- Sections 16 and 17B (Ramsar wetlands);
- Sections 18 and 18A (Listed threatened species); and
- Sections 20 and 20A (Migratory species).

Manner in which the proposed action is to be taken:

The following measures must be taken to ensure that significant impacts are avoided on populations of the listed vulnerable Green and Golden Bell Frog (*Litoria aurea*), listed migratory shorebirds that utilise Deep Pond, and the ecological character of the Hunter Estuary Wetlands Ramsar site.

Green and Golden Bell frog

1. Green and Golden Bell Frogs found on the project site during construction or operation will be removed from the direct disturbance area and placed in adjacent similar habitat within the Kooragang Nature Reserve, and in accordance with the NPWS *Hygiene Protocol for the Control of Disease in Frogs 2001*.
2. The following management measures, as a minimum, will be undertaken to minimise the further spread of amphibian chytrid fungus:
 - The training of all project personnel in site hygiene management in accordance with the NPWS *Hygiene Protocol for the Control of Disease in Frogs 2001*.
 - Procedures will be implemented to inspect mobile plant entering the proposal site during construction activities to ensure the plant is free of soil and/or organic matter and to disinfect tyres and wheels of vehicles entering the proposal site that have been exposed to mud.
3. Rail culverts, to act as frog underpasses, will be designed and constructed along the proposed rail loop and as described in the referral and on Drawing 3, NCIG Coal Export Terminal (NCIG 2006) attached to the referral.
4. The following measures will be undertaken to establish habitat for the Green and Golden Bell Frogs at the frog underpasses, including culverts placed within existing drainage channels that will be retained for use as frog underpasses:
 - Planting of vegetation preferred by the frog species, including Cumbungi (*Typha* sp), spikerushes (*Eleocharis* spp) or sedges (*Schoenoplectus* spp).
 - Placing piles of rocks at either end of, or within, frog underpasses.
 - Establishment of pond areas at either end of the frog underpasses.
5. Project personnel will be prohibited from entering Green and Golden Bell Frog habitat area located outside defined construction areas.

6. Annual monitoring during the breeding season of the Green and Golden Bell Frog will be undertaken on the Coal Export Terminal site until 2020. Thereafter, monitoring will be undertaken on a three yearly basis until 2030. If monitoring indicates declining populations attributable to the development, measures will be implemented, in consultation with the Department, to reverse any decline. Such measures may include control of *Gambusia* populations, further creation or enhancement of frog habitat and dispersal pathways, and establishment of new populations.

Shorebirds

7. Screens, comprising timber paling fences or similar structures, will be placed at intervals along the rail infrastructure to minimise lighting impacts on shorebird habitat along the southern shores of Deep Pond from trains and ground-level rail corridor lighting.
8. Annual monitoring of the Australasian Bittern and shorebird populations utilising Deep Pond will be undertaken during summer (eg peak waterbird usage period) until 2020. Thereafter, monitoring will be undertaken on a three yearly basis until 2030.
9. Monitoring results will be provided on an annual basis to the Department up to 2020 (by 31 March of each year). A summary and analysis of the results will also be provided each three years (by 31 March) addressing any changes in the utilisation patterns of listed migratory shorebirds at Deep Pond since the monitoring commenced. Measures will be implemented to enhance existing habitat, or provide additional habitat, in the event monitoring indicates a decline in listed shorebird usage attributable to construction and operation of the rail loop. Design and construction of any new habitat, or habitat enhancement measures, will be undertaken in consultation with a shorebird specialist.
10. The Department will be notified a minimum of 24 months prior to construction of the northern rail spur, if it proceeds. An assessment of potential impacts on listed shorebird habitat in Deep Pond will be provided at that time, together with a description of any design or other mitigation measures required to avoid significant impacts on listed birds. Such measures may include enhancement of existing habitat and creation of new habitat alongside the northern rail spur embankment. Design and construction of any new habitat, or habitat enhancement measures, will be undertaken in consultation with a shorebird specialist.

Hunter Estuary Ramsar Wetlands

11. A site water management plan, including a surface water monitoring program, will be developed in accordance with the measures outlined in the *Site Water Management Plan (SWMP) (Construction and Operation)* provided in Section 5 of the *Draft Statement of Commitments, Environmental Assessment* (Newcastle Coal Infrastructure Group, July 2006) and Sections 8 & 9 of the *Land Contamination and Groundwater Assessment, Newcastle Coal Infrastructure Group Coal Export Terminal, Kooragang Island, Appendix D* (RCA Australia, June 2006).

Dated this 11th day of October 2006


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**ASSISTANT SECRETARY
ENVIRONMENT ASSESSMENT BRANCH
DEPARTMENT OF THE ENVIRONMENT AND HERITAGE**