

# Modification of Minister's Approval

## Section 75W of the *Environmental Planning and Assessment Act 1979*

The Planning Assessment Commission of New South Wales (**the Commission**) as delegate of the Minister for Planning and Infrastructure under delegation enforced from 1 October 2011, approves the modification application referred to in Schedule 1, subject to the conditions specified in Schedule 2.



**Mr Garry Payne AM**  
Member of the Commission



**Mr Brian Gilligan**  
Member of the Commission

Sydney

13 May 2013

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### SCHEDULE 1

**Project Approval:**

**MP 06\_0009** granted by the then Minister for Planning on 13 April 2007.

**For the following:**

Construction and operation of a coal export terminal with capacity of up to 66 million tonnes per annum, including:

- foundation preparation/capping of a rail corridor traversing the existing Kooragang Island Waste Emplacement Facility for the development of the rail spurs, rail sidings and rail loops;
- construction of rail spurs, rail sidings and rail loops, rail overpass, train unloading stations and connecting conveyors;
- reuse of dredged materials from the south arm of the Hunter River as preload and engineering fill for construction of the coal storage area, rail corridor and wharf facilities;
- construction of a coal storage area including coal stockpiles, conveyors, transfer points and combined stacker/reclaimers;
- construction of wharf facilities, shiploaders, conveyors and buffer bins;
- development of water management infrastructure including Site drainage works, stormwater settlement ponds, primary and secondary settling ponds, Site water pond, water tanks and stockpile spray system;
- installation of electricity reticulation and control systems;
- development of access roads and internal roads;

- construction of administration and workshop buildings;
- other associated minor infrastructure, plant, equipment and activities; and
- operation of the coal export terminal up to a capacity of 66 million tonnes per annum of coal, including the unloading of coal trains, the stockpiling of coal, and the loading of coal to ships via the wharf facilities and shiploaders.

**Modification:**

(MP 06\_0009 MOD 2): Modification to construct and operate a rail flyover which includes the following components:

- grade separation of the inbound track for the NCIG Northern Rail Spur (also referred to as the high capacity optional inlet rail spur and rail sidings);
- realignment of the inbound (western) track of the Kooragang Island Main Line;
- realignment and lowering of the outbound (eastern) track of the Kooragang Island Main Line; and
- associated ancillary infrastructure.

To update agency names throughout the approval.

## SCHEDULE 2

1. In the listing of abbreviations and definitions in Schedule 2, delete references to and the definitions for “DEC”, “Department”, “Director-General” “DNR”, “EPA”, “Minister” , “RTA” and insert in alphabetical order the following:

<b>Department</b>	Department of Planning and Infrastructure
<b>Director-General</b>	Director-General of the Department of Planning and Infrastructure, or nominee
<b>EPA</b>	Environment Protection Authority
<b>Minister</b>	Minister for Planning and Infrastructure, or nominee
<b>RMS</b>	Roads and Maritime Services

2. In the listing of abbreviations and definitions in Schedule 2, insert in alphabetical order the following:

**Conservation Bond** An irrevocable and unconditional undertaking by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time to pay the face value of that undertaking (being such amount as is determined in accordance with condition 2.20A) on demand.

**High Capacity Optional Inlet Rail Spur and Rail Sidings**

Rail infrastructure delineated on Figure 2-1 of the document referred to under condition 1.1b), as modified by condition 1.1e)

**OEH** Office of Environment and Heritage

**Viable breeding population (in relation to *Litoria aurea*)**

Success in the establishment of both a breeding population and a viable population.

**Breeding population (in relation to *Litoria aurea*)**

Evidence of natural breeding events occur in two seasons (September to March) and include the presence of eggs, tadpoles and/or metamorphs that were not released from captive breeding stock in at least one pond. The breeding events do not have to be recorded over two consecutive seasons.

**Viable population (in relation to *Litoria aurea*)**

Evidence of at least five reproductively mature individuals are identified within new aquatic and/or terrestrial habitat in each of the two seasons when breeding events occurred. Such evidence will include presence of calling males with nuptial pads and gravid females.

**PWCS** Port Waratah Coal Services

3. Delete references to DEC and replace with EPA in conditions 2.12, 2.14, 3.2, 3.3, 3.4, 3.7 and 4.3 (except in relation to document authors).
4. Delete reference to DEC and replace with OEH in condition 2.16 (except in relation to document authors).
5. Delete references to RTA and replace with RMS in conditions 2.21, 2.22, 2.24, 2.25, 2.27, 2.28, 2.29, 2.30, 2.31, 2.32, 2.33, 2.34, 2.35, 2.36, 2.37 and 7.3d) (except in relation to document authors).

6. Delete reference to DECC in condition 4.1 and replace with EPA and OEH.
7. Delete reference to NSW Maritime in condition 4.2 and replace with RMS.
8. Delete condition 1.1 and replace with the following:
  - 1.1 The Proponent shall carry out the project generally in accordance with the:
    - a) Major Projects Application 06\_0009;
    - b) *Environmental Assessment: Newcastle Coal Infrastructure Group Coal Export Terminal*, prepared by Resource Strategies Pty Ltd and dated July 2006;
    - c) *Responses to Submissions*, prepared by Newcastle Coal Infrastructure Group and dated December 2006;
    - d) modification application MP 06\_0009 MOD 1, related to the plan of subdivision titled *Stage 1 Proposed Subdivision of Lot 122 DP 874949, Lot 2 DP 581473, Lot 6 DP 1015754 and Lots 71 and 74 DP 1119950, Stages 2 and 3 Proposed Subdivision of Lot 20 DP 262325* (surveyors reference HW43.01.03.00) prepared by Paul John Stivano and undated; and plan of subdivision titled *Plan of Subdivision of Lot 122 DP 874949, Lot 2 DP 581473, Lot 6 DP 1015754 and Lots 71 and 74 DP 1119950* (surveyors reference HW43.01.03.00) prepared by Paul John Stivano and dated 2 November 2007;
    - e) modification application MP 06\_0009 MOD 2 and supporting document titled *Newcastle Coal Infrastructure Group Coal (NCIG) Export Terminal Rail Flyover Modification Environmental Assessment* prepared by NCIG and dated June 2012, as modified by the Response to Submissions document prepared by NCIG and dated 6 December 2012; and
    - f) the conditions of this approval.
9. Delete condition 1.2 and replace with the following:
  - 1.2 In the event of an inconsistency between:
    - a) the conditions of this approval and any document listed from condition 1.1a) to 1.1e) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
    - b) any of the documents listed from condition 1.1a) to 1.1e) inclusive, the most recent document shall prevail to the extent of the inconsistency.
10. Delete condition 1.6 and replace with the following:
  - 1.6. The Proponent may only proceed to construct the High Capacity Optional Inlet Rail Spur and Rail Sidings upon receipt of the Director-General's satisfaction that:
    - a) the Compensatory Habitat and Ecological Monitoring Program required under condition 2.20 is being implemented according to the timeframes required, or to the extent agreed by the Director-General; and
    - b) the Proponent has complied with rail infrastructure design requirements referred to in condition 2.39 of this approval.
11. Delete condition 2.17 and replace with the following:
  - 2.17 The Proponent shall design and construct relevant rail infrastructure associated with the project to include culverts, underpasses or other similar measures to

permit the movement of *Litoria aurea* and other amphibian species under the rail infrastructure, and shall have consideration of existing and proposed frog habitat areas and movement corridors. The culverts, underpasses or other similar measures shall be installed to include suitable habitat for *Litoria aurea* and to provide protection from predators, and shall be designed in consultation with the OEH and PWCS.

12. Insert a new condition 2.19A, as follows:

2.19A The Proponent shall minimise clearing of native vegetation, edge effects and fragmentation to the greatest extent practicable and shall maintain retained native vegetation and habitat on Site. In relation to the clearing required for the High Capacity Optional Inlet Rail Spur and Rail Sidings, the amount of clearing to the west of the existing Kooragang Island Main Line shall be limited to a maximum of 2.6 hectares including 1.32 hectares of *Coastal Saltmarsh in the NSW North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community*, and 0.13 hectares of *Freshwater Wetlands on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions Endangered Ecological Community*.

13. Delete condition 2.20 and replace with the following:

2.20 The Proponent shall develop and submit for the approval of the Director-General, a Compensatory Habitat and Ecological Monitoring Program to detail how habitat and ecological values lost as a result of the project will be offset, and how ecological monitoring will be undertaken to inform on-going ecological management. The Program shall be developed in consultation with the OEH, and shall include, but not necessarily be limited to:

- a) ecological surveys, following detailed design of the project, to identify and quantify the extent and types of habitat that would be lost or degraded as a result of the project;
- b) provision for establishment of compensatory habitat for each relevant component of the project as follows, unless otherwise agreed by the Director-General:
  - i) for *Litoria aurea* habitat lost as a result of the project, establishment of 75 hectares of compensatory habitat in a location agreed by the Director-General, in consultation with the OEH. The compensatory habitat shall include viable and sustainable populations of *Litoria aurea* within a mosaic of wetland, terrestrial and breeding habitat, which includes foraging, sheltering, and wintering habitat attributes and movement corridors, in order to maximise the potential reproductive output of the *Litoria aurea* population. This amount of compensatory habitat may be reduced if the Proponent can determine, using a scientific methodology agreed to the Department, in consultation with the OEH, that the population of *Litoria aurea* impacted by the project is less than 37.5 hectares. The reduced amount shall be agreed to by the Department, in consultation with the OEH, by 30 June 2015;
  - ii) for migratory shore bird habitat (including endangered ecological communities) lost as a result of the project, including filling in of parts of Deep Pond and Swan Pond from the construction of rail and associated infrastructure, the establishment of 8 hectares of compensatory habitat in a location agreed by the Director-General, in consultation with the OEH. The commencement of compensatory habitat works shall occur within six months of the commencement of

- construction of the High Capacity Optional Inlet Rail Spur and Rail Sidings, or as otherwise agreed by the Director-General;
- c) provision for on-going ecological studies and migratory bird monitoring in and around Deep Pond and Swan Pond, to investigate bird behaviour and to inform the design process for components of the project affecting these ponds;
  - d) provision for the funding of works required under this condition, to be managed by a mechanism that provides sound and legally enforceable means of allocating resources for ongoing adaptive management and review of the performance of compensatory habitat works for the life of the project;
  - e) provision for research into *Litoria aurea* in and around Kooragang Island and the Hunter Estuary, as may be identified by the Proponent in consultation with relevant ecological and research groups;
  - f) provision for ameliorative works on land surrounding the project Site, as may be negotiated by the Proponent with the relevant adjacent land owners, to improve or restore natural hydrology and ecosystems, remove mangrove communities where relevant and restore locally-endemic Endangered Ecological Communities;
  - g) consideration of coordinating compensatory and ameliorative works with similar requirements for other developments, including with respect to the development the subject of development consent DA-134-3-2003-i (dredging and remediation of the South Arm of the Hunter River);
  - h) monitoring requirements for compensatory habitat works and other ecological amelioration proposed under the Program; and
  - i) timing and responsibilities for the implementation of the provisions of the Program. The Proponent shall provide the following commitments in the Program, or as otherwise agreed by the Director-General:
    - i. before 31 December 2013, the Proponent shall secure compensatory habitat locations required under condition 2.20b);
    - ii. before 31 December 2014, the Proponent shall have completed the migratory shorebird compensatory habitat works required under condition 2.20b)ii);
    - iii. before 31 December 2016, the Proponent shall have completed the *Litoria aurea* compensatory habitat works required under condition 2.20b)i). If a viable breeding population of *Litoria aurea* has not been established as part of the implemented compensatory habitat works then the Proponent is required to purchase an equivalent area of land that is known to contain the species and manage this land for the enduring conservation of the species in perpetuity. Any land required to be purchased is required to be completed by 31 December 2019.

14. Insert a new condition 2.20A as follows:

2.20A Financial surety of the requirements specified in condition 2.20 will be provided by the Proponent to the Department in the form of a Conservation Bond. Within 3 months of the date of the approval of modification application MP 06\_0009 MOD 2, referred to in condition 1.1e), the Proponent shall determine the sum of the Conservation Bond to the satisfaction of the Director-General, in consultation with OEH, based on the following:

- a) calculating the full cost of fulfilling its compensatory habitat obligations outlined in condition 2.20, in perpetuity, (including any land acquisition costs). These costs need to consider research, establishment of habitat, ongoing monitoring and management of the habitat.

- b) employing a suitably qualified quantity surveyor to verify the calculated costs.

The Conservation Bond is required to be lodged with the Department by 30 July 2013, or as otherwise agreed by the Director-General, to ensure that the biodiversity offsets outlined in condition 2.20 are implemented in accordance with the performance and timing commitments provided in the Compensatory Habitat and Ecological Monitoring Program. If the offset is completed in accordance with the performance and timing commitments in the Compensatory Habitat and Ecological Monitoring Program to the satisfaction of the Director-General, in consultation with the OEH, the Director-General will release the bond. If the offset is not completed in accordance with the performance and timing commitments in the Compensatory Habitat and Ecological Monitoring Program, the Director-General may, in consultation with OEH, call in all or part of the Conservation Bond, and arrange for the satisfactory completion of the relevant works.

The sum of the Conservation Bond may be reduced subject to the successful performance of the compensatory works. The reduction of the Conservation Bond would be at the agreement of the Director-General, in consultation with the OEH. In relation to *Litoria aurea*, successful performance works include the identification of a viable breeding population.

- 15. Insert a new condition 2.20B as follows:

2.20B In the event that the project is modified such that it results in impacts to biodiversity different to those assessed in the document referred to in condition 1.1b), the Proponent is required to submit for the approval of the Director-General, a revised Compensatory Habitat and Ecological Monitoring Program within three months of any approval.

- 16. Delete condition 2.21 and replace with the following:

2.21 Prior to the commencement of each stage of construction of the project, including fill/preload activities, the Proponent shall develop and submit for the approval of the RMS and Council, construction traffic control measures to be implemented for the project. The construction traffic control measures shall include measures to ensure that project traffic does not adversely affect traffic movements on Cormorant Road during peak traffic times.

- 17. Delete condition 2.39 and replace with the following:

2.39 The Proponent shall consult with PWCS and ARTC, and meet the reasonable requirements of ARTC with respect to the design of the project, including those components of the project that may affect the design, connection and operation of existing and proposed ARTC and PWCS rail infrastructure assets.

- 18. Delete condition 2.40, insert a new heading and condition 2.40 as follows:

#### **UTILITIES AND SERVICES**

2.40 Utilities, services and other infrastructure potentially affected by construction shall be identified prior to construction to determine requirements for access to, diversion, protection, and/or support. Consultation with the relevant owner

and/or provider of services that are likely to be affected by the project shall be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the Proponent, unless otherwise agreed by the utility or service provider.

19. Insert a new heading and conditions 2.45A and 2.45B as follows:

***Groundwater Monitoring and Management***

2.45A Prior to the commencement of construction of the High Capacity Optional Inlet Rail Spur and Rail Sidings the Proponent shall sample and characterise the quality of the existing groundwater in and around the rail infrastructure corridor to determine groundwater quality trigger values.

2.45B Prior to the commencement of construction, the Proponent must develop a long-term groundwater monitoring program in and around the High Capacity Optional Inlet Rail Spur and Rail Sidings to identify changes in groundwater quality from pre-construction groundwater conditions. The groundwater monitoring program will include an action plan should groundwater quality trigger values be exceeded during the course of the monitoring program and the Proponent shall rectify any adverse impact on groundwater that may be detected. Groundwater monitoring must commence at least one month prior to the commencement of construction.

20. Delete condition 2.53 and replace with the following:

2.53 The Proponent shall engage an appropriately qualified person to audit construction of the rail infrastructure over land use as part of the KIWEF against the commitments contained in the documents referred to in condition 1.1, including the High Capacity Optional Inlet Rail Spur and Rail Sidings. The auditor shall provide the Director-General and the EPA with quarterly reports on the disturbance and recapping of the waste emplacement area during construction. In the event of any deviation from the commitments made in the abovementioned documents, prior approval should be sought from the EPA, and any deviation from the commitments shall be described in detail and reasons for the change provided and fully justified.

21. Delete condition 3.8 and replace with the following:

3.8 The requirements of conditions 3.6 and 3.7 shall be repeated within 90 days of the commencement of operation of each stage of the project, including the operation of the High Capacity Optional Inlet Rail Spur and Rail Sidings.

22. Insert a new condition 5.2 as follows:

5.2 The independent environmental audit referred to in condition 5.1c) shall:

- (a) be conducted by a suitably qualified, experienced and independent team of experts whose appointment has been endorsed by the Director-General;
- (b) include consultation with the relevant agencies;
- (c) assess the environmental performance of the project and assess whether it is complying with the requirements in this approval, and any other relevant approvals and relevant EPL/s;
- (d) review the adequacy of any approved strategy, plan or program required under the abovementioned approvals; and



- (e) recommend measures or actions to improve the environmental performance of the project, and/or any strategy, plan or program required under these approvals.

*Note: This audit team must be led by a suitably qualified auditor, and include experts in biodiversity, air quality, noise, surface water and groundwater management and other fields as specified by the Director-General.*

23. Add the following requirement 7.2 c) iv) and v) into condition 7.2, following requirement 7.2 c) iii) as follows:

- iv) measures to monitor and manage groundwater impacts, particularly in the vicinity of the High Capacity Optional Inlet Rail Spur and Rail Sidings, and
- v) measures to monitor and manage potential Aboriginal Heritage impacts.

24. Add the following requirement 7.2 e) into condition 7.2, following requirement 7.2 d) as follows:

- e) a **Construction Aboriginal Heritage Management Plan** to detail how construction impacts on Aboriginal heritage will be minimised and managed. The plan shall be developed in consultation with the local Aboriginal Community, and include, but not necessarily be limited to:
  - i. a commitment to provide opportunities for representatives of the local Aboriginal community to monitor any initial ground disturbance activities associated with previously undisturbed environments within the project area;
  - ii. procedures for dealing with previously unidentified Aboriginal objects (excluding human remains) including cessation of works in the vicinity, assessment of the significance of the item(s) and determination of appropriate mitigation measures including when works can re-commence by a suitably qualified archaeologist in consultation with the Department, OEH and the local Aboriginal community, and registering of the new site in the OEH's Aboriginal Heritage Information Management System (AHIMS) register;
  - iii. procedures for dealing with human remains, including cessation of works in the vicinity and notification of the Department, NSW Police, OEH and local Aboriginal community and not recommencing any works in the area unless authorised by the OEH and/ or the NSW Police; and
  - iv. heritage training and induction processes for construction personnel (including procedures for keeping records of inductions) and obligations under the conditions of this approval including site identification, protection and conservation of Aboriginal cultural heritage;

25. Delete condition 7.3b) and replace with the following:

- b) a Construction Surface Water Management Plan to detail how surface water and stormwater will be managed on the Site during construction. The Plan shall include use of appropriately sized stormwater controls, in accordance with *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004). The Plan shall also include specific measures to avoid sediment laden stormwater from entering Deep and Swan Ponds, wetland areas or the Hunter River, and a monitoring program for stormwater leaving the Site;

26. Delete condition 7.4 and replace with the following:

7.4 In the event that construction of the project is staged or phased up to the maximum capacity specified under condition 1.5, the requirements of conditions 7.2 and 7.3 shall be repeated prior to the commencement of construction.

27. Add the following requirement 7.5 c) iv) into condition 7.5, following requirement 7.5 c) iii) as follows:

iv) measures to monitor and manage retained onsite native vegetation and habitat.

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