

5 October 2012

Infrastructure Projects
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Attention: Glenn Snow

**RE: NEWCASTLE COAL INFRASTRUCTURE GROUP (NCIG)
COAL EXPORT TERMINAL (CET) – RAIL FLYOVER MODIFICATION
RESPONSES TO SUBMISSIONS**

Newcastle Coal Infrastructure Group (NCIG) submitted to the Department of Planning and Infrastructure on 17 September 2012 a *Responses to Submissions* document following review of submissions received during the exhibition of the NCIG CET Rail Flyover Modification Environmental Assessment (EA). In summary, submissions were received from:

- NSW Environment Protection Authority (EPA);
- NSW Office of Environment and Heritage (OEH);
- Hunter-Central Rivers Catchment Management Authority (CMA);
- NSW Department of Primary Industries (DPI) (including NSW Fisheries and NSW Office of Water);
- NSW Roads and Maritime Services (RMS);
- Newcastle City Council (NCC);
- several associations, organisations, groups, clubs and centres (e.g. Hunter Bird Observers Club [HBOC], Cumberland Bird Observers Club, Hunter Community Environment Centre, National Parks Association of NSW, Birdlife Australia, Correct Planning and Consultation for Mayfield Group, Australian Wetlands Rivers and Landscapes Centre, Australian Waders Studies Group, and Birding NSW); and
- approximately 40 individual submissions.

NCIG has since received correspondence from the Department (dated 20 September 2012) indicating that an initial review had been undertaken and that the issues raised in the submissions had not been adequately addressed. Please find enclosed NCIG's response to each of the Department's specific comments (Enclosure 1) and the updated Responses to Submissions document (Enclosure 2).

The updated Responses to Submissions document now includes three parts (previously only 2 parts):

- **Part A** (revised) – provides responses to issues raised in all submissions.
- **Part B** (revised) – provides detailed and specific responses to issues raised in the NSW Office of Environment and Heritage (OEH) submission at the request of the Department following a meeting on 3 September 2012.
- **Part C** (new) – provides additional detail in relation to biodiversity impacts, including up to date survey records from Swan Pond purchased from the Hunter Bird Observers Club.

Given the proposed rail flyover modification is minor in nature as described in the EA and Responses to Submissions (i.e. approximately 2.6 hectares of additional disturbance), NCIG requests that the Project Approval (06_0009) be modified under Section 75W of the *Environmental Planning and Assessment Act, 1979*.

For your records, please also find attached (Enclosure 3) previous correspondence (letter received 1 October 2008) from the then Department of Environment and Climate Change (DECC) which provides a proposed Threatened Species Offset Framework which was also copied to the Department of Planning at that time. NCIG will continue to progress and propose compensatory habitat for green and golden bell frogs and shorebirds in accordance with the requirements of Project Approval (06_0009) in recognition of this DECC advice.

In 2009, NCIG commenced compensatory habitat works on Kooragang Island with the installation of a hydraulic control structure (culvert) on Creek 5 to commence "*reversal of the trend of mangrove encroachment into Ash Island Area E*" consistent with the DECC advice. Prior to its construction, consultation was undertaken with DECC and DPI-Fisheries explaining that the reason/need for its installation was to meet the compensatory habitat requirements relating to construction of the Swing Basin in the south arm of the Hunter River which, at the time, was considered necessary for Stage 2 of the NCIG Coal Export Terminal (CET). However, the Swing Basin was not built as it was agreed between all parties that it was not needed for the NCIG CET. Notwithstanding, NCIG funded and commissioned the installation of the culvert as a component of compensatory habitat works, which is consistent with DECC's Threatened Species Offset Framework.

The shorebird compensatory habitat design is being prepared in consultation with Phil Straw (Avifauna Research & Services Pty Ltd), who specialises in wetland habitat design, restoration and management for waterbirds and migratory species. Phil Straw is a member (Vice Chairman) of the Australasian Wader Studies Group. NCIG will continue to consult with Hunter Bird Observers Club, University of Newcastle (research and frog pond construction), OEH/National Parks & Wildlife Service (NPWS) (as landowners on Kooragang Island) and the Hunter Central Rivers Catchment Management Authority (CMA) in relation to compensatory habitat matters in accordance with the conditions of Project Approval (06_0009).

Please do not hesitate to contact me on 0409 461 608 if you have any queries.

Yours faithfully

Lex Gleeson
Project Manager - Newcastle Coal Export Terminal

ENCLOSURE 1

**RESPONSES TO SPECIFIC COMMENTS IN DEPARTMENT OF PLANNING AND
INFRASTRUCTURE CORRESPONDENCE DATED 20 SEPTEMBER 2012**

Table 1
Responses to Specific Comments in Department of Planning and Infrastructure Correspondence Dated 20 September 2012

<p align="center">Department of Planning and Infrastructure Specific Comment (Correspondence Dated 20 September 2012)</p>	<p align="center">NCIG Response</p>
<ul style="list-style-type: none"> <i>Many of the issues raised, specifically in relation to Swan Pond, biodiversity and cumulative impacts have been responded to in a minimalistic manner. Additional detail is required to be provided.</i> 	<p>Specific responses (supported with additional detail to that presented in the EA) are provided in the Responses to Submissions document in relation to Swan Pond, biodiversity and cumulative impacts, including:</p> <ul style="list-style-type: none"> Swan Pond (Responses to Issues A1 to A3 [in Part A]; Responses to Issues B14, B15, B17 and B20 [in Part B]; and Part C); Biodiversity (Responses to Issues A6 to A22 [in Part A]; Responses to Issues B1 to B21 [in Part B]); and Part C); and Cumulative Impacts (Responses to Issues A4 and A5 [in Part A]). <p>NCIG is of the opinion the responses (supported with additional detail) provided in the Responses to Submissions document are adequate.</p>
<ul style="list-style-type: none"> <i>At the meeting held on 3 September 2012, the Department confirmed that proposed compensatory habitat offsets for biodiversity impacts will need to be detailed in the Responses to Submissions and not postponed to the revision of the Compensatory Habitat and Ecological Monitoring Program. The Responses to Submissions document does not provide any detail in this regard.</i> 	<p>Specific responses (supported with additional detail to that presented in the EA) is provided in the Responses to Submissions document in relation to proposed compensatory habitat offsets for biodiversity impacts, including:</p> <ul style="list-style-type: none"> Offsets (Responses to Issues A23 to A26 [in Part A]); Provision of Offsets/Compensatory Habitat (Responses to Issues B22 to B24 [in Part B]); and Conservation in Perpetuity of Offset Lands (Responses to Issue B25 [in Part B]). <p>NCIG specifically included Attachment B-C in Part B of the Responses to Submissions document following the meeting held on 3 September 2012 with the Department. Attachment B-C outlines NCIG's proposed compensatory habitat for shorebirds and green and golden bell frogs.</p> <p>This approach is consistent with the intent of Condition 2.20 of Project Approval (06_0009) and original assessment conducted by the Department for the original entire NCIG application.</p>
<ul style="list-style-type: none"> <i>The ecological assessment undertaken for the T4 project states that Swan Pond is considered to be the third most important wetland for shorebirds in the Hunter Estuary. This assessment also indicates (pg 5.17) "that a number of migratory shorebirds and wetland dependent species are likely to be significantly impacted by the substantial modification of Deep Pond and parts of Swan Pond..." This statement is not consistent with statements made in the Rail Flyover assessment or Response to Submissions document regarding the potential impacts of the proposal.</i> 	<p>The statements made in the Rail Flyover Modification EA and Terminal 4 Project ecological assessment are not inconsistent.</p> <p>The Rail Flyover Modification does not have the same potential impact as the Terminal 4 Project due to the relative scales. From a cumulative perspective, the disturbance areas proposed by the Rail Flyover Modification are located wholly within the Terminal 4 Project extent (see new Figure A-3), so there is no incremental increase as a result of the Rail Flyover Modification. The conclusions presented in the Rail Flyover Modification EA regarding significance of impact have been peer reviewed by Dr Arthur White.</p>

Table 1 (Continued)
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<ul style="list-style-type: none"> <i>(Continued)</i> 	<p>A summary of the differences in the scale of the impacts on Deep Pond, Saltmarsh (including parts of Swan Pond) and Freshwater Wetland is tabulated below:</p> <table border="1" data-bbox="770 469 2016 847"> <thead> <tr> <th data-bbox="770 469 1021 544">Aspect</th> <th data-bbox="1021 469 1518 544">NCIG Rail Flyover Modification (proposed modification of approved NCIG CET)</th> <th data-bbox="1518 469 2016 544">PWCS Terminal 4 Project (currently undergoing assessment)</th> </tr> </thead> <tbody> <tr> <td data-bbox="770 544 1021 671">Impact on Deep Pond</td> <td data-bbox="1021 544 1518 671"><u>Nil</u> The realignment of the outbound track (including the associated embankment) has been specifically designed to avoid Deep Pond beyond that for the approved NCIG CET (NCIG, 2012).</td> <td data-bbox="1518 544 2016 671"><u>23 hectares [ha]</u> Removal of open water habitat in Deep Pond (Umwelt, 2012).</td> </tr> <tr> <td data-bbox="770 671 1021 775">Impact on Saltmarsh (including Parts of Swan Pond)</td> <td data-bbox="1021 671 1518 775"><u>1.32 ha</u> Removal of a linear strip of Saltmarsh on the west of the existing Kooragang Island Main Line embankment (NCIG, 2012).</td> <td data-bbox="1518 671 2016 775"><u>18.8 ha</u> Removal of Saltmarsh, including <u>2.3 ha</u> of Swan Pond (Umwelt, 2012).</td> </tr> <tr> <td data-bbox="770 775 1021 847">Impact on Freshwater Wetland</td> <td data-bbox="1021 775 1518 847"><u>0.13 ha</u> Removal of Freshwater Wetland (NCIG, 2012).</td> <td data-bbox="1518 775 2016 847"><u>27.3 ha</u> Removal of Freshwater Wetland (Umwelt, 2012).</td> </tr> </tbody> </table> <p data-bbox="770 852 1753 895">NCIG (2012) <i>Newcastle Coal Infrastructure Group Coal Export Terminal Rail Flyover Modification Environmental Assessment</i>. June 2012. Umwelt (2012) <i>Ecology Assessment</i>. Appendix K in Volume 4 of the T4 Project Environmental Assessment. February 2012.</p>			Aspect	NCIG Rail Flyover Modification (proposed modification of approved NCIG CET)	PWCS Terminal 4 Project (currently undergoing assessment)	Impact on Deep Pond	<u>Nil</u> The realignment of the outbound track (including the associated embankment) has been specifically designed to avoid Deep Pond beyond that for the approved NCIG CET (NCIG, 2012).	<u>23 hectares [ha]</u> Removal of open water habitat in Deep Pond (Umwelt, 2012).	Impact on Saltmarsh (including Parts of Swan Pond)	<u>1.32 ha</u> Removal of a linear strip of Saltmarsh on the west of the existing Kooragang Island Main Line embankment (NCIG, 2012).	<u>18.8 ha</u> Removal of Saltmarsh, including <u>2.3 ha</u> of Swan Pond (Umwelt, 2012).	Impact on Freshwater Wetland	<u>0.13 ha</u> Removal of Freshwater Wetland (NCIG, 2012).	<u>27.3 ha</u> Removal of Freshwater Wetland (Umwelt, 2012).
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<ul style="list-style-type: none"> <i>The ecological assessment undertaken for the T4 project indicates that 2.3 hectares of Saltmarsh would be impacted within Swan Pond. The Department understands that the proposed modification in this area coincides with the rail and utility corridor for the T4 project and therefore clarification is requested on the area of Saltmarsh proposed to be impacted as part of the proposal. A large scale diagram showing the existing rail corridor, the existing transmission lines and the proposed works as well as the extent of habitats in the vicinity is required to be proposed.</i> 	<p>As stated in Responses to Issue A4 [in Part A] of the Responses to Submissions:</p> <p align="center"><i>“The additional parcels of land the subject of disturbance for the Rail Flyover Modification are located wholly within the extent of the proposed PWCS Terminal 4 Project ‘rail and utility corridor’.”</i></p> <p>To better communicate, NCIG has updated the Responses to Submissions document to include an additional drawing (new Figure A-3) which shows the relative areas of the NCIG Rail Flyover Modification compared to that proposed for the Terminal 4 Project on the large scale diagram (with inset) consistent with that previously requested by the Department prior to exhibition of the Rail Flyover Modification EA.</p> <p>The area of the Saltmarsh proposed to be impacted as part of the proposal is shown on Figure A-3 (consistent with that shown on Figure 11 of the Rail Flyover Modification EA). The disturbance area for the NCIG Rail Flyover Modification is discussed and tabulated in Section 4.9 of the Rail Flyover Modification EA and further explained in the Responses to Issue A1 (in Part A) of the Responses to Submissions document.</p>														

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<p align="center">Department of Planning and Infrastructure Specific Comment (Correspondence Dated 20 September 2012)</p>	<p align="center">NCIG Response</p>
<ul style="list-style-type: none"> <i>The issue of alternative options investigated has not been adequately addressed.</i> 	<p>As stated in Responses to Issue A39 [in Part A] of the Responses to Submissions:</p> <p align="center"><i>“Without the inbound (western) track of the Kooragang Island Main Line for the Rail Flyover Modification, significant loss of port capacity would be incurred on Kooragang Island for approximately 9 months of the anticipated 18 month construction period due to reduced train speeds and periodic shut downs of the tracks.”</i></p> <p>To clarify, the following sentence has therefore been added to Responses to Issue A39:</p> <p align="center"><i>“There are not considered to be any other feasible alternatives available for NCIG’s Rail Flyover Modification which would not result in a significant loss of port capacity for approximately 9 months of the anticipated 18 month construction period.”</i></p> <p>Consequently, the inbound (western) track of the Kooragang Island Main Line for the Rail Flyover Modification has been designed to minimise its disturbance footprint (i.e. it is a linear disturbance located adjacent to the existing rail embankment).</p> <p>To provide some further background, the approved Northern Rail Spur arrangement is based on the Feasibility Study design (i.e. an at-grade rail separation for NCIG inroads with a retaining wall and flyover constructed for the PWCS Kooragang Coal Terminal [KCT] upline [outroad]). It was anticipated that all works could be completed within the existing rail corridor. A number of engineering issues were subsequently identified and these considered with developments in rail design standards introduced subsequent to the original approval date, impacted to make the original proposal unworkable. These engineering issues and developments included:</p> <ul style="list-style-type: none"> Closure of Rail for Construction: The Feasibility Study proposed retaining wall and KCT upline going over the NCIG Arrivals (and any other arrangement without a diversion of PWCS rail) would require blocking KCT and NCIG lines for a number of months which was unacceptable. Increase in Line Speeds: The initial rail geometry design was based on 25 kilometres per hour (kph) line speed. At the time of the Feasibility Study, the line speed through North Fork and over the Hunter River Bridge was restricted to 25 kph, this has since been raised and is currently a 35 kph restriction. The permanent alignment must allow for ARTC’s intention to increase to the final speed of 45 kph. Line speed requirements govern the track geometry; a higher speed track requires a wider radius curve. Vertical Geometry: The required vertical geometry of the track prevents the option of PWCS over NCIG as originally proposed. For the KCT upline to have the necessary clearance over the NCIG arrivals and then grade down to meet the NCIG departures, the grades would be excessive and therefore unworkable.

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<ul style="list-style-type: none"> • <i>(Continued)</i> 	<ul style="list-style-type: none"> • Introduction of Hunter 200+ Guidelines: Hunter 200+ Guidelines and ARTC Standards are the criteria against which ARTC review and approve new infrastructure. ARTC's intent is to roll out 200+ as the new minimum for new infrastructure resulting in: <ul style="list-style-type: none"> ○ <i>Expanded track centres</i> - Larger track centres increases the footprint of disturbance, increased lease area, increased formation and therefore additional fill or cut. ○ <i>Additional access roads</i> - The additional requirement is for maintenance roads on two sides wherever there are two or more tracks and at signals, signal boxes and turnouts for vehicle turn-around points and parking areas. Any additional embankment width has consequent additional fill or cut, increasing the footprint. <p>Due to the significant rail geometry changes required, limiting impact on Deep Pond became a key driver in the decision process. The area to the west of the rail lies within an approved planning corridor for infrastructure of this nature, the encroachment resulting from the Rail Flyover Modification is very small and, in addition, the potential disturbance in this area from the future PWCS Terminal 4 Project would extend well beyond that required for the Rail Flyover Modification. Therefore the minor realignment of the Kooragang Island Main Line to the west was identified as the best option.</p>

ENCLOSURE 2

**NCIG'S RESPONSES TO SUBMISSIONS
[PARTS A, B & C]**

ENCLOSURE 3

**DECC THREATENED SPECIES OFFSETS FRAMEWORK
[LETTER RECEIVED 1 OCTOBER 2008]**