



30 September 2015

**NSW Planning Assessment Commission Determination Report  
Port Waratah Coal Services Terminal 4, Newcastle LGA**

**1. INTRODUCTION**

The Proponent, Port Waratah Coal Services Limited (PWCS), is proposing to construct and operate a fourth coal export terminal on Kooragang Island in the Port of Newcastle. The proposed development includes rail and coal receipt infrastructure, coal stockpile pads and associated stacking and reclaiming machinery; wharf and berth infrastructure; coal conveyors, feeders and transfer stations and associated infrastructure. Three biodiversity offset sites located at Ellalong Lagoon, Brundee Swamp Nature Reserve and Tomago are also proposed.

The proposed development has been assessed by the Department of Planning and Environment (the Department) as a Major Project, subject to the transitional provisions of Part 3A of the *Environmental Planning and Assessment Act 1979*. At the request of the Minister for Planning, the project has also been the subject of a Review and Public Hearing by the Planning Assessment Commission (the Commission). Following further consideration by the Proponent and the Department, on 5 June 2015, the project was referred to the Commission for determination.

The project is also a controlled action and requires approval under the *Environment Protection and Biodiversity Conservation Act 1999*. The Commonwealth Minister for the Environment will make a determination on the proposal with reference to the Department's assessment of matters of national significance.

**2. PROJECT APPLICATION**

The Proponent is seeking to construct and operate the new coal export terminal, referred to as Terminal 4, with the capacity to export up to 70 million tonnes of coal per annum ( Mtpa). The facility would operate as an 'open access terminal', meaning access to terminal facilities would be available to any supplier wanting to export coal. The proposal has an estimated capital investment value of \$4.8 billion and is expected to generate 1,500 construction positions and up to 80 operational positions.

The major components of the proposal are summarised as follows:

- Site establishment and remediation works.
- Development of terminal infrastructure, including:
  - Rail infrastructure, stockpile pads, conveyers and ship loaders, berthing facilities, access, services, water management and supporting infrastructure;
  - Up to four arrival tracks converging into up to three dump stations;
  - Up to four departure tracks combining into a single track around Kooragang Coal Terminal;
  - Rail tracks realigned at Mosquito Creek to minimise disturbance to the creek;
  - Rail tracks realigned at arrival onto Kooragang Island to accommodate Newcastle Coal Infrastructure Group's tracks;
  - Up to four coal stockpile pads with total throughput capacity of 70 Mtpa;
  - Up to four stackers and four reclaimers;

- Inbound and outbound conveyors would service up to two dump stations and 4 stockpiles;
- Three ship berths on the north side of the Hunter River South Arm and a barge landing area on north bank of swing basin to unload large equipment;
- Three main settling ponds and one main transfer pond, south of stockyard;
- Three land based biodiversity offset sites secured at Ellalong Lagoon Offset Site (409 hectares), Tomago Offset Site (238 hectares) and Brundee Swamp Offset Site (204 hectares).

The Proponent operates under a long term operational framework governed by Capacity Framework Agreements (CFAs). The CFAs were developed by the NSW government and the coal industry to avoid circumstances where an increase in demand for coal could not be met due to coal chain constraints, by providing a suitable framework for forward planning and long term operational management. The CFAs include an annual process for coal producers to nominate export capacity required for the coming 10 years on a "ship or pay" basis (i.e. penalties or the costs of coal handling are paid by the producer regardless of whether the allocation is used). This is to ensure the existing terminals have enough capacity to service the contracted coal throughputs.

In 2012, the Proponent projected capacity shortfalls at its Carrington Coal Terminal and Kooragang Coal Terminal in Newcastle by 2015. This was based on the assumption that world demand for coal would continue to grow strongly, based on trends at the time and ultimately triggered the requirements for PWCS to seek approval for a fourth terminal.

The more recent slowing of coal demand from the Port of Newcastle has exposed over-allocations. In May 2013, the Proponent voluntarily accepted a reduction in contracted tonnages from the majority of Hunter Valley producers, and announced that the requirement for the Terminal 4 project had been un-triggered.<sup>1</sup>

As such, the Proponent proposes to only construct the coal terminal and implement the associated environmental management and mitigation measures, including contamination management, remediation and the biodiversity offset strategy, if the requirements for the terminal are re-triggered. Terminal 4 would then be progressively constructed in response to demand nominated by coal producers and commercial requirements, with the actual timing and scale of the development dependent on these factors.<sup>2</sup>

### **3. EARLIER PLANNING ASSESSMENT COMMISSION REVIEW & RESPONSES**

Terms of Reference for the Review (issued by the Minister for Planning on 13 September 2012) required the Commission to assess the merits of the project and hold a public hearing. The Commission was directed to pay particular attention to:

- noise and air quality impacts of the project;
- traffic impacts of the project;
- biodiversity and contamination impacts of the project; and
- any other potentially significant impacts of the project.

The Department referred the project to the Commission for review on 27 June 2014. The Department's Assessment Report considered a number of topics, including:

- Upstream and downstream impacts;
- Air quality;

<sup>1</sup> ARTC (2014), *2014-2023 Hunter Valley Corridor Capacity Strategy*, July, p.7.

<sup>2</sup> PWCS (2014), *Response to Submissions on Preferred Project*, p.84, January.

- Flora and fauna;
- Contamination;
- Stormwater and Drainage;
- Flooding;
- Noise;
- Traffic, transport and access;
- Visual impacts; and
- Other matters raised in submissions.

The Department concluded that the proposal meets key environmental and amenity criteria and *“could proceed with minimal adverse environmental impacts whilst realising significant benefits to the local, regional, State and National economies.”*

During the review, the Commission held a Public Hearing and other meetings and inspections. The Commission also engaged the Centre for International Economics to undertake an independent review of the economic analyses provided by the Proponent. After careful consideration of the issues, the Commission’s Review Report was completed in December 2014. The Commission’s Review Report concluded that the proposal is approvable, subject to refinements, and has the potential to minimise current conflicts between biodiversity values and the need to remediate the highly disturbed and contaminated site. However, concern was raised regarding the uncertainty about the timing for the construction of the proposal due to the current volatility of the demand and pricing of coal. The Review Report made 16 recommendations regarding the proposal.

The Proponent responded to the Commission’s Review Report in March 2015, outlining its position on each of the 16 recommendations. The Proponent concluded that while it supports some of the Commission’s recommendations, there are others it does not agree with.

The Department subsequently completed an Addendum Report which also responds to the Commission’s recommendations. The Department’s Addendum Report provides the Department’s consideration and response to the findings and recommendations of the Commission’s Review Report. The key issues considered in the Addendum Report included:

- Lapse date;
- Biodiversity – Tomago offset;
- Stockyard layout;
- Contamination;
- Proactive and reactive management;
- Coal wagons;
- Noise;
- Guidelines; and
- Demand forecasts and justification.

The Department responded to each of the PAC’s 16 recommendations in turn, and provided consideration of each one. Of the 16 PAC recommendations the Department was:

- Supportive or largely supportive of five recommendations; and
- Unsupportive of 11 recommendations.

The Department’s Addendum Report recommends that the project has merit and should be granted consent subject to a number of conditions. The conditions the Department has recommended include measures to reduce or manage the impacts to: noise and air quality; biodiversity; soil and water quality; visual amenity and traffic and transport. Other conditions relating to the management of contaminated land, potential hazards and risks, the

coordination of environmental monitoring and management and community information, consultation and involvement have also been recommended.

#### **4. DELEGATION TO THE COMMISSION**

On 5 June 2015, this project was referred to the Commission for determination with the above Addendum Report to be read in conjunction with the Secretary's June 2014 Assessment Report for the project.

For this determination, Brian Gilligan, John Cook, and Robyn Kruk AM constituted the Commission for this project. Brian Gilligan chaired the Commission. The Commission has given careful consideration to the Review recommendations and the Proponent's and the Department's responses in this determination.

#### **5. COMMISSION'S MEETINGS AND INSPECTIONS**

##### **5.1. Meeting with the Department of Planning and Environment**

The Commission was briefed by the Department on 6 July 2015. The briefing focused on the recommendations made in the Commission's Review Report, and the Department's reasons for not accepting some of the recommendations. A summary of the briefing is attached in Appendix 3.

##### **5.2. Site visit and briefing from the Proponent**

The Commission undertook a site inspection on 7 July 2015 and received a briefing from the Proponent. The briefing by the Proponent included: a background of PWCS and its operations; predictions of future demand; the origin of the proposal; and the Proponent's response to the Commission's Review and recommendations. During the site inspection, the Commission looked at both the existing Kooragang Terminal and the site of the proposed development. A summary of the briefing and site inspection is attached in Appendix 3.

##### **5.3. Meeting with the City of Newcastle Council**

The Commission met with representatives of the City of Newcastle Council on 7 July 2015 to discuss the matters raised in Council's correspondence to the Commission dated 18 June 2015. The meeting focused on the status of the Voluntary Planning Agreement negotiations between Council and the Proponent. A summary of the meeting is attached in Appendix 3.

##### **5.4. Public Meeting**

The Commission held a public meeting to provide the community with a final opportunity to comment, prior to determining the application. The public meeting was held on Monday 13 July 2015, continuing on Tuesday 14 July 2015 at Fort Scratchley Historic Site, Newcastle East. A total of 85 speakers presented to the Commission. A list of speakers is in Appendix 1. All those seeking to address the Commission were heard.

The majority of the speakers were opposed to the proposal, due to concerns regarding the potential impacts from the proposal on the air quality in Newcastle. Other issues raised included the potential impacts to the habitat of the green and golden bell frog, migratory shorebirds and other flora and fauna species; the suitability of the biodiversity offset package; the current contamination of the site; the cumulative impacts associated with mining and transportation of coal to the port; and concerns that the economy was shifting away from the coal industry. Those supporting the project highlighted the economic benefits that the proposal would bring to the community, including employment prospects. A summary of the topics raised at the public meeting is provided in Appendix 2.

### **5.5. Meeting with the Environment Protection Authority**

The Commission met with the Environment Protection Authority on 14 July 2015 to discuss the remediation works needed to address historical contamination on the site, the management of dust including the cleaning of unloaded wagons and the stormwater management system. A summary of the meeting is attached in Appendix 3.

### **5.6. Follow up meeting with the Department of Planning and Environment**

The Commission met again with the Department on 16 July 2015 to discuss the main issues raised at the public meeting. The Commission advised that it would be seeking to amend the conditions and sought clarification from the Department on options to structure conditions of consent. A summary of the meeting is attached in Appendix 3.

On 20 August the Department provided a written response to the Commission, including some amendments to the recommended conditions. The response is attached in Appendix 5.

## **6. COMMISSION'S CONSIDERATION**

### **6.1. Rebalancing Certainty**

There has been considerable debate about the need for this project given the continued reduction in the global coal price (and associated demand implications). Internationally, there has also been a steady shift in the political will to address climate change, with potential long term implications for Australia's coal export market.

The Proponent has acknowledged that this proposed fourth coal terminal is not currently required, but suggests that it needs the flexibility to build the terminal, should demand for coal increase again, as many in the industry predict. Consequently, the Proponent is seeking an approval that would not need to be activated upon for up to ten years, twice standard five year lapse period usually granted.

On the other hand, objectors have suggested that, as there is no need for the coal terminal at present, it should not be approved to proceed. The Commission's Review report acknowledged the community's concerns with the 10 year lapse period proposed for the project. The Commission noted that there are several uncertainties associated with granting an approval with such a long lapse period, including that air quality standards and greenhouse gas policies may change within a 10 year period. The Commission was also concerned that a 10 year commencement period could result in extended delays in dealing with contamination and biodiversity issues.

At the public meeting, significant concern was raised about the current volatility of the coal market and the uncertainty of the project proceeding in the future. Many from the community were of the view that the application should be deferred until there is a demand for the coal export terminal as there would be no current public benefit from any approval issued. Several of the speakers agreed with the Commission's previous recommendation that any development consent should be issued with a standard five year lapse date to provide the public with increased certainty that priority site remediation and biodiversity works will be undertaken in a timely manner and Ramsar wetland values will be protected. Many of the speakers were also of the opinion that if air quality standards change and the development has not physically commenced within the five years, a new application should be submitted and should be subject to a fresh assessment against the environmental standards of the day.

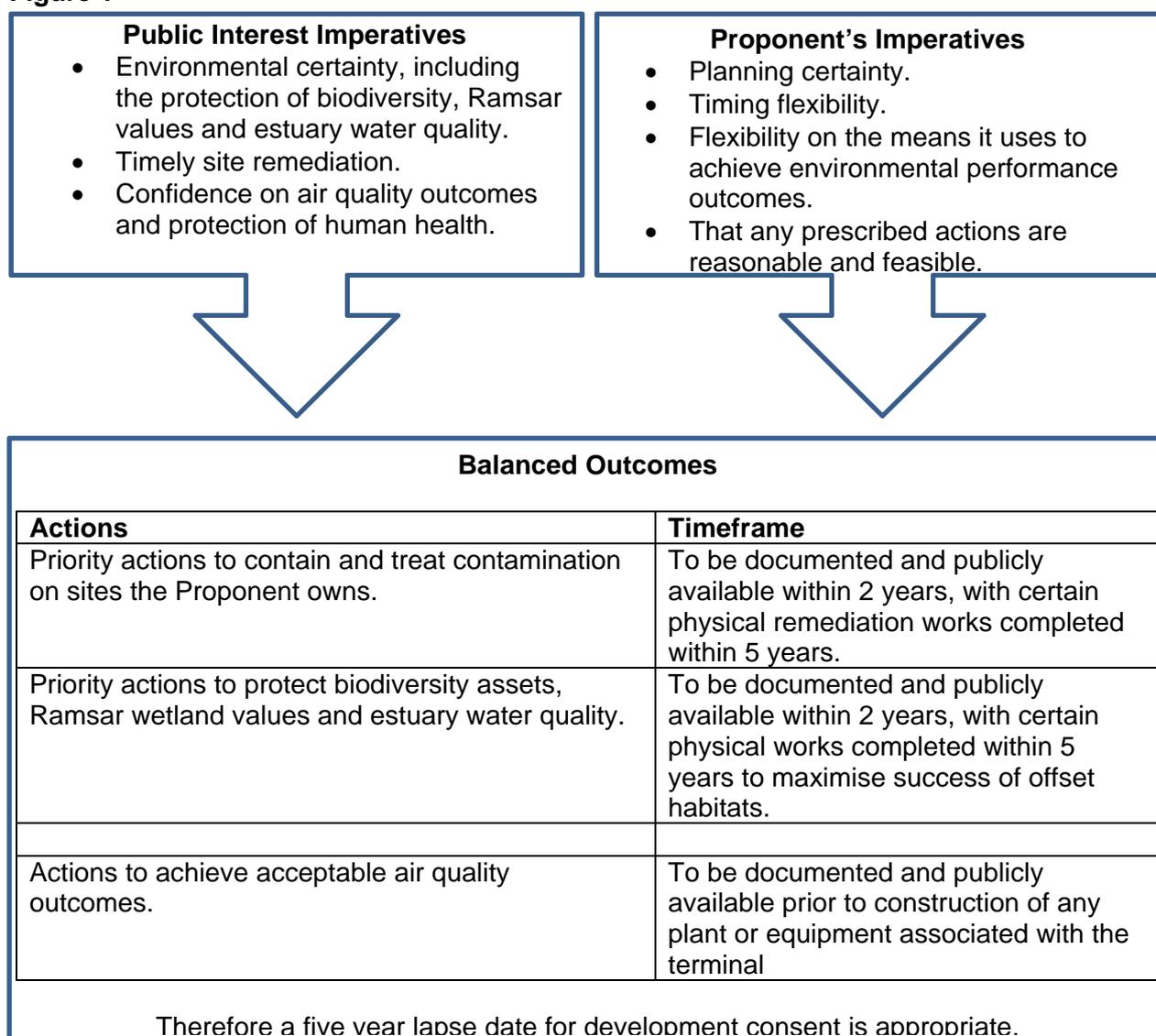
Both the community and the Proponent raised concern regarding what specific works would constitute 'physical commencement' to activate the approval and urged the Commission to clarify this issue in any conditions as part of an approval.

The Commission acknowledges the legitimate interest of the Proponent in achieving planning certainty for the project. As a multinational enterprise exposed to the fluctuations of its business cycle, needing to plan and operate in a dynamic policy environment, PWCS has a complex governance structure and must bring a range of considerations into convergence before being able to commit to the nearly five billion dollars of capital expenditure required for the T4 project.

The Commission also acknowledges the concerns raised by members of the community, and believes that greater certainty should be provided to ensure that some public benefit, particularly in relation to the protection of biodiversity, remediation works and air quality, is achieved even if the project is not developed for up to a decade.

Figure 1 summarises the Commission’s consideration of reasonable imperatives of both the public and the Proponent and the balanced result delivered by the Commission through the conditions.

**Figure 1**



As explained in the additional information provided by the Department, see Appendix 5, to address the 'Balanced Outcomes' sought by the Commission (as outlined in the above diagram) a new condition was developed, condition A6. The Department explains, that "*The Site Management Plan would also include a Priority Action Statement with specific measures that the proponent would commit to implementing or completing within five years of the approval date. These are likely to include capping or remediating parts of the site and biodiversity and management and habitat improvement measures.*"<sup>3</sup> The Commission is satisfied this condition developed by the Department, in response to its concerns, generally provides for the remediation of highly contaminated parts of the site owned by the Proponent and also ensures biodiversity and Ramsar wetland values are protected and enhanced, while providing the Proponent with the certainty that it can develop the fourth terminal, if and when required. The Commission has made some amendments to conditions A5 and new condition A6 to clarify certain points, and to ensure alignment of various staging requirements. Condition A5 and A6 read as follows:

- A5. This approval shall lapse five (5) years after the date on which it is granted unless construction, the subject of this Project approval, has substantially commenced on or before that date.
- A6. The Proponent shall, prior to the commencement of construction and within two (2) years of the date of this approval, prepare and submit to the Secretary for approval, a **Site Management Plan** for the project site. The **Site Management Plan** shall :
- (a) be prepared in consultation with OEH, the EPA, relevant councils, the Commonwealth Department of Environment, NSW Fisheries (DPI), the Hunter Development Corporation and the Local Land Services (Hunter);
  - (b) include actions to be implemented to minimise further degradation of environmental values of the site, with particular consideration given (but not limited) to:
    - (i) measures to contain and treat (where appropriate) contamination ahead of any decision to proceed to construction; and
    - (ii) biodiversity values of both the site and the Hunter Estuary Ramsar Site, in particular its ecological character description; and
    - (iii) amending the stockyard layout, for example to provide sufficient space to adequately capture and contain stormwater runoff from the site and to retain Deep Pond as a freshwater system; and
  - (c) include a **Priority Action Statement** which commits to the actions that are to be completed within five years (5) of the date of this approval.

The **Site Management Plan** must be implemented upon receipt of the Secretary's approval and be reviewed at least annually. The Plan is to remain in place until such time as the actions are completed on the site. Once approved by the Secretary, the Proponent shall ensure the Plan is made publicly available on a suitable website, and that the website is kept up-to-date with details of its implementation.

The completion of the works associated with the priority actions identified in the **Priority Action Statement** shall be deemed to constitute substantial commencement of construction for the purposes of condition A5 above. If the priority actions are not completed prior to the lapse date identified in condition A5 above, then this approval will be deemed to have lapsed.

\* Notes:

1. *Nothing in this condition requires the Proponent to remediate or cap any portion of the site which it does not own or hold a legally binding agreement to manage; or to which a current and enforceable Approval of the Surrender of Licence is held by a third party.*
2. *Nothing in this condition prevents the implementation of approved remediation works on any part of the site.*

The Commission considers that condition A6 will fast track remediation and biodiversity works and as such, is satisfied there will be enhanced certainty of public benefit as a result

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<sup>3</sup> Department of Planning and Environment, 20 August 2015, p 2.

of the approval. The Commission anticipates that the commencement of the Priority Actions will activate the approval, thus providing ongoing certainty for the Proponent. In view of this, the Commission believes it is appropriate that this approval should lapse if the specified works are not undertaken within five years. Condition A5 has been amended accordingly.

## **6.2. Biodiversity**

During the public meeting, concern was raised about the capability of the biodiversity offset strategy to mitigate potential impacts of the project on flora and fauna and that any change in the populations of these species could adversely affect the ecological character of the Hunter Estuary Wetlands Ramsar site.

### Tomago offset

In the review report, the Commission considered that the potential impact on the migratory shorebird population was a significant issue. Construction of the coal terminal would require the removal of 7.5 hectares of mudflat at the northern area of Deep Pond and 18.8 hectares of saltmarsh habitat, including 2.3 hectares of Swan Pond. As a result, five migratory shorebird species that regularly use this habitat would be directly affected; there would be moderate impacts on four other species and low impacts on an additional ten species. In consultation with shorebird and saltmarsh experts, the Proponent has prepared a restoration concept of up to 140 hectares of shorebird habitat to ensure that the ecological character and habitat values of the Ramsar wetland site are protected.

The OEH and the DoE recommended that prior to the impact of construction occurring, one migratory season that shows successful use of the site by shorebirds would prove the functionality of the offset. The Commission considered that if the offset was functioning for at least three years, at least one successful migratory shorebird season could be documented and its Review Report recommended accordingly.

The Proponent and the Department do not consider that a three year functioning period for the Tomago offset is required. The Department advises that a longer trial period will not provide greater certainty that migratory species will come to the offset area, particularly where existing habitat has not been affected because construction has not commenced. The Proponent has also suggested that works that are not within close proximity to Deep Pond could be undertaken concurrently with the construction of the Tomago offset. The Commission notes that the Department's recommended conditions enabled the Proponent to undertake construction work in synergy with the construction of the Tomago offset, as long as the works do not impact on the migratory shorebird habitat.

The Commission acknowledges the difficulty of demonstrating the success of the offset as a result of the array of external factors that may influence usage of the site by migratory birds. Factors include condition and availability of suitable habitat both regionally and internationally, seasonal conditions and disturbance from adjacent properties and operations. However, notwithstanding the confidence expressed by DoE that biodiversity and Ramsar wetland values can be adequately protected, the public interest imperative remains to provide as much certainty as possible on this score by having additional habitat areas physically complete for as long as possible to optimise their ecological functionality prior to disturbance of any areas currently in use by migratory shorebirds. The Commission accepts the Department's condition that allows for works on the T4 site not associated with the migratory habitat to commence before offset areas are physically completed. The Commission is satisfied that no timeframe for the functioning of the offset can be realistically imposed but the Site Management Plan and Biodiversity Offset Package need to be finalised in consultation with OEH and DoE so that priority works are undertaken in a timely manner to give certainty that key values are protected. As such, condition A7 has been amended to read as follows:

- A7. *Construction to create the compensatory migratory shorebird habitat at the Tomago Offset Site must be completed prior to the commencement of construction at the Site which would impact on migratory birds in accordance with an approved Biodiversity Offset Package required under condition B27.*

The Proponent indicated that if a ten year approval lapse period is granted for the project, it would be prepared to complete the design work for the redevelopment of the Tomago offset site within five years from the receipt of both State and Commonwealth's project approvals. Given that condition A6 may require construction works to be undertaken within five years of the issue of the development consent and that the Tomago offset needs to be ecologically functioning prior to any construction work occurring on site, the Commission notes that the design work for the redevelopment of the Tomago offset should be fast tracked, so that design work is completed within 2 years and any priority physical works can be commenced within 5 years.

#### Other offsets

The Commission notes that some speakers at the public meeting and submitters also raised concerns about the other proposed offset areas. However, the NSW Office of Environment and Heritage (OEH), the Commonwealth Department of Environment (DoE) and the Department are largely satisfied with the offset strategy proposed. The Commission further notes that the Department has recommended conditions requiring the proponent to enhance the offset strategy in consultation with DoE and Local Land Services (Hunter). The Commission has also amended the conditions (e.g. condition A6) to require the Proponent to explore options to further minimise the biodiversity impacts on the site in the formulation of the Site Management Plan in consultation with the specialist agencies.

The Commission accepts that the amended conditions taken together adequately address the impacts of the proposed coal export terminal on flora and fauna and provide certainty that key values can and will be protected.

#### Stockyard Layout

The Commission recommended that the stockyard layout be refined so that it had a reduced impact on Deep Pond, Frog Pond and Railway Pond. This would provide improved Green and Golden Bell Frog and Australasian Bittern habitat as well as minimizing the impact on migratory shorebirds and ensuring no reduction in the ecological character and values of the Hunter Estuary Wetlands Ramsar site.

The Proponent and the Department do not support this recommendation. The Proponent notes that the design of the project is based on a terminal capacity of 70Mtpa, but allows for future growth to a capacity of 120Mtpa. The Proponent has given consideration to the retention of frog habitat during construction and operation of the project and engaged a consultant to undertake a study into options for retaining this habitat within the terminal footprint. The study concluded that the cost of retaining the habitat would be significant and there would be no certainty that an amended design would avoid impacts on frog habitat. As such, the Proponent considers that an amended design is not feasible or practical.

Dredging of the Hunter River South Arm for the berths is required for the project and provides material to cap the site. The Proponent and the Department are of the view that there may be inefficiencies as a result of any change to site capping, including traffic impacts, resource supply impacts for the disposal of surplus dredge material and importation of capping material. The Proponent and Department also note that the DoE has not raised any objection to the information provided in the Response to Submissions and Preferred Project Report in regards to the design of the stockyard layout and frog habitat.

Following the public meeting where significant concern was raised regarding the project's impact on flora and fauna, the Commission is of the view that further consideration should be given to the design of the stockyard layout and location of settling pond(s) for saline dredge water to mitigate potential adverse impacts on frog populations and habitat of migratory shorebirds and the Australian Bittern. This has been included in condition A6.

### **6.3. Contamination**

The site has previously been used as an industrial waste disposal area for contaminated material, substances and general refuse associated with past activities of nearby industry and the port. Fill substances include materials dredged from the Hunter River and waste from the former BHP steelworks and subsidiaries. The remainder of the site contains areas of localised contamination and the potential for acid sulfate soils.

The site comprises three licensed landfill areas including Kooragang Island Waste Emplacement Facility (KIWEF), owned by Port of Newcastle Lessor Pty Ltd; Delta Electrolytic Manganese Dioxide (EMD) waste disposal facility, owned by PWCS; and Fines Disposal Facility, owned by PWCS.

#### Delta EMD

The Delta Electrolytic Manganese Dioxide (EMD) waste disposal facility occupies a central portion of the site. It is contaminated with a range of toxic materials and the EPA has identified it as its highest priority for remediation. A remediation plan to cap the site has already been accepted by the EPA, however there is no apparent timetable for completion of the works. The Commission understands that this component of the site would be capped to achieve a permeability of  $1 \times 10^{-11}$  m/s. Implementation of this capping work will vastly improve the situation.

In the review report, the Commission recommended that contamination be remediated as soon as practicable. As noted previously condition A6 has been imposed, in part to ensure that this highly contaminated site, owned by the Proponent is promptly remediated. The condition will ensure the capping is completed within 5 years of this approval, preventing further degradation of the site and associated biodiversity values.

#### Kooragang Island Waste Emplacement Facility (KIWEF)

Hunter Development Corporation (HDC) is responsible for capping and closure works for KIWEF by 30 June 2017, as required by the Environment Protection Licence Surrender Notice (Surrender Notice #1111840). The Commission understands that PWCS and HDC have an agreement whereby PWCS would carry out the capping works required by the Surrender Notice if construction of the proposed terminal coincided with that timing. Whilst the cap proposed by HDC is considered by the regulator to be an adequate temporary protection measure for the site, the cap proposed by the Proponent as part of the T4 proposal is superior due to its lower permeability. The Commission notes that the Proponent has committed to capping the EMD area within ten years of the date of receiving development consent from both State and Commonwealth, should the consents be issued with a ten year lapse date.

In the review report, the Commission recommended that contamination be remediated as soon as practicable and that an agreement be reached between the EPA, HDC and the Proponent for a strategy and timetable for remediation. The Commission was of the view that there would be significant public benefit if early remediation of the site is undertaken. This recommendation was largely supported by the community during the public meeting, with many people also raising concern that a ten year lapse date for any development consent issued would delay remediation works.

Given the current volatility of the coal export market, it has been suggested by the Department that it is unlikely that construction of the proposed development will be

undertaken by 30 June 2017 and as such, HDC are working towards fulfilling the requirements of the Surrender Notice. In order to encourage best practice, condition A6 imposed by the Commission provides the Proponent with the opportunity to undertake priority actions, which could include the capping of the KIWEF site, within five years of the date of development consent. The commencement of priority actions would activate the development consent and provide the Proponent with ongoing certainty about the development potential of the site.

The Commission has carefully considered this issue, and the advice provided by the Department of Planning and Environment. The Commission accepts that it would not be reasonable to specifically require the proponent to remediate land it does not own, and that is required to be rehabilitated by a third party. Nonetheless, Condition A6 requires that a Site Management Plan be prepared within two years of the date of issue of the development consent, in consultation with relevant agencies. The plan requires actions to be implemented to minimise further degradation of environmental values of the site. Consequently options to explore a more efficient and cost effective remediation solution for the KIWEF site remain, so long as they are negotiated and completed prior to the 30 June 2017 timeframe specified within the licence.

#### Other amendments to manage contamination

In the review, the Commission also recommended that all EPA's recommendations in correspondence to Department dated 10 October 2014 be adopted. The EPA recommended that the handling and deposition of wet sediment and dredge waters only be undertaken in areas of the site which have an impermeable land surface barrier and appropriate drainage such that the risk of waters entering the groundwater table is minimised. The EPA also recommended that final capping works must be implemented and completed prior to any dredge material emplacement, preloading and/or construction at the site. Given the site's close proximity to the Hunter River, the Hunter Wetlands National Park and the Hunter Estuary Wetlands Ramsar site, the Commission considers it important that best practice protection, remediation and mitigation measures are undertaken to protect the environmental values of these areas. As such, EPA's recommendations have been generally adopted by the Commission and are reflected in conditions B39 and B51 of the approval.

#### **6.4. Stormwater Management**

In its correspondence to Department dated 10 October 2014, the EPA recommended that the surface water management system be designed to capture a 1 in 100 year (2 hour) ARI event with no surface water discharge to occur from the site unless provided for in an EPL. The project has been designed with a surface water management system to capture a 1 in 3 month average recurrence interval (ARI) discharge event. During the review, the Commission did not specifically comment on this issue, generally accepting the Department's position that the Proponent has committed to appropriate surface water management measures.

To comply with EPA's recommendation, the Proponent is of the opinion that the storage volume and associated footprint would need to increase by between 8 and 10ha, which would adversely impact on the habitat of the Green and Golden Bell Frogs. The Proponent also advises that the rainfall depth and likely runoff volume for a 1 in 100 ARI 2 hour storm event is similar to what would be expected during a relatively infrequent 10 to 20 day rain period. The water management ponds provide 131ML of flood storage and will temporarily store water during surplus periods. If sufficient rainfall occurs, storages will fill and overflow once every 3 months.

At the public meeting, some members of the public suggested that 1 in 100 year storm events would occur more frequently as a result of climate change and therefore an appropriate and larger drainage system is required. In correspondence to the Commission,

received 14 September 2015 (Appendix 5), the EPA advised that its objective is to ensure that there is no discharge of water from the site other than in extreme weather events. The EPA highlighted that the Proponent has specified an average overflow frequency in its proposed stormwater management system, which is inconsistent with this objective and therefore the stormwater management system should be designed to capture a 1 in 100 year (2 hour) rainfall event.

The Commission agrees with the EPA requested requirement that the provision of a 1 in 100 year (2 hour) ARI stormwater management system for the development will minimise the risk of stormwater discharge and provide greater certainty that stormwater is able to be adequately managed on site. The Commission also understands this requirement is consistent with other facilities in the area. Conditions requiring the design of the stormwater management system to be amended have been included in the approval. While the Commission notes the Proponent's suggestion that a larger storage basin could adversely impact on habitat for the Green and Golden Bell Frog, the Commission is satisfied that the requirements to review the stockyard layout and to minimise impacts on the biodiversity values of the site will ensure an alternative layout and or storage solution can be developed to achieve both stormwater management and biodiversity protection outcomes

#### **6.5. Air Quality & Associated Health Impacts**

The air quality in Newcastle was a recurring issue raised by the community during the public meeting. Of particular concern to the community were the impacts of diesel exhaust emissions from the transportation of coal and the deposition of coal dust from coal handling and loading on the health of residents living within close proximity to the existing and proposed coal export terminals and railway lines.

As raised during the Public Meeting, the Commission notes that in terms of human health, particulates, PM<sub>10</sub> and PM<sub>2.5</sub> have the potential to give rise to adverse health effects. PM<sub>2.5</sub> particles are of most concern in terms of health effects as they penetrate deeper into the respiratory system than larger particles and because they are generally created by combustion of fuels or by chemical reactions and can carry toxins. Deposited dust, whilst not resulting generally in health impacts, can cause nuisance impacts.

The Commission acknowledges that the EPA is currently undertaking further work on the air quality in the Newcastle and Hunter region and that the National Environmental Protection (Ambient Air Quality) Measures (NEPMs) are currently under review. In correspondence dated 27 July 2015, NSW Health advised the Commission that this research does not alter previous advice on the project and that there will be a relatively small difference in air quality if the T4 project is constructed.

During the Public Meeting it was mentioned that the National Environment Protection Council is considering changes to the NEPM particle standards and that air quality standards are expected to be tightened in the future. Given this, some speakers argued against granting a blanket approval using the current air quality standards, as the development may struggle to meet future standards. To address this concern, the Commission has added to condition B3 and B4, requiring compliance with any limits imposed in an Environment Protection Licence or pollution reduction programs imposed by the EPA, as well as an air emissions mitigation plan.

Consequently, should construction of the proposed coal export terminal proceed, a number of conditions are in place to ensure best practice measures are applied to minimise air quality impacts at both the detailed design stage and during construction and operation of the facility.

- Prior to the commencement of dust generating plant or activities, conditions require that an air quality monitoring program, that specifies how ambient air quality impacts of the proposal will be monitored, must be developed and submitted for approval by the Secretary and the Commission has strengthened this to ensure that PM<sub>2.5</sub> levels would also be monitored.
- Prior to the construction of the terminal, conditions C1 and C2 require that an Air Quality Management Plan be developed in consultation with the EPA and the Department of Health and is to include the identification of all potential sources of dust emissions from the construction of the Project; and all reasonable and feasible mitigation measures to be implemented to manage dust emissions on site during construction.
- Condition B5 imposed by the Commission also requires a detailed air emissions mitigation plan to ensure that the facility is designed to meet best practice standards of the day, and to demonstrate compliance with relevant air quality standards, or that alternative measures are implemented, to ensure the region's air quality is not unacceptably degraded.
- Within two years of the date of the commencement of construction, and annually thereafter, condition C10 requires that an Independent Environmental Audit of the project against the requirements of the development consent be undertaken to ensure compliance with all air quality conditions.
- Prior to the commencement of operation, conditions D4 and D5 require the Proponent to prepare and implement a comprehensive Air Quality Management Plan that outlines monitoring, management procedures and measures to minimise dust emissions from the operation of the project.

The PAC Review report recommended that only coal that has been appropriately profiled within the wagon and meets appropriate moisture content levels or have been treated with a chemical veneer should be accepted; and that all wagons leaving the site be completely empty with dump doors fully closed and wagons sufficiently cleaned to ensure no visible evidence of coal deposition on rail tracks leaving the site. The Commission accepts the view of the Proponent and the Department that there are constraints within the rail network that inhibit the Proponent's ability to turn around or not accept coal wagons. As such, a condition that requires the Proponent to refuse and turn back coal wagons may not be reasonably enforceable.

However, the Commission does not agree that the Proponent can totally avoid responsibility for the transportation of coal. After all it is the proponent that unloads the coal wagons at its site. As such, the Commission has sought to strengthen the Proponent's obligations to ensure coal wagons are clean as per Recommendation 11 of the Commission's Review report. The Commission has imposed condition B6, as follows:

*B6. The Proponent shall ensure that coal wagons leaving the site are completely empty with dump doors fully closed and sufficiently clean so that there is no visible evidence of coal deposition on the ballast around the rail tracks from trains leaving the site.*

The Commission has also added a note to condition D4 to reinforce that the Proponent must outline the practices and procedures to be followed during operation to ensure the achievement of condition B6. The Commission is generally satisfied that any potential air quality impacts from the project will be mitigated and managed through the recommended conditions.

## **6.6. Social and Economic**

The Commission heard differing views regarding the social and economic impacts of the project. A number of local businesses and individuals generally supported the proposal suggesting that it would bring more employment opportunities to the region. The need for a

diverse economy was emphasised with recollections of the closure of the BHP steelworks in 1999 which threatened economic decline and an increase in unemployment.

The Commission has reviewed the comments on the pros and cons of the socio-economic issues and notes the varying opinions on the economic assessment undertaken to justify the project. The Commission accepts that coal pricing and demand predictions are largely a financial matter for the Proponent in deciding whether to proceed with the project and how it will be staged. However, in the context of the wider public interest, the economic costs and benefits to the broader community need to be considered. The Commission is satisfied that the conditions requiring early remediation and habitat enhancement works would provide a material benefit to the local area, while providing the proponent with the capacity to expand its operations, should the demand warrant it. In balancing all of the issues, the Commission has given particular consideration to how the environmental impacts could be managed to ensure adequate protection of flora and fauna on site and avoiding any change to the ecological character of the Hunter Estuary Ramsar Site.

### **6.7. Noise**

In relation to the noise limits that should apply to the project, the Commission previously recommended that noise limits should be included for locations at Warabrook and Sandgate, as recommended by the EPA. The Commission also recommended that options to tighten the noise limits that would apply to the proposal in concert with the Kooragang Coal Terminal (KCT) should be further explored and that additional noise limits specific to the project should also be considered.

The Proponent has developed noise limits for Warabrook and Sandgate in hand with the operation of KCT in accordance with the Industrial Noise Policy, as per the Commission's recommendation. The Department has accepted these noise limits, noting that the alternative of applying site specific noise limits to the proposal without consideration of KCT would potentially result in cumulative noise increases. The Department notes that if both terminals operate to their maximum noise limit, there would be an increase in the cumulative noise environment and that experienced at residential receivers. The Commission accepts this view and is satisfied that the noise limits for both the proposal and KCT outlined in condition B14 will provide a robust framework to manage any potential noise impacts on the surrounding area.

In its meeting with the Commission on 6 July 2015, the EPA raised a concern that the proposed conditions did not reflect the allowable noise contributions from the project when measured at specific locations as recommended in their correspondence in November 2013. The Commission acknowledges that the noise limits specified by the EPA apply only to the subject terminal and not to KCT. However, should operation at KCT cease, the Commission is of the view that site specific noise limits should also apply to the proposal. As such, EPA's recommended noise limits for the proposal have been included as condition B15.

The Commission is generally satisfied that the conditions of development consent as amended will effectively manage existing and future cumulative noise impacts at Kooragang Island and surrounding residential areas.

### **6.8. Other Issues**

A number of other issues were also raised at the public meeting. The Commission understands that these are issues that are of concern to the local community, and that a number of the issues are raised at many public meetings, relating to mining projects.

#### **6.9.1 Climate Change**

At the public meeting, concern was raised regarding climate change and related issues, including greenhouse gas emissions and sea level rise. A range of local and international

sources were cited, with many speakers highlighting the need to reduce greenhouse gas emissions and shift towards more renewable energy sources.

One of the objects of the *Environmental Planning and Assessment Act 1979* is to encourage ecologically sustainable development. The Commission recognises that climate change presents a clear threat of serious or irreversible environmental damage, as well as a threat to intergenerational equity and a threat to the conservation of biological diversity.

The Commission notes that the current policy on Greenhouse Gas Emissions in Australia is a Direct Action Plan and an Emissions Reductions Fund to “provide incentives for emissions reductions activities across the Australian economy”<sup>4</sup> and “to reduce Australia’s greenhouse gas emissions and deliver improvements to our environment”<sup>5</sup>. If the Proponent decides to proceed with the construction of the proposed export terminal, the Commission is satisfied that condition B11, which requires the Proponent to prepare and implement an Energy Efficiency Plan, is in keeping with this policy.

### **6.9.2 Voluntary Planning Agreement**

The Proponent and the City of Newcastle Council have agreed to enter into a Voluntary Planning Agreement (VPA). As outlined in correspondence to the Commission from both parties, the terms of the agreement will be as follows:

- (a) *Port Waratah will pay to Newcastle City Council, upon taking a final decision to proceed with the construction of the Terminal 4 Project, the amount of \$528,140 representing the developer contributions in respect of potential impact on Council services and public amenities.*
- (b) *Port Waratah will also pay to Newcastle City Council, upon taking a final decision to proceed with the construction of the Terminal 4 Project, the amount of \$1.5million for allocation towards infrastructure projects to be selected from Council’s work schedule and new facilities as listed in Schedule 1 of Appendix A and B to the Section 94A Development Contributions Plan as it is made and updated from time to time.*
- (c) *Port Waratah will pay to Newcastle City Council \$400,000 per annum for allocation towards infrastructure projects to be selected from Council’s work schedule and new facilities as listed in Schedule 1 of Appendix A and B to the Section 94A Development Contributions Plan as it is made and updated from time to time. This contribution will be paid annually, commencing 12 months after (b) above and will continue for 25 years. As per our previous offers, Port Waratah accepts Council’s offer to establish a governance arrangement through which Port Waratah would be able to submit proposals for and be consulted on projects to be funded through this contribution outlined in (b) and (c).*
- (d) *All amounts above will be escalated by the official consumer price index from the date of development approval to the date of payment.*

Condition A15 requires that the Proponent enter into the agreed VPA with the City of Newcastle Council prior to the commencement of construction.

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<sup>4</sup> Department of Environment Website. 2014. <http://www.environment.gov.au/climate-change/emissions-reduction-fund> accessed 6 November 2014

<sup>5</sup> Department of Environment. 2014 <http://www.climatechange.gov.au/reducing-carbon/reducing-australias-emissions> accessed 6 November 2014.

## 7. COMMISSION'S FINDINGS AND DETERMINATION

The Commission has carefully considered the proposal from Port Waratah Coal Services, including the Department's assessment report, the PAC Review Report and the Department's addendum report. The Commission also received additional information from the Proponent, the Department, other Government agencies, other interest groups and members of the public, during its various briefings, meetings, inspections and at the public meeting held on 13 and 14 July 2015.

The project is unusual as there is no immediate need for the development of the terminal. Equally the site is highly contaminated, yet has biodiversity values supporting threatened species and migratory shore birds. The site is also in close proximity to significant Ramsar wetlands.

The Commission has found that it is possible to balance the Proponent's potential need for a future coal terminal site with the public interest, through the inclusion of requirements that contamination and biodiversity protection measures are prioritised. Implementation of these improvement works will in turn trigger commencement of the approval, providing the Proponent with the flexibility to proceed with the project at a later date, or pass on its interest in the land in a significantly improved (and more valuable) state.

The Commission is satisfied that this highly contaminated site, occupying prime port side land, can be made suitable for a terminal use. The site is removed from sensitive residential receptors and consequently air quality, noise, traffic and transport impacts can each be adequately managed through implementation of suitable control and mitigation measures. There may also be other more regional benefits, should the additional terminal capacity assist the Proponent to reduce its current use of the Carrington Coal Terminal.

There is scope to further minimise the biodiversity impacts of the project through refinements to the layout of the facility and the Commission has added conditions to ensure that these refinements occur. With the remediation and biodiversity protection works and offsets in place, the project has the capacity to ensure existing risks to the adjoining Ramsar wetlands site are avoided and contained, and to prevent adverse impacts and to provide longer-term improvements for biodiversity in the Hunter estuary.

Should it ever be developed, the project will also generate employment and economic inputs to the local and regional economy. Equally the site has the capacity to be remodelled for alternative port side uses in the longer term, should the coal export market retract in the future.

Consistent with the assessment and recommendations from the Department of Planning and Environment, and the previous Planning Assessment Commission review, the Commission has approved the project subject to comprehensive conditions.



Brian Gilligan (Chair)  
Member of the Commission



John Cook  
Member of the Commission



Robyn Kruk AM  
Member of the Commission

**PLANNING ASSESSMENT COMMISSION MEETING  
WATERMARK COAL PROJECT**

Date & Time: Monday 13 July, 9am & Tuesday 14 July 2015, 9am

Place: Fort Scratchley Historic Site, Nobby's Road, Newcastle East NSW 2300

**List of Speakers**

Monday, 13 July 2015

1. Henny Du Plooy (Port Waratah Coal Services)
2. Geoff Crowe (Port of Newcastle)
3. Michael Osborne (Newcastle Greens)
4. John Sutton
5. Allan Ball (Daracon)
6. Claire Charles
7. Donna Manning
8. John Mackenzie (Hunter Community Environment Centre)
9. Ian Dunlop
10. Antony Lewis (Blacktown and District Environment Group)
11. Ben Ewald (Doctors of Environment Australia)
12. Nick Higginbotham (Newcastle Public Health Professionals)
13. James Whelan (Environmental Justice Australia)
14. Fee Mozeley (The Coal Terminal Action Group Dust and Health Committee)
15. Vanessa Wiebford
16. Anne Ross
17. Rev Greg Heathcoate (Australian Religious Response to Climate Change)
18. Stephen Talbott (The Gomerioi Traditional Custodians)
19. Mick Roderick (Hunter Bird Observers Club)
20. Amanda Macokatic (Wilderness Society Newcastle)
21. John Hayes (Correct Planning and Consultation for Mayfield Group)
22. Melanie McKinnon (Tighes Hill Community Group)
23. Kristen Keegan (Hunter Business Chamber)
24. Megan Benson
25. Mike Campbell OAM (Australian Coal Alliance)
26. Kevin Taggart (Wanarua Traditional Custodians WTC)
27. Jack Galvin Waight (NSW Teachers Federation)
28. Lynden Jacobi
29. David Whitson (Lake Macquarie Climate Action Group)
30. Kirsten Molloy (Hunter Valley Coal Chain Coordinator)
31. Nigel Waters (Port Stephens Greens and Econetwork Port Stephens)
32. Pastor John Carroll
33. Wayne Diemer (Hunter Net)
34. Father Kevin Corrigan
35. Esther Robinson
36. Ian Donovan (National Parks Association of NSW)
37. Kate Johnson (Stockton Community Action Group)
38. Paul Hodge
39. Geoff Evans
40. Justine Suthers (Central Coast Greens)
41. Jonathan Moylan
42. Sharyn Munro
43. Ras Berghout
44. Ark Griffin
45. Charlotte McCabe
46. John Shiel
47. Mark Begamo
48. Ross Holdings
49. Naomi Issacs

Tuesday, 14 July 2015

1. Brett Lewis (Bloomfield Collieries)
2. Niko Leka
3. Chris Butler (Reliable Conveyer Belt RCB)
4. Terry Tynan
5. Michael Forrest
6. Steve Phillips (Lock the Gate Alliance)
7. Beverley Smiles (Hunter Communities Network)
8. Rick Banyard (Maryville Community Group)
9. Tim Buckley (Institute of Energy Economics and Financial Analysis)
10. Zoe Rogers (Climate Action Newcastle)
11. Lord Mayor Nuatali Nelmes (City of Newcastle)
12. Rex Palmer
13. Robert Monteath
14. Cathy Burgess
15. Bob Plank
16. Peter Morris
17. Glenn MacFayden
18. Lynn Benn
19. Wayne Carman
20. Judith Leslie
21. Annika Dean
22. John Thacker
23. Shaun Sears
24. Robert McLaughlin
25. AnneMaree McLaughlin
26. Emma Giles (350.org)
27. Nicola Bowskill
28. Peter Sainsbury (Climate Health Alliance)
29. Michelle Hancock
30. Jamie Rowbottom
31. Randolph Wild
32. George Barnes
33. Annette Tubnor
34. Tess Lieberman
35. Jane Oakley (Lake Macquarie Greens)
36. Lyn Kilby (Great Lifestyle of Wickham)

## Appendix 2

### Summary of issues presented at the public meeting

#### Approval lapse period

- A ten year approval lapse period is appropriate because the proposal is large and complex.
- A ten year approval lapse period for the proposal will provide more certainty to the coal industry, should the demand for coal increase within this time.
- A 10 year approval lapse period will not impact on rehabilitating land as HDC needs to undertake remediation by 2017.
- T4 will only be built when required and when the other terminals reach capacity.
- 'Commencing work' should be defined.
- A five year approval lapse period is appropriate because the future of coal is uncertain.
- Whether a five or ten year approval lapse period is granted, the proponent could activate the consent at any time by undertaking minor physical works.
- Air quality and other environmental standards may change within ten years.
- Once construction starts, there should be a time frame for completion of works.
- Should the trigger be activated, PWCS only has 4 years to access further capacity. An approval would allow the terminal to be constructed in a timed and staged way to prepare for future demand.
- T4 will prevent the queues experienced when there was previous high demand and supports the growth of the coal industry.

#### Tomago offset

- A one year trial period for the Tomago offset is in keeping with the recommendation from the Office of Environment and Heritage (OEH) and the Commonwealth Department of the Environment.
- A three year trial will result in unnecessary delays.
- Indicators of a successful or suitable habitat cannot be measured.
- Indicators of a successful or suitable habitat could be determined and have set parameters. Additional community consultation could assist with this process.
- It is unlikely that the Tomago offset will be able to function successfully in one year and as such, at least three years are needed for the trial period.

#### Socio-economic considerations

- There are many different predicted forecasts for the price and demand for coal.
- The coal industry directly and indirectly affects other industries and businesses.
- Newcastle's economy needs to be diversified. The proposal will remove the opportunity for diversification.
- The proposal will impact on the prices for properties located close to the site.
- Jobs will be created when the terminal is under construction.
- The majority of jobs created will be for existing employees.
- Jobs provided by the construction of the proposal would only be short term.
- Short term economic benefits should be weighed against environmental and social impacts.
- The proponent should provide updated economic justification for the proposal.

- There will be no social benefits for the majority of the community.
- The site could be used for different uses that benefit the greater community.
- The proposal will adversely impact on views and vistas of Newcastle.
- The cost of health care for people affected by air pollution from coal dust has not been included in the economic appraisal.
- Newcastle has a long history of exporting coal.

#### Company's practices

- Port Waratah Coal Services (PWCS) donates to schools.
- PWCS provides further education and training opportunities for staff.
- PWCS has a history of breaching their Environment Protection Licence.
- PWCS is mostly compliant with their Environment Protection Licence and has previously shut down operations due to noise complaints.
- Other coal terminals are only operating at a 71% capacity.
- PWCS is mostly foreign owned and any profits will be sent overseas.

#### Department of Planning and Environment's addendum report

- The Department has only fully adopted 3 of the 16 recommendations.
- The Department has used outdated economic information to justify the need for the proposal.
- The Department has not undertaken community consultation before forming their recommendation.
- The PAC recommendations reflect community concerns that have not been considered by the Department.

#### Climate change

- The proposal is designed to expand fossil fuel business and does not consider climate change.
- Further consideration of climate change and greenhouse gas mitigation measures need to be undertaken prior to the determination of the application.
- Determination of the proposal should be held off until climate change discussions in Paris have been concluded.
- Climate change will impact future generations and the environment.
- Climate change may increase the occurrence of 1 in 100 year storm events.

#### Sea level rise

- Sea level rise needs to be a consideration in the determination of this application.
- Sea level rise has not been considered during the assessment process.
- How will sea level rise affect contaminated land, including the subject site?
- Sea level rise will impact on frog and bird habitat.

#### Air quality

- There are concerns that the air quality in Newcastle is already impacted on the health of residents.
- The proposal will increase the demand for more mines and will therefore inadvertently impact on the air quality in the region.
- Health impact assessment needs to be undertaken as part of the application.

- NEPM will publish air quality standards within the next few weeks. No determination should be made until these standards are published.
- There is no safe level of exposure to fine Particulate Matter (PM<sub>2.5</sub>).
- Local residents are already impacted by coal dust from trains and existing operations of the coal terminals. The proposal will result in increased coal operations, therefore further contributing to coal dust emissions.
- The proposal does not include best practice measures, as seen in other countries, to mitigate coal dust emissions.
- There are no national standards for PM<sub>10</sub> exposure.
- Exposure to PM<sub>10</sub> increases chances of lung disease and impedes the growth of children.
- To reduce the impacts of PM<sub>10</sub>, the coal loader should be removed.
- No dust mitigation measures have been proposed by the proponent.
- An air quality management plan should be considered as part of the assessment process, not after determination.

#### Coal transportation

- In order to reduce coal dust emissions from rail operations, coal wagons should be cleaned when leaving the site.
- Coal wagons should be covered.
- Empty wagons contribute to more airborne coal dust than full wagons.
- Coal left on rail lines becomes airborne, resulting in more air pollution.
- Coal trains should have a curfew to reduce noise impacts on surrounding residents.
- The proposal will result in more ships accessing the Port of Newcastle, resulting in more diesel fume pollution. Exhaust limits should be applied to coal ships.

#### Offsets

- The offsets may not work.
- The offsets do not retain the existing ecological character of the site.
- Deep pond should be avoided.
- The use of offsets are not recognised under RAMSAR convention.
- Offsets will not contain breeding sites for the green and golden bellfrog.
- The population and number of species of migratory shorebirds visiting Newcastle are already in declining.
- The proponent has not provided an environmental strategy.
- The proposal is not ecologically sustainable development.
- The proposal will impact on ecosystems and the habitat of a number of species.

#### Remediation works

- The proponent has not provided a detailed site remediation plan that would remediate the entire site.
- Remediation needs to be undertaken by the proponent.

#### Planning process

- There is distrust in the development of planning policies.
- T4 aligns with NSW state objectives and plans.
- A new strategic plan is needed for Newcastle.

### Renewable energy

- Australia should be moving towards renewable energy.
- Currently, there are no alternate energy sources that can replace coal to the extent of the energy it produces.

### Traffic and infrastructure

- The proposal will result in increased traffic and therefore, a higher risk of accidents.
- The structural integrity of the Tourle Street Bridge must be protected.

### Development contributions

- Development contributions through a Voluntary Planning Agreement will be paid to Council, should the proposal be approved.
- The development contributions calculated by DPE are significantly less than the 1% of cost of works of the development, as usually required under Section 94A of the *Environmental Planning and Assessment Act 1979*.
- The DPE have not used a consistent method to calculate development contributions.

### Cumulative Impacts

- Impacts of mining on land with Aboriginal Cultural significance.
- If the proposal is approved, there will be an increased amount of ammonium nitrate produced on neighbouring sites, resulting in a higher risk of explosions and endangering public health.
- In order to use the proposed coal export terminal at full capacity, more mines and associated mining activity would have to be sanctioned.

## Appendix 3

## Records of Commission Meetings

### Notes of meeting with the Department of Planning and Environment – 6 July 2015

<b>Meeting note taken by:</b> Jade Shepherd	<b>Date:</b> Monday, 6 July 2015	<b>Time:</b> 11:15am
<b>Project:</b> Port Waratah Coal Services Terminal 4		
<b>Meeting place:</b> PAC office		
<p><b>Attendees:</b>            PAC Members: Brian Gilligan (Chair), John Cook and Robyn Kruk AM            PAC Secretariat: Jade Shepherd and Megan Webb</p> <p>Department of Planning and Environment (DPE):            Karen Jones (Director, Infrastructure Projects)            Lisa Mitchell (Team Leader – Rail, Ports &amp; Water, Infrastructure Projects)            Anuj Saraogi (Case Manager - Department of Premier and Cabinet)</p>		
<p><b>The purpose of the meeting:</b> To brief the Commission on the project and to discuss the DPE's Addendum Report and the PAC's recommendations</p>		
<p>A summary of the key issues discussed is provided below.</p> <p><u>Approval lapse period</u></p> <p>PAC recommended a five year approval lapsing period in order to fast-track the remediation of the site and the establishment of the offset areas. DPE recommends a ten year lapse period for the following reasons:</p> <ul style="list-style-type: none"> <li>• Physical works could commence at any time, thereby activating the consent</li> <li>• A 10 year lapse period is not unusual for complex projects</li> <li>• From the proponent's perspective, it is better for commercial reasons</li> </ul> <p><u>Ownership of railway lines</u></p> <p>PAC sought further clarification on the ownership of the railway lines within Kooragang Island and the proponent's control over rail and coal wagon operations on site.</p> <p><u>Air quality</u></p> <p>PAC noted that the majority of submissions for the Review were received from Carrington residents and enquired whether the Department and the proponent had given any consideration to the possibility of the Carrington Coal Export Terminal reducing throughput, should the construction of T4 proceed. The Department advised that it had not considered this.</p> <p><u>Biodiversity offset areas</u></p> <p>PAC recommended that the Tomago offset be functioning successfully for 3 years, prior to commencing construction. DPE recommends one year, which is supported by the Office of Environment and Heritage (OEH) and the Department of Environment (DoE). DPE is of the opinion that it is difficult to define or measure the 'success' of the offset and that adopting a longer trial period may not provide greater certainty that the migratory species will come to the offset area because construction has not commenced.</p> <p><u>Contamination</u></p> <p>PAC raised concern regarding site contamination and sought clarification on the proposed site capping.</p> <p><u>Drainage</u></p> <p>The proposal incorporates a surface water management system to capture a 1 in 3 month average recurrence interval (ARI) discharge event. The EPA recommends that the surface management system for the site captures a 1 in 100 year ARI event. PAC sought clarification on the differences between the systems. DPE tabled the document 'T4 Project Management Objectives', prepared by the proponent, describing the proposed</p>		

system.

VPA and Owner's consent

PAC enquired about the status of VPA negotiations between the City of Newcastle and the proponent. DPE stated that negotiations are continuing. PAC also noted that the application was unable to be determined without owner's consent from the City of Newcastle.

**Documents tabled at meeting/to be provided:** T4 Project Management Objectives

**Meeting closed:** 1pm

## Notes of meeting and site visit with the proponent – 7 July 2015

<b>Meeting note taken by:</b> Jade Shepherd	<b>Date:</b> Tuesday, 7 July 2015	<b>Time:</b> 10am
<b>Project:</b> Port Waratah Coal Services Terminal 4		
<b>Meeting place:</b> Port Waratah Coal Services Administration Building		
<p><b>Attendees:</b>            PAC Members: Brian Gilligan (Chair), John Cook and Robyn Kruk AM            PAC Secretariat: Jade Shepherd and Megan Webb</p> <p>The Proponent - Port Waratah Coal Services (PWCS):            Henny du Plooy - CEO            Terry Tynan – General Manager Development            Nick Godfrey-Smith – Principal Project Approvals</p>		
<p><b>The purpose of the meeting:</b> For the proponent to provide their comments to the Commission on the Review Report, DPE's addendum report and the recommended conditions and for the Commission to view the site.</p>		
<p>The proponent gave a presentation outlining:</p> <ul style="list-style-type: none"> <li>• A background of PWCS and their operations</li> <li>• Predictions for future demand</li> <li>• The origin of the proposal</li> </ul> <p>The proponent provided comments in response to the Review Report and DPE's addendum report, as summarised below:</p> <p><u>Approval lapse period</u></p> <p>The proponent seeks a 10 year approval lapse period because:</p> <ul style="list-style-type: none"> <li>• T4 is likely to be needed in the future;</li> <li>• DPE have granted 10 year approval lapse periods to other projects;</li> <li>• The project is large and complex and obtaining relevant information and approvals will take a long time;</li> <li>• There has already been a large expenditure on the project to date;</li> <li>• Environmental Protection Licences are updated frequently, which would address any change in environmental standards.</li> </ul> <p><u>Contamination and Capping</u></p> <ul style="list-style-type: none"> <li>• The proponent noted that HDC are accountable for capping the Delta site by 1 July 2017.</li> <li>• Further investigation will be undertaken to establish what the preliminary steps are to remediate the land owned by PWCS.</li> </ul> <p><u>Tomago Offset</u></p> <ul style="list-style-type: none"> <li>• The proponent is seeking for the Tomago offset to be functioning for 1 year, rather than 3 years.</li> <li>• The proponent raised concern that 'success' of the offset area is difficult to measure.</li> </ul> <p><u>VPA with the City of Newcastle Council</u></p> <ul style="list-style-type: none"> <li>• The proponent acknowledged that land owner's consent from Council was outstanding.</li> <li>• The proponent stated that negotiations on the VPA with Council are continuing and that another meeting will be set up with Council within the next few weeks.</li> </ul> <p><u>Site Visit</u></p> <ul style="list-style-type: none"> <li>• The Commission viewed existing operations at Kooragang Terminal, including the unloading of coal wagons and dust mitigation measures currently employed by PWCS.</li> <li>• The Commission viewed the site of the proposed development, including a number of ponds.</li> </ul>		
<b>Documents tabled at meeting:</b> PowerPoint presentation slides and a map of subject site		
<b>Meeting closed:</b> 1:40pm		

## Notes of meeting with the City of Newcastle – 7 July 2015

<b>Meeting note taken by:</b> Jade Shepherd	<b>Date:</b> Tuesday, 7 July 2015	<b>Time:</b> 2:30pm
<b>Project:</b> Port Waratah Coal Services Terminal 4		
<b>Meeting place:</b> The City of Newcastle Council Administration Building		
<p><b>Attendees:</b>            PAC Members: Brian Gilligan (Chair), John Cook and Robyn Kruk AM            PAC Secretariat: Jade Shepherd and Megan Webb</p> <p>The City of Newcastle Council (Council):            Ken Gouldthorp – General Manager            Peter Chrystal – Director Planning and Regulatory            Murray Blackburn-Smith – Manager Development and Building</p>		
<b>The purpose of the meeting:</b> For Council to further discuss the issues raised in their submission to the PAC, dated 18 June 2015.		
<p>A summary of the key issues discussed are provided below.</p> <p><u>VPA with the proponent</u></p> <ul style="list-style-type: none"> <li>• Council indicated that the proposal will adversely impact on the amenity of the area and Section 94A contributions should be provided commensurate with the amenity impacts.</li> <li>• Council expressed concern with the proposed contribution amount prescribed by Department, which is based on Council’s work schedule and new public facilities. Council indicated that this schedule is not up to date.</li> <li>• Council sought an alternative condition requiring the proponent to pay the full Section 94A contribution or enter into a VPA.</li> <li>• Negotiations are continuing with the proponent.</li> </ul>		
<b>Documents tabled at meeting:</b> N/A		
<b>Meeting closed:</b> 3:30pm		

## Notes of meeting with EPA – 14 July 2015

<b>Meeting note taken by:</b> Jade Shepherd	<b>Date:</b> Tuesday, 14 July 2015	<b>Time:</b> 1:15pm
<b>Project:</b> Port Waratah Coal Services Terminal 4		
<b>Meeting place:</b> Fort Scratchley Historic Site		
<p><b>Attendees:</b></p> <p>PAC Members: Brian Gilligan (Chair), John Cook and Robyn Kruk AM  PAC Secretariat: Jade Shepherd and Megan Webb</p> <p>NSW Environment Protection Authority (EPA):  Mitchell Bennett – Head Regional Operations Unit  Rebecca Scrivener – Senior Regional Operations Officer</p>		
<b>The purpose of the meeting:</b>		
<p>A summary of the key issues discussed are provided below.</p> <p><u>Comments on DPE's recommended conditions of consent</u></p> <p>The EPA provided the comments on the Department of Planning and Environment's (DPE) updated recommended conditions of consent, as follows:</p> <ul style="list-style-type: none"> <li>• B14 – EPA noted that the noise limits included in this condition do not align with the noise limits recommended by the EPA;</li> <li>• B15 – EPA noted that Pollution Control Approvals referenced in the condition do not exist;</li> <li>• B32 – EPA recommends that the condition should be amended to clarify that spatial provision will be provided for shore power for vessels at berth; and</li> <li>• B40 – EPA recommends that this condition be expanded to include any land surface that may be used to store wet sediment and dredge waters so that the potential for any leachate generated to infiltrate groundwater is reduced and minimize the potential mobilisation of existing contaminants.</li> </ul> <p><u>Coal dust and air quality</u></p> <ul style="list-style-type: none"> <li>• The PAC noted that the public has raised concern regarding coal dust and the air quality in Newcastle and that further research is being undertaken.</li> <li>• The EPA said air quality in Newcastle was generally good.</li> <li>• The EPA noted that further research will be undertaken on particulate matter and that a dust deposition study will be published within the next few weeks.</li> <li>• The EPA agreed with the PAC that coal wagons could be cleaned on site.</li> </ul> <p><u>Contamination and remediation works</u></p> <ul style="list-style-type: none"> <li>• The EPA noted that the site capping of Hunter Development Corporation's 'Delta' site to be undertaken by 2017 will only be a temporary (5-10 year) solution to the contamination issues affecting the site.</li> <li>• The EPA will investigate what remediation works should be prioritised and be undertaken by the proponent.</li> </ul> <p><u>Stormwater Drainage</u></p> <ul style="list-style-type: none"> <li>• The EPA strongly recommends that the proposal includes a surface water management system that is designed for a 1 in 100 year ARI two hour storm event, with no surface water discharge.</li> <li>• The EPA noted that NCIG and Kooragang Terminal have a surface water management system designed for a 1 in 100 year ARI two hour storm event.</li> </ul>		
<b>Documents tabled at meeting:</b> N/A		
<b>Meeting closed:</b> 3:30pm		

## Notes of meeting with the Department of Planning and Environment – 16 July 2015

<b>Meeting note taken by:</b> Jade Shepherd	<b>Date:</b> Monday, 16 July 2015	<b>Time:</b> 11am
<b>Project:</b> Port Waratah Coal Services Terminal 4		
<b>Meeting place:</b> PAC office		
<p><b>Attendees:</b>            PAC Members: Brian Gilligan (Chair), John Cook and Robyn Kruk AM            PAC Secretariat: Jade Shepherd and Megan Webb</p> <p>Department of Planning and Environment (DPE):            Karen Jones (Director, Infrastructure Projects)            Lisa Mitchell (Team Leader – Rail, Ports &amp; Water, Infrastructure Projects) via telephone</p>		
<p><b>The purpose of the meeting:</b> To update the DPE on the issues raised during the public meeting and to discuss how to proceed with drafting conditions.</p>		
<p>A summary of the key issues discussed are provided below.</p> <p><u>Issues raised at the public meeting</u></p> <ul style="list-style-type: none"> <li>• PAC informed the DPE that the community is concerned about:               <ul style="list-style-type: none"> <li>○ Remediation schedule for the site, particularly given the history of deferred works;</li> <li>○ The potential impacts that the proposal may have on biodiversity; and</li> <li>○ The potential impacts that the proposal may have on air quality.</li> </ul> </li> <li>• PAC advised the DPE that conditions should provide greater certainty for the community by prescribing specific works to be undertaken in the above areas, within certain timeframes.</li> <li>• PAC suggested that a Site Management Plan and Priority Action Plan should be prepared by the proponent. These plans could outline remediation and biodiversity works that need to be undertaken on the site as well as strategies for reducing potential air pollution created from the proposal.</li> <li>• PAC advised that the EPA will be providing further information regarding remediation works within the new few weeks.</li> <li>• PAC advised that it would be contacting NSW Health to provide further clarification on the air quality in the Newcastle region.</li> </ul> <p><u>Approval lapse period</u></p> <ul style="list-style-type: none"> <li>• The DPE informed PAC that 10 year approval lapse periods are usually provided to infrastructure type projects. Mining approvals, by default, are usually provided 5 year lapse periods.</li> <li>• The DPE advised that in order to activate the consent, physical works on the site need to be undertaken.</li> </ul> <p><u>VPA and Owner's consent</u></p> <ul style="list-style-type: none"> <li>• PAC advised the DPE that VPA negotiations between the City of Newcastle and the proponent were continuing.</li> </ul> <p><u>Conditions of consent</u></p> <ul style="list-style-type: none"> <li>• DPE advised PAC that the recommended conditions of consent will be amended to reflect the public's concerns and that draft conditions will be sent to PAC in due course.</li> </ul>		
<b>Documents tabled at meeting:</b> A1 Aerial Photograph of Site		
<b>Meeting closed:</b> 1pm		

## Appendix 4

Table Summary of Recommendations from Review Report and Results of Determination

Recommendation	Results of Determination
<b>Lapsing Period</b>	
<p><u>Recommendation 1:</u> There should be a five year rather than ten year approval lapsing period for the project.</p>	<p>This recommendation has been adopted to provide the public with greater certainty that some public interest benefits related to site remediation, protection of biodiversity values and regional air quality aspirations can be achieved even if this project does not become fully operational for many years. Condition A5 states that the consent will lapse five years after the date the consent is granted unless on or before that date: the priority actions identified in condition A6 have been completed or construction has physically commenced.</p>
<b>Biodiversity</b>	
<p><u>Recommendation 2:</u> The detailed design of the offset sites should be prepared in consultation with government agencies including the Commonwealth, OEH and relevant Council.</p>	<p>This recommendation is reflected in conditions B20 to B25.</p>
<p><u>Recommendation 3:</u> A five year approval period would provide an appropriate timeframe for the Proponent to commence the conservation works.</p>	<p>A five year approval period has been applied to the development consent.</p>
<p><u>Recommendation 4:</u> The Tomago Offset Site should be functioning for a minimum of three years to be confident of documenting at least one successful migratory season.</p>	<p>Condition A7 requires that the Tomago Offset Site be completed prior to the commencement of construction at the Site. The Commission acknowledges the difficulties in specifying measures of success and prescribing a specific timeframe but has determined that these matters must be resolved in consultation with the relevant specialist agencies, working on the principle that the earlier the physical works establishing wetland habitats are completed, the more certainty there is that the habitats will be ecologically functional when disturbance occurs to habitats on the T4 project site.</p>
<p><u>Recommendation 5:</u> The stockyard layout should be refined to reduce impact on Deep Pond, Frog Pond and Railway Pond.</p>	<p>This recommendation is reflected in condition A6, which requires the Proponent, in consultation with relevant specialist agencies, to consider refining the design of the stockyard layout within two years of the date of the approval.</p>
<b>Contamination</b>	
<p><u>Recommendation 6:</u> The contamination of Kooragang Island needs to be remediated as soon as practicable. Prior to</p>	<p>Condition A6 requires that a Site Management Plan, to be prepared within two years of the date of the consent, must detail measures to contain and treat contamination</p>

Recommendation	Results of Determination
determination, the Proponent, the EPA and HDC should agree on comprehensive remediation strategy.	ahead of any decision to proceed to construction. In the Priority Action Plan, the Proponent must commit to actions that are to be completed within five years of the date of the approval. These actions should include remediation works on those parts of the site over which it has control.
<u>Recommendation 7:</u> The amendments and additional conditions recommended by EPA on 10 October 2014 should be adopted in whole. Condition B32 should be amended to reference a 1 in 100 year Average Recurrence Interval (ARI) discharge event.	All conditions recommended by the EPA in correspondence to the Commission dated 10 October 2014 have generally been adopted. Condition B37 requires that the Proponent design, construct, maintain and operate surface water and stormwater management infrastructure on the site to accommodate a 1 in 100 year (2 hour) ARI event with no surface water discharge to occur from the site unless provided for in an Environment Protection Licence. The Commission notes that EPA's recommendations provide greater certainty for the community with regard to site remediation and stormwater management.
<b>Air Quality</b>	
<u>Recommendation 8:</u> The Department should give further consideration to strengthening conditions requiring pro-active and reactive management of air quality. It should be confirmed what mitigation measures are proposed, which components will be shut down and justification should be provided for continued emissions during adverse conditions. Conditions should be extended to cover ships and locomotives associated with the project.	Conditions on the management and monitoring of air quality have been strengthened. In particular, condition B4 requires the Proponent, in consultation with the EPA and NSW Health, to prepare an air emissions mitigation plan for the site, which must be approved by the Secretary. The plan will also cover ships and locomotives associated with the project.
<u>Recommendation 9:</u> Proponent should be required to make spatial provision for shore power for vessels.	This recommendation is included as condition B35.
<u>Recommendation 10:</u> Conditions should require that coal wagons should only be accepted at the project site if they meet certain criteria.	The Commission accepts the view of the Proponent and the Department that there are constraints within the rail network that inhibit the Proponent's ability to turn around or not accept coal wagons. However, the Commission is not persuaded that the proponent is totally free of obligations in this regard and conditions have been strengthened to require collaborative engagement with other parties to minimise air quality impacts associated with the transport of coal to the terminal and the despatch of empty wagons after unloading.
<u>Recommendation 11:</u> Conditions should ensure that	This recommendation is included as condition B5.

Recommendation	Results of Determination
<p>wagons leaving the site are to be completely empty, with dump doors fully closed and sufficiently clean to ensure there is no visible evidence of coal deposition on the ballast around the rail tracks from trains leaving the site.</p>	
<b>Noise</b>	
<p><u>Recommendation 12:</u> Noise limits should be included for locations at Warabrook and Sandgate.</p>	<p>Noise limits for locations at Warabrook and Sandgate have been included in conditions B16 and B17.</p>
<p><u>Recommendation 13:</u> Options to tighten noise limits that would apply to T4 in concert with the Kooragang Coal Terminal should be further explored.</p>	<p>Condition B16 outlines the maximum allowable noise levels to be produced by T4 in concert with the Kooragang Coal Terminal.</p>
<p><u>Recommendation 14:</u> Additional noise limits specific to T4 should be considered</p>	<p>The Commission has imposed condition B17 which provides specific noise limits to T4 for any time when the Kooragang Coal Terminal is not operating.</p>
<b>Other</b>	
<p><u>Recommendation 15:</u> Where the conditions specify that issues shall be managed in accordance with the relevant guidelines, the condition specifies that the latest version of the policy or guideline would apply.</p>	<p>Conditions require the Proponent to manage the project, applying best practice procedures and comply with relevant policies, standards and guidelines.</p>
<p><u>Recommendation 16:</u> Coal pricing and demand forecasts should be considered during the final design to ensure environmental impacts are minimised</p>	<p>The Commission accepts the Proponent's advice that it would not build the terminal unless there is demand for its services. The Commission has imposed conditions that allow the commencement of site improvement works, required for any future development of the site, while also minimising the potential for adverse environmental impacts from the coal terminal, should it eventually be developed. Expenditure required to undertake site improvement works are consistent with existing obligations and may add to the value of the Proponent's asset regardless of whether the proposal proceeds to be built.</p>

- 1. Newcastle City Council, 29 July 2015; Port Waratah Coal Services Major Project Application MP10-0215 – Proposed Voluntary Planning Agreement.**
- 2. Planning and Environment, 20 August 2015; Additional information: Port Waratah Coal Services Terminal 4**
- 3. Environment Protection Authority, 9 September 2015; Proposed Terminal 4 Coal Terminal – Noise and Stormwater**