

Appendix B

DoEE

Controlled

Action







Mr Neil Cooke
Manager
Power Development
NGSF Asset Pty Limited
200 George Street
SYDNEY NSW 2000

Dear Mr Cooke,

**Decision on referral
Newcastle Power Station Project, Tomago, NSW**

Thank you for submitting a referral under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This is to advise you of my decision about the referral of the proposed action, to construct and operate a gas fired power station and associated infrastructure in Tomago, NSW.

As a delegate of the Minister for the Environment, I have decided under section 75 of the EPBC Act that the proposed action is a controlled action and, as such, it requires assessment and a decision about whether approval for it should be given under the EPBC Act.

The information that I have considered indicates that the proposed action may have a significant impact on a listed wetland of international importance (s16 & s17B). Based on the information available in the referral, the proposed action could potentially have significant impacts on a Ramsar wetland, due to its proximity to the Kooragang Component of the Hunter Estuary Wetland, potential for groundwater intersection, the potential presence of contaminants in soils, and the likely presence of acid sulphate soils.

Please note that this decision only relates to the potential for significant impacts on matters protected by the Australian Government under Chapter 2 of the EPBC Act.

I have also decided that the project will need to be assessed by an accredited assessment under the NSW *Environmental Planning and Assessment Act 1979*. The NSW Department of Planning, Industry and Environment will manage the assessment process on behalf of the Commonwealth. This approach is in keeping with the policy intent of the bilateral agreement and the proposed amending agreement between the NSW and Commonwealth governments. I have also written to the NSW Department of Planning, Industry and Environment to advise it of my decision.

Please note that the NSW assessment process includes a public consultation phase, in which any third parties can comment on the proposed action. Indigenous communities may also need to be consulted during the assessment process. For more information on how and when indigenous engagement should occur during environmental assessments, please refer to the indigenous engagement guidelines at <http://www.environment.gov.au/epbc/publications/engage-early>.

Please also note that once a proposal to take an action has been referred under the EPBC Act, it is an offence under section 74AA to take the action while the decision

making process is on-going (unless that action is specifically excluded from the referral or other exemptions apply). Persons convicted of an offence under this provision of the EPBC Act may be liable for a penalty of up to 500 penalty units. The EPBC Act is available on line at: <http://www.environment.gov.au/epbc/about/index.html>.

Under subsection 520(4A) of the EPBC Act and the *Environment Protection and Biodiversity Conservation Regulations 2000*, your assessment is subject to cost recovery. Please find attached a copy of the fee schedule for your proposal, noting that Stage 1 and 2 fees are not applicable as NSW is managing these stages on behalf of the Commonwealth. You will receive a revised fee schedule for Stages 3 and 4 fees. Further details on cost recovery are available on the Department's website at: <http://www.environment.gov.au/epbc/cost-recovery>.

If you disagree with the fee schedule provided, you may apply under section 514Y of the EPBC Act for reconsideration of the method used to work out the fee. The application for reconsideration must be made within 30 business days of the date of this letter and can only be made once for a fee. Further details regarding the reconsideration process can be found on the Department's website at:

<http://www.environment.gov.au/protection/environment-assessments/assessment-and-approval-process/refer-proposed-action>.

You may elect under section 132B of the EPBC Act to submit a management plan for approval at any time before the Minister makes an approval decision of the proposed action under section 133 of the EPBC Act. If an election is made under section 132B of the EPBC Act, cost recovery will apply to the approval of any action management plans you submit.

Where you vary an approval condition and it results in you being required to submit an action management plan for approval, cost recovery will apply to the approval of the action management plan.

The Department has recently published an *Environmental Impact Assessment Client Service Charter* (the Charter) which outlines the Department's commitments when undertaking environmental impact assessments under the EPBC Act. A copy of the Charter can be found at: <http://www.environment.gov.au/epbc/publications/index.html>.

If you have any questions about the referral process or this decision, please contact the project manager, Emily Smith, by email to Emily.Smith@environment.gov.au, or by telephone on (02) 6274 1443 and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely



Mike Smith
A/g Assistant Secretary
Assessments and Waste Branch

15 August 2019



**Notification of
REFERRAL DECISION AND DESIGNATED PROPONENT – controlled action
DECISION ON ASSESSMENT APPROACH**

Newcastle Power Station Project, Tomago, NSW (EPBC 2019/8425)

This decision is made under section 75 and section 87 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

proposed action To construct and operate a gas fired power station and associated infrastructure in Tomago, NSW [See EPBC Act referral 2019/8425]

decision on proposed action The proposed action is a controlled action.
The project will require assessment and approval under the EPBC Act before it can proceed.

relevant controlling provisions • Ramsar wetlands (sections 16 & 17B)

designated proponent AGL Energy Limited
74115061375

assessment approach The project will be assessed by accredited assessment under Division 5.2 of the *NSW Environmental Planning and Assessment Act 1979*.

Decision-maker

Name and position Mike Smith
A/g Assistant Secretary
Assessments and Waste Branch

Signature

date of decision 15 / 8 / 2019
