



***MODIFICATION REQUEST:
F3 to Branxton (Hunter Expressway) -
Modification 4 (MP07_0033 MOD4)***

***Modification of condition 60 to provide a
process for the verification and assessment of
vegetation clearing limits associated with the
project.***

Director General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2011

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EXECUTIVE SUMMARY

The F3 to Branxton (Hunter Expressway) project was approved by the then Minister for Urban Affairs and Planning on 7 November 2001 under Division 4, Part 5 of the *Environmental Planning and Assessment Act, 1979* (the Act). By virtue of savings and transitional provisions, the approval is now deemed to be an approval under Part 3A of the Act.

The approved project involves the construction and operation of a new 40 kilometre dual carriageway freeway between the F3 Freeway at Seahampton and the New England Highway at Branxton in the Lower Hunter region of NSW. Construction of the project commenced in July 2010.

The NSW Roads and Traffic Authority (the Proponent) have submitted a request (MP07_0033 MOD 4) under Section 75W of the Act seeking a modification to Condition 60 of the Minister's approval to provide a process for the verification and assessment of vegetation clearing limits associated with the project.

The Department has undertaken a detailed assessment of the modification request and considers the modification to be acceptable as it would ensure an appropriate process for addressing vegetation clearing impacts within the approved project corridor, in a manner that does not reduce the Proponent's environmental obligations for the project nor unduly restricts the progress of construction. The Department is satisfied that the proposed modification is justified and in the public's interest has therefore recommended its approval.

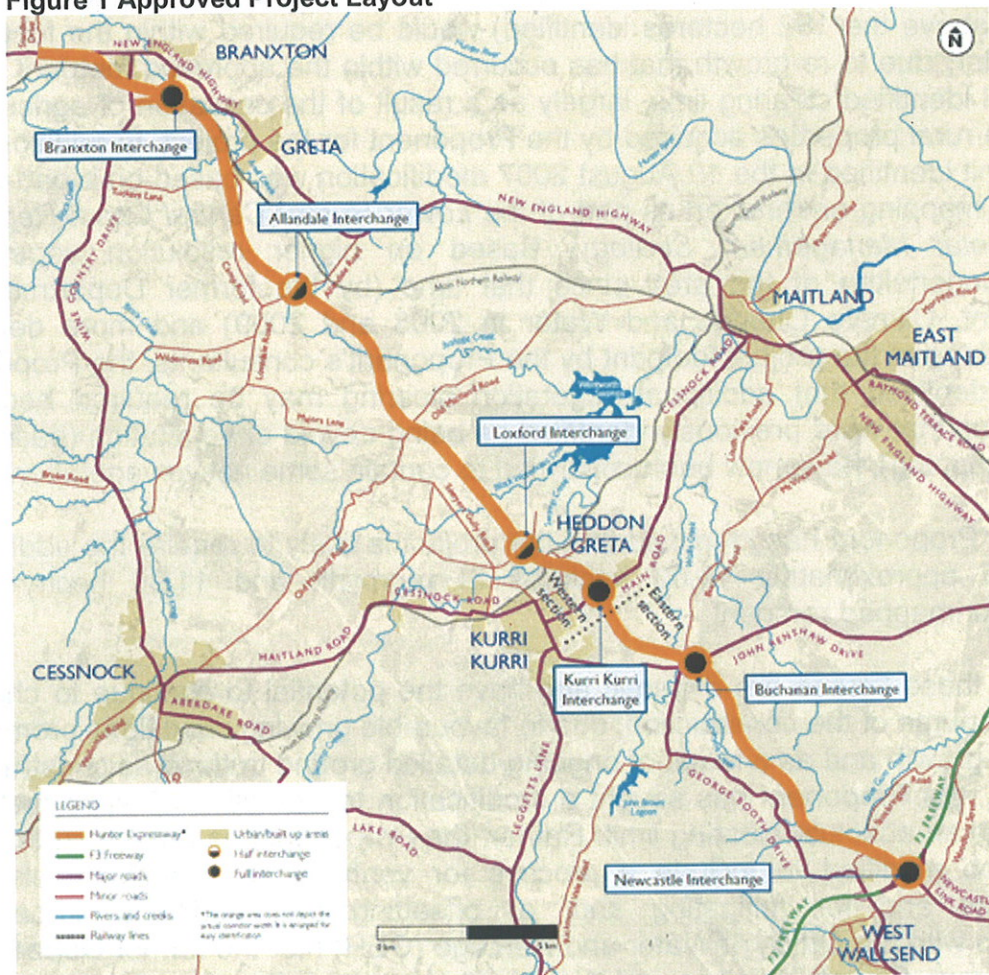
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1. BACKGROUND

The F3 to Branxton (Hunter Expressway) project comprises a proposal by the NSW Roads and Traffic Authority (the Proponent) to construct and operate a new 40 kilometre dual carriageway freeway between the F3 Freeway at Seahampton and the New England Highway at Branxton in the Cessnock, Lake Macquarie, Maitland and Singleton local government areas, in the Lower Hunter region of NSW (refer Figure 1).

Figure 1 Approved Project Layout



The Hunter Expressway is being jointly funded by the Commonwealth (\$1.5 billion) and NSW (\$200 million) governments and would reduce travel times between Newcastle and the Hunter, provide a more direct and efficient route for freight movements between the Upper Hunter and the Port of Newcastle and support population growth in the Hunter.

The project was approved by the then Minister for Urban Affairs and Planning on 7 November 2001. The project was modified on 31 July 2006 to permit staged construction, on 19 August 2007 to reflect changes to the alignment and on 28 June 2010 to adopt contemporary management practices.

The project commenced construction in July 2010 and is scheduled to open in 2013. Key landuses across the project area include native bushland, State forest, mining, rural agricultural, industrial land and the townships of West Wallsend, Kurri Kurri, Greta and Branxton.

2. PROPOSED MODIFICATION

Condition 60 of the Minister's approval places a vegetation clearing limit of 182 hectares on the proposal. This was based on the clearing footprint identified for the project during the 19 August 2007 modification process, which approved several amendments to the project design based on revisions to the Proponent's concept design.

Since this time, the Proponent has identified that whilst the approved footprint itself has remained materially unchanged, there is a risk that additional vegetation clearing (over and above the 182 hectares identified) would be required within the footprint. This is mainly due to re-growth that has occurred within the approved footprint since the original identified clearing limit, largely as a result of the cessation of agricultural activities in rural properties acquired by the Proponent for the project. In addition, the clearing limit identified in the 19 August 2007 modification was based on broad scale vegetation mapping undertaken as part of the *Lower Hunter Central Coast Regional Environmental Management Strategy*. Based on higher resolution vegetation mapping undertaken of the area since that time (by the former Department of Environment, Climate Change and Water in 2008 and 2009) and more detailed ground truthing of the project footprint by the Proponent's consultants, the Proponent has also identified that additional vegetation clearing may be required because project areas that were previously identified as being devoid of vegetation (based on previous mapping), have now been confirmed to contain some native vegetation.

In total the Proponent has identified that the project is likely to require the additional clearing of approximately 18.62 hectares of regrowth and 11.96 hectares of previously unmapped remnant.

Given that these figures are dynamic and have the potential to continue to change during the course of the construction, due to favourable growing conditions promoting ongoing re-growth and as a result of ongoing detailed ground truthing as construction progresses, the Proponent has sought a modification to Condition 60 such that it is not linked to an absolute clearing limit. Rather, the Proponent has requested that the condition be modified to include a process for verifying any additional clearing requirements and for mitigating and/ or offsetting that additional impact in consultation with the Office of Water and Heritage (OEH) (i.e. the former Department of Environment, Climate Change and Water). A copy of the Proponent's modification request (MP07_0033 MOD 4) is attached in Appendix A.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The F3 to Branxton (Hunter Expressway) project was granted approval under Division 4 Part 5 of the *Environmental Planning and Assessment Act 1979* (the Act). By virtue of savings and transitional provisions in Schedule 6, Clause 88(3) of the Act, the approval is now deemed to be an approval under Part 3A of the Act and therefore can be modified under Section 75W of the Act.

Consideration of the modification request under Section 75W of the EP&A Act is appropriate as the proposed modification is not consistent with the project approval,

but is not a radical transformation of the approved project as it proposes a change to the process whereby the clearing requirements for the project (within the approved footprint) would be accounted for, but does not propose a change to the scale, scope or approved footprint of the project.

3.2 Delegated Authority

The Minister for Infrastructure and Planning is the approval authority for the modification request under Section 75W of the Act. On 25 January 2010, the then Minister for Planning delegated his powers and functions under Section 75W of the Act to the Deputy Director-General, Development Assessment and Systems Performance in cases where there are less than 25 public submissions (not including submissions from public authorities) in the nature of objections in respect of the modification request.

It is noted that there is no statutory requirement for modification requests under Section 75W to be publicly exhibited. Nevertheless, a copy of the modification request together with supporting information was placed on the Department's website. No public submissions were received on the request. Consequently, the Department is satisfied that the modification request meets the terms of the delegation and that the Deputy Director-General, Development Assessment and Systems Performance may determine the modification under delegated authority.

4. CONSULTATION AND SUBMISSIONS

As stated above, modification requests under Section 75W of the Act are not required to be publicly exhibited. Notwithstanding, in accordance with the requirements of Section 75X of the Act, the Department has made the modification request publicly available on the Department's website. The Department has also consulted with OEH on the modification request.

OEH did not raise any objection to the modification, but recommended that the instrument of modification include: clear timeframes, a provision for staged review, the requirement for the total area of clearing to be quantified by September 2011, a provision for comprehensive offsetting of any new impacts consistent with OEH *Biodiversity Offsetting Principles* and/ or *BioBanking Assessment Methodology* and the requirement for the offset package for any new impacts to be finalised by December 2012. The Department has incorporated these recommendations into its recommended instrument of modification.

5. ASSESSMENT

The Department has assessed the Proponent's modification request and considers it to be acceptable. The Department concurs that in the context of ongoing re-growth identified within the project corridor and changes to vegetation mapping, linking the project to an absolute clearing limit is likely to lead to ongoing compliance difficulties during the construction period, even though the project impacts are retained within the existing approved corridor.

The Department therefore considers it reasonable that the requirements of condition 60 be modified to include a process for the progressive verification of vegetation clearing as construction progresses. The Department considers that this should be

undertaken through verification surveys by an appropriately qualified specialist, shortly before construction commences to enable the most accurate verification of the level of clearing required for that particular stage of construction (which would take into account any new re-growth that has occurred up to that point). The verification surveys would confirm the extent, type and condition of vegetation to be cleared to ensure there is a clear record of the biodiversity values of vegetation to be impacted prior to its removal.

The above process would ensure that there is a clear basis upon which mitigation and/ or offset requirements for additional vegetation impacts (beyond those originally identified in the 19 August 2007 modification within the approved corridor) can be finalised. The Department notes that as required under Conditions 49 and 50 of the Minister's approval, a comprehensive 2:1 offset package covering the vegetation impacts that were originally predicted to occur along the approved corridor (i.e. 182 hectares) has already been approved for the project. The RTA has committed to ensure that any additional vegetation impacts identified along the approved corridor are similarly offset in consultation with OEH. The RTA has indicated that it is well positioned to provide additional offsets as necessary, with negotiations for property acquisition (as part of the current offset package) well advanced and able to cover additional impacts if required. The RTA has indicated that in addition to the above, extensive rehabilitation and revegetation measures are also underway as part of the project to mitigate clearing impacts (including rehabilitation of areas disturbed by construction and returning previously cleared areas to bushland). These measures would provide a similar mitigative benefit in relation to any additional vegetation impacts identified within the approved corridor (particularly with respect to re-growth).

The Department notes that the vegetation subject to additional clearing within the approved corridor would be generally consistent with the vegetation communities previously identified to be impacted and for which offsets have been successfully negotiated and for which additional rehabilitation and revegetation measures are currently underway. On this basis, the Department is satisfied that where additional impacts are identified, mitigation and/ or offsets for these vegetation communities can be achieved, as required. OEH has recommended that offsets for additional vegetation impacts identified within the approved footprint (which are not already subject to the approved offset package under Conditions 49 and 50), be subject to offsetting based on current best practice offsetting principles. Consistent with OEH's recommendations, the Department has recommended conditions of approval requiring any offset requirements to account for additional vegetation impacts of the project, be consistent with current best practice offset assessment methodology and be approved by the Director-General prior to the 1 December 2012 (that is prior to the expected commencement of operation of the project in 2013).

On the above basis, the Department considers that a process, which provides for the accurate verification of impacts prior to the commencement of construction and for the appropriate mitigation and/ or offset of any identified additional impacts, will provide an appropriate mechanism for dealing with additional vegetation impacts identified within the existing approved corridor.

The Department notes that the RTA has incorporated substantial financial incentives linked to vegetation clearing as part of the construction contracts awarded for the project, to ensure that the clearing footprint of the project is minimised as far as practicable. Consequently, the Department is satisfied that the modification of the

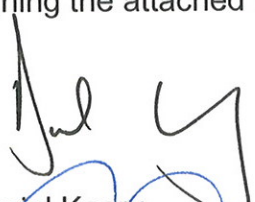
Minister's approval as proposed would not provide a mechanism for additional vegetation clearance, but rather, vegetation clearing would continue to be limited to the minimum extent required for the development of the project within the approved project footprint. It is noted that clearing associated with construction that has already commenced, has been limited to within the clearing limits of the existing condition. OEH has recommended that the Proponent be required to quantify the total area of clearing required within the approved project footprint by September 2011, the expected timing for the completion of clearing activities. The Department has incorporated this recommendation into its draft instrument of modification, however provided flexibility for this date to be revised if required (with the agreement of the Director-General) to take into account any unanticipated delays in construction or clearing activities.

In summary, the Department considers that the proposed modification would ensure an appropriate process for addressing vegetation clearing impacts within the approved project corridor, in a manner that does not reduce the Proponent's environmental obligations for the project nor unduly restricts the progress of construction (noting the strategic importance and critical delivery timeframes of the project). The Department has formulated a draft instrument of modification (refer Appendix B – **tagged A**) in relation to Condition 60, on this basis.

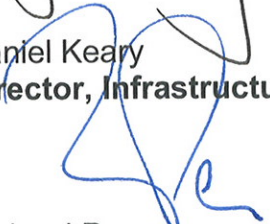
6. CONCLUSION AND RECOMMENDATIONS

The Department has assessed the Proponent's modification and considers it to be acceptable as it would ensure a process for appropriately accounting for and mitigating vegetation impacts within the existing approved footprint of the project. The modification would not change the scope, scale or approved footprint of the project or reduce the Proponent's environmental obligations for the project. The modification would enable the strategic benefits of the project (which is of regional and State importance to the Hunter Region and in the public interest) to be realised by ensuring that the critical delivery timeframes of the project are supported (whilst not reducing the environmental obligations of the project).

On the above basis the Department considers the proposed modification to be justified and in the public's interest and should be approved. It is therefore recommended that the Deputy Director-General, Development Assessment and Systems Performance approve the proposed modification under delegation by signing the attached instrument of modification (**tagged A**).


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Director, Infrastructure Projects

18/5/11


Richard Pearson
Deputy Director-General
Development Assessment and Systems Performance

23/5/11

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APPENDIX A MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=4687

APPENDIX B RECOMMENDED INSTRUMENT OF MODIFICATION
