

ASSESSMENT REPORT

Section 75W Modification of Tugun Bypass (05_0063 MOD 1)

1. BACKGROUND

The Tugun Bypass project involves the construction and operation of a 7 kilometre motorway standard road connecting the Pacific Highway in New South Wales with the Pacific Motorway in Queensland, along an alignment to the west of the Gold Coast Airport main runway (see Figure 1). Two sections of the project are located within NSW (see Figure 1):

- a grade-separated interchange at the Tweed Heads Bypass approximately 1.5km in length including a short section of tunnel (approximately 300 metres) (A); and
- a section between the Gold Coast Airport and the Queensland border approximately 0.75km in length (B).



The New South Wales component of the project was approved by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on 21 December 2005, subject to 50 conditions of approval. The Roads and Traffic Authority (RTA) is the Proponent for the NSW component of the project.

2. MODIFICATION REQUEST

On the 5 April 2006 the RTA lodged a request to modify the Minister's Approval for the Tugun Bypass under section 75W of the EP&A Act with the Department, to correct some typographical errors and misdescriptions in the instrument of approval (see Table 1).

3. CONSULTATION

Under section 75W of the Act, a request for a modification of approval is not required to be publicly exhibited. Given the largely administrative nature of the proposed modification, public exhibition of the request was not considered necessary.

Notwithstanding, in accordance with the requirements of section 75X of the EP&A Act, the Department has made the modification request publicly available by placing a copy of the request on the Department's website.

4. CONSIDERATION

The Department has assessed each of the requested modifications to the Minister's conditions of approval in Table 1 below.

RTA – Modification Request	Department's Consideration	Impact
1. Change the word 'consistent' to 'inconsistency' in paragraph 3 of Schedule 2.	This change would correct a typographical error in paragraph 3 of Schedule 2.	Nil environmental impact. Correction of typographical error. Approve as proposed
2. The description of the project provided in Schedule 1 differs from that in the 'Definitions' section of the instrument. It is requested that the definition provided in Schedule 1 be adopted in the 'Definitions' section of the instrument of approval.	The project description provided in Schedule 1 of the instrument is more comprehensive than the one currently provided in the 'Definitions' section of the instrument. Therefore, the Department has no objection to the description in Schedule 1 being adopted in the 'Definitions' section of the instrument. This change would ensure that the project is described in a consistent manner in the instrument of approval.	Nil environmental impact. Administrative change that will not change the nature of the approved project. Approve as proposed
3. Condition of approval 1(b) and 1(c) duplicate the same information. Condition 1(b) should be deleted.	The Department agrees that condition 1(b) and 1(c) both refer to the RTA's statement of commitments and to avoid replication, recommends that Condition 1(b) be deleted. This change would not change the intent of condition 1 as the RTA would still be required to carry out the project in accordance with its statement of commitments.	Nil environmental impact. The modification will not change the RTA's environmental obligations in relation to its statement of commitments. Approve as proposed
4. Insert the following additional requirement to Condition 13: "If the Proponent has an Operation Environmental Management Plan (for example a certified and operating environmental management system) for its other projects which is applicable to this Project then that system may be proposed as the OEMP. Details of the existing system must be provided to the Director-General demonstrating its application to this Project"	Condition 13 of the Minister's Approval requires the RTA to prepare an Operation Environmental Management Plan to cover the operational phase of the Project. The Department is not concerned with the format of the OEMP submitted, as long as the content of the plan addresses the requirements of the Minister's conditions of approval. Consequently, the Department has no objection to the requested modification, which allows flexibility in the format of the OEMP submitted.	Nil environmental impact. The modification will not change the RTA's environmental obligations, as set out in the Minister's conditions, in relation to the OEMP. Approve as proposed
5. Remove reference to Independent Community Liaison Representative (ICLR) in condition 23.	The Minister's conditions do not require an ICLR to be provided for the project; therefore the Department has no objection to removing references to this term in condition 23. This change would remove a term which should not have been present in this condition.	Nil environmental impact. This change would correct a minor error. The RTA's environmental obligations under the conditions of approval would not change. Approve as proposed
6. Delete condition 24 as the requirements of this condition are covered by condition 23.	The Department does not believe that the specific requirements of condition 24 (display centres) are covered by condition 23 (Community Involvement Plan). Condition 24 requires	No change to condition

	the establishment of display centres and specifies which facilities must be provided as part of the centres, while condition 23 requires the Applicant to clarify how the display centres will fit into its overall Community Involvement plan. These conditions have separate functions. Therefore the Department does not recommend that this modification request be approved.	
7. Correct error in numbering in Condition 25(b)	This modification would correct a typographical error in relation to numbering.	Approve as proposed
8. Condition 30 requires a Construction Noise & Vibration Management Plan (NVMSP) to be prepared as part of the project's Construction Environmental Management Plan (CEMP) and for the plan to be submitted to the Director-General. The RTA requests that the words "and submitted to the Director-General" be deleted from this condition, as it is already understood that the entire CEMP would be submitted to the Director-General in accordance with condition 12.	The requested change is purely cosmetic, to minimise repetition. The requested change would not clarify the intent of the condition or correct any mistakes within the condition, and thereby would not add any value. Therefore the Department does not recommend that this modification request be approved. Furthermore, the Department considers that this change would be superfluous given that the entire CEMP (including the NVMSP) has already been submitted and approved by the Director-General in accordance with the requirements of conditions 12 and 30.	No change to condition
9. Change condition 31 so that it refers to the construction work hours specified in the RTA's statement of commitments rather than the Minister's conditions of approval, as there is no specific condition within the Minister's approval relating to construction hours	The Department notes that while condition 1 places an overarching requirement on the RTA to carry out the project in accordance with its statement of commitments, there is no specific condition within the Minister's Approval, which requires the RTA to undertake the project within the construction hours specified in its statement of commitments. Therefore, the Department agrees that the reference in condition 31 to construction hours "detailed in the Minister's Approval" may be confusing and believes that this should be changed to refer to the work hours "specified in the RTA's statement of commitments", to remove any confusion in the interpretation of this condition. This would not change the intent of the condition as it was always envisaged that the RTA would undertake the project in accordance with the construction hours specified in its statement of commitments, unless otherwise specified. It is noted that the construction hours specified in the RTA's statement of commitments are standard construction hours (i.e. 7am to 6pm Mon to Fri, 8am to 12pm Sat and no work on Sundays or public holidays), which are consistent with construction hours on other RTA projects.	Nil environmental impact. Minor change to avoid confusion in the interpretation of this condition. The RTA's environmental obligations under this condition of approval would not change. Approve as proposed
10. Change the term 'Impact Statement' to 'Management in Plan in condition 49.	This change would correct an error in terminology where the term 'construction environmental impact statement' has been used in place of 'construction environmental management plan'. This modification would not change the intent of the condition as approved.	Nil environmental impact. This change would correct an error in terminology. The RTA's environmental obligations under the conditions of approval would not change. Approve as proposed

Table 1. Department's Consideration of Modification Request

Based on its assessment the Department is satisfied that most of the RTA's requested changes to the Minister's approval (see No.'s 1-5, 7, and 9-10 in Table 1 above):

- are largely administrative in nature involving a number of corrections to typographical errors and misdescriptions;
- are minor and will not change the nature of the approved project or change the RTA's environmental obligations under the approved conditions of approval; and
- will not result in any additional environmental impacts.

Consequently, the Department believes that these changes should be approved as they would add value to the Instrument of Approval by correcting errors and clarifying terminology. However, the Department does not believe that the RTA's requested changes to conditions 24 and 30 (see No.'s 6 and 8 in Table 1 above) should be approved as:

- the Department disagrees with the RTA that condition 24 should be deleted as it does not consider that the functions of condition 24 are covered by condition 23; and
- the proposed changes to condition 30 are purely cosmetic and would not add value to the instrument of approval in terms of correcting or clarifying any errors, and would be superfluous given that the management plan in question has already been submitted to the Department.

In addition to the modifications requested by the RTA, the Department has identified a further four (4) minor errors within the instrument of approval which need to be rectified:

- the requirement in condition 23(a) for a Community Involvement Plan to be prepared to be consistent with the principles of the document "*Community Engagement in the NSW Planning System (PlanningNSW, 2003)*" should be deleted as this document is no longer in public circulation;
- the numbering in 24(c) needs to be corrected;
- for the same reasons provided in Table 1 (see No. 9) the Department considers that the reference in condition 30(J) to 'construction hours detailed in the Minister's Approval' should be replaced with 'construction hours detailed in the RTA's Statement of Commitments'; and
- condition 49 should refer to statement of commitment No. 28 (construction facilities) rather than statement of commitment No. 27 (hazard and risk), as condition 49 relates to the identification and management of construction facilities rather than hazard and risk.

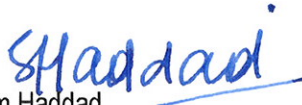
The modifications identified by the Department are purely administrative in nature and would not change the RTA's environmental obligations under the approved conditions of approval.

The Department believes that the modifications requested by the RTA (with the exception of those relating to condition 24 and 30), and those additional changes identified by the Department should be approved.

The proposed changes to the Minister's Approval are summarised in Appendix A. The RTA does not object to these modifications.

11. RECOMMENDATION

It is recommended that the Minister for Planning, under section 75W of the EP&A Act, approve the modifications to the Tugun Bypass approval, as set out in the attached Modification Approval.


Sam Haddad
Director-General
3/8/2006

Appendix A: Summary of Proposed Modifications

Condition of Approval	Existing Wording	Proposed Wording
Schedule 2 – 3 rd Paragraph Schedule 2 - Definitions	These conditions prevail in the event of any consistent with the Statement of Commitments. Project: "The Project described in Chapter 6 of the Tugun Bypass EIS Main Volume"	These conditions prevail in the event of any inconsistency with the Statement of Commitments. Project: "Tugun Bypass project described in the environmental impact statement (EIS) for the Tugun Bypass Stewart Road to Kennedy Drive prepared by Queensland Department of Main Roads and the NSW Roads and Traffic Authority, dated December 2004 as modified by the Submissions Report for the Tugun Bypass Stewart Road to Kennedy Drive prepared by the Queensland Department of Main Roads and the NSW Roads and Traffic Authority dated October 2005 and the revised Statement of Commitments in Attachment 1 to Schedule 2."
CoA 1	The Project must be carried out consistent with: (a) the procedures, safeguards and mitigation measures identified in the EIS, SIS and SIS addendum, as modified by the Submissions Report; and (b) the measures, controls and commitments for the Project listed in the amended Tables 7.1 and 7.2 of the Submissions Report. The amended tables are included as Appendix A to the Conditions of Approval; and (c) the Statement of Commitments; and (d) these Conditions. These Conditions prevail in the event of any inconsistency with the requirements for the Construction and Operation of the Project arising out of the documents described in (a) and (b) above.	The Project must be carried out to be consistent with: (a) the procedures, safeguards and mitigation measures identified in the EIS, SIS and SIS addendum, as modified by the Submissions Report; and (b) the Statement of Commitments, included as Attachment 1 to the Conditions of Approval; and (c) these Conditions. These Conditions prevail in the event of any inconsistency with the requirements for the Construction and Operation of the Project arising out of the documents described in (a) and (b) above.
CoA 13	An Operation Environmental Management Plan (OEMP) must be prepared and implemented in accordance with the Statement of Commitments, in particular Statement of Commitment No. 2, these Conditions, and all relevant Acts and Regulations. The Proponent must obtain the approval of the Director-General for the OEMP before Operation commences or within any other time agreed to by the Director-General.	An Operation Environmental Management Plan (OEMP) must be prepared and implemented in accordance with the Statement of Commitments, in particular Statement of Commitment No. 2, these Conditions, and all relevant Acts and Regulations. The Proponent must obtain the approval of the Director-General for the OEMP before Operation commences or within any other time agreed to by the Director-General. If the Proponent has an Operation Environmental Management Plan (for example a certified and operating environmental management system) for its other projects which is applicable to this Project then that system may be proposed as the OEMP. Details of the existing system must be

CoA 23	The Proponent must prepare and implement a Community Involvement Plan as soon as is practicable before Construction commences. The Plan must: (a) where relevant, be consistent with the principles of the document "Community Engagement in the NSW Planning System" (PlanningNSW 2003); (b) specifically address the requirements of the Conditions of Approval for CLGs, complaints management, display centres and the ICLR; and (c) include: - identification of the community likely to be affected by the Project including Sensitive Receivers, and commercial and industrial land uses; - procedures for informing the local community of investigation and Construction activities; - procedures for informing affected road users of temporary traffic changes; and - identification of training needs for Proponent employees and contractors on implementing the Community Involvement Plan. A copy of the Community Involvement Plan must be provided to the Director-General as soon as is practicable before Construction commences.	provided to the Director-General demonstrating its application to this Project The Proponent must prepare and implement a Community Involvement Plan as soon as is practicable before Construction commences. The Plan must: (a) specifically address the requirements of the Conditions of Approval for CLGs, complaints management and display centres; and (b) include: - identification of the community likely to be affected by the Project including Sensitive Receivers, and commercial and industrial land uses; - procedures for informing the local community of investigation and Construction activities; - procedures for informing affected road users of temporary traffic changes; and - identification of training needs for Proponent employees and contractors on implementing the Community Involvement Plan. A copy of the Community Involvement Plan must be provided to the Director-General as soon as is practicable before Construction commences.
24 (c)	(c) contain information (written and/or graphics) covering at least: - Construction activities and programs including temporary works that would affect Sensitive Receivers, commercial and industrial land uses, pedestrians and public transport users; - overall architectural and landscape designs with graphics, such as sections, sketches, perspective views etc, for key elements;	(c) contain information (written and/or graphics) covering at least: - Construction activities and programs including temporary works that would affect Sensitive Receivers, commercial and industrial land uses, pedestrians and public transport users; - overall architectural and landscape designs with graphics, such as sections, sketches, perspective views etc, for key elements;
25 (b)	(b) methods to manage impacts on flora and fauna species (terrestrial and aquatic) and their habitat which may be directly or indirectly affected by the Project. These must include: - procedures for vegetation clearing, soil management and managing other habitat damage (terrestrial and aquatic) during Construction; - methods to protect vegetation both retained within, and also adjoining, the Project from damage during Construction; - a habitat tree management program including fauna recovery procedures and habitat maintenance (e.g. relocating hollows or installing nesting boxes); - methods to minimise damage to aquatic habitats; - where possible, and where consistent with DEC or NSW Fisheries requirements,	(b) methods to manage impacts on flora and fauna species (terrestrial and aquatic) and their habitat which may be directly or indirectly affected by the Project. These must include: - procedures for vegetation clearing, soil management and managing other habitat damage (terrestrial and aquatic) during Construction; - methods to protect vegetation both retained within, and also adjoining, the Project from damage during Construction; - a habitat tree management program including fauna recovery procedures and habitat maintenance (e.g. relocating hollows or installing nesting boxes); - methods to minimise damage to aquatic habitats; - where possible, and where consistent with DEC or NSW Fisheries requirements,

	strategies for re-using in rehabilitation works individuals of any threatened plant species that would be otherwise be destroyed by the Project; xiii. performance criteria against which to measure the success of the methods	vii. performance criteria against which to measure the success of the methods
CoA 30 (j)	(j) justification for any activities outside the Construction hours specified in the Conditions of Approval . This includes identifying areas where Construction noise would not be audible at any Sensitive Receiver;	(j) justification for any activities outside the Construction hours specified in the Statement of Commitments . This includes identifying areas where Construction noise would not be audible at any Sensitive Receiver;
CoA 31	The Proponent must ensure that public address systems used at any Construction site are not used outside the Construction hours detailed in the Conditions of Approval unless otherwise approved through the Construction Noise and Vibration Management Sub Plan. Public address systems must be designed to minimise noise spillage offsite.	The Proponent must ensure that public address systems used at any Construction site are not used outside the Construction hours detailed in the Statement of Commitments unless otherwise approved through the Construction Noise and Vibration Management Sub Plan. Public address systems must be designed to minimise noise spillage offsite.
CoA 49	The Construction Environmental Impact Statement must identify ancillary facilities required for the construction of the project and include locational criteria for site selection in accordance with Statement of Commitment No. 27 .	The Construction Environmental Management plan must identify ancillary facilities required for the construction of the project and include locational criteria for site selection in accordance with Statement of Commitment No. 28 .