



***MODIFICATION REQUEST:
Pacific Highway Upgrade
Warrell Creek to Urunga***



***Amendment to heritage management measures
(07_0112 MOD 5)***

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

December 2013

Cover Photo — Artist's impression of aerial views of the [Pacific Highway Upgrade — Warrell Creek to Urunga] Proposal at Nambucca River, looking north (RTA 2010)

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1. BACKGROUND

The Pacific Highway Upgrade – Warrell Creek to Urunga (07_0112) was approved by the Minister for Planning and Infrastructure on 19 July 2011 under Part 3A of the Environmental Planning and Assessment Act 1979 (the Act). The Approved project, referred to as the Warrell Creek to Urunga section of the Pacific Highway upgrade, is being delivered in two sections equalling a total of 42 kilometres. The 22 kilometre section between Nambucca Heads to Urunga is being prepared for construction with geotechnical and environmental investigations currently underway. Construction of the 20 kilometre section from Warrell Creek to Nambucca Heads is anticipated to commence in late 2014. Both sections are in the Nambucca and Bellingen local government areas.

The project location and layout is shown in **Figure 1**.

The project area is characterised by a mix of rural and rural residential land uses, state forests, and small settlements. The townships of Macksville, Nambucca Heads and Urunga will be bypassed by the upgraded highway.

The project has been modified four times:

- MOD 1 (November 2012) to allow minor ancillary facilities (lunch sheds, office sheds and portable toilet facilities) which do not comply with the locational criteria for ancillary facilities (condition C27) to be assessed and approved by the Environmental Representative (ER);
- MOD 2 (December 2012) to correct minor reference errors in condition C28;
- MOD 3 (February 2013) to correct minor reference errors in conditions A1 and A2 of the modification document; and
- MOD 4 (March 2013) to amend the definition of construction to exclude establishing ancillary facilities in locations meeting the location criteria contained in condition C27.



Figure 1 Project layout

2. PROPOSED MODIFICATION

Roads and Maritime Services has submitted a request (07_0112 MOD 5) under section 75W of the Act, seeking a modification to the Minister's approval to amend management measures for heritage items impacted and potentially impacted by the project. The proposed amendments are explained below.

2.1 Condition C16

RMS seeks to amend condition C16 to allow archaeological sub-surface investigation and test excavation, and salvage where required, for permanent and/or temporary works associated with construction of the project outside the approved project footprint (including prior to construction and approval of the Heritage Management Plan). These works would include establishment of ancillary facilities, utilities relocations, permanent and temporary fencing and access tracks, and design refinements. RMS asserts that, while the project approval envisages impacts to heritage outside the approved project footprint, the conditions of approval do not currently provide RMS with the ability to undertake investigations to ascertain the extent of those impacts. The text of condition C16 is included below.

C16 The measures to protect any Aboriginal heritage or historic heritage sites near or adjacent to the project during construction shall be detailed in the Heritage Management Plan required under condition B31(e).

2.2 Condition C27

RMS also seeks to amend condition C27 to allow archaeological sub-surface investigation/test excavation to confirm the level of heritage significance of any newly proposed ancillary facility sites outside of the approved project footprint. Condition C27 requires the Director-General's approval for establishment of ancillary facilities that do not meet one or more of a set of locational criteria. The texts of condition C27 is provided below.

C27. Unless otherwise approved by the Director General in accordance with this condition, the sites for ancillary facilities associated with the construction of the project shall:

- (a) be located more than 50 metres from a waterway;
- (b) have ready access to the road network or direct access to the construction corridor;
- (c) be located in areas of low ecological significance and require minimal clearing of native vegetation (not beyond that already required by the project);
- (d) be located on relatively level land;
- (e) be separated from the nearest residences by at least 200 metres (or at least 300 metres for a temporary batching plant);
- (f) be above the 20 ARI flood level unless a contingency plan to manage flooding is prepared and implemented;
- (g) not unreasonably affect the land use of adjacent properties;
- (h) provide sufficient area for the storage of raw materials to minimise, to the greatest extent practical, the number of deliveries required outside standard construction hours; and
- (i) be located in areas of low heritage conservation significance (including identified Aboriginal cultural value) and not impact on heritage sites beyond those already impacted by the project.

Ancillary sites identified that do not meet the above criteria shall be assessed against this criteria to demonstrate how any impacts can be mitigated and managed to acceptable standards (including demonstrating consistency with project impacts identified in the documents listed under condition A1, to the satisfaction of the Director General. Such assessment(s) can be submitted separately or as part of the Construction Environmental Management Plan required under condition B30.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

In accordance with clause 3 of schedule 6A of the Act, section 75W of the Act, as in force immediately before its repeal on 1 October 2011 and as modified by schedule 6A, continues to apply to transitional Part 3A projects.

Section 75W of the Act provides that a proponent may request the Minister to modify the approval of a transitional Part 3A project. The Minister's approval is not required if the project, as modified, will be consistent with the original approval. The subject modification is not consistent with the approval, but does not constitute a project in its own right, and therefore a modification in accordance with section 75W of the Act is considered appropriate.

3.2 Delegated Authority

An application to modify a transitional Part 3A project approval may be determined by the Director, Infrastructure Projects of the Department of Planning and Infrastructure under delegation from the Minister for Planning and Infrastructure, dated 4 April 2013, where the local council does not object, a political disclosure statement has not been made in relation to the application, and less than 10 objections are received. This proposed modification meets the terms of this delegation.

4. CONSULTATION AND SUBMISSIONS

Under Section 75X(2)(f) of the Act, the Director General is required to make the modification request publicly available. Accordingly, the Department placed a copy of the modification request on its website. No public or agency submissions were received.

5. ASSESSMENT

5.1 Modification of Condition C16

RMS requests condition C16 be amended to allow archaeological sub-surface investigation and test excavation at any newly identified potential archaeological deposits outside the approved project footprint.

In general, the project approval allows RMS to undertake work within an approved project footprint, as well as limited work (where previously identified and assessed) outside the project footprint. RMS notes that construction of the project will require permanent and temporary works outside the approved project footprint, including establishment of temporary ancillary facilities, permanent relocation of utilities and services, and permanent access and service roads. In some

cases, these works would be located on sites on or in the vicinity of potential archaeological deposits, and would cause heritage impacts that have not been previously assessed.

RMS asserts that the ability to undertake sub-surface investigation and test excavation at these sites would expedite the process of assessing any new heritage impacts outside the project footprint. Enabling these investigations would provide flexibility in the timing of works during construction. Further, RMS commits to conducting any such investigations in a manner minimising heritage impacts.

Department's consideration

The department supports the modification in so far as it relates to archaeological investigations (and heritage impacts, where unavoidable) at sites outside the project footprint, provided that those works are required for the purposes of permanent works (that is, utilities, services and permanent access and service roads) and take place on sites envisaged in the project documents listed in condition A1.

The department acknowledges that detailed design can result in need for permanent works outside the approved project footprint. These permanent works include utility and service adjustments, and new access and service roads. The department also acknowledges that such works may have previously unassessed impacts on heritage items, and that archaeological investigations could be required to ascertain the nature of those impacts, and the measures required to avoid, manage and/or mitigate the impacts.

The department considers that the project approval, at present, does not provide the proponent with an ability to undertake archaeological investigations outside the project footprint. The department considers that archaeological investigations should be allowed on sites required for permanent works outside the approved project footprint, provided that the need for permanent works at these sites was generally identified in the approved EA. The department acknowledges that detailed design may identify the need to construct works on new sites, unidentified in the project approval documents (that is, the approved EA or subsequent project modifications listed in condition A1 of the project approval). The department, however, asserts that the ability to undertake archaeological investigations without further approval must be limited to sites required for permanent works that were identified in the project approval documents. This approach ensures that any such archaeological investigations would be consistent with the project approval, given the potential for environmental impacts at those sites has been previously identified.

The department does not consider that the proponent should have the ability to conduct archaeological investigations for all temporary works and facilities. Temporary works should generally not entail permanent impacts on heritage, and therefore should not require archaeological investigations to ascertain such impacts (see section 5.3 below). The department does, however, acknowledge the importance of temporary ancillary construction facilities, and notes that those establishment of those facilities may impact on archaeological deposits. Therefore, the department does recommend that the proponent be able to undertake archaeological investigations for the purposes of establishing ancillary facilities (see section 5.2 below).

The department considers that any archaeological investigations must be in conducted in accordance with an appropriate methodology. Generally, a methodology for archaeological

investigations is contained in an approved Construction Heritage Management Plan. The department considers, however, that the proponent should have the ability to undertake investigations prior to approval of a Construction Heritage Management Plan (that is, prior to commencement of construction). The department acknowledges the time savings associated with pre-construction archaeological testing and salvage, and notes that such works have been undertaken successfully on previous Pacific Highway Upgrade projects. The department considers that, provided an appropriate methodology for archaeological investigations is in place, archaeological testing can be undertaken with the same level of environmental protection as if a Construction Heritage Management Plan was in place.

The department, therefore, recommends that the project approval be modified to allow the proponent to undertake investigations in line with a methodology prepared for those investigations, in the absence of an approved Construction Heritage Management Plan. This methodology should be prepared in consultation with OEH and approved by the Director-General.

The department considers that results of any such archaeological investigations should be provided to the Director-General prior to any works that would impact on Aboriginal heritage. Where potential impacts are less than those envisaged in the approved EA, the report of these results should be provided to the Director-General for his information. Where potential impacts are the same as previously assessed, the results should be prepared in consultation with OEH, prior to submission to the Director-General. Where the potential impacts are greater than previously envisaged, the Director General should be satisfied with the report of the results before it can be finalised.

The department notes that the results of archaeological investigations undertaken may ascertain that proposed permanent works would have additional heritage impacts to those previously approved. The department notes that additional impacts outside the approved project footprint may or may not be inconsistent with the project approval and, as a result, may or may not require modification of the project approval. The department considers that the proponent should have the ability to undertake permanent works that impact on heritage sites outside the approved project footprint with the approval of the Director-General, provided it demonstrates that those impacts are consistent with the project approval. The department considers that permanent works are envisaged in the project approval, and therefore can be determined by the Director-General without the need for modification of the project approval, provided the Director-General is satisfied the proposed heritage impacts are consistent with those impacts identified in the project approval documents. In determining whether to approve such permanent works, the department recommends that the Director-General should be required to consider the results of any relevant archaeological investigations undertaken.

The department therefore recommends that the proponent should have the ability to undertake archaeological investigations outside the approved project footprint for the purposes of establishing permanent works, provided that any subsequent heritage impacts are consistent with those impacts identified in the project approval documents, and are approved by the Director-General with reference to the results of any the relevant archaeological investigations.

5.2 Modification of Condition C27

RMS requests condition C27 be amended to allow archaeological sub-surface investigation and test excavation at ancillary facility sites.

RMS acknowledges the potential for ancillary facilities to be located on sites outside the approved project footprint and, therefore, the potential that those ancillary facilities would have previously unassessed impacts on heritage items. RMS asserts that amending condition C27 would allow it to confirm the level of heritage significance of proposed ancillary facility sites outside of the approved project footprint. The results of archaeological sub-surface investigation and test excavation at ancillary facility sites would then inform consultation and environment management for those facilities.

Department's consideration

The department supports the modification in so far as it would allow archaeological investigations outside the project footprint for the purposes of establishment of ancillary facilities, in accordance with an appropriate methodology for those investigations.

The department notes that condition C27 allows the Director-General to approve additional impacts resulting from establishment and operation of temporary ancillary facilities, having considered an assessment of those impacts. These additional impacts may include additional permanent heritage impacts, provided RMS has demonstrated consistency with the project impacts identified in the documents listed under condition A1, to the satisfaction of the Director-General. In some cases, the department considers that the assessment of those impacts should be informed by archaeological investigations, including test excavations, and the results of those investigations.

As noted in section 5.1 above, the department considers that the project approval does not provide the proponent with the ability to undertake archaeological investigations outside the project footprint. Consequently, the department considers that the proponent should have the ability to undertake archaeological investigations outside the project footprint, where required to determine the heritage impacts of ancillary facilities.

The department considers that archaeological investigations must be undertaken in accordance with an appropriate methodology. Once the project is under construction, the department considers all archaeological investigations for the project should be undertaken in accordance with the construction heritage management sub-plan of the CEMP. The department notes, however, that the proponent has requested the ability to undertake investigations prior to construction, where a CEMP is not in place. The department considers that pre-construction investigations can be advantageous, where it enables the proponent to ascertain impacts and avoid sensitive sites accordingly. The department, however, notes the need for an appropriate methodology to guide those investigations in the absence of an approved construction heritage management sub-plan. In this event, the department considers that it would be appropriate for the proponent to undertake investigations in line with a methodology prepared for the investigations, provided it has been prepared in consultation with OEH and approved by the Director General.

The department therefore recommends that the proponent should have the ability to undertake archaeological investigations outside the approved project footprint for the purposes of establishing ancillary facilities, provided the results of any such archaeological investigations are provided to the Director-General as part of the assessment of the ancillary facility required under condition C27A.

5.3 Limits to Proposed Ability to Undertake Archaeological Testing

Department's consideration

Further to sections 5.1 and 5.2 above, the department advises that it does not support extending the ability to undertake archaeological testing beyond where required to ascertain and assess the heritage impacts of permanent works or ancillary facilities.

The department only supports archaeological testing where it is permissible under the project approval, or is intended to identify and assess additional heritage impacts the Director-General may approve under the project conditions of approval. The department notes that the project approval provides RMS with the ability to establish some temporary works and facilities outside the approved project footprint. For example, the project approval provides RMS the ability to self-approve stockpile sites; the department advises that it has provided RMS with this ability based on the large construction-stage demand for these sites, and notes that the environmental impact of stockpiling on these sites must be generally consistent with impacts described in the project approval. The department would, therefore, not support archaeological investigations that are intended to test the suitability of stockpile establishment, given the deleterious nature of stockpile impacts on subsurface archaeology: placing stockpiles on sites with potential archaeology is unlikely to be consistent with the impacts described in the project approval and should be avoided. The department would only support extension of the ability to undertake archaeological testing for the assessment of stockpile sites should the Director-General retain an approval role for establishment and use of those stockpile sites — this, however, has not been requested by RMS and is not proposed.

Where RMS intends to undertake works that would impact on previously unassessed or unimpacted heritage items, and there is no pathway for approval of such impacts under the project approval, those impacts (and any archaeological investigations to establish those impacts) will not be consistent with the project approval. Given there is no ability under the conditions of approval for the Director-General to approve temporary works and facilities (excluding ancillary sites) and realignments outside the approved project footprint, the department does not consider it appropriate to provide RMS with the ability to undertake investigations outside the project footprint for such works.

6. CONCLUSION AND RECOMMENDATIONS

The department has considered the modification request and is satisfied that the proponent has demonstrated that changes to the project approval to allow archaeological investigations outside the approved project footprint are justified.

The department acknowledges that works undertaken for the purposes of establishing permanent works outside the approved project footprint may have heritage impacts. The department considers that RMS should be able to undertake such archaeological investigations, provided they are done on sites identified in the project approval, and are undertaken in accordance with an approved methodology, be it part of the CEMP or separate. To ensure that any resultant heritage impacts are identified and assessed adequately, the department recommends that any salvage works require the approval of Director-General, having reference to the results of the relevant investigations. Prior to giving any such approval, the Director-General should be satisfied that the potential heritage impacts are consistent with the project approval.

The department also considers that RMS should have the ability to undertake archaeological investigations to assess the impacts of ancillary construction facilities outside the approved project footprint. The department considers that any such archaeological investigations should also be undertaken in accordance with an approved methodology. The department recommends that where archaeological investigations are conducted for an ancillary site, the results of those archaeological investigations should be provided as part of any ancillary facility assessment required under condition C27 of the project approval.

To clarify these points, the department has recommended that the terms heritage and heritage item be defined in the project approval.

In conclusion, the department is satisfied that, with the implementation of the measures proposed by the proponent, the proposal would have minimal impacts on the surrounding community, and therefore recommends the approval of the modification request.

Dominic Crinnion

Endorsed by

Approved by



Andrew Beattie 17/12/13
**A/Team Leader—Roads
Infrastructure Projects**



Karen Jones 17.12.13
**Director
Infrastructure Projects**

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5951

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT
