



**MODIFICATION REQUEST:
Sydney Light Rail – Inner West Extension
(MP 10_0111 MOD 1)**

Modifications to condition B18 to:

- *Allow indirect offsets given the infeasibility of compensating impacts via direct compensation; and*
- *Amend the management and protection timeframe from 'in-perpetuity' to 'long term'*

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

November 2013

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*NSW Government
Department of Planning & Infrastructure*

EXECUTIVE SUMMARY

On 16 February 2011, the then Minister for Planning approved the Sydney Light Rail – Inner West Extension, under Section 75J of the *Environmental Planning and Assessment Act 1979*. The approved project included an extension of the existing light rail for 5.6 kilometres along the disused Rozelle Goods Line corridor from Lilyfield to Dulwich Hill, including 9 new stops and changes to the existing stabling and maintenance facility at Pyrmont.

Condition B18 of the approval requires the Proponent to develop and implement a Revegetation and Biodiversity Compensation and Monitoring Package that will outline how ecological impacts will be managed and offset. Transport for NSW submitted this Package for the Director-General's approval in August 2013. The Department's review of the Package identified a number of issues which would require modification to condition B18, to make the Package fully compliant with the requirements of the approval.

The Proponent subsequently submitted a request on 18 September 2013 to modify the approval to address minor changes associated with the implementation of the Revegetation and Biodiversity Compensation and Monitoring Package required by condition B18. The modifications includes allowing indirect offsets due to the infeasibility of compensating all impacts through direct compensation, and varying conservation management and protection plan timeframes from 'in-perpetuity' to 'long term' due to lack of appropriate statutory mechanisms to secure these sites.

The Department acknowledges that due to the urban setting of the project, achieving 100% direct offsetting, and 'in-perpetuity' protection of the offset sites is not feasible. Consequently, the Department considers that the modifications are justified, and recommends that the Minister approve the modification request subject to the recommended conditions of approval.

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1. BACKGROUND

On 16 February 2011, the then Minister for Planning approved the Sydney Light Rail – Inner West Extension, under Section 75J of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The project is currently under construction.

The approved project includes an extension of the existing light rail for 5.6 kilometres along the disused Rozelle Goods Line corridor from Lilyfield to Dulwich Hill, including a GreenWay walking and cycling path, and 9 stops at Leichhardt North, Hawthorne, Marion, Taverners Hill, Lewisham West, Waratah Mills, Arlington, Dulwich Grove, and Dulwich Hill Interchange (refer **Figure 1**).

Other components of the light rail project include raising of the existing rail bridge over Parramatta Road, crossovers and turnbacks, pedestrian and cyclist linkages, modifications to existing infrastructure, and changes to the existing stabling and maintenance facility at Pyrmont.

The project passes through the local government areas of Leichhardt, Ashfield and Marrickville, with the Pyrmont stabling and maintenance facility located within the City of Sydney. Much of the corridor has residential zoning consisting of a mix of single and multiple dwellings. Other land uses include industrial uses, schools and child-care centres, active recreation areas, retail areas, existing CityRail lines, and open space.

Condition B18 of the project approval requires the implementation of a Revegetation and Biodiversity Compensation and Monitoring Package (the Package) which outlines how ecological impacts will be compensated and how habitat will be monitored within the corridor, at 'Bushcare' sites and at other appropriate locations related to the project. Transport for NSW (the Proponent) submitted the Package for the Director-General's approval in August 2013.

The Department's review of the Package identified a number of issues which would require modification to condition B18, so that the Package was fully compliant with the requirements of the project approval. The following issues were identified by the Department as requiring modification:

- The Department noted that the total area to be impacted included 1.1108ha, whilst the total area of compensation sites included only 0.991ha. The Proponent therefore proposed to offset the remaining impacted area indirectly, via a research project targeted to the Inner West Long-Nosed Bandicoot population. The Department concluded that as the condition requires all vegetation loss to be offset by an equivalent area, if a portion of the offset is provided indirectly, a modification to the condition is required.
- The Department noted that the Proponent's Revegetation and Biodiversity Compensation and Monitoring Package outlines 'long term' protection for the site as conservation 'in perpetuity' is not feasible. A modification to the condition of approval would therefore be required to reflect this proposed change.

2. PROPOSED MODIFICATION

The Proponent is seeking two modifications to condition B18 relating to indirect offsets and the timeframe that offsets will be secured (refer to Modification Request included as **Appendix A**).

Indirect Offsets

The Proponent proposes to directly offset 0.991ha of the 1.1108ha to be impacted, through the provision of sites within and outside the corridor. The location and areas of the proposed sites will provide a network of small habitat and shelter sites that will benefit the Inner West Long-Nosed Bandicoot population and other native fauna in the area.

To offset the remaining area, two indirect offset mechanisms are proposed directly targeting the Inner West Long-Nosed Bandicoot population:

- provision of shelter sites within the rail corridor and in areas where compensation sites are not feasible due to safety of operational constraints; and
- provision of a research project which will provide a targeted promotion of the Inner West Long-Nosed Bandicoot within the community.

The Proponent believes that by including the indirect offsets in the Package, that ecological impacts caused by the project on the Inner West Long-Nosed Bandicoot are minimised. This is consistent with the objectives of the Package and the intent of condition B18. The Proponent therefore seeks to modify the following clause of condition B18 (bold added),

*'...that all vegetation loss, including native vegetation and weeds, is offset by an equivalent area of regeneration or replanting **or indirect offset** ...'*

Long Term Protection

The Proponent has advised that the only way to protect sites 'in perpetuity' is through the establishment of a funded conservation covenant, such as a Biobank site. Consultation with the Office of Environment and Heritage (OEH) confirmed that they would not accept a Biobank site in an urban setting that is less than 1ha in size. Compensation sites proposed as part of the Package are all small in size, with the largest area being 0.22ha, therefore establishment of Biobank sites is not feasible.

The Proponent therefore proposes to provide conservation mechanisms for the sites which provide robust long term protection and management for the sites (as detailed in the Package). The Proponent therefore seeks to modify the following clause of condition B18 (bold added),

*'Any land offset must be enduring and include a **long term** conservation mechanism which protects and manages the land ~~in perpetuity~~'.*

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Pursuant to Schedule 6A of the EP&A Act, the approved project is a *transitional Part 3A project* and therefore Part 3A of the EP&A Act continues to apply in respect of the project. Section 75W(2) of the EP&A Act provides that a Proponent can request the Minister to modify the approval of a project.

3.2 Determining Authority

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to Directors in the Major Projects Assessment Division where: the relevant local council has not made an objection; and a political disclosure statement has not been made; and there are less than 10 public submissions in the nature of objections. No political disclosure statement has been made, and no public submissions were received.

The GreenWay Councils (Ashfield, Leichhardt and Marrickville Councils) advised that they can not accept the modification regarding long term protection until per square metre funding for on-going management and maintenance has been satisfactorily resolved. Therefore delegations are not able to be exercised, and the Minister the determining authority for the modification.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

In accordance with section 75X of the EP&A Act and clause 8G of the EP&A Regulation, the modification request was made available on the Department's website. Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means.

No public submissions were received on the modification request. The request was referred to OEH and Ashfield Council (on behalf of Greenway Councils Ashfield, Marrickville and Leichhardt) for consideration, who provided the following comments:

OEH

No issue was raised regarding proposed amendments to condition B18.

GreenWay Councils

Councils are keen to continue discussions with Transport for NSW about the details of the Long-Nosed Bandicoot monitoring project and shelter sites, and request the amended condition include ongoing consultation with the GreenWay Councils and the Inner West Environment Group. Councils advised that the proposed modification from 'in perpetuity' to 'long term' is unacceptable given that 'long term' is open to interpretation.

Marrickville Council

Council requested clarification on the management and protection of direct offsets.

5. ASSESSMENT

5.1 Ecological Impacts

The Environmental Assessment for the project identified that the project would result in a range of direct impacts to biodiversity within the construction corridor and potential indirect impacts on biodiversity in the surrounding landscape. These impacts include:

- clearing of vegetation with approximately 1.78ha of vegetation being cleared, including 1.7ha of weeds, and the remaining 0.8ha being 'Bushcare' sites and planted trees;
- removal of fauna habitats equating to approximately 0.05ha of foraging habitat for threatened species;
- habitat fragmentation through severing of the vegetated corridor as a result of fragmentation caused by the station stops. The fragmentation resulting from the project is unlikely to have a significant impact on the viability of species, with the exception of the Long-Nosed Bandicoot, for which the project may form a barrier to movement; and
- invasion and establishment of weeds with the project potentially dispersing weeds into 'Bushcare' areas and cleared areas.

Surveys included in the Environmental Assessment identified the presence of the Long-Nosed Bandicoot, which is listed as an endangered population under the *Threatened Species Conservation Act 1995* within inner western Sydney. The Proponent undertook impact assessments against the endangered and threatened species likely to be impacted by the project, including the Long-Nosed Bandicoot (*Perameles nasuta*), Grey-headed Flying-fox (*Pteropus poliocephalus*), Eastern Bentwing-bat (*Miniopterus schreibersii Oceanensis*), Swift Parrot (*Lathamus discolor*), and the Little Lorikeet (*Glossopsitta pusilla*). The assessment concluded that the project would not have a significant impact on these species.

In relation to the Long-Nosed Bandicoot, the impact assessment concluded that it is unlikely that the project will have a significant impact on the species Inner West Sydney population. Some removal of habitat and fragmentation will occur, however the revegetation and establishment of 'Bushcare' sites along the rail alignment will create a greater area of habitat for the Long-Nosed Bandicoot in the long-term.

In its consideration of the project, the Department acknowledged the community's concerns relating to the establishment and ongoing management of measures to offset the clearance of vegetation. A condition was included requiring the Proponent to prepare a Revegetation and Biodiversity Compensation and Monitoring Strategy which outlined how ecological impacts would be compensated for, and habitat monitored within the corridor, 'Bushcare' areas and other sites.

5.2 Indirect Offsets

The Proponent's Revegetation and Biodiversity Compensation and Monitoring Package identified a revised impact to vegetation of 1.1108ha to be cleared. **Table 1** provides a summary of the Package compensation components, which includes a total of 0.991ha of direct offsets.

Table 1: Package Summary

Direct Compensation	Area	Comments
Habitat creation works at identified locations within Long-Nosed Bandicoot core area of occupancy (Little, Fred, and Hercules Street (North) Sites, and Johnson Park, <i>Marrickville LGA</i>).	0.51ha	Long-Nosed Bandicoot habitat creation would comprise a mixture of habitats, with a structurally rich and dense ground and shrub cover, and smaller more sparsely vegetated areas, which will provide adequate shelter and foraging habitat for the species protected from future development or inappropriate use.
Habitat creation works at identified locations outside of Long-Nosed Bandicoot range (Loftus Street, Leichhardt Park <i>Leichhardt IGA</i>).	0.481ha	Habitat creation would comprise a mixture of habitats as above, which will provide adequate shelter and foraging habitat suitable for the species and also small birds and other species noted in the area.
Habitat enhancement with shelter sites (wood piles) along rail corridor within Long-Nosed Bandicoot range near Johnson and Hoskins Parks.		Providing shelter sites may assist the transverse movement of bandicoots across the rail corridor and provide protection against predators. Fencing will be constructed in a manner to also assist this movement. This will occur where there is no conflict with light rail operations.
Indirect Compensation		
Research project by Sydney University of sightings in Dulwich Hill, and Sydney University areas.		Funding of a local community survey program undertaken by a research student based on similar program being undertaken on the North Head Long-Nosed Bandicoot population in Manly.

The GreenWay Councils support the proposal for monitoring the endangered Long-Nosed Bandicoot population by Sydney University, subject to further consultation. It was requested that the modification be amended so that the objectives and methodology for the proposed research project be developed in consultation with the three GreenWay Councils and the Inner West Environment Group.

The GreenWay Councils acknowledge that the provision of Long-Nosed Bandicoot shelter sites are of considerable value and are keen to be involved in discussions about the details of the project. It is therefore requested that the proposed modification be amended to include the requirement to consult closely with the GreenWay Councils and the Inner West Environment Group about the siting, on-going management and maintenance issues which need to be addressed by all stakeholders to ensure that the shelter sites are effective and sustainable over the medium to long term.

The Department has reviewed the Proponent's modification request and Revegetation and Biodiversity Compensation and Monitoring Package and considers that it addresses the intent to offset the project's impacts on biodiversity and in particular the Inner West Long-Nosed Bandicoot. The Department considers that the Proponent has shown due diligence in providing as much offsetting as reasonably and feasibly possible, to offset the impacts of vegetation clearing. Additionally, the Proponent has provided justification for the 0.1198ha offset shortfall, and has provided indirect offsets directly targeted at the endangered Long-Nosed Bandicoot.

The proposed Long-Nosed Bandicoot research project will include gathering of additional information from community sightings and observations in the area and the provision of remote camera monitoring of shelter sites or areas where sightings have previously occurred.

The Proponent's Revegetation and Biodiversity Compensation and Monitoring Package has been prepared in consultation with OEH, relevant Councils, the GreenWay Sustainability Project, the

GreenWay Steering Committee and the Inner West Environment Group. The Proponent has also committed to the research project in consultation with the local Councils, OEH and DP&I with results of the project provided to Councils, OEH and DP&I.

The Department considers that the existing consultation requirements identified within condition B18, and the further commitment by the Proponent to consult with Councils and other key stakeholders while undertaking the Long-Nosed Bandicoot research project, responds to the concerns of the GreenWay Councils requirement for ongoing consultation. The Department will further consider the GreenWay Council's request for ongoing consultation when reviewing the final Revegetation and Biodiversity Compensation and Monitoring Package for determination, and re-iterate the need for ongoing consultation, as appropriate.

The Department therefore considers that the amendment to condition B18, to allow indirect offset mechanisms to directly target and benefit the Inner West Long-Nosed Bandicoot population, where direct offset requirements are not able to be met, is appropriate. The following modification is therefore recommended:

'...that all vegetation loss, including native vegetation and weeds, is offset by an equivalent area of regeneration or replanting **or indirect offset** ...'.

5.3 Long Term Protection

The Proponent's Revegetation and Biodiversity Compensation and Monitoring Package identified that 'in perpetuity' protection of the compensation sites selected is not considered feasible as the compensation sites are small, reducing the likelihood of establishing a funded conservation covenant (such as a Biobank site) on each site. The Proponent's consultation with OEH confirmed they would not accept a Biobank site in an urban setting that is less than 1ha in size. The Proponent has therefore proposed that the sites be protected and managed in the following way:

Protection

- compensation sites will be surveyed, documented and provided to the light rail operator and RailCorp / landowner;
- should any of the sites within the corridor be required for further infrastructure works an equivalent area is to be offset; and
- compensation sites outside of the corridor will be protected by a mechanism to be confirmed with the landowner.

Management

- sites will be managed by the relevant Council and community groups in accordance with the final Site Management Plan;
- should any 'Bushcare' areas inside the corridor fail to be managed on an ongoing basis, the management responsibility is placed with the light rail operator; and
- any areas outside the corridor will be managed by Council under a formal maintenance agreement with Transport for NSW.

The GreenWay Councils are concerned that the modification from 'in perpetuity' to 'long term' is not acceptable, given that 'long term' is open to interpretation. The GreenWay Councils also reiterated concerns that the per square metre funding proposed by Transport for NSW for on-going management and maintenance of the compensatory 'Bushcare' sites is 'grossly inadequate'. This is because it amounts to approximately one-third of the dollar amount per square metre recommended by OEH (NSW Environmental Trust) and the Greenway Councils for on-going management and maintenance of 'Bushcare' sites.

The Department has reviewed the modification and considers that it has provided adequate justification as to why 'in perpetuity' protection is not possible. However, in reviewing the Proponent's Revegetation and Biodiversity Compensation and Monitoring Package the

Department considers that the intent of the requirement, which is to protect the proposed offsets as far as feasible and reasonable, has not been adequately addressed.

Additionally, the Department acknowledges the GreenWay Councils concerns regarding the long term management of the offsets, and the need to negotiate the provision of appropriate and realistic ongoing maintenance funding for Councils. Whilst the Department acknowledges these negotiations should take place in association with finalisation of the Revegetation and Biodiversity Compensation and Monitoring Package, the need to reach agreement with the Councils can be further incorporated into the amended condition B18.

The Department acknowledges that negotiations regarding management of offset sites have been ongoing between the Proponent and Councils, therefore the following modification is recommended:

‘Any land offset must be enduring and include a long term conservation mechanism which protects and manages the land ~~in perpetuity~~. The long term conservation mechanism should include details of agreement with the relevant landowner, and include the time period for conservation, funding requirements, maintenance arrangements and frequency. Should agreement with the landowner not be able to be reached, dispute resolution shall be facilitated by the Department of Planning and Infrastructure.’

6. CONCLUSION AND RECOMMENDATIONS

The proposed modifications to condition B18 relate to indirect offsets where direct offsets cannot be achieved, and long term protection of the offsets instead of ‘in perpetuity’ protection.

The Department considers that the Proponent has shown due diligence in providing as much offsetting as reasonably and feasibly possible and that the Proponent has provided appropriate justification for not meeting the requirement that all vegetation loss is offset by an equivalent area of regeneration or replanting. The amendment to condition B18, to allow indirect offset mechanisms to directly target and benefit the Inner West Long-Nosed Bandicoot population, where direct offset requirements are not able to be met, is therefore considered appropriate.

The Department considers that the Proponent has provided adequate justification as to why ‘in perpetuity’ protection is not possible, and has subsequently proposed that the sites will be protected and managed in the long-term. The amendment to condition B18, to allow long term protection and management in place of ‘in perpetuity’, is appropriate, subject to further consideration of long-term protection mechanisms within the Revegetation and Biodiversity Compensation and Monitoring Package.

Consequently, the Department recommends that the Minister approve the modification request subject to the recommended modified conditions of approval.

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APPENDIX A MODIFICATION REQUEST

See the Department's website at <http://majorprojects.planning.nsw.gov.au/page/>

APPENDIX B SUBMISSIONS

APPENDIX C RECOMMENDED MODIFYING INSTRUMENT

