



Planning &
Environment

***MODIFICATION REQUEST:
Pacific Highway Upgrade
Woolgoolga to Ballina***

***Modification of Conditions of Approval
Related to Oxleyan Pygmy Perch Habitat
SSI 4963 (MOD 5)***



Secretary's Environmental Assessment Report
Section 115ZI of the
Environmental Planning and Assessment Act 1979

September 2017

Cover Photo — BC51 Watercourse Section 8 (Pacific Complete 2017)

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TABLE OF CONTENTS

1.	BACKGROUND	1
1.1.	Project Approval	1
1.2.	Project Description	1
1.3.	Subsequent Modifications	1
2.	CURRENT MODIFICATION	3
3.	STATUTORY CONTEXT	4
3.1	Modification of the Minister's Approval	4
3.2	Delegated Authority	4
4.	CONSULTATION AND SUBMISSIONS	4
4.1	Modification of the Minister's Approval	4
4.2	Submissions	4
5.	ASSESSMENT	4
6.	RECOMMENDATION	6
APPENDIX A	MODIFICATION REQUEST	7
APPENDIX B	RECOMMENDED MODIFYING INSTRUMENT	8

1. BACKGROUND

1.1. Project Approval

The Pacific Highway Upgrade – Woolgoolga to Ballina (W2B) project was identified as a key priority transport infrastructure project in the Government's *Long Term Master Plan (2012)* and was declared critical State Significant Infrastructure. The then Minister for Planning granted planning approval under section 115ZB of the *Environmental Planning and Assessment Act 1979* (the Act) on 24 June 2014.

1.2. Project Description

The W2B project involves an upgrade of the Pacific Highway to dual carriageways, from about six kilometres north of Woolgoolga at Arrawarra Beach Road to Pimlico Road about six kilometres to the south of Ballina. The project has a distance of approximately 155 kilometres and is located in the Coffs Harbour, Clarence Valley, Richmond Valley and Ballina local government areas. The key components of the project include:

- Bypasses of Grafton, South Grafton, Ulmarra, Woodburn, Broadwater and Wardell.
- 10 interchanges enabling access to and from the project.
- 95 bridges.
- Fauna connectivity structures.
- Service roads and access roads to existing local roads and properties.

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

The construction of the project is being delivered in stages. Stage 1 is being progressively opened to traffic, Section 2 from Halfway Creek to Glenugie in August 2017 and Section 1 between Woolgoolga and Halfway Creek expected in late 2017. Construction of Stage 2 commenced in April 2016 and is expected to be completed by 2020.

1.3. Subsequent Modifications

The project approval has been modified two times subsequent to the Minister's approval and three modifications, including this request, are under assessment. A summary of the modifications is provided in **Table 1**.

Table 1: Modifications to Woolgoolga to Ballina Project

Modification	Status	Description
Modification 1 – Administrative changes	• Approved 15 January 2015	• Change the definition of construction and update public authority references.
Modification 2 – Heritage assessment	• Approved 7 October 2015	• To permit heritage investigations and impacts for additional works outside the project boundary.
Modification 3 – Glenugie Interchange to Eight Mile Lane Interchange	• Under assessment	• Realign approximately 2.5 kilometres of the road between the Pacific Highway and Eight Mile Lane, Glenugie, (Chainage 33500 to Chainage 36000) approximately 250 metres to the east of the approved alignment..
Modification 4 – Moonimba borrow site	• Under assessment	• Temporary use of the borrow site to extract one million tonnes of material per annum for a period of two years. • Associated infrastructure such as a site office and staff amenities.

		- Average of 230 to 250 heavy vehicles movements per day to and from the borrow site. - Proposed haulage along Boggy Creek Road, Reardons Lane and Woodburn-Coraki Road.
Modification 5 – Oxleyan Pygmy Perch habitat	Under assessment	Modify conditions B8, B9 and B13.

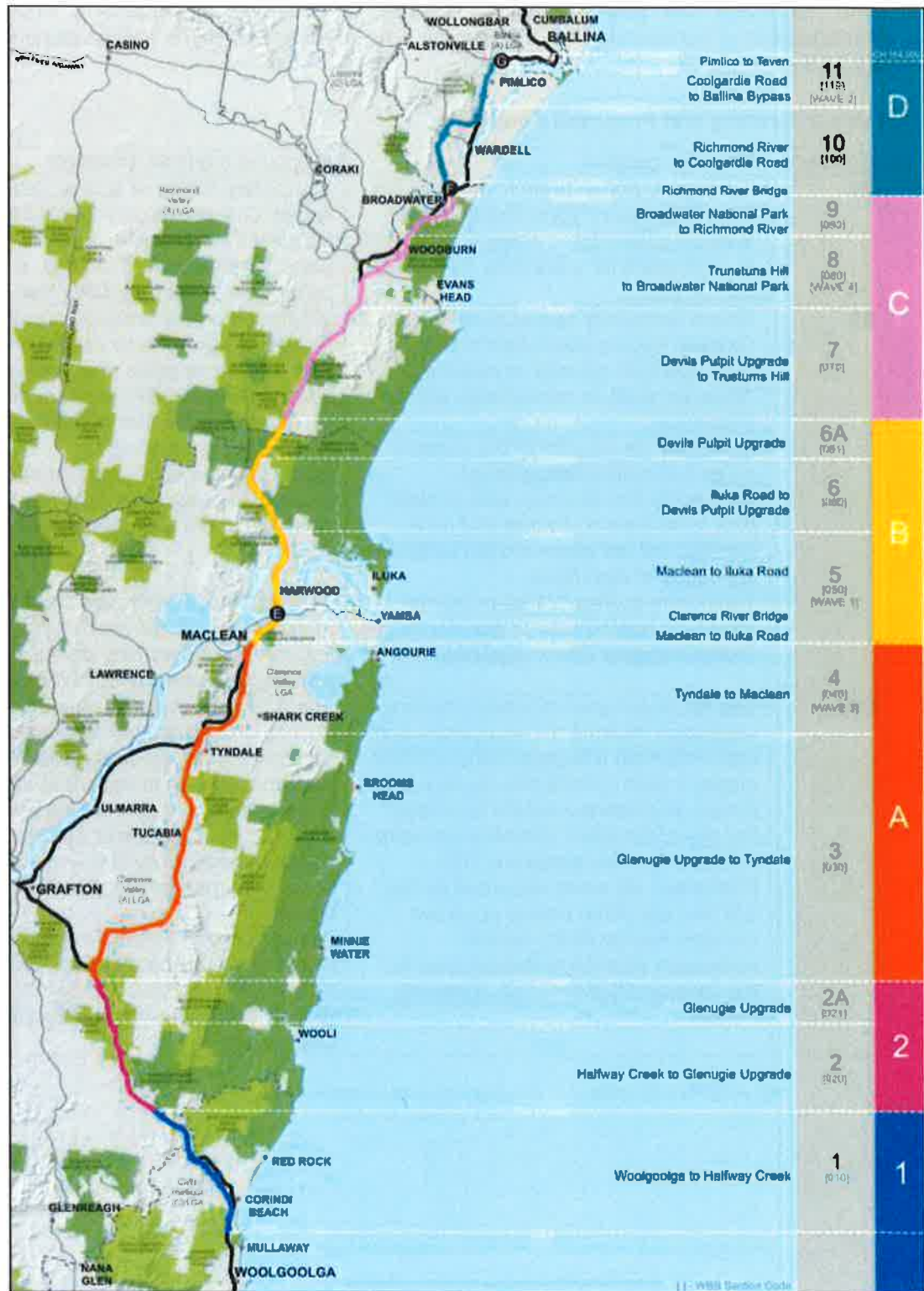


Figure 1: Approved Project

2. CURRENT MODIFICATION

Roads and Maritime Services (RMS) is seeking to modify the Minister's approval in relation to conditions B8, B9 and B13, which outlines the requirements for construction management within areas of Oxleyan Pygmy Perch (OPP) habitat. These conditions specify the requirements for duration of temporary works and crossing structures as well as timing and stabilisation requirements of OPP habitat watercourses during the OPP spawning period.

RMS considers the proposal would facilitate an adaptive management approach to the management of construction in OPP habitat. The existing conditions and proposed changes are outlined in **Table 2**.

Table 2: Existing and Proposed Conditions

Condition	Existing condition	Proposed modified condition
B8	<i>Temporary bridge or arch structures in known Oxleyan Pygmy Perch habitat shall be used if the crossing is intended to be in place for more than 3 months.</i>	<i>Temporary bridge or arch structures in known Oxleyan Pygmy Perch habitat shall be used if the crossing is intended to be in place for more than 3 months, unless otherwise agreed by DPI (Fisheries)</i>
B9	<i>Where temporary crossings in known Oxleyan Pygmy Perch habitat are proposed with culverts or pipes, the Applicant shall, in consultation with DPI (Fisheries): (a) determine the size of the culverts or pipes to facilitate fish passage (b) Identify the minimum size of clean rock to be used to ensure that rock material will not wash into the waterway in periods of high flows. Temporary culvert or pipe crossings shall be removed prior to the start of the Oxleyan Pygmy Perch spawning period.</i>	<i>Where temporary crossings in known Oxleyan Pygmy Perch habitat are proposed with culverts or pipes, the Applicant shall, in consultation with DPI (Fisheries): (a) determine the size of the culverts or pipes to facilitate fish passage (b) Identify the minimum size of clean rock to be used to ensure that rock material will not wash into the waterway in periods of high flows. Temporary culvert or pipe crossings shall be removed prior to the start of the Oxleyan Pygmy Perch spawning period, unless otherwise agreed by DPI (Fisheries)</i>
B13	<i>The Applicant shall minimise riparian vegetation clearing during construction and undertake a targeted rehabilitation program post construction to restore in-stream and riparian habitat to at least the pre-construction condition or better, unless otherwise agreed by DPI (Fisheries). All areas disturbed by the SSI that are in the vicinity of known Oxleyan Pygmy Perch habitat waterways shall be stabilised prior to the Oxleyan Pygmy Perch Spawning Period</i>	<i>The Applicant shall minimise riparian vegetation clearing during construction and undertake a targeted rehabilitation program post construction to restore in-stream and riparian habitat to at least the pre-construction condition or better, unless otherwise agreed by DPI (Fisheries). All areas disturbed by the SSI that are in the vicinity of known Oxleyan Pygmy Perch habitat waterways shall be stabilised prior to the Oxleyan Pygmy Perch Spawning Period, unless otherwise agreed by DPI (Fisheries).</i>

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

In accordance with section 115ZI of the Act, a proponent may request the Minister to modify the Minister's approval for State significant infrastructure. 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 115ZI of the Act is considered appropriate.

3.2 Delegated Authority

On 16 February 2015 the Minister for Planning delegated his powers and functions under section 115ZI of the Act to Directors who report to the Executive Directors in the Planning Services division of the Department of Planning and Environment in cases where:

- the relevant council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

The proposed modification meets the terms of this delegation and the Director Transport Assessments may determine the modification request.

4. CONSULTATION AND SUBMISSIONS

4.1 Modification of the Minister's Approval

Under section 115ZL(1)(g) of the Act, the Secretary is required to make the modification application publicly available. Accordingly, the Department placed a copy of the modification request on its website (**Appendix B**).

The Department referred the modification request to the Environment Protection Authority (EPA), the Department of Primary Industries (DPI) Fisheries and the Commonwealth Department of the Environment and Energy (DoEE), who are the relevant authorities in relation to the modification request. The modification request was not exhibited by any other means due to its minor nature.

4.2 Submissions

The DPI-Fisheries advised that it had no objection to the modification request. No submissions were received from the EPA and DoEE. However, it is noted that RMS consulted the DoEE who advised that it supported the modification request, and the proposal was supported by the W2B Environmental Review Group (ERG). The EPA is a member of the ERG.

5. ASSESSMENT

The W2B project approval includes conditions which specify requirements to manage impacts on the Oxleyan pygmy perch (OPP) *Nannoperca oxleyana Whitley*. The OPP is a small freshwater fish endemic to the coastal region of eastern Australia from northern NSW to south-eastern Queensland. Pre-construction surveys of threatened fish species in the W2B project area recorded OPP in a number of watercourses in Sections 7, 8 and 9. The OPP is listed as "vulnerable" under the *Fisheries Management Act 1994* and the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

The project conditions relevant to the OPP are:

- B7 – no high risk construction activities during the OPP spawning period or on days with forecast of 90% chance of 10mm or more of rain.

- B8 – temporary bridge or arch structure to be used if intended to be in place for more than 3 months.
- B9 – temporary crossings to be designed in consultation with DPI-Fisheries and removed prior to the start of the OPP spawning period.
- B13 – restoration of in-stream and riparian habitat in consultation with DPI-Fisheries. Disturbed areas in the vicinity of OPP habitat to be stabilised prior to the OPP spawning period.
- B40 – bridge or arch structure to be used for crossings of Class 1 watercourses.
- B41 and B42 – flood management objectives for OPP habitat.

The OPP spawning period occurs between October and April and high risk construction activities in and adjacent to OPP habitat (such as piling and work platform construction in waterways, concreting of bridge abutments, decks and parapets, and vegetation clearing and filling within 50 metres of OPP habitat) is restricted during this period. In doing so impacts to OPP habitat are minimised during the spawning period. The key risk primarily relates to water quality impacts from disturbance within the bed and banks of watercourses and construction runoff to watercourses.

RMS proposes to modify conditions B8, B9 and B13, which specify requirements for bridge or arch structures where the crossing is intended to be in place for more than 3 months (B7), and the removal of temporary crossings and stabilisation of disturbed OPP habitat, prior to the start of the spawning period, conditions B9 and B13, respectively. The modification request would allow flexibility by enabling DPI-Fisheries to consider and agree to waive the construction requirements of these conditions. RMS considers that the modified conditions would facilitate a timely adaptive environmental management approach to impacts on OPP habitat.

RMS advised the modification request is supported by the W2B ERG (membership of the ERG includes the EPA and DPI-Fisheries), the project's aquatic ecologist, DPI-Fisheries, and DoEE (**Appendix A**).

The Department notes the existing OPP conditions provides flexibility by allowing DPI-Fisheries to waive the requirements for high risk construction activities during the spawning period or on days with forecast rain of 10 mm or more (90% chance), design of temporary crossings (size of pipes and rock material), restoration of in-stream and riparian habitat, and Class 1 watercourse crossing design, conditions B7, B9(a) and (b), B13 and B40, respectively. The extension of DPI-Fisheries ability to waive the requirements of B8, B9 and B13 is considered to be consistent with conditions B7, B9(a) and (b), B13 and B40. The Department does not consider that the modified conditions would confer responsibilities beyond DPI-Fisheries' existing responsibilities to determine impacts to the OPP.

The Department notes that DPI-Fisheries and the DoEE supported the modification request.

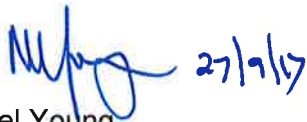
6. RECOMMENDATION

The Department notes the modification request provides flexibility in terms of the requirements of temporary watercourse crossings of OPP habitat, and the stabilisation of disturbed OPP habitat and duration of temporary crossings during the spawning period. The modification request provides a process in which the requirements of the conditions can be waived with the agreement of DPI-Fisheries. The Department considers that the proposed modification is consistent with existing OPP conditions which permit DPI-Fisheries to waive certain requirements. The modification request facilitates an adaptive environmental management approach to OPP habitat and would provide opportunities for an improved environmental outcome.

It is recommended that the Director, Transport Assessments, as delegate for the Minister for Planning:

- Consider the findings and recommendations of this report;
- Determine that the application falls within the scope of section 115ZI of the Act;
- Approve the modification request Woolgoolga to Ballina SSI 4963 MOD 5; and
- Sign the attached notice of modification (**Appendix B**).

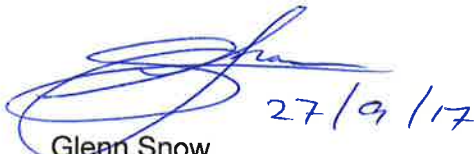
Recommended by:

Handwritten signature in blue ink, dated 27/9/17.

Michael Young
A/Team Leader
Transport Assessments

DECISION

Approved by:

Handwritten signature in blue ink, dated 27/9/17.

Glenn Snow
Director
Transport Assessments

As delegate of the Minister for Planning

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/page/development-categories/transport--communications--energy---water/roads/?action=view_job&job_id=8748