



14 October 2016

Ref: A14784642

Ms Glen Snow  
Director, Transport Assessments  
Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Glen,

**WestConnex M4 East (SSI 6307) – Request for Modification of condition D38**

Roads and Maritime Services (Roads and Maritime) would like to request a modification to the conditions of approval in accordance with the requirements of 115ZI of the NSW *Environmental Planning and Assessment Act 1979* (the EP&A Act).

The modification request relates to the condition D38 which requires an Archaeological Relics Management Plan be prepared in consultation with NSW Heritage Council, in the event that archaeological relics of State or local significance are discovered during construction.

**Proposed Modification**

Condition D38 states the following:

*D38 In the event that archaeological relics are discovered during construction, all work must cease in the affected area and the Excavation Director must be notified and attend the site to assess the finds, identify their significance level and provide mitigation advice according to the significance level and the impact proposed. In the event that the relics are identified as being of State or local significance, the NSW Heritage Council must be notified in writing in accordance with section 146 of the Heritage Act 1977. An **Archaeological Relics Management Plan** specific to the relics or site encountered is to be prepared in consultation with the NSW Heritage Council which is to outline all feasible and reasonable measures to be implemented to avoid and/or minimise harm to the State of locally significant heritage items. Works within the vicinity of the find must not recommence without the approval of the NSW Heritage Council. The Proponent must notify the Secretary in writing of any such encounter of an archaeological relic triggering this condition and must also notify the Secretary of the outcome of consultation with the NSW Heritage Council.*

Consultation has been completed with the Heritage Division (refer to section Consultation) regarding this condition. The Heritage Division have confirmed via correspondence (see attachment) that they believe the condition is 'onerous and does not provide strategic assistance in managing impacts to archaeology of local or State heritage significance'.

Roads and Maritime Services

The Heritage Division have also advised the following in relation to the current wording of condition D38:

- The process has increased issues for the project, its contractors and the Heritage Division generated by the time delays required in considering and endorsing the approach proposed. This is particularly evident when the same type of 'relic' of the same level of significance is uncovered at different locations for the project;
- The condition is worded in such a way that there is no way to update what is considered to be expected and unexpected based on the finds uncovered to date;
- Each time a relic is identified unexpectedly, regardless of its presence in other areas Historical Archaeological Management Unit (HAMU) or within the same HAMU, a separate management plan is required;
- The Heritage Division is of the opinion the current approach does not allow a holistic management of project areas or archaeological relics, with the need to repeatedly contact the Heritage Division for each significant relic identified, even though previous management processes have approved an appropriate identification and management strategy; and
- The management of relics should be based on significance and type with similar techniques being able to be used to identify and record relics regardless of their location.

It is also recognised that the first sentence of condition D38, i.e. the requirement to cease works and contact the Excavation Director, should only be applicable to unexpected potential archaeological relics as the project Historical Archaeological Research Design (HARD) (approved in accordance with condition D37) requires the Excavation Director be present onsite during ground disturbance activities in areas where relics are expected to be uncovered. The remaining sections of the condition would be applicable to both expected and unexpected relics.

To address these issues, a request to modify condition D38 is proposed:

*In the event that potential archaeological relics are discovered unexpectedly during construction, all work must cease in the affected area and the Excavation Director must be notified and attend the site to assess the find/s, identify their significance level and provide mitigation advice according to the assessed significance and the impact proposed.*

*In the event unexpected or expected relics are identified as being of State or local significance, the NSW Heritage Council must be notified in writing in accordance with section 146 of the Heritage Act 1977.*

*Unexpected or expected relics of local heritage significance should be managed in accordance with the Historical Archaeological Research Design approved for this project under Condition D37.*

*Where unexpected or expected relics of State heritage significance are identified an Archaeological Relics Management Plan must be prepared in consultation with the NSW Heritage Council, which must outline all feasible and reasonable measures to be implemented to avoid and/or minimise harm to the State significant relics. Works within the vicinity of the find of the State significant relic must not recommence without the written approval from the NSW Heritage Council or its delegate.*

*The proponent must notify the Secretary in writing of any such encounter of any archaeological relic triggering this condition and must also notify the Secretary of the outcome of consultation with the NSW Heritage Council (if required).*

## Consultation

Representatives of Sydney Motorway Corporation (SMC) and CPB Contractors Samsung John Holland (CSJ) have undertaken consultation with the Department of Planning and Environment (DPE) and the Heritage Division of the Office of Environment and Heritage (OEH) to discuss the requirements of condition D38.

Please refer to the attachment to this modification request, for a copy of the correspondence issued from the Heritage Division on 24 August 2016, which proposes a change to condition D38. This correspondence is signed by the Delegate of the Heritage Council of NSW.

**Table 1:** Summary of Stakeholder Consultation

Meeting Date	Stakeholders Present	Summary of Discussions
27 July 2016	<ul style="list-style-type: none"><li>• CSJ</li><li>• Roads and Maritime</li><li>• SMC</li><li>• DPE</li><li>• OEH</li><li>• Environmental Representative</li></ul>	Discussions and agreement in relation to the proposed approach regarding condition D38 and the management and process in the event relics of local heritage significance are encountered.
05 August 2016	<ul style="list-style-type: none"><li>• CSJ</li><li>• SMC</li><li>• OEH (Heritage Division)</li></ul>	The Heritage Division discussed their strong preference for condition D38 to be modified to provide greater clarity. It was discussed that the current condition doesn't help the Project or State achieve archaeological objectives. It was recommended by the Heritage Division that relics of local heritage significance should be managed in accordance with the HARD and relics of State heritage significance should be managed in accordance with the production of an ARMP.
25 August 2016	<ul style="list-style-type: none"><li>• CSJ</li><li>• Roads and Maritime</li><li>• SMC</li><li>• DPE</li><li>• OEH (Heritage Division)</li><li>• Department of Premier and Cabinet</li></ul>	Confirmation that the Heritage Division has worked with the project to revise condition D38 to better manage archaeology. The Heritage Division provided suggested revised wording to manage relics of local heritage significance.

## Impact of Modification

During consultation it was acknowledged that condition D38 is not a standard condition and that historical archaeological relics of local significance are adequately managed under the M4 East Project Historical Archaeological Research Design (HARD), included as Annexure B of the approved project Heritage Management Plan (HMP).

In accordance with the HMP (including revised environmental management measure NAH15) any relic encountered during construction activities and classified as a relic of local heritage significance is subject to the following management measures:

- A HARD was been prepared by a qualified historical archaeologist in accordance with NSW Heritage Division requirements, prior to the commencement of works. The HARD (section 4.3) outlines a methodology for the investigation, monitoring and/or salvage of archaeological resources, including:

- In the event of unexpected relics, work would stop in the affected area and the Excavation Director would be contacted to assess the integrity and significance of the relic,
  - Archaeological relics will be assessed and recorded as they are exposed, including a clear and comprehensive understanding of the resources of the site to ensure preservation for the future,
  - Collection of artefacts for analysis, including samples of bricks and mortar from each feature,
  - The excavation methodology for wells and / cesspits would be followed,
  - Artefacts would be cleaned, bagged, labelled and stored for analysis, and
  - A final report would be prepared detailing the results of the excavations.
- Archaeological monitoring will be led by a suitably qualified Excavation Director for the works in accordance with the HARD (section 4.3). Monitoring will be followed by open-area excavation as required. This will depend on the nature, extent and integrity of the archaeological resource to be impacted, and the level of impact proposed; and
  - Where required, an archaeological excavation program will be implemented in accordance with the Heritage Council of NSW Archaeological Assessments Guidelines (1996). This work will be undertaken by an appropriately qualified archaeological consultant.

The HARD and management measures within HMP (including revised environmental management measure NAH15), outline a process to be followed for heritage finds of local significance which ensures the protection of the relic. The preparation of an Archaeological Relics Management Plan and the approval of this plan by the Heritage Council, as currently required by condition D38, does not assist in the management of heritage finds of local significance, with the HARD and HMP providing sufficient management, therefore the proposed change is not considered to be a significant change.

The revised wording is considered appropriate in ensuring the protection for both local and State significant relics. In particular, it distinguishes relics of State significance would provide a more streamlined approach for items of local significance, to ensure that heritage and project objectives are satisfied in a timely manner, and in accordance with already approved documents.

Should you have any queries in relation to this matter, please feel free to contact David Kelly on 0407 239 667.

Yours faithfully



Philip Knudsen  
Project Director WestConnex Delivery Interface

**Attachment** – Letter from the Heritage Council titled: *Compliance with archaeological condition of approval D38 and request for modification to Condition of Approval D38 (SSD6307) for WestConnex M4 East.*



File No: SF16/33234  
Ref No: DOC16/371485

Mr Ryan Franklin  
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CPB Samsung John Holland Joint Venture  
WestConnex M4 East  
L4, 85 Harrington Street,  
THE ROCKS NSW 2000  
E: Ryan.Franklin@m4e.com.au

Dear Mr Franklin

**RE: Compliance with archaeological condition of approval D38 and request for modification to Condition of approval D38 (SSD 6307) for WestConnex M4 East.**

Reference is made to your correspondence requesting confirmation of compliance with Condition of Approval D38 which states:

*In the event that archaeological relics are discovered during construction, all work must cease in the affected area and the Excavation Director must be notified and attend the site to assess the finds, identify their significance level and provide mitigation advice according to the significance level and the impact proposed. In the event that the relics are identified as being of State or local significance, the NSW Heritage Council must be notified in writing in accordance with section 146 of the Heritage Act 1977. An Archaeological Relics Management Plan specific to the relics or site encountered is to be prepared in consultation with the NSW Heritage Council which is to outline all feasible and reasonable measures to be implemented to avoid and/or minimise harm to the State or locally significant heritage items. Works within the vicinity of the find must not recommence without the approval of the NSW Heritage Council.*

As part of ongoing compliance with this condition the Heritage Division has been involved in four separate instances requiring involvement for Condition D38 including:

1. Archaeological Management Plan HAMU 11, prepared by AMBS Ecology and Heritage, dated 30 June 2016.
  - The Heritage Division responded on 8 July 2016 and indicating compliance under Condition D38 had occurred.
2. Archaeological Management Plan Telford Roads, prepared by AMBS Ecology and Heritage, dated Thursday 26 July 2016.
  - The Heritage Division responded on 16 August 2016 indicating compliance under Condition D38 had occurred but only for the areas in the management plan.
3. Archaeological Management Plan Underwood Estate, prepared by AMBS Ecology and Heritage, dated 21 June 2016.
  - The Heritage Division responded on 16 August 2016 via email indicating compliance under Condition D38 had occurred but only for the areas in the management plan.
4. Archaeological Management Plan Cintra Park, prepared by AMBS Ecology and Heritage, dated 3 August 2016.
  - The Heritage Division has requested further information which is currently pending and compliance under Condition D38 for this area is not yet finalised.

The Heritage Division has observed that compliance with Condition D38 in this form is onerous and does not provide strategic assistance in managing impacts to archaeology of local or State heritage significance. This process has also increased issues for the project, its contractors and the Heritage Division generated by the time delays required in considering and endorsing the approach proposed. This is particularly evident when the same type of 'relic' of the same level of significance is uncovered at different locations for the project.

The current condition is worded in such a way that there is no way to update what is considered to be expected and unexpected based on the finds uncovered to date. It also means each time a relic is identified unexpectedly, regardless of its presence in other areas Historical Archaeological Management Unit (HAMU) or within the same HAMU, a separate management plan is required.

The Heritage Division is of the opinion the current approach does not allow a holistic management of project areas or archaeological relics, with the need to repeatedly contact the Heritage Division for each significant relic identified, even though previous management processes have approved an appropriate identification and management strategy.

The management of relics should be based on significance and type with similar techniques being able to be used to identify and record relics regardless of their location. As such, the Heritage Division recommends Westconnex M4 East consider requesting a revision of Condition D38 as a project modification to the Department of Planning to allow better management of archaeological relics identified unexpectedly for the project.

The following wording is suggested to replace Condition D38 as follows:

*In the event that potential archaeological relics are discovered unexpectedly during construction, all work must cease in the affected area and the Excavation Director must be notified and attend the site to assess the find/s, identify their significance level and provide mitigation advice according to the assessed significance and the impact proposed. In the event relics are identified as being of State or local significance, the NSW Heritage Council must be notified in writing in accordance with section 146 of the Heritage Act 1977. Relics of local heritage significance should be managed in accordance with the Archaeological Research Design approved by this project under Condition D37. Where relics of State heritage significance are identified a relics management plan must be prepared in consultation with the NSW Heritage Council, which must outline all feasible and reasonable measures to be implemented to avoid and/or minimise harm to the State significant relics. Works within the vicinity of the find must not recommence without the written approval of the NSW Heritage Council or its delegate.*

The Heritage Division considers the above updated wording ensures appropriate protection for both local and State significant relics. In particular it distinguishes relics of State significance as requiring additional management which accords with the EIS that was approved by the Department of Planning and Environment for this SSD. This revision will also ensure that archaeological management across the project and across all HAMUs will occur in a clear and streamlined way to ensure heritage and project outcomes are both met in a timely manner. The Heritage Division would be happy to support a modification expressed above to the Department of Planning.

If you have any questions regarding the above matter, please contact Rebecca Newell, Archaeologist, at the Heritage Division, Office of Environment and Heritage on telephone (02) 9873 8517 or by e-mail: [Rebecca.Newell@environment.nsw.gov.au](mailto:Rebecca.Newell@environment.nsw.gov.au).

Yours sincerely



**Katrina Stankowski**  
Acting Manager, Conservation  
Heritage Division  
Office of Environment & Heritage  
**As Delegate of the Heritage Council of NSW**  
24/08/2016

Cc: Project Archaeologist Dr Jennie Lindbergh [jenniel@ambs.com.au](mailto:jenniel@ambs.com.au)