



**Planning &
Environment**

***MODIFICATION REQUEST:
WestConnex M4 East***

***Administrative modifications to conditions E9, E11,
E21, E29 and E39
SSI 6307 (MOD 5)***



Environmental Assessment Report
Section 5.25 of the
Environmental Planning and Assessment Act 1979

July 2018

Cover Photo — Artist impression of M4 East looking east above the western portal entry and exit ramps (Figure 2.4 from the Urban Design, Landscape Character and Visual Assessment - Appendix L of the EIS, WestConnex Delivery Authority, 2015)

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1. BACKGROUND

WestConnex is a 33 kilometre motorway currently being constructed to improve connectivity between industrial, commercial and residential areas in Sydney's west, south-west and east. The M4 East is the first underground section of WestConnex and involves the construction of twin tunnels of approximately 5.5 kilometres in length from Homebush to Haberfield and associated surface works to connect to the existing road network.

The M4 East project (SSI 6307) was approved by the then Minister for Planning on 11 February 2016 under section 115ZB (now Section 5.19) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Construction of the project commenced in March 2016 and completion is expected by 2019.

Since SSI 6307 was approved, the approval instrument has been modified four times as outlined in **Table 1**.

Table 1: Approved Modifications

Modification	Date Approved	Description
MOD 1	15 December 2016	Administrative change relating to duplication of requirements for archaeological relics.
MOD 2	10 January 2017	Alteration to project boundary to facilitate drainage works into Dobroyd Canal.
MOD 3	16 June 2017	Changes to tree definition and tree replacement requirements.
MOD 4	13 June 2018	Construction of a cul-de-sac at Dobroyd Parade and kerb extension on Parramatta Road at Rogers Avenue, Haberfield.

On 7 June 2018, Roads and Maritime Services (RMS – the Proponent) submitted a request to modify five conditions within SSI 6307, as described in **Section 2**.

2. PROPOSED MODIFICATION

The Proponent is seeking administrative changes to the following conditions of approval:

- Condition E9, which specifies goals for ambient monitoring of air pollutants;
- Condition E11, which requires reporting exceedances of the goals in conditions E2, E3 and E4;
- Condition E21, which requires reporting of real-time ambient monitoring;
- Condition E29, which requires the preparation of an Operational Noise Management Plan; and
- Condition E39, which requires the preparation of an Emergency Response Plan six months prior to operation and the provision for a simulated emergency response exercise, one month prior to operation.

In addition, administrative changes are proposed to the titles of Appendix A and B to correct typographical errors.

Condition E9

The Proponent has stated that it is not clear when the measurements of air pollutants should be measured against the goals in condition E9, in particular, the annual average required under conditions E9(e) and (f) in relation to notification and reporting obligations under conditions E11 and E12.

The Proponent has proposed that a note be included within the condition which clarifies that the commencement of ambient monitoring, for the purposes of measurement against the goals, will commence at the commencement of operation, as follows:

Note: Ambient monitoring of pollutants for the purposes of notification and reporting obligations under conditions E10, E11 and E12 will commence at the commencement of operation of the SSI. As such, the first annual average of pollutants will be available 12 months following the commencement of operations.

Condition E11

Condition E11 requires that a notification of above-goal reporting is to be provided to the Secretary, EPA and NSW Health if ambient monitoring of air pollutants records an exceedance of the goals in conditions E2, E3 and E4. Condition E2, E3 and E4 refer to in-tunnel air quality limits and are not ambient air quality goals. These are instead listed in condition E9. The Proponent has indicated that this is a typographical error in the condition.

Further, item (b) of the condition requires that the notification of above-goal reporting must detail visibility levels that occurred and in item (d) requires the Proponent to detail the measures employed to improve visibility levels. Condition E8, and in particular, Column 1 of Table 8, lists the pollutants and parameters to be monitored for ambient air quality. Condition E9 details ambient air quality goals for the project. Neither condition E8 nor E9 require visibility levels to be monitored, nor do they provide ambient air quality goals in relation to visibility levels. The Proponent therefore also considers this to be a typographical error and recommends the following amendments:

- E11 The Ambient Air Quality Goal Protocol must provide a Notification of Above-Goal Recording if ambient monitoring of air pollutants records an exceedance of the goals in conditions ~~E9~~E2, E3 and E4. The Notification of Above-Goal Recording is to be submitted within 24 hours of the recording, to the Secretary, EPA and NSW Health. The Notification of Above-Goal Recording must detail:
- (a) the nature of the event;
 - (b) the concentration ~~or visibility~~ levels that occurred;
 - (c) the duration of the event;
 - (d) the measures employed to minimise the concentration levels ~~and/or improve the visibility levels~~; and
 - (e) the Proponent's commitment to prepare and submit a Report on Above-Goal Reading in accordance with condition E12.

Condition E21

Condition E21 requires that real-time ambient monitoring of PM₁₀, PM_{2.5}, visibility, NO₂ and CO be made publicly available. However, as noted above, neither of the conditions relating to the ambient air quality parameters to be monitored (E8 and E9) specify a goal for ambient visibility. The project is required to measure in-tunnel visibility in accordance with condition E1 and Table 4, and comply with the in-tunnel visibility limits in condition E4 and Table 7. The Proponent has suggested the following amendments:

- E21 Results of hourly updated real-time ambient monitoring of PM₁₀, PM_{2.5}, visibility, NO₂, and CO at the approved monitoring stations, in-tunnel CO/NO₂ and visibility, and ventilation outlet measurements, and relevant meteorological data, must be provided on a website and made publicly available each month in hard copy format in an easy to interpret format. This data must be preliminary until a quality assurance check has been undertaken by a person or organisation accredited by NATA for this purpose. The availability of this data must be conveyed to the local community by way of newsletter (including translation into common community languages in the area) and newspaper advertisement at least one month prior to the commencement of operation.

Condition E29

Condition E29 requires the preparation of an Operational Noise Management Plan as part of the Operational Environmental Management Plan required by condition E29. However, the Operational Environmental Management Plan is required by condition E26. Based on this the Proponent considers that the existing condition contains a cross-referencing error and has requested that the reference to condition E29 be replaced with E26.

Condition E39

Condition E39 specifies timing requirements for the preparation of an Emergency Response Plan and simulated emergency response.

The Proponent proposes that the timing requirements be removed from the condition whilst maintaining the requirement for compliance prior to the commencement of operations. Further, the condition refers to an “approved” Emergency Response Plan but the conditions do not specify that the plan requires approval. Therefore, the Proponent considers this to be a typographical error and has requested that the text “approved” be deleted from the condition. The proposed amendments are as follows:

E29 ~~Six months p~~Prior to operation, the Proponent must prepare an **Emergency Response Plan**, in consultation with FRNSW and NSW Police Force.

The Emergency Response Plan must include, but not be limited to:

- (a) protocols and procedures to be followed during emergency situations associated with the operation of the project (including fires, explosions and, for the purposes of this condition, vehicle collisions). The protocols and procedures are to take into account the needs of people with a disability or who may experience access problems in emergency situations;
- (b) details of traffic management measures to be implemented during emergencies, where appropriate, to minimise the potential for escalation of the emergency;
- (c) design and management measures to address the potential environmental impacts of an emergency situation, including measures for containment of contaminated fire-fighting water, fuel spills and gaseous combustion products;
- (d) details of a training and testing program to ensure that
 - (i) all operational staff are familiar with the Emergency Response Plan, and
 - (ii) coordination with FRNSW and NSW Police is regularly exercised; and
- (e) provision for a simulated emergency response exercise, including the Proponent, FRNSW and NSW Police, to be conducted in accordance with the approved Emergency Response Plan on at least one occasion ~~at least one month~~ prior to the opening of the tunnels to traffic. The time for the exercise is to be agreed by the participants, and FRNSW and NSW Police are to be provided with at least one month prior notification of any proposed time.

Appendix A and B

The word “ventilation” has been misspelt in the title of both Appendix A and B and is proposed to be amended to the correct spelling.

3. STATUTORY CONTEXT

3.1. Modification of the Minister’s Approval

In accordance with Section 5.25 of the EP&A Act, a proponent may request the Minister for Planning to modify a State significant infrastructure approval. The proposed administrative changes requested by the Proponent are not consistent with the existing approval and represent changes.

The proposed amendment to conditions E9, E11, E21, E29 and E39 involve administrative changes to improve clarity and consistency of the conditions. Consequently, modification of the Minister's approval under Section 5.25 of the EP&A Act is appropriate.

3.2. Delegated Authority

On 11 October 2017, the Minister for Planning delegated his powers and functions to determine a modification request under Section 5.25 of the EP&A Act to Directors and Managers in the Planning Services division where:

- the relevant council has not made an objection;
- a political disclosure statement has not been made; and
- there are no public submissions objecting to the modification.

The proposed modification meets the terms of this delegation for the Director, Transport Assessments to determine the modification application.

4. CONSULTATION

4.1. Public Notification

Under Section 5.28(1)(g) of the EP&A Act, the Secretary is required to make requests for modification of approvals by the Minister publicly available. Accordingly, the Department provided a copy of the modification request on its website.

No submissions were received from the public.

4.2. Consultation with Government Authorities

As the modification request is limited to administrative changes, government agencies were not consulted.

5. ASSESSMENT

The Department has reviewed the modification request and considers the changes proposed by the Proponent to be acceptable.

The Department intended that measurement of air pollutants against the ambient air quality goals would start at the commencement of operation of the project. In addition, it was expected that the first annual averages for PM₁₀ and PM_{2.5} would be calculated once the project had been operating for 12 months. The Department supports the Proponent's request for a note to be included to condition E9 in that it clarifies the timing requirements of the condition. The inclusion of the note does not change the intent or requirements of condition E9.

The changes proposed to condition E11 are a correction to a cross-referencing error and deletion to a reference to an air quality parameter (visibility). Visibility is a monitoring and reporting requirement for in-tunnel air quality, not ambient air quality and is addressed in conditions E4 and E6. As such, the Department supports the Proponent's suggested amendments to the condition.

Condition E21 also incorrectly refers to visibility when referring to ambient air quality and accordingly, the Department agrees to the modification request.

The amendment proposed to condition E29 is to correct a cross-referencing error and is supported by the Department.

The Department considers that the timing requirements of condition E39 can be removed because the condition maintains that an Emergency Response Plan and a simulated emergency response exercise must be undertaken prior to the commencement of SSI operations. The Department considers that the change to this condition will allow the Proponent greater flexibility to plan its work while not changing the intent of the requirements of the condition to comply with emergency response activities prior to the commencement of operations.

The Department supports that the word "ventilaton" be corrected to read "ventilation" in the titles of Appendix A and B.

6. RECOMMENDATION

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

- note the information provided in this report;
- determine that the request (MOD 5) falls within the scope of section 5.25(2) of the EP&A Act; and
- approve the modification request by signing the attached modifying instrument (**Appendix B**).

Recommended by:

 4/7/18

Naomi Moss
A/Team Leader
Transport Assessments

DECISION

The recommendation is approved by:

 4/7/18

Glenn Snow
Director
Transport Assessments

APPENDIX A - MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9405

APPENDIX B - MODIFYING INSTRUMENT

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9405