

3 May 2019

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Carolyn McNally
Secretary
Department of Planning and Environment
320 Pitt Street, Sydney NSW 2000

Dear Ms McNally,

RE: SECTION 4.55(1A) MODIFICATION APPLICATION – WESTERN SYDNEY ORBITAL (WESTLINK M7) COMMERCIAL ADVERTISING ON TRANSPORT CORRIDOR LAND

We write to you on behalf of the operator of the Westlink M7 Motorway (WSO Co), whose ownership comprises 50% Transurban, 25% Queensland Infrastructure Corp (QIC) and 25% Canada Pension Plan Investment Board (CPPIB). Westlink M7 Motorway is part of the NorthWestern Roads Group (NWR) which also encompasses the NorthConnex (NCX) project.

This letter seeks to modify Project Approval for the 'Western Sydney Orbital' project (the Westlink M7 Motorway), which was granted under the now repealed Division 4 of Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Due to the repeal, the project was deemed to be a Part 3A project, to which Section 75W of the EP&A Act would have applied prior to the conclusion of transitional arrangements associated with the *Environmental Planning and Assessment Amendment Bill 2017*. As transitional arrangements have now concluded, this application is made under Section 4.55 of the EP&A Act following the gazettal of the project as State significant infrastructure (SSI) on 18 April 2019.

This Section 4.55(1A) modification seeks to delete Condition 66 of the project approval, which currently prohibits commercial advertising within the road reserve. This modification follows the changes to *State Environmental Planning Policy No 64 – Advertising and Signage* (SEPP 64) made in November 2017, whereby the state-wide effectual prohibition of advertising on almost all transport corridor land was repealed. The objective of this modification application is therefore to allow separate Development Applications for commercial advertising within the Westlink M7 Transport Corridor to be lodged in the future.

1.0 Background

Outdoor advertising and signage has been guided by SEPP 64 since its introduction in 2001. In 2007, SEPP 64 was amended (Amendment No 2) which changed the conditions relating to advertising signage to occur on transport corridor land. The amendment included the introduction of Clause 16, which stated that despite the provisions of any other environmental planning instrument, the display of an advertisement on transport corridor land is permissible with development approval. However, clause 16(4)(b) went on to say that consent cannot be given for the display of an advertisement on transport corridor land if:

“the display of an advertisement on the land concerned is prohibited by a local environmental plan made after the commencement of SEPP 64 (Amendment No. 2)”

Under the Standard Instrument (LEP) Order 2006, LGAs were made to adopt new LEPs that were consistent with terms, structure and definitions of the Standard Instrument. The intention at the time may have been for each Council to consider the permissibility of advertising on transport corridor land when they adopted the Standard Instrument. However, because the Standard Instrument SP2 Infrastructure zone (which is used for Motorways) prohibits all uses other than roads, this is not what eventuated.

When the final Standard Instrument LEP was gazetted in 2015, only 3 LGAs out of 43 in metropolitan Sydney (prior to amalgamation) included signage in SP2 zones – Holroyd, Kogarah and Lane Cove – none of which are applicable to the Westlink M7.

In November 2017, the NSW Department of Planning and Environment (DPE) gazetted changes to SEPP 64. This included the deletion of clause 16 (4), inserting instead the following in relation to transport corridor land:

“This clause does not apply to the display of an advertisement if the Minister determines that display of the advertisement is not compatible with surrounding land use, taking into consideration any relevant provisions of the Guidelines¹.”

In effect, the amendment reflects the NSW Government’s intent for advertising signage to be permissible within transport corridor land and creates a development approval pathway for future advertising on the Westlink M7 transport corridor land that was not previously available.

1.1 State Significant Infrastructure Gazettal

The consent to be modified was approved under Division 4, Part 5 of the EP&A Act on 28 February 2002. Following the repeal of this division, the project was taken to be an approval under Part 3A of the EP&A Act (Schedule 1, cl.88(3) to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*).

On 18 April 2019, Glenn Snow (Director, Transport Assessments), under delegation from the Minister for Planning, declared the project to be SSI under clause 5 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

As SSI, the project can now be lawfully modified under Section 4.55 of the EP&A Act as proposed in the subject application.

2.0 Consent to be modified

Approval for the Western Sydney Orbital (Westlink M7) was granted under Division 4, Part 5 of the EP&A Act on 28 February 2002. The proposal was for a 40km tolled motorway standard route linking the Hume Highway/M5 Motorway at Prestons in the south to the M2 Motorway at West Baulkham Hills in the north. The proposal included 4 traffic lanes, a 15m wide median for future provision of public transport and a pedestrian and cyclist path along its length. The proposal was also for a major freight route within western Sydney as well as providing facilities to allow bus services between Richmond Road and the M2 from opening to traffic.

The Approval included a condition which states that “No commercial advertising except for direction purposes during construction shall be permitted within the road reserve for the Project during construction or when in operation.”

The consent has been modified on 19 June 2003, 4 May 2004, 25 August 2004 and 24 January 2006.

3.0 Proposed modifications to the consent

This Section 4.55(1A) modification application seeks to bring the Westlink M7 approval into alignment with the recent amendments to SEPP 64 that have created a development approval pathway for advertising. Accordingly this modification seeks to delete Condition 66 which currently prevents commercial advertising on the Westlink M7:

~~66. No commercial advertising except for direction purposes during construction shall be permitted within the road reserve for the Project during construction or when in operation.~~

¹ ‘Guidelines’ refers to the *Transport Corridor Advertising and Signage Guidelines* adopted in November 2017

4.0 Substantially the same development

Section 4.55(1A) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”.

The development, as proposed to be modified, is substantially the same development as that originally approved in that it:

- retains the approved use, being a 40km tolled motorway;
- does not propose any physical development under this application, rather, this application is to allow separate Development Applications for commercial advertising within the Westlink M7 Transport Corridor to be lodged in the future;
- will allow for future applications to be compatible with the use and operation of the Westlink M7 in terms of safety and amenity, in accordance with the Guidelines; and
- only affects one of the conditions of consent (out of 223), in that it only intends to allow for future commercial advertising in accordance with changes to State policy.

As shown above, the consent authority may be satisfied that the modified proposal represents substantially the same development for which the consent can be granted.

5.0 Environmental assessment

The environmental assessment of the proposed modification remains generally unchanged to that of the project approval. The following matters warrant further assessment as set out below.

5.1 Compliance with relevant EPIs, policies and guidelines

The development, as proposed to be modified, will not affect the Approved Project’s consistency with any relevant EPIs, policies or guidelines. The proposed modifications are consistent with the recently amended provisions of SEPP 64 to allow advertising on transport corridor land, including the M7 Motorway.

5.2 Site Suitability

The Westlink M7 is one of the only motorways in Sydney that does not have any advertising on transport corridor land. SEPP 64 and the accompanying Transport Corridor Outdoor Advertising and Signage Guidelines (the Guidelines):

- recognises that motorways are suitable locations for advertising, specifically referencing the M7 Motorway; and
- creates a framework for considering compatible land uses, safety, design and amenity outcomes.

Accordingly advertising signage is a suitable land use for transport corridor land, as established under SEPP 64, and any specific DA for advertising will be designed and assessed in accordance with the SEPP and Guidelines to ensure that it is suitable for the site.

5.3 Public Interest

Provision of public benefits associated with outdoor advertising is mandatory under the Guidelines and can include:

- Improved traffic safety (road, rail, bicycle and pedestrian);
- Improved public transport services;
- Improved public amenity within, or adjacent to, the transport corridor;

- Support school safety infrastructure and programs; and
- Other appropriate community benefits such as free advertising time to promote a service, tourism in the locality, community information, or emergency messages.

Future DAs for signage on the Westlink M7 have the potential to provide significant public benefits and therefore this Modification to facilitate future advertising signage in accordance with the Guidelines is in the public interest.

5.4 Safety and Amenity

This application does not seek consent for any physical signage, rather, seeks a modification to the existing consent that allows future applications to be lodged. As in accordance with the recent amendments to SEPP 64, any future application is to take into consideration any relevant provisions of the Guidelines. The Guidelines include assessment criteria to minimise risk associated with sign location, design, illumination, reflectance and content in addition to design assessment criteria for consent authorities and specifically for transport corridors to ensure high quality amenity outcomes.

Given the amendments to State Policy and the relevant Guidelines in place, this proposed Section 4.55(1A) application is not anticipated to have any significant environmental impact in relation to safety and amenity.

6.0 Conclusion

This Section S4.55(1A) modification application seeks to permit commercial advertising on transport corridor land within the Westlink M7. The proposed modification will not alter the nature of the original approval.

The proposed modifications do not result in any environmental impacts and do not alter the Project Approval's consistency with the relevant EPIs, policies or guidelines. Any future signage application permitted as a result of this application will need to demonstrate consistency with the Guidelines, which mandate public benefit outcomes and ensure that safety and amenity outcomes are maintained. We therefore request that the Minister or his delegate approve the modification application.

Should you have any queries about this matter, please do not hesitate to contact Chris or Michael at the details below.

Yours sincerely,



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