



Western Sydney Orbital

*State Significant
Infrastructure
Modification Assessment
(SSI 663 MOD 5)*

July 2019

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Glossary

Abbreviation	Definition
Approval	Infrastructure Approval
CIV	Capital Investment Value
Councils	Liverpool City Council Fairfield City Council Blacktown City Council The Hills Shire Council
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
Minister	Minister for Planning
Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	<i>State Environmental Planning Policy (State and Regional Development) 2011</i>
SSI	State Significant Infrastructure



Contents

Glossary	iii
1. Introduction	1
1.1 Background.....	1
1.2 Approval History.....	1
2. Proposed Modification	3
3. Statutory Context	4
3.1 Part 3A Transition to State Significant Infrastructure	4
3.2 Scope of Modifications.....	4
3.3 Delegated Authority	4
4. Engagement	5
4.1 Department's Engagement	5
5. Assessment	6
6. Evaluation	7
7. Recommendation	8
8. Determination	9
Appendices	10
Appendix A – List of Documents	10
Appendix B – Consolidated Approval.....	10
Appendix C – Notice of Modification	10



1. Introduction

This report assesses a request to modify the Western Sydney Orbital approved under the former Part 4, Division 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and transitioned to State Significant Infrastructure (SSI).

The modification request seeks approval to delete condition 66 which prohibits advertising within the Western Sydney Orbital corridor.

The request was lodged by WSO Co (the Proponent) and accepted by the Department on 6 June 2019 pursuant to section 5.25 of the *Environmental Planning and Assessment Act 1979* (the Act).

1.1 Background

The Western Sydney Orbital (now referred to as the M7 Motorway) is a 40 km dual carriageway motorway linking the M5 at Camden Valley Way in the south and the M2 in the north. The approved project included four traffic lanes, a 15 m wide median for future provision of public transport and a pedestrian and cycling path. The project was opened to traffic in December 2005.

The approved project included a condition which precluded commercial advertising within the transport corridor. At the time of approval, advertising was not permitted on freeways and tollways, with the exception of the Eastern Distributor, the M2, the M4, the M5 and the Sydney Harbour Tunnel, in accordance with *State Environmental Planning Policy No 64 – Advertising and Signage* (SEPP 64). However, SEPP 64 has since been amended to permit advertising on transport corridor land in the M7 Motorway corridor subject to development consent.

1.2 Approval History

Project approval was granted on 28 February 2002 for the Western Sydney Orbital by the then Minister for Planning. The project approval has since been modified four times. A summary of the modifications is provided in **Table 1**.

Table 1 | Summary of Modifications

Mod No.	Summary of Modifications	Approval Authority	Modification Type	Approval Date
MOD 1	Administrative changes	Minister	115BAA	19 June 2003
MOD 2	Administrative changes	Minister	115BAA	4 May 2004
MOD 3	Administrative changes	Minister	115BAA	25 August 2004

MOD 4	Removal of requirement to maintain pedestrian and bicycle access across the M7 at Mavis Street, Rooty Hill	Minister	75W	24 January 2006
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On 3 May 2019, the Proponent lodged a request to modify the project approval to remove condition 66 which prohibits commercial advertising in the corridor.



2. *Proposed Modification*

The approved project prohibits commercial advertising, except for direction purposes, within the road corridor.

Condition 66 of the approval states:

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.

The Proponent is seeking to amend the approval to delete condition 66 to remove the prohibition of commercial advertising within the Western Sydney Orbital corridor. While no physical works are proposed as part of the modification, the Proponent is seeking the change to enable separate development applications to be lodged in the future. The modification follows the changes to *State Environmental Planning Policy No 64 – Advertising and Signage* (SEPP 64) introduced in November 2017. The effect of the SEPP 64 amendments is that advertising within some transport corridors is permissible with consent.



3. Statutory Context

3.1 Part 3A Transition to State Significant Infrastructure

The project was originally approved under the former Division 4, Part 5 of the EP&A Act, and was a transitional Part 3A project under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (EP&A (ST&OP) Regulation).

Following amendments to the EP&A Act and the commencement of the associated EP&A (ST&OP) Regulation on 1 March 2018, the power to modify Part 3A project approvals under former section 75W is no longer available for modifications submitted after 1 March 2018. In order to modify a transitional Part 3A project approval, the Minister for Planning can declare the development to be SSI by order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation. If a declaration is made the project approval becomes a development consent which can be modified under Division 5.2 of the EP&A Act if it meets the relevant criteria.

On 18 April 2019 the Director, Transport Assessments (as delegate of the Minister for Planning), made an order under clause 6 of Schedule 2 of the EP&A (ST&OP) Regulation declaring the development the subject of the project approval to be SSI. The order was published in the NSW Government Gazette on 26 April 2019 and took effect from that date.

The effect of this order is that the project approval is taken to be an infrastructure approval under Division 5.2 of the EP&A Act for the carrying out of development, and that the modification request is taken to be an application to modify under section 5.25 of the EP&A Act.

3.2 Scope of Modifications

In accordance with section 5.25 of the EP&A Act, a Proponent may request the Minister to modify the approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval. The changes requested by the Proponent are not consistent with the existing approval. Consequently, modification of the Minister's approval under section 5.25 of the EP&A Act is required.

3.3 Delegated Authority

Under the Instrument of Delegation dated 11 October 2017, the functions and powers of the Minister for Planning under section 5.25 of the EP&A Act to determine a modification of the Minister's approval may be delegated to the Director, Transport Assessments, whereby:

- the relevant local council has not made an objection;
- 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.



4. Engagement

4.1 Department's Engagement

Under section 5.28(1)(g) of the EP&A Act, the Planning Secretary is required to make requests for modification of approvals determined by the Minister publicly available. Accordingly, the Department made the modification request publicly available on its website from 13 June 2018.

The modification request was also referred to the following government agencies and councils for comment:

- Liverpool City Council
- Fairfield City Council
- Blacktown City Council
- The Hills Shire Council
- Roads and Maritime Services

Fairfield City Council and **The Hills Shire Council** did not provide any comments on the proposal.

Liverpool City Council did not raise any objection in relation to the proposal.

Blacktown City Council did not raise any objection to the proposal however requested that council be notified and given the opportunity to comment on any future advertisements in the corridor.

Roads and Maritime Services raised no objection to the proposed modification subject to any future application for signage being assessed in accordance with SEPP 64 and the Transport Corridor Outdoor Advertising and Signage Guidelines.



5. Assessment

Condition 66 of the project approval does not permit commercial advertising in the Western Sydney Orbital corridor. This was consistent with SEPP 64's prohibition of commercial advertising in the Western Sydney Orbital corridor at the time of approval. The Proponent seeks to remove this condition as SEPP 64 now identifies the display of advertisements in the M7 corridor as permissible with consent.

While no physical works are proposed, removal of condition 66 would allow future advertising proposals to be submitted as separate development applications to the Minister for Planning, in accordance with SEPP 64. In accordance with clause 16(3) of the SEPP 64, the Minister must not grant development consent to advertising in the corridor unless:

- The relevant local council has been notified and any comments received by the Minister within 28 days of notification have been considered by the Minister.
- The advice of any design review panel appointed by the Minister has been considered.
- The Minister is satisfied that the advertisement is consistent with the *Transport Corridor Outdoor Advertising and Signage Guidelines* ('the Guidelines').

The Department acknowledges that the impact and suitability of any future advertisements would be subject to separate development applications assessed in accordance with SEPP 64 and the Guidelines, and in consultation with the relevant local council.

The Department considers it appropriate to modify the approval to ensure that it is consistent with SEPP 64's current provisions. Removal of condition 66 would provide a consistent approach to advertising across Sydney motorway corridors, as intended by recent amendments to SEPP 64 and the introduction of the Guidelines. The Department supports the Proponent's request to delete condition 66.



6. *Evaluation*

The Department has reviewed the proposed modification and assessed the merits of the modified project. The Department concludes that the proposed modification is not likely to result in any further environmental impacts as no physical changes are proposed to the approved project. Furthermore, the Department acknowledges the broader objectives of SEPP 64 and the *Transport Corridor Outdoor Advertising and Signage Guidelines*. This modification will align the M7 corridor with the SEPP 64 provisions for advertising across Sydney motorways and enable future applications for advertising to be submitted as separate development applications to the Minister for Planning. The Department considers the proposal is in the public interest and the modification should be approved.



7. Recommendation

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

- **considers** the findings and recommendations of this report; and
- **Determines** that the request SSI 663 MOD 5 falls within the scope of section 5.25 of the EP&A Act;
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to grant approval to the request;
- **modify** the approval SSI 663; and
- **signs** the attached Notice of Modification (Attachment C)

Recommended by:

Lauren Rose

A/Senior Planning Officer

Transport Assessments

Recommended by:

Naomi Moss

A/Team Leader

Transport Assessments



8. *Determination*

The recommendation is: **Adopted by:**

Alexander Scott

A/Director

Transport Assessments



Appendices

Appendix A – List of Documents

Modification Application – Western Sydney Orbital (Westlink M7) Commercial Advertising on Transport Corridor Land

Appendix B – Consolidated Approval

Appendix C – Notice of Modification