



Planning &
Environment

***MODIFICATION REQUEST:
WestConnex New M5***

***Administrative Modification
SSI 6788 (MOD 3)***



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

December 2017

Cover Photo — Aerial view of St Peters Interchange (Artists impression)
(WestConnex New M5, EIS)

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1. BACKGROUND

The Roads and Maritime Services (RMS – the Proponent) has submitted a request to modify the New M5 State significant infrastructure approval (SSI 6788). The project was approved on 20 April 2016 by the then Minister for Planning under Section 115ZB of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The New M5 is the second stage of the 33 kilometre long WestConnex motorway to be constructed between Parramatta and Beverly Hills via the inner western and inner southern suburbs of Sydney. The New M5 project involves the construction of twin tunnels of approximately nine kilometres in length between Kingsgrove and St Peters and the construction of a new interchange at St Peters. Construction of the project commenced in July 2016 and is expected to be completed by 2019.

On 30 August 2017, the Director, Transport Assessments, approved a modification request (SSI 6788 MOD2) (under delegation) to amend conditions E3, E14 and E44 of the State significant infrastructure approval, amending the timing requirements in conditions E3 and E44, and clarifying the monitoring requirements in condition E14.

On 14 November 2017, the Director, Transport Assessments, approved a modification request (SSI 6788 MOD1) (under delegation) to include limiting tensile strain to the settlement criteria in condition D8, and revising the terminology used within conditions D6-D9 and condition B58.

2. PROPOSED MODIFICATION

The Proponent has requested the inclusion of a new condition which states:

'In the event that there are differing interpretations of this approval, including in relation to a condition of this approval, the Secretary's interpretation is final.'

The Proponent has justified this request by stating that there may be instances where there is ambiguity with respect to the terms of the approval, including in relation to a condition of approval. In these instances, it may be necessary for the Proponent to seek clarification from the Department as to the intent of the terms of the approval and, in light of this, the Department's interpretation on how the conditions of approval should be applied.

The Proponent believes there is considerable benefit in formalising this interpretation process as it ensures that the Department's interpretation will be appropriately acted upon in carrying out the SSI in accordance with the approval.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

In accordance with Section 115ZI of the EP&A Act, a proponent may request the Minister for Planning to modify the State significant infrastructure approval for a project. The Proponent is seeking formal approval from the Minister for Planning for the modification of the State significant infrastructure approval SSI 6788 granted on 20 April 2016. The proposed modification is not consistent with the existing approval but does not represent a radical transformation to the project. Consequently, modification of the Minister's approval under Section 115ZI of the EP&A Act is appropriate.

3.2 Delegated Authority

Under the Instrument of Delegation dated 11 October 2017, the functions and powers of the Minister for Planning 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.

A political disclosure statement has not been made, the relevant local councils have not made an objection and no public submissions in the nature of objections were received. Accordingly, the Director, Transport Assessments, is delegated the authority to determine the modification request.

4. CONSULTATION AND SUBMISSIONS

4.1 Public Notification

Under Section 115ZL(1)(g) of the EP&A Act, the Secretary is required to make requests for modification of approvals given 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.

5. ASSESSMENT

5.1 Inclusion of condition

The Department agrees with the Proponent that the proposed modification will add rigour to the approval by ensuring that where there is ambiguity, the Department's interpretation must be appropriately acted upon.

The Department also notes that this provision is incorporated into the more recently determined Sydney Metro City and Southwest approval (SSI 7400).

The Department also notes that any interpretation must remain consistent with the project approval.

The Department therefore supports the inclusion of the follow condition:

In the event that there are differing interpretations of the terms of this approval, including in relation to a condition of this approval, the Secretary's interpretation is final.

6. RECOMMENDATION

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 request SSI 6678 MOD 3 falls within the scope of section 115ZI of the EP&A Act;
- modify the approval SSI 6678 subject to conditions; and
- sign the attached modification of approval (Attachment A).

Recommended by:



7.12.2017

Kane Winwood
Team Leader, Transport Assessments

DECISION

The recommendation is approved by:



7/12/17

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/index.pl?action=view_job&job_id=8952

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT
