



Our reference: ECM: 8891610
Contact: Gavin Cherry
Telephone: 4732 8125

27 November 2019

Ms Naomi Moss
NSW Department of Planning Industry & Environment

By Email: naomi.moss@planning.nsw.gov.au

Dear Ms Moss,

M12 Motorway (SSI-9364)

I refer to your email dated 15 October 2019 regarding the invitation to comment on the above proposed M12 Motorway.

Please find following comments in response to the proposed State Significant Infrastructure application. It is requested that the issues outlined within this correspondence be considered in the assessment of the application.

It is also recommended that the applicant have any opportunity to amend the proposal and / or submit further documentation that adequately responds to the matters raised prior to the determination of the State Significant Infrastructure application.

If you require any further information, please do not hesitate to contact Gavin Cherry, Development Services Coordinator on (02) 4732 8125.

Yours sincerely,

Peter Wood
Development Services Manager

SSI – 9364 M12 Motorway Penrith City Council Submission

Strategic Planning and Connectivity Considerations

The proposal has been considered having regard to broader strategic planning opportunities and identified connection requirements throughout the precinct. Below are issues that have been identified as part of a review of the EIS and should be addressed by the Applicant and responded to by the Department in the assessment of the application: -

- Noting that the Western City is a key part of the rationale for the M12 proposal, there doesn't appear to be any inclusion of, or definitive provision for interchange into the Northern Gateway, which is an initial precinct within the Aerotropolis as envisaged in the Western Sydney Aerotropolis Stage 1 Land Use and Infrastructure Implementation Plan (LUIIP);
- It is therefore requested that the Devonshire Road interchange be brought into the proposal, or alternately be considered as a future extension in the plans (similar to the grade separation of the Northern Road, or the potential for widening to 6 lanes). It is also noted that the options analysis could be expanded to demonstrate this potential connectivity, as it would enable the opportunities and constraints of bringing forward such connectivity to be assessed;
- Currently there are no plans for an interchange with Elizabeth Drive. If interchange would be expected between the M12 and Elizabeth Drive through the airport road network, then this may be difficult to rely on given the Commonwealth ownership of airport lands and the inability for the NSW to ensure an airport related connectivity outcome over the long term. It is requested that this aspect be considered in the assessment of the application;
- In line with the above, as the road network develops for the Aerotropolis during the Stage 2 LUIIP and precinct planning, the EIS (and the design of the M12) should be updated to respond to, and ensure consistency with, these developments. This could include the provision of additional interchanges as the arterial and sub arterial road network develops through the Aerotropolis;
- The EIS would also need to have regard for the future Draft Aerotropolis SEPP and DCP, which are forthcoming (as indicated in the Western Sydney Aerotropolis 'What We Heard' Report);
- Connectivity across the corridor needs to be considered as a priority, either by including the provision for / of bridges and underpasses across the Northern Gateway precinct, or enabling these to be delivered by others at a future point in time. This is because the Northern Gateway is (in part) divided by this future infrastructure. Private, public and active transport connectivity across the M12 corridor north-south, as well as east-west connectivity across the Airport – M12 link should not be prohibited by the proposed motorway;
- Impacts on land owners should be minimised to the maximum degree possible, including the return of construction required land to productive use as soon as possible; and
- Consideration of the impacts on surrounding land should also be undertaken in a manner which identifies the future urban use of

surrounding sites (rather than considering in a rural context only). This may require some further works to minimise future impacts.

Construction Management Measures

The EIS provides an analysis of noise and vibration, air quality, land contamination, waste and resource management as appendices.

The EIS is considered to sufficiently address construction and operational related issues and foreshadows the need for further investigation and refinement of mitigation measures during the detailed design stage. To facilitate this, the EIS proposes the preparation of a Construction Environmental Management Plan and Sub-plans to address issues such as land contamination, community consultation, construction dust and noise. These plans are anticipated to satisfactorily minimise and manage construction impacts as a result of those works. It is however recommended that suitable conditions of consent reflect these recommendations and ensure that the Plans are prepared by appropriately qualified consultants and submitted to the consent authority for endorsement, prior to commencement of construction works.

Land Acquisition and Wastewater Management Implications

It is noted that construction of the proposed motorway will require partial land acquisition and may impact on existing waste water management systems on various rural – residential properties along the route of the proposed motorway. As part of that process, the impact of any property adjustments, if any, on on-site sewage management systems and disposal areas should be considered and addressed as these allotments are not serviced by Sydney Water infrastructure and rely on site specific effluent management systems.

Whilst the EIS does not specifically discuss property acquisition and resulting impacts to existing operational onsite sewerage management systems, is recommended that this issue be raised for the Department to consider in the assessment of the application and the need for suitable recommended conditions of consent that are addressed during the detailed design phase, ensuring that any impacts to approved effluent management systems resulting from required land acquisition are rectified through the necessary consent processes prior to commencement of construction.

Biodiversity Consideration

The findings and conclusions of the EIS has been reviewed by Council's Biodiversity Officer and the following matters are considered to require further address and resolution:

- While the application is supported by a Biodiversity Offset Strategy (BOS), the BOS is not finalised and an offset to the extent of clearing proposed has not been identified in the EIS. This is critical in the consideration of impact. While the Roads and Maritime Service in a recent presentation to Council suggested that 80% of offset credits have been secured, this is not reflected within the EIS and security or retirement of all 100% offset credits should be ascertained prior to determination of the application. This is recommended to ensure that the credits are firstly available, and that the credits are appropriate to compensate for the extent of loss identified as a direct consequence of the proposed works;

- The EIS also makes numerous statements that “certain impacts on biodiversity values require further consideration by the relevant consent authority” and “Further surveys of these areas would be undertaken during detailed design and prior to construction and new calculations performed as necessary”. It is considered necessary that this survey work be undertaken up front as part of the Development Application process, to inform an assessment of significance. This required survey work will ascertain the extent of biodiversity, specifically native vegetation impact and as a consequence, the amount of credits to be secured / retired to conclude if the proposal will, or will not, have a detrimental impact on native flora;
- Similar to the above comments, the EIS suggests that detailed design is to be progressed that will ascertain the retention of fauna passages at all four main creek lines (Cosgroves, South, Kemps and Badgerys Creeks)”. In the absence of this detailed design, it cannot reasonably be concluded that fauna passages will not be impacted upon which should be investigated and suitably addressed as part of the development application stage rather than being deferred to construction;
- While pathogen management is referenced within the EIS, it is recommended that pathogen management be undertaken in accordance with Guide 7 Pathogen management of the Biodiversity Guidelines: Protecting and managing biodiversity on RTA projects. This is recommended to be addressed by a condition of consent should the proposal be supported;
- The EIS states that “Fauna within the area would already be adapted to photo pollution and the increased artificial lighting associated with the project is unlikely to have a significant effect.” There is no clear justification for this conclusion, and it is considered necessary that light mitigation measures be included in the assessment of impact and be reflected within proposed mitigation measures. This potentially could be addressed through conditions of consent if the proposal is supported; and
- If the pre-clearing survey finds the sea-eagle nest needs to be removed, it is recommended that a detailed plan be developed and implemented in conjunction with a sea-eagle expert. This potentially could be addressed through conditions of consent if the proposal is supported.

It is also noted that the proposed Cumberland Plain Conservation Plan (CPCP) is part of the Government’s commitment to delivering the Western Parkland City. It is intended to protect the region’s threatened plants and animals and support the needs of the community through the creation of conservation lands and green spaces close to homes. The CPCP aims to help balance the future needs of the community and protect threatened plants and animals in Western Sydney for the long term. The CPCP will seek to offset impacts on threatened plants and animals through a conservation program that includes new reserves and ecological restoration.

Given the above, and the importance that the State Government is placing on using “strategic conservation planning”, it is considered imperative that the proposed M12 motorway and the EIS that supports it specifically address the intended CPCP and demonstrate how the strategic intentions of the proposed CPCP are being maintained and addressed through the design and development of this proposal. While it is appreciated that the CPCP is yet to be finalised, an infrastructure project of this scale should integrate and reflect the

intentions and strategic objectives of this plan which are known to the NSW Government.

Water Quality Management

In relation to water and catchment health, there are a number of potential impacts associated with both the construction and operation of the proposed M12 Motorway. The proposed new dual carriageway has the potential to impact on water quality and hydrology. Some of the potential impacts include:

- Increased road runoff volumes and/or velocity resulting in potential increase in scouring and erosion;
- Accidental leaks or spills of chemicals and fuels;
- The introduction of gross pollutants (rubbish) into the waterways;
- Smothering of aquatic organisms from increased sediments;
- Reduced water quality from elevated turbidity, nutrients and other contaminants; and
- Changes to flow rates, volumes and flow paths within waterways and drainage lines;
- Altered hydrology and geomorphology from the loss of ephemeral streams and the creation of impermeable surfaces and the proposed minor creek adjustments at Badgerys Creek, South Creek and Kemps Creek.

The EIS has included a number of stormwater management commitments for implementation in both the construction and operational stages of the project. Proposed stormwater treatment measures include sediment basins, gross pollutant traps, swales and stormwater treatment basins.

These measures aim to ensure that the quality of stormwater runoff from the M12 Motorway during construction and operation contributes toward the achievement of the NSW Water Quality Objectives as well as those outlined in Council's WSUD Policy. The report also indicated that the design of the treatment measures will be further refined at the detailed design stage and will be monitored to ensure their adequacy.

In summary, the protection of waterway health is considered to be an important consideration for Penrith City Council and given the scale of the proposed motorway, the management and treatment of stormwater will be important to ensure the impact on receiving waterway and catchments is minimised.

In order to improve the water quality outcomes, the following recommendations are provided for consideration in the assessment:

- It is recommended that the stormwater management strategies be further refined and ensure that the proposal meets current best practice water quality, pollutant reduction and flow management targets to ensure the impacts on all receiving waterways are minimised and adequately managed;
- There are opportunities to ensure that the stormwater treatment measures are provided in an integrated manner with the associated riparian corridors. The measures should serve to maximise opportunities to enhance passive recreational benefits of the riparian corridors;

- It is recommended that all stormwater treatment measures associated with the construction of the motorway, be owned and maintained by the RMS or operator of the road and not be dedicated to Council, and
- An appropriate water management and monitoring strategy should be prepared and implemented to ensure water management measures are adequately maintained and appropriately function both during the construction and operational phases of the project.

It is noted that these recommendations could be addressed as conditions of consent to be further refined and compliance demonstrated through detailed design progression.

Flooding and Overland Flow

Clause 7.8 of the EIS and Appendix L – Flooding Assessment Report provides an assessment of the proposal on the flood characteristics of the land and potential impacts of the proposal on those characteristics and neighbouring properties. The following matters are raised for consideration and address in the assessment of the application:

- The construction standards and finished levels for the proposed motorway have been designed for a 100-year ARI year flood immunity however it is considered necessary that the EIS be amended to provide a cross section of each bridge showing the top water level for various flood events up to and including the PMF event. This is considered necessary to adequately consider the implications of the proposal stemming from flood events beyond the 1 in 100-year flood;
- The Flooding and Drainage Design Criteria (Table 3-1 of Appendix L) also states that culverts are to be designed to a 50-year ARI where surcharge is allowable. It is considered necessary that the assessment of the application, specifically the impacts of surcharge on land be considered having regard to the strategic intentions for this area, which is planned to undergo significant change in response to the Western Sydney Aerotropolis;
- The Flood Impact Objectives (Table 3-2 Appendix L) states that less than 50mm increase in flood levels for the 20 and 100 year ARI flood events is acceptable for houses, urban areas and commercial areas. It has been the position of Penrith City Council that no increase in flood levels is suitable for such areas. It is considered imperative that this position be maintained that that any increase in flood levels resulting from the development should not have any adverse impact upon neighbouring properties. As such, any increase in flood levels upon properties that are not affected by flooding is not considered to be supportable and should be addressed and resolved as part of this application assessment process;
- The EIS identifies that the bridges will span across the 1:100 year flood extent. However, some plans and diagrams illustrate the bridge span falling short of the illustrated flood areas. It should be confirmed that the plans to be relied upon for the bridge extent align with the mitigation measures outlined within the EIS being an expanse for the full width of the flood zone;
- Further consideration should be given to upgrading the existing culverts under Luddenham Road to eliminate any potential risk to motorists and pedestrians from overland flow flooding in major storm events. This

aspect could be addressed as a recommended condition of consent if the proposal is supported; and

- Where the motorway drainage network proposes to connect into existing Council drainage systems, the capacity of such existing systems is required to be assessed with any upgrades to existing systems to be provided with the development. This aspect could be addressed as a recommended condition of consent if the proposal is supported.

Road Construction and Maintenance Expectations

The following matters have been identified by Council's Traffic Management and Development Engineering Teams for consideration and address in the assessment of the application:

- The EIS has acknowledged there is a proposal for a future extension of Devonshire Road to Mamre Road, which would provide a North-South arterial road connection with a potential connection to the proposed M12 Motorway. Given the significance of this infrastructure to Western Sydney, including the Western Sydney Airport and Growth Area, along with its relationship to transport movements in the region, it is recommended that the timeframe for the Devonshire Road/Mamre Road interchange be brought forward to coincide with the opening of the proposed M12 Motorway and this form part of, or be facilitated by, this State Significant Infrastructure proposal;
- Confirmation is sought from the applicant as to what authority is intended to be responsible for the future long-term maintenance of any infrastructure that is to be delivered by the project including: water quality / detention basins; landscaping; public art; shared pathways and associated lighting. Specifically, there needs to be up front advice and negotiated agreement with Council for any assets that are proposed to be handed over to Council at the completion of the project;
- All local road construction within the Penrith Local Government area is to be undertaken in accordance with Council's standards and specifications. Detailed design plans for the local access road construction are to be reviewed by Penrith City Council. This specifically relates to works associated with Clifton Avenue and Salisbury Avenue;
- Provision for future vehicular access and connectivity to the Western Sydney Priority Growth Area lands to the north of the M12 Motorway should be provided as part of the development. In particular, the lands north of the M12 Motorway between Badgerys Creek and South Creek will likely become land locked as a result of the proposed development. Provision of an underpass is should be provided as part of the M12 development proposal;
- Further to the above point, access to the lands between Cosgrove Creek and Badgerys Creek north of the M12 Motorway should also be considered. Any suggestion for access to the Western Sydney Priority Growth Area lands from the local road network of Twin Creeks is not considered acceptable and a suitable arrangement must be provided for as part of this proposal; and
- The bridge over South Creek on Luddenham Road has a load limit and is not suitable for heavy traffic. Any construction traffic or haulage along Luddenham Road for construction of the bridge is to occur from Elizabeth Drive. A dilapidation report of the existing pavement condition

of Luddenham Road is to be undertaken prior to any use of Luddenham Road as a haulage route.

Landscape and Open Space

The following landscape, urban design and open space matters are raised for consideration and address in the assessment of the application:

- The proposal has identified the opportunity to provide a connection between the creek crossings and the shared pathways. The gradients of these connections must be confirmed through detailed design as part of the initial work proposed, to ensure that large areas of vegetation are not compromised when regrading for the secondary connections planned for the future;
- It is understood that amendments have been made to the M12 alignment to accommodate the Western Sydney Parklands to the east, however the same preservation and consideration has not been applied to the western extent of the proposed corridor. It is considered necessary that a similar open space connection between Luddenham Road and The Northern Road be provided for. A landscape connection between Luddenham Road and The Northern Road would service as a spine for further recreational and ecological connections to be provided. Opportunities may exist for an overpass as an innovative open space infrastructure outcome for the western parkland city. It is also noted that the proposal is identified as a key link in the implementation of the NSW 'Green Grid' network however the opportunities that this establishes are not yet realised in the current proposal due to the missing connections west;
- The proposal provides for water quality treatment measures in the form of basins however basins of this nature are usually required to be fenced. Opportunities to better integrate the basins as landscape features with recreational attraction should be investigated, rather than just acting as civil drainage and biofiltration infrastructure;
- Canopy tree planting is predominantly shown at the toe of batters and significant distance to road pavements. This planting arrangement is not considered to suitably address Council's Cooling the City plan by ensuring the appropriate locations for planting of trees for maximum amenity and shading effect. Opportunities should be pursued to locate trees that provide canopy shade on road pavements, with the use of barriers considerate of the need to enable non-frangible canopy trees;
- Pedestrian and cycle connections along the road corridor are linked to open space recreation (creek) corridors which may, or may not, be established at the time of road construction. The assessment of the application should consider and address how these connections will still be delivered if no recreation path networks exist in open space corridors;
- It should be clarified if power is intended to be provided underground for the entire alignment and if not, how is development inclusive of exposed power poles and the like, sufficiently responding to the need for integrated and environmentally responsive design solutions;
- The proposed engineered batters contrast against the natural existing landforms as outlined in the Landscape Character Zones. The urban design analysis has sought to demonstrate that the visual prominence of the resulting road levels and batters will not be excessive as viewed from various vantage points, however the scale and gradient of the

batters is still excessive and has the potential to dictate finished ground levels when the broader precinct is developed. The rationale for the finished road levels and the necessity for excessive batters, irrespective of landscaping requires further explanation;

- Existing dams add visual interest and contribute to landscape character. Given the extensive loss of dams, consideration should be given to proposed water bodies being designed to be more naturalistic elements in the landscape (not standard engineered forms);
- The shared path is noted as having high amenity and separation from the highway where possible. A dialogue with the RMS during design phases of the shared path is encouraged to ensure sufficient amenity is achieved. This includes maximising canopy cover over the shared path for pedestrian and cyclist comfort and health;
- There are opportunities through this proposal to include and exhibit 'parkland city principles' and contribute to the 5 million trees program (e.g. through the planting of additional trees and improvement of the interface with the South Creek corridor, etc);
- Part of the shared path along the M12 relies on upgrades made by Western Sydney Parklands. Further detail on the certainty of this upgrade is requested, as the benefits of the shared path would be best realised if there is connectivity through to the M7 shared path network; and
- Further view corridor analysis is recommended up and down the north-south creek corridor as these will be key areas of open space in accordance with the LUIIP. This includes South Creek, Kemps Creek, Badgerys Creek and Thompsons Creek.

Land Fragmentation Considerations

The proposal would appear to render a number of properties between the M12 east / west alignment, the proposed southern approach to the planned airport and the mapped flooding extent coinciding with Badgerys Creek as being land locked. The design interface and relationship of Elizabeth Drive and the airport entry is not yet known and as such it is not clear how orderly development and access arrangements to this land will be retained. This should be further investigated and clarified.

Non-Aboriginal Heritage Assessment

The Non-Aboriginal Heritage Assessment Report which forms Appendix J of the EIS while lengthy, is not considered to be sufficient in the analysis that has been undertaken to inform the conclusions made. The report recommends destruction and archival recording of all known and documented items of heritage significance where they are directly impacted by the proposed development.

The proposal should be informed by a detailed analysis of site conditions, heritage significance and suitably demonstrate that the proposal has respected and responded to that significance. The proposal and alignment of the road corridor, including the future planned connection with the airport, does not appear to have been prepared in response to these items given the recommendations made. This is particularly concerning as the report itself acknowledges that major impacts are proposed to items of identified State significance being McGarvie Smith Farm and McMaster Field Station.

The heritage assessment also does not make identifiable reference to the heritage qualifications of the author and given the proposal seeks to destroy and archive all directly impacted items of heritage significance, it is imperative that the analysis is undertaken by a suitably qualified heritage consultant that explores all opportunities for retention or amendment of the development to provide for some retention or relocation.

Alternatively, the assessment must detail why, on the grounds of heritage conservation, it is most appropriate to remove / destroy and archive photographically.

It is also noted that the assessment report states that for the McGarvie Farm: "options will be investigated to provide funding support to prepare a thematic heritage study ..." It is recommended that this be prepared prior to approval of the proposal, to better understand if this site has a greater significance than currently thought/understood (national or commonwealth significance). The assessment of significance and requirements of the project to respond to that significance should then be assessed based on the results of this study.

Luddenham Road is also still listed as containing heritage significance and while the reports note impact is minimal it is thought that this might not be the case in respect to road alignment, rural setting, landscaping and fencing. Further discussion should be sought through the amended impact assessment as outlined above.

It is therefore requested that the Department consider pursuing an amended Heritage Impact Assessment, or an addendum to the existing report that is prepared from a suitably qualified independent heritage consultant which addresses the above points and the following key questions and considerations:

- What other options have been explored (in a heritage context) to avoid impacts to the sites?;
- Archival recording should be the last resort for options relating to demolition of listed heritage items. Have other options been explored and where is this discussion if they were not thought to be feasible options? i.e. Has salvaging been explored? Relocation of structures? Partial demolition as opposed to demolition of all buildings?;
- What interpretation strategy is taking place for demolished structures/site? This should be provided prior to construction and available for the consent authority and affected local Council to review; and
- Is the demolition essential at this time? Or can it be postponed in case future circumstances change? i.e. entry/exit ramp locations

Aboriginal Heritage Assessment

Similar concerns are raised with the nature of the reporting and assessment undertaken within the separate enclosure (page 1).

The author of this component of the EIS is identified as being a "suitably qualified heritage consultant in accordance with the guidance documents listed Section 7.5.1." It should be demonstrated by nomination of author and qualification that this is complied with and it should be demonstrated that the author is independent to the RMS, and that the conclusions are informed by that independent analysis given the implications of the proposal on identified items of significant.



It is however noted that survey work was undertaken between July and September 2017 with representatives from the Deerubbin and Gandangara Local Aboriginal Land Councils. With consultation with Aboriginal community representation stated between October 2017 and February 2019.

The assessment surveys identified 19 aboriginal sites within the construction footprint. With an addition 7 sites within the investigation area. There were areas identified as containing high significance along South Creek however the assessment confirms that all 19 sites will be subject to direct harm, 11 sites subject to partial harm and 8 sites subject to total harm.

The report concluded that realignments were considered, and it was found that all options would have an impact on aboriginal heritage values. The focus is outlined as being on minimisation of impacts, but the report does not clearly detail if this alignment was deemed to be the least impactful having specific regard to aboriginal heritage values or the basis on which this alignment was the most appropriate balance of all competing considerations.

The report does however confirm that the least extent of impact would be realignment to areas of high ground disturbance, specifically referencing the existing Elizabeth Drive corridor or operational quarries. This however was not deemed strategically appropriate due to perceived unacceptable impacts on existing infrastructure, transport and commercial operations.

The Department is therefore requested to confirm what alignment options were tested with a constraints and benefit analysis that would support the identified impacts to aboriginal heritage values including sites of 'total harm' in considering impacts to infrastructure, transport links and commercial operations.