


Modification of Minister's Approval

Section 75W of the *Environmental Planning and Assessment Act 1979*

I, the Director, Infrastructure Projects, Major Projects Assessment of the Department of Planning, in accordance with the Instrument of Delegation issued by the Minister for Planning, on 25 January 2010, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* determine to approve of the modification to the approval referred to in Schedule 1 in the manner set out in Schedule 2.



Director
Infrastructure Projects
Major Projects Assessment
As delegate for the Minister for Planning

Sydney, *12 March* 2010

SCHEDULE 1

Project Approval:	granted by the Minister for Planning on 10 July 2008
For the following:	Pacific Highway Upgrade – Kempsey to Eungai (06_0224)
Modification:	modification to the Minister's approval in relation to the timing of minor clearing of Endangered Ecological Communities and threatened species' habitat, the salvage of Aboriginal objects and stakeholder consultation.

SCHEDULE 2

The approval is modified by:

1. Replacing the definitions for "construction", "DECC", "DPI", with the following:

Construction	Includes all work in respect of the project other than survey; acquisitions; fencing; investigative drilling or excavation; building/road dilapidation surveys; minor clearing (except where Endangered Ecological Communities or threatened species' habitat would be affected, unless otherwise approved by the Director General, in consultation with DECCW); the salvage and storage of Aboriginal objects where a strategy has been approved by the Director General in consultation with DECCW; establishing ancillary facilities in locations meeting the criteria stated in these Conditions or as otherwise agreed by the Director General; or other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads, adjustments to services / utilities, etc.).
DECCW	NSW Department of Environment, Climate Change and Water
I&I NSW	Industry and Investment NSW

2. Deleting the definition of "DWE"
3. Replacing all references to "DECC" with "DECCW"
4. Replacing all references to "DPI" with "I&I NSW"
5. Replacing existing condition 1.1 with the following:
 - 1.1 The Proponent shall carry out the project generally in accordance with the:
 - a) Major Projects Application 06_0224;
 - b) *Kempsey to Eungai – Upgrading the Pacific Highway: Environmental Assessment* (Volumes 1 and 2), prepared by Parsons Brinckerhoff Australia Pty Limited and dated July 2007;
 - c) *Kempsey to Eungai – Upgrading the Pacific Highway: Submissions Report*, prepared by Parsons Brinckerhoff Australia Pty Ltd and dated March 2008, including the Statement of Commitments contained therein;
 - d) Modification Application 06_0224 MOD 1 and request for modification dated 5 February 2010; and
 - e) the conditions of this approval.
6. Replacing existing condition 1.2 with the following:
 - 1.2 In the event of an inconsistency between:
 - a) the conditions of this approval and any document listed from condition 1.1a) to 1.1d) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
 - b) any document listed from condition 1.1a) to 1.1d) inclusive, and any other document listed from condition 1.1a) to 1.1d) inclusive, the most recent document shall prevail to the extent of the inconsistency.

7. Replacing condition 2.10 with the following:

- 2.10 The Proponent shall develop and submit for the approval of the Director General, a **Biodiversity Offset Strategy**. The Strategy shall provide a framework for developing the Biodiversity Offsets Package required by Condition 2.11 and shall be developed in consultation with the DECCW. The Strategy shall:
- a) include a minimum requirement to provide 382 hectares of native vegetation to offset direct and indirect impacts of the proposal
 - b) identify the extent and types of habitat/vegetation communities that would be lost or degraded as a result of the project;
 - c) describe the quality of the habitat/vegetation communities identified in point a);
 - d) identify the objectives and outcomes to be met by the final Biodiversity Offset Package;
 - e) consider the biodiversity management measures or activities identified in the documents set out in condition 1.1 or elsewhere in these Conditions of Approval, including:
 - i. fauna crossing structures and associated fauna fencing to be installed as part of the project;
 - ii. revegetation measures;
 - iii. translocation plans;
 - iv. any other fauna mitigation measures such as nest boxes and frog breeding ponds; and
 - v. any ongoing biodiversity or threatened species monitoring requirements;
 - f) provide details of available compensatory habitat in the region to offset the loss of Freshwater Wetlands, Swamp Sclerophyll Forest, Swamp Oak Floodplain Forest, River Flat Eucalypt Forest and Mahogany Dry Sclerophyll Forest and habitat for threatened fauna species as a result of the project. This may include other non land based management measures or actions to deliver a beneficial outcome for the region;
 - g) provide a decision-making framework to be used in selecting the priority ranking of compensatory habitat options available in the region; and
 - h) consider the linkage between compensatory measures and floodplain natural resource management.

Unless otherwise agreed, the Biodiversity Offset Strategy shall be submitted to the Director General for approval no later than 6 weeks prior to the commencement of any construction that would result in the disturbance of Endangered Ecological Communities or threatened fauna species' habitat.

Nothing in this condition prevents minor clearing of Endangered Ecological Communities and threatened species habitat prior to approval of the Strategy, where the clearing does not compromise biodiversity outcomes and has been approved by the Director General, in consultation with DECCW.

Nothing in this condition or this approval precludes the Proponent from implementing a suitable offsets package which addresses impacts from multiple Pacific Highway Upgrade Projects (including the Kempsey-Eungai Upgrade) within the North Coast Bio-region (Manning-Macleay sub region). Any such agreement made with the Department of Environment, Climate Change and Water must be made in consultation with the Department and approved by the Director General.

Note: A request for minor clearing of Endangered Ecological Communities and threatened species habitat prior to approval of the Biodiversity Offset Strategy shall consider the requirements of the relevant ecological conditions of this approval.

8. Replacing condition 2.21 with the following:

2.21 Unless otherwise agreed with the DECCW, the Kempsey Local Aboriginal Land Council and the Dunghutti Elders group, the Proponent shall:

- a) salvage any identified artefacts from sites KE14, KE15, KE16 and KE42; and
- b) undertake subsurface testing for sites KE PAD 1 to 12 inclusive, and salvage any artefacts of significance identified at those sites.

The subsurface investigations and salvage of artefacts shall be undertaken prior to the commencement of construction works that may impact on those sites and in consultation with the DECCW, the Kempsey Local Aboriginal Land Council and the Dunghutti Elders group.

The approach to salvage shall be in accordance with a methodology developed in consultation with the DECCW, the Kempsey Local Aboriginal Land Council and the Dunghutti Elders group.

The salvage and storage of Aboriginal objects may proceed in the absence of an approved Construction Environmental Management Plan, subject to the activities being undertaken in accordance with a salvage strategy, prepared in consultation with the DECCW, the Kempsey Local Aboriginal Land Council and the Dunghutti Elders group, and approved by the Director General.

9. Deleting condition 2.22.

10. Replacing condition 5.2 with the following:

5.2 The Proponent shall prepare and implement a **Community Communication Strategy** for the project. This Strategy shall be designed to provide mechanisms to facilitate communication between the Proponent, the Contractor, the Environmental Representative, Council and local community (broader and local stakeholders) on the detailed design, progress and the related environmental management of the project. The Strategy shall include, but not necessarily limited to:

- a) identification of stakeholders to be consulted as part of the Strategy, including affected and adjoining landowners;
- b) procedures and mechanisms for the regular distribution of information to stakeholders on the progress of the project, detailed design and matters associated with environmental management;
- c) procedures and mechanisms through which stakeholders can discuss or provide feedback to the Proponent and/or Environmental Representative in relation to the environmental management, detailed design and delivery of the project;
- d) the formation of community-based forums (focus groups) that focus on key design, environmental management and construction issues for the project. The Strategy shall provide detail on the structure, scope, objectives and frequency of the community-based forums;
- e) procedures and mechanisms through which the Proponent can respond to any enquires or feedback from stakeholders in relation to the environmental management, detailed design and delivery of the project; and
- f) procedures and mechanisms that would be implemented to resolve any issues/ disputes that may arise between parties on the matters relating to environmental management and the delivery of the project. This may include the use of an appropriately qualified and experienced independent mediator.

Key issues that should be addressed in the Community Communication Strategy should include (but not necessarily be limited to):

- i) traffic management (including property access);

- ii) community infrastructure;
- iii) property acquisition;
- iv) business impacts;
- v) landscaping/ urban design matters;
- vi) heritage;
- vii) flood management;
- viii) construction activities; and
- ix) noise and vibration mitigation and management.

The Proponent shall maintain and implement the Strategy throughout construction. The Strategy shall be approved by the Director General prior to the commencement of construction unless otherwise agreed by the Director General.

11. Deleting condition 5.3.

12. Replacing condition 6.3 with the following:

- 6.3 Prior to the commencement of construction of the project, or as otherwise agreed by the Director General, the Proponent shall prepare an **Urban Design and Landscape Plan** in consultation with the relevant Council(s), relevant Government agencies and the community. The Plan shall include, but not necessarily be limited to:
- a) sections and perspective sketches;
 - b) location and identification of existing and proposed vegetation including use of indigenous and endemic species where possible;
 - c) location of mounds, bunds, structures (noise walls, bridges) or other proposed treatments, finishes of exposed surfaces (including paved areas);
 - d) progressive landscaping strategies incorporating other environmental controls such as erosion and sedimentation controls, drainage, noise mitigation; and
 - e) monitoring and maintenance procedures.