



2 November 2010

Daniel Keary
Director Infrastructure Projects
Department of Planning
GPO Box 39
SYDNEY NSW 2001

Attention: Mark Turner

**Pacific Highway Upgrade
Tintenbar to Ewingsdale Upgrade Project
Request for Modification to Conditions of Approval – Schedule 2, Construction**

Dear Sir,

I refer to the Planning Approval for the Pacific Highway Upgrade, Tintenbar to Ewingsdale of 29 January 2010 from the Minister for Planning received by the Roads and Traffic Authority (RTA) and in particular the Schedule 2 definition of Construction.

I also refer to your letter Ref. 9037893 of 1 November 2010 approving the RTA's Hairy Joint Grass Offset Package in accordance with Ministers Condition of Approval No. 2.4.

As described in previous correspondence with the Department, a number of pre-construction activities are required, and are underway, for the Tintenbar to Ewingsdale project. In order for RTA to meet State and Federal Government commitments for the project, it is both necessary and logical to program a number of activities prior to 'construction' as defined in Schedule 2 of Ministers Conditions of Approval.

One activity which RTA needs to commence as early as possible is the translocation of threatened species from within the project alignment, and in particular the *Arthraxon hispidus* 'Hairy Joint Grass' as identified in the RTA's Hairy Joint Grass Offset Package. The criticality of timing here relates to the optimisation of undertaking this work at the best seasonal time to ensure the maximum chance of translocation success, and the timely relocation of threatened species before the commencement critical activities.

By exception, 'minor clearing' is defined in Schedule 2 of the Conditions of Approval as a pre-construction activity, except where *"heritage, threatened species populations or ecological communities would be affected"*. Additionally a number of Conditions of Approval require certain activities or outcomes to occur prior to the commencement of construction. The Departments advice of 1 November 2010 that *"clearing of threatened species, populations or ecological communities is defined as construction, and therefore triggers a range of associated conditions including the need for a Construction Environmental Management Plan"* is noted. Notwithstanding that a number of the Conditions of Approval actually require translocation or other pre-construction activities to occur *"Prior to the commencement of construction..."*, for example Conditions of Approval 2.3, 2.4, 2.23, 2.24 etc, in consultation with NSW Department of Environment, Climate Change and Water (DECCW) and the Director General, it would appear that in order for these works to be undertaken, the Department of Planning (DoP) now requires a Construction Environmental

Roads and Traffic Authority

Management Plan (CEMP) to be prepared and approved. Alternatively, DoP have verbally advised that the RTA could seek a Modification to the Schedule 2 definition of construction, which would allow these works to proceed earlier.

Accordingly RTA proposes that translocation activities are deemed pre-construction activities. In accordance with the Conditions of Approval, these activities are required to occur prior to the commencement of construction and do not involve the impacts of full construction. In the specific case of the Hairy Joint Grass the translocation activities also form an essential component of the approved Hairy Joint Grass Offset Package. Translocation of Hairy Joint Grass seedlings using hand shovel / trowel methods is considered to have very minimal, if any, environmental impact, particularly as such activities are contained within the project footprint. The following modification to the Schedule 2 definition of construction is therefore requested to allow such minor pre-construction activities: -

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 heritage, threatened species, populations or ecological communities would be affected, <u>unless otherwise approved by the Director General, in consultation with DECCW</u>); establishing ancillary facilities in locations meeting the criteria stated in these Conditions; or other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads and adjustments to services / utilities, etc.)
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It is noted that a similar definition has been agreed for the Pacific Highway Upgrade - Kempsey to Eungai Project which involved the clearing of 0.5Ha of Endangered Ecological Community.

As detailed in the Hairy Joint Grass Offset Package, the RTA remains committed to developing, documenting and successfully implementing the Offset Package in consultation with DECCW, DoP and Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA). Consultation with DECCW and DEWHA was undertaken during the development of the Offset Package, with records of consultation included in the final document submitted to DoP. Recent correspondence from DECCW to DoP and RTA, noting that Hairy Joint Grass Offset Package process needed to move forward is also noted.

In this regard, and as previously advised, the project ecologist Dr Andrew Benwell, has identified that in order to maximise the chance of translocation success, and based on current site climatic / seasonal conditions, the translocation works are required to be undertaken now, ie., during early November 2010. If this seasonal opportunity is missed, the translocation works would be delayed by 12 months until the next appropriate season, delaying this critical project. Due to these restricted timeframes, it would be appreciated if the Department could approve this requested modification as soon as possible; and, approve the translocation of the Hairy Joint Grass as per the Offset Package in accordance with that modification.

Should you require further information regarding this matter, please contact the RTA's Senior Project Manager, Strategic Projects Mr Peter Borrelli in the first instance on 02 6640 1022.

Yours faithfully



Robert (Bob) Higgins
General Manager, Pacific Highway

2/11/10

Request to modify a major project



NSW GOVERNMENT
Department of Planning

Date duly made: **2 / 11 / 2010**

Modification No. **07_0051 MOD 2**

1. Before you lodge

This form is required under section 75W of the *Environmental Planning and Assessment Act 1979* (the Act) in order to request the Minister to modify the Minister's approval to carry out a project or concept plan to which Part 3A of the Act applies.

Before making this request, it is recommended that you first consult with the Department of Planning (the Department) concerning your modification. The Director-General may issue environmental assessment requirements that must be complied with before your request will be considered by the Minister. If the changes proposed by the modification will result in a project that is consistent with the existing approval, the Minister's approval for a modification is not required.

Disclosure Statement

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Note: For more details about political donations disclosure requirements, including a disclosure form, go to www.planning.nsw.gov.au/donations.

Lodgement

All modification requests must be lodged with the Director-General of the Department of Planning, by courier or mail. An electronic copy should also be e-mailed to the assessment contact officer assigned to the project.

NSW Department of Planning
Ground floor, 23-33 Bridge Street, SYDNEY NSW 2000
GPO Box 39 SYDNEY NSW 2001
Phone 1300 305 695

2. Details of the proponent

Company/organisation/agency

ABN

NSW Roads and Traffic Authority

64480155255

☐ Mr ☐ Ms ☐ Mrs ☐ Dr ☐ Other

First name

Family name

Position

STREET ADDRESS

Unit/street no.

Street name

21

Prince Street

Suburb or town

State

Postcode

Grafton

NSW

2640

POSTAL ADDRESS (or mark 'as above')

PO Box 576

Suburb or town

State

Postcode

Grafton

NSW

2460

Daytime telephone

Fax

Mobile

02 6640 1022

02 6604 9380

0407 254 363

Email

peter_borrelli@rta.nsw.gov.au

3. Identify the land

STREET ADDRESS (where relevant)

Unit/street no.

N/A

Street or property name

Pacific Highway

Suburb, town or locality

Tintenbar to Ewingsdale

Postcode

2478

Local government area(s)

Ballina, Byron

State Electorate(s)

Ballina

REAL PROPERTY DESCRIPTION

As Tintenbar to Ewingsdale EA, Aug 2008

Note: The real property description is found on a map of the land or on the title documents for the land. If you are unsure of the real property description, you should contact the Department of Lands.

Please ensure that you place a slash (/) to distinguish between the lot, section, DP and strata numbers. If the proposed modification applies to more than one piece of land, please use a comma to distinguish between each real property description.

OR: detailed description of land attached: ☐

MAP: A map of the site and locality should also be submitted with this request.

4. Details of the original major project or concept plan

Briefly describe what the original approval allows

The construction and operation of an approximately 17 km four lane divided carriageway, comprising a tunnel, six twin bridges, three underpasses, a half interchange and upgrading an existing interchange, referred to as the Pacific Highway Upgrade - 'Tintenbar to Ewingsdale' Project.

What was the original project application no.?

07_0051

What was the date of the approval?

29 Jan 2010

What was the original application fee?

N/A

Note: Clause 245K of the *Environmental Planning and Assessment Regulation 2000* provides information on calculating the maximum fee for a request for modification.

5. Describe the modification you propose to make to the approval

Describe the proposed modification

As per RTA's Letter dated 2 November 2010, our reference: M2941 (16.2) GM to allow translocation of threatened species prior to construction.

Your modification request may need to be accompanied by an Environmental Assessment, including plans. An electronic and hard copy of this document will be required.

ESTIMATED CAPITAL INVESTMENT VALUE

Please indicate the estimated capital investment value (CIV) of the modification to the project approval or concept plan (excluding GST).

\$N/A

FULL TIME EQUIVALENT JOBS

Please indicate the number of jobs created by the proposed modification. This should be expressed as a proportion of full time equivalent (FTE) jobs over a full year.

Construction jobs (FTE)

N/A

Operational jobs (FTE)

N/A

6. Landowner's consent (where required)

As the owner(s) of the above property, I/we consent to this request being made by the proponent:

Land

N/A

Signature

Name

Date

Land

N/A

Signature

Name

Date

Note: Under Clause 8F of the *Environmental Planning and Assessment Regulation 2000* (the Regulation), certain applications for approval under Part 3A of the Act do not require consent of the landowner, however, the proponent is required to give notice of the application (e.g. linear infrastructure, mining & petroleum projects, and critical infrastructure).

7. Political donation disclosure statement

Persons making a request to modify a project or concept plan are required to declare reportable political donations (including donations of or more than \$1,000) made in the previous two years.

Have you attached a disclosure statement to this request?

☒ Yes

☐ No

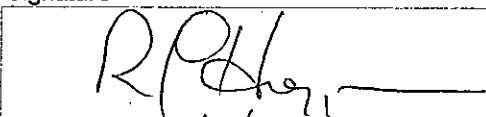
Note: For more details about political donations disclosure requirements, including a disclosure form, go to www.planning.nsw.gov.au/donations.

8. Proponent's signature

As the proponent(s) of the project and in signing below, I/we hereby:

- provide a description of the modification to the project approval or concept plan and address all matters required by the Director-General pursuant to Section 75W of the Act, and
- declare that all information contained within this form is accurate at the time of signing.

Signature



Name

2/11/10

In what capacity are you signing if you are not the proponent

General Manager, Pacific Highway

Robert (Bob) Higgins

Date

2 November 2010

Name, if you are not the proponent