



**MODIFICATION REQUEST:**  
***Pacific Highway Upgrade***  
Tintenbar to Ewingsdale



***Modification request to modify the definition of an ancillary facility and the approval process for minor ancillary facilities. (07\_0051 MOD 3)***

Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*  
November 2012

Cover Photo - Ongoing works at the main site compound [RMS Aug 2012]

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Published October 2012  
NSW Department of Planning & Infrastructure  
[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

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## EXECUTIVE SUMMARY

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The Pacific Highway Upgrade – Tintenbar to Ewingsdale Project (07\_0051) was approved by the then Minister for Planning in January 2010 under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act). The Approved project, referred to as the Tintenbar to Ewingsdale section of the Pacific Highway upgrade, is approximately 16.3 kilometres in length, starting at the northern end of the Ballina bypass at Ross Lane and extending to the Ewingsdale interchange.

Construction of the project commenced in mid 2012 and is expected to be completed by March 2014.

The Roads and Maritime Services (RMS) has submitted a modification request (07\_0051 MOD 3) under section 75W of the Act to modify the definition of an ancillary facility and the approval process for minor ancillary facilities. The modification is proposed to be consistent with current best practice management and to reflect more recent Roads and Maritime Service project approvals, such as Oxley Highway to Kempsey, Warrell Creek to Urunga and the M5 West Widening projects.

The modification request was forwarded to the Department of Primary Industries, Rous Water and the Environment Protection Authority. The Environment Protection Authority did not object to the modification request.

The Department has undertaken a comprehensive assessment of the modification request and considers the modification to be acceptable. The Department is satisfied that the modification request is justified and therefore has recommended its approval.

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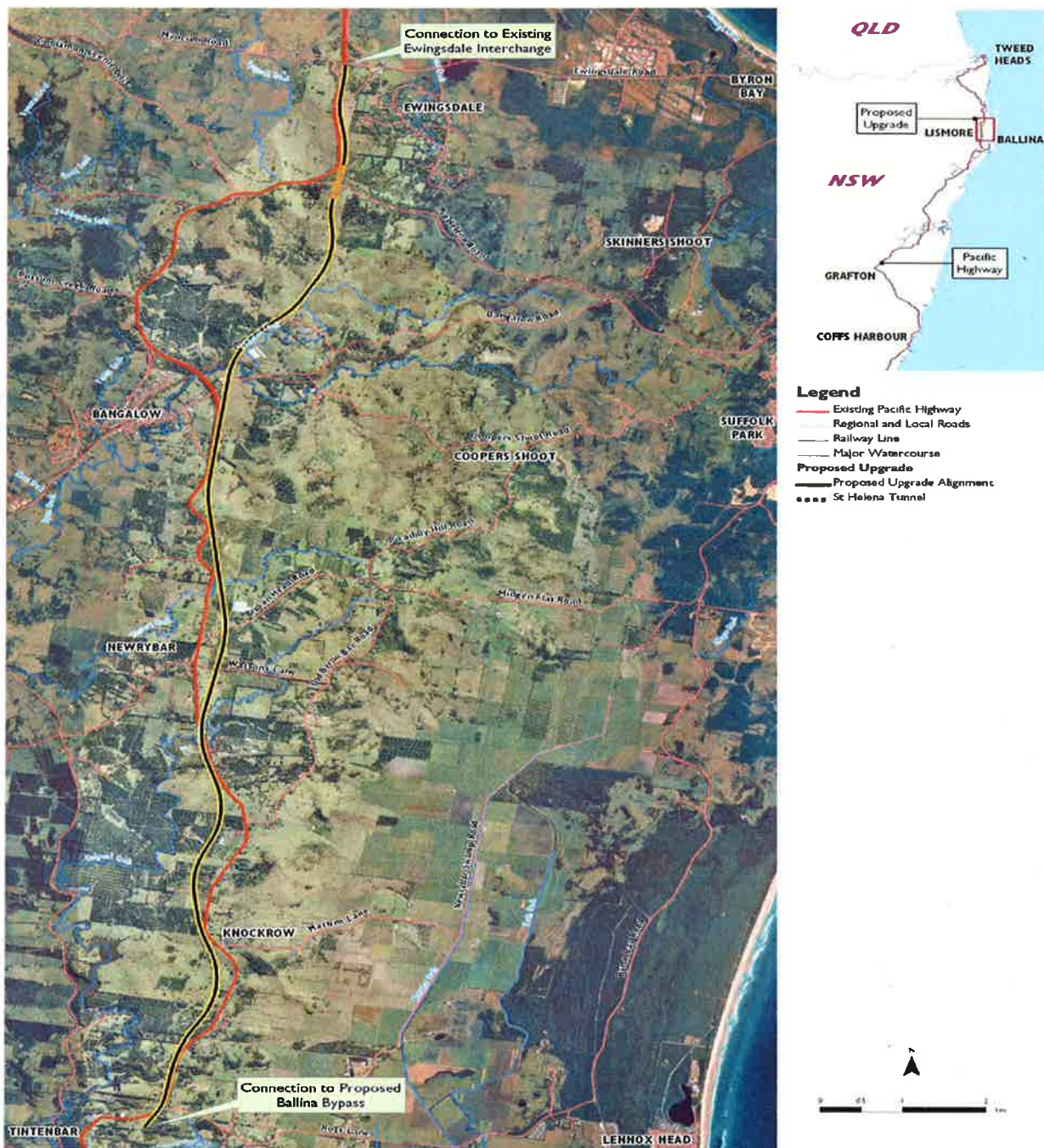
## 1. BACKGROUND

The Pacific Highway Upgrade – Tintenbar to Ewingsdale Project (07\_0051) was approved by the then Minister for Planning in January 2010 under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act). The Approved project, referred to as the Tintenbar to Ewingsdale section of the Pacific Highway upgrade, is approximately 16.3 kilometres in length, starting at the northern end of the Ballina bypass at Ross Lane and extending to the Ewingsdale interchange.

Construction of the project commenced in May 2012 and is expected to be completed by March 2014.

The project location and layout is shown in Figure 1.

**Figure 1: Project Location**





The project was modified in July 2010 (MOD 1) to extend the hours in which construction of the tie-in with the Ballina bypass can take place, and in November 2010 (MOD 2) to modify the definition of construction to permit certain pre-construction activities.

The project traverses mostly rural land uses between Tintenbar and Ewingsdale. The Project is designed to separate local traffic and highway traffic by providing a continuous alternative local road link. However the project runs in close proximity to Bangalow and Ewingsdale Townships.

## 2. PROPOSED MODIFICATION

### 2.1 Modification Description

The Roads and Maritime Services (the proponent) has submitted a request (07\_0051 MOD 3) under section 75W of the Act to modify the definition of ancillary facilities and the approval process for minor ancillary facilities. Essentially RMS proposes to utilise the ER for approval of minor ancillary facilities (e.g. lunch sheds) instead of the Director General. The RMS also requests the removal of material stockpile areas from the definition of an ancillary facility in schedule 2.

Under condition 2.26, the Director General's approval is required for ancillary facilities (including material stockpiles) that do not comply with the locational criteria (criteria 2.26 (a) be located more than 100 metres from a waterway). The construction of the project will require the removal, temporary storage and movement of approximately 3 million cubic metres of material, consequently there will be a requirement for numerous temporary material stockpiles in the project footprint. Under the current definition of ancillary facilities the majority of these stockpile areas would require the Director General's approval under condition 2.26 due to the nature of the land use and topography within the project corridor. The proposed revised schedule 2 definition is:

Ancillary facility	Temporary facility for construction, including for example an office and amenities compound, construction compound, batch plant (concrete or bitumen), materials storage compound, maintenance workshop, or testing laboratory.
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In addition, the RMS proposes to modify the approval process for minor ancillary facilities such as lunch sheds, office sheds and portable toilet facilities that do not meet the condition 2.26 locational criteria and therefore would require the Director General's approval. The RMS considers that the environmental management measures in the Construction Environmental Management Plan for the project are sufficient to manage the low environmental and community risks from these minor ancillary facilities. The RMS proposes the following additional requirements for minor ancillary facilities:

*The Director General's approval is not required for minor ancillary facilities (e.g. lunch sheds, office sheds, and portable toilet facilities) that do not comply with the criteria set out in condition 2.26 of this approval and which:*

- (a) *are located within an active construction zone within the approved project footprint; and*
- (b) *have been assessed by the Environmental Representative to be –*
  - i) *of low amenity risk to surrounding residences, with consideration to matters such as noise and vibration impacts, traffic and access impacts, dust and odour impacts, and visual (including light spill) impacts, and*
  - ii) *of low environmental risk in respect to waste management and impacts on flora and fauna, soil and water, and heritage; and*
- (c) *have environmental and amenity impacts that can be managed through the implementation of environmental measures detailed in a Construction Environment Management Plan for the project.*

The Department notes Condition 6.1 of the project approval defines the role of the Environmental Representative (ER) as being the principal point of contact for environmental advice. The ER for the project has been endorsed by the Director General

The RMS considers that these modifications would result in a more streamlined approach to the management of material stockpiles and minor ancillary sites during the construction of the project.

### **3. STATUTORY CONTEXT**

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#### **3.1 Modification of the Minister's Approval**

In accordance with clause 3 of schedule 6A of the Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by schedule 6A, continues to apply to transitional Part 3A projects.

Section 75W of the Act provides that a proponent can request the Minister to modify the approval of the project. The Minister's approval is not required if the project, as modified, will be consistent with the original approval. The subject modification is not consistent with the approval, but would not result in a radical transformation and therefore a modification in accordance with section 75W of the Act is considered appropriate.

Consequently, this report has been prepared in accordance with the requirement of Part 3A and associated regulations, and the Minister (or his delegate) may approve or disapprove of the carrying out of the project under section 75W of the Act.

#### **3.2 Delegated Authority**

On 14 September 2011, the Minister delegated his powers and functions under section 75W of the Act to the Directors in the Major Projects Assessment division where:

- The relevant local council has not made an objection and;
- A political disclosure statement has not been made; and
- There are less than 10 public submissions in the nature of objections.

The proposal satisfies all of the above criteria as no submissions were received from the public, Byron Shire Council and Ballina Shire Council have not objected to the modification request and there has been no political disclosure statements made for this application or for any previous related applications.

Accordingly the application is able to be determined by the A/Director, Infrastructure Projects under delegated authority.

### **4. CONSULTATION AND SUBMISSIONS**

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In accordance with section 75W of the Act and clause 8G of the EP&A Regulation, the modification request was made available on the Department's website:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5618](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5618)

Due to the minor nature of the proposed modification, the modification request was not exhibited by any other means.

The modification request was referred to the Environment Protection Authority (EPA), the Department of Primary Industries (DPI) Fisheries and Rous Water. The EPA recommended consultation be undertaken with appropriate agencies in assessing the risks and impacts of minor ancillary facilities. No comment was received from DPI or Rous Water.

## 5. ASSESSMENT

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The Department has considered the modification request, the EPA's comments and RMS' response.

Condition 2.26 lists the criteria for the location of ancillary facilities, these are:

- (a) be located more than 100 metres from a waterway;
- (b) have ready access to the road network;
- (c) be located in areas of low ecological and heritage conservation significance (including identified Aboriginal cultural value), and will not require any significant clearing of native vegetation beyond that already required by the project;
- (d) be located on relatively level land;
- (e) be separated from the nearest residences by at least 200 metres (or at least 250 metres for a temporary batching plant and stockpiling sites);
- (f) be above the 20 ARI flood level unless a contingency plan to manage flooding is prepared and implemented;
- (g) not unreasonably affect the land use of adjacent properties;
- (h) provide sufficient area for the storage of raw materials to minimise, to the greatest extent practical, the number of deliveries required outside standard construction hours; and
- (i) not impact on heritage sites beyond those already impacted by the project.

Ancillary facilities that do not meet the criteria require the Director General's approval. In obtaining that approval, the proponent must demonstrate how environmental impacts are managed and mitigated.

The RMS has identified a need for material stockpiles and minor ancillary facilities (such as lunch sheds, office sheds and portable toilets) to be located along the project corridor during the construction phase. Because of the proximity to residences and watercourses and the topography within the project corridor, the RMS considers that a majority of the stockpiles and minor ancillary facilities would require the Director General's approval as they do not comply with one or more of the locational criteria. The RMS has proposed a streamlined assessment and approval process for stockpiles and minor ancillary facilities.

### **Material stockpile areas**

The construction of the project would require the excavation, temporary storage and movement of a large quantity of material, which would be temporarily stored within the project footprint. The definition of ancillary facilities in schedule 2 of the approval includes material stockpile areas. The RMS proposes the deletion of material stockpiles from the definition of ancillary facilities.

This would mean that material stockpile areas would not be subject to the condition 2.26 locational criteria. The RMS proposes an alternative assessment for material stockpiles, one that is similar to the recently approved Oxley Highway to Kempsey and the Warrell Creek to Urunga projects. The definitions of ancillary facilities under these approvals do not include material stockpiles. These approvals require a stockpile management protocol to be prepared and implemented to manage the stockpiling of material. The protocol would include measures to manage and minimise risks from the stockpiling of material on the environment and community. The RMS has committed to include a protocol in the Construction Environmental Management Plan (CEMP) to manage material stockpiles within the project corridor.



The Department notes that the temporary stockpiling of material within the project footprint forms part of earthworks construction and that given the surrounding land uses and topography of the area, compliance with the locational criteria for ancillary facilities would be difficult to achieve. The Department considers that the inclusion of a protocol in the CEMP to assess, manage and mitigate the impacts of stockpile areas is an appropriate procedure for locating material stockpile areas. The proposed change to the definition of ancillary facilities is also consistent with recent Pacific Highway Upgrade approvals, as is the development of a material stockpile area protocol. The EPA supports the proposal. The Department considers the change to the definition of ancillary facilities is justified and that the project's environmental management systems would appropriately manage potential stockpiling impacts on the environment and community.

### **Minor ancillary facilities**

The RMS considers that the approval process for minor ancillary facilities could be streamlined and has proposed additional assessment requirements for the location of minor ancillary facilities. The RMS considers that the additional assessment requirements, along with the implementation of measures in the project's environmental management systems would adequately manage the low environmental and community impacts of minor ancillary facilities.

The Department generally concurs with the RMS' assessment requirements, however during the course of the assessment the Department recommended, they be revised to refer to minimal impacts rather than low risks and to require no impacts on flora and fauna, soil and water and heritage beyond that approved for the project, to ensure that appropriate environmental outcomes are achieved. The revised assessment criteria require that minor ancillary facilities are:

- Located in the project footprint; and
- Have been assessed by the Environmental Representative (ER) to be of minimal amenity impact (in relation to noise and vibration, dust, etc.) and minimal environmental impact in relation to waste and to have no impacts on flora and fauna, soil and water, and heritage beyond those approved for the project; and
- Have environmental and amenity impacts that can be managed through the CEMP.

The EPA has recommended that the ER, in assessing the environmental and amenity risks for minor ancillary facilities, consult with relevant agencies, where necessary. The RMS does not consider that consultation with agencies is necessary as the proposed condition is similar to the condition for minor ancillary facilities in the M5 West Widening project, the modification request applies to minor ancillary facilities with minor environmental and amenity risks, the CEMP contains detailed mitigation measures to ensure potential risks are minimised and should the ER determine the proposal was not minor or required additional consultation, then the RMS, rather than the ER, should undertake the additional work/consideration. The RMS has committed to consult/inform agencies and the ER through the Environment Review Group (ERG) process that has been established for the project. The Department concurs with the RMS and notes that minor ancillary facilities are required to comply with all the requirements of the proposed condition, the ER has to be satisfied the facility has minimal environmental and amenity impacts, and the RMS' commitment to consult/inform agencies of proposed minor ancillary facilities through the ERG forum.

The Department has revised the condition to reflect the largely greenfields sites of the Pacific Highway Upgrade projects and to be consistent with the ER's functions under the approval. The ER's functions include the approval of activities which have minimal environmental impact, such as minor access roads and adjustments to services/utilities, as pre-construction. The Department considers that the extension of the ER's functions to the approval of minor ancillary facilities is consistent with the ER's role under the approval. The

ability for minor ancillary facilities that do not comply with the locational criteria to be considered and approved by the ER and managed by the approved CEMP would streamline the approval process for ancillary facilities and ensure residual impacts are managed and mitigated.

## 6. CONCLUSION AND RECOMMENDATIONS

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The Department has considered the modification request and is satisfied that that the changes to the definition of ancillary facilities and the approval process for minor ancillary facilities has minimal impacts on nearby receivers and the environment. The modification request is considered to be in the public interest through a more streamlined approach to the management of minor ancillary facilities and material stockpiles. The Department therefore recommends the approval of the modification request.

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