



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



***Modification request to modify condition
2.22 in regards to heritage sites H29 and
H39 (07_0051 MOD4)***

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

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

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EXECUTIVE SUMMARY

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 4) under section 75W of the Act to modify condition 2.22 in regards to heritage sites H29 and H39.

The modification request was referred to the Office of Environment and Heritage (Heritage Branch), who raised no objections on heritage grounds to the proposed modification.

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.

TABLE OF CONTENTS

1.	BACKGROUND	1
2.	PROPOSED MODIFICATION	2
	2.1 Modification Description	2
3.	STATUTORY CONTEXT	2
	3.1 Modification of the Minister's Approval	2
	3.2 Delegated Authority	3
4.	CONSULTATION AND SUBMISSIONS	3
5.	ASSESSMENT	3
6.	CONCLUSION AND RECOMMENDATIONS	3

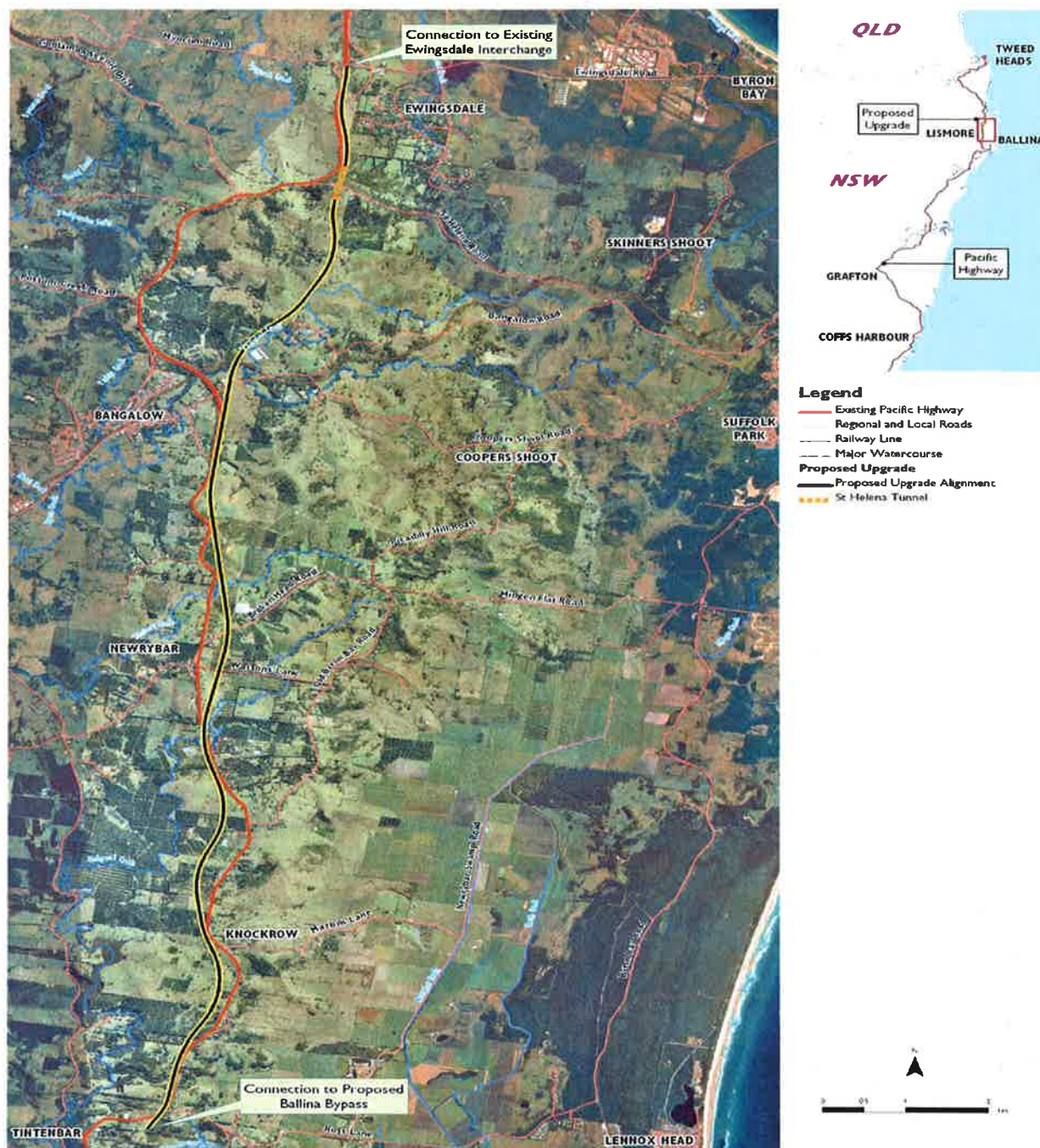
1. BACKGROUND

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 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.

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. In October 2012 the Roads and Maritime Services (RMS) lodged a modification request in relation to minor ancillary facilities (MOD 3).

2. PROPOSED MODIFICATION

2.1 Modification Description

The RMS (the Proponent) has submitted a request (07_0051 MOD 4) under section 75W of the Act to modify condition 2.22 to permit the removal of heritage sites H29 and H39.

These sites are currently protected under condition 2.22:

2.22 "The Proponent shall not destroy, modify or otherwise physically affect sites A8, H18, H29, H30, H38, and H39."

The two sites are located in close proximity to the project corridor and were assessed in the cultural heritage assessment component of the environmental assessment of the project. The sites were identified as a forestry stump (H29) and a glass and ceramic fragment scatter site (H39). The original heritage assessment considered these sites did not meet the criteria for heritage significance, however, they were included in condition 2.22 as sites which would not be impacted by the project.

Following detailed design, both sites will be impacted by the construction of the project, and the sites consequently need to be deleted from condition 2.22.

3. STATUTORY CONTEXT

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

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=5619

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 Office of Environment and Heritage (Heritage Branch), who raised no objections on heritage grounds to the proposed modification.

5. ASSESSMENT

The two sites H29 and H39 are located in close proximity to the road foot print, and, were documented and assessed in the cultural heritage assessment - Working Paper No. 9 Cultural Heritage Assessment as: -

SITE	DESCRIPTION
H29	"A forestry stump, reportedly of a teak tree, located on the Deenford Plantation property on the western side of the Pacific Highway at Knockrow. The stump is in poor condition and is now incorporated into the buttress roots of a large fig and camphor laurel tree. The tree was reportedly felled to provide timber for the floor of a nearby c1910 homestead. One springboard notch is evident on the stump approximately 1.3 m above ground level. The stump is approximately 2.5 m high and had an estimated original diameter of 1.5m."
H39	"A sparse scatter of late nineteenth and early to mid twentieth century glass and ceramic fragments located in a macadamia plantation on the eastern side of the Pacific Highway about two kilometres north of Newrybar. The materials exposed on the devegetated ground under the macadamia trees. This site is probably the scattered remains of a refuse area for a former farm house residence located nearby and upslope, probably adjacent to the east side of the current highway."

The original heritage assessment noted that some heritage sites would be destroyed as a result of the highway upgrade project, whilst others would be protected (this was addressed by the Department through condition 2.22). Both sites were assessed as falling beneath the

threshold for heritage significance under the NSW Heritage Office guidelines and considered to have 'little' heritage value, the close proximity of these sites to the road footprint was noted:

"Two heritage sites are situated in close proximity to proposed construction works and it may be necessary to remove or destroy them in order to facilitate construction or to comply with occupational health and safety or highway operational standards. These sites are H29 a forestry stump which now supports a living tree, and H39 a scatter of glass and ceramic fragments."

The Department notes the original 2010 heritage assessment continued to refer to the sites as heritage sites, despite concluding the sites were assessed as falling beneath the threshold for heritage significance, had little heritage significance and required no specific mitigation measures should they be impacted.

The more recent detailed design has confirmed the two sites would be impacted and/ or destroyed completely by the project. Site H29 is close to the road corridor and the original forestry stump has been incorporated into a live tree. The tree has no heritage significance and the Department notes that the Camphor Laurel is a class 4 noxious weed in the Ballina and Byron Shires. (For class 4 noxious weeds the growth of the plant must be managed in a manner that reduces its numbers, spread and incidence and continuously inhibits its reproduction and the plant must not be sold propagated or knowingly distributed). Construction of the project will result in the roots of the live tree being cut and damaged. Should the tree survive, its roots could cause long-term damage to the road pavement and the tree would require ongoing maintenance of the canopy to maintain clearance from the highway. It is therefore being removed in its entirety.

Site H39 consists of a scatter of broken glass and ceramic artefacts visible on the exposed ground underneath rows of macadamia plantings. The former land owner has advised the area has undergone substantial disturbance during the establishment of the macadamia plantation and regular weed removal and soil profiling works. The RMS states that because of the level of disturbance and damage to the site, it has no archaeological value.

The Department acknowledges the proximity of the sites to the road corridor, has considered the revised information provided by the proponent and is of the view that impacts to, and removal of these two sites would not result in any heritage impacts to items of local or state significance.

The Department considered the information provided for this modification and proponent's original 2010 technical heritage assessment, and considers these documents already constitute an appropriate record for these sites. As such the Department has not recommended any additional requirements to be undertaken in relation to the sites prior to their removal but notes the proponent has committed to undertake a photographic record of the tree and tree stump (H29).

6. CONCLUSION AND RECOMMENDATIONS

In conclusion, the Department is satisfied that the proposed removal of two sites H29 and H39 would benefit the construction and management of the project and would not result in any heritage impacts to items of local or state significance. The two sites were assessed as having no heritage significance under the Heritage Council of NSW's guidelines and that the artefact scatter has no archaeological value due to previous disturbance and damage from existing land uses. The Department recommends approval of the modification to allow the removal of sites H29 and H39.

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