



***MODIFICATION REQUEST:
Pacific Highway Upgrade
Oxley Highway to Kempsey***



Modification request to modify the approval process for minor ancillary facilities. (07_0090 MOD 1)

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

Cover Photograph: View of existing Pacific Highway (RTA)

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EXECUTIVE SUMMARY

The Pacific Highway Upgrade – Oxley Highway to Kempsey Project (07_0090) was approved by the Minister for Planning and infrastructure on 8 February 2012 under the then Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act). The Approved project, referred to as the Oxley Highway to Kempsey section of the Pacific Highway upgrade, is approximately 37.8 kilometres of four lane divided carriageway between the Oxley Highway at Port Macquarie and the Kempsey bypass.

Geotechnical investigations are underway and the detailed design of the Kundabung to Kempsey section of the project is expected to be completed in early 2013.

The Roads and Maritime Services (RMS) has submitted a modification request (07_0090 MOD 1) under section 75W of the Act to modify 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 the M5 West Widening project and recent modification to the Tintenbar to Ewingsdale project.

The modification request was forwarded to the Environment Protection Authority, to which no objection was raised.

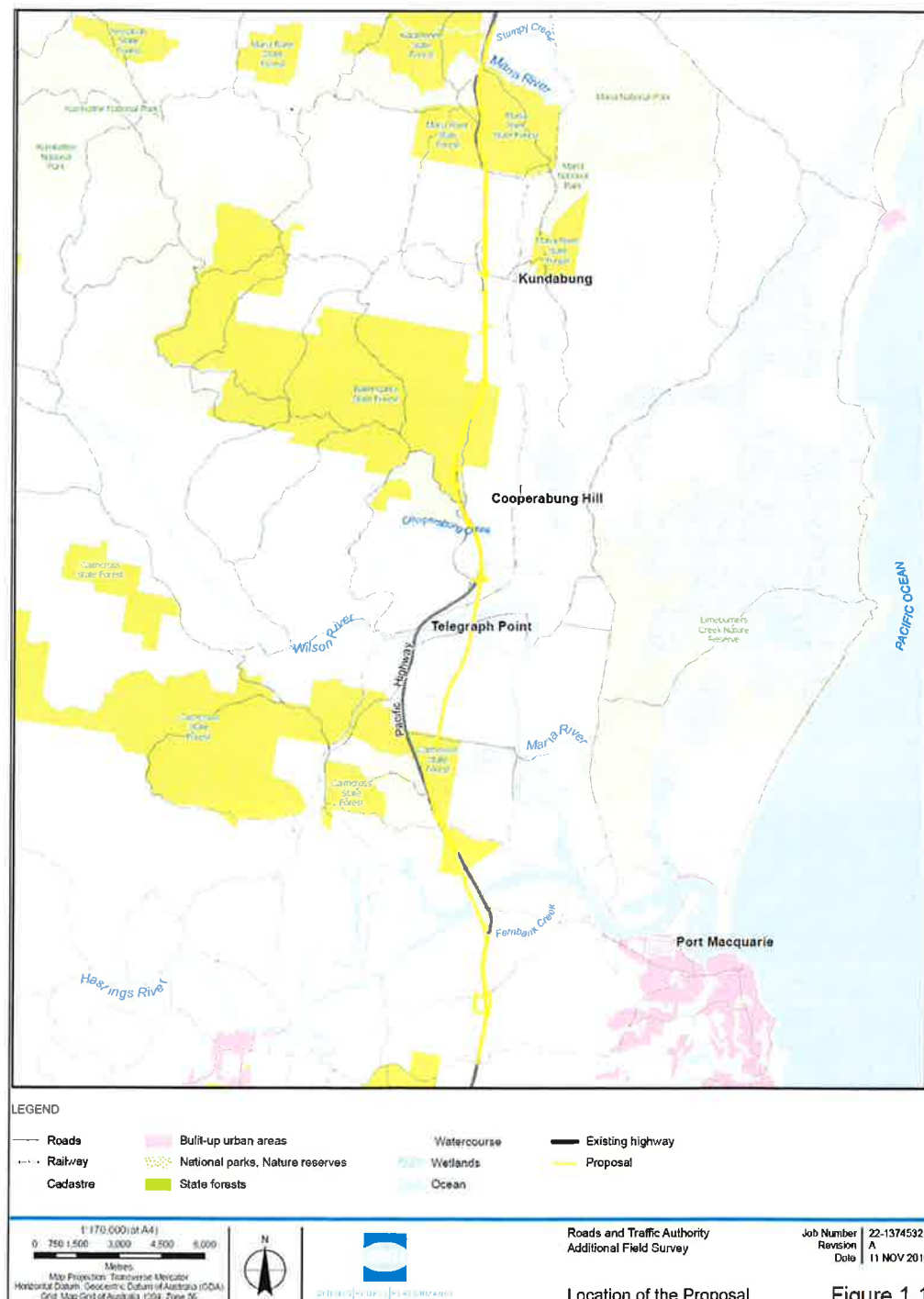
The Department has undertaken a comprehensive assessment of the modification request and considers the modification to be acceptable. The Department is satisfied that the modification request is justified and therefore has recommended its approval.

1. BACKGROUND

The Pacific Highway Upgrade – Oxley Highway to Kempsey Project (07_0090) was approved by the then Minister for Planning and Infrastructure on 8 February 2012 under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act). The Approved project, referred to as the Oxley Highway to Kempsey section of the Pacific Highway upgrade, is approximately 37.8 kilometres of four lane divided carriageway between the Oxley Highway at Port Macquarie and the Kempsey bypass, in the Port Macquarie – Hastings and Kempsey local government areas.

The project location and layout is shown in Figure 1.

Figure 1: Project Location



This is the first proposed modification to the Oxley Highway to Kempsey project since its approval.

Geotechnical investigations are underway and the detailed design of the 14 kilometre section between Kundabung and Kempsey is expected to be completed in early 2013.

The project traverses mostly rural and rural-residential land uses between Port Macquarie and Kundabung. The villages of Telegraph Point and Kundabung are bypassed and the upgraded highway crosses the Wilson and Hastings rivers in new corridors across the floodplains.

2. PROPOSED MODIFICATION

2.1 Modification Description

The Roads and Maritime Services (RMS) has submitted a request (07_0090 MOD 1) under section 75W of the Act 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 C28 locational criteria and therefore would require the Director General's approval. Essentially, the RMS proposes to utilise the Environmental Representative (ER) for approval of minor ancillary facilities (e.g. lunch sheds, etc.) instead of the Director General. The RMS considers that environmental management measures in the Construction Environmental Management Plan for the project will be 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 C28 of this approval and:

- (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 Environmental Management Plan for the project.*

The RMS considers that the modification would result in a more streamlined approach to the management of minor ancillary sites during the construction of the project.

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, Port Macquarie–Hastings Council and Kempsey 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/page/project-sectors/transport--communications--energy---water/roads/?action=view_job&job_id=5646

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), to which no objection was raised.

5. ASSESSMENT

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

The location of ancillary facilities is guided by condition C28, which specifies criteria for their location. Ancillary facilities that do not meet the criteria are required to be approved by the Director General. In seeking the Director General's approval, the RMS is required to assess the proposed ancillary facility against these criteria and demonstrate how impacts would be managed and mitigated. Condition C28 is reproduced below:

Unless other wise approved by the director general in accordance with this condition, the sites for ancillary facilities (except stockpiles) associated with the construction of the project shall:

- be located more than 50 metres from a waterway;*
- have ready access to the road network or direct access to the construction corridor;*
- be located in areas of low ecological significance and require minimal clearing of native vegetation (not beyond that already required by the project);*
- be located on relatively level land;*
- be separated from the nearest residences by at least 200 metres (or at least 300 metres for a temporary batching plant);*

- (f) not unreasonably affect the land use of adjacent properties;
- (g) be above the 20 ARI flood level unless a contingency plan to manage flooding is prepared and implemented;
- (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) be located in areas of low heritage conservation significance (including identified Aboriginal cultural value) and not impact on heritage sites beyond those already impacted by the project.

Ancillary sites identified that do not meet the above criteria shall be assessed against this criteria to demonstrate how any impacts can be mitigated and managed to acceptable standards (including demonstrating consistency with project impacts identified in the documents listed under condition A1, to the satisfaction of the Director General. Such assessment can be submitted separately or as part of the Construction Environmental Management Plan (CEMP) required under condition B30.

The RMS considers that the approval process for minor ancillary facilities that do not meet the criteria could be streamlined and has proposed additional assessment requirements for the assessment 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 considers they should 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 Department 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 that impacts can be managed through the CEMP. The proposed approval role for the ER is considered to be consistent with the ER's functions under condition B29, which includes being the principle point of contact for environmental advice, monitoring the project's environmental management plans and programs, approving minor amendment to such plans and programs, and being able to stop work and require actions be taken to avoid or address adverse environmental impacts. In addition, the ER has an approval role under the project approval for pre-construction activities with minimal environmental impacts, such as minor access roads and adjustments to services/utilities. The Department considers the extension of the ER's functions to the approval of minor ancillary facilities would be consistent with the ER's role under the approval.

The Oxley Highway to Kempsey project is not yet at the construction stage and does not have an approved ER. Notwithstanding, the Department considers that the modification to allow the ER to approve minor ancillary facilities is consistent with the ER's functions under the approval, more recent RMS road approvals, and would streamline the approval process for ancillary facilities and ensure that residual impacts are managed and mitigated. Additionally, the Department notes the existing conditions of approval require the ER to be approved by the Director General.

6. CONCLUSION AND RECOMMENDATIONS

The Department has considered the modification request and is satisfied that that the changes to the approval process for minor ancillary facilities would have 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. The Department therefore recommends the approval of the modification request.

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