



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



***Amendment to heritage management
conditions***

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

November 2013

Cover Photo – Wilson River excavation [Environmental Assessment. GHD 2011]

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Published November 2013
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

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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 project is approximately 37.8 kilometres of four lane divided carriageway between the Oxley Highway at Port Macquarie and the Kempsey bypass, and is situated in the Port Macquarie-Hastings and Kempsey local government areas. The project location and layout is shown in **Figure 1**.

The project has previously been modified to allow minor ancillary facilities (lunch sheds, office sheds and portable toilet facilities) which do not comply with the locational criteria for ancillary facilities (condition C27) to be assessed and approved by the Environmental Representative (ER) (07_0090 MOD1).

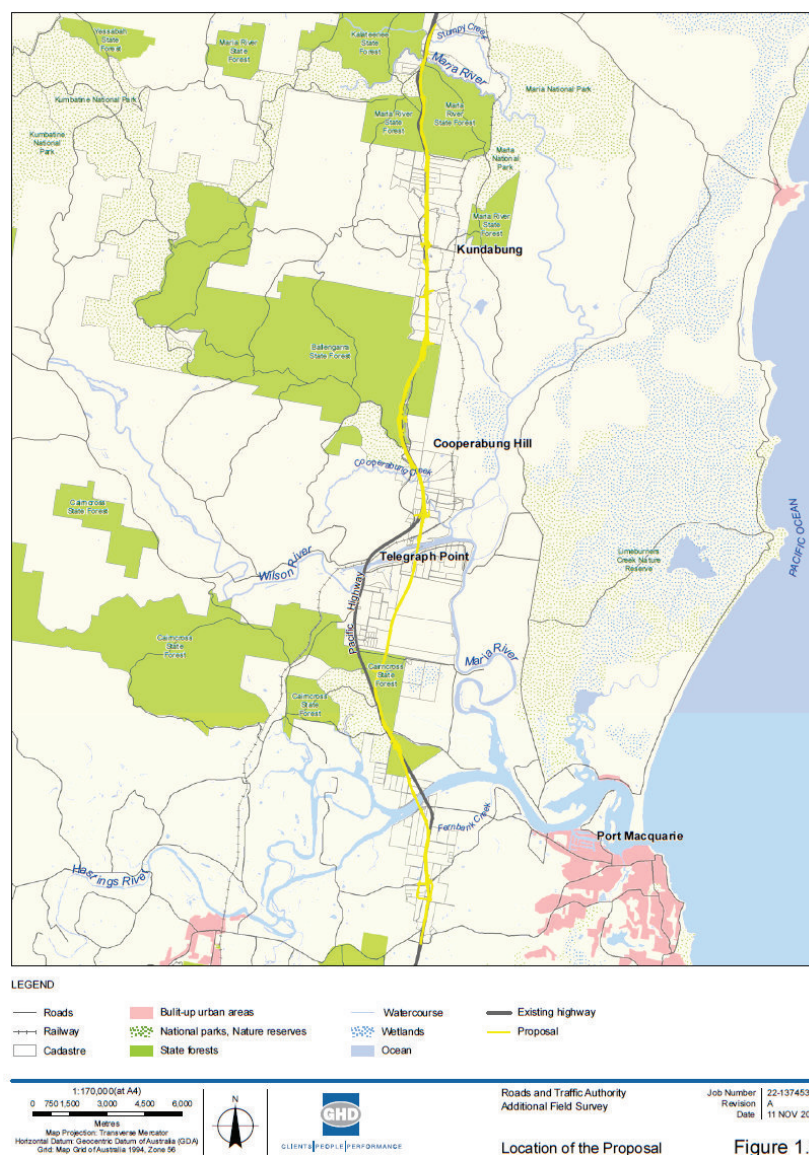


Figure 1 Project layout (Source: Submissions Report Appendix B — GHD 2011)

2. PROPOSED MODIFICATION

The Roads and Maritime Services (RMS) has submitted a request (MP06_0293 MOD 7) under section 75W of the Act, seeking a modification to the Minister's approval to amend management measures for heritage items impacted and potentially impacted by the project.

2.1 Amendment of condition C14

RMS seeks to amend condition C14 to allow management of heritage items in accordance with the approved EA. The text of condition C14 is included below.

C14 This approval does not allow the Proponent to destroy, modify or otherwise physically affect any heritage items or human remains.

RMS asserts that condition C14 unnecessarily restricts impacts on heritage items. RMS notes that the approved project allows specified impacts to heritage items in certain circumstances listed in the conditions of approval. Further, RMS reiterates that the heritage impacts of the project were evaluated as part of the approved Environmental Assessment, including preparation of Aboriginal and non-Indigenous heritage impact assessments and commitment to avoidance and mitigation measures. Consequently, RMS requests that condition C14 be amended to remove reference to 'heritage items'.

2.2 Amendment of condition B18

RMS also seeks to amend condition B18 to allow archaeological testing (and, where required, salvage) at a number of Aboriginal sites. The text of condition B18 is included below.

B18 Prior to the commencement of pre-construction and construction in Aboriginal sites OHK46/A, OHK47/A, OHK54/A, OHK90/A, OHK91/A and OHK219/A, the Proponent shall undertake the relevant salvage mitigation measures outlined in section 19.4.1 of Volume 1 of the EA for these sites.

The results of the salvage program shall be provided to the Department, the OEH and Aboriginal stakeholders within six months of the completion of the salvage program, unless otherwise agreed by the Director General.

RMS has undertaken salvage of the six listed sites, and considers that condition B18 maintains appropriate controls on the conduct of salvage operations, while providing additional flexibility in construction scheduling by allowing pre-construction salvage works. RMS seeks to modify condition B18 to allow pre-construction salvage to occur at two sites not listed in condition B18. Following approval of the project, RMS has undertaken detailed survey of the project footprint, and identified additional investigations are required at a site adjacent to Pipers Creek (the Pipers Creek PAD). At this stage, RMS considers it is likely that investigations will identify a need for salvage at the Pipers Creek PAD. RMS has also identified need for salvage at a previously identified site, known as OHK85. Consequently, RMS requests that condition B18 be amended to

include the Pipers Creek PAD and OHK85 in the list of sites that may be salvaged prior to construction, in accordance with the condition.

2.3 Definition of construction

RMS seeks amendment of the definition of construction. The text of the definition of construction is included below.

<i>Construction</i>	<p><i>Includes all work in respect of the project other than:</i></p> <ul style="list-style-type: none"> <i>a) survey; acquisitions; or building/ road dilapidation surveys.</i> <i>b) fencing; investigative drilling, excavation or salvage; work undertaken in accordance with a strategy or salvage operation required by the conditions of this approval; or minor clearing or translocation of native vegetation.</i> <i>Note - work where heritage, threatened species, populations or endangered ecological communities would be affected is classified as construction, unless otherwise approved by the Director General in consultation with the EPA.</i> <i>c) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads and adjustments for services/ utilities, etc).</i>
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RMS seeks to include a new point d): 'establishing ancillary facilities in locations meeting the criteria stated in these Conditions or otherwise agreed by the Director-General.' RMS asserts that this would allow establishment of establishment of ancillary facilities prior to commencement of construction where such work would be of minor environmental impact, or otherwise has the agreement of the Director-General.

2.4 Correction of minor errors and misdescriptions

Finally, RMS also seeks to amend a typographical error in conditions B16, C7 and C16. The amendment would clarify that these conditions refer to condition B31, specifying the contents of sub plans required as part of the project Construction Environmental Management Plan.

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 may request the Minister to modify the approval of a transitional Part 3A 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 does not constitute a project in its own right, and therefore a modification in accordance with section 75W of the Act is considered appropriate.

3.2 Delegated Authority

An application to modify a transitional Part 3A project approval may be determined by the Director, Infrastructure Projects of the Department of Planning and Infrastructure under delegation from the Minister for Planning and Infrastructure, dated 4 April 2013, where the local council does not object, a political disclosure statement has not been made in relation to the application, and less than 10 objections are received. This proposed modification meets the terms of this delegation, and may be determined by the Director, Infrastructure Projects of the Department of Planning and Infrastructure.

4. CONSULTATION AND SUBMISSIONS

Under Section 75X(2)(f) of the Act, the Director General is required to make the modification request publicly available. Accordingly, the Department placed a copy of the modification request on its website. The Department also consulted with the NSW Office of Environment and Heritage (Heritage Division) on the proposed amendment of condition C14. The Heritage Division indicated its support for the proposal.

5. ASSESSMENT

5.1 Amendment of condition C14

At present, condition C14 purports to restrict all impacts on heritage items and human remains. RMS requests that the restrictions in condition C14 should, instead, be expressly limited to human remains. It is claimed that this would clarify the ability of the proponent to manage heritage impacts (including management of unexpected heritage finds) in accordance with the approved EA for the project.

As noted at Section 2.1 above, RMS asserts that it has undertaken a sufficient level of assessment of Aboriginal heritage impacts to allow management of those impacts during construction and operation of the project. On this point, RMS notes that the Oxley Highway to Kempsey project EA provided an assessment of Aboriginal and non-Aboriginal heritage impacts. The assessment was informed by a number of specialist studies, which notably includes:

- **An Aboriginal cultural heritage assessment prepared by GHD for the proponent (this document was included in the EA as the Aboriginal Heritage Working Paper)**
The assessment identified five areas of cultural sensitivity and ten Aboriginal heritage sites that would be impacted either directly or indirectly by construction of the project.
- **A non-Indigenous heritage impact assessment prepared by Peter Kuskie and Christopher Carter (South East Archaeology Pty Limited) for the proponent (the department notes this document was not included in the EA)**
A summary of the non-Aboriginal heritage impacts of the project was provided in section 20.2 of the EA. The assessment identified five items of heritage significance, one of which, the Marla River bridge (OHK14), is considered of State significance.

Following submission of the EA, the then-Heritage Branch of the Office of Environment and Heritage (the Heritage Division) requested further details of the non-Indigenous heritage impact assessment provided for the project. Subsequently, a copy of the report was provided to the Heritage Branch, which provided comments regarding the proponent's assessment of non-Indigenous heritage and draft conditions of approval. These comments were addressed, as detailed in the Director-General's environmental assessment report for the project.

Further, RMS notes that, given certain project approval conditions allow specific impacts on listed sites, condition C14 appears to contradict the balance of the conditions of approval. The project approval contains a number of conditions relating to management of non-Indigenous heritage items and relics. For instance, condition C15 prohibits the proponent from destroying, modifying or otherwise physically affecting the Marla River bridge, unless otherwise agreed by the Director General (the department proposes to retain condition C15). Finally, condition B31(e) requires the proponent to prepare and implement a construction heritage management sub-plan as part of the construction environmental management plan. This sub-plan must include management measures for recorded Aboriginal and non-Aboriginal heritage sites and potential Aboriginal deposits, and procedures for dealing with previously unidentified heritage objects. The construction heritage management sub-plan has not yet been submitted to the department for approval.

Department's consideration

The department supports the proposed modification, subject to exclusion of works outside the approved project footprint, as these impacts were not envisaged and assessed in the EA or the non-Indigenous heritage impact assessment report undertaken by South East Archaeology Pty Limited.

Heritage impacts within the approved project footprint — previously assessed impacts

The department notes that, in a general sense, the approval for this project provides RMS with the ability to undertake construction and operation of the project within a defined project footprint (the 'approved project footprint'). The approved project footprint includes the road alignment and a defined adjacent area. The department notes that (but for condition C14) the approval allows certain impacts on heritage items to occur within the approved project footprint, provided an adequate assessment of those impacts was undertaken.

The department agrees that RMS has generally undertaken an adequate assessment of the Aboriginal and non-Aboriginal impacts within the approved project footprint. It is acknowledged that the approved EA contains an assessment of heritage impacts within the approved project footprint. The department considers that heritage impacts within the approved project footprint were assessed as part of the EA, and notes the proponent is bound to implement the heritage management procedures outlined in the EA.

The department does note, however, that while the proponent has undertaken an adequate assessment of non-Indigenous heritage impacts, the non-Indigenous heritage impact assessment report undertaken by South East Archaeology Pty Limited was not included in the project EA. As a result, the report has not been incorporated into the project approval. The department, therefore, recommends that approval of this modification request be made

subject to incorporation of the non-Indigenous heritage impact assessment report in the project approval.

The department reiterates that all impacts within the approved project footprint will be managed in accordance with the construction heritage management sub-plan (once approved), and other relevant requirements under the conditions of approval. The department notes that condition B31(e) requires all heritage management procedures during construction to be contained in the construction heritage management sub-plan, and that this sub-plan will require the approval of the Director-General prior to commencement of construction. The department considers that this sub-plan would, once approved, provide sufficient detail of required management measures, and provide certainty to the community that construction heritage impacts would be appropriately managed.

The department notes that some Aboriginal heritage impacts are allowed prior to approval of the construction heritage management sub-plan, under condition B18. The proponent's request to modify condition B18 concerns a proposal to extend allowance this to two additional sites.

The department is satisfied that the proponent should have the ability to impact on heritage items within the approved project footprint that have been identified and previously assessed.

Heritage impacts within the approved project footprint — unexpected finds

The department acknowledges that the project (as constructed) is also likely to result in impacts to previously unidentified heritage items (unexpected finds).

The department understands that the proponent has identified a previously unidentified non-Aboriginal heritage item, a bridge over Barrys Creek at Cooperabung, during the course of pre-construction surveys of the approved project footprint. The proponent asserts that demolition of this bridge is unavoidable, but has noted that no impacts to the bridge over Barrys Creek are proposed prior to construction.

The department notes that a Statement of Heritage Impact was prepared for the Barrys Creek Bridge by Niche Environment and Heritage (November 2012). The Statement of Heritage Impact concluded that the Barrys Creek Bridge is of local heritage significance. The department acknowledges that the proponent consulted with the Heritage Division of OEHL, which indicated that the Statement of Heritage Impact was comprehensive, and has committed to providing OEHL with archival recording of the bridge once completed.

The department is satisfied that impacts to unexpected heritage finds within the approved project footprint (including demolition and archival recording of the bridge over Barrys Creek) would be managed in accordance with the construction heritage management sub-plan (once approved). On this point, the department notes that condition B31(e) requires the sub-plan to include procedures for dealing with previously unidentified Aboriginal and non-Aboriginal objects.

Heritage impacts outside the approved project footprint

The department acknowledges that, in some circumstances, RMS will need to undertake work outside the approved project footprint. In many cases, the need for this work will be determined during construction. As an example, the department notes the Pacific Highway Upgrade projects commonly require establishment and operation of ancillary construction facilities (eg. stockpile sites, construction compounds, and concrete batch plants) outside the approved project footprint to facilitate road construction. The department accepts that heritage impacts may result, for example, from establishment and operation of these ancillary construction facilities. Consequently, the project approval provides the Director-General with the ability to approve minor additional environmental impacts (including heritage impacts) outside the project footprint.

To ensure such heritage impacts are appropriately assessed and managed, condition C28 of the project approval requires the Director-General to approve the establishment and operation of ancillary construction facilities that are not located:

'in an area of low heritage conservation significance (including identified Aboriginal cultural value) and [will] not impact on heritage sites beyond those already impacted by the project.'

Where this criterion is not met, the Director-General may only approve the ancillary construction facility when satisfied that RMS has detailed that those impacts can be mitigated and managed to acceptable standards. The department considers that condition C28 is the sole mechanism under the project approval for approving previously unassessed heritage impacts outside the approved project footprint.

The department considers that heritage impacts outside the approved project footprint are consistent with the project approval if:

- the Director-General agrees to or approves those impacts in accordance with a condition of approval (for example, by approving impacts on heritage objects as part of establishment and operation of an ancillary construction facility); or,
- the assessment and management of those heritage impacts has been incorporated into the project approval (by inclusion in the EA or by subsequent modification of the project approval).

The department considers that these approval pathways adequately provide for the assessment of additional heritage impacts outside the approved project footprint. Further, the department considers that these approval pathways provide sufficient opportunity to consult with relevant agencies (including the Office of Environment and Heritage) on the nature and extent of those additional heritage impacts. As a result, the department supports inclusion of a new condition C14A, to reiterate that these are the appropriate pathways for approval of any impacts outside the approved project footprint.

The department considers that, given the heritage controls contained in the project approval and outlined above, the current prohibition on destroying, modifying or otherwise physically affecting any heritage items may be removed while retaining heritage outcomes for the project.

5.2 Amendment of condition B18

At present, condition B18 allows salvage of a number of sites prior to pre-construction, provided these are undertaken in accordance with section 19.4.1 of the EA (Aboriginal heritage management plan - pre-construction). The six applicable sites are listed in the condition, and are OHK46/4, OHK47/A, OHK54/A, OHK90/A, OHK91/A and OHK219/A. RMS requests that condition B18 be amended to allow investigation and salvage at two additional sites, being the Pipers Creek PAD and OHK85.

RMS asserts that it has prepared adequate methodologies and committed to sufficient mitigation measures to ensure investigations and salvage can be completed with minimal environmental impacts. A methodology for investigation at these sites has been prepared for RMS by Kelleher Nightingale Consulting Pty Ltd (*Pacific Highway Upgrade – Oxley Highway to Kempsey: Aboriginal Archaeological Assessment and Artefact Salvage Methodology and Cultural Heritage Assessment Report* (September 2012) — 'the Kelleher Nightingale report'). Further, any salvage of these sites would be undertaken in accordance with the same controls adopted at OHK46/4, OHK47/A, OHK54/A, OHK90/A, OHK91/A and OHK219/A. RMS asserts that undertaking investigation and salvage of these sites under condition B18 would facilitate time savings in construction of the project, while ensuring those works would be conducted in accordance with the management measures in the approved EA.

Pipers Creek PAD site

As part of the EA, an area of potential archaeological significance was identified adjacent to Pipers Creek. This site, the Pipers Creek PAD site, comprised an area extending from the centre of the road alignment east beyond the proposed project footprint, and was assessed in the Aboriginal Heritage Working Paper. At the time of project approval, the impact on Pipers Creek PAD was limited to works within the project footprint. RMS has advised that, prior to construction, archaeological investigations were conducted in that part of the Pipers Creek PAD site within the project footprint. The findings of these investigations indicated no salvage of artefacts was required.

RMS has advised that, as part of the detailed design process, the project team has identified the potential need to realign the section of the project that passes through the Pipers Creek PAD. RMS advises that the need to review the project alignment is to avoid or minimise impact on known Giant Barred Frog habitat west of the road. The Giant Barred Frog is an endangered species listed under the *Threatened Species Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), and impacts to this species from this project are subject of a referral under the *Environment Protection and Biodiversity Conservation Act 1999*. Any realignment to avoid Giant Barred Frog habitat would move the road alignment east. RMS has indicated that such a realignment would pass through a previously unimpacted section of the Pipers Creek PAD.

RMS asserts that, while the area of Pipers Creek PAD east of the alignment is located outside the approved project footprint, any impacts to that area would be consistent with the impacts identified in the project approval. The Kelleher Nightingale report indicates that the Pipers Creek PAD is of moderate archaeological potential; construction at the Pipers Creek PAD site would shift east but impact a similar area and proportion of the PAD. Further, RMS notes that the results of investigations on the Pipers Creek PAD site within the project alignment did not identify need for salvage; investigation of the site would determine the

significance of the area to be impacted, and identify need for salvage. RMS acknowledges, however, that investigation of the site prior to construction is not permitted under condition B18. As a result, RMS requests the condition be amended to allow this.

OHK85

The OHK85 site was also identified in the EA, as a potential deposit within the project footprint. The EA recommended further investigations at the OHK85 site, to identify impacts resulting from construction and inform the development of appropriate avoidance measures or salvage requirements. RMS advises that investigations at OHK85 were undertaken in September 2012 and February 2013. These investigations were conducted in accordance with the Kelleher Nightingale report, using the same methodology adopted for investigations for the six sites listed in condition B18. The preliminary results of this investigation have been provided to the department, and recommend salvage of the site.

RMS asserts that the impacts to OHK85 have been identified and assessed in the EA. RMS acknowledges, however, that the salvage of this site prior to construction is not permitted under condition B18. As a result, RMS requests the condition be amended to allow this.

Department's consideration

The department considers that investigation and salvage should be allowed at Pipers Creek PAD site and OHK85. The department considers that, consistent with the reasons outlined in Section 5.1, such works require modification of the project approval to ensure consistency with the project approval.

The department acknowledges that the proponent has undertaken an assessment of impacts on the Pipers Creek PAD site and OHK85. This assessment was documented by the Aboriginal Heritage Working Paper, and has been incorporated into the project approval as part of the project EA. While part of the Pipers Creek PAD site falls outside the project alignment, the department is satisfied that the assessment of impacts to the broader Pipers Creek PAD site provides requisite certainty as to the nature of any impacts to that part of the site. The department, however, notes that works at the Pipers Creek PAD site falling outside the project footprint were not included in the project approval; as a result, the proponent has requested the project approval be modified to allow those works.

The department acknowledges the time savings that would result from the ability to undertake this work before construction, but notes that allowing the work to take place prior to construction means that the project would not take place under an approved CEMP, and Construction Heritage Management Sub-plan. The department, however, considers that the proposed work at the Pipers Creek PAD site and OHK85 could be managed under the methodology provided in the Kelleher Nightingale report and (where salvage is recommended) the salvage controls listed in section 19.4.1 of Volume 1 of the EA.

The department considers that the Kelleher Nightingale report provides sufficient guidance for undertaking investigations at OHK85 and Pipers Creek PAD. The department acknowledges that the report was prepared having consideration to comments from OEH. The department notes that the methodology contained in the report was adopted for the six sites listed in condition B18, and also includes methods for investigations at OHK85 and Pipers Creek PAD.

The department acknowledges that RMS has advised that investigations have already been undertaken at OHK85 and Pipers Creek PAD site (within the approved project footprint), in accordance with the Kelleher Nightingale report. The department asserts that the project approval does not provide RMS with the ability to undertake investigations at any sites other than the six sites listed in condition B18 unless such work is undertaken in accordance with an approved Construction Heritage Management Sub-plan —further, the department advises it cannot retrospectively provide this ability. As such, the department considers that investigations conducted to date have not been undertaken in accordance with the project approval.

Notwithstanding this, the department notes that RMS has provided a memorandum titled *Oxley Highway to Kempsey - Pacific Highway Upgrade OHK85 Test Excavation - Preliminary Results*, prepared by Kelleher Nightingale Consulting Pty Ltd (the Kelleher Nightingale OHK85 memo) that recommends salvage works at OHK85 based on the results of the investigations at the site. The department is satisfied that construction work for the purposes of the project is necessary at the OHK85 site, and recommends salvage work be permitted at the OHK85 site in accordance with the Kelleher Nightingale OHK85 memo.

The department considers that RMS should have the ability to undertake investigations at the Pipers Creek PAD site outside the project alignment. These investigations would be necessary to accurately assess the heritage impacts of realigning the project and, where appropriate, determine need for mitigation strategies or salvage works. The department recommends that these investigations should be conducted in accordance with the Kelleher Nightingale report or, alternatively, a methodology prepared in consultation with OEH and approved by the Director General.

The department considers that the salvage mitigation measures listed under section 19.4.1 of Volume 1 of the EA provide appropriate controls to minimise the impact of salvage works at OHK85 and (where necessary) Pipers Creek PAD site: the department acknowledges that salvage has been undertaken at the six sites listed in condition B18 under these controls. The relevant controls listed in section 19.4.1 of Volume 1 of the EA include '[s]ystematically collecting stone artefacts from the identified Aboriginal sites that would be totally or substantially impacted', '[c]uration of any collected heritage in an appropriate manner, as determined in consultation with registered Aboriginal stakeholders and [OEH] and in accordance with the *National Parks and Wildlife Act 1974*', '[a]n appropriate level of analysis of the collected evidence with reference to the DECCW *Aboriginal Cultural Heritage Standards and Guidelines Kit* (1997)', and '[l]odgement of site records with [OEH] for any previously unrecorded Aboriginal heritage evidence that is identified and for any evidence that is salvaged.' The department considers that these requirements are sufficient to ensure the works would be undertaken with due care and diligence.

The department notes that, while condition B18 provides sufficient controls for salvage of Aboriginal sites, it does not allow the proponent to undertake investigation or salvage at Pipers Creek PAD site or OHK85. Under the approval, investigation or salvage of sites not listed in condition B18 can take place in accordance with an approved Aboriginal heritage management sub-plan of the CEMP. As such, the department asserts that modification of the project approval is required to allow such works to occur pre-construction.

The department is satisfied that the salvage work at the OHK85 and Pipers Creek PAD sites can occur pre-construction using the controls listed in section 19.4.1 of Volume 1 of the EA. The department considers that modifying condition B18 is not the appropriate mechanism for approval of this work. The department recommends that new conditions B18A, B18B and B18C should be inserted, to allow for investigation and salvage work and reporting on the findings of any such salvage work at both sites, respectively.

5.3 Definition of construction

As noted above, RMS requests definition of construction be amended to exclude establishing ancillary construction facilities in locations meeting the criteria stated in the conditions of approval, or otherwise agreed any the Director-General. This would allow ancillary facilities meeting the criteria to be established prior to construction.

Department's consideration

The department supports the proposed definition amendment, subject to its limitation to those sites meeting the ancillary facility locational criteria.

The department recommends that the definition of construction be amended to exclude: '*establishing site compounds (in locations meeting the criteria of ancillary facilities in condition C28)*'. Condition C28 specifies locational criteria for ancillary site — where these criteria are met, environmental impacts are considered minimal in the context of general construction activities and no approval is required from the Director General. The department considers that express reference to condition C28 is necessary to clarify the applicable criteria, and notes that this approach is consistent with a number of Pacific Highway Upgrade project approvals, including the adjacent Kempsey to Eungai project.

The department considers that RMS should also have the ability to establish ancillary facilities prior to construction, with the approval of the Director General under condition C28. The department notes that early establishment of ancillary facilities under condition C28 would occur prior to implementation of the project CEMP. The department considers that early establishment of ancillary facilities meeting the condition C28 criteria would help enable 'early work' (that is, work excluded from the definition of construction) yet entail minimal risk of significant environmental impacts. The department, however, considers that ancillary facilities that do not meet the condition C28 criteria could potentially have significant environmental impacts if all relevant conditions of approval are not complied with. As such, the department considers that approval of pre-construction ancillary facilities should be made contingent on RMS demonstrating how all relevant conditions of approval would be complied with, to the satisfaction of the Director General.

5.4 Correction of minor errors and misdescriptions

As noted above, RMS requests the department amend a typographical error in conditions B16, C7 and C16, to clarify references to condition B31.

Department's consideration

The department supports the proposed modifications. Further, the department has proposed a number of changes to references to agencies, to reflect recent administrative changes in the NSW public service.

6. CONCLUSION AND RECOMMENDATIONS

The department has considered the modification request and is satisfied that the proponent has demonstrated that the proposed clarification of heritage management requirements and changes to permissible pre-construction works are justified. The department considers that modification of condition C14 and insertion of new condition C14A clarifies the heritage management requirements of the project and have no adverse impacts to heritage items, other than those necessarily impacted by construction activities that have been appropriately assessed. The department acknowledges that RMS has undertaken an adequate assessment of heritage impacts, and considers that amending condition C14 would not reduce the mitigation and control measures that apply to works impacting on heritage items.

The department also considers that RMS should have the ability to undertake investigations and salvage at Pipers Creek PAD site and OHK85. The department acknowledges that the proposed control measures that would apply to such work has been employed to date at six additional sites, and considers that they are sufficient to ensure the works would be undertaken with due care and diligence. The department acknowledges the time savings that would result from the ability to undertake this work before construction.

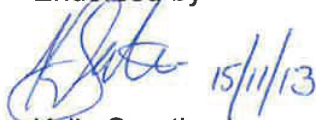
The department acknowledges the time savings associated with early establishment of construction facilities. The department considers that RMS should have the ability to establish site compounds prior to commencement of construction, provided they meet the location criteria listed in condition C28 of the project approval. The department considers that facilities that meet the locational criteria are generally low environmental risk, and can be established and operated with standard environmental controls. The department, however, considers that ancillary facilities that do not meet the condition C28 criteria could potentially have significant environmental impacts if not conducted under a CEMP. The department states that establishment and operation of ancillary facilities prior to commencement of construction should only allowed be where RMS has demonstrated that those facilities would comply with all relevant conditions of approval.

Finally, the department supports the correction of a small number of typographical errors and incorrect references to state government agencies.

In conclusion, the department is satisfied that, with the implementation of the measures proposed by the proponent, the proposal would have minimal impacts on the surrounding community, and therefore recommends the approval of the modification request.

Dominic Crinnion

Endorsed by

Handwritten signature of Kylie Seretis in blue ink, dated 15/11/13.

Kylie Seretis
**Manager—Roads
Infrastructure Projects**

Approved by

Handwritten signature of Karen Jones in blue ink, dated 15/11/13.

Karen Jones
**A/Director
Infrastructure Projects**