

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation executed on 1 October 2011, I approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.



A/Director, Infrastructure Projects

Sydney

15 November

2013

SCHEDULE 1

Project Approval:

07_0090 granted by the Minister for Planning for Infrastructure on 8 February 2012.

For the following:

The construction and operation of approximately 37 kilometres of two lane divided carriageways, referred to as the Pacific Highway Upgrade – Oxley Highway to Kempsey Project.

Modification:

07_0090 MOD 2: Amendment to Conditions B18 and C14 (Heritage items) and definition of construction (Ancillary facilities)

SCHEDULE 2 CONDITIONS

1. Replace the definition of construction in the Definitions table in Schedule 2 with new definition of construction as follows:

Construction	<p>Includes all work in respect of the project other than:</p> <ul style="list-style-type: none"> a) survey; acquisitions; or building/ road dilapidation surveys. 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. c) establishing site compounds (in locations meeting the criteria of ancillary facilities in condition C28). d) other activities determined by the Environmental Representative to have minimal environmental impact (e.g. minor access roads and adjustments for services/ utilities, etc). <p>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 OEH.</p>
---------------------	--

2. Add new definitions of heritage and heritage item in the Definitions table in Schedule 2 as follows:

Heritage	Encompasses both Aboriginal and historic heritage including sites that predate European settlement, and a shared history since European settlement such as a shared associations in pastoral landscapes as well as associations linked with the mission period.
Heritage item	An item, as defined under the <i>Heritage Act 1977</i> and assessed as being of local/state and/or National heritage significance, and/or an Aboriginal Object or Aboriginal Place, as defined under the <i>National Parks and Wildlife Act 1974</i> .

3. Replace condition A1 with new condition A1 as follows:

- A1** The Proponent shall carry out the project generally in accordance with the:
- (a) Major Projects Application 07_0090;
 - (b) *Upgrading the Pacific Highway – Oxley Highway to Kempsey – Environmental Assessment (volumes 1, 2, and 3)*, prepared by GHD Pty Ltd for the NSW Roads and Traffic Authority and dated September 2010;
 - (c) *Upgrading the Pacific Highway – Oxley Highway to Kempsey – Environmental Assessment Submissions Report*, prepared by the NSW Roads and Traffic Authority and dated March 2011, including the revised Statement of Commitments contained therein;
 - (d) *Oxley Highway to Kempsey – Pacific Highway Upgrade Ecological Review of Fauna Crossings in the Ballengarra State Forest*, Roads and Maritime Services, dated October 2011;
 - (e) The Roads and Maritime Services modification request and letter dated 25 October 2012 (07_0090 MOD1);
 - (f) The Roads and Maritime Services modification requests and letters dated 17 April 2013 and 9 September 2013; the document titled *Pacific Highway Upgrade – Oxley Highway to Kempsey: Aboriginal Archaeological Assessment and Artefact Salvage Methodology and Cultural Heritage Assessment Report*, prepared by Kelleher Nightingale Consulting Pty Ltd, dated September 2012; the document titled *Oxley Highway to Kempsey - Pacific Highway Upgrade OHK85 Test Excavation - Preliminary Results*, prepared by Kelleher Nightingale Consulting Pty Ltd, dated 2013; and the

document titled *Pacific Highway Upgrade — Oxley Highway to Kempsey — Non-Indigenous Heritage Impact Assessment Report*, prepared by Peter Kuskie and Christopher Carter (South East Archaeology Pty Limited), dated December 2007 (07_0090 MOD2); and

- (g) The conditions of this approval.

4. Replace condition A2 with new condition A2 as follows:

A2 In the event of an inconsistency between:

- (a) the conditions of this approval and any document listed from condition A1(a) to A1(f) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
- (b) any document listed from condition A1(a) to A1(f) inclusive, and any other document listed from condition A1(a) to A1(f) inclusive, the most recent document shall prevail to the extent of the inconsistency.

5. Add new conditions B18A, B18B and B18C:

B18A Prior to the commencement of pre-construction and construction activities affecting the Pipers Creek PAD site, the Proponent shall:

- (a) undertake archaeological investigations at the Pipers Creek PAD site generally consistent with section 6 of the September 2012 Kelleher Nightingale report referenced in condition A1(f), or a methodology prepared in consultation with OEH and approved by the Director General; and
- (b) report on the results of the investigations, including recommendations (such as for salvage), in consultation with OEH and to the satisfaction of the Director General. The report shall include but not necessarily be limited to:
 - (i) consideration of measures to minimise disturbance to archaeology, where significant archaeological deposits are found to be present;
 - (ii) where impacts cannot be avoided, recommendations for any further investigations for significant archaeological deposits; and
 - (iii) management and mitigation measures to ensure there are no additional impacts due to pre-construction and construction activities; and
- (c) undertake any salvage works recommended by the results of the archaeological investigations, in accordance with the report required under condition B18A(b).

B18B Prior to the commencement of pre-construction and construction activities affecting site OHK85, the Proponent shall undertake any salvage works recommended by the results of the archaeological investigations described in the 2013 Kelleher Nightingale document referenced in condition A1(f), in accordance with the relevant salvage mitigation measures outlined in section 19.4.1 of Volume 1 of the EA.

B18C Within 12 months of completing any salvage work in accordance with conditions B18A and/or B18B, or at such time otherwise agreed by the Director General, the Proponent shall submit a report containing the findings of the salvage works, prepared in consultation with OEH and to the satisfaction of the Director General.

6. Replace condition B31(e)(i)iii. with new condition B31(e)(i)iii. as follows:

- iii. procedures for dealing with human remains, including cessation of works in the vicinity and notification of the Department, NSW Police Force, OEH and registered Aboriginal stakeholders and not recommencing any works in the area unless authorised by the Department and/ or the NSW Police Force); and

7. Replace condition C14 with new conditions C14 and C14A as follows:

C14 This approval does not allow the Proponent to destroy, modify or otherwise physically affect any human remains as part of the project.

- C14A The proponent shall not destroy, modify or otherwise physically affect any heritage items outside the approved project footprint, except where this has been approved by the Director General in accordance with condition C28 of this project approval.
8. Add new condition C28A:
- C28A The proponent may request to establish and operate an ancillary facility prior to commencement of construction under condition C28. Where establishment and operation of an ancillary facility prior to commencement of construction is proposed, the proponent shall demonstrate that establishment and operation of that ancillary facility prior to commencement of construction complies with all relevant conditions of approval, to the satisfaction of the Director General.
9. Replace 'B310' in conditions B16, C7 and C16 with 'B31'.
10. Replace 'EPA' in conditions B2, B3, B4, B6, B7, B8, B9, B10, B16, B17, B30, B31(b) and B31(d) with 'OEH'.