

***MODIFICATION REQUEST:  
Pacific Highway Upgrade  
Warrell Creek to Urunga***



***Amendment to Condition of Approval C15  
(07\_0112 MOD 6)***

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

March 2014

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Cover Photo — Artist's impression of aerial views of the [Pacific Highway Upgrade — Warrell Creek to Urunga] Proposal at Nambucca River, looking north (RTA 2010)

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*NSW Government  
Planning & Infrastructure*

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## 1. BACKGROUND

The Pacific Highway Upgrade – Warrell Creek to Urunga (07\_0112) was approved by the Minister for Planning and infrastructure on 19 July 2011 under Part 3A of the Environmental Planning and Assessment Act 1979 (the Act). The approved project, referred to as the Warrell Creek to Urunga section of the Pacific Highway upgrade, is being delivered in two sections equalling a total of 42 kilometres. The 22 kilometre section between Nambucca Heads to Urunga is being prepared for construction with geotechnical and environmental investigations currently underway. Construction of the 20 kilometre section from Warrell Creek to Nambucca Heads is anticipated to commence in late 2014. Both sections are in the Nambucca and Bellingen local government areas. The project location and layout is shown in **Figure 1**.

The project area is characterised by a mix of rural and rural residential land uses, state forests, and small settlements. The townships of Macksville, Nambucca Heads and Urunga will be bypassed by the upgraded highway. The project has been modified five times:

- MOD 1 (November 2012) 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);
- MOD 2 (December 2012) to correct minor reference errors in condition C28;
- MOD 3 (February 2013) to correct minor reference errors in conditions A1 and A2 of the modification document;
- MOD 4 (March 2013) to amend the definition of construction to exclude establishing ancillary facilities in locations meeting the location criteria contained in condition C27; and
- MOD 5 (December 2013) to amend management measures for heritage items impacted and potentially impacted by the project.



**Figure 1: Project Layout**



## 2. PROPOSED MODIFICATION

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Roads and Maritime Services has submitted a request (07\_0112 MOD 6) under section 75W of the Act to modify the Minister's approval so as to amend condition C15 to delete reference to the heritage site 'vegetation group remnant forest' conservation area.

### 2.1 Condition C15

RMS seeks to amend condition C15 to allow construction work to be undertaken that may impact on the area listed as 'vegetation group remnant forest' conservation area which reflects its heritage listing under the *Bellingen Local Environment Plan 2003*. It is noted that the *Bellingen Local Environment Plan 2010* no longer lists this conservation area as a local heritage item. The text of condition C15 is included below.

C15	The Proponent shall not destroy, modify or otherwise physically affect the following historic sites: the ferry/punt crossing at Boulton Hill; old municipal tip; Valle Gold Mine; former stock route; tramway and quarry, Martells Road; the native swamp conservation; and 'vegetation group remnant forest' conservation area.
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## 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 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 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.

## 4. CONSULTATION AND SUBMISSIONS

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Under Section 75X(2)(f) of the Act, the Director General is required to make the modification request publicly available. Accordingly, Planning and Infrastructure placed a copy of the modification request on its website. No public or agency submissions were received.

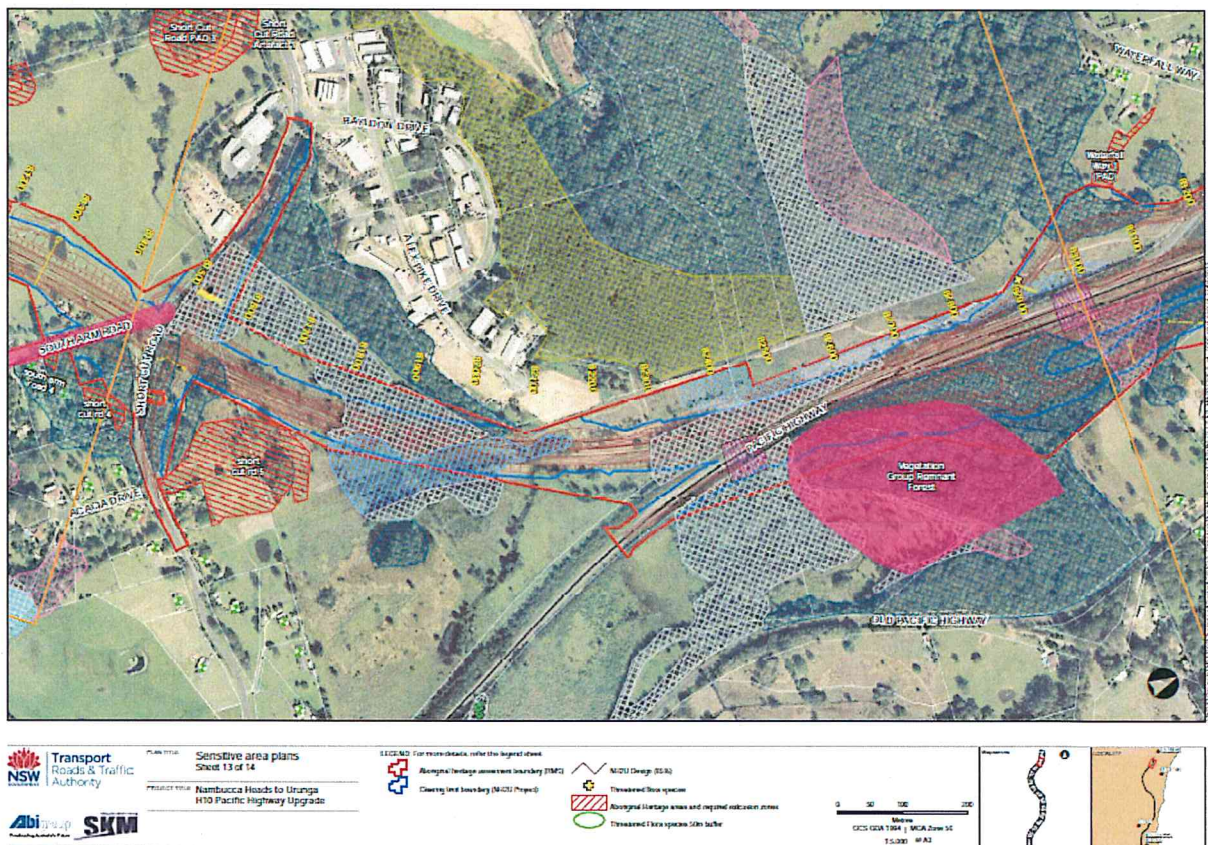


## 5. ASSESSMENT

### 5.1 Modification of Condition C15

RMS seeks to amend condition C15 to allow construction work to be undertaken that may impact on the area listed as heritage site 'vegetation group remnant forest' conservation area. The conservation area was listed as a local heritage item under the *Bellingen Local Environment Plan 2003*. It is noted that the *Bellingen Local Environment Plan 2010* no longer lists this conservation area as a local heritage item.

In general, the project approval allows RMS to undertake work within an approved project footprint, whilst not destroying, modifying or otherwise physically affecting historic sites. The 'vegetation group remnant forest' conservation area was incorrectly identified in the EA for the project as not being impacted by the project (and no mitigation measures were proposed as a result). However, it is now clear that when this conservation area is plotted it lies within the impact zone of the project. The conservation area, as originally plotted, is shown in **Figure 2**.



**Figure 2:** Location of the former conservation area adjacent to the proposed highway

RMS undertook further enquiries with Bellingen Shire Council in regards to the heritage status of the vegetation group remnant forest conservation area, identifying that this item is not included in the *Bellingen Local Environment Plan 2010*. Correspondence with Council also advises that there is no information in Council's records to indicate that the site retains any heritage significance.

### Planning and Infrastructure's consideration

Planning and Infrastructure supports the modification to avoid any uncertainty surrounding the interpretation of Condition C15 at a later date, given the prescriptive wording of the condition.



It is noted that the area referred to as 'vegetation group remnant forest' conservation area was listed as Item BGO 280 of the Bellingen Shire Heritage Inventory (SHI) which was compiled in 1990-91. However, prior to the gazettal of *Bellingen Local Environment Plan 2010* the main focus for heritage items was to 'roll-over' existing items from the 1990 SHI into the new LEP, involving numerous inspections and liaison with property owners to determine whether items still existed and warranted listing in the new LEP. Planning and Infrastructure notes that the Council decision to not include the 'vegetation group remnant forest' conservation area in the new LEP indicates that the item either did not contain any heritage significance, was protected by other legislation or no longer retained characteristics that warranted listing in the LEP.

Planning and Infrastructure also notes that RMS has provided an ecologist report which confirms the impacted vegetation is not a threatened species.

Therefore, it is recommended that the project approval be modified to remove reference to 'vegetation group remnant forest' conservation area in Condition C15. This will allow the proponent to undertake works that may impact on the area plotted within the impact zone of the project.

## 6. CONCLUSION AND RECOMMENDATIONS

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Planning and Infrastructure has considered the modification request and is satisfied that the proponent has demonstrated that changes to the project approval to remove 'vegetation group remnant forest' conservation area from Condition C15 are justified.

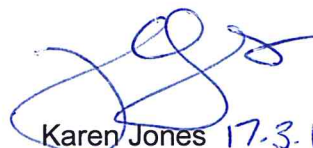
It is noted that whilst the project may impact on an item previously identified as being of local heritage significance, the de-listing of this item indicates that the site no longer retains any heritage significance. In conclusion, Planning and Infrastructure is satisfied that, with the implementation 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.

Endorsed by

 17/3/14

Michael Young  
**A/Team Leader—Roads  
Infrastructure Projects**

Approved by

 17.3.14

Karen Jones  
**Director  
Infrastructure Projects**

## **APPENDIX A    MODIFICATION REQUEST**

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See the Department's website at

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=5951](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5951)



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## **APPENDIX B    RECOMMENDED MODIFYING INSTRUMENT**

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# 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 4 April 2013, I approve the modification of the project application referred to in schedule 1, subject to the conditions in schedule 2.



Director, Infrastructure Projects

Sydney

17 March

2014

### SCHEDULE 1

**Project Approval:**

07\_0112 granted by the Minister for Planning and Infrastructure on 19 July 2011

**For the following:**

The construction and operation of an approximately 42 kilometres four lane divided carriageway upgrade of the Pacific Highway between Warrell Creek and Urunga

**Modification:**

07\_0112 MOD 6: Amendment of Condition C15 to delete reference to 'vegetation group remnant forest' conservation area



## SCHEDULE 2 CONDITIONS

1. 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\_0112;
  - (b) *Upgrading the Pacific Highway – Warrell Creek to Urunga – Environmental Assessment (Volumes 1 and 2)*, prepared by Sinclair Knight Merz Pty Ltd for the NSW Roads and Traffic Authority and dated January 2010;
  - (c) *Upgrading the Pacific Highway – Warrell Creek to Urunga – Environmental Assessment Submissions and Preferred Project Report*, prepared by the NSW Roads and Traffic Authority and dated November 2010;
  - (d) Letter from the NSW Roads and Traffic Authority titled *Pacific Highway Upgrade – Warrell Creek to Urunga Upgrade Addendum to Submissions Report – Fauna Crossing Structures*, dated 25 May 2011 and accompanying attachments and Letter from the NSW Roads and Traffic Authority titled *Pacific Highway Upgrade – Warrell Creek to Urunga Upgrade Addendum to Submissions Report – Fauna Crossing Structures*, dated 1 June 2011 and accompanying attachment;
  - (e) The Roads and Maritime Services modification request and letter dated 23 October 2012 (07\_0112 MOD1);
  - (f) The Roads and Maritime Services modification request and letter dated 23 November 2012 to correct a minor error in condition C28 (07\_0112 MOD2);
  - (g) The Roads and Maritime Services modification request and letter dated 18 January 2013 to correct minor errors in condition A1 (07\_0112 MOD3);
  - (h) The Roads and Maritime Services modification request and letter dated 13 February 2013 to amend the definition of construction in Schedule 1 (07\_0112 MOD4);
  - (i) The Roads and Maritime Services modification request and letter dated 9 September 2013 to amend the heritage management requirements in conditions C16 and C27 (07\_0112 MOD5);
  - (j) The Roads and Maritime Services modification request and letter dated 12 February 2014 to delete reference to 'vegetation group remnant forest' conservation area in condition C15 (07\_0112 MOD6); and
  - (k) The conditions of this approval.

2. 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(j) 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(j) inclusive, and any other document listed from condition A1(a) and A1(j) inclusive, the most recent document shall prevail to the extent of the inconsistency.

3. Replace condition C15 with new condition C15 as follows:

- C15 The Proponent shall not destroy, modify or otherwise physically affect the following historic sites: the ferry/punt crossing at Boulton Hill; old municipal tip; Valla Gold Mine; former stock route; tramway and quarry, Martells Road; and the native swamp conservation area.