



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



***Amendment to Condition of Approval C14
(07_0112 MOD 7)***

Secretary's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

January 2015

Cover Photo — Artist's impression of aerial view of the proposal at Nambucca River, near Macksville, looking north (RTA 2010)

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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 upgrade, involves an upgrade of the Pacific Highway between Warrell Creek and Urunga to dual carriageways, a distance of approximately 42 kilometres in the Nambucca and Bellingen local government areas. The project is being delivered in two stages, with construction of the 22 kilometre section between Nambucca Heads to Urunga commencing in early 2014. Construction of the 20 kilometre section from Warrell Creek to Nambucca Heads is anticipated to commence in early 2015. The project location and layout is shown in **Figure 1**.



Figure 1: Project Layout

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 six 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 relating to minor ancillary facilities;
- MOD 3 (February 2013) to correct minor reference errors in conditions A1 and A2 of the relevant project documents;
- 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;
- MOD 5 (December 2013) to amend management measures for heritage items impacted and potentially impacted by the project; and
- MOD 6 (March 2014) to correct minor reference errors in condition C15 relating to non-Aboriginal heritage items.

2. PROPOSED MODIFICATION

Roads and Maritime Services (the Proponent) has submitted a request (07_0112 MOD 7) under section 75W of the Act to modify the Minister's approval to amend condition C14 to remove four sites from the list of Aboriginal cultural sites that may not be impacted by the project.

2.1 Condition C14

The Proponent seeks to amend condition C14 to correct inconsistencies between this condition and the Environmental Assessment for the project by deleting references to AHIMS site number 21-6-0141, the Cabbage tree palm resource, Boggy Creek spiritual area and PAD 31. The text of condition C14 is:

C14 The Proponent shall not destroy, modify or otherwise physically affect the Aboriginal cultural sites identified in Table 15-3 of the Environmental Assessment (including AHIMS site numbers 21-6-36, 21-6-0287, 21-6-0016, 21-6-0163, 21-6-0039, 21-6-0090, 21-6-0102, 21-6-0141, 21-6-0164, 21-6-0064, and 21-6-0044), Boggy Creek spiritual area, Buchanan Conflict Site at Cow Creek (21-6-00286), burial site, Cabbage tree palm resource site, Aboriginal mirrah (21-3-0034), Rosewood Scarred Tree or potential archaeological deposits (PAD) 31

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 Planning and Environment under delegation from the Minister for Planning dated 10 November 2014, where the local council does not object, a political disclosure statement has not been made in relation to the application, and there are no public submissions in the nature of objections. This proposed modification meets the terms of this delegation.

4. CONSULTATION AND SUBMISSIONS

Under Section 75X(2)(f) of the Act, the Secretary is required to make the modification request publicly available. Accordingly, the Department placed a copy of the modification request on its website and forwarded a copy of the request to the Environment Protection Authority (EPA). The Office of Environment and Heritage (OEH), in advice to the EPA on the proposal, advised that it did not object to the removal of the four sites from condition C14, subject to evidence of consultation with the Registered Aboriginal Parties and clarification of the error of the inclusion of AHIMS 21-6-0141 (**Tab A**).

5. ASSESSMENT

5.1 Modification of Condition C14

The Proponent seeks to amend condition C14 to remove four sites from the list of Aboriginal cultural sites that may not be destroyed, modified or otherwise physically affected. The four sites are AHIMS 21-6-0141, the Cabbage tree palm resource, Boggy Creek spiritual area and PAD 31.

Condition C14 lists Aboriginal cultural sites that may not be impacted by the project, including the sites listed in Table 15-3 of the Environmental Assessment (EA), 5 other sites and a PAD site. The Proponent has identified inconsistencies between the EA and the sites listed in condition C14.

The sites and justification for removal of the sites is shown in **Table 1**.

Table 1: Proposed Amendments to Condition C14

Amendment	Justification
AHIMS 21-6-0141 to be removed	This site has been erroneously associated with the Bellwood Swamp in Table 15-3 of the EA. Bellwood Swamp was identified as an area of high significance and the route was realigned to avoid indirect impacts on the swamp. AHIMS 21-6-0141 is actually the archaeological site "Bald Hill Road 1". This site is listed in Table 1511 of the EA as being directly impacted.
Cabbage tree palm resource to be removed	Table 15-11 of the EA states this cultural site would be partially impacted.
Boggy Creek spiritual area to be removed	Table 15-11 of the EA states that this cultural site would be directly impacted.
PAD 31 to be removed	PAD 31 is not a cultural site and is not listed in Table 5-3 of the EA.

These amendments would allow these cultural sites to be impacted by the proposal, as assessed in the cultural heritage assessment of the proposal in the EA.

Department's consideration

The Department notes the inconsistency between the EA and condition C14 which lists the cultural heritage sites that may not be impacted by the project. **Table 2** makes reference to the relevant sections of the EA which identifies impacts of the project on archaeological and cultural heritage sites. Condition C14 has included 3 cultural sites which were identified in the EA as being impacted by the project, and incorrectly includes an archaeological site (PAD 31).

The OEH supports the modification request to remove the 4 sites from condition C14. OEH states that consultation with the Registered Aboriginal Parties (RAPs) on all Aboriginal heritage related matters is important and notes that there is no information on consultation with the RAPs on the modification request. OEH also sought clarification on the removal of AHIMS 21-6-0141 as to whether its inclusion in Table 15-3 (referenced by condition C14) was an error of addition of an unrelated site or a typographical error.

The Proponent provided a response (**Tab B**) which stated the inclusion of 21-6-0141 as part of the Bellwood Swamp cultural site was an error of an addition of an unrelated site. Site 21-6-0141 is located between two of the Bellwood sites and was inadvertently included as part of the Bellwood site. The correct description of the site is Bald Hill Road 1 and the EA assessed the proposal as having a direct impact on this cultural site.

The Proponent has advised that consultation on the modification request was undertaken with the RAPs at an Aboriginal Focus Group meeting in November 2014. Details of the modification request were presented at the meeting. Further information on the Boggy Creek spiritual area was requested. This was subsequently provided and the Bowraville and Unkya Local Aboriginal Land

Councils supported the proposed modifications. No other issues were raised at the Aboriginal Focus Group meeting.

OEH has advised it is satisfied with the Proponent's response (**Tab C**).

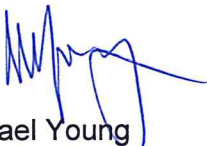
The Department supports the modification request and considers that it would clarify the intent of condition C14 and gives certainty to impacts of the project on Aboriginal cultural heritage sites.

Therefore, it is recommended that the project approval be modified to remove reference to four cultural heritage sites incorrectly identified in condition C14.

6. CONCLUSION AND RECOMMENDATIONS

The Department has considered the modification request and is satisfied that the Proponent has demonstrated that the proposed modification of condition C14 is justified and therefore recommends the approval of the modification request.

Approved

 12/1/15
Michael Young
A/Team Leader—Roads
Infrastructure Projects

 15.1.15
Karen Jones
Director
Infrastructure Projects

APPENDIX A MODIFICATION REQUEST

See the Department's website at

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=5951

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT
