



**Planning &
Environment**

***MODIFICATION REQUEST:
Princes Highway Upgrade
Foxground and Berry Bypass Project
(MP10_0240)***



Amendment to Out of Hours Work Provisions

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

July 2015

Cover Photograph: Existing Princes Highway looking south towards Berry (Source: EA)
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1. BACKGROUND

The Princes Highway Upgrade – Foxground and Berry Bypass Project was approved by the Minister for Planning and Infrastructure on 22 July 2013 under Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act). The project involves an 11.6km upgrade of the Princes Highway between Toolijooa Road north of Foxground and Schofields Lane to the immediate south of Berry. Construction is currently underway. The project runs through Kiama and Shoalhaven local government areas.

Major features of the project include:

- dual carriage highway (four lane upgradeable to six);
- bypasses of the bends at Foxground and Berry;
- five new grade separated interchanges;
- four new bridges, including three bridges spanning Broughton Creek and a bridge at Berry;
- a 900m long cutting at Toolijooa Ridge approximately 26m deep;
- two new roundabouts at the southern interchange for Berry and the existing Princes Highway/ Woodhill Mountain Road Intersection; and
- the creation of public open space

The project location and layout is shown in **Figure 1**.

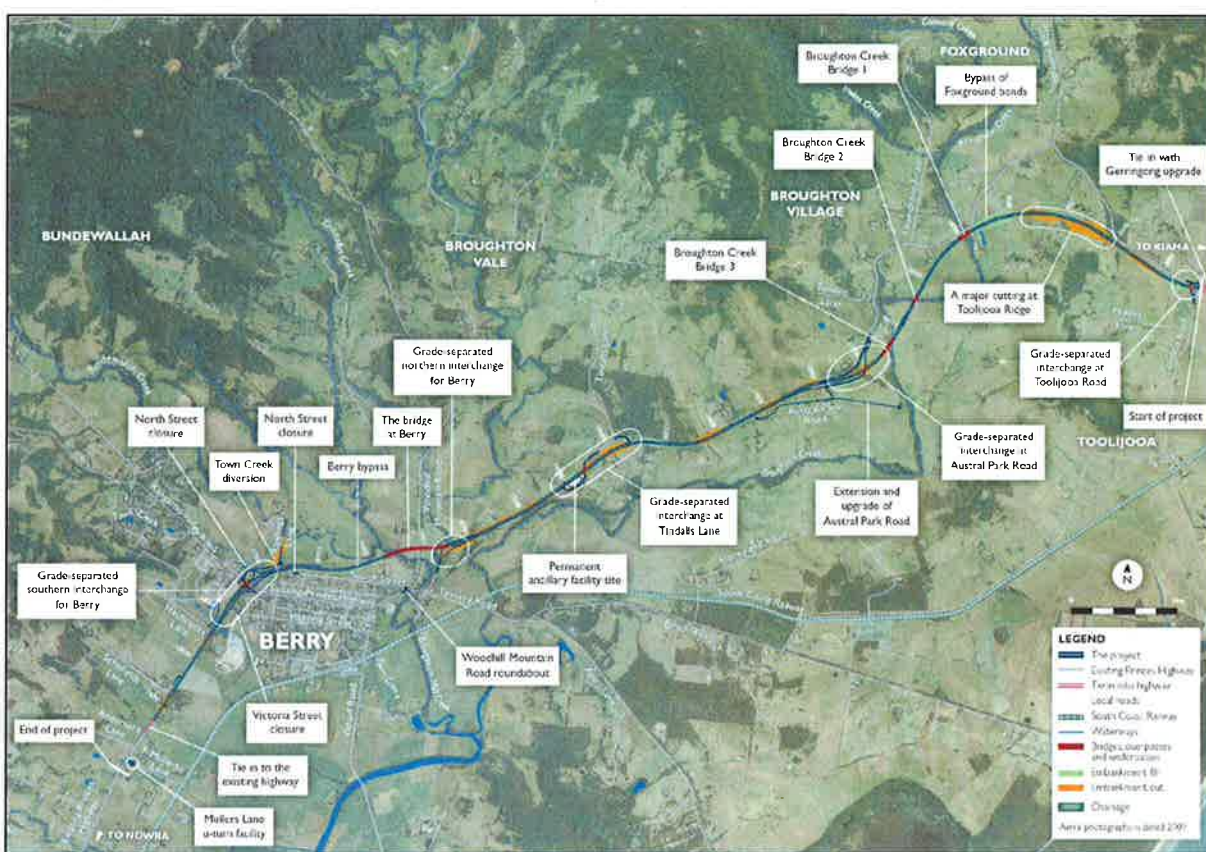


Figure 1: Project Layout

The project area is characterised by a range of land uses including residential rural/ agricultural, light industrial, commercial, a railway corridor, nature reserves and a National Park. North of the project area, the Gerringong urban area consists of mostly low density housing and retail services. To the south of the project area, the Bomaderry Nowra Urban area contains residential, commercial and light industrial land uses. The South Coast Line lies to the east of the project, with a station located at Berry.

2. PROPOSED MODIFICATION

Roads and Maritime Services (RMS) has submitted a request under Section 75W of the Act to modify the Minister's approval to amend Condition C4(e) and removal of Condition C6 to enable the streamlining of the Out-of-Hours-Works process without reducing the required level of assessment. This is the second modification to the Foxground and Berry Bypass project.

Condition C4 permits works outside of the standard construction hours to be undertaken within the outlined circumstances and in accordance with Condition C6. Condition C4 states:

C4.

Works outside of the standard construction hours identified in condition C3 may be undertaken in the following circumstances:

- (a) works that generate noise that is:
 - (i) no more than 5dB(A) above rating background level at any residence; or*
 - (ii) no more than the noise management levels specified in Table 3 of the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009) at other sensitive land uses; or**
- (b) for delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or*
- (c) where it is required in an emergency to avoid the loss of lives, property and/or to prevent environmental harm;*
- (d) for the area between Toolijooa Road and Tindalls Lane, encompassing Toolijooa cut, Broughton Creek floodplain and major bridge works (outside of Berry Township) low noise impact activities and works as follows:
 - (i) between 6.00am and 7.00am Monday to Friday; and*
 - (ii) between 6.00pm and 7.00pm Monday to Friday; and*
 - (iii) 1.00pm and 5.00pm on Saturdays; and*
 - (iv) at no time after 6pm on a day preceding a public holiday long weekend; and**
- (e) with the approval of the Director General in accordance with Condition C6.*

Condition C6 correlates with Condition C4 in which construction activities (out of hours work) may be allowed to occur outside the construction hours specified in Condition C3 subject to the prior written approval of the Director General. Condition C6 states:

C6.

Construction activities (Out of Hours work) may be allowed to occur outside the construction hours specified in condition C3 with the prior written approval of the Director General. Requests for Out of Hours approval will be considered for construction activities specified in condition C3 with the prior written approval of the Director General. Requests for Out of Hours approval will be considered for construction activities which cannot be undertaken during the construction hours specified in condition C3 for technical or other justifiable reasons and will be considered on a case by case or activity-specific basis.

Request for Out of Hours work must be accompanied by:

- (a) details of the nature and need for activities to be conducted during the varied construction hours;*
- (b) written evidence to the EPA and the Director General that activities undertaken during the varied construction hours are justified, appropriate consultation with potentially affected receivers and notification of the relevant Council has been undertaken, issues raised have been addressed, and all feasible and reasonable mitigation measures have been put in place; and*
- (c) evidence of consultation with the EPA on the proposed variation in standard construction hours.*

Despite the above, Out of Hours work may also occur in accordance with an approved Construction Environment Management Plan or Construction Noise and Vibration

Management Sub-plan for this period, where that plan provides a process for considering the above on a case by case or activity specific basis by the Proponent, including factors (a) to (c) above.

It should also be noted that Condition B36(c)(iv) is a sub-condition of Condition B36(c) which relates to the Construction Noise and Vibration Management Sub-plan and refers to Conditions C4 and C6, more specifically:

B36(c)(iv).

Procedures for dealing with out-of-hour works in accordance with condition C4 and C6, including procedures for notifying the Director General concerning complaints received in relation to the extended hours approved under condition C4(e).

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, 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 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 Environment under delegation from the Minister of Planning, dated 16 February 2015, 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 objection. 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.

Prior to formal lodgement, RMS consulted and received comments from Shoalhaven City Council, Kiama Municipal Council and EPA. Both Councils and EPA raised no objections to the proposed modification.

Due to the administrative nature of the modification, no further consultation was undertaken and no further comments were received.

5. ASSESSMENT

Conditions of approval C4 and C6 provide the criteria that construction activities (Out of Hours work) associated with the project must meet. In addition to the requirements under Condition C4(a) to C4(d), Condition C4(e) also refers to the requirement of obtaining the approval of the Director General in accordance with Condition C6. The Proponent proposes to amend Condition C4 by replacing Condition C4(e) thereby allowing Out of Hours Work to be undertaken as per an Environmental Protection Licence (including any Out of Hours Work Protocol) rather than complying with Condition C6, which requires prior written approval and consultation with the EPA.

Further, the proposed amendment to Condition C4(e) and removal of Condition C6 will therefore render Condition B36(c)(iv) redundant.

The proposed modification of Condition C4(e) to streamline the Out-of-hours-Work Protocol is in line with current Department and EPA practice and notably conditioned in recent State Significant Infrastructure projects.

Department's consideration

The Department has considered this modification request to amend Condition C4(e) and remove Condition C6 to remove duplicate requirements and to streamline the process in line with current practice, in which the issues considered under Condition C6 are similar to that considered through an EPL.

The Department has also noted that the EPA, Shoalhaven City Council and Kiama Municipal Council do not have any objections regarding the modification.

In making a decision, the Department has considered the benefits of revising the conditions relating to out of hours work and removing duplicate processes to streamline the process in the context of current practice, whilst ensuring community amenity is considered and managed.

Consistent with current practice, an additional requirement has been incorporated in Condition C4 which requires that Out-of-Hours-Work be subject to an approved Environmental Protection Licence (including any Out-Of-Hours-Work Protocol).

It is therefore recommended that Condition C4 to be reworded as follows:

'Works outside of the standard construction hours identified in condition C3 may be undertaken in the following circumstances:

- (a) *construction works that generate:*
 - (i) *LA_{eq} (15 minute) noise levels no more than 5 dB(A) above rating background level at any residence in accordance with the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009); and*
 - (ii) *LA_{eq} (15 minute) noise levels no more than the noise management levels specified in Table 3 of the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009) at other sensitive receivers; or*
- (b) *where a negotiated agreement has been reached with affected receivers, where the prescribed noise levels cannot be achieved; or*
- (c) *for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or*
- (d) *for the area between Toolijooa Road and Tindalls Lane, encompassing Toolijooa cut, Broughton Creek floodplain and major bridge works (outside of Berry Township) low noise impact activities and works as follows:*

- (i) between 6.00am and 7.00am Monday to Friday; and
- (ii) between 6.00pm and 7.00pm Monday to Friday; and
- (iii) 1.00pm and 5.00pm on Saturdays; and
- (iv) at no time after 6pm on a day preceding a public holiday long weekend; and
- (e) where it is required in an emergency to avoid injury or the loss of life, property and/or to prevent environmental harm; or
- (f) works approved through an EPL, including for works identified in an out of hours procedure.

Due to the amendment to Condition C4(e), both Conditions B36(c)(iv) and Condition C6 will no longer be required and deletion of both conditions are recommended.

6. CONCLUSION AND RECOMMENDATIONS

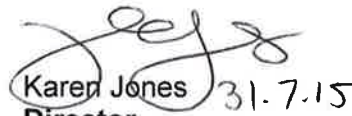
In conclusion, the Department is satisfied that with the implementation of the additional requirement to Condition C4 and deletion of Conditions B36(c)(iv) and C6, the modification is about improving efficiency, and removing the need for two approvals whilst maintaining community amenity.

Endorsed by



Glenn Snow 30/7/15
Team Leader Regional Roads
Infrastructure Assessments

Approved by



Karen Jones 31.7.15
Director
Infrastructure Assessments

APPENDIX A MODIFICATION REQUEST

See the Department's website at


http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7130

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

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

I, Karen Jones, Director Infrastructure Assessments, as delegate of the Minister for Planning under Instrument of Delegation dated 16 February 2015, approve the modification of the project application referred to in Schedule 1, subject to the conditions in Schedule 2.


Karen Jones
Director, Infrastructure Projects

Sydney

31 July 2015

SCHEDULE 1

Project Approval:

MP 10_0240 granted by the Minister for Planning and Infrastructure on 22 July 2013.

For the following:

The construction and operation of approximately 11.6 kilometres of two lane divided carriageways (with the exception of the cutting through Toolijooa Ridge which comprises two lanes plus a climbing lane in each direction), with provisions for the possible future widening to three lanes within the road corridor (if required in the future).

The project is referred to as the Princes Highway Upgrade – Foxground and Berry Bypass Project.

Modification:

10_0240 MOD 2: Amendment of Out-Of-Hours-Work Process in line with current practice.

SCHEDULE 2 CONDITIONS

1. Delete Condition B36(c)(iv);
2. Replace condition C4 with new condition C4 as follows:

C4.

Works outside of the standard construction hours identified in condition C3 may be undertaken in the following circumstances:

- (a) works that generate noise that is:
 - (i) LA_{eq} (15 minute) noise levels no more than 5 dB(A) above rating background level at any residence in accordance with the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009); and
 - (ii) LA_{eq} (15 minute) noise levels no more than the noise management levels specified in Table 3 of the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009) at other sensitive receivers; or
- (b) where a negotiated agreement has been reached with affected receivers, where the prescribed noise levels cannot be achieved; or
- (c) for the delivery of materials required outside these hours by the NSW Police Force or other authorities for safety reasons; or
- (d) for the area between Toolijooa Road and Tindalls Lane, encompassing Toolijooa cut, Broughton Creek floodplain and major bridge works (outside of Berry Township) low noise impact activities and works as follows:
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 - (iii) 1.00pm and 5.00pm on Saturdays; and
 - (iv) at no time after 6pm on a day preceding a public holiday long weekend; and
- (e) where it is required in an emergency to avoid injury or the loss of life, property and/or to prevent environmental harm; or
- (f) works approved through an EPL, including for works identified in an out of hours procedure.

3. Delete Condition C6.