



Planning &
Environment

***MODIFICATION REQUEST:
Princes Highway Upgrade
Foxground and Berry Bypass***

***Amendments to Conditions C15 and C16
MP 10_0240 (MOD 4)***



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

September 2017

Cover Photo — Foxground and Berry Bypass (Source: <http://www.rms.nsw.gov.au/projects/south-coast/foxground-berry-bypass/photo-gallery/2017-photos.html>)

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1. BACKGROUND

The Roads and Maritime Services (RMS – the Proponent) has submitted a request to modify the Princes Highway Upgrade: Foxground and Berry Bypass (MP 10_0240) (the project). The project was approved in July 2013 by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The project is an approximately 11.6 kilometre length of dual carriageway upgrade of the Princes Highway from approximately the junction of Toolijooa Road and the Princes Highway to approximately the junction of Schofields Lane and the Princes Highway, south of Berry, including a bypass of Berry, in the Kiama and Shoalhaven local government areas. The Project is shown in Figure 1.

The project was approved by the Minister for Planning on 22 July 2013 and has since been modified three times. A summary of these modifications is provided below:

- Modification 1 (approved 28 January 2015) to condition C13 to delete the final paragraph and add a requirement for non-Aboriginal heritage assessment.
- Modification 2 (approved 31 July 2015) to provide an amendment of out-of-hours-work process in line with current practice.
- Modification 3 (approved 3 July 2017) to allow impacts to identified heritage items with approval of the Secretary.

Construction of the project commenced in October 2014. The project has been progressively opened to traffic from early 2017 and is expected to be completed in late October 2017.

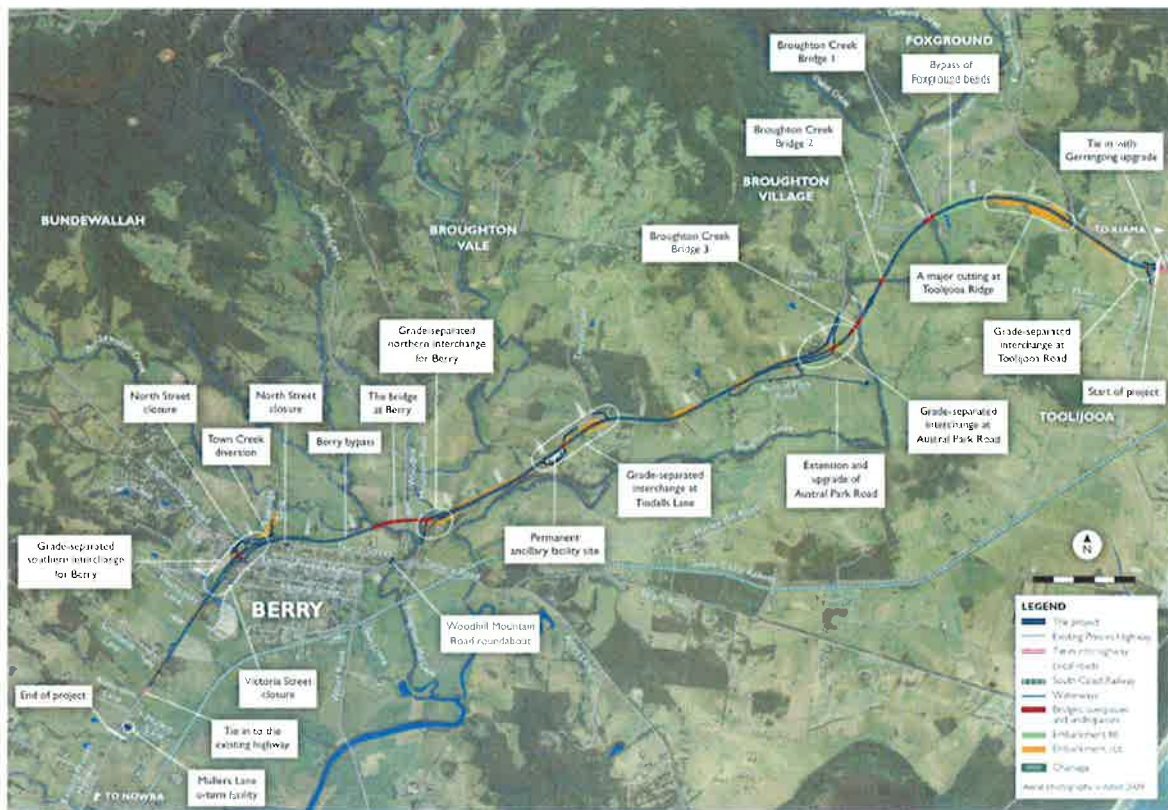


Figure 1 The Project (source: EIS)

2. PROPOSED MODIFICATION

RMS has submitted an application to make amendments to conditions C15 and C16 of the project approval. RMS seeks to replace condition C15 with a new condition which was inadvertently deleted by Modification 3, and replacing condition C16 with the existing condition C15 (the subject of Modification 3).

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

The project was approved under Part 3A of the EP&A Act as a transitional Part 3A project. Under Clause 3 of Schedule 6A of the EP&A Act, Section 75W of the EP&A Act continues to apply to transitional Part 3A projects despite being repealed on 1 October 2011.

Under Section 75W of the EP&A Act a Proponent may request the Minister to modify the Minister's approval for State significant infrastructure. The Minister's approval for a modification is not required if the infrastructure as modified will be consistent with the existing approval. The proposed change to condition C15 is not consistent with the existing approval. Consequently, modification of the Minister's approval under Section 75W of the EP&A Act is required.

3.2 Delegated Authority

Under the Instrument of Delegation dated 16 February 2015, the functions and powers of the Minister for Planning to determine a modification of the Minister's approval may be delegated to the Director, Transport Assessments, whereby:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

This proposed modification meets the terms of this delegation.

4. CONSULTATION

4.1 Public Notification

Under Section 75X(2)(f) of the EP&A Act, the Secretary is required to make the modification request publicly available. Accordingly, the Department provided a copy of the modification request on its website.

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

5. ASSESSMENT

5.1 Issue

The Proponent's application is to modify the project approval by:

- deleting the existing condition C15 and replacing it with the original condition C15; and
- deleting condition C16 and replacing it with the existing condition C15

5.2 Department's Consideration

The Department notes a condition numbering error occurred in an internal document during the assessment of Modification 1, and was not discovered until the assessment of Modification 3.

Modification 3 involved the replacement of condition C16 with alternate wording of the same condition. Due to the numbering error in the internal document, instead of condition C16 being replaced with alternate wording, the then condition C15 was inadvertently replaced with the proposed alternate wording intended for condition C16. This resulted in the project approval conditions C15 and C16 include variations in wording of the same condition (Tab A).

This modification request would delete the original condition C16, change the numbering of condition C15 to become condition C16, and restore the original condition C15 to the project approval. These changes would restore the condition numbering to its intended numbering and properly enact the changes made in Modification 3 (Tab B).

The Department considers the proponent's request is a minor administrative change which will restore the condition numbering in the project approval to correct inadvertent errors. The restoration of the original project approved numbering removes confusion of conditions C15 and C16 including similar wording, during post construction compliance reporting and auditing.

6. RECOMMENDATION

It is recommended that the Director, Transport Assessments, as delegate of the Minister:

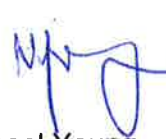
- note the information provided; and
- approve the modification request by signing the attached modifying instrument (Tab C);

Recommended by:

 29/09/17

Amy Porter
Planning Officer
Transport Assessments

Recommended by:

 29/9/17

Michael Young
Team Leader Regional Roads
Transport Assessments

DECISION

Approved by:

 29/9/17

Glenn Snow
Director
Transport Assessments

APPENDIX A MODIFICATION REQUEST

See the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8545

APPENDIX B RECOMMENDED MODIFYING INSTRUMENT


See the Department's website at:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8044

Modification of Infrastructure Approval

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

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



29/9/17

Glenn Snow
Director
Transport Assessments

Sydney

2017

SCHEDULE 1

Infrastructure Approval:

MP 10_0240 granted by the Minister for Planning 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.

Modification:

MP 10_0240 MOD 4: Amendments to conditions C15 and C16 of the project approval.

SCHEDULE 2

1. Delete condition C15 and replace with the following wording:

C15 This approval does now allow the Proponent to destroy, modify, or otherwise physically affect human remains as part of the project.

2. Delete condition C16 and replace with the following wording:

C16 The Proponent shall not destroy, modify or otherwise physically affect Aboriginal sites A3, A20, A37-A39, and MFT 13-23 and non Aboriginal sites H25, H26, H51, H52, H58 and H59 unless prior written approval has been received from the Secretary.

APPROVAL FOLLOWING MODIFICATION 3

- (c) where necessary, investigate additional feasible and reasonable noise mitigation measures to achieve the criteria outlined in the *Road Noise Policy* (DECCW, 2011),.

Heritage Impacts

~~C15. This approval does not allow the Proponent to destroy, modify or otherwise physically affect human remains as part of the project.~~

- C15. The Proponent shall not destroy, modify or otherwise physically affect Aboriginal sites A3, A20, A37 – A39, and MFT 13-23 and non-Aboriginal sites H25, H26, H51, H52, H58, and H59 unless prior written approval has been received from the Secretary.
- C16. The Proponent shall not destroy, modify or otherwise physically affect Aboriginal sites A3, A20, A37 – A39, and MFT 13-23 and non-Aboriginal sites H25, H26, H51, H52, H58, and H59
- C17. Identified impacts to heritage (both Aboriginal and non-Aboriginal), shall be minimised to the greatest extent practicable through both detailed design and construction, particularly with regard to Aboriginal sites A13, A14, A18 and TRACL, and historic sites H13, H20, H54, H62, H63 and the Southern Illawarra Coastal Plain and Hinterland Cultural Landscape. Where impacts are unavoidable, works shall be undertaken in accordance with the actions to manage heritage construction impacts required by condition B36(e) and under the guidance of an appropriately qualified heritage specialist.
- C18. The proponent shall not destroy, modify or otherwise physically affect any heritage items outside the approved project footprint, unless otherwise agreed by the Director General in accordance with Condition C32 of this project approval.
- C19. The measures to protect Aboriginal or historic heritage sites near or adjacent to the project during construction shall be detailed in the Heritage Management Sub-plan required under condition B36(e).

Sedimentation, Erosion and Water

- C20. Soil and water management measures consistent with *Managing Urban Stormwater - Soils and Construction Vols 1 and 2, 4th Edition* (Landcom, 2004) and *Managing Urban Stormwater Soils And Construction Vols 2A and 2D Main Road Construction* (Department of Environment and Climate Change, 2008) shall be employed during the construction of the project for erosion and sediment control.
- C21. Where available, and of appropriate chemical and biological quality, the Proponent shall use stormwater, recycled water or other water sources in preference to potable water for construction activities, including concrete mixing and dust control.
- C22. All surface water and groundwater must be adequately treated prior to entering the stormwater system to protect the receiving water source quality.

Property and Landuse

- C23. The Proponent shall construct the project in a manner that minimises impacts to private properties and other public or private structures (such as dams, fences, utilities, services etc) along the project corridor. In the event that construction of the project results in direct or indirect damage to such property or structure, the Proponent shall arrange and fund repair of the damage to a standard comparable to that in existence prior to the damage occurring, unless otherwise agreed by the relevant property or utility owner.

**Approval
following
Modification 4**

- (b) review the suitability of the operational noise mitigation measures identified in the documents listed under condition A1 to achieve the criteria outlined in the *Road Noise Policy* (DECCW, 2011), based on the operational noise performance of the project predicted under (a) above; and
- (c) where necessary, investigate additional feasible and reasonable noise mitigation measures to achieve the criteria outlined in the *Road Noise Policy* (DECCW, 2011),.

Heritage Impacts

- C15. This approval does not allow the Proponent to destroy, modify or otherwise physically affect human remains as part of the project.
- C16. The Proponent shall not destroy, modify or otherwise physically affect Aboriginal sites A3, A20, A37 – A39, and MFT 13-23 and non-Aboriginal sites H25, H26, H51, H52, H58, and H59 **unless prior written approval has been received from the Secretary.**
- C17. Identified impacts to heritage (both Aboriginal and non-Aboriginal), shall be minimised to the greatest extent practicable through both detailed design and construction, particularly with regard to Aboriginal sites A13, A14, A18 and TRACL, and historic sites H13, H20, H54, H62, H63 and the Southern Illawarra Coastal Plain and Hinterland Cultural Landscape. Where impacts are unavoidable, works shall be undertaken in accordance with the actions to manage heritage construction impacts required by condition B36(e) and under the guidance of an appropriately qualified heritage specialist.
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Modification 1 approved 28 January 2015

Modification 2 approved 31 July 2015

Modification 3 approved 03 July 2017