



Planning &  
Environment

***MODIFICATION REQUEST:  
Pacific Highway Upgrade  
Woolgoolga to Ballina (SSI 4963  
Modification Request 1***



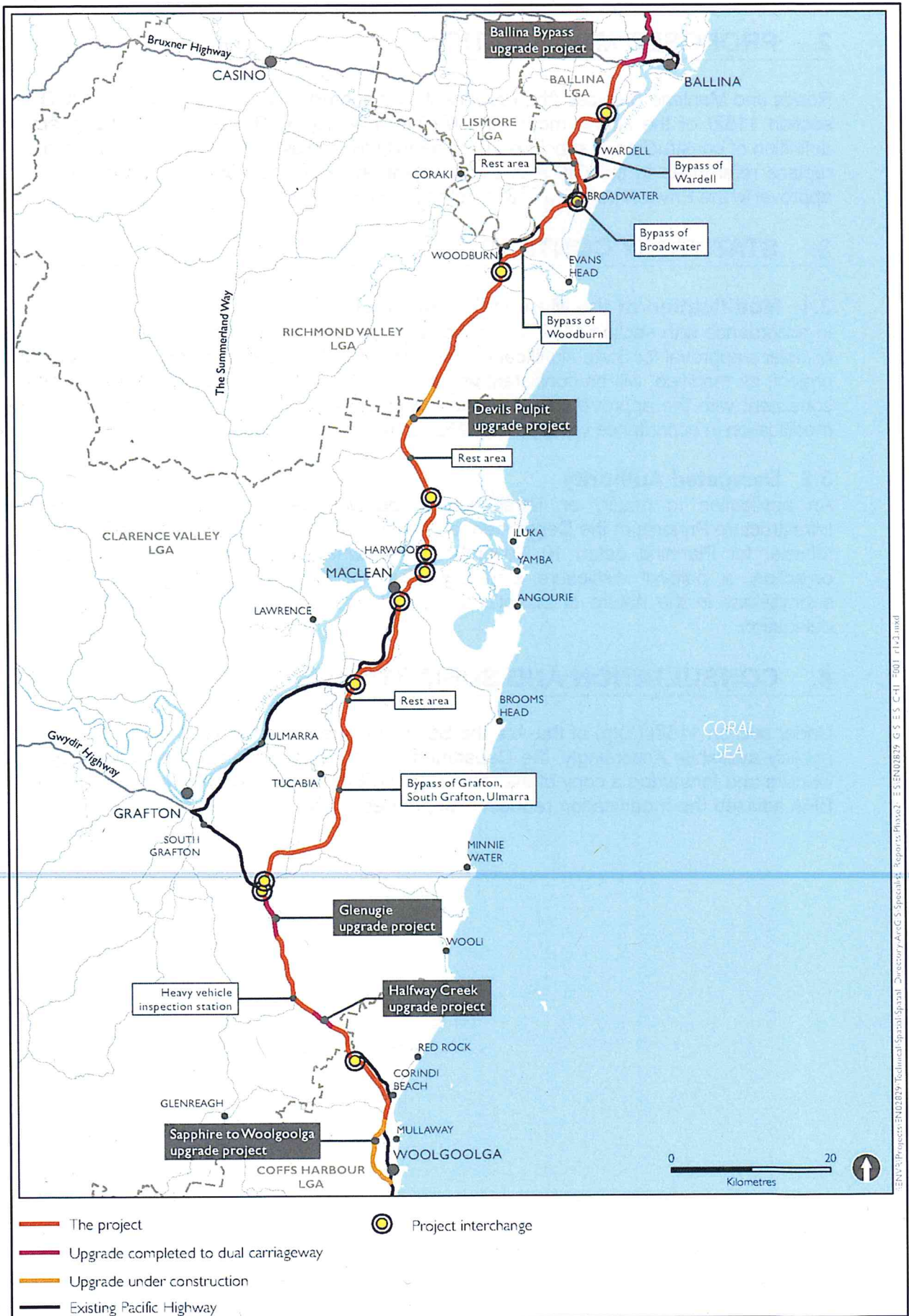
Secretary's Environmental Assessment Report  
Section 115ZI of the  
*Environmental Planning and Assessment Act 1979*

January 2015

## TABLE OF CONTENTS

---

<b>1.</b>	<b>BACKGROUND</b>	<b>1</b>
<b>2.</b>	<b>PROPOSED MODIFICATION</b>	<b>3</b>
<b>3.</b>	<b>STATUTORY CONTEXT</b>	<b>3</b>
	3.1 Modification of the Minister's Approval	3
	3.2 Delegated Authority	3
<b>4.</b>	<b>CONSULTATION AND SUBMISSIONS</b>	<b>3</b>
<b>5.</b>	<b>ASSESSMENT</b>	<b>4</b>
	5.1 Modification of the Definition of Construction	4
	5.2 Modification of References to Office of Environment and Heritage	6
<b>6.</b>	<b>CONCLUSION AND RECOMMENDATIONS</b>	<b>7</b>
<b>APPENDIX A</b>	<b>MODIFICATION REQUEST</b>	<b>8</b>
<b>APPENDIX B</b>	<b>RECOMMENDED MODIFYING INSTRUMENT</b>	<b>9</b>



**Figure 1: Project Location**



## 5. ASSESSMENT

---

### 5.1 Modification of the Definition of Construction

The Proponent seeks to amend the definition of construction in subclause (f) which nominates sections where clearing for utility adjustments does not trigger construction. The definition under subclause (f) states:

*"Includes all work in respect of the SSI other than:*

*(f) utilities adjustments within sections 1, 2, 5, 6 and 11 of the SSI, as specified in the documents referred to in condition A2(f), where an Environment Work Method Statement has been approved by the Secretary in consultation with OEH and DoE"*

The Proponent has identified that subclause (f) omits utility adjustments in section 4, which was included in the project document referenced in condition A2(f). The definition unnecessarily includes section 2 which should be removed. The amendment would ensure consistency with the approval.

#### **Department's consideration**

The Department notes the inconsistency between the definition of construction in subclause (f) and the project document in condition A2(f), which shows the sections of the project where native vegetation for utility adjustments would be carried out as early works. The document is shown in **Figure 2**.

The Minister's approval included native vegetation clearing for utility adjustments in section 4, however, the definition of construction in subclause (f) is inconsistent with the approval as section 4 has been omitted. However, section 2 has been included in error. The amendment would correct this inconsistency and administrative error.

The amendment of subclause (f) would ensure the approval is consistent with the approval given by the Minister for the Environment on 14 August 2014 under the *Environment Protection and Biodiversity Conservation Act 1999 (Cwth)*, which excludes utility adjustments required in sections 1, 4, 5 and 11 from the definition of the commencement of the project.

The Department supports the modification request as it would ensure consistency with the approval and corrects an administrative error. Therefore, it is recommended that the approval be modified to remove section 2 and include section 4 in the definition of construction in subclause (f).

## **5.2 Modification of References to Office of Environment and Heritage**

The Proponent seeks to replace all references to OEH with EPA where these conditions relate to biodiversity issues or environment protection matters. The Proponent and EPA have a Memorandum of Understanding (MOU) on the role and responsibilities of the two agencies on the Pacific Highway Upgrade Program (the Program). The MOU states that the EPA is responsible for delivering environmental protection and biodiversity management services on the Program. The replacement of OEH with EPA in the conditions of the approval would reflect the MOU between the two agencies and the current working relationship.

### **Department's consideration**

The conditions of approval require the Proponent to consult with various public authorities in the preparation of documents required by the approval. The approval specifically requires the Proponent to consult with the OEH on matters relating to biodiversity and Aboriginal heritage. The EPA is required to be consulted on environment protection matters (such as noise and vibration, soil and water and air quality). This represents the statutory responsibilities of the relevant public authorities.

The Department notes the terms of the MOU between the Proponent and EPA which sets out the responsibilities of the EPA in providing services on the management of biodiversity issues. The terms of the MOU provides for two dedicated threatened species officers within the EPA's Pacific Highway Upgrade Team. The Department is satisfied that the MOU provides for appropriately qualified officers to provide biodiversity and threatened species services to the Proponent on the Program and the Woolgoolga to Ballina project, in particular.

The Department notes that the Proponent has not sought to modify other approved Pacific Highway Upgrade projects which similarly reference the OEH in biodiversity related conditions of approval. These projects are in various stages of construction and the role of the EPA in those projects is review of the implementation of biodiversity matters (such as fauna crossings, biodiversity monitoring and biodiversity offsets). This project is at the pre-construction stage and it is appropriate that the approval reflect the role of the EPA in providing biodiversity services instead of OEH. The key input of EPA at this stage is the review of biodiversity management plans, strategies and programs, prior to the commencement of construction.

The EPA has advised it is supportive of the proposed modification as it reflects the terms of the MOU with RMS and current 'on the ground' practices. The EPA has a role in providing expert technical advice on biodiversity conservation and management. The EPA continues to consult with OEH, particularly on matters relating to Aboriginal heritage.

The Department is satisfied with the arrangement between the Proponent and EPA for EPA to provide advice on biodiversity management and Aboriginal heritage. The Department is satisfied with the technical advice that it has received from EPA on biodiversity conservation matters and is confident that the level of service and quality of advice provided, to both the Department and the Proponent, would be maintained for this project.



## 6. CONCLUSION AND RECOMMENDATIONS

---

The Department has considered the modification request and supports the proposal as it would correct an administrative error and would ensure consistency of the approval with the project documents. The change to agency names (replacement of OEH with EPA) reflects current arrangement where EPA provides technical advice on biodiversity matters. Therefore it is recommended that the modification request be approved.

Approved

 15/1/15  
Michael Young  
Senior Planner  
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/page/project-sectors/transport--communications--energy---water/roads/?action=view\\_job&job\\_id=6824](http://majorprojects.planning.nsw.gov.au/page/project-sectors/transport--communications--energy---water/roads/?action=view_job&job_id=6824)

## **APPENDIX B    RECOMMENDED MODIFYING INSTRUMENT**

---