

INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

Office of Sustainable Development Assessment and Approvals

PLANNING ASSESSMENT REPORT – MINOR MODIFICATION TO APPROVAL FOR WESTERN SYDNEY ORBITAL (M7)

Purpose:

The NSW Roads and Traffic Authority (RTA) has requested a minor modification to the approval for the Western Sydney Orbital (now the Westlink M7) granted by the Minister on 28 February 2002. The modification is sought to amend minor error or apparent misdescription in a number of conditions which has resulted in inconsistency between the Minister's Conditions of Approvals (MCoA) Nos 20, 128 and 146. The RTA's request is attached, tagged "A". This planning assessment report is prepared in accordance with Section 115C (1B) of the *Environmental Planning and Assessment Act 1979*.

Background

MCoA No. 20 requires that:

- An Ancillary Infrastructure Impact Assessment (AIIA) be prepared for, among other things, sedimentation basins, detention basins and constructed wetlands; and
- That the AIIA assess the additional impacts on any endangered ecological communities and threatened flora and fauna species and shall incorporate findings into negotiations with the NPWS on mitigation measures, including the compensatory habitat package.

MCoA No. 128 requires that sedimentation basins only be constructed in locations that have low conservation significance for flora, fauna or heritage and where clearing of native vegetation is not necessary. Similarly MCoA No. 146 (g) requires that detention basins/construction wetlands shall only be located at sites having low conservation significance for flora, fauna and heritage.

Issue/s:

The RTA asserts that the wording of MCoA No. 20 accepts that the siting and construction of ancillary infrastructure, including construction of sedimentation or detention basins or constructed wetlands, accepts that there may be an additional impact on Endangered Ecological Communities and threatened flora and fauna.

Department's Consideration

The EIS for the project stated that construction facilities would be located either within the road reserve or in nearby areas appropriately zoned for such activities. It was also indicated in the EIS that these would be located in areas which do not contain threatened or regionally significant vegetation although no indicative or proposed locations were provided. A species impact statement was also prepared for the approval area (i.e. largely the area within the road reserve) and concurrence issued by the then National Parks and Wildlife Service which permits the clearing of vegetation or habitat (including that of endangered ecological communities, threatened flora and fauna) covered by the SIS.

Notwithstanding, there are areas of Endangered Ecological Communities, threatened flora and fauna within the road reserve which have been protected from construction impacts. Despite undertakings in the EIS that the ancillary infrastructure would not affect threatened or regionally significant vegetation, the Department concurs with the RTA's interpretation of MCoA 20 that this envisaged that there may be "additional" impact on Endangered Ecological Communities or threatened species.

Having established the potential for additional impacts, the Department accepts that there is an inconsistency between the general requirements for assessing ancillary infrastructure and locational requirements for sedimentation and erosion controls (MCoA 128) and locational requirements for detention basins/constructed wetlands (MCoA 146). These MCoA require that such facilities only be located in sites with low conservation significance for flora, fauna and heritage. MCoA 128 also requires that sites do not require any native vegetation clearing beyond that which must be cleared for the Project in any case.

Recommendation

It is the Department's opinion that every effort should be made to meet the commitments of the EIS to avoid areas of threatened species and regionally significant vegetation. However, where this is not possible, impacts should be minimised and considered in negotiations with the NPWS (now DEC) on mitigation measures, including compensatory habitat as appropriate. This requirements is currently written in to MCoA 20.

The Department recommends to address this inconsistency the following amendments (noted in *italics*) be made to the MCoA:

128. The Proponent shall only construct sedimentation and erosion controls and sedimentation basins under this approval in those locations that satisfy the following criteria:

.....

- (g) sites are to have low conservation significance for flora, fauna or heritage and they are not to require any clearing of native vegetation beyond that which must be cleared for the Project in any case, *unless otherwise agreed by the Director General. Where an area of low conservation significance cannot be used, detailed justification for the selected site must be provided;*

.....”

146. The Proponent shall only construct detention basins/constructed wetlands associated with the Project in those locations that satisfy the following criteria:

.....

- (g) sites are to have low conservation significance for flora, fauna or heritage *unless otherwise agreed by the Director General. Where an area of low conservation significance cannot be used, detailed justification for the selected site must be provided;*

.....”

Conclusion

The Department considers that the proposed amendments to MCoA 128 and 146 would resolve the inconsistency with MCoA 20 which acknowledges the potential for additional impact on Endangered Ecological Communities and threatened flora and fauna. However, the preference that these be located on areas of low conservation significance is retained and where it cannot be met then justification for the site selection must be provided and the site agreed by the Director General.

Sam Haddad

Deputy Director General

Department of Infrastructure, Planning and Natural Resources

As delegate for the Director General