

# INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES

*Office of Sustainable Development Assessment and Approvals*

## **Director General's Report – Minor Modification to the Approval for the Western Sydney Orbital (M7)**

### **PURPOSE:**

The NSW Roads and Traffic Authority (RTA) has requested two minor modifications to the approval for the Western Sydney Orbital (now the Westlink M7) granted by the Minister on 28 February 2002 and modified on 19 June 2003 and 4 May 2004. The RTA's requests are attached (**Tag A**). The modifications are sought to:

1. correct a minor error or misdescription in the Minister's Condition of Approval number (MCoA) 223 which has resulted in an inconsistency with MCoA 20, and
2. correct a minor error or misdescription in MCoA 109 which contains an incorrect reference to the Minister.

Each modification is discussed separately below.

This Director General's report is prepared in accordance with Section 115C (1B) of the Environmental Planning and Assessment Act 1979.

### **INCONSISTENCY – MCOA 20 AND MCOA 223**

#### **Background**

MCoA 20 requires that:

- an Ancillary Infrastructure Impact Assessment (AIIA) be prepared for several items including noise mitigation measures, 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 223 requires that ancillary facilities only be constructed on sites that would not affect endangered ecological communities or threatened flora and fauna.

#### **Issues**

The RTA asserts that the wording of MCoA 20 accepts that the siting and construction of ancillary infrastructure, including construction of noise mitigation measures, may have an additional impact on endangered ecological communities or 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. The concurrence permits the clearing of vegetation or habitat (including that of endangered ecological communities, threatened flora and fauna) within the road reserve. Notwithstanding, parts of the road reserve containing endangered ecological communities or threatened flora and fauna have been protected from construction impacts.

Despite undertakings by the RTA in their EIS that 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 flora and fauna. MCoA 20 is also consistent with the NPWS concurrence.

Having established the potential for additional impacts, the Department accepts that there is an inconsistency between the general requirements for assessing ancillary infrastructure (MCoA 20) and location requirements for ancillary infrastructure (MCoA 223).

### **Recommendation**

It is the Department's opinion that every effort should be made to meet the EIS commitments to avoid areas of threatened species and regionally significant vegetation. 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 requirement is currently included in MCoA 20.

The Department recommends the following amendments be made to MCoA 223 (g) to address the minor error or misdescription between MCoA 20 and MCoA 223. The recommended change is shown below (deletions struck through, e.g. ~~struck through~~, and additions in italics, e.g. *italics*).

223(g) sites are to be excluded from areas that would have an impact on any endangered ecological communities or threatened flora and fauna *unless otherwise agreed by the Director General. Where an area of low conservation significance cannot be used, justification for the selected site must be provided; and*

## **INCORRECT REFERENCE MCOA 109**

### **Background**

MCoA 109 requires in its last paragraph:

The Cycleway Strategy shall be submitted to the Director-General and require the approval of the Minister for Planning within an appropriate timeframe to ensure that the approved cycleway is opened to cyclists no later than the opening of the Project to traffic.

### **Issue and Department's Consideration**

The reference to the "approval of the Minister for Planning" in MCoA 109 is considered a typographic error. The Department's recommendations for Conditions of Approval, as a rule, do not require further approvals at Ministerial level. If an approval is required this is usually an approval from the Director General.

The Director General's Report for the Western Sydney Orbital does not identify any reason to require a Minister's approval for the Cycleway Strategy. In addition, related conditions, in particular MCoA 112 which covers a Pedestrian Access Strategy, require an approval from the Director General.

There is no reason for MCoA to require a Minister's approval and such a requirement is against normal Department practice. The nominated Minister's approval is therefore considered a typographic error.

### **Recommendation**

It is recommended that MCoA 109 be amended to remove the reference to obtaining the Minister's approval and replace this with an approval from the Director General. The recommended change is shown below (deletions struck through, e.g. ~~struck through~~, and additions in italics, e.g. *italics*).

The Cycleway Strategy shall be submitted to the Director-General *for approval* and ~~require the approval of the Minister for Planning~~ within an appropriate timeframe to ensure that the approved cycleway is opened to cyclists no later than the opening of the Project to traffic.

### **CONCLUSION**

The Department considers that the proposed minor modifications would resolve the issues identified by the RTA correspondence while retaining the intent of the original conditions.

Sam Haddad

**Deputy Director General**

**Department of Infrastructure, Planning and Natural Resources**

As delegate for the Director General