



**MODIFICATION REQUEST:
NorthConnex M1-M2 – Modification 1
SSI-6136 (MOD1)**

***Extension of time to implement the Biodiversity
Offset Package***



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

June 2016

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1. BACKGROUND

The Roads and Maritime Services (RMS) has submitted a request to modify the NorthConnex M1-M2 State significant Infrastructure (SSI) approval (see Appendix A).

The NorthConnex project comprises twin tunnels each at nine kilometres in length containing separate northbound and southbound carriageways. NorthConnex is to link the M1 Pacific Motorway at Wahroonga and the Hills M2 Motorway at West Pennant Hills and would generally follow the alignment of Pennant Hills Road.

The Project was approved on 13 January 2015 by the then Minister for Planning under section 115ZB of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Under the approved project (condition D47), the RMS must develop and implement a Biodiversity Offset Package for approval of the Secretary within 12 months of the commencement of construction. No discretion currently exists within the condition to allow the Secretary to vary the timeframe of implementation, only the details of the Offset Package, as shown below:

“Within 12 months of the commencement of construction, the Proponent shall develop and implement a Biodiversity Offset Package for the approval of the Secretary. The Package shall detail how the ecological values lost as a result of the SSI will be offset. The Package shall be consistent with the NSW offset principles for major projects (state significant development and state significant infrastructure) (OEH, 2013) and align, as far as is feasible and reasonable, with the Biodiversity Offset Strategy requirements of the NSW Biodiversity Offsets Policy for Major Projects (OEH 2014), unless otherwise agreed by the Secretary.”

2. PROPOSED MODIFICATION

2.1 Modification Description

The RMS advises that it is not able to implement the Biodiversity Offset Package by 18 June 2016 (construction of the project commenced on 18 June 2015), and requests that condition D47 be amended to allow the Secretary to vary the timeframe of implementation, as shown (***in bold***) below:

*“Within 12 months of the commencement of construction, ***unless otherwise agreed by the Secretary***, the Proponent shall develop and implement a Biodiversity Offset Package for the approval of the Secretary. The Package shall detail how the ecological values lost as a result of the SSI will be offset. The Package shall be consistent with the NSW offset principles for major projects (state significant development and state significant infrastructure) (OEH, 2013) and align, as far as is feasible and reasonable, with the Biodiversity Offset Strategy requirements of the NSW Biodiversity Offsets Policy for Major Projects (OEH 2014).”*

Following determination of the modification, the RMS is seeking the Secretary's approval of a 24 month extension (to 18 June 2018) to implement the Biodiversity Offset Package under the amended condition D47.

The Biodiversity Offset Package is proposed to be completed before completion of the Project in late 2019.

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

In accordance with Section 115ZI 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 Project as modified will be consistent with the existing approval.

The existing approval does not explicitly allow the Secretary to consider a request for an extension of time for the implementation of the Biodiversity Offset Package. Consequently, a modification of the Minister's Approval under section 115ZI 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;
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.

A political disclosure statement has not been made and no submissions in the nature of objections were received. Accordingly the Director, Transport Assessments, is delegated the authority to determine the modification request.

The Director, Transport Assessments also has delegated authority to carry out the Secretary's post approval functions under the conditions of consent for State significant development.

4. CONSULTATION AND SUBMISSIONS

4.1 Public availability

Under Section 115ZL(1)(g) of the EP&A Act, the Secretary is required to make the modification request publicly available. Accordingly, the Department placed a copy of the modification request on it's website on 16 June 2016.

No objections to the modification request were received.

5. ASSESSMENT

The RMS advises that considerable effort has occurred in identifying and/or obtaining the offset credit requirements to satisfy the Biodiversity Offset Package for the project (see Table 1 below for the preliminary offset requirements):

Table 1: Offset Credits Required under the NorthConnex Infrastructure Approval

Community / species to be offset	Indicative credits required
Blue Gum High Forest (ME001) (2.21 hectares for the project)	78
Smooth-barked Apple - Red Bloodwood - Sydney Peppermint heathy open forest (ME029) (1.06 hectares for the project)	30
Red Bloodwood - Smooth-barked Apple shrubby forest (ME039) (2.21 hectares for project)	85
Sydney Turpentine-Ironbark Forest (ME041) (0.21 hectares for the project)	9
Gang-gang Cockatoo	74
<i>Epacris purpurascens subsp. Purpurascens</i>	4403

The RMS also advises that construction has not commenced in all locations where clearing is required, and the final offset credit requirements cannot be finalised until all clearing required for the project is complete and final impacts can be quantified.

However the relevant offset credits that are currently (or proposed to be) available have been investigated by the RMS, with negotiations commenced with a number of offset holders. This includes:

- 28 of the 30 credits for Smooth-barked Apple - Red Bloodwood - Sydney Peppermint heathy open forest (ME029) have already been purchased, with the remaining 2 credits to be purchased from Hornsby Shire Council from its Waitara Creek site;
- potential credit generating areas have been identified within the Ku-ring-gai Shire Council local government area for the Red Bloodwood-Smooth-barked Apple shrubby forest, with credits potentially available for purchase in the next 12 months;
- credits are available for purchase for Sydney Turpentine-Ironbark Forest from the Hills Shire Council and Transport for NSW, with negotiations to be undertaken for the purchase of the relevant credits;
- potential credit generating sites are being made available within the Hornsby Shire Council local government area for the Gang-gang Cockatoo which should be available for purchase in the next 3-6 months; and
- a potential supplier has been identified who has a surplus of credits available for *Epacris purpurascens subsp. Purpurascens*, with negotiations to be undertaken for the purchase of the relevant credits.

To address the Blue Gum High Forest offset requirement, the RMS further advises that lands owned by Hornsby Shire Council and the Hills Shire Council contain this ecological community. Consultation with both Councils indicates that they are willing to enter into a Biobanking agreement in relation to those lands to generate offset credits and make

those credits available to the project. The RMS estimates this process could take up to 18 months, with a further 6 months required to formally secure the credits through the Biobanking register once the credit conversion and certification process is complete.

The RMS therefore states that for the above mentioned reasons, it is not able to implement the Biodiversity Offset Package by 18 June 2016, and requests:

1. Condition D47 be amended to include the words "*unless otherwise agreed to by the Secretary*" after "*within 12 months of the commencement of construction*"; and
2. Should this modification be approved, a 24 month extension (to 18 June 2018) to implement the Biodiversity Offset Package.

Departments Consideration

Modification Request

The Department notes the complexities involved in the preparation of Biodiversity Offset Packages for large scale infrastructure projects, including the identification of the projects impacts and offset requirements, then calculating the relevant credit requirements. The process of finding and making suitable offset credits available can then be a particularly lengthy process. In this respect the Department considers the RMS has currently progressed the Biodiversity Offset Package to an acceptable level in relation to the projects known impacts.

The Department also notes for other recent State significant infrastructure projects (such as the WestConnex New M5 Project and Northern Beaches Hospital Connectivity and Network Enhancement Works-Stage 2), the relevant condition relating to the Biodiversity Offset Package permits the timeframe of approval to be varied by the Secretary, in recognition that the process can be lengthy.

Given this, the Department considers that modifying the condition to enable the Secretary to consider a request to vary the timing to prepare and implement the Biodiversity Offset Package for the NorthConnex Project is reasonable, consistent with other Major State significant infrastructure project approvals, and should be approved.

Extension request

The RMS further requests a 24 months extension (to 18 June 2018) for the implementation of the Biodiversity Offset Package as required under condition D47 (as amended).

The Department notes the work that has been undertaken to date in identifying and securing the offset requirements for the project, and is satisfied the RMS is adequately progressing the preparation of the Biodiversity Offset Package. The Department therefore considers an extension of time until 18 June 2018 is reasonable as it will be finalised prior to the expected completion date of the project in late 2019.

6. RECOMMENDATION

Based on the above, it is recommended that the Director, Transport Assessments (as delegate of the Secretary):

- approve the modification request by signing the attached modifying instrument (Tag A); and
- agree to an extension to the lodgement date for the Biodiversity Offset Package until 18 June 2018, in accordance with Condition D47 of the modified NorthConnex Infrastructure Approval (SSI-6136), by signing the attached letter (Tag B).

Toby Philp, Senior Planner
Roads (Metro)

Endorsed By



28/6/16

Kane Winwood
Team Leader
Roads (Metro)

Approved By



29.6.16

Karen Jones
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=7707