



Approval

The Northern Road Upgrade, Mersey Road, Bringelly, to Glenmore Parkway, Glenmore Park, NSW (EPBC 2016/7696)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

Proposed action

person to whom the approval is granted	Roads and Maritime Services
proponent's ABN	76 236 371 088
proposed action	To widen The Northern Road from the existing two lane corridor to up to eight lanes between Littlefields Road, Luddenham to 100m south of Glenmore Parkway, Glenmore Park, and to realign between Mersey Road, Bringelly, and Littlefields Road, Luddenham, to by-pass Luddenham and to avoid the site of the planned Western Sydney Airport. [See EPBC Act referral 2016/7696]

Approval decision

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approve
Commonwealth land (sections 26 & 27A)	Approve

conditions of approval

This approval is subject to the conditions specified below.

expiry date of approval

This approval has effect until 31 December 2030.

Decision-maker

name and position	Mike Smith Acting Assistant Secretary Assessments and Waste Branch
signature	
date of decision	15 June 2018

Conditions attached to the approval

1. The **approval holder** must undertake the action, including but not limited to those parts of the action that occur on Commonwealth Land, in accordance with all conditions in the **NSW Infrastructure Approval**.
2. The **approval holder** must notify the **Department** in writing of:
 - a. any application to modify the **NSW Infrastructure Approval** made under section 5.25 of the **EP&A Act**, no later than one week after making the application;
 - b. any proposed imposition of or variation to any conditions of the **NSW Infrastructure Approval** by the NSW Minister for Planning under Division 9.4 of the EP&A Act, no later than one week after the **approval holder** becomes aware of the proposed change, and
 - c. any actual modification or variation to the conditions of the **NSW Infrastructure Approval**, no later than one week after the modification or variation is officially notified to the **approval holder**.
3. The nature and quantity of **offsets** required to address the impacts of the action on biodiversity are to be implemented as required by the **NSW Infrastructure Approval**, with the following additional requirements:
 - a. The **Biodiversity Offset Strategy** described in Condition E2 of the **NSW Infrastructure Approval** must be submitted to the **Minister** for approval within 12 months after the date of **commencement of the action**. If the **Biodiversity Offset Strategy** is not submitted to the **Minister** for approval within 12 months after **commencement**, all physical works must cease, unless otherwise agreed in writing by the **Minister**.
 - b. The **Minister** may, at any point after the **Department** receives submission of the **Biodiversity Offset Strategy**, provide written notice to the **approval holder** that the **Biodiversity Offset Strategy** is not adequate. The notice may specify a time in which the **approval holder** must resubmit a revised **Biodiversity Offset Strategy**. If the revised **Biodiversity Offset Strategy** is not resubmitted within the period specified in the notice, the **approval holder** must not undertake any further works without the written agreement of the **Minister**.
 - c. In relation to Condition E3(c) of the **NSW Infrastructure Approval**, payment of funds into a statewide or multi-project biodiversity trust fund may not form part of an **offset** except with prior agreement in writing from the **Minister**.
 - d. Except as otherwise required by the **NSW Infrastructure Approval**, the **approval holder** may **commence the action** and undertake the action for 12 months after the date of **commencement** prior to securing any **offset**.
 - e. Once 12 months have passed since the date of **commencement**, the **approval holder** must not conduct any works further impacting a matter protected under Part 3 of the **EPBC Act** unless:
 - a. the **approval holder** has secured **offsets** sufficient to compensate for all impacts that occurred during the first 12 months after **commencement**, and

- b. the **approval holder** has secured further **offsets** sufficient to compensate for each future area of impact before that area is impacted.

The **approval holder** may continue works without fulfilling the requirements of Conditions 3(e)a and 3(e)b of this approval if the **Minister** provides written agreement that works may continue.

Note: an **offset** will be taken to be secured for the purposes of this condition if the **approval holder** has entered into a written in-principle agreement to with a relevant landholder or landholders to purchase **biodiversity credits** from land the **approval holder** reasonably believes will yield an **offset** sufficient to discharge the relevant degree of **offset** liability.

- f. In addition to the requirements of Condition 3(e) of this approval, within 3 years after the date of **commencement**, the **approval holder** must provide the **Department** with a **credit retirement report** demonstrating to the **Department's** satisfaction that all **offsets** required under the **NSW Infrastructure Approval** are in place.

4. The **approval holder** must undertake an archaeological excavation of the Chaffey Brothers Canal. The excavation must:

- a. be completed in accordance with, and fully implement, the '*The Chaffey Brothers Irrigation Scheme Canal, Archaeological research design and excavation methods*' (EMM, 19 October 2017) at Appendix D to Volume 2 of the '*The Northern Road Upgrade – Mersey Road, Bringelly to Glenmore Parkway, Glenmore Park Final Environmental Impact Statement*' dated December 2017; and

- b. be completed before any construction works occur within 20 m of the Chaffey Brothers Canal.

5. The **Historical Archaeological Excavation Report** referred to in Conditions E12 and E13 of the **NSW Infrastructure Approval** must also cover the Chaffey Brothers Canal.

6. In so far as it is relevant to **DEOH** or the **DEOH Golf Club**, the **Urban Design and Landscape Plan** described in Conditions E62 to E65 of the **NSW Infrastructure Approval** must not be finalised, nor implemented within the **DEOH** or **DEOH Golf Club** boundaries, until all measures positively or negatively impacting **DEOH** or the **DEOH Golf Club** are consented to by the **Department of Defence**.

7. No **waste** material generated outside the **DEOH** site may be used as soil, fill, or a component of soil or fill, within the boundaries of **DEOH** nor within 10 metres of the **DEOH** boundary, unless:

- a. the material is **Virgin Excavated Natural Material**, and

- b. the material is sourced from a location that appropriate testing demonstrates is free of weed propagules and/or *Phytophthora cinnamomi*. Details of the material source and testing undertaken must be provided to the **Minister** before the material is taken onto the **DEOH** site. The **Minister** may write to the **approval holder** at any time and advise that the **Minister** is not satisfied with the testing undertaken. If the **Minister** provides such advice, the **approval holder** must not source any further material from that site without the **Minister's** written agreement.

Between 10 m and 30 m from the **DEOH** boundary, the **approval holder** must make all reasonably practical efforts to ensure that all material used is free of weed propagules and/or *Phytophthora cinnamomi*.

8. No **topsoil** material generated outside the **DEOH** site may be used as soil, fill, or a component of soil or fill, within the boundaries of **DEOH** nor within 30 metres of the **DEOH** boundary, unless:
- a. The **approval holder** can demonstrate the **topsoil** material is free of contaminants that would adversely affect the environment, and
 - b. the **topsoil** material is sourced from a location that appropriate testing demonstrates is free of weed propagules and/or *Phytophthora cinnamomi*. Details of the **topsoil** material source and testing undertaken must be provided to the **Minister** before the **topsoil** is taken onto the **DEOH** site. The **Minister** may write to the **approval holder** at any time and advise that the **Minister** is not satisfied with the testing undertaken. If the **Minister** provides such advice, the **approval holder** must not source any further **topsoil** material from that site without the **Minister's** written agreement.
9. Any **mulch** material applied or stockpiled on land that will be inside the **DEOH** boundary fence once the action is completed, or on land that will be within 30 m of the **DEOH** boundary fence once the action is completed, must fulfil the requirements of the **Mulch Exemption** and the **Mulch Order** as if the **mulch** were being applied to an **environmentally sensitive area**.
10. Within 30 days after the **commencement of the action**, the person taking the action must advise the **Department** in writing of the actual date of commencement.
11. The person taking the action must maintain accurate records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement all management plans required by this approval, and make them available upon request to the **Department**. Such records may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the **Department's** website. The results of audits may also be publicised through the general media.
12. By 30 June of each year after the **commencement of the action**, the person taking the action must publish a report on their website addressing compliance with the conditions of this approval over the previous 12 months, including implementation of any management plans as specified in the conditions. Non-compliance with any of the conditions of this approval must be reported to the **Department** at the same time as the compliance report is published.
13. The person taking the action must provide the **Department** with a copy of each approved or finalised document provided to the **DP&E Secretary** in accordance with conditions A27 to A43 on the **NSW Infrastructure Approval**.
- Note:** These conditions relate to documenting and reporting compliance and non-compliance with the conditions of the **NSW Infrastructure Approval**.
14. Upon the direction of the **Minister**, the person taking the action must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the **Minister**. The independent auditor must be approved by the **Minister** prior to the commencement of the audit. Audit criteria must be agreed to by the **Minister** and the audit report must address the criteria to the satisfaction of the **Minister**.
15. If, at any time after five years from the date of this approval, the person taking the action has not substantially **commenced the action**, then the person taking the action must not substantially commence the action without the written agreement of the **Minister**.

Definitions

Approval holder – has the same meaning as in the **EPBC Act**.

BC Act – the *Biodiversity Conservation Act 2016* (New South Wales), as amended from time to time.

Biodiversity credits – has the same meaning as in the **BC Act**.

Biodiversity Offset Strategy – has the same meaning as in the **NSW Infrastructure Approval**.

Commence the action / commencement of the action – the first instance of **construction** associated with the proposed action.

Construction – has the same meaning as in the **NSW Infrastructure Approval**.

Credit retirement report – has the same meaning as in the **NSW Infrastructure Approval**.

DEOH – the Defence Establishment Orchard Hills site, which includes but is not limited to all areas listed on the Commonwealth Heritage List as Defence Establishment Orchard Hills. For the purposes of conditions 7, 8, and 9 of this approval only, **DEOH** does not include any area that will be transferred to the **approval holder** for the on-going operation and maintenance of the road development comprising the proposed action.

DEOH Golf Club – the Orchard Hills Golf Club, located within and adjacent to **DEOH**.

DP&E Secretary – the Secretary of the New South Wales Department of Planning and Environment

Department – the Commonwealth Department or Agency administering the **EPBC Act** from time to time, and includes the **Minister**.

Department of Defence – the Commonwealth Department of Defence.

Environmentally sensitive area – has the same meaning as under the **Mulch Exemption** and the **Mulch Order**.

EP&A Act – the *Environment Planning and Assessment Act 1979* (New South Wales).

EPBC Act – the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth), as amended from time to time.

Historical Archaeological Excavation Report – has the same meaning as in the **NSW Infrastructure Approval**.

Minister – the Commonwealth Minister administering the **EPBC Act** from time to time, and includes a delegate of that Minister.

Mulch – has the same meaning as under the **Mulch Order** and **Mulch Exemption**.

Mulch Exemption – means the Resource Recovery Exemption under Part 9, Clauses 91 and 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW), known as ‘The Mulch Exemption 2016’. (Note: the exemption is available from <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption>)

Mulch Order – means the Resource Recovery Order under Part 9, Clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW), known as ‘The Mulch Order 2016’. (Note: the exemption is available from <https://www.epa.nsw.gov.au/your-environment/recycling-and-reuse/resource-recovery-framework/current-orders-and-exemption>)

NSW Infrastructure Approval – the infrastructure approval for the Northern Road Upgrade issued by the New South Wales Government on 30 May 2018, and as amended from time to time.

Offsets – has the same meaning as in the **NSW Infrastructure Approval**.

Topsoil – means natural surface soil that may contain organic matter, and includes soil brought into the project site that is used on site as natural surface soil.

Urban Design and Landscape Plan – has the same meaning as in the **NSW Infrastructure Approval**.

Waste – any material categorised as waste material by the NSW Environment Protection Agency (or a successor agency), with the following exceptions:

- Material generated by cut-and-fill works that are part of the EPBC 2016/7696 action. The exception for material generated by cut-and-fill works only applies if that material is used exclusively for cut-and-fill works as part of the EPBC 2016/7696 action.
- **Mulch** material that satisfies the requirements of condition 8 of these conditions.