

# **Appendix B**

## **Statutory compliance**

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# Appendix B – Statutory compliance

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## 1.1 NSW legislation

### 1.1.1 Environmental Planning and Assessment Act 1979

The Minister for Planning is the approval authority for the Great Western Highway Blackheath to Little Hartley Upgrade (the project) under section 5.14 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Transport for NSW is seeking State significant infrastructure and critical State significant infrastructure declaration for the project by the Minister for Planning.

As part of this declaration, Schedule 4 and 5 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) will be amended to include the project. Section 5.17 of the EP&A Act requires that Transport for NSW (Transport), as the proponent, prepare an environmental impact statement (EIS) for the project.

In accordance with section 5.22 of the EP&A Act, environmental planning instruments (i.e. State Environmental Planning Policies and Local Environmental Plans) do not apply to State significant infrastructure except in relation to:

- the declaration of State significant infrastructure projects or critical State significant infrastructure projects. The application of State Environmental Planning Policy (Planning Systems) 2021 in this context is discussed in Section 1.1.2
- in so far as they enable State significant infrastructure to be carried out without development consent (but in accordance with an approval granted under Division 5.2, Part 5 of the EP&A Act). The application of the State Environmental Planning Policy (Transport and Infrastructure) 2021 in this context is discussed in Section 1.1.2.

Because the project would be carried out within Sydney's drinking water catchment, an assessment to demonstrate that the project would have a neutral or beneficial effect (NorBE) on water quality has been carried out (refer to Chapter 14 (Surface water and flooding) and Appendix J (Technical report – Surface water and flooding)). State Environmental Planning Policy (Biodiversity and Conservation) 2021 provides context to the protection of Sydney's drinking water catchment and carrying out NorBE assessments and is discussed in Section 1.1.4.

### 1.1.2 State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)

Section 2.109 of the Transport and Infrastructure SEPP applies to development for the purpose of a road or road infrastructure facilities and provides that these types of works, where carried out by or on behalf of a public authority are development which is permissible without consent, on any land, except for land reserved under the *National Parks and Wildlife Act 1974*. The project does not traverse any land reserved under the *National Parks and Wildlife Act 1974*.

The project includes a road and "road infrastructure facilities" as defined by section 2.108 of the Transport and Infrastructure SEPP and would be carried out by or on behalf of Transport, a public authority as defined under Section 1.4 of the EP&A Act.

The project is therefore permissible without consent pursuant to section 2.109 of the Transport and Infrastructure SEPP.

### 1.1.3 State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)

Section 2.14 of the Planning Systems SEPP declares development as State significant infrastructure if it is specified in Schedule 4 of the SEPP.

Section 5.12(4) of the EP&A Act states that development specified in Schedule 4 of the Planning Systems SEPP is State significant infrastructure despite anything to the contrary in section 5.12 of the EP&A Act, if it is specifically declared to be State significant infrastructure by a State environmental planning policy or by an order of the Minister (published on the NSW legislation website) that amends a State environmental planning policy for that purpose.

Section 2.15 of the Planning Systems SEPP enables the Minister for Planning to declare a State significant infrastructure project to be critical State significant infrastructure.

Transport for NSW is seeking State significant infrastructure and critical State significant infrastructure declaration for the project by the Minister for Planning.

As part of this declaration, Schedule 4 and 5 of the Planning Systems SEPP will be amended to include the project.

### 1.1.4 State Environmental Planning Policy (Biodiversity and Conservation) 2021

As discussed in Section 1.1.1, State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) does not apply to the project because it has been declared to be State significant infrastructure. Notwithstanding, the Biodiversity and Conservation SEPP is discussed here because it provides context to the NorBE completed for the project.

The project would be carried out within Sydney's drinking water catchment. For other developments and activities proposed within the drinking water catchment (being developments and activities not declared to be State significant infrastructure), the Biodiversity and Conservation SEPP requires that Water NSW's current recommended practices and standards be applied. These recommended practices and standards have been considered and applied to the project where relevant, as detailed in Appendix J (Technical report – Surface water and flooding).

The Biodiversity and Conservation SEPP also requires that activities (being activities not declared to be State significant infrastructure) be subject to an assessment of NorBE on water quality. Although the project is not bound to comply with this requirement, a NorBE assessment has nonetheless been completed as a matter of good practice, and is detailed in Appendix J (Technical report – Surface water and flooding).

### 1.1.5 Environmental Planning and Assessment Regulation 2021

Division 5, Part 8 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) lists the information required to be included in an EIS. Form and content requirements for an EIS are listed in Table 1, as well as a checklist to demonstrate where these requirements are included in the EIS for this project.

Table 1 Environmental Planning and Assessment Regulation 2021, Part 8, Division 5, Sections 190 to 193 checklist

Requirement	Where addressed
<b>190. Form of the environmental impact statement</b>	
1. An environmental impact statement must contain the following information—	
a. the name, address and professional qualifications of the person by whom the statement is prepared	Declaration

Requirement	Where addressed
b. the name and address of the responsible person	Declaration
c. the address of the land— i. to which the development application relates, or ii. on which the activity or infrastructure to which the statement relates will be carried out	Declaration
d. a description of the development, activity or infrastructure	Declaration, Chapter 4 (Project description) and Chapter 5 (Construction)
e. an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division	Throughout the EIS
2. The person preparing the statement must consider—	
a. for State significant development—the State Significant Development Guidelines or	Not applicable
b. for State significant infrastructure—the State Significant Infrastructure Guidelines.	Declaration and throughout EIS
3. An environmental impact statement must also contain a declaration by the person who prepared the statement of the following—	
a. the statement has been prepared in accordance with this Division, and	Declaration
b. the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure, and	Declaration
c. the information contained in the statement is not false or misleading.	Declaration
d. for State significant development or State significant infrastructure—the statement contains the information required under the Registered Environmental Assessment Practitioner Guidelines.	Declaration
<b>191. Compliance with environmental assessment requirements</b>	
The environmental impact statement must comply with the environmental assessment requirements notified under Section 176 or the Act, Section 5.16(4).	Appendix A (Assessment requirements)
<b>192. Content of environmental impact statement</b>	
1. An environmental impact statement must also include each of the following:	
a. a summary of the environmental impact statement	Summary

Requirement	Where addressed
b. a statement of the objectives of the development, activity or infrastructure	Chapter 2 (Strategic context and project need)
c. an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, considering its objectives, including the consequences of not carrying out the development, activity or infrastructure	Chapter 3 (Project alternatives and options)
d. an analysis of the development, activity or infrastructure, including—	
i. a full description of the development, activity or infrastructure, and	Chapter 4 (Project description) and Chapter 5 (Construction)
ii. a general description of the environment likely to be affected by the development, activity or infrastructure and a detailed description of the aspects of the environment that are likely to be significantly affected, and	Environmental assessment chapters (Chapters 8-24) and technical environmental assessment appendices (Appendices D-Q)
iii. the likely impact on the environment of the development, activity or infrastructure, and	Environmental assessment chapters (Chapters 8-24) and technical environmental assessment appendices (Appendices D-Q)
iv. a full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment, and	Environmental assessment chapters (Chapters 8-24) and technical environmental assessment appendices (Appendices D-Q)
v. a list of the approvals that must be obtained under another Act or law before the development, activity or infrastructure may lawfully be carried out	Chapter 6 (Statutory context) and Appendix B (Statutory compliance)
e. a compilation, in a single section of the environmental impact statement, of the measures referred to in paragraph (d)(iv)	Appendix R (Compilation of environmental mitigation measures)
f. the reasons justifying the carrying out of the development, activity or infrastructure, considering biophysical, economic and social factors, including the principles of ecologically sustainable development set out in Section 193.	Chapter 23 (Sustainability, climate change and greenhouse gas) Chapter 25 (Justification and conclusion)
2. This section is subject to the environmental assessment requirements that relate to the environmental impact statement.	Appendix A (Assessment requirements)
3. This section does not apply if—	

Requirement	Where addressed
a. the Planning Secretary has waived the requirement for an application for environmental assessment requirements in relation to an environmental impact statement for State significant development, and	Not applicable
b. the conditions of the waiver specify that the environmental impact statement must instead comply with requirements set out or referred to in the conditions.	Not applicable
4. A document adopted or referred to by an environmental impact statement is taken to form part of the statement.	Entire EIS, including appendices
<b>193. The principles of ecologically sustainable development</b>	Chapter 25 (Justification and conclusion)

### 1.1.6 Other NSW legislation

Approvals under other NSW legislation that may apply to the project and how relevant matters have been addressed in the EIS are summarised in Table 2.

Table 2 Other approvals

Other approvals	Applicability to the project
Environment Protection Licences under the <i>Protection of the Environment Operations Act 1997</i>	<p>The project comprises “road construction” classified as a scheduled activity requiring an Environment Protection Licence (EPL) under Chapter 3 of the <i>Protection of the Environment Operations Act 1997</i> (POEO Act). Under section 5.24 of the EP&amp;A Act, an EPL under the POEO Act cannot be refused if it is necessary for carrying out approved State significant infrastructure. As the EPL is necessary for the carrying out of the project, authorisation of the licence cannot be refused and is to be substantially consistent with the project’s approval under Section 5.19 of the EP&amp;A Act.</p> <p>The POEO Act also requires an EPL for the operation of ventilation outlets associated with specified roads tunnels. It is anticipated that if approved, and if the ventilation outlet option is selected as the preferred ventilation option, that the project would be added to the list of regulated road tunnels and an EPL would be required for the operation of the project ventilation outlets. If the portal emissions option is selected as the preferred ventilation option, this particular EPL would not be required.</p>
Tenure arrangements under the <i>Crown Land Management Act 2016</i>	A portion of the project would traverse Crown land and tenure arrangements under the <i>Crown Lands Management Act 2016</i> would be sought to grant relevant interest (i.e., licence, permit, easement or right of way) over the Crown Reserve. The project’s interface with Crown land is further discussed in Chapter 20 (Business, land use and property).
<i>Aboriginal Land Rights Act 1983</i>	Several properties required for the project are subject to unresolved Aboriginal Land Claims (refer to Chapter 20 (Business, land use and property)). These land claims under the <i>Aboriginal Land Rights Act 1983</i> do not necessarily denote Aboriginal cultural or scientific archaeological values. Land Councils are not required to establish cultural association with lands when making land claims under the <i>Aboriginal Land Rights Act 1983</i> .

Other approvals	Applicability to the project
<p><i>Water NSW Act 2014</i></p>	<p>Surface works at Blackheath (construction and operation phases) would be located within the Blackheath Special Area, listed under Schedule 1 of the Water NSW Regulation 2020. The Blackheath Special Area forms the surface water catchment for Lake Medlow and Lake Greaves, which supply water (along with supply from the Cascade dams) to the Cascade water filtration plant for subsequent supply to the populations of Medlow Bath, Blackheath and Mount Victoria.</p> <p>Division 4, Part 3 of the Water NSW Regulation 2020 prohibits the carrying out of certain activities on land within a Schedule 1 Special Area except with consent granted by Water NSW under section 9.</p> <p>Under section 50 of the Water NSW Act, notice would need to be given to the Regulatory Authority, being Water NSW, in relation to the relevant parts of the project within the special area.</p> <p>Once notice has been given under section 50, Water NSW may make representations regarding the relevant parts of the project within the special areas. If these parts of the project are contrary to any representations made by Water NSW, then Transport would need to give Water NSW 28 days further notice before commencing those works.</p> <p>Transport is in consultation with Water NSW about the project.</p> <p>Clause 12(1)(b) of the Water NSW Regulation 2020 specifies that it is an offence to take any water that is located on land in a special area or controlled area.</p> <p>Modelling for the project demonstrates that groundwater drawdown around the Blackheath portal during construction and operation would ‘take’ groundwater and surface water (notably from Greaves Creek) from within the Blackheath Special Area.</p> <p>Clause 12(2) of the Water NSW Regulation 2020 provides that the taking of water from a special area or a controlled area is not an offence if done with lawful authority, including a licence or approval under the <i>Water Management Act 2000</i> or the <i>Water Act 1912</i>.</p> <p>Transport is relieved from the need to obtain certain approvals under the <i>Water Management Act 2000</i> or the <i>Water Act 1912</i> (by virtue of the operation of section 5.23(1) of the EP&amp;A Act).</p> <p>Transport is seeking State significant infrastructure and critical State significant infrastructure declaration for the project by the Minister for Planning. The State Significant Infrastructure approval and the water allocation under the <i>Water Management Act 2000</i>, if granted, would constitute ‘lawful authority’ to take water from the Blackheath Special Area.</p>

By virtue of section 5.23 of the EP&A Act, the following approvals would not be required for the project as an approved State significant infrastructure project:

- permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994*
- approvals under Part 4 and excavation permits under section 139 of the *Heritage Act 1977*
- various approvals under the *Water Management Act 2000*, including water use approvals under section 89, water management work approvals under section 90, and activity approvals under section 91.



## 1.2 Commonwealth legislation

### 1.2.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), proposed 'actions' that have the potential to significantly impact on matters of national environmental significance (MNES) or the environment or Commonwealth land, or 'actions' that are being carried out by a Commonwealth agency, must be referred to the Commonwealth Minister for the Environment. If the Minister determines that a referred project is a 'controlled action', the approval of the Minister will be required for the project in accordance with the EPBC Act, in addition to any State approvals.

Consideration of the project against MNES and Commonwealth land is provided in Table 3. An assessment of the project's potential impact on threatened species, ecological communities and migratory species (as discussed in Chapter 12 (Biodiversity)), as well as the Blue Mountains World Heritage Area (as discussed in Chapter 17 (Non-Aboriginal heritage)) found that the project's level of impact on MNES is not considered significant. Transport has submitted a referral under the EPBC Act to the Department of Climate Change, Energy, the Environment and Water. At the time of finalisation of this EIS there has been no decision on whether the project constitutes a controlled action or not.

Table 3 Consideration of matters of national environmental significance

EPBC matter	Project consideration
World heritage	There are no direct impacts to Greater Blue Mountains World Heritage area and the project has been designed to minimise indirect impacts (refer to Chapter 4 (Project alternatives and options)). Further consideration of world heritage is discussed in Chapter 17 (Non-Aboriginal heritage).
National heritage	The project is located within an area mapped as The Greater Blue Mountains Area – Additional Values which has been under consideration for inclusion on the National Heritage List since 2000. The project would not have a significant impact on the Greater Blue Mountains Area – Additional Values. Further consideration of national heritage is discussed in Chapter 17 (Non-Aboriginal heritage).
Wetlands of international importance	There are no mapped wetlands of international importance within one kilometre of the project. The nearest wetland of international importance is the Towra Point Nature Reserve about 93 kilometres southeast of the project. The project would therefore not impact on wetlands of international importance.

EPBC matter	Project consideration
Listed threatened species and communities	<p>Two threatened fauna species listed under the EPBC Act have been recorded (Large-eared Pied Bat and Greater Glider) and a further eight are considered likely to have potential habitat potentially affected by the project (refer to Chapter 12 (Biodiversity)):</p> <ul style="list-style-type: none"> <li>• Regent Honeyeater <i>Anthochaera phrygia</i> (critically endangered)</li> <li>• Gang-gang Cockatoo <i>Callocephalon fimbriatum</i> (endangered)</li> <li>• Large-eared Pied Bat <i>Chalinolobus dwyeri</i> (vulnerable)</li> <li>• Spotted-tailed Quoll <i>Dasyurus maculatus</i> (endangered)</li> <li>• Broad-headed Snake <i>Hoplocephalus bungaroides</i> (vulnerable)</li> <li>• Swift Parrot <i>Lathamus discolor</i> (critically endangered)</li> <li>• Purple Copper Butterfly <i>Paralucia spinifera</i> (vulnerable)</li> <li>• Greater Glider <i>Petauroides volans</i> (endangered)</li> <li>• Koala <i>Phascolarctos cinereus</i> (endangered)</li> <li>• Grey-headed Flying-Fox <i>Pteropus poliocephalus</i> (vulnerable).</li> </ul> <p>The project would not have a significant impact on these threatened fauna species. No threatened flora species listed under the EPBC Act have been recorded or are considered likely to occur within the area affected by the project.</p> <p>There is one threatened ecological community listed under the EPBC Act that may be indirectly impacted by the project – specifically potential changes in hydrology impacting Temperate Highland Peat Swamps on Sandstone (endangered ecological community). The project would not have a significant impact on this community (refer to Chapter 12 (Biodiversity)).</p>
Listed migratory species	The project would not have a significant impact on listed migratory species (refer to Chapter 12 (Biodiversity)).
Protection of the environment from nuclear actions	No nuclear actions are associated with the project.
Marine environment	The project does not traverse or impact any marine environment.
Great Barrier Reef marine park	The project does not traverse or impact the Great Barrier Reef marine park.
Protection of water resources from coal seam gas development and large coal mining development	The project does not involve any coal seam gas development or large coal mining development.
Additional matters of national environmental significance	Not applicable.

### **1.2.2 Native Title Act 1993 (Commonwealth)**

No native title claims exist over the area of the project.

The Soldiers Pinch construction footprint lies within the Gundugurra Indigenous Land use agreement area, which may be subject to future Native title claims. This area would be temporarily leased during construction and reinstated at the completion of construction (refer to Chapter 20 (Business, land use and property)).