

## 5.0 Statutory context

This chapter describes the environmental planning approval process and other statutory requirements for the proposed modification.

### 5.1 Planning approval process

#### 5.1.1 Westlink M7 project approval

The Westlink M7 (the approved project) was granted approval on 28 February 2002 under the then Division 4, Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This included the granting of concurrence for the project under Section 112D of the EP&A Act by the National Parks and Wildlife Service (NPWS) on 14 September 2001 (NPWS, 2001). In 2005, Division 4, Part 5 of the EP&A Act was repealed with the introduction of Part 3A of the Act. Due to the repeal of Division 4, Part 5, and under the transitional provisions of the Act, the project was deemed to be a Part 3A project.

Following the repeal of the then Part 3A of the EP&A Act in 2011, a series of savings and transitional provisions were implemented. Projects previously subject to Part 3A were then subject to a system of State Significant Development (Division 4.7, Part 4) and State Significant Infrastructure (SSI) (Division 5.2, Part 5).

Clause 5(1) of Schedule 2 of *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (NSW) provides that specified development on specified land to which Part 3A applied before its repeal can be declared to be SSI by Order made by the Minister for Planning and Public Spaces. An Order was made by the Minister for Planning which came into effect on 26 April 2019 to make the original Division 4, Part 5 approval for the project subject to the current SSI provisions of the EP&A Act (Division 5.2, Part 5). As such, the project is now gazetted to be SSI under the Act.

Since approval was granted, the approved project has been modified on five occasions as described in **Section 2.2.1**.

#### 5.1.2 Modification application

Transport for NSW (Transport) is submitting a request to the Minister to modify the existing project approval (SSI-663) under section 5.25 of the EP&A Act. Section 5.25 (2) of the EP&A Act states that *“the 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 infrastructure as modified will be consistent with the existing approval under this Division”*. Section 180 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) sets out requirements for a modification request.

The approved project was for the construction and operation of the four-lane traffic motorway (two lanes in each direction), with the ability to accommodate the future provision of public transport or additional road lanes in the median. The proposed modification would enable the establishment of an extra trafficable lane in each direction (excluding through the Westlink M7/M4 Motorway (Light Horse) Interchange). This will be done by widening into the existing median of the Westlink M7. The design of the proposed modification would not preclude the use of the median or lanes of the motorway for dedicated public transport routes in the future.

The project approval for SSI-663 would require changes to a number of the conditions of approval (CoA) to account for the proposed modification, particularly Condition 1 (which requires the project to be carried out in accordance with the original Environmental Impact Statement, as modified) and Condition 29 (which requires the approved project be constructed and operated to accommodate a maximum of four through traffic lanes, two in each direction). Changes to the CoA for the proposed modification are discussed further in **Chapter 8** (Conditions of approval).

## 5.2 Commonwealth legislation

### 5.2.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (EPBC Act) provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places, defined in the EPBC Act as 'Matters of National Environmental Significance (MNES)'. The EPBC Act requires the assessment of whether a project is likely to significantly affect MNES or Commonwealth land.

Under the environmental assessment provisions of the EPBC Act, MNES and impacts on Commonwealth land are required to be considered to assist in determining whether the proposed modification should be referred to the Australian Government Department of Agriculture, Water and the Environment.

Potential impacts on MNES as a result of the modification are detailed in Table 5-1.

**Table 5-1 Impacts on MNES as a result of the proposed modification**

Matters of National Significance	Potential impact
Any impact on a World Heritage property?	Nil
Any impact on a National Heritage place?	Nil
Any impact on a wetland of international importance?	Nil
Any impact on a listed threatened species or communities?	Impacts to a threatened (critically endangered) ecological community (Cumberland Plain Woodland in the Sydney Basin Bioregion). A biodiversity assessment undertaken for the proposed modification found that this community is unlikely to be significantly impacted (refer <b>Section 7.6</b> (Biodiversity) for further information).
Any impacts on listed migratory species?	Nil
Any impact on a Commonwealth marine area?	Nil
Does the proposal involve a nuclear action (including uranium mining)?	Nil
Additionally, any impact (direct or indirect) on the environment of Commonwealth land?	Nil

No significant impact in relation to MNES has been identified during the environmental impact assessment. As such, a referral to the Department of Agriculture, Water and the Environment is not required for the proposed modification. Further detail on the potential impacts on MNES are provided in **Section 7.6** (Biodiversity).

## 5.2.2 Other Commonwealth legislation

An overview of other Commonwealth legislation relevant to the proposed modification is provided in Table 5-2.

**Table 5-2 Applicable Commonwealth legislation relevant to proposed modification**

Applicable legislation	Considerations
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	<p>The <i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i> (the ATSIHP Act) provides for the preservation and protection of places, areas and objects of particular significance to Indigenous Australians.</p> <p>The ATSIHP Act can override state and territory laws in situations where a state or territory has approved an activity, but the Commonwealth Minister prevents the activity from occurring by making a declaration to protect an area or object. However, the Minister can only make a decision after receiving a legally valid application under the ATSIHP Act and, in the case of long-term protection, after considering a report on the matter. Before making a declaration to protect an area or object in a state or territory, the Commonwealth Minister must consult the appropriate minister of that state or territory.</p> <p>No declarations relevant to the study area have been made under the ATSIHP Act.</p> <p>An Aboriginal heritage assessment has been undertaken for the proposed modification otherwise, and appropriate mitigation measures have been proposed to address potential impacts (refer <b>Section 7.7</b> (Aboriginal heritage)).</p>
<i>Native Title Act 1993</i>	<p>There are no pending or approved native title claims over the alignment of the Westlink M7 or areas subject to the proposed modification.</p> <p>Searches of the <i>National Native Title Register</i>, <i>Register of Native Title Claims</i> and <i>Register of Indigenous Land Use Agreements</i> were undertaken in October 2021 for the Blacktown, Fairfield and Liverpool Local Government Areas (LGAs). These searches returned no registered native title determinations, claims or ILUAs.</p>
<i>Airports Act 1996</i>	<p>Under the provisions of the <i>Airports Act 1996</i> and the <i>Airports (Protection of Airspace) Regulations 1996</i>, height requirements can be imposed for developments within controlled airspace. Measures to limit developments within controlled airspace include defined Obstacle Limitation Surface (OLS), Terminal Area Radars (TAR), and 'procedures for air navigation systems – aircraft operations' (PANS-OPS) surface.</p> <p>Under section 183 of the <i>Airports Act 1996</i>, a controlled activity must not be undertaken in relation to 'prescribed airspace' (i.e. OLS and PANS-OPS) without the approval of the Secretary of the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications.</p> <p><i>Western Sydney Airport</i></p> <p>The OLS for the Western Sydney Airport, which extends from the centre of the runway for a radius of 15 kilometres. The OLS for the Western Sydney Airport controlled airspace is set at anything over about 220 metres Australian Height Datum (AHD) and over 100 metres above the ground level where the OLS interfaces with the Westlink M7 (Australian Government Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 2020). Given the proposed modification (if approved) would be constructed before the operation of the Western Sydney International Airport, the OLS would not be impacted by the proposed modification. Similarly, as the operation of the proposed modification would not intrude into the protected airspace, an approval or exemption under the <i>Airports Act 1996</i> and the <i>Airports (Protection of Airspace) Regulation 1996</i> is not required. TAR facilities are located at Cecil Park</p>

Applicable legislation	Considerations
	<p>near to the proposed modification. The Airservices Australia (Airservices) facilities at Cecil Park include a radar and a microwave link. The height of the antennae are 177 metres AHD for the primary radar and 168 metres AHD for the microwave link. Therefore, obstacles, including structures, cranes and construction equipment, that are kept below 165 metres AHD will have a minimal risk of impacting Airservices facilities. Details of the proposed modification construction machinery and equipment would be provided to Airservices to determine whether a Development Assessment Submission form is required for the proposed modification.</p> <p><i>Bankstown Airport</i></p> <p>The OLS and PANS-OPS for the Bankstown Airport extend over the footprint of the proposed modification. The OLS outer horizontal surface covers land between Prestons and Horsley Park and is set at about 150 metres above ground level (Australian Government Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 2012). The PANS-OPS differs across parts of the Westlink M7 but is set at about 270 metres at the lowest point near Elizabeth Drive (Sydney Metro Airports, 2019). Construction and operation of the proposed modification would not intrude into the heights these surfaces relate to. As above, Airservices would be consulted in relation to the proposed modification.</p>

### 5.3 NSW legislation and regulations

#### 5.3.1 Environmental Planning and Assessment Act 1979

The EP&A Act establishes the system of environmental planning and assessment in NSW. The proposed modification is subject to the environmental impact assessment and planning approval requirements of Division 5.2, Part 5 of the EP&A Act.

As outlined in **Section 5.1.1**, the approved project is SSI. By virtue of the approved project and by consequence of the proposed modification being SSI, the proposed modification is subject to sections 5.23 and 5.24 of the EP&A Act. Those sections identify approvals that are not required and approvals that cannot be refused if necessary (and are consistent with the SSI approval), for carrying out an SSI project, respectively.

With reference to section 5.23 of the EP&A Act, approvals that do not apply to this proposed modification are detailed in Table 5-3. The potential impacts anticipated by those approvals have been assessed as part of this modification report.

**Table 5-3 Approvals and permits not required for SSI projects under section 5.23 of the EP&A Act**

Approval or permit not required	Comment
<p>A permit under section 201 of the <i>Fisheries Management Act 1994</i></p> <p>(Dredging or reclamation)</p>	<p>The proposed modification would require temporary creek diversions and/or crossings during construction to facilitate the establishment of additional bridge piers at the following locations:</p> <ul style="list-style-type: none"> <li>• Within the Cabramatta Creek catchment: <ul style="list-style-type: none"> <li>- Cabramatta Creek (upstream of Georges River)</li> <li>- Hinchinbrook Creek (upstream of Cabramatta Creek)</li> <li>- Maxwells Creek (upstream of Cabramatta Creek)</li> <li>- An unnamed creek at Cecil Hills</li> </ul> </li> <li>• Within the Ropes Creek catchment: <ul style="list-style-type: none"> <li>- Ropes Creek</li> </ul> </li> <li>• Within the Eastern Creek Catchment: <ul style="list-style-type: none"> <li>- Reedy Creek (upstream of Eastern Creek)</li> <li>- An unnamed Creek at Eastern Creek (upstream of Eastern Creek)</li> <li>- Angus Creek (upstream of Eastern Creek)</li> </ul> </li> </ul> <p>The potential impacts of construction on aquatic ecology are assessed in <b>Section 7.6</b> (Biodiversity), with appropriate mitigation measures recommended to address potential impacts identified.</p> <p>The proposed modification would require dredging and reclamation works for the establishment of additional bridge piers within creeks that cross the Westlink M7, resulting in permanent waterway adjustments. The anticipated impact of this upon aquatic ecology is assessed in <b>Section 7.6</b> (Biodiversity) and <b>Appendix H</b> (Biodiversity development assessment report), with appropriate mitigation measures recommended to address potential impacts identified.</p>
<p>A permit under section 205 of the <i>Fisheries Management Act 1994</i></p> <p>(Marine vegetation – regulation of harm)</p>	<p>The proposed modification would not be carried out within or nearby a marine area and would therefore not affect marine vegetation.</p>
<p>A permit under section 219 of the <i>Fisheries Management Act 1994</i></p> <p>(Passage of fish not to be blocked)</p>	<p>The proposed modification would require temporary creek diversions and/or crossings during construction and the permanent establishment of additional bridge piers within creeks that cross the Westlink M7. The anticipated impact of these construction and operational impacts upon the passage of fish is assessed in <b>section 7.6</b> (Biodiversity), with appropriate mitigation measures recommended to address potential impacts identified.</p>
<p>An approval under Part 4, or an excavation permit under section 139, of the <i>Heritage Act 1977</i></p>	<p>The State Heritage Register listed item <i>Upper Canal System (Pheasants Nest Weir to Prospect Reservoir)</i> is the only listed non-Aboriginal heritage item located within the construction and operational footprint of the proposed modification. Multiple other listed heritage items are located adjacent or nearby. An assessment of impacts on those heritage items during the construction and operation of the proposed modification is provided in <b>Section 7.8</b> (Non-Aboriginal heritage) and <b>Appendix J</b> (Non-Aboriginal heritage assessment), with appropriate mitigation measures recommended to address potential impacts identified. The proposed modification of the Westlink M7 is unlikely to have a significant impact on the Upper Canal System. While there is the potential for indirect, vibrational, impacts during construction works, this could be avoided through the application of management measures.</p>

Approval or permit not required	Comment
An AHIP under section 90 of the <i>National Parks and Wildlife Act 1974</i>	<p>An AHIP is required if impacts to Aboriginal objects and/or places cannot be avoided. The proposed modification is not likely to impact on known Aboriginal sites and would therefore not require an approval under section 90 of the <i>National Parks and Wildlife Act 1974</i>.</p> <p>Further discussion of the impact assessment of the proposed modification on Aboriginal heritage is provided in <b>Section 7.7</b> (Aboriginal heritage) and <b>Appendix I</b> (Aboriginal Cultural Heritage ASR), with appropriate mitigation measures recommended to address potential impacts identified. Subject to the implementation of the identified management measures, there is no requirement for an AHIP.</p>
A bushfire safety authority under section 100B of the <i>Rural Fires Act 1997</i>	<p>The proposed modification would not involve the type of development that a bushfire safety authority under section 100B would apply to (i.e. a subdivision of bush fire prone land for residential or rural residential purposes, or the development of bush fire prone land for a special fire protection purpose).</p> <p>Potential bushfire related impacts relevant to the proposed modification include increasing temperatures and number of hot days, bushfire risk, and storm impacts. These have been assessed in <b>Section 7.14</b> (Climate change), <b>Section 7.17</b> (Hazard and risk), and <b>Appendix N</b> (Climate change risk and greenhouse gas assessment), with appropriate mitigation measures recommended to address potential impacts identified.</p>
A water use approval under section 89 of the <i>Water Management Act 2000</i>	<p>The proposed modification would not require the use of water from a creek or river and would therefore not require an approval under section 89 of the <i>Water Management Act 2000</i>, regardless of it being SSI or not.</p>
A water management work approval under section 90 of the <i>Water Management Act 2000</i>	<p>The <i>Water Management Act 2000</i> defines flood work as 'a work (such as a barrage, causeway, cutting or embankment) that is situated in the vicinity of a river, estuary or lake; or within a floodplain; and is of such a size or configuration that it is likely to have an effect on the flow of water to or from a river, estuary or lake, or the distribution or flow of floodwater in times of flood'.</p> <p>The proposed modification would involve flood work. A description of the proposed modification and the construction activities required is provided in <b>Chapter 4</b> (Proposed modification). Flooding, hydrology and water quality impacts associated with the proposed modification are assessed in <b>Sections 7.4</b> (Hydrology and flooding) and <b>Section 7.5</b> (Surface water and groundwater), with appropriate mitigation measures recommended to address potential impacts identified.</p>
An activity approval (other than an aquifer interference approval) under section 91 of the <i>Water Management Act 2000</i>	<p>The proposed modification would involve works on waterfront land, being works within 40 metres of a waterbody. An assessment of the effects of those construction activities including the potential for the sedimentation of the water body, is provided in <b>Section 7.5</b> (Surface water and groundwater) and <b>Section 7.11</b> (Soils and contamination), with appropriate mitigation measures recommended to address potential impacts identified.</p>



In addition to the above, section 5.23 (2) and (3) of the EP&A Act precludes the following directions, orders or notices being made to prevent or interfere with the carrying out SSI (as modified), if approved:

- An order restricting harm to buildings, works, relics and places not subject to interim heritage orders or State Heritage Register listing under Division 8 of Part 6 of the *Heritage Act 1977* (NSW)
- An interim protection order under the *National Parks and Wildlife Act 1974* (NSW)
- An order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974* (NSW) or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994* (NSW)
- A remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974* (NSW)
- An order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* (NSW)
- An environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997* (NSW)
- An order under section 124 of the *Local Government Act 1993* (NSW).

Table 5-4 discusses each of the approvals that must be applied consistently under section 5.24 of the EP&A Act, whereby authorisation of the following approvals cannot be refused if it is necessary for the carrying out of the proposed modification (as a modification to SSI).

**Table 5-4 Approvals that must be applied consistently under section 5.24 of the EP&A Act**

Approval	Comment
An aquaculture permit under section 144 of the <i>Fisheries Management Act 1994</i>	The proposed modification would not involve aquaculture or require an aquaculture permit.
An approval under section 15 of the <i>Mine Subsidence Compensation Act 1961</i>	The proposed modification is not located within a mine subsidence district.
A mining lease under the <i>Mining Act 1992</i>	The proposed modification does not require a mining lease and would not be undertaken within a mining lease area.
A production lease under the <i>Petroleum (Onshore) Act 1991</i>	The proposed modification would not involve petroleum production or require a petroleum lease.
An Environment Protection Licence (EPL) under Chapter 3 of the POEO Act (for any of the purposes referred to in section 43 of that Act)	Under clause 35 of Schedule 1 of the POEO Act, road construction which results in the existence of four or more traffic lanes for a continuous length of at least one kilometre (where the road is in a metropolitan area and is classified, or proposed to be classified, as a freeway or tollway under the <i>Roads Act 1993</i> ) is declared to be a scheduled activity.  As such, accordance with clause 35 of Schedule 1 of the POEO Act, an EPL would be required for the construction of the proposed modification.
Consent under section 138 of the <i>Roads Act 1993</i>	If approved, the proposed modification would enable the widening of a section of the existing Westlink M7, which is a classified road. An approval under section 138 of the <i>Roads Act 1993</i> (NSW) would be required.
A licence under the <i>Pipelines Act 1967</i>	The proposed modification would not involve installation of pipelines to / from the road and therefore a license under the <i>Pipelines Act 1967</i> (NSW) would not be required.

In addition to the approvals described in Table 5-4, an aquifer interference approval would be sought prior to works occurring in accordance with section 91 of the *Water Management Act 2000* (NSW), as the proposed modification is likely to interact with groundwater during construction.

### 5.3.2 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (NSW) (BC Act) provides a framework to avoid, minimise and offset impacts on biodiversity. Under the BC Act it is an offence to harm animals and plants, damage areas of outstanding biodiversity value, or damage habitat of threatened species or ecological communities. Under Part 2 Division 2 of the BC Act, it is a defence if the harm or damage was undertaken consistent with an SSI approval under Division 5.2 of the EP&A Act.

The modification report considers the potential impacts of the proposed modification on threatened species, populations, ecological communities and critical habitat in accordance with the BC Act. A Biodiversity Development Assessment Report has been prepared for the proposed modification (refer to **Appendix H**) and the results are summarised in **Section 7.6** (Biodiversity).

### 5.3.3 Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act 1983* (ALR Act) was established to return land in NSW to Aboriginal peoples through a process of lodging claims for certain Crown lands. The ALR Act is a compensatory regime which recognises that land is of spiritual, social, cultural and economic importance to Aboriginal people.

The ALR Act establishes the NSW Aboriginal Land Council (NSWALC) and a network of over 120 autonomous Local Aboriginal Land Councils (LALCs), as well as requirements for these LALCs.

A search of the NSW Register of Aboriginal Land Claims (for Crown land parcels) on 15 November 2021 did not identify any current land claims for the proposed modification.

### 5.3.4 Biosecurity Act 2015

The *Biosecurity Act 2015* (NSW) (Biosecurity Act) provides a framework for the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers or potential carriers.

The Biosecurity Act introduces the legally enforceable concept of a General Biosecurity Duty. This duty provides that any person who deals with biosecurity matter or a carrier and who knows, or ought reasonably to know, the biosecurity risk posed or likely to be posed by the biosecurity matter, carrier or dealing has a biosecurity duty to ensure that, so far as is reasonably practicable, the biosecurity risk is prevented, eliminated or minimised.

This duty extends to weeds, which under the Biosecurity Act are pests. This means that any person dealing with plant matter must take measures to prevent, minimise or eliminate the biosecurity risk (as far as reasonably practicable).

Consideration of weed species and management in relation to the proposed modification is provided in **Section 7.6** (Biodiversity).

### 5.3.5 Contaminated Land Management Act 1997

The *Contaminated Land Management Act 1997* (NSW) (CLM Act) establishes a process for investigating and (where appropriate) remediating land that the NSW Environment Protection Agency (EPA) considers to be contaminated significantly enough to require regulation under this Act.

Section 60 of the CLM Act imposes a duty on persons whose activities have contaminated land to notify the NSW EPA, and potentially investigate and remediate land if contamination is above EPA guideline levels.

A contamination assessment was undertaken for the proposed modification, finding that there is potential for contaminants to be present within the soils underlying the road area and bridges, including in areas of former cut and fill associated with the original Westlink M7 construction, former filling near surface water bodies and former structures within the footprint of the proposed modification. If approval for the proposed modification is given, a Sampling, Analysis and Quality Plan (SAQP) will be prepared ahead of detailed site investigations (DSIs), focusing on specific source areas of potential



contamination identified, as well as additional areas, to provide an understanding of potential impacts and determine if remediation is required.

During construction, excavated material would be re-used onsite where possible or otherwise classified in accordance with the NSW EPA *Waste Classification Guideline* (EPA, 2014) and transported to an appropriately licensed offsite facility. Refer to **Section 7.16** (Waste), **Section 7.11** (Soils and contamination) and **Appendix L** (Contamination assessment report) for further information.

### 5.3.6 Western Sydney Parklands Act 2006

The *Western Sydney Parklands Act 2006* (NSW) (WSP Act) establishes the Western Sydney Parklands and constitutes the Western Sydney Parklands Trust with functions in relation to the management of the Parklands, as well as providing for the addition of land to the Parklands and their management. The WSP Act establishes certain land to be Trust Land.

The Western Sydney Parklands comprise land described and shown on maps in Schedule 2 of the WSP Act. Sections of the existing Westlink M7 are located adjacent to Trust Land around the suburbs of Eastern Creek, Abbotsbury, Cecil Park and Cecil Hill. Some areas of the construction footprint would be located within Trust Land (refer to **section 7.9** (Land use and property) for further detail).

Where relevant, potential impacts to the Western Sydney Parklands have been considered throughout **Chapter 7** (Environmental assessment). The proposed modification would not require any permanent acquisition of Western Sydney Parklands land. Consultation undertaken to date with Western Sydney Parklands Trust in relation to the proposed modification is described in **Chapter 6** (Consultation).

### 5.3.7 Waste Avoidance and Resource Recovery Act 2001

The *Waste Avoidance and Resource Recovery Act 2001* (NSW) encourages the most efficient use of resources in order to reduce environmental harm. Waste resulting from the proposed modification would be managed in accordance with the requirements of this Act. Waste would be classified in accordance with the *Waste Classification Guidelines 2014* (NSW Environmental Protection Agency (EPA)), (2014a). Further details of waste management are provided in **section 7.16** (Waste).

### 5.3.8 Protection of the Environment Operations (Waste) Regulation 2014

The *Protection of the Environment Operations (Waste) Regulation 2014* (NSW) regulates matters such as the obligations of consignors (producers and agents), transporters, and receivers of waste, in relation to waste transport licensing and tracking requirements within NSW. Waste transport associated with the proposed modification would be managed in accordance with the requirements of this Act as outlined in **Section 7.16** (Waste).

### 5.3.9 Fisheries Management Act 1994

The *Fisheries Management Act 1994* (NSW) (FM Act) purpose is to conserve key fish stocks and habitats, threatened species, populations and ecological communities, and promote and appropriately share information on ecologically sustainable development and biological diversity. This includes promoting viable commercial fishing and aquaculture industries and quality recreational fishing opportunities.

Under section 199 of the FM Act, notification to the Minister is required if dredging or reclamation works are to occur on water land. 'Water land' means land submerged by water (whether permanently or intermittently), and applies to all waters in the State. Consideration of any matters raised by the Minister must be addressed within 21 days of receiving the Minister's matters.

Under section 198A of the FM Act, dredging work includes "any work that involves excavating water land, or any work that involves moving material on water land or removing material from water land that is prescribed by the regulations as being dredging work to which this Division applies". While reclamation work includes "using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim water land, or depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or draining water from water land for the purpose of its reclamation". The proposed modification includes works at waterways and would likely include some broadly defined dredging or reclamation activities during construction.

Another object of the FM Act is to conserve key fish habitats. These habitats are defined as "those aquatic habitats that are important to the sustainability of the recreational and commercial fishing

*industries, the maintenance of fish populations generally, and the survival and recovery of threatened aquatic species".* The proposed modification works would traverse several key fish habitats mapped by the Department of Primary Industries (DPI) including Hinchinbrook Creek, Hopkins Creek, Cabramatta Creek and Maxwells Creek. Further assessment of key fish habitat is provided in **Section 7.6** (Biodiversity).

Under Part 5, Division 5.2 of the EP&A Act, permits under section 201 (dredging or reclamation works), or 219 (passage of fish not to be blocked) of the FM Act are not required for SSI. Nonetheless efforts to minimise potential dredging or reclamation work, and work over key fish habitats, would be managed in accordance with the FM Act and are outlined in **Section 7.5** (Surface water and groundwater), **section 7.6** (Biodiversity) and **Appendix H** (Biodiversity development assessment report).

### 5.3.10 Crown Land Management Act 2016

Approvals to occupy and use Crown land are made under the *Crown Land Management Act 2016* (e.g. a 'lease, licence, permit, easement or right of way over dedicated or reserved Crown land').

Crown land outside of the current Westlink M7 footprint is required for the temporary establishment of a construction ancillary facility, at the edge of the Hoxton Park Reserve. Several Crown waterways (creeks) are also traversed by the existing Westlink M7 and would be subject to in-creek works for bridge widening as part of the proposed modification.

A temporary licence and/or easement under the Crown Lands Management Act would be required for use of Crown land during construction. Transport would consult with NSW Crown Lands to obtain the relevant authorisation, and use of this land, including reinstatement following construction, would be in accordance with applicable conditions.

Crown land is also addressed in **section 7.9** (Land use and property).

## 5.4 Environmental Planning Instruments

Section 5.22 of the EP&A Act excludes the application of environmental planning instruments to SSI projects, except where those instruments apply to the declaration of SSI or critical SSI. However, the provisions of the following environmental planning instruments have been considered, consistent with good environmental assessment practice. Planning instruments considered include State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

### 5.4.1 State Environmental Planning Policies

Provisions of relevant SEPPs are considered in Table 5-5.

**Table 5-5 Relevant State Environmental Planning Policies**

Relevant SEPP	Notes
SEPP (Transport and Infrastructure) 2021	Section 2.108 of the SEPP (Transport and Infrastructure) applies to development for the purpose of a 'road' or 'road infrastructure facilities.' It provides that these types of works are development which is permissible without consent, if undertaken by or on behalf of a public authority. The proposed modification is appropriately classified as being for the purpose of a 'road' and a 'road infrastructure facility' under this SEPP and would be undertaken on behalf of Transport.
SEPP (Biodiversity and Conservation) 2021	Chapters 3 and 4 of SEPP (Biodiversity and Conservation) aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. This SEPP is applicable to the section of the proposed modification located within the City of Liverpool LGA. While the proposed modification works would generally be carried out within the existing median of the Westlink M7, an assessment of potential impacts upon Koalas and vegetation species that support the feeding, breeding, and movement habits of Koalas through the construction and operation of the proposed modification is provided in <b>Appendix H</b> (Biodiversity development assessment report).

Relevant SEPP	Notes
SEPP (Precincts – Western Parkland City) 2021	<p>SEPP (Precincts – Western Parkland City) puts in place planning controls that enable the Western Sydney Parklands Trust to develop the Western Parklands into a multi-use urban parkland. This allows for the Trust to approve a range of developments without consent that are akin to the recreational, entertainment, tourist, commercial, retail and infrastructure uses of the parklands. Under Schedule 12, the SEPP also provides definitions for exempt development, including conditions for the temporary use of the land including maximum periods of land use to be considered exempt development and maintenance of the environmental integrity of the land. Some areas of the construction footprint (construction ancillary facilities) would be located within Trust Land, however the land impacted would be reinstated following construction (refer to <b>Chapter 4</b> (Proposed modification) for further detail). The majority of the land owned by Western Sydney Parklands Trust proposed to be used during construction has already been assessed as part of the approved M12 Motorway project. Construction activities undertaken on land owned by the Western Sydney Parklands Trust would be undertaken in accordance the provisions in the SEPP (Precincts - Western Parkland City). Consultation undertaken to date with Western Sydney Parklands Trust in relation to the proposed modification, including any lands not previously assessed as part of the M12 Motorway project, is described in <b>Chapter 6</b> (Consultation).</p> <p>Chapter 4 of the SEPP relates to the Western Sydney Aerotropolis and provides requirements for this development and those surrounding it. Clause 4.19 includes a requirement for a wildlife hazard assessment to be undertaken for development within the 13 kilometre designated wildlife buffer of the airport, prior to development consent being granted. The majority of the operational footprint of the proposed modification would be within 13 kilometres of the Western Sydney Airport, however this clause does not apply to the proposed modification as SSI. However, the National Airports Safeguarding Framework, <i>Guideline C: Managing the risk of Wildlife Strikes in the Vicinity of Airports</i> provides requirements for considering the wildlife hazard of new development within 13 kilometres of an airport. Wildlife hazard in relation to landscaping species selection and drainage basins is considered further in <b>Section 7.17</b> (Hazard and risk).</p>
SEPP (Resilience and Hazards) 2021	<p>Chapter 2 of the SEPP establishes a strategic land use planning framework for coastal management. Clause 2.4 defines the following coastal management areas (which together forms the 'coastal zone'):</p> <ul style="list-style-type: none"> <li>• The coastal wetlands and littoral rainforests area;</li> <li>• Land in proximity to coastal wetlands or littoral rainforest</li> <li>• The coastal vulnerability area</li> <li>• The coastal environment area</li> <li>• The coastal use area.</li> </ul> <p>The SEPP identifies specific development controls applying to development requiring consent within each management area.</p> <p>The proposed modification would not impact any mapped coastal wetlands, however would traverse land mapped as "proximity area for coastal wetlands" in the following locations:</p> <ul style="list-style-type: none"> <li>• Within part of the construction footprint and operational footprint of the proposed modification near Bernera Road</li> <li>• Within part of the operational footprint and construction footprint near Wilson Rd and Pavesi Place</li> </ul>

Relevant SEPP	Notes
	<ul style="list-style-type: none"> <li>Within the operational footprint near Hinchinbrook Creek, between the Westlink M7 and Rossini Drive to the east.</li> </ul> <p>The project is SSI and is permissible without consent. As a consequence, development under Divisions 1-5 of the SEPP is not applicable once the project is approved by the Minister.</p> <p>SEPP (Resilience and Hazards) is not strictly applicable to infrastructure. However, the provisions of this SEPP have been considered in <b>Section 7.17</b> (Hazard and risk) in relation to the storage of hazardous substances and dangerous goods during the construction and operation of the proposed modification.</p> <p>Chapter 4 of SEPP (Resilience and Hazards) provides a State-wide approach to the remediation of contaminated land. In accordance with clause 4.6 (1), a consent authority must not consent to the carrying out of development on any land unless it has considered whether the land is contaminated, if contaminated it is satisfied that it is in suitable state, and that remediation requirements are suitable for the developments purpose. A contamination assessment has been carried out for the proposed modification, which is provided in <b>Appendix L</b> (Contamination assessment report) and summarised in <b>section 7.11</b> (Soils and contamination).</p>

#### 5.4.2 Local Environmental Plans

The declaration of a project as SSI overrides the requirement to consider LEPs. While there is no formal requirement to consider the LEPs, the proposed modification is considered consistent with the associated land use zone objectives. The proposed modification would be located within three LGAs, which are associated with the following LEPs:

- Blacktown LEP 2015
- Fairfield LEP 2013
- Liverpool LEP 2008.

Most sections of the operational footprint and construction footprint of the proposed modification are zoned 'SP2 Infrastructure (Classified road)'. The proposed modification would be consistent with the objectives of this zone to provide for infrastructure and related uses. A further discussion of relevant land use zones within these LEPs is provided in **Section 7.9** (Land use and property).

Some construction activities and features including construction compounds and access tracks would occur outside of the SP2 land use zone. Further discussion on construction activities and features located on land ownerships other than Westlink M7 and relevant provisions relating to these land uses is provided in **Section 7.9** (Land use and property).