

2 Assessment process

This chapter describes the planning approval process for the M4-M5 Link project (the project) as well as other relevant environmental planning and statutory approval requirements.

2.1 Approval framework

The project requires approval from the NSW Minister for Planning under Part 5.1 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) for the reasons set out below.

Clause 94 of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) provides that development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without development consent on any land. The project is characterised as being for the purpose of a road and road infrastructure facilities for the purposes of the Infrastructure SEPP, and is to be carried out by NSW Roads and Maritime Services (Roads and Maritime), being a public authority. Accordingly, the project is permissible without obtaining development consent under Part 4 of the EP&A Act. Nevertheless, section 115U(2) of the EP&A Act provides that a State Environmental Planning Policy (SEPP) may declare any development or class of development to be State significant infrastructure (SSI), which requires approval from the NSW Minister for Planning under section 115W of the EP&A Act.

Clause 14(1) of the State Environmental Planning Policy (State and Regional Development) 2011 (State and Regional Development SEPP) declares development to be SSI if the development is permissible without consent under Part 4 of the EP&A Act and is a type of development specified in Schedule 3 of the State and Regional Development SEPP. Schedule 3 of the State and Regional Development SEPP includes any infrastructure or other development for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement (EIS) to be obtained under Part 5 of the EP&A Act.

Roads and Maritime, as the proponent and determining authority for the project within the meaning of Part 5 of the EP&A Act, has formed the view that the impact of the project is likely to significantly affect the environment and, therefore, would require the preparation of an EIS. On this basis, the project is declared to be SSI under section 115U(2) of the EP&A Act. The effect of the EP&A Act and the relevant SEPPs is that Roads and Maritime would have been the determining authority for the project under Part 4 of the EP&A Act, were it not for the application of section 115U(2) of the EP&A Act. In this instance, section 115U(2) of the EP&A Act is triggered by reason of the operation of clause 14 and Schedule 3 of State and Regional Development SEPP.

Accordingly, the project is subject to assessment under Division 2, Part 5.1 of the EP&A Act and requires the approval of the NSW Minister for Planning under section 115W of Part 5.1. A request has been made for the NSW Minister for Planning to specifically declare the project to be State significant infrastructure and also critical State significant infrastructure.

The assessment and approvals process under Part 5.1 of the EP&A Act is illustrated in **Figure 2-1**. Further information on the assessment process is available on the NSW Department of Planning and Environment (DP&E) website (www.planning.nsw.gov.au).

In January 2016, Roads and Maritime prepared a SSI application report (SSIAR) for the project under section 115X of the EP&A Act. The SSIAR describes the project and identifies and considers the potential environmental issues arising from the project. The purpose of the SSIAR was to assist the formulation of the Secretary's Environmental Assessment Requirements (SEARs) by DP&E under section 115Y of the EP&A Act and inform the preparation of an EIS for the project. On 3 March 2016, SEARs for the project were issued by DP&E. The SEARs were revised on 9 November 2016 and further revised on 3 May 2017. A copy of the SEARs and an indication of where they are addressed in the EIS is provided in **Appendix B** (Secretary's Environmental Assessment Requirements checklist).

Preliminary design development further refined the project design with the addition of a tunnel connection from the eastern abutment of Iron Cove Bridge to the proposed Rozelle interchange (the 'Iron Cove Link'). The Iron Cove Link was not considered in the SSIAR, but has now become a component of the project. Since the preparation of the SSIAR, Roads and Maritime also identified a separate project involving site management works to be undertaken at part of the former Rozelle Rail Yards. As outlined in further detail in **section 2.5**, the site management works at the Rozelle Rail Yards were subject to a separate environmental assessment and are being undertaken separately from the construction of the project.

To address these items, Roads and Maritime prepared and submitted an SSIAR Addendum (SSIAR Addendum 1) to DP&E in September 2016, which provided a preliminary environmental assessment of the potential impacts of the Iron Cove Link. For clarity, the site management works at the Rozelle Rail Yards were excluded from the SSI application. These site management works were assessed separately in a review of environmental factors (REF) under Part 5 of the EP&A Act and determined by Roads and Maritime in April 2017. The revised SEARs issued by DP&E on 9 November 2016 addressed SSIAR Addendum 1.

Following submission of the SSIAR Addendum 1, further developments were made to the project design and scope, comprising:

- Refinement of the Rozelle interchange design to include tunnel connections which extend beyond the boundaries of the Rozelle Rail Yards, including civil construction of tunnels linking to a proposed future Western Harbour Tunnel and Beaches Link. The interchange design also includes civil construction of infrastructure for, and ramps into, a proposed future Western Harbour Tunnel as part of the Rozelle interchange
- Removal of the road interchange at Camperdown
- Realignment of the mainline tunnels
- Amendment of the mainline tunnel configuration from up to three lanes to up to four lanes
- Removal of Easton Park from the project footprint.

Roads and Maritime prepared and submitted SSIAR Addendum 2 for the purpose of undertaking a preliminary environmental assessment of the five design refinements and scope changes. Addendum 2 was lodged with DP&E in March 2017. The revised SEARs issued by DP&E on 3 May 2017 reflected the design refinement and project scope expansions currently being considered and assessed in this EIS.

The SEARs require, among other things, that the EIS be prepared in consideration of all relevant legislative requirements, and that the EIS assess key issue impacts objectively and thoroughly to provide confidence that the project would be constructed and operated within acceptable levels of impact. **Table 2-1** sets out the SEARs with respect to the assessment process and the assessment of key issues only (the other SEARs are set out elsewhere in this EIS). **Table 2-1** further identifies the associated desired performance outcomes that relate to the assessment of key issues for the project, and identifies where they have been addressed in this EIS.

Table 2-1 SEARs – impact assessment process and assessment of key issues

Desired performance outcome	SEARs	Where addressed in the EIS
<p>1. Environmental Impact Assessment Process</p> <p>The process for assessment of the proposal is transparent, balanced, well focussed and legal.</p>	<p>1. The Environmental Impact Statement must be prepared in accordance with Part 3 of Schedule 2 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation).</p>	<p>Refer to Appendix D (Environmental Planning and Assessment Regulation 2000 (NSW) checklist).</p>
	<p>2. It is the Proponent's responsibility to determine whether the project needs to be referred to the Commonwealth Department of the Environment for an approval under the Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). The Proponent must contact the Commonwealth Department of the Environment immediately if it is determined that an approval is required under the EPBC Act, as supplementary environmental assessment requirements may need to be issued to ensure a streamlined assessment under the Bilateral agreement can be achieved.</p>	<p>Potential impacts on matters of national environmental significance under the EPBC Act are discussed in section 2.4.1.</p>
	<p>3. Where the project requires approval under the EPBC Act and is being assessed under the Bilateral Agreement the EIS should address:</p> <ul style="list-style-type: none"> (a) consideration of any Protected Matters that may be impacted by the development where the Commonwealth Minister has determined that the proposal is a Controlled Action; (b) identification and assessment of those Protected Matters that are likely to be significantly impacted; (c) details of how significant impacts to Protected Matters have been avoided, mitigated and, if necessary, offset; and (d) consideration of, and reference to, any relevant conservation advices, recovery plans and threat abatement plans. 	<p>Potential impacts on matters of national environmental significance under the EPBC Act are discussed in section 2.4.1.</p>
	<p>4. The onus is on the Proponent to ensure legislative requirements relevant to the project are met.</p>	<p>Discussed in this chapter.</p>

Desired performance outcome	SEARs	Where addressed in the EIS
<p>2. Environmental Impact Statement</p> <p>The project is described in sufficient detail to enable clear understanding that the project has been developed through an iterative process of impact identification and assessment and project refinement to avoid, minimise or offset impacts so that the project, on balance, has the least adverse environmental, social and economic impact, including its cumulative impacts.</p>	<p>1. The EIS must include, but not necessarily be limited to, the following:</p>	<p>Descriptions of the existing general biophysical and socio-economic environment that is likely to be impacted by the project (including offsite impacts) are provided for each key issue in Chapter 8 (Traffic and transport) to Chapter 25 (Hazard and risk).</p>
	<p>(h) a concise description of the general biophysical and socio-economic environment that is likely to be impacted by the project (including offsite impacts). Elements of the environment that are not likely to be affected by the project do not need to be described;</p>	<p>Identification and assessment of key issues is provided in Chapter 8 (Traffic and transport) to Chapter 27 (Sustainability).</p>
	<p>(j) the identification and assessment of key issues as provided in the 'Assessment of Key Issues' performance outcome;</p>	<p>Key issues outcomes are stated in Appendix A (Project synthesis).</p>
	<p>(k) a statement of the outcome(s) the Proponent will achieve for each key issue;</p>	<p>Measures to avoid, minimise or offset impacts specific to identified impacts are provided in Appendix A (Project synthesis) and Chapter 29 (Summary of environmental management measures).</p>
	<p>(l) measures to avoid, minimise or offset impacts must be linked to the impact(s) they treat, so it is clear which measures will be applied to each impact;</p>	<p>Refer to Chapter 29 (Summary of environmental management measures).</p>
	<p>(m) consideration of the interactions between mitigation measures, between impacts and between measures and impacts;</p>	<p>Identification and assessment of key issues is provided in Chapter 8 (Traffic and transport) to Chapter 27 (Sustainability).</p>
	<p>(n) identification of other environmental impacts (such as protective and sensitive lands, sedimentation and erosion and impacts to water front land) and proposed measures for managing and/or mitigating the level of impact;</p>	<p>Discussed in this chapter, Chapter 30 (Project justification and conclusion) and Appendix D (Environmental Planning and Assessment Regulation 2000 (NSW) checklist).</p>
<p>(p) statutory context of the project as a whole, including:</p> <ul style="list-style-type: none"> • how the project meets the provisions of the EP&A Act and EP&A Regulation; and • a list of any approvals that must be obtained under any other Act or law before the project may lawfully be carried out 		

Desired performance outcome	SEARs	Where addressed in the EIS
	<p>(q) a chapter that synthesises the environmental impact assessment and provides:</p> <ul style="list-style-type: none"> • a succinct but full description of the project for which approval is sought; • a description of any uncertainties that still exist around design, construction methodologies and/or operational methodologies and how these will be resolved in the next stages of the project; • a compilation of the impacts of the project that have not been avoided; • a compilation of the proposed measures associated with each impact to avoid or minimise (through design refinements or ongoing management during construction and operation) or offset these impacts; • a compilation of the outcome(s) the proponent will achieve; and • the reasons justifying carrying out the project as proposed, having regard to the biophysical, economic and social considerations, including ecologically sustainable development and cumulative impacts; and 	Refer to Appendix A (Project synthesis).
	<p>(r) relevant project plans, drawings, diagrams in an electronic format that enables integration with mapping and other technical software.</p>	Project plans are provided in Chapter 5 (Project description) and Chapter 6 (Construction work). Electronic copies of project plans, drawings and diagrams will be provided to DP&E.
	<p>2. The EIS must only include data and analysis that is reasonably needed to make a decision on the proposal. Relevant information must be succinctly summarised in the EIS and included in full in appendices. Irrelevant, conflicting or duplicated information must be avoided.</p>	Addressed throughout this EIS.

Desired performance outcome	SEARs	Where addressed in the EIS
<p>3. Assessment of Key Issues*</p> <p>Key issue impacts are assessed objectively and thoroughly to provide confidence that the project will be constructed and operated within acceptable levels of impact.</p> <p>* Key issues are nominated by the Proponent in the CSSI project application and by the Department in the SEARs. Key issues need to be reviewed throughout the preparation of the EIS to ensure any new key issues that emerge are addressed. The key issues identified in this document are not exhaustive but are key issues common to most CSSI projects.</p>	<p>1. The level of assessment of likely impacts must be proportionate to the significance of, or degree of impact on, the issue, within the context of the proposal location and the surrounding environment. The level of assessment must be commensurate to the degree of impact and sufficient to ensure that the Department and other government agencies are able to understand and assess impacts.</p> <p>2. For each key issue the Proponent must:</p> <p>(a) describe the biophysical and socio-economic environment, as far as it is relevant to that issue, including adequate baseline data, in terms of temporal, spatial and parameters monitored;</p> <p>(b) describe the legislative and policy context, as far as it is relevant to the issue;</p> <p>(c) identify, describe and quantify (if possible) the impacts associated with the issue, including the likelihood and consequence of the impact (comprehensive risk assessment), and the cumulative impacts of: i) concurrent project construction activities; and ii) proposed and approved projects (where information is available at the time of writing);</p> <p>(d) demonstrate how potential impacts have been avoided (through design, or construction or operation methodologies);</p>	<p>A description of the biophysical and socio-economic environment, as far as it is relevant to that issue, a description of the relevant legislative and policy context and an assessment of the impacts relating to issues, including the likelihood and consequence of the impact are described in:</p> <p>Chapter 8 (Traffic and transport), Chapter 9 (Air quality), Chapter 10 (Noise and vibration), Chapter 11 (Human health risk), Chapter 12 (Land use and property), Chapter 13 (Urban design and visual amenity), Chapter 14 (Social and economic), Chapter 15 (Soil and water quality), Chapter 16 (Contamination), Chapter 17 (Flooding and drainage), Chapter 18 (Biodiversity), Chapter 19 (Groundwater), Chapter 20 (Non-Aboriginal). heritage), Chapter 21 (Aboriginal heritage), Chapter 22 (Greenhouse gas), Chapter 23 (Resource use and waste minimisation), Chapter 24 (Climate change and risk adaptation), Chapter 25 (Hazard and risk).</p> <p>Cumulative impacts, including impacts arising from concurrent project construction activities and from proposed and</p>

Desired performance outcome	SEARs	Where addressed in the EIS
	(e) detail how likely impacts that have not been avoided through design will be minimised, and the predicted effectiveness of these measures (against performance criteria where relevant); and	<p>approved projects are assessed and described in Chapter 26 (Cumulative impacts) and each of the Technical working papers (Appendix H to Appendix V), Appendix W (Detailed greenhouse gas calculations), Appendix X (Climate change risk assessment framework), Chapter 22 (Greenhouse gas), Chapter 23 (Resource use and waste minimisation), Chapter 24 (Climate change and risk adaptation), Chapter 25 (Hazard and risk) and Chapter 27 (Sustainability).</p> <p>A comprehensive environmental risk analysis that considers the likelihood and consequence of the potential impacts has been carried out and is included in Chapter 28 (Environmental risk analysis).</p>
	(f) detail how any residual impacts will be managed or offset, and the approach and effectiveness of these measures.	Residual impacts and a process for how they will be managed are outlined in Chapter 28 (Environmental risk analysis) and Appendix A (Project synthesis).
	3. Where multiple reasonable and feasible options to avoid or minimise impacts are available, they must be identified and considered and the proposed measure justified taking into account the public interest.	Reasonable and feasible options to avoid or minimise impacts have been identified and considered for each key issue. These are summarised in Chapter 29 (Summary of environmental management measures). The public interest has been taken into account in the development of the concept design and the construction methodology that has been assessed in this EIS.

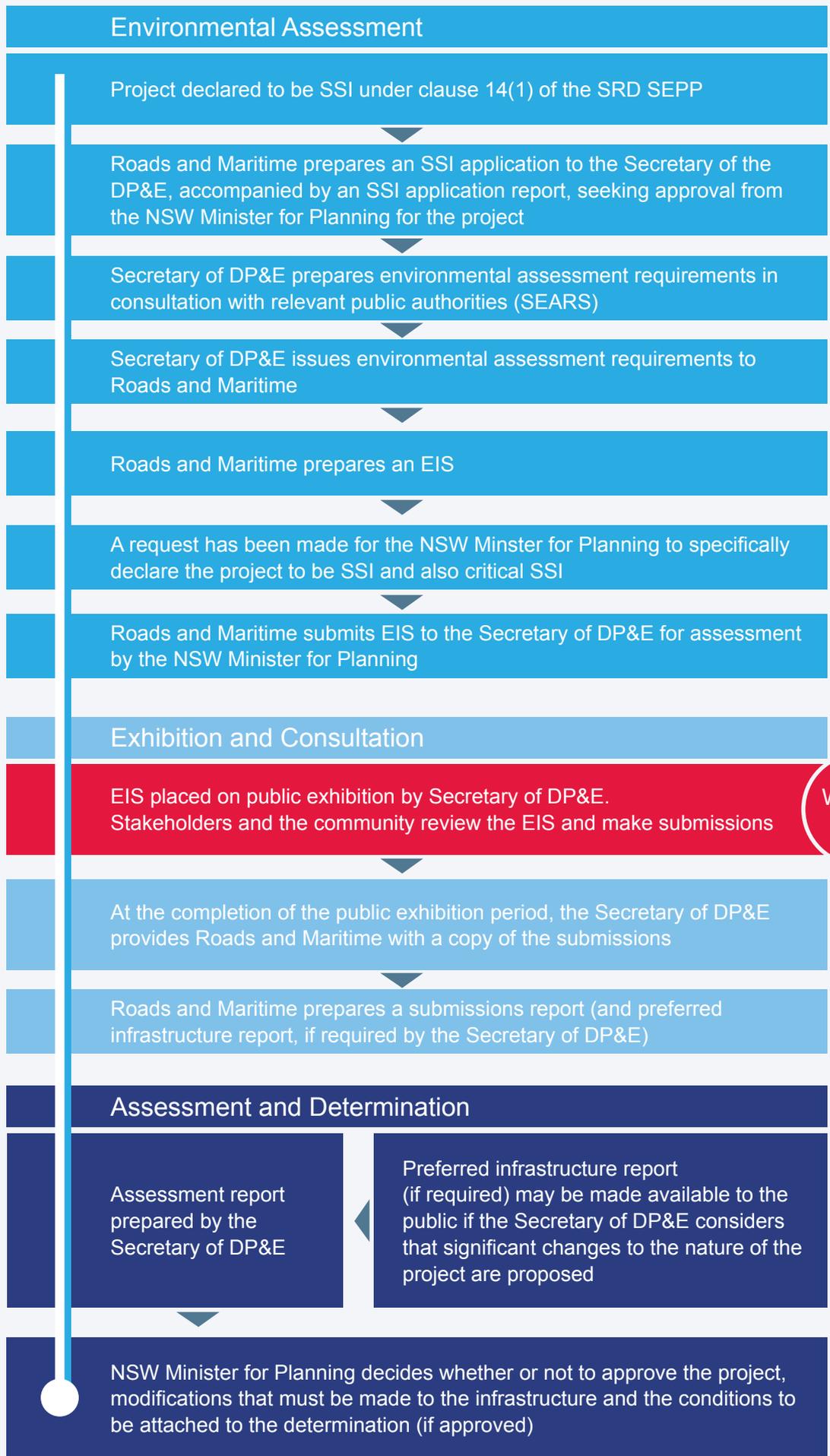


Figure 2-1 Assessment and approvals process

2.2 Environmental planning instruments

2.2.1 State environmental planning policies

In general, section 115ZF(2) of the EP&A Act excludes the application of environmental planning instruments to SSI projects (except as those instruments apply to the declaration of SSI or critical SSI – see **section 2.1**). Notwithstanding this, the provisions of the following SEPPs and deemed SEPPs have been considered to be consistent with good environmental assessment practice.

State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the state. Clause 94 of the Infrastructure SEPP 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 project is appropriately classified as being for the purpose of a ‘road’ and a ‘road infrastructure facility’ under the Infrastructure SEPP. However, as discussed in **section 2.1**, approval is required for the project under Part 5.1 of the EP&A Act.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) aims to protect and preserve bushland within urban areas including within the former Ashfield, Leichhardt and Marrickville local government areas (LGAs) (now amalgamated as the Inner West LGA) and the City of Sydney LGA. For the purposes of SEPP 19, bushland is defined as ‘land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation’. Clause 7 of SEPP 19 states that works undertaken by public authorities (such as Roads and Maritime) shall not disturb bushland zoned or reserved for public open space for specific purposes, which include the purpose of constructing or maintaining roads, without first considering the aims of SEPP 19.

As outlined in **Chapter 18** (Biodiversity), the project would involve clearance of vegetation at the locations of interchanges, surface infrastructure and areas within the project footprint, including ancillary construction facilities. Vegetation in the project footprint comprises ‘urban exotic’ and ‘native cover’ (NSW Office of Environment and Heritage 2013a) and no bushland as defined in Clause 4 of SEPP 19 is present.

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33) is not strictly applicable to infrastructure. However, the provisions of the policy have been considered in **Chapter 25** (Hazard and risk) in relation to the storage of hazardous substances and dangerous goods during the construction and operation of the project.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides a State-wide approach to the remediation of contaminated land for the purpose of minimising the risk of harm to the health of humans and the environment. In accordance with Clause 7(1) of SEPP 55, 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 the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or would be suitable, after remediation) for the purpose for which the development is proposed to be carried out
- If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land would be remediated before the land is used for that purpose.

A contamination investigation has been carried out for the project to inform the design and EIS. The outcomes of the contamination investigations and recommended environmental mitigation measures are addressed in **Chapter 16** (Contamination).

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Sydney Harbour Catchment SREP), a deemed SEPP, provides planning principles and development controls for the Sydney Harbour Catchment. In Rozelle, at the Rozelle interchange and at the northern extent of the Iron Cove Link, the project footprint is located within a mapped foreshore and waterway area. The project, as described in the EIS, is not located at a strategic foreshore site and would not affect any mapped heritage or wetland areas under the Sydney Harbour Catchment SREP. As discussed in **Chapter 15** (Soil and water quality) and **Chapter 19** (Groundwater), the project is not considered to result in an adverse impact on the water quality of Sydney Harbour.

Sydney Regional Environmental Plan No. 26 – City West

Sydney Regional Environmental Plan No. 26 – City West (SREP 26) is a deemed SEPP under clause 120 of Schedule 6 of the EP&A Act that provides planning principles and development controls for land at City West covering the Ultimo-Pyrmont Precinct, The Bays Precinct and Eveleigh Precinct. Part of the project footprint is located within the boundary of The Bays Precinct as defined in SREP 26.

The principal aims of SREP 26 are to promote the orderly and economic use and development of City West by establishing planning principles and controls for the City West area. The provisions of SREP 26 would not apply to the project as it is SSI. Nevertheless, Roads and Maritime has considered the intent of the policy during the development of the project. The relevant SREP 26 objectives, planning principles and policies for The Bays Precinct are discussed in **Table 2-2**.

Table 2-2 Relevant SREP 26 matters

SREP Policy	Discussion
Clause 11 – Planning Principles of regional significance for City West	<p>This clause requires that development within City West is consistent the following planning principles:</p> <ul style="list-style-type: none"> • Regional Role – The project would not conflict with this principle being achieved in the future. In addition, the project would address existing traffic congestion, which would benefit the people of Sydney and NSW • Land Use Activities – The project would not conflict with this principle being achieved in the future • Mixed Living and Working Environment – The project would not conflict with this principle being achieved in the future • Education – No educational establishment is proposed as part of the project, however, this would not conflict with this principle being achieved in the future • Leisure and Recreation – The project would deliver up to 10 hectares of new public open space for recreational use within the Rozelle Rail Yards • Port Functions – This principle is not relevant to the project • Social Issues – Active transport and open space to be delivered as part of the project would promote social cohesion within the area • Environment Issues – Environmental management measures would be implemented throughout development of the project as outlined in Chapter 29 (Summary of environmental management measures). Chapter 27 (Sustainability) addresses the assessment of the project against the principles of ecologically sustainable development • Urban Design and Public Domain – The project would provide an improved urban design outcome for the Rozelle Rail Yards by creating public open space for recreational use within the disused rail yards (refer to Chapter 13 (Urban design and visual amenity))

	<ul style="list-style-type: none"> • Heritage – An assessment of the impact of the project on heritage items listed in the SREP (and other heritage items) and how impacts would be managed is provided in Chapter 20 (Non-Aboriginal heritage) • Movement and Parking – The project would not conflict with this principle being achieved in the future • Implementation and Phasing – The project would not conflict with achieving this principle in the future.
Division 3 – Planning principles for precincts	<p>Clause 15 of Division 3 requires that development within The Bays Precinct is consistent with a number of planning principles. These are discussed below with the following planning principles:</p> <ul style="list-style-type: none"> • Role and land use activities – The project would not conflict with this principle being achieved in the future • Urban Design – The project would provide an improved urban design outcome for the former Rozelle Rail Yards through the delivery of up to 10 hectares of new public open space for recreational use as outlined in Chapter 13 (Urban design and visual amenity) • Public domain – The urban design solution at the former Rozelle Rail Yards would promote this area as public domain and encourage recreational uses, active transport and community cohesion (refer to Chapter 13 (Urban design and visual amenity)).
Division 6 – Heritage Conservation (supported by Schedule 4)	<p>This division provides for the protection of heritage items and conservation areas shown on Map 4 of the SREP. Clause 30 requires that the consent authority considers the significance of a heritage item or conservation area, the potential impacts on this area from the development and measures to conserve the heritage significance. It also requires that the consent authority considers any archaeological sites or potential.</p> <p>An assessment of the potential impacts of the project on non-Aboriginal heritage values and how impacts would be managed, including measures to conserve significance, is provided in Chapter 20 (Non-Aboriginal heritage).</p>
Division 9 – Miscellaneous provisions	<p>Clause 50 of this division requires that development must not be carried out on any land until arrangements have been made for the supply of water, sewerage and drainage which are satisfactory to the Water Board.</p> <p>A description of the water supply, wastewater and drainage design for the project, potential impacts on these factors and how impacts would be managed is provided in is provided in Chapter 5 (Project description) and Chapter 17 (Flooding and drainage). Potential impacts of the project on utilities, including relocation or adjustment of utilities are identified in the Utilities Management Strategy in Appendix F (Utilities Management Strategy).</p>

2.2.2 Local environmental plans

Local environmental plans (LEPs) do not apply to SSI projects. The project is located within two LGAs, being the City of Sydney and the Inner West. The Inner West LGA was formed on 12 May 2016 upon the amalgamation of the former Ashfield, Leichhardt and Marrickville LGAs. Existing LEPs for the former Ashfield, Leichhardt and Marrickville LGAs remain in force until a combined LEP has been gazetted for the Inner West LGA.

City of Sydney and Inner West councils have been consulted during the development of the project and preparation of the EIS. Further details on consultation carried out for the EIS are provided in **Chapter 7** (Consultation).

Notwithstanding the above, the provisions of the following LEPs are considered in **Chapter 12** (Land use and property):

- Ashfield Local Environmental Plan 2013
- Leichhardt Local Environmental Plan 2013
- Marrickville Local Environmental Plan 2011
- Sydney Local Environmental Plan 2012.

2.3 Other NSW legislation

Approval of a project under Part 5.1 of the EP&A Act (EP&A Act s 115ZG) means that certain other approvals are not required. The potential impacts anticipated by those approvals have nevertheless been assessed as part of this EIS. Approvals not required for the project include:

- Permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994* (NSW) (FM Act) to carry out dredging and reclamation works, to harm marine vegetation in a protected area or to block fish passage (refer to **Chapter 18** (Biodiversity))
- Approvals under Part 4 (to disturb or excavate a place, building, work, relic, moveable object, precinct or land to which an interim heritage order or listing on the State Heritage Register applies) and excavation permits under section 139 of the *Heritage Act 1977* (NSW) (refer to **Chapter 20** (Non-Aboriginal heritage))
- Aboriginal heritage impact permits under section 90 of the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) to harm an Aboriginal object or place (refer to **Chapter 21** (Aboriginal heritage))
- Authorisations under the *Native Vegetation Act 2003* (NSW) to clear native vegetation or State protected land (refer to **Chapter 18** (Biodiversity))
- Various approvals under the *Water Management Act 2000* (NSW), namely water use approvals under section 89, water management work approvals under section 90, and activity approvals (other than aquifer interference approvals) under section 91 (refer to **Chapter 15** (Soil and water quality)).

Approvals under other NSW legislation that would be required for the project include the following:

- An Environment Protection Licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act). In accordance with clause 35 of Schedule 1 of the POEO Act an Environment Protection Licence would be required for construction of the project. In accordance with section 115ZH of the EP&A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with any approval granted to the project under Part 5.1 of the EP&A Act.

Other NSW legislation that would apply to the project includes:

- The *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), which applies to the acquisition of any land by an Authority of the State which is authorised to acquire the land by compulsory process. Acquisition is further discussed in **Chapter 5** (Project description) and **Chapter 12** (Land use and property)
- The *Contaminated Land Management Act 1997* (NSW), which outlines the circumstances in which notification of the NSW Environment Protection Authority is required in relation to contamination of land. This is discussed further in **Chapter 16** (Contamination)
- The *Roads Act 1993* (NSW) is relevant as the project would result in a road classified as a freeway or tollway under the Act as it contains four or more traffic lanes over a distance of more than one kilometre in the Sydney metropolitan area
- The FM Act is relevant as notification to the NSW Department of Primary Industries – Fisheries is required if dredging or reclamation work are required in water land classed as key fish habitat. This is discussed further in **Chapter 18** (Biodiversity)

- The *Crown Lands Act 1989* (NSW), which applies to the acquisition of land reserved under that Act. The project would impact Crown land at Rozelle (Refer to **Chapter 12** (Land use and property)).

Because the project has been declared to be SSI, section 115ZG(2) of the EP&A Act precludes the following directions, orders or notices being made to prevent or interfere with the carrying out of the project once approved:

- An order restricting harm to buildings, works, relics or places that are not the subject of an interim heritage order or listing under the State Heritage Register under Division 8 of Part 6 of the *Heritage Act 1977* (NSW).

Further, if the project is declared as critical SSI, section 115ZG(3) of the EP&A Act precludes the following directions, orders or notices being made to prevent or interfere with the carrying out of the project once approved:

- An interim protection order within the meaning of the NPW Act or the *Threatened Species Conservation Act 1995* (NSW) (TSC Act)
- An order under Division 1 (Stop work orders) of Part 6A of the NPW Act, Division 1 (Stop work orders) of Part 7 of the TSC Act or Division 7 (Stop work orders) of Part 7A of the FM Act
- A remediation direction under Division 3 of Part 6A of the NPW Act
- An environmental protection notice under Chapter 4 of the POEO Act
- An order from a council to demolish or move a building, to repair or make structural alterations to a building, or to do or refrain from doing things under section 124 of the *Local Government Act 1993* (NSW).

2.4 Commonwealth legislation

2.4.1 Environment Protection and Biodiversity Conservation Act 1999

Under the EPBC Act, proposed 'actions' that have the potential to significantly impact matters of national environmental significance or the environment of Commonwealth land, or 'actions' that are being carried out by a Commonwealth agency, must be referred to the Australian Government. If the Australian Government Minister for the Environment determines that a referred project is a 'controlled action', the approval of that Minister will be required for the project in accordance with the EPBC Act and in addition to the approval required from the NSW Minister for Planning under Part 5.1 of the EP&A Act.

As discussed in **Chapter 18** (Biodiversity) and **Chapter 20** (Non-Aboriginal heritage), the impact assessments carried out for the project indicate that the project would not be likely to result in a significant impact on any matter of national environmental significance under the EPBC Act, including threatened and migratory species, world heritage properties, national heritage places or Commonwealth land. Accordingly, the project has not been referred to the Australian Government Department of the Environment and Energy for further assessment or approval under the EPBC Act.

2.4.2 Airports Act 1996

Under section 183 of the *Airports Act 1996* (Commonwealth) and the Airports (Protection of Airspace) Regulations 1996 (Commonwealth), a controlled activity must not be undertaken in relation to 'prescribed airspace' without the approval of the Secretary of the Australian Government Department of Infrastructure and Regional Development (DIRD). Controlled activities are defined in section 182 (1) of the *Airports Act 1996* (Commonwealth) and include activities that result in turbulence, such as from exhaust plumes, that exceeds the level ascertained in the regulations. Regulation 6A provides that for subparagraph 182(1)(f)(i) of the *Airports Act 1996* (Commonwealth), the level of air turbulence for turbulence caused by an emission from a vent is upward vertical velocity of 4.3 metres per second.

Under section 9 of the *Civil Aviation Act 1988* (Commonwealth), the Civil Aviation Safety Authority (CASA) is responsible for the safety regulation of civil air operations in Australian territory. Consequently, CASA stipulates requirements for the construction and operation of new infrastructure that has the potential to influence aviation safety. Part 139.70 of the Civil Aviation Safety Regulations

1998 (Commonwealth) provides that CASA may determine that a plume is a hazardous object if the vertical velocity of the exhaust exceeds 4.3 metres per second.

'Prescribed airspace' is the airspace above any part of either an obstruction limitation surface (OLS) or procedures for air navigation systems operations (PANS-OPS) surface for Sydney Airport:

- The OLS is the maximum height that objects may project into the airspace around an aerodrome so that aircraft operations may be conducted safely
- PANS-OPS protection surfaces establish the airspace that is to remain free of any potential disturbance (including physical objects and other disturbances such as turbulence due to operation of ventilation outlets) so that aircraft operations may be conducted safely.

The PANS-OPS is generally higher than the OLS. Where structures may (under certain circumstances) be permitted to penetrate the OLS, they will not ordinarily be permitted to penetrate any PANS-OPS surface.

The project would include the construction and operation of ventilation facilities at:

- Haberfield, at the corner of Parramatta Road and Walker Avenue (this ventilation facility is being built as part of the M4 East project with fitout (mechanical and electrical) as part of the M4-M5 Link project)
- Rozelle, within the Rozelle Rail Yards
- Rozelle, in the Victoria Road carriageway between Callan Street and Springside Street at Rozelle
- St Peters, within the St Peters interchange near Campbell Road.

The exhaust plumes from all of the ventilation facilities have the potential to penetrate either or both the OLS or PANS-OPS levels. The project has been designed to satisfy requirements set by DIRD in relation to erected structures (such as ventilation outlets), equipment manoeuvring and lighting. To determine whether plume rise resulting from the operation of these ventilation facilities would be a controlled activity as defined in section 183 of the *Airports Act 1996* (Commonwealth), a plume rise assessment would be carried out in accordance with the *CASA Advisory Circular Plume Rise Assessments AC 139-5(1) November 2012* prior to the operation of the project.

Further discussion of potential impacts on prescribed airspace is provided in **Chapter 25** (Hazard and risk).

2.5 Site management works at the Rozelle Rail Yards

Roads and Maritime is carrying out a suite of site management works on part of the Rozelle Rail Yards site. The works are needed to manage the existing environmental and safety issues at the site and would also improve access to surface conditions, which would allow for further investigation into the location of utilities and the presence of contamination and waste. The works would benefit future uses of the site (including construction of the M4-M5 Link project if it is approved) because the works would remove material and redundant facilities associated with rail and rail related infrastructure from the site.

The site management works were subject to a separate environmental assessment. The works were assessed in an REF which was approved by Roads and Maritime under Part 5 of the EP&A Act in April 2017.

The key features of the site management works are:

- Site establishment – including fencing, installing temporary site offices, arranging site access, erosion, sediment and drainage controls and defining lay down, stockpile and transfer areas
- Utility location and site investigations
- Removal of waste, existing stockpiles and vegetation
- Removal of existing above ground rail infrastructure, including gantries, railway lines, ballast, sleepers and buildings (but excluding the southern penstock, the switching station, the transformer and rail infrastructure to the east of Victoria Road bridge) and redundant services

where intercepted when removing infrastructure (eg gantries and ballast) generally to a depth of 500 millimetres below ground level, except where drainage channels and sediment basins are required

- Site stabilisation comprising reshaping of the ground surface as a result of the site management works and installation of stormwater controls including the construction of drainage channels and sediment basins
- Site completion and handover – demobilise all temporary construction materials, plant and equipment installed for the works and leave the site secure.

Site management works commenced in mid-2017 and will be carried out over a period of around 12 months. After completion of the works, the 'finished site' would be managed and maintained to ensure that the surface cover and stormwater controls are operating effectively. For the purposes of this EIS, it has been assumed that the site management works are completed prior to construction of the project commencing.

2.6 Modifications to the project approval

Should the project be approved, the proponent can apply to the NSW Minister for Planning to modify an approval. Any modification requests would be lodged with DP&E for assessment. The modification request would be appropriately notified and/or exhibited depending on the scale of the proposed modification and the potential for environmental or social impacts.