

2 Assessment process

This chapter describes the planning approval process and framework for the proposed modification of the WestConnex M4-M5 Link (the project). The proposed modification is related to Stage 2 (Rozelle Interchange) of the project as described in **Chapter 1** (Introduction).

2.1 Approval framework

2.1.1 Project approval

The project was declared as State Significant Infrastructure (SSI) and Critical State Significant Infrastructure (CSSI) and was therefore assessed and approved under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act). An Environmental Impact Statement (EIS) was prepared and placed on public exhibition from 18 August 2017 to 16 October 2017.

Following the public exhibition, a number of submissions (over 13,000 from around 7,950 submitters) were received from the community and from NSW Government agencies and local councils. A submissions and preferred infrastructure report (SPIR) was produced to document the responses to the issues raised and to assess design changes in responses to the submissions received. The SPIR was lodged with the former NSW Department of Planning and Environment (DPE) in January 2018.

Planning approval was granted by the former NSW Minister for Planning on 17 April 2018 (application number SSI 7485) and was subject to a number of conditions set out in the Conditions of Approval (CoA) relating to the construction and operation of the project.

Following receipt of planning approval, NSW Roads and Maritime Services (Roads and Maritime) submitted a modification of the project under section 5.25 of the EP&A Act (MOD1 Modification report) relating to Stage 1 (Mainline Tunnels) of the approved project and the modification application was approved by the former NSW Minister for Planning on 25 February 2019.

2.1.2 Modification application

Since planning approval was granted for the project, a contractor has been appointed to construct Stage 2 (Rozelle Interchange and Iron Cove Link) of the approved project on behalf of the proponent, Roads and Maritime. The contractor has reviewed the concept design for the approved project and together in discussions with Roads and Maritime has identified a number of potential design and constructability improvements.

Following a consideration of the options, a new elevated overpass (The Crescent overpass) was considered to be the most appropriate option for alleviating future traffic pressures at the intersection of The Crescent and City West Link.

To facilitate The Crescent overpass, amendments to conditions contained within the CoA for the project are required. Conditions A1 and A2 outline that the project must be carried out in accordance with the terms of the approval, the description of the CSSI and the procedures, commitments, preventative actions, performance criteria and mitigation measures contained in the EIS, SPIR, Modification 1 Report and Modification 1 Response to Submissions (RTS). Conditions A1 and A2 would require amendment to include reference to this report along with the RTS report to be prepared following exhibition of this modification application.

Condition E87 requires that at-receiver noise mitigation in the form of at property treatment or as otherwise agreed by the occupier must be offered to the land owner for habitable living spaces, to properties identified in Appendix D of the CoA. Certain receivers close to The Crescent, Johnston Street and Chapman Road modification works are predicted to require noise mitigation in the form of at-property treatment to address noise impacts associated with out of hours construction work. On this basis the Condition 87 'treatment zone' shown in Appendix D of the CoA would be extended to include the receivers adjacent to the proposed modification works in this area.

The realignment of the Pedestrian and Cycling Green Link ('green link') to span across City West Link from Rozelle Rail Yards to the west of The Crescent (adjacent to the Rozelle Bay light rail stop) as opposed to the east (leading towards the park adjacent to Chapman Road) as outlined in the EIS would also require amendments to Conditions E120, E121 and E134. To maintain a connection to the park adjacent to Chapman Road (Bicentennial Park) from Rozelle and to retain the connectivity required under Conditions E120 and E121, a separate shared user path connection is proposed that would link the Rozelle Rail Yards to Bicentennial Park.

Condition E163 requires the preparation of a Heritage Archival Recording and Salvage Report which includes photographic recording of heritage items, which have been identified for demolition in the documents referred to in Condition A1. Condition E163 is to be amended to include and archival recording of The Crescent Mural, which would not be demolished, but would be visually impacted by of The Crescent overpass.

As outlined above, the proposed change cannot be accommodated within the existing project approval, particularly in relation to Conditions A1, A2, E87 (including Appendix D), E120, E121, E134 and E163. As such, Roads and Maritime as the proponent for the project, is submitting a request to the Minister to modify project planning approval SSI 7485 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 5.25(3) states that *"the request for the Minister's approval is to be lodged with the Planning Secretary. The Planning Secretary may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister"*. Section 5.25(4) states that *"the Minister may modify the approval (with or without conditions) or disapprove of the modification"*.

An overview of the required changes to the CoA as a result of the proposed modification is summarised in **Chapter 7** (Conditions of Approval).

2.2 Environmental planning instruments

Section 2.2 of the EIS provides an overview of the environmental planning instruments (EPIs) relevant to the project. This section notes that *"in general, section 115ZF(2) of the EP&A Act (now section 5.22(2)) excludes the application of environmental planning instruments to SSI projects (except as those instruments apply to the declaration of SSI or critical SSI"*. Nevertheless, a review of section 2.2 of the EIS has confirmed that the discussion of the various EPIs relevant to the project remains valid for this modification application and as such it has not been repeated below.

A review of current EPIs has identified that two new State Environmental Planning Policies (SEPPs) have been gazetted since lodgement of the EIS for the project. These are *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) and *State Environmental Planning Policy (Coastal Management) 2018* (Coastal SEPP).

A review of the mapping for the Coastal SEPP identified that the proposed modification would involve some works on land identified as 'coastal environment area' and 'coastal use area' under the Coastal SEPP and would therefore require consideration of a number of potential impacts under clause 13 and clause 14 respectively of the Coastal SEPP. However, while the proposed modification includes works within the mapped coastal environment area and coastal use area, the works are also within the Foreshores and Waterways Area outlined in the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*. As outlined in clauses 13(3) and 14(2) of the Coastal SEPP, the consideration of clauses 13 and 14 of the Coastal SEPP is not required if the works are located within the Foreshores and Waterways Area.

Discussion of the applicability of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* is provided in section 2.2 of the EIS.

As no additional areas of vegetation are proposed to be removed as a result of the proposed modification, requirements of the Vegetation SEPP are also deemed not relevant for the proposed modification.

2.3 Other NSW legislation

Section 2.3 of the EIS provides an overview of the other NSW legislation relevant to the project. A review of section 2.3 of the EIS has confirmed that the discussion of the other NSW legislation relevant to the project remains valid for this modification application and as such it has not been repeated below. This includes the need for an Environment Protection Licence (EPL) 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 EPL would be required for construction of the project.

2.4 Commonwealth legislation

Section 2.4 of the EIS provides an overview of Commonwealth legislation that is relevant to the project. It considered the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (EPBC Act) and the *Airports Act 1996* (Commonwealth).

Consistent with the approved project described in the EIS and SPIR, the nature of the proposed modification activities means that no matters of national environmental significance are likely to be impacted. As such, the modification application has not been referred to the Australian Government Department of the Environment and Energy for further assessment or approval under the EPBC Act.

The proposed modification would also not involve any changes to the design and operation of the Rozelle Interchange tunnels including the ventilation facilities. Therefore, air quality impacts from the ventilation facilities will not need to be reassessed. Notwithstanding, construction of the proposed modification would not be a controlled activity as defined in section 182 of the *Airports Act 1996* (Cth).

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