

## 2 Assessment process

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This chapter describes the planning approval process and framework for the modification of the WestConnex M4-M5 Link (the project). The proposed modification is related to Stage 2 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 (critical SSI) and 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 to 16 October 2017.

Following the public exhibition, over 13,000 submissions 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 response to the submissions received. The SPIR was lodged with the NSW Department of Planning, Industry and Environment (DPIE) (formerly the Department of Planning and Environment) in January 2018.

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

As noted in Section 1.4, following receipt of planning approval, 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 report was approved by the NSW Minister for Planning on 25 February 2019.

An additional modification to the M4-M5 Link has been proposed to The Crescent overpass and active transport links. That modification application is being assessed separately from the modification that is the subject of this report.

#### 2.1.2 Modification application

Roads and Maritime, as the proponent for the project, is proposing to modify project planning approval SSI 7485 under Section 5.25 of the EP&A Act, which 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”*.

No conditions of approval would need to be deleted or modified as a result of the changes proposed in the Iron Cove ventilation underground modification, other than to reference this report in Planning Approval Conditions A1 and A2, along with the Response to Submissions (RTS) report to be prepared following exhibition of this modification application. The proposed changes in the context of the conditions of approval are discussed further in Chapter 7 (Conditions of approval).

#### 2.1.3 Secretary’s environmental assessment requirements

Roads and Maritime and the design and construction contractor have had regular meetings and engagement with the DPIE to confirm assessment and consultation requirements and provide updates on the development and assessment of the proposed modification.

The Planning Secretary’s Environmental Assessment Requirements (SEARs) for the project were issued in May 2017. DPIE advised that this modification report should address the SEARs issued used in May 2017 as relevant. The relevant SEARs are set out in Appendix A, including cross references to where the issues are addressed in this report.

## 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 identified that two new State Environmental Planning Policies (SEPPs) had been gazetted since lodgement of the EIS for the project. These are the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)* and the *State Environmental Planning Policy (Coastal Management) 2018 (Coastal SEPP)*. A review of these SEPPs confirmed that the Vegetation SEPP is not relevant for the modification application as no vegetation is likely to be impacted as a result of this proposed modification. The Coastal SEPP is also not relevant as the proposed modification is located on land where the SEPP does not apply.

## 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 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 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.

## 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 (Cwth) (EPBC Act)* and the *Airports Act 1996 (Cwth)*.

Consistent with the approved project described in the EIS and SPIR, the nature of the activities associated with the proposed modification 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 Iron Cove Link facilities are located within the Sydney Airport airspace planning scheme, which includes both the Obstacle Limitation Surface (OLS), and the Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface.

Exhaust plumes from ventilation facilities have the potential to penetrate either or both the obstruction limitation surface (OLS) or procedures for air navigation systems operations (PANS-OPS) levels. This is discussed further in section 2.4.2 and Chapter 25 of the EIS. A plume rise assessment was carried out in September 2017 that indicated that the Civil Aviation Safety Authority’s (CASA’s) threshold vertical velocity at the OLS and PANS-OPS surfaces would not be exceeded. Based on this assessment, the Commonwealth Department of Infrastructure and Regional Development advised on 23 November 2017 that the Iron Cove Link site did not constitute a controlled activity as defined in Section 183 of the *Airports Act 1996 (Cwth)*.

The proposed modification would not alter the ventilation outlet at Iron Cove that would see it remaining above ground in the same location indicated in the EIS. Given that the proposed new ventilation tunnel and caverns would not change the location or operation of the ventilation outlet described in the EIS, the proposed modification would not constitute a controlled action, as per the above decision.