

Appendix B

Statutory approvals framework

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1 Introduction

This document sets out the NSW and Commonwealth environmental planning and approvals processes as they apply to the Sydney Metro – Western Sydney Airport project (the project). The project entails the construction and operation of a metro rail line by Sydney Metro, extending from the T1 Western Line at St Marys in the north, through the Western Sydney International (Nancy-Bird Walton) Airport (Western Sydney International) to the Western Sydney Aerotropolis at Bringelly in the south.

This document forms an appendix to the Environmental Impact Statement and presents a detailed discussion of the statutory approval requirements of the project. An overview discussion of this information is provided in Chapter 4 (Planning and assessment process) of the Environmental Impact Statement.

There are three overarching statutory frameworks that govern the environmental planning approvals and assessment process for the construction and operation of the project, being:

- the *Environmental Planning and Assessment Act 1979* (NSW) (the EP&A Act)
- the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act)
- the *Airports Act 1996* (Cth) (the Airports Act).

These primary pieces of legislation relate to works that are located outside the boundaries of the Western Sydney International (discussed below as off-airport works) and works that are located within the boundaries of Western Sydney International (discussed below as on-airport works). The manner in which the legislation relates to these two components of the project is illustrated in Figure 1-1.

The off-airport components of the project, located outside the Western Sydney International site, are subject to NSW legislation. The EP&A Act is the primary legislation in NSW that provides the statutory controls for development within NSW and will apply to the off-airport works.

This primary piece of legislation is supported by the Environmental Planning and Assessment Regulation 2000 (EP&AA Regulation) and a suite of environmental planning instruments, including State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs). Secondary environmental approvals under other NSW legislation would be required post approval but are largely integrated into the assessment and approvals process under the EP&A Act. A further discussion of the application of SEPPs and LEPs is provided in Sections 2.1.5 and 2.1.6 respectively, while a discussion of the application of other NSW legislation is provided in Section 2.2.

In addition to relevant NSW legislation, the provisions of the EPBC Act also apply to the off-airport works.

All works within the Western Sydney International site are subject to the provisions of the Airports Act, to the exclusion (in the planning context) of the EP&A Act.

An Airport Plan has been determined under the Airports Act and has authorised the first stage of the airport development at Western Sydney International. The Airport Plan would need to be varied by the Commonwealth Infrastructure Minister in accordance with the Airports Act to enable the delivery of the project.

Under section 96D(7) of the Airports Act (which triggers section 160 of the EPBC Act), advice from the Commonwealth Environment Minister must be sought and considered when varying the Airport Plan, and if the proposed variation involves a variation to a condition specified by the Commonwealth Environment Minister at the time of determination of the Airport Plan, then the Commonwealth Environment Minister must agree to the variation.

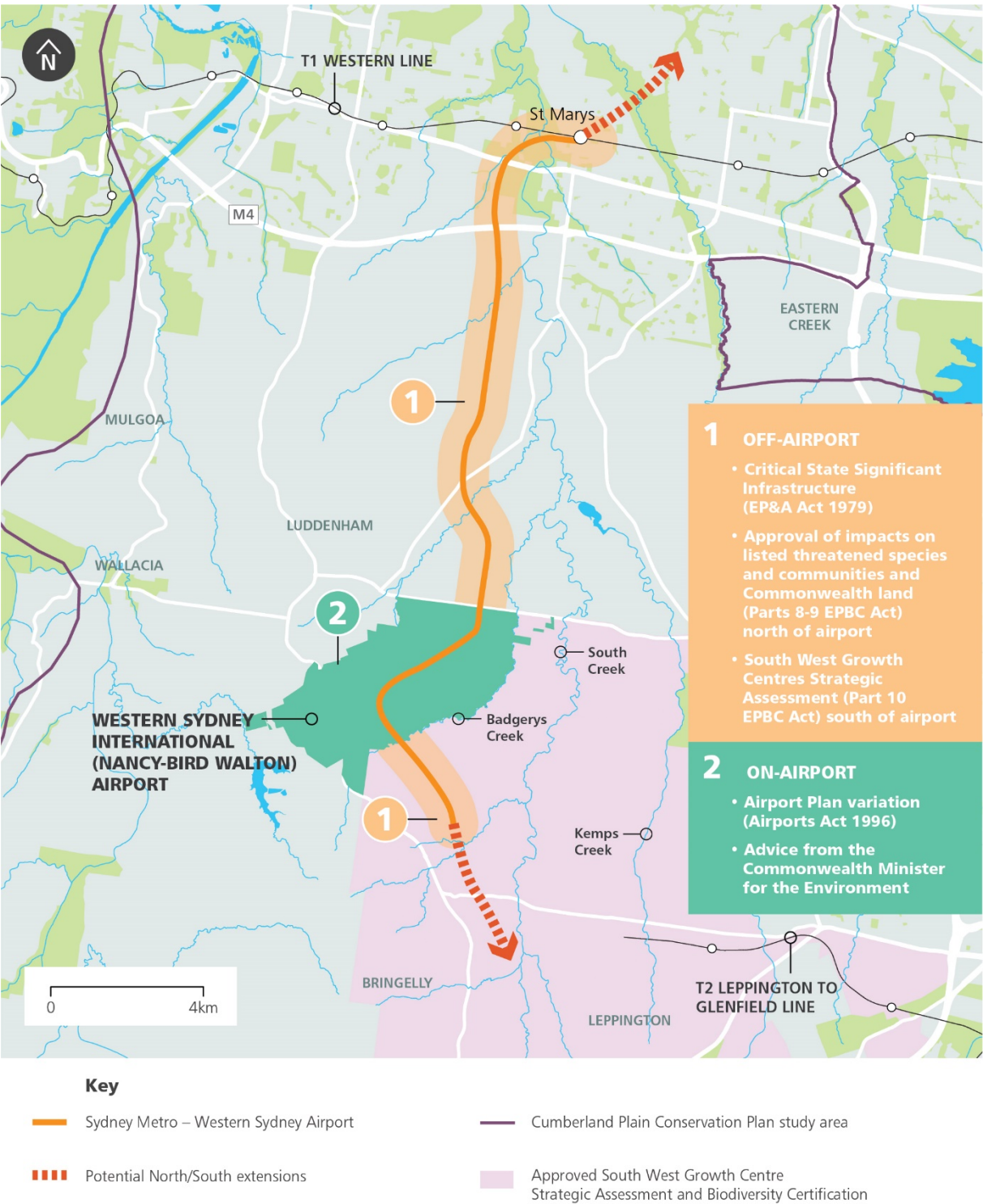


Figure 1-1 Planning approval context

2 Off-airport environmental planning approvals

The off-airport works are subject to assessment and approval under:

- the EP&A Act; and
- the EPBC Act.

2.1 NSW EP&A Act requirements

The EP&A Act provides the statutory controls that establish a framework governing what development is permitted or prohibited, and the processes for how assessment of proposals and gaining approval for development is undertaken in NSW. It is supported by the EP&A Regulation which provides additional detail and gives effect to the legislation.

Relevantly for the project, Part 5 of the EP&A Act deals with infrastructure and environmental impact assessment. Division 5.2 of Part 5 sets out the requirements for the assessment and approval of State significant infrastructure and identifies how State significant infrastructure may also be declared critical State significant infrastructure.

Part 3 of the EP&A Act provides the mechanism for making environmental planning instruments such as SEPPs and LEPs for the purpose of achieving the objects of the Act. However, apart from environmental planning instruments that relate to the declaration of State significant infrastructure or critical State significant infrastructure, instruments created under Part 3 of the EP&A Act do not, in general, apply to State significant infrastructure (section 5.22(2) of the EP&A Act).

2.1.1 State significant infrastructure and critical State significant infrastructure

Section 5.12(4) of the EP&A Act provides for the declaration of specified development on specified land as State significant infrastructure and Section 5.13 of the EP&A Act provides for the declaration of State significant infrastructure as critical State significant infrastructure if the project, in the opinion of the Minister of Planning and Public Spaces, is essential for the State for economic, environmental or social reasons.

A declaration is being sought for Sydney Metro – Western Sydney Airport as critical State significant infrastructure under Section 5.13 of the EP&A Act. Should the project be declared as critical State significant infrastructure, Schedule 5 of the *State Environmental Planning Policy (State and Regional Development) 2011* (NSW) (SRD SEPP) would be amended to include Sydney Metro – Western Sydney Airport.

Accordingly, the off-airport components of the project would be controlled by Division 5.2 of the EP&A Act.

2.1.2 Environmental Planning and Assessment Regulation

The EP&A Regulation supports the EP&A Act, providing supplementary detail and giving effect to the operation of the Act and the achievement of its objects. It sets out the process for preparing an environmental impact statement, as well as the form of that document.

2.1.3 State environmental planning instruments

Notwithstanding section 5.22(2) of the EP&A Act, SEPPs that have some relevance to the project are listed in Table 2-1, together with a brief commentary on whether they apply to the project. In addition to the SEPPs discussed in Table 2-1, a SEPP that is under consideration but has not yet been gazetted that would be relevant to the area within which the project is located is a future Cumberland Plain Conservation Plan SEPP.

Table 2-1 State Environmental Planning Policies

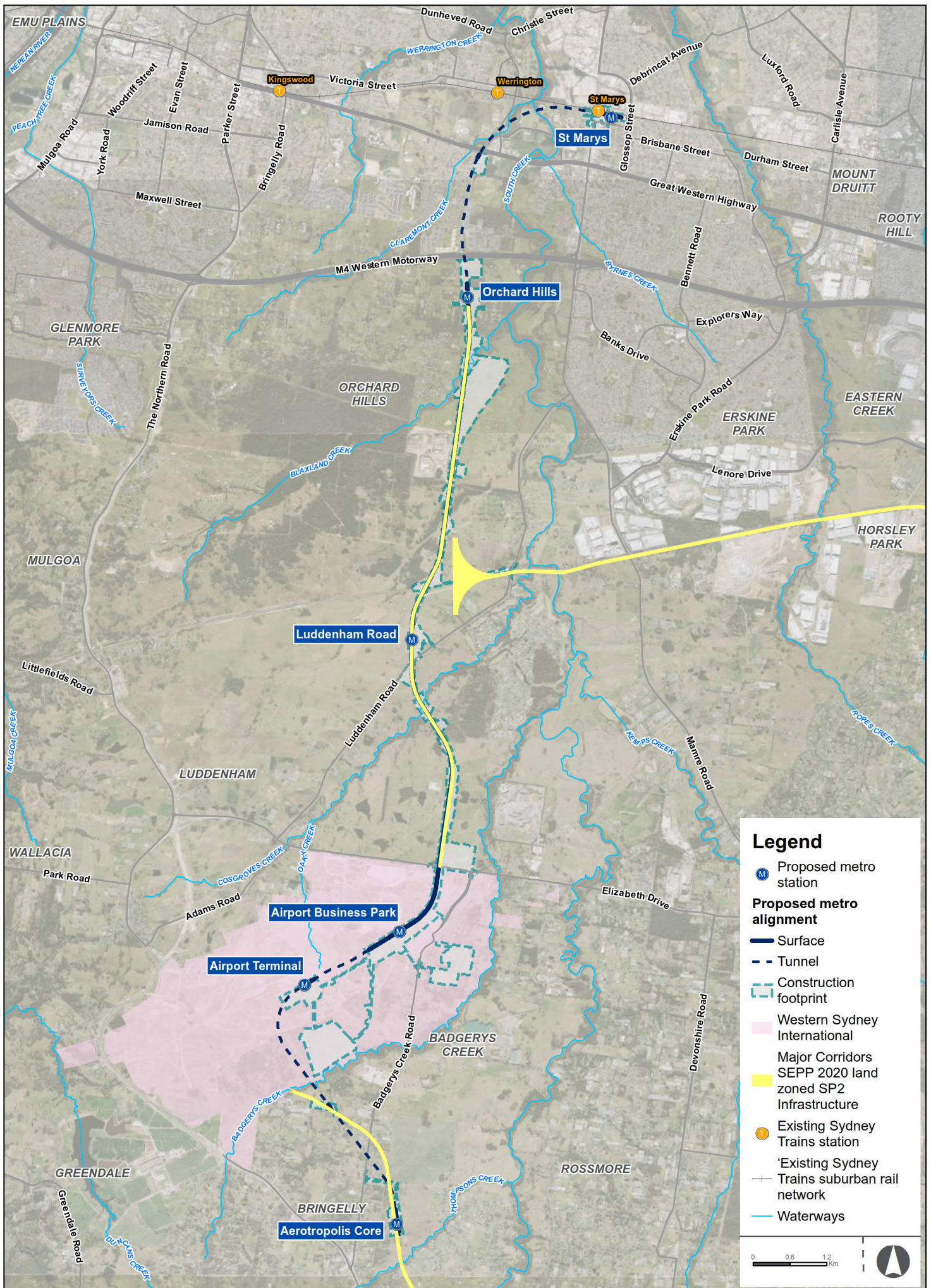
Planning instrument	Relevance to the project
State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)	Except as provided for within the policy, the Infrastructure SEPP applies to the State.
	<p>The aim of the Infrastructure SEPP is to facilitate the effective delivery of infrastructure across the State by:</p> <ul style="list-style-type: none"> • improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and • providing greater flexibility in the location of infrastructure and service facilities, and • allowing for the efficient development, redevelopment or disposal of surplus government owned land, and • identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and • identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and • providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing, and • providing opportunities for infrastructure to demonstrate good design outcomes.
	<p>If there is an inconsistency between a provision of the Infrastructure SEPP and any other environmental planning instrument, the Infrastructure SEPP prevails to the extent of the inconsistency except for:</p> <ul style="list-style-type: none"> • some provisions of <i>State Environmental Planning Policy (Coastal Management) 2018</i>; • all of the provisions of <i>State Environmental Planning Policy (State Significant Precincts) 2005</i>.
	<p>The project is defined as a rail infrastructure facility under the provisions of clause 78 of the Infrastructure SEPP. Clause 79 of the Infrastructure SEPP enables the delivery of rail infrastructure facilities by or on behalf of a public authority without consent on any land.</p> <p>Clause 82 of the Infrastructure SEPP also deems some development as exempt development when carried out by or on behalf of a public authority (in addition to exempt development types identified in the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>). Clauses 84, 85 and 86 of the Infrastructure SEPP require a consent authority to consult with the rail authority in relation to development adjacent to the rail corridor in relation to (respectively) level crossings, various safety matters and excavation.</p> <p>Clause 87 of the Infrastructure SEPP requires a consent authority to consider whether certain future development (residential, public worship, hospital and educational) that is on land in or adjacent to the rail corridor is likely to be adversely affected by rail noise or vibration and, in the case of residential development, whether that development incorporates appropriate measures to meet nominated noise levels.</p>
	<p>Once the project is declared as critical State significant infrastructure, the Project will be permissible without consent, not by reason of clause 79 of the Infrastructure SEPP but because of clause 16 and Schedule 5 of the SRD SEPP (see below).</p>

Planning instrument	Relevance to the project
State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)	The SRD SEPP applies to the State.
	The aims of the SRD SEPP are: <ul style="list-style-type: none"> to identify development that is State significant development, to identify development that is State significant infrastructure and critical State significant infrastructure, to identify development that is regionally significant development.
	The SRD SEPP identifies the types of development that are deemed to be State significant development, State significant infrastructure and critical State significant infrastructure.
	A declaration is being sought for Sydney Metro – Western Sydney Airport as critical State significant infrastructure under section 5.13 of the EP&A Act. Should the project be declared as critical State significant infrastructure, Schedule 5 of the SRD SEPP would be amended to include Sydney Metro – Western Sydney Airport.
State Environmental Planning Policy (Major Infrastructure Corridors) 2020 (Corridors SEPP)	The Corridors SEPP applies to the State.
	The aims of the Corridors SEPP are to identify land intended to be used in the future as an infrastructure corridor, and establish planning controls on that land that enable ongoing use of the land while protecting it from development that would affect its use for the future infrastructure corridor.
	Clause 8 of the Corridors SEPP makes the project permissible with consent where it is located within the SP2 Infrastructure zone as shown on the Future Infrastructure Corridor Map (refer to Figure 2-1). Development within (clause 9) and in, above, below or adjacent (clause 11) to a future infrastructure corridor may not be determined by a consent authority without first seeking the concurrence of Transport for NSW or giving notice of the development application to Transport for NSW.
	Once the project is declared as critical State significant infrastructure, the Project will be permissible without consent, due to clause 16 and Schedule 5 of the SRD SEPP (see above).
State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (Aerotropolis SEPP)	The Aerotropolis SEPP applies to certain lands in Western Sydney as shown on maps that form part of the Aerotropolis SEPP. In relation to the project, the Aerotropolis SEPP applies to land to the south of the Warragamba to Prospect Water Supply Pipelines.
	The aims of the Aerotropolis SEPP include facilitating and promoting sustainable, orderly and transformational development in the Western Sydney Aerotropolis, while ensuring development is compatible with the growth and development of Western Sydney International, and preserving land for future infrastructure development. Additional aims address the recognition and protection of Aboriginal physical and cultural connections to the land and identified environmental and cultural values.
	Clause 7 of the Aerotropolis SEPP confirms that the relevant clauses of the Infrastructure SEPP for the project (i.e. clauses 78 to 87) continue to apply to land subject to the Aerotropolis SEPP. Therefore, the project can still be undertaken without development consent under Part 4 of the EP&A Act.
	The project is identified in maps adopted by, and forming part of, the Aerotropolis SEPP.
	Part 3 of the Aerotropolis SEPP identifies development controls specifically aimed at safeguarding the airport. Part 4 addresses general development controls that apply and Part 5 sets out the framework for achieving design excellence throughout the Western Sydney Aerotropolis.

Planning instrument	Relevance to the project
	<p>Clause 29 of the Aerotropolis SEPP requires a consent authority to obtain concurrence from Transport for NSW on land mapped as transport corridor land, considering the appropriateness of development in relation to planned infrastructure including the timing, and any additional costs of construction infrastructure if the development is carried out.</p> <p>Clause 29(3) outlines that development consent must not be granted to development with capital investment of more than \$200,000 on land in the 400 metre zone of the proposed metro stations at Luddenham Road and Aerotropolis Core unless the consent authority has consulted Sydney Metro about the appropriateness of the development in relation to planned train stations, timing and effect of the development on the construction of planned train stations.</p> <p>The provisions of the Aerotropolis SEPP apply to the project. The project alignment and station locations within the Western Sydney Aerotropolis are shown on the maps adopted by the Aerotropolis SEPP.</p>
State Environmental Planning Policy (State Significant Precincts) 2005 (SSP SEPP)	<p>The SSP SEPP applies to the State.</p> <p>The aims of this SEPP are to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to make possible the orderly use, development or conservation of those State significant precincts for the benefit of the State; and to enable service delivery outcomes for a range of public services, as well as providing for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes.</p> <p>There are no listed precincts in the Penrith local government area and only part of the Edmondson Park South precinct is listed at the southern boundary of the Liverpool local government area.</p> <p>The provisions of the SSP SEPP do not apply to the project. The project is not located on land included in listed precincts.</p>
State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)	<p>The CM SEPP applies to land within the coastal zone.</p> <p>The coastal zone is identified in the SEPP as:</p> <ul style="list-style-type: none"> the coastal wetlands and littoral rainforests area, the coastal vulnerability area, the coastal environment area, the coastal use area. <p>The project is not located within areas identified as comprising the coastal zone.</p> <p>The provisions of the CM SEPP do not apply to the project. The project is not located on land to which the CM SEPP applies.</p>
State Environmental Planning Policy (Sydney Region Growth Centres) 2006	<p>The SRGC SEPP applies to all land in a growth centre.</p> <p>Growth centres defined in the SEPP are listed as:</p> <ul style="list-style-type: none"> the North West Growth Centre the South West Growth Centre the Wilton Growth Centre

Planning instrument	Relevance to the project
(SRGC SEPP)	<p>The aims of this SEPP are:</p> <ul style="list-style-type: none"> • to co-ordinate the release of land for residential, employment and other urban development in the North West Growth Centre, the South West Growth Centre and the Wilton Growth Area, • to enable the Minister from time to time to designate land in growth centres as ready for release for development, • to provide for comprehensive planning for growth centres, • to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high-quality local amenity, • to provide controls for the sustainability of land in growth centres that has conservation value, • to provide for the orderly and economic provision of infrastructure in and to growth centres, • to provide development controls in order to protect the health of the waterways in growth centres, • to protect and enhance land with natural and cultural heritage value, • to provide land use and development controls that will contribute to the conservation of biodiversity. <p>The provisions of the SRGC SEPP apply to the area in which the project is proposed to be carried out located to the south of Western Sydney International.</p> <p>The provisions of the SRGC SEPP do not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority that is permitted to be carried out, with or without consent, under the Infrastructure SEPP.</p> <p>The project is located on land located within the South West Growth Centre that has been biodiversity certified (see Figure 2-2) in accordance with the repealed Threatened Species Conservation Act 1995 (TSC Act), which is taken to be certified under the Biodiversity Conservation Act 2016.</p>
<p>State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) (Remediation SEPP)</p>	<p>The Remediation SEPP applies to the whole of the State.</p> <p>The object of this SEPP is to provide for a State-wide planning approach to the remediation of contaminated land.</p> <p>SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment by:</p> <ul style="list-style-type: none"> • specifying when consent is required, and when it is not required, for a remediation work, and • specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and • requiring that a remediation work meet certain standards and notification requirements. <p>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:</p> <ul style="list-style-type: none"> • 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

Planning instrument	Relevance to the project
	<p>that the land would be remediated before the land is used for that purpose.</p> <p>The provisions of the Remediation SEPP do not apply to the project. State significant infrastructure does not require development consent. As a matter of good environmental assessment practice, assessments undertaken for the Environmental Impact Statement take account of the assessment provisions of the Remediation SEPP.</p>
<p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (VNA SEPP)</p>	<p>The VNA SEPP applies to the non-rural areas of the State, relevantly the local government areas of the City of Penrith and City of Liverpool.</p> <p>The aims of this SEPP are:</p> <ul style="list-style-type: none"> to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. <p>The SEPP does not affect the provisions of other SEPPs and prevails to the extent of any inconsistency with the provisions of a LEP.</p> <p>An authority to clear vegetation is not required under this Policy if it is clearing of a kind that is authorised under section 60O of the <i>Local Land Services Act 2013</i> (Clearing authorised under other legislation).</p> <p>Under the provisions of section 60O of the <i>Local Land Services Act 2013</i>, the clearing of native vegetation is authorised if the clearing was authorised by a State significant infrastructure approval under section 5.19 of the EP&A Act.</p> <p>The provisions of the VNA SEPP do not apply to the project. The project is State significant infrastructure.</p>



The project and land zoned SP2 Infrastructure by Major Corridors SEPP 2020

Figure 2-1

Indicative only, subject to design development

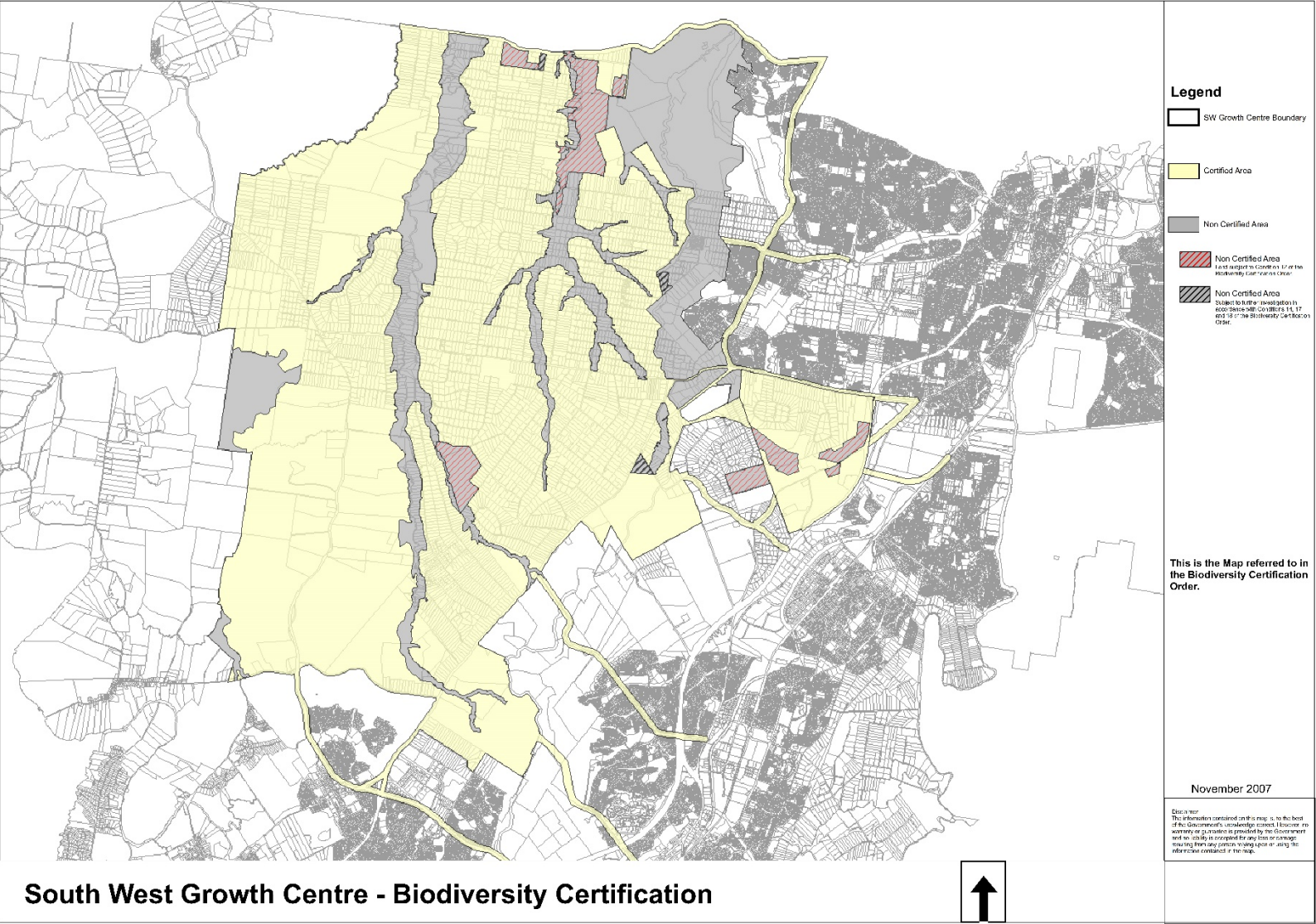


Figure 2-2 South West Growth Centre - biodiversity certified lands

2.1.4 Local environmental planning instruments

The project is located within the local government areas of the City of Penrith and City of Liverpool.

Section 5.22 of the EP&A Act provides that environmental planning instruments such as LEPs do not, with some exceptions, apply to State significant infrastructure projects. By virtue of the provisions of certain SEPPs (as identified in Table 2-1) LEPs do not apply to the project, however, LEPs of relevance to land in the vicinity of the project are discussed in Table 2-2.

Table 2-2 Local Environmental Plans

Planning instrument	Relevance to the project
Penrith Local Environmental Plan 2010 (Penrith LEP 2010)	Penrith LEP 2010 applies to lands at the northern part of the project.
	The LEP provides development standards applying to land in Penrith. It guides planning decisions for each piece of land and specifies what may be built, what land may be used for, and what building heights and floor spaces are allowed.
	As a rail infrastructure facility to be carried out by or on behalf of a public authority, the project is development that is permissible without consent under the provisions of clause 79 of the Infrastructure SEPP.
	The provisions of Penrith LEP 2010 do not apply to the project.
Liverpool Local Environmental Plan 2008 (Liverpool LEP 2008)	Liverpool LEP 2008 applies to lands at the southern part of the project.
	The LEP provides development standards applying to land in Liverpool. It guides planning decisions for each piece of land and specifies what may be built, what land may be used for, and what building heights and floor spaces are allowed.
	As a rail infrastructure facility to be carried out by or on behalf of a public authority, the project is development that is permissible without consent under the provisions of clause 79 of the Infrastructure SEPP.
	The provisions of Liverpool LEP 2008 do not apply to the project.

2.1.5 Planning Secretary's Environmental Assessment Requirements

The Planning Secretary's Environmental Assessment Requirements for the project were issued on 16 July 2020 in accordance with the requirements of section 5.16 of the EP&A Act. These requirements are listed in Appendix A (Environmental assessment requirements) of the Environmental Impact Statement.

2.2 Other relevant State legislation requirements

A range of other environmental planning and approval requirements are embodied in various interrelated pieces of NSW legislation, and are summarised in Table 2-3 in relation to the project and their applicability. Sections 5.23 and 5.24 of the EP&A Act identify limitations on the applicability of some elements of these interrelated pieces of legislation as they apply to approved State significant infrastructure or approved critical State significant infrastructure, as discussed in Section 2.3 and Section 2.4.

Table 2-3 Other NSW legislation

Legislation	Relevance to the project
Aboriginal Land Rights Act 1983 (ALR Act)	The purpose of the ALR Act includes providing land rights for Aboriginal persons and representative Aboriginal Land Councils in the State.
	The ALR Act applies to Crown Lands that are not lawfully needed for an essential purpose.
	As identified in Division 2 of Part 2 of the ALR Act, these lands are referred to as claimable Crown Lands.
	The provisions of the ALR Act apply to the project.

Legislation	Relevance to the project
	The project does not occupy lands that are claimable Crown Lands.
<i>Biodiversity Conservation Act 2016 (BC Act)</i>	<p>The BC Act was introduced to maintain a healthy, productive and resilient environment for the greatest well-being of the community, consistent with the principles of ecologically sustainable development. In particular, its key aims are to conserve biodiversity, maintain the diversity and quality of ecosystems, and enhance their capacity to adapt to change and provide for the needs of future generations.</p> <p>The BC Act, together with the Biodiversity Conservation Regulation 2017, outlines the framework for assessment and approval of biodiversity impacts associated with developments that require consent under the EP&A Act. It introduces a Biodiversity Offsets Scheme (BOS), a framework to avoid, minimise and offset impacts on biodiversity from development and clearing. The proponent for a development to which the BOS applies is required to prepare a Biodiversity Development Assessment Report (BDAR) in support of an application for approval to undertake that development. The BDAR shall use the Biodiversity Assessment Method (BAM) that was established under these biodiversity reforms to provide a methodology for determining the number and type of biodiversity credits required to offset biodiversity impacts.</p> <p>State significant infrastructure projects are required to prepare a BDAR to identify and assess biodiversity impacts under the provisions of the BC Act and offset those impacts by retiring biodiversity credits, determined using the BAM, through the BOS.</p> <p>The area of the project to the south of Western Sydney International is the subject of biodiversity certification under the repealed <i>Threatened Species Conservation Act 1995</i> (TSC Act). The biodiversity certified land is identified on Figure 2-2. Through the transitional provisions, it is taken to be the subject of biodiversity certification under the BC Act. Under the BC Act, where a project is being carried out on land that is biodiversity certified, a BDAR is not required. Accordingly, a BDAR is not required for the area to the south of the airport.</p> <p>In relation to the area north of the airport, strategic conservation planning is currently being undertaken for Western Sydney, referred to as the Cumberland Plain Conservation Plan. This is intended to lead to certification under the BC Act. However, the project is not included in that conservation plan and therefore requires a BDAR to be prepared for the area north of the airport.</p> <p>The provisions of the BC Act apply to the project. Under the provisions of section 5.23(3) of the EP&A Act, directions, orders or notices that could otherwise be issued under Part 11 of the BC Act cannot be issued for approved critical State significant infrastructure. A biodiversity assessment has been undertaken by way of a Biodiversity Development Assessment Report (BDAR) for the areas north of the airport and is presented in Technical Paper 3 (Biodiversity Development Assessment Report) and summarised in Chapter 11 (Biodiversity) of the Environmental Impact Statement. The project to the south of the airport is located on land that was biodiversity certified under the TSC Act and is subject to the transitional provisions of the BC Act. A BDAR is not required for the project in this area.</p>
<i>Biosecurity Act 2015 (Bio Act)</i>	The Bio Act provides for the prevention, elimination, minimisation and management of biosecurity risks in NSW posed by biosecurity matter,

Legislation	Relevance to the project
	<p>which is defined in section 10 of the Bio Act. It replaces the Noxious Weeds Act.</p> <p>Under the Bio Act, weeds are defined as a plant that is a pest and a biosecurity risk exists where invasive weeds, now termed priority weeds under the Bio Act, have the potential to negatively impact on the environment.</p> <p>The Bio Act introduces a responsibility for landowners or land managers to control and prevent the introduction and spread of these priority weeds, which is to be known as a General Biosecurity Duty.</p> <p>The provisions of the Bio Act apply to the project. Sydney Metro being the landowner/land manager for land on which the project is to be located has a General Biosecurity Duty to control priority weeds, as required, on lands on which the project is located. This is addressed through the biosecurity management provisions outlined in Appendix F (Construction Environmental Management Framework) of the Environmental Impact Statement, which contains a range of measures to manage weeds and other biosecurity risks applicable to the project.</p>
Contaminated Land Management Act 1997 (CLM Act)	<p>The CLM Act was introduced to promote the better management of contaminated land with regard to the principles of ecologically sustainable development which are described in section 9(3). The CLM Act also establishes a process for investigating and (where appropriate) remediating land.</p> <p>The CLM Act provides a process for the investigation and remediation of land where contamination presents a significant risk of harm to human or ecological health or other aspect of the environment.</p> <p>Section 60 of the CLM Act identifies a duty to report contamination where a party becomes aware of that contamination, regardless of whether the contamination was caused by that party or occurred prior to that party becoming the landowner/land manager for that land.</p> <p>The provisions of the CLM Act apply to the project. As the owner or occupier of land on which the project would be located, Sydney Metro would follow the process established by the CLM Act where contamination on that land is identified. The provisions of the CLM Act apply to the project through prescribing the contamination assessment measures that will need to be satisfied in relation to project development. An assessment of contamination undertaken for land on which the project is located is presented in Technical Paper 8 (Contamination) and summarised in Chapter 16 (Soils and contamination) of the Environmental Impact Statement.</p>
Fisheries Management Act 1994 (FM Act)	<p>The FM Act was introduced to conserve, develop and share the fishery resources of the State for the benefit of present and future generations, and applies to all waters within the area occupied by the project.</p> <p>Part 7 of the FM Act relates to the protection of fish and aquatic habitats with the objective of conserving the biodiversity of fish and aquatic vegetation. It provides for the management of certain works located on land that is permanently or intermittently submerged by water.</p> <p>Pursuant to sections 201, 205 and 219 of the FM Act, works and activities such as those required for the project, may be undertaken under the authority of a permit.</p> <p>Under the provisions of section 5.23(1) of the EP&A Act, permits that would otherwise be required under sections 201, 205 and 219 of</p>

Legislation	Relevance to the project
	<p>the FM Act are not required for approved State significant infrastructure projects.</p> <p>Similarly, under the provisions of section 5.23(3) of the EP&A Act, directions, orders or notices that could otherwise be issued under Division 7 of Part 7A of the FM Act cannot be issued for approved critical State significant infrastructure.</p>
<p>Heritage Act 1977 (Heritage Act)</p>	<p>The Heritage Act was introduced to promote and encourage an understanding and the conservation of the State's heritage. It also provides for the identification and registration of items that meet the definition of State heritage significance.</p> <p>Part 4 of the Heritage Act identifies the effect of interim heritage orders and listing on the State Heritage Register. It specifies that a person must not demolish, damage, move or destroy a listed item without being granted an exemption.</p> <p>Part 6 of the Heritage Act deals with other measures for the conservation of the environmental heritage. Relevantly, section 139 specifies that a person must not disturb or excavate land knowing, or suspecting, that the action may result in the discovery, exposure, movement, damage or destruction of a relic, unless the work is undertaken in accordance with an excavation permit. Additionally, section 146 requires that the discovery or location of a relic must be notified to the Heritage Council unless the Heritage Council is aware of the relic's location.</p> <p>Under the provisions of section 5.23(1) of the EP&A Act, exemptions and permits that would otherwise be required under Part 4 and section 139 of the Heritage Act are not required for approved State significant infrastructure projects.</p> <p>Similarly, under the provisions of section 5.23(2) of the EP&A Act, Division 8 of Part 6 of the Heritage does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.</p>
<p>Land Acquisition (Just Terms Compensation) Act 1991 (LA Act)</p>	<p>The LA Act was introduced in relation to the acquisition of land on just terms by authorities of the State with the objective of simplifying and expediting the compulsory acquisition process, while ensuring compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale.</p> <p>An authority of the State that is authorised by law to acquire land by compulsory process in accordance with the LA Act is also authorised to acquire native title rights and interests in relation to the land (where they exist) in the same way that other interests in the land may be acquired. For the purposes of any such acquisition of native title rights and interests, the authority of the State is required to comply with any relevant procedure under the Commonwealth Native Title Act for a valid acquisition of those rights and interests.</p> <p>The LA Act does not apply to the acquisition of land if the land is available for public sale and the land is acquired by agreement.</p> <p>The provisions of the LA Act apply to the project.</p> <p>Some of the land on which the project is proposed to be located is privately owned and may need to be acquired to accommodate the project.</p>
<p>Local Government Act 1993 (LG Act)</p>	<p>The purpose of the LG Act is to provide the legal framework for the system of local government in the State and identifies guiding principles for councils while setting out their responsibilities and powers.</p>

Legislation	Relevance to the project
	<p>Part 2 of the LG Act deals with matters that a council may order a person to do or refrain from doing, with section 124 listing those matters and under what circumstances they apply, as well as the party who may be issued with the order.</p> <p>Matters for which orders may be issued include fencing of land, filling or covering a hole, removing an object or matter from a public place, altering a work on, over or under a public place, and complying with an approval.</p> <p>Under the provisions of section 5.23(3) of the EP&A Act, orders or directions pursuant to section 124 of the LG Act cannot be made or given so as to prevent or interfere with the carrying out of an approved critical State significant infrastructure project.</p>
<p>Local Land Services Act 2013 (LLS Act)</p>	<p>The LLS Act was introduced to provide direction around programs and services associated with agricultural production, biosecurity, natural resource management and emergency management. It aims to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistent with the principles of ecologically sustainable development as described in section 6(2) of the <i>Protection of the Environment (Operations) Act 1997</i> (POEO Act). One of the ways that it intends to achieve this is through the regulation of clearing of native vegetation.</p> <p>Part 5A of the LLS Act sets out the ways in which the regulating of activities will occur and the areas of the State to which it will apply. Section 60A applies Part 5A to any area of the State, other than some nominated areas which, relevantly, include urban areas of the State to which the Vegetation in Non-Rural Areas SEPP applies. Additionally, Section 60O of the LLS Act deals with clearing that is authorised under other legislation.</p> <p>City of Penrith and City of Liverpool are two of the identified urban areas to which the Vegetation in Non-Rural Areas SEPP applies, thereby excluding them from the provisions of the LLS Act. Furthermore, under the provisions of section 60O of the LLS Act the clearing of native vegetation is authorised if the clearing was authorised by a State significant infrastructure approval under Part 5.1 of the EP&A Act.</p> <p>The provisions of the LLS Act do not apply to the project. Land management associated with agricultural production, biosecurity, natural resource management and emergency management, including native vegetation, does not apply to the lands on which the project is located.</p>
<p>National Parks and Wildlife Act 1974 (NPW Act)</p>	<p>The NPW Act was introduced to establish statutory provisions for the preservation and management of national parks, historic sites and certain other areas, as well as the protection of certain Aboriginal objects. The NPW Act provides for the conservation of elements of the natural environment, as well as the conservation of objects, places or features of cultural value to Aboriginal people and the people of NSW.</p> <p>Under the provisions of section 86 of the NPW Act, a person must not harm or desecrate a known Aboriginal object unless authorised by an Aboriginal heritage impact permit issued under section 90 of the NPW Act.</p> <p>Division 1 and Division 2 of Part 6A of the NPW Act provide authorisation to make a stop work order and/or an interim protection order.</p> <p>Under the provisions of section 5.23(1) of the EP&A Act, a permit that would otherwise be required under section 90 of the NPW Act is not required for approved State significant infrastructure projects.</p>

Legislation	Relevance to the project
	Additionally, under the provisions of section 5.23(3) of the EP&A Act, orders or directions pursuant to Part 6A of the NPW Act cannot be made or given so as to prevent or interfere with the carrying out of an approved critical State significant infrastructure project.
Protection of the Environment (Operations) Act 1997 (POEO Act)	<p>The POEO Act is a key piece of environmental protection legislation in NSW. Key objectives of the POEO Act include the protection, restoration and enhancement of the quality of the NSW environment, having regard to the principles of ecologically sustainable development, and to reduce the risk to human health and prevent the degradation of the environment.</p> <p>Chapter 3 of the POEO Act describes the types of environment protection licences (section 43) and the requirement for a licence (section 48) if the scheduled activity is listed in Schedule 1.</p> <p>Schedule 1 includes (at clauses 33, 33A and 33B) the following premises-based activities for which a licence under sections 48 and 49 of the POEO Act would be required:</p> <ul style="list-style-type: none"> • Railway activities – railway infrastructure construction • Railway activities – railway infrastructure operations • Railway activities – rolling stock operations <p>The provisions of the POEO apply to the project. Under the provisions of sections 43 and 48 of the POEO Act, environment protection licences may be required for the construction and the operation of the project, as well as for the project's rolling stock operations. Under the provisions of section 5.24 of the EP&A Act, an environment protection licence for any of the purposes listed in section 43 of Chapter 3 of the POEO Act, cannot be refused if it is necessary for carrying out State significant infrastructure and is to be substantially consistent with the approval for the State significant infrastructure project. In addition, under the provisions of section 5.23(3) of the EP&A Act, orders or directions pursuant to Chapter 4 of the POEO Act cannot be made or given so as to prevent or interfere with the carrying out of an approved critical State significant infrastructure project.</p>
Roads Act 1993 (Roads Act)	<p>The principal object of the Roads Act of relevance to the project is the regulation of the carrying out of various activities on public roads.</p> <p>Part 7 of the Roads Act identifies provisions relating to the protection of public roads and traffic and is applicable to the project.</p> <p>Part 9 of the Roads Act nominates the requirements for undertaking works within a public road, including the requirement to obtain consent under section 138 for carrying out works in, on or over a public road (this includes the erection of structures), and the digging up or disturbance of the surface of a public road. Clause 5 of Schedule 2 of the Roads Act exempts a public authority (which includes Sydney Metro) from the need to obtain consent to exercise its functions in, on or over an unclassified road. In addition, section 38N of the <i>Transport Administration Act 1988</i> provides that section 138 of the Roads Act does not apply to Sydney Metro in respect of carrying out its functions on classified roads.</p> <p>Some provisions of the Roads Act may apply to the project. Sydney Metro, is exempt from obtaining a consent under section 138 of the Roads Act in, on or over an unclassified or classified road.</p>

Legislation	Relevance to the project
Rural Fires Act 1997 (RF Act)	The objects of the RF Act are focused on the prevention, mitigation and suppression of bush and other fires in rural fire districts, and the co-ordination of fire fighting and prevention across the State.
	Rural fire districts are defined in section 6 of the RF Act as coincidental to local government areas, meaning the project is located within each of the Penrith and Liverpool rural fire districts.
	Section 100B applies to bush fire prone land and empowers the Commissioner of the NSW Rural Fire Service to issue a bush fire safety authority. The bush fire authority authorises certain types of development, subject to compliance with matters considered by the Commissioner to be necessary to protect persons, property or the environment.
	Under the provisions of section 5.23(1) of the EP&A Act, a bush fire safety authority pursuant to section 100B of the RF Act is not required and accordingly, does not apply to the carrying out of an approved State significant infrastructure project.
Waste Avoidance and Resource Recovery Act 2001 (WARR Act)	The WARR Act aims to encourage the most efficient use of resources to reduce environmental harm in accordance with the principles of ecologically sustainable development.
	Objectives of the WARR Act include ensuring resource management options consider a waste hierarchy, provision is made for the continual reduction of waste generation, and natural resource consumption and waste disposal are minimised.
	The WARR Act is intended to operate in order to assist in the achievement of the objectives of the POEO Act.
	The provisions of the WARR Act apply to the project. The project would consume some natural resources and would produce waste. Waste avoidance and recovery measures are addressed through provisions outlined in Appendix F (Construction Environmental Management Framework) of the Environmental Impact Statement.
Water Act 1912 (Water Act)	Parts of the Water Act have been repealed with most of these repealed elements replaced by the WM Act. The Water Act deals primarily with water rights and works, including artesian water and the licensing of water management authorities in some limited circumstances.
	Part 5 of the Water Act deals with sub-surface water and section 105 defines a 'bore' as comprising a bore or well or any excavation or work connected to or proposed to be connected to a source of sub-surface water.
	Pursuant to the provisions of Division 3 of Part 5 of the Water Act, a licence is required for an excavation connected to a source of sub-surface water.
	Under section 129A of the Water Act, the licensing requirement does not apply to areas of NSW where the requirements for a water supply work approval applies. A water supply work approval is not required for State significant infrastructure and the licensing requirement does not therefore apply to the project.
Water Management Act 2000 (WM Act)	The overarching objective of the WM Act is to provide for the sustainable and integrated management of the water resources of the State and include the application of the principles of ecologically sustainable development.
	Water use approvals, which authorise and confer a right on the holder of the approval to use water for a particular purpose at a particular location,

Legislation	Relevance to the project
	<p>are dealt with in section 89 of the WM Act. Section 90 of the WM Act identifies three kinds of water management works approvals, being a water supply work approval, a drainage work approval and a flood works approval, with all three of these approvals conferring a right on the holder of the approval to construct and use the specified works at a specified location. There are two kinds of activity approvals that are dealt with in section 91 being a controlled activity and aquifer interference, both of which confer a right on the holder to carry out the specified activity at the specified location.</p> <p>Division 2 of Part 3 of Chapter 3 of the WM Act deals with the process for the making and determining the applications identified in sections 89, 90 and 91, while Division 3 of Part 3 of Chapter 3 discusses the conditioning and duration of approvals. Part 2 of Chapter 3 deals with water access licences, which may be required in order to take water from certain water sources.</p> <p>Under the provisions of section 5.23(1) of the EP&A Act, a water use approval pursuant to section 89 of the WM Act, a water management work approval pursuant to section 90 of the WM Act, and an activity approval (other than an aquifer interference approval) pursuant to section 91 of the WM Act are not required and accordingly, do not apply to approved State significant infrastructure project. In some circumstances, a water access licence may be required.</p>
Water NSW Act 2014 (WNSW Act)	<p>The Water NSW Act defines the functions and objectives of WaterNSW.</p> <p>The Warragamba to Prospect Water Supply Pipelines corridor is declared to be a Controlled Area, consistent with Schedule 1 of the Water NSW Regulation 2013 (WNSW Regulation).</p> <p>The declaration includes controls, restrictions and penalties designed to protect the water supply infrastructure and drinking water quality from pollution, damage, unauthorised entry or other unauthorised activities.</p> <p>The provisions of the Water NSW Act apply to the crossing of the project over the Warragamba to Prospect Water Supply Pipelines corridor.</p>
Western City and Aerotropolis Authority Act 2018 (WCAA Act)	<p>The Western Parkland City Authority is constituted under the provisions of the WCAA Act.</p> <p>The overarching object of the WCAA Act is to encourage the economic growth and development of the Western Sydney Aerotropolis and the rest of the Western City.</p> <p>There are a number of general functions listed for the WCAA which include, relevantly:</p> <ul style="list-style-type: none"> • master planning • participation in the planning, funding, prioritisation and co-ordination of public infrastructure provided in association with the carrying out of development within precincts • carrying out development <p>The project is located on lands within two of the eight local government areas (being Penrith and Liverpool) that form the area that comprises the Western City.</p>
Western Sydney Parklands Act 2006 (WP Act)	<p>The WP 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.</p>

Legislation	Relevance to the project
	The Western Sydney Parklands comprise land described in Schedule 2 of the Act and shown on one of the maps in Schedule 2.
	The footprint of the project is not located within the area identified as comprising the Western Sydney Parklands.
	The provisions of the WP Act do not apply to the project. The project is not located on lands which are identified as the Western Sydney Parklands.

2.3 NSW approval requirement exemptions

As noted in Table 2-4, section 5.23(1) of the EP&A Act identifies a number of approvals related to other NSW legislation that are not required for approved State significant infrastructure and would not therefore apply to the project.

In summary, these exemptions apply to the following authorisations which would ordinarily be relevant to the project.

- a permit under sections 201, 205 or 219 of the FM Act e.g. for excavation works within key fish habitat
- an approval under Part 4, or an excavation permit under section 139 of the Heritage Act
- an Aboriginal heritage impact permit under section 90 of the NPW Act
- a bush fire safety authority under section 100B of the RF Act
- a water use approval under section 89, a water management approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the WM Act.

Furthermore, section 5.23(2) provides that a cease work order pursuant to Division 8 of Part 6 of the Heritage Act does not apply to prevent or interfere with the carrying out of approved State significant infrastructure.

Section 5.23(3) also identifies directions, orders or notices that cannot be made or given so as to prevent or interfere with the carrying out of approved critical State significant infrastructure.

These exemptions apply to the following matters relevant to the project.

- an interim protection order (within the meaning of the NPW Act)
- stop work orders under Division 1 of Part 6A of the NPW Act or Division 7 of Part 7A of the FM Act
- an order or direction under Part 11 (regulatory compliance mechanisms) of the BC Act
- an environment protection notice under Chapter 4 of the POEO Act
- an order under section 124 of the LG Act.

2.4 NSW post approval authorisation requirements

Following an approval under the provisions of the EP&A Act, certain authorisations would be required under additional pieces of NSW legislation. Authorisations that cannot be refused if they are necessary for carrying out the approved State significant infrastructure and which must be substantially consistent with the approval, are listed in section 5.24 of the EP&A Act.

In summary, these authorisations relevant to the project include an environment protection licence under Chapter 3 of the POEO Act.

2.5 Commonwealth EPBC Act requirements

The EPBC Act is the Australian Government's key piece of environmental legislation. It enables the Australian Government to join with the states and territories in providing a truly national scheme of environment and heritage protection and biodiversity conservation. The EPBC Act focuses Australian Government interests on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance.

Key parts of the EPBC Act that are relevant to the project are:

- Part 3 - requirements for environmental approvals
- Part 7 - whether an approval is needed
- Part 8 - assessing the impacts of a controlled action
- Part 9 - the approval of actions
- Part 10 - strategic assessments
- Part 13 - species and communities.

2.5.1 Part 3 requirements

Part 3 identifies requirements for approvals where a proposed action may or has the potential, to have a significant impact on a protected matter. These protected matters are listed in Part 3 and grouped into two overarching categories – matters of national environmental significance, and the environment where proposals involve the Commonwealth.

There are several matters protected under Part 3 of the EPBC Act that would be impacted by the project. These include listed threatened species, listed threatened ecological communities and the environment on parcels of Commonwealth land.

2.5.2 Part 7 requirements

Part 7 sets out the process for deciding whether an approval under the EPBC Act is required for a proposed action. If the taking of an action may or has the potential to have a significant impact on a protected matter, then the action may be a controlled action and would require approval under the EPBC Act. A person proposing to take an action that the person thinks may be or is a controlled action must refer the proposal to the Minister for the Environment to obtain the Minister's decision whether or not the action is a controlled action.

The off-airport components of the project located to the north of Western Sydney International were referred to the Minister as a proposed action on 2 June 2020 (EPBC 2020/8687). Pursuant to sections 75 and 87 of the EPBC Act, Sydney Metro was advised on 14 July 2020 that the referred action, being the off-airport components of the project located to the north of Western Sydney International, is a controlled action and will require assessment and approval under the EPBC Act before it can proceed. The Commonwealth Minister for the Environment has determined that the project requires approval:

- in relation the component north of the airport, because of its impact on listed threatened species and ecological communities (sections 18 and 18A of the EPBC Act)
- in relation to the component on Commonwealth land owned by Defence, because of its impact on the environment, particularly in the context of animal species and vegetation (sections 26 and 27A of the EPBC Act).

The assessment to support this is provided in Appendix K (EPBC Act Draft Environmental Impact Assessment of off-airport proposed action (EPBC 2020/8687)) to the Environmental Impact Statement.

South of Western Sydney International, *The Sydney Growth Centres Strategic Assessment: Program Report* (DECCW and DoP 2010) provided a strategic assessment and conservation planning for the South West Growth Area located south of Elizabeth Drive. All components of the project located south of Elizabeth Drive and outside the airport site are located on land subject to this assessment. As a result, impacts on Matters of National Environmental Significance (MNES) and Commonwealth land protected by the EPBC Act have already been assessed under that strategic assessment.

The Sydney Growth Centres Strategic Assessment Program Report was completed in November 2010 and the program was endorsed by the Commonwealth Environment Minister in December 2011 under the provisions of section 146 of Part 10 of the EPBC Act.

No further approval (including approval under s146B) under the EPBC Act would therefore be required for the project south of Elizabeth Drive and outside the airport site.

2.5.3 Part 8 requirements

The approach to undertaking the assessment of an action is determined by the Minister from the alternate ways of assessing the action that are identified in Part 8.

The assessment approach for the off-airport components of the project located to the north of the Western Sydney International site was notified by the Minister on 14 July 2020 under the requirements of Part 8 as an assessment on preliminary documentation.

A request for further information was provided to Sydney Metro on 21 July 2020 to enable the relevant impacts of the off-airport components of the project located to the north of Western Sydney International to be considered by preliminary documentation.

2.5.4 Part 9 requirements

Part 9 deals with the approval of actions and identifies the requirements for making a decision on approval and conditions.

As the off-airport components of the project located to the north of Western Sydney International were determined to be a controlled action, approval is required under the EPBC Act before the project can proceed.

2.5.5 Part 10 requirements

Under the provisions of Part 10 of the EPBC Act, the Commonwealth Environment Minister may agree to undertake a strategic assessment of the impacts of actions under a policy, plan or program.

The area south of Western Sydney International is the subject of a Part 10 assessment and approval. No further assessment or approval under the EPBC Act is required for the project south of Western Sydney International.

In relation to the area north of Western Sydney International, the NSW Department of Planning, Industry and Environment is currently managing a process known as the Strategic Assessment of the *Cumberland Plain Conservation Plan – Section 146 Agreement* (the Strategic Assessment), which is being carried out under Part 10 of the EPBC Act. The parties to the agreement, which covers the identified Western Sydney Development Areas including Transport Corridors and was signed in late 2018, are the Commonwealth of Australia and the State of NSW.

This plan and the accompanying Part 10 process does not include the project. Accordingly, Part 9 approval will still be required for those areas.

2.5.6 Part 13 requirements

The off-airport development of the project may also require an approval under Part 13 of the EPBC Act if a member of a listed threatened species or listed threatened ecological community is to be killed or injured on Commonwealth land.

Subdivision B of Part 13 of the EPBC Act sets out the permit system for protection of members of listed threatened species or ecological communities. An application for a permit may be made before or after the approval of an action under Part 9 of the EPBC Act.

2.6 Application of Commonwealth Airports Act requirements to off-airport works

The Airports Act establishes a system for the regulation of airports and the promotion of the efficient and economic development and operation of airports that includes Western Sydney International (referred to in the Act as Sydney West Airport). Division 4A of Part 5 of the Airports Act sets out the requirements for the content of the Airport Plan for Western Sydney International which includes land use, planning and authorised developments for Western Sydney International.

The Airport Plan, among other things, provides approval to carry out the activities contained within it. Accordingly, in order for the Airport Plan to capture the project and provide the relevant approval for the project under the Airports Act, it must be varied under section 96D of the Airports Act (see section 3.1 below).

The assessment to support this variation is provided in Appendix J (EPBC Act Draft Environmental Impact Assessment of on-airport proposed action (EPBC 2019/8541)) of the Environmental Impact Statement.

The Airport Plan does not apply to the project outside the boundaries of the Western Sydney International site. However, other parts of the Airports Act and Regulation may apply beyond the boundaries of Western Sydney International, for example, air safety and related issues.

Part 12 of the Airports Act, along with the Airports (Protection of Airspace) Regulations 1996, deals with the protection of airspace around airports. Section 182 in Part 12 of the Airports Act, together with the Regulations, requires approval for certain controlled activities in relation to a prescribed airspace, which include physical elements such as buildings, structures or activities that intrude into the prescribed airspace, as well as activities creating turbulence such as smoke stacks. The currently identified protected airspace for Western Sydney International is known as the Obstacle Limitation Surface and was declared on 19 October 2017 under the provisions of the Airports Act and the Regulations. Additional surfaces are expected to be identified for protection through the airspace development process for the airport.

No approvals in relation to airspace protection outside of the airport site are currently expected to be required for the project.

The project components located off-airport either do not (or are unlikely to) involve relevant activities (such as elevated structures or air turbulence) or can otherwise be appropriately designed to avoid the need for separate approval.

2.7 Other relevant Commonwealth legislation requirements

A range of relevant approval requirements are embodied in a number of interrelated pieces of Commonwealth legislation and are summarised in Table 2-4 in relation to the project and their applicability.

Table 2-4 Interrelated Commonwealth legislation

Legislation	Relevance to the project
<i>Disability Discrimination Act 1992 (DD Act)</i>	The DD Act aims to eliminate, as far as possible, discrimination against persons on the ground of disability in areas including access to premises and the provision of facilities and services relating to transport or travel.
	Under the provisions of Division 2 of Part 2 of the DD Act, it is unlawful to discriminate against a person for various reasons including, relevantly, in relation to providing access to premises and services relating to transport and travel. Section 31 of the DD Act provides for the formulation of standards by legislative instrument in relation to matters identified in Part 2, in which it is unlawful to discriminate.
	The <i>Disability Standards for Accessible Public Transport 2002</i> , developed in response to section 31 of the DD Act, apply to all operators and the conveyances they use to provide public transport services.
	The provisions of the DD Act apply to the project. The project has been designed to comply with the provisions of the DD Act.
<i>Native Title Act 1993 (NT Act)</i>	The NT Act was introduced to recognise and protect native title. It provides that native title cannot be extinguished contrary to the Act
	Section 8 of the NT Act specifies that the Act is not intended to affect the operation of any law of a State or a Territory that is capable of operating concurrently with this Act.

Legislation	Relevance to the project
	The provisions of the NT Act apply to the project.
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act)</i>	The ATSIHP Act enables the Commonwealth to intervene and, where necessary, preserve and protect areas and objects of particular significance to Australia's Aboriginal or Torres Strait Islander peoples from being desecrated or injured.
	Section 7 of the ATSIHP Act specifies that the Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
	The provisions of the ATSIHP Act apply to the project.
<i>National Greenhouse and Energy Reporting Act 2007 (NGER Act)</i>	The NGER Act was introduced to enable an understanding of the quantum of emissions of greenhouse gases at a national level and binds the Crown in each of its capacities.
	The NGER Act establishes the National Greenhouse and Energy Reporting Scheme as a single reporting framework for the reporting and dissemination of information about greenhouse gas emissions, energy production, energy consumption and energy production.
	The provisions of the NGER Act apply to the project.

3 On-airport environmental planning approvals

3.1 Commonwealth Airports Act and EPBC Act requirements

The Airports Act regulates certain Commonwealth owned airports, including the development of airport sites to the exclusion of state planning laws. The Airports Act contains a planning framework under which each airport is required to prepare a master plan for approval by the Commonwealth Infrastructure Minister. In addition, for major airport developments, a major development plan is required to be prepared and approved.

Notwithstanding other references to Western Sydney International in the Airports Act, Division 4A of Part 5 of the Airports Act deals specifically with land use, planning and building controls relating to Western Sydney International, in particular the Airport Plan which applies to Western Sydney International. This transitional planning instrument regulates development on the site until a masterplan is put in place (Part 2) and also authorises the first stage of airport development subject to conditions (Part 3).

The Airport Plan for Western Sydney International was determined by the Commonwealth Infrastructure Minister in December 2016 following preparation and exhibition of an Environmental Impact Statement, and incorporates the conditions specified by the Commonwealth Environment Minister. Those conditions include the requirement for preparation and approval of a Construction Plan and a number of Construction Environmental Management Plans prior to commencement of main construction works. These plans have been prepared and approved, and main construction work at Western Sydney International commenced in September 2018.

The development of the project on the Western Sydney International site is expected to be authorised through a variation of the Airport Plan by the Commonwealth Infrastructure Minister to include the rail development and any required conditions for the rail development taking into account advice from the Commonwealth Environment Minister.

Section 96D of the Airports Act deals with variations to the Airport Plan and, in accordance with the requirements of section 96D(7), the Commonwealth Infrastructure Minister has made a referral to the Commonwealth Environment Minister pursuant to section 161 of the EPBC Act in relation to the variation of the Airport Plan. The Commonwealth Environment Minister has responded that advice is required under the provisions of section 160 of the EPBC Act and will require assessment in the form of preliminary documentation. The Commonwealth Environment Minister subsequently provided a request identifying the information to be included in the preliminary documentation.

If the existing conditions in the Airport Plan require variation to accommodate the rail development, the agreement of the Commonwealth Environment Minister to those variations would also be required under section 96D(3) of the Airports Act.

Developments on Western Sydney International will also require building approvals issued under the Commonwealth's *Airports (Building Control) Regulations 1996*, as well as Airport Lessee consent.

The on-airport development of the project may also require a permit under Part 13 of the EPBC Act if a member of a listed threatened species or ecological community is to be killed or injured on Commonwealth land. An application for a permit may be made before or after the approval of an action under Part 9 of the EPBC Act.

3.2 Commonwealth EPBC Act requirements

In accordance with section 96G of the Airports Act, variations to, and implementation of, the Airport Plan on Western Sydney International is not subject to the provisions of Parts 3 and 9 of the EPBC Act.

Sections 160 (requirement to take account of Minister's advice) and 161 (seeking the Minister's advice) of Part 11 of the EPBC Act apply to the proposal to vary the Airport Plan. As discussed above, in accordance with the requirements of section 96D(7) of the Airports Act, that advice has been sought and the Commonwealth Environment Minister has identified information to be included in the preliminary documentation.

The information requested by the Commonwealth Environment Minister for the preliminary documentation is provided in Appendix J (EPBC Act Draft Environmental Impact Assessment of on-airport proposed action (EPBC 2019/8541)) of the Environmental Impact Statement.