



Australian Government

**BUILDING OUR FUTURE**



# M1 Pacific Motorway extension to Raymond Terrace

Environmental impact statement –  
Chapter 2: Assessment process

Transport for NSW | July 2021





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## 2. Assessment process

This chapter describes the planning approval process for the project as well as other relevant environmental planning and statutory approval requirements. **Table 2-1** outlines the Secretary's Environmental Assessment Requirements (SEARs).

Table 2-1 SEARs (assessment process)

Secretary's requirement	Where addressed in EIS
1. Environmental Impact Assessment Process	
1. The Environmental Impact Statement (EIS) must be prepared in accordance with Part 3 of Schedule 2 of the Environmental Planning and Assessment Regulation 2000 (the Regulation).	The approvals framework, discussion of the EP&A Act and the EP&A Regulation are provided in <b>Section 2.1</b> .
2. The project will impact matters of national environmental significance (MNES) protected under the Commonwealth <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act) and will be assessed in accordance with the NSW Bilateral Agreement (2015). The Proponent must assess impacts to MNES protected under the EPBC Act. The assessment must be in accordance with the requirements listed in Attachment A.	MNES of relevance to the project are listed threatened species and communities (Section 18 and 18A of the EPBC Act). Impacts are discussed in <b>Chapter 9</b> (biodiversity). Impacts have been assessed in accordance with the requirements listed in Attachment A of the SEARs (EPBC Act Requirements). Commonwealth legislative requirements are discussed in <b>Section 2.2.2</b> .
3. The onus is on the Proponent to ensure legislative requirements relevant to the project are met.	Relevant NSW legislative requirements and how they are addressed are discussed in <b>Section 2.1.1</b> and <b>Section 2.2.1</b> . Commonwealth legislative requirements are discussed in <b>Section 2.2.2</b> .
2. Environmental Impact Statement	
1. The EIS must include, but not necessarily be limited to, the following:	
(p) statutory context of the project as a whole, including:	The approvals framework and statutory context is discussed in <b>Section 2.1</b> . The statutory context is further discussed in <b>Section 2.2</b> .
– how the project meets the provisions of the EP&A Act and EP&A Regulation;	The provisions of the EP&A Act and EP&A Regulation are discussed in <b>Section 2.1.1</b> , <b>Chapter 26</b> (project justification and conclusion) and <b>Appendix B</b> .
– a list of any approvals that must be obtained under any other Act or law before the project may lawfully be carried out;	NSW planning approvals are discussed in <b>Section 2.1.1</b> and <b>Section 2.2.1</b> . The relevance of Commonwealth approvals is discussed in <b>Section 2.2.2</b> and <b>Appendix C</b> .

## 2.1 Approval framework

### 2.1.1 Environmental Planning and Assessment Act 1979

Transport is seeking project approval for the project under Division 5.2 of the EP&A Act.

The project is State Significant Infrastructure (SSI) under Section 5.12 of the EP&A Act and does not require consent under Part 4 of the EP&A Act. The project is also declared to be critical State significant infrastructure (CSSI) under Section 5.13 of the EP&A Act, by virtue of clause 16 and Schedule 5, clause 1(a) of State Environmental Planning Policy (State and Regional Development) (SEPP) 2011.

The project is, therefore, subject to assessment under Division 5.2 of the EP&A Act and requires the approval of the Minister for Planning and Public Spaces under Section 5.14 of the EP&A Act.

In October 2015, an SSI application was submitted to the former Department of Planning and Environment (DPE, now DPIE) for the project. In November 2015, the SEARs for the project were issued (and re-issued in December 2017). The SEARs were then revised on 20 March 2019 to reflect the Commonwealth decision that the project is a controlled action under the EPBC Act. This is discussed further in **Section 2.2.2**. A copy of the SEARs (2019) and an indication of where each requirement is addressed in the EIS is provided in **Appendix A**. SEARs relevant to each key issue are also summarised at the start of each chapter.

This EIS was prepared in accordance with the SEARs (2019) and Part 3 of Schedule 2 of the EP&A Regulation. This includes the project description, alternative options, likely environmental impacts and mitigation measures, and relevant environmental planning approvals and permits. **Appendix B** outlines where each relevant environmental element listed in the EP&A Regulation is discussed within the EIS.

This EIS will be publicly exhibited for at least 28 calendar days, during which time any person (including a public authority) may make a written submission to the Secretary. Once the exhibition period has concluded, the Secretary will provide copies of submissions received or a report of the issues raised in the submissions to Transport and any other public authority the Secretary considers appropriate. The Secretary may then require Transport to submit a response to the issues raised in a Submissions Report and, if required, a Preferred Infrastructure Report (PIR).

The approval process under Division 5.2 of the EP&A Act is illustrated on **Figure 2-1**. Further information on the assessment process is available on the DPIE website ([www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)).



Figure 2-1 Approval process under Part 5, Division 5.2 of the EP&A Act and the EPBC Act



## 2.2 Other legislation

### 2.2.1 NSW legislation

#### *Legislation that applies to the project*

NSW legislation that applies to the project is detailed in **Table 2-2**. Under Section 5.24 of the EP&A Act, certain statutory approvals cannot be refused and must be issued substantially consistent with the CSSI approval, including an Environmental Protection Licence (EPL) under the *Protection of Environment Operations Act 1997* (POEO Act).

Table 2-2 NSW legislation applicable to the project

NSW legislation	Relevance to the project
<i>Threatened Species Conservation Act 1995</i> (TSC Act) and <i>Biodiversity Conservation Act 2016</i> (BC Act)	<p>Prior to August 2017, the TSC Act provided for the protection of biodiversity, including requirements for the protection of threatened species, populations and ecological communities. The TSC Act was repealed and replaced by the BC Act on 25 August 2017.</p> <p>Under clause 28(1) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017, former planning provisions continue to apply to the project as a “pending or interim planning application” as the application for planning approval was made before the commencement of the BC Act. Therefore, in accordance with the SEARs, the TSC Act still applies and the project assessment has applied the Framework for Biodiversity Assessment (FBA).</p> <p>Land clearing, threatened species, and biodiversity offsetting are further discussed in <b>Chapter 9</b> (biodiversity).</p>
<i>Native Title (New South Wales) Act 1994</i>	<p>This Act applies to the project on land affected by native title claims in NSW. The Act requires notification to native title claimants affected by the project. Notification was sent to the relevant affected parties on 13 January 2015. This is further discussed in <b>Chapter 12</b> (Aboriginal cultural heritage).</p>
<i>Water Management Act 2000</i> (WM Act)	<p>The WM Act provides for the sustainable and integrated management of the water sources of NSW. An approval under Section 256 (1)(a) of the WM Act is required as the project involves construction of a structure in, on, or adjacent to, a levee bank.</p> <p>An aquifer interference approval under the WM Act would also be required if construction requires intersection of a groundwater source.</p> <p>This is further discussed in <b>Chapter 10</b> (hydrology and flooding).</p>
<i>Hunter Water Act 1991</i>	<p>This Act applies to land within the Tomago Sandbeds Catchment Area (special area). The Act specifies the circumstances in which a public agency may exercise its functions within the special area. The regulations prohibit certain activities within the special area except with the approval of the Secretary. Transport has and will continue to consult with Hunter Water Corporation with regard to access and project activities on Hunter Water Corporation land, as discussed in <b>Chapter 6</b>.</p>
<i>Protection of the Environment Operations Act 1997</i> (POEO Act)	<p>An EPL for road construction is required as per Schedule 1 of the POEO Act.</p> <p>In accordance with Section 5.24 of the EP&amp;A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with the Division 5.2 approval.</p>
<i>Land Acquisition (Just Terms Compensation) Act 1991</i> (Land Acquisition Act)	<p>The Land Acquisition Act relates to acquisition of land by an authority of the State.</p> <p>Under Section 20 of the Act, any land compulsory acquired would be ‘freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land’.</p> <p>Acquisitions are further discussed in <b>Chapter 14</b> (land use and property).</p>

NSW legislation	Relevance to the project
<i>Contaminated Land Management Act 1997</i> (CLM Act)	The CLM Act outlines the circumstances in which notification to the NSW Environment Protection Authority (EPA) is required in relation to the contamination of land. Contaminated land is further discussed in <b>Chapter 16</b> (soils and contamination).
<i>Coastal Management Act 2016</i>	The main objective of the Act is to manage the coastal environment consistently with the principles of ecologically sustainable development. According to the Act, the coastal zone is defined as an area of land comprised of coastal wetlands and littoral rainforests, coastal vulnerability areas, coastal environment areas, and coastal use areas. The considerations of this policy are addressed in <b>Chapter 10</b> (hydrology and flooding) and <b>Chapter 11</b> (surface water and groundwater quality).
<i>Crown Land Management Act 2016</i>	The Act provides for the ownership, use and management of Crown land in NSW. Ministerial approval is required to grant a 'lease, licence, permit, easement or right of way over dedicated or reserved Crown land'. Crown land is further discussed in <b>Chapter 14</b> (land use and property).
<i>Fisheries Management Act 1994</i>	The Act requires written notification to the Minister for any dredging or reclamation works. Refer to <b>Chapter 11</b> (hydrology and flooding).

### **Approvals not required for the project**

Section 5.22 of the EP&A Act specifies that environmental planning instruments, including State Environmental Planning Policies (SEPPs), do not apply to projects that are declared SSI. As a result, relevant SEPPs have been considered throughout this EIS but do not strictly apply to the project.

In addition, a number of approvals are not required for a project approved under Part 5, Division 5.2 of the EP&A Act (Section 5.23). Approvals not required for the project include:

- Permits under Section 201, 205 or 219 of the *Fisheries Management Act 1994* (FM Act)
- Approval under Part 4, or an excavation permit under Section 139 of the *Heritage Act 1977* (Heritage Act)
- Aboriginal heritage permit under Section 90 of the *National Parks and Wildlife Act 1974* (NP&W Act)
- A bushfire safety authority under Section 100B of the *Rural Fires Act 1997*
- Water use approvals under Section 89, water management work approvals under Section 90, and activity approvals (other than aquifer interference approvals) under Section 91 of the WM Act.

Section 5.23(2) of Division 5.2 of the EP&A Act precludes the following being made to prevent or interfere with the carrying out of the project once approved:

- 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.

Section 5.23(3) of Division 5.2 of the EP&A Act precludes the following being made to prevent or interfere with the carrying out of a CSSI project once approved:

- Interim protection order within the meaning of the NP&W Act
- Order under Division 1 (Stop work orders) of Part 6A of the NPW Act, or Division 7 (Stop work orders) of Part 7A of the FM Act
- Remediation direction under Division 3 of Part 6A of the NP&W Act
- Order or direction under Part 11 of the BC Act
- Environmental protection notice under Chapter 4 of the POEO Act
- Order under Section 124 of the *Local Government Act 1999*.



## 2.2.2 Commonwealth legislation

### ***Environment Protection and Biodiversity Conservation Act 1999***

Under the EPBC Act proposed 'actions' that have the potential to impact on MNES or the environment of Commonwealth land, or are being carried out by a Commonwealth agency, must be referred to the Australian Government. If the Australian Minister for the Environment determines that a referred project is a 'controlled action', the approval of that Minister is required for the project in addition to the approval from the NSW Minister for Planning and Public Spaces.

Transport's decision to refer the project to the Australian Government Department of Agriculture, Water and the Environment (DoAWE) was based on the potential impacts to listed threatened species and communities (Sections 18 and 18A of the EPBC Act), specifically the Koala (*Phascolarctos cinereus*) and Coastal Swamp Oak (*Casuarina glauca*) Forest of New South Wales and South East Queensland. Accordingly, the project was referred (EPBC Reference 2018/8288) to the DoAWE on 2 November 2019.

On 14 January 2019, the delegate for the Australian Minister for the Environment confirmed the project is a controlled action (under Section 75 of the EPBC Act) due to its potential for significant impact on listed threatened species and communities (Section 18 and 18A of the EPBC Act). As such, the project requires assessment and approval under the EPBC Act.

The NSW Government confirmed the action will be assessed under the "Bilateral agreement made under Section 45 of the EPBC Act relating to environmental assessment between Commonwealth of Australia and the State of New South Wales" (Bilateral Agreement) (2015). This agreement accredits the assessment process under Division 5.2 of the EP&A Act. The Australian Minister for the Environment would then need to issue a separate approval for the project.

In March 2019, the SEARs were revised to reflect the project being a controlled action (**Appendix A**).

The approval process under the EPBC Act is illustrated on **Figure 2-1**. Further information on the assessment process is available on the DoAWE website (<https://www.environment.gov.au/epbc>).

### ***Native Title Act 1993***

One of the main objectives of the *Native Title Act 1993* is to recognise and protect native title. Section 8 states that the Act is not intended to affect the operation of any law of a State or Territory that is capable of operating concurrently with the Act. Searches of the register maintained by the National Native Title Tribunal indicate that there was one native title claim registered with respect to land within the area of the project, however this claim has now been withdrawn.

In the event of a registered claim, notification requirements under Section 24KA of the *Native Title Act 1993* apply where construction work is required on Crown land and where the land has not been acquired by Transport. Notification in accordance with this section will occur concurrently with the public display of the EIS. This is further discussed in **Chapter 12** (Aboriginal cultural heritage).