

# Chapter 4

## Statutory context



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## 4. Statutory context

This chapter provides a summary of the planning approval requirements for the project under relevant legislation. The approval pathway and permissibility of the project are summarised, relevant planning instruments and legislation are considered, and approval considerations are outlined.

### 4.1 Approval pathway and permissibility

The project is declared State significant infrastructure by operation of Part 5, Division 5.2 of the EP&A Act, State Environmental Planning Policy (Planning Systems) 2021 (the Planning Systems SEPP), and State Environment Planning Policy (Transport and Infrastructure) 2021 (the Transport and Infrastructure SEPP).

Section 5.12(2) of the EP&A Act provides that a State environmental planning policy may declare any development, or any class or description of development, to be State significant infrastructure. The Planning Systems SEPP (section 2.13(1)) provides that development is State significant infrastructure if it is permissible without development consent under Part 4 of the EP&A Act and it is specified in the categories of development in Schedule 3 of the Planning Systems SEPP.

The project is permissible without consent as a result of the operation of the Transport and Infrastructure SEPP. Section 2.91 of the Transport and Infrastructure SEPP applies to development for the purpose of a railway or rail infrastructure facilities and provides that these types of works may be carried out by or on behalf of a public authority without consent on any land (with exceptions in relation to land reserved under the *National Parks and Wildlife Act 1974*). As the project is appropriately characterised as being for the purpose of 'rail' and 'rail infrastructure facilities' in accordance with the definitions provided in section 2.90 of the Transport and Infrastructure SEPP, and is being undertaken by a public authority, it is permissible without consent.

Schedule 3 (clause 1) of the Planning Systems SEPP defines State significant infrastructure as infrastructure that would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an EIS to be obtained under Part 5 of the EP&A Act. Transport for NSW, as the proponent, has formed the view that the project is likely to significantly affect the environment and would require the preparation of an EIS.

As the project is permissible without consent and meets clause 1 of Schedule 3 of the Planning Systems SEPP, it is declared State significant infrastructure. As declared State significant infrastructure, the NSW Minister for Planning is the approval authority for the project.

#### 4.1.1 Additional declarations

##### Critical State significant infrastructure

In accordance with section 5.13 of the EP&A Act, State significant infrastructure may also be declared to be critical State significant infrastructure if it is of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons.

Transport for NSW is seeking that the project be declared by the Minister for Planning as critical State significant infrastructure under section 5.13 of the EP&A Act. As critical State significant infrastructure, the project would be listed in Schedule 5 of the Planning Systems SEPP and would be permissible without consent in accordance with section 2.15 of the SEPP. The project would remain subject to assessment and approval under Division 5.2 of the EP&A Act.

### **Specified development on specified land**

Transport for NSW is also seeking that the project be declared as specified development on specified land under section 5.12(4) of the EP&A Act. As specified development on specified land, the project would be listed in Schedule 4 of the Planning Systems SEPP and would be declared, in accordance with section 2.14 of the SEPP, to be State significant infrastructure for the purposes of the EP&A Act. The project would remain subject to assessment and approval under Division 5.2 of the EP&A Act.

## **4.2 Other approvals required**

### **4.2.1 Approvals under NSW legislation**

#### **Approvals not required**

In accordance with section 5.23 of the EP&A Act the following approvals, which may otherwise have been required, are not required for declared State significant infrastructure:

- a permit under sections 201, 205 and 219 of the *Fisheries Management Act 1994*
- an approval under Part 4 or an excavation permit under section 139 of the *Heritage Act 1977*
- an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
- a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

#### **Approvals that must be applied consistently**

In accordance with section 5.24 of the EP&A Act, approvals under other specified NSW legislation that may apply to the project cannot be refused and must be applied consistently with the approval for the State significant infrastructure. Those approvals relevant to the project include:

- an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (POEO Act) for scheduled activities or development work (see Table 4.1)
- a consent under section 138 of the *Roads Act 1993* (see Table 4.1).

#### **Other approvals and requirements**

Approvals required under other relevant NSW legislation are summarised in Table 4.1.

In addition to the approvals required, there is a range of other legislation that would apply to the design, construction and operation of the project. This legislation, which defines matters such as requirements for notifications, utility connections, construction safety and design requirements, includes the *Contaminated Land Management Act 1997*, *Land Acquisition (Just Terms Compensation) Act 1991*, *Sydney Water Act 1994* and the *Crown Lands Act 1989*.

Table 4.1 Other approvals required under NSW legislation

Act	Approval requirement	Relevance/where considered
<i>Marine Safety Act 1998</i>	Section 18(1) of the <i>Marine Safety Act 1998</i> provides that aquatic activities (i.e. an activity that is conducted in or on navigable waters and that restricts the availability of those waters for normal use by the public) are subject to the licensing requirements of clause 97 of the Marine Safety Regulation 2016.	Construction of the proposed bridges over the Parramatta River would be defined as an aquatic activity for the purposes of the Marine Safety Act and a licence would be required.  An overview of the proposed indicative approach to constructing the bridges is provided in Chapter 7 (Project description – construction).  Potential navigation impacts are considered in Chapter 9 (Transport and traffic).
<i>Protection of the Environment Operations Act 1997</i>	Schedule 1, clause 33 of the <i>Protection of the Environment Operations Act 1997</i> provides that construction of railway infrastructure in the metropolitan area that is more than three kilometres in length is a scheduled activity.	An environment protection licence would be required to construct the project.
<i>Roads Act 1993</i>	Section 138 of the <i>Roads Act 1993</i> provides that consent from the relevant road authority is required to disturb, erect a structure, or carry out a work in, on or over a public road. Clause 5(1) of Schedule 2 exempts public authorities from this requirement, except in relation to works on or over classified and Crown roads.	The project includes constructing a new bridge over Silverwater Road, which is classified road. Approval would be sought under section 138 of the <i>Roads Act 1993</i> .  Potential impacts to the road network are considered in Chapter 9 (Transport and traffic).
<i>Sydney Olympic Park Authority Act 2001</i>	Section 40 of the <i>Sydney Olympic Park Authority Act 2001</i> provides that a private road (or part of a private road) within Sydney Olympic Park cannot be (i) provided, opened, closed or realigned; (ii) regulated in its use; or (iii) used for a purpose other than a road, except with the consent of the Sydney Olympic Park Authority.	Roads within Sydney Olympic Park, which are not roads for the purposes of the <i>Roads Act 1993</i> , must be treated under section 40 of the <i>Sydney Olympic Park Authority Act 2001</i> .  Potential impacts to the road network are considered in Chapter 9 (Transport and traffic).

## 4.2.2 Approvals under Commonwealth legislation

### Environment Protection and Biodiversity Conservation Act 1999

In accordance with the EPBC Act, proposed actions with the potential to significantly impact matters protected by the EPBC Act must be referred to the Australian Minister for the Environment and Water to determine whether they are controlled actions and require approval from the Minister. The following matters are defined as protected matters by Part 3 of the EPBC Act:

- matters of national environmental significance
- the environment of Commonwealth land
- the environment in general if they are being carried out by a Commonwealth Government agency.

The project is not being carried out by a Commonwealth Government agency and no significant impacts on the environment of Commonwealth land have been identified.

The project has the potential to impact on three matters of national environmental significance (Commonwealth-listed threatened species and ecological communities). Although no significant impacts on these species have been predicted, the project was referred to the Australian Minister for the Environment and Water. Transport for NSW was notified in October 2022 that, by decision made on 30 September 2022, the project is a controlled action, which requires assessment and approval under the

EPBC Act. The relevant controlling provisions that apply to the project are listed threatened species and communities.

Further information on the potential impacts on Commonwealth-listed threatened species and ecological communities is provided in Chapter 16 (Biodiversity).

### 4.3 Pre-conditions and mandatory considerations

The statutory pre-conditions relevant to the application for approval of the project, which must be met by Transport for NSW before the approval authority can exercise its power to grant approval, are listed in Table 4.2.

Mandatory considerations are the matters that the approval authority is required to consider in deciding whether to grant approval. These considerations are also listed in Table 4.2, together with a reference to where relevant information is provided in the EIS.

Section 5.22(2)(a) of the EP&A Act provides that environmental planning instruments (such as State environmental planning policies and local environmental plans) do not apply to or in respect of State significant infrastructure, except where they apply to the declaration of State significant infrastructure. The application of the Transport and Infrastructure SEPP and the Planning Systems SEPP to the declaration of the project as State significant infrastructure is considered in section 4.1. Although not a mandatory consideration for the project, Table 4.2 also notes how the environmental issues addressed by other relevant environmental planning instruments have been considered in the EIS.

Table 4.2 Pre-conditions and mandatory considerations

Reference	Requirement/consideration	Where addressed in the EIS
<b>Pre-conditions/mandatory considerations</b>		
EP&A Act Section 2 Objects of Act	The objects of the EP&A Act are guiding principles that need to be considered by planning authorities when making decisions under the Act.	Table C.3 in Appendix C (Statutory compliance)
EP&A Act Division 5.2	Section 5.14(1) provides that the approval of the Minister for Planning is required to carry out State significant infrastructure. Section 5.17(1) provides that the proponent must submit an EIS for approval to carry out the State significant infrastructure.	This chapter. This EIS has been prepared in accordance with the requirements of Division 5.2.
Environmental Planning and Assessment Regulation 2000 Part 3 of Schedule 2 (Environmental impact statements)	The SEARs (General SEARs, item 1) require the EIS to be prepared in accordance with Part 3 of Schedule 2 of the Environmental Planning and Assessment Regulation 2000 (see Appendix A (SEARs compliance table)). Part 3 of Schedule 2 provides requirements in terms of the form and contents of the EIS.	Appendix C (Table C.1) documents where the requirements of Part 3 of Schedule 2 have been addressed in the EIS. The EIS is also consistent with the form and content requirements of the current Environmental Planning and Assessment Regulation 2021 as defined by sections 190 and 192 of Division 5 of Part 8, with the exception of the requirement for a declaration under section 190(3), which does not apply to the project by virtue of a savings and transitional provision contained in Schedule 8 to the Environmental Planning and Assessment Regulation 2021.

Reference	Requirement/consideration	Where addressed in the EIS
<i>Biodiversity Conservation Act 2016</i>	<p>Sections 7.9(1) and 7.9(2) provide that an application for approval of State significant infrastructure must be accompanied by a biodiversity development assessment report unless the proposed development is not likely to have any significant impact on biodiversity values.</p> <p>Section 7.14(2) provides that, when determining an application in accordance with the EP&amp;A Act, the Minister for Planning must take into account the likely impact of a proposed development on biodiversity values as assessed in the biodiversity development assessment report.</p>	<p>A Biodiversity Development Assessment Report has been prepared (Technical Paper 9).</p> <p>Potential biodiversity impacts are considered in Chapter 16 (Biodiversity).</p>
<i>Sydney Olympic Park Authority Act 2001</i>	<p>Section 22(2) provides that, in determining an application for consent to carry out development on land within Sydney Olympic Park, the Minister for Planning must consider the consistency of the proposed development with the Environmental Guidelines.</p> <p>The principal objective of the <i>Environmental Guidelines for Sydney Olympic Park</i> (Sydney Olympic Park Authority, 2008) (as described in section 1.2 of the guidelines) is to '...set out a general scheme of environmental issues and commitments that aim to implement the Environmental Policy of the Sydney Olympic Park Authority with regards to the care, control, management, and development of Sydney Olympic Park'.</p>	<p>The potential impacts of the project assessed by the EIS encompass the key issues listed in section 4 of the Environmental Guidelines as they relate to the current stage of the design and approval process. Relevant chapters include: 9 (Transport and traffic), 13 (Land use and property), 16 (Biodiversity), 17 (Water), 18 (Soils and contamination), 20 (Air quality), 21 (Climate change) and 22 (Waste and resources).</p> <p>Issues relevant to the design and material selection would continue to be considered during design development.</p>

#### Consideration of other relevant environmental planning instruments

<p>State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)</p>	<p>The project site crosses areas mapped as coastal wetlands and proximity areas for coastal wetlands, and coastal environment areas, by the (now repealed) State Environmental Planning Policy (Coastal Management) 2018. The provisions of State Environmental Planning Policy (Coastal Management) 2018 have been incorporated into the Resilience and Hazards SEPP. Chapter 2, section 2.7 of the SEPP provides that a consent authority must not grant consent for development in these areas unless it is satisfied that the listed matters have been addressed, including that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of coastal wetlands.</p> <p>Chapter 3 of the Resilience and Hazards SEPP provides a process to ensure that, in considering an application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether a development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact.</p> <p>Chapter 4 of the SEPP provides for a coordinated State-wide planning approach to the remediation of contaminated land, defining the requirements in relation to contaminated or potentially contaminated land that must be considered by a consent authority.</p>	<p>As noted above the table, section 5.22(2)(a) of the EP&amp;A Act provides that SEPPs do not apply to or in respect of State significant infrastructure, except where they apply to the declaration of State significant infrastructure.</p> <p>The potential impacts assessed by the EIS encompass relevant matters that are the subject of the Resilience and Hazards SEPP.</p> <p>Potential impacts on wetland areas are considered in Chapter 16 (Biodiversity). Potential hydrological impacts are considered in Chapter 17 (Water). Potential contamination impacts are assessed in Chapter 18 (Soils and contamination). Potential hazards associated with the project are considered in Chapter 19 (Hazards and risks).</p>
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Reference	Requirement/consideration	Where addressed in the EIS
State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)	<p>Part of the project site is located within the Sydney Harbour Catchment, as mapped by the (now repealed) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.</p> <p>Chapter 10, Part 10.3 of the Biodiversity and Conservation SEPP provides the matters for consideration in relation to development in the Foreshores and Waterways area of the Sydney Harbour Catchment. These matters include biodiversity, public access and visual quality.</p> <p>An item listed as a heritage item by the SEPP is located partially within the project site, and another item is located close to the project site (see Chapter 13 (Non-Aboriginal heritage)). Part 10.5 of the SEPP includes the matters for consideration in relation to heritage items listed by the SEPP.</p> <p>Part 10.6 of the SEPP includes the matters for consideration in relation to the protection of wetland areas.</p>	<p>The potential impacts of the project assessed by the EIS encompass the matters for consideration listed in the Biodiversity and Conservation SEPP. Relevant chapters include: 9 (Transport and traffic), 12 (Non-Aboriginal heritage), 15 (Landscape and visual amenity), 16 (Biodiversity), 17 (Water) and 18 (Soils and contamination).</p>
State Environmental Planning Policy (Precincts – Central River City) 2021 (Central River City Precinct SEPP)	<p>Part of the project site is located within the Homebush Bay area, as mapped by the (now repealed) Sydney Regional Environmental Plan No 24 – Homebush Bay Area. Chapter 4, section 4.11 of the Central River City Precinct SEPP provides the matters for consideration in relation to development in the Homebush Bay area. These matters include relevant master plans, biodiversity, public access, heritage, drainage and flooding, and significant views.</p> <p>Two items listed as heritage items by the SEPP are located partially within the project site, and another item is located close to the project site (see Chapter 12 (Non-Aboriginal heritage)). The project site also crosses a heritage conservation area listed by the SEPP.</p> <p>Part of the project site is located within the Sydney Olympic Park site, which is a State Significant Precinct under the Central River City Precinct SEPP. As declared State significant infrastructure, the development controls and standards for development on this site, as specified by the Central River City Precinct SEPP, are not relevant to the project.</p>	<p>The potential impacts of the project assessed by the EIS encompass the matters for consideration listed in the Central River City Precinct SEPP. Relevant chapters include: 9 (Transport and traffic), 12 (Non-Aboriginal heritage), 15 (Landscape and visual amenity), 16 (Biodiversity), 17 (Water) and 18 (Soils and contamination).</p>

## 4.4 Assessment process and requirements

The key steps in the assessment process are described below and shown in Figure 4.1.

### 4.4.1 Environmental assessment requirements

In accordance with section 5.15(2) of the EP&A Act, an application for State significant infrastructure needs to describe the infrastructure and contain any other matter required by the Planning Secretary. The SEARs for the project, originally issued on 24 December 2021 (and updated on 12 October 2022), define the matters the Secretary requires the EIS to address. The requirements detailed in the SEARs, together with where they are addressed by this EIS, are provided in Appendix A.



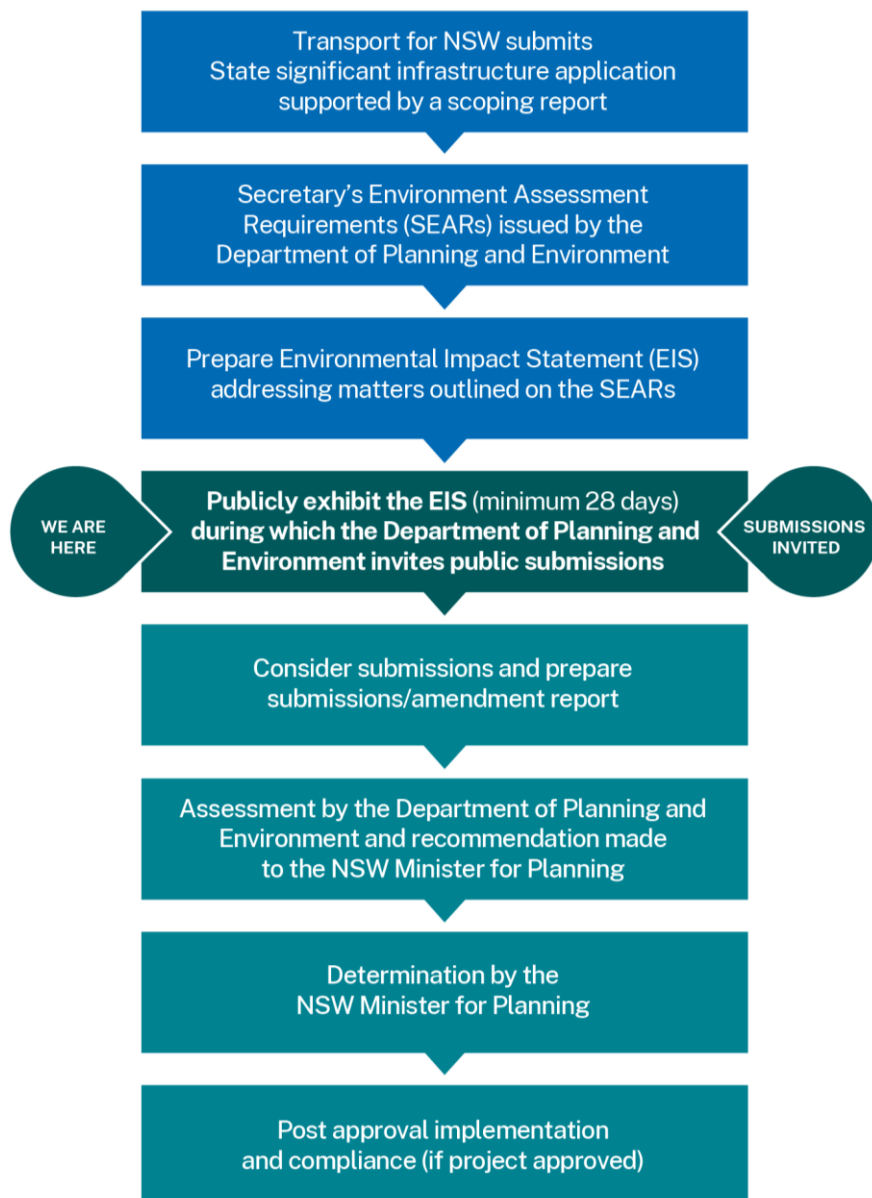


Figure 4.1 Assessment and approval process

#### 4.4.2 Public exhibition and submissions

If the EIS is considered to meet the SEARs, the Department of Planning and Environment will place it on public exhibition for at least 28 calendar days and invite submissions. At the end of the exhibition period, the Department will provide Transport for NSW with a copy of the submissions and may ask Transport for NSW to provide a response to the issues raised in submissions. The Department may also request that a preferred infrastructure report be prepared in accordance with section 5.17(6)(b) of the EP&A Act. The preferred infrastructure report may be made available to the public.

Transport for NSW may also elect to provide an amendment report that outlines any proposed changes to the project to minimise its environmental impact or deal with other issues raised during the assessment of the application. The amendment report may be made available to the public.

Further information on the proposed approach to consultation during the exhibition period is provided in Chapter 8 (Community and stakeholder engagement).

### **4.4.3 Assessment and approval**

Following the exhibition period, the Department will, on behalf of the Minister for Planning, review the EIS, the submissions report and any amendment report or preferred infrastructure report. The Department will prepare an assessment report, which is submitted to the Minister for Planning for consideration. The Minister may refuse the project or approve it with such conditions and modifications as the Minister may determine. The Minister's decision and the assessment report will be published on the Department of Planning and Environment's Major Projects' website following determination.

The EPBC Act referral notification confirmed that the potential impacts of the project on matters of national environmental significance listed by the EPBC Act will be assessed under the assessment bilateral agreement with NSW. Following consideration of the results of the assessment by the Department, the Australian Minister for the Environment and Water will make a separate decision whether or not to approve the proposal under the EPBC Act