

4 Statutory and planning framework

This chapter provides the statutory and planning framework for the proposal and considers provisions of relevant State and Commonwealth legislation, plans and policies. Any legislation, plans or policies that are not relevant to this proposal have not been discussed in this section.

4.1 State Environmental Planning Policies

4.1.1 State Environmental Planning Policy (Infrastructure) 2007

The *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) aims to facilitate the effective delivery of infrastructure across the State.

Clause 94 of ISEPP permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent.

As the proposal is for a road and is to be carried out by or on behalf of RMS, it can be assessed under Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Development consent from council would not be required.

The proposal would not be located on land reserved under the *National Parks and Wildlife Act 1974* and does not affect land or development regulated by *State Environmental Planning Policy No. 14 - Coastal Wetlands*, *State Environmental Planning Policy No. 26 - Littoral Rainforests*, *State Environmental Planning Policy (State and Regional Development) 2011* or *State Environmental Planning Policy (Transitional Major Projects) 2005*.

Part 2 of the ISEPP contains provisions for public authorities to consult with local councils and other public authorities prior to the commencement of certain types of development. Consultation, including that required by ISEPP is discussed in chapter 5 of this REF.

4.1.2 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

The *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) aims to co-ordinate the release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney region. The policy also aims to provide for comprehensive planning for those growth centres and to provide for the orderly and economic provision of infrastructure in and to those growth centres.

The majority of the proposal from Cobbitty Road to the northern end of the proposal and the land immediately adjoining (chainage 3000 to 15100) is located within the South West Growth Centre, and is land to which this policy applies.

Clause 18A of the Growth Centres SEPP allows development for public utility undertakings (which includes road transport undertakings) to be carried out provided written notice of the intention to carry out the development to the Department of Planning and Infrastructure is provided and consideration of any response received from the Department of Planning and Infrastructure is undertaken. Chapter 5 provides details of the consultation undertaken for the proposal.

The proposal is consistent with the aims of the Growth Centres SEPP and would provide for the anticipated increase in local population in the South West Growth Centre.

Biocertification

In December 2007 the Minister for the Environment conferred an order for a biodiversity certification (biocertification) on the Growth Centres SEPP for the purposes of Part 7 of Schedule 7 of the *Threatened Species Conservation Act 1995* (TSC Act). Biocertification aims to achieve landscape-scale conservation, moving away from site-by-site decision-making and providing greater certainty in land-use planning.

The main practical effect of certification is that Part 5 activities where located within certified areas are not considered to significantly affect any threatened species, populations or ecological communities, or their habitats. As a consequence of this, threatened species assessments and species impact statements are not required. However where the Part 5 activity is located outside of certified land (ie in non-certified land) in the South West Growth Centre, normal threatened species assessment processes apply.

The Sydney Growth Centres Strategic Assessment Program was approved by the Australian Government on 28 February 2012. This removes the need for approvals under the EPBC Act where the assessment is consistent with the requirements of the growth centres biodiversity certification. An assessment of impacts on biodiversity is in section 6.2 and Appendix D.

4.1.3 State Regional Environmental Plan No 20 – Hawkesbury-Nepean River (No 2 – 1997) (now deemed a SEPP)

The *Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River (No 2 – 1997)* (SREP 20) (now deemed a SEPP) integrates planning with catchment management and aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. SREP 20 covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture, and urban and rural residential development. It controls development that has the potential to impact on the river environment.

Camden and Liverpool LGAs are identified as two of the LGAs to which SREP 20 applies.

Clause 5 of SREP 20 outlines general planning considerations and Clause 6 outlines specific planning policies and recommended strategies that must be considered when determining activities under Part 5 of the EP&A Act. These are considered and outlined in table 4-1.

Table 4-1 General and specific planning considerations under SREP20

Clause	Specific policy	Comment and section where addressed
5(a)	The aims of this plan.	Considerations of the SREP are considered in this table.
5(b)	The strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy	The strategies listed in the Action Plan are considered throughout this REF.

Clause	Specific policy	Comment and section where addressed
	(Action Plan).	
5(c)	Whether there are any feasible alternatives to the development or other proposal concerned.	Feasible alternatives to the proposal are discussed in section 2.4.
5(d)	The relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored.	The environmental impact assessment is detailed in chapter 6 and safeguards to manage those impacts are described in chapter 7.
6(1)	Total catchment management is to be integrated with environmental planning for the catchment.	The design of the proposal has considered drainage, erosion and sedimentation risks. Hydrology is considered in section 6.7.
6(2)	The environmental quality of environmentally sensitive areas must be protected and enhanced through careful control of future land use changes and through management and (where necessary) remediation of existing uses.	The proposal would not be expected to have a substantial impact on any environmentally sensitive areas.
6(3)	Future development must not prejudice the achievement of the goals of use of the river for primary contact recreation (being recreational activities involving direct water contact, such as swimming) and aquatic ecosystem protection in the river system. If the quality of the receiving waters does not currently allow these uses, the current water quality must be maintained, or improved, so as not to jeopardise the achievement of the goals in the future. When water quality goals are set by the Government these are to be the goals to be achieved under this policy.	The drainage system is designed to maintain or improve water quality in receiving waterways. Water quality is addressed in section 6.6.
6(4)	Aquatic ecosystems must not be adversely affected by development which changes the flow characteristics of surface or groundwater in the catchment.	Potential impacts to aquatic ecosystems as a result of changes to surface and water quality are addressed in section 6.2.
6(5)	The importance of the river in contributing to the significance of items and places of cultural heritage significance should be recognised, and these items and places should be protected and	Impacts to cultural heritage items are addressed in section 6.3 and section 6.4.

Clause	Specific policy	Comment and section where addressed
	sensitively managed and, if appropriate, enhanced.	
6(6)	Manage flora and fauna communities so that the diversity of species and genetics within the catchment is conserved and enhanced	Flora and fauna communities are addressed in section 6.2.
6(7)	The scenic quality of the riverine corridor must be protected.	The proposal would not impact on the scenic quality of the riverine corridor.
6(8)	Agriculture must be planned and managed to minimise adverse environmental impacts and be protected from adverse impacts of other forms of development.	The proposal would be restricted to road works and would have a minimal impact on agricultural production. This is discussed in section 6.9.
6(9)	Rural residential development should not reduce agricultural sustainability, contribute to urban sprawl, or have adverse environmental impacts (particularly on the water cycle or on flora or fauna).	The proposal does not involve rural residential development.
6(10)	All potential adverse environmental impacts of urban development must be assessed and controlled.	The environmental impact assessment and safeguards to manage those identified impacts are described in chapter 6.
6(11)	The value of the riverine corridor as a significant recreational and tourist asset must be protected.	The proposal would not affect the value of the riverine corridor.
6(12)	Development should complement the vision, goal, key principles and action plan of the Metropolitan Strategy.	The Metropolitan Strategy (now the Metropolitan Plan) is discussed in chapter 2.

4.2 Local environmental plans

The proposal is located within the Camden and Liverpool LGAs. Consequently, any development on this land would be subject to the provisions of the *Camden Local Environmental Plan 2010* (Camden LEP) and the *Liverpool Local Environmental Plan 2008* (Liverpool LEP). However, the ISEPP operates to remove otherwise applicable consent requirements, as discussed in section 4.1.1.

4.3 Other relevant legislation

4.3.1 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) is the primary legislation dealing with Aboriginal cultural heritage in New South Wales. Items of Aboriginal cultural heritage (Aboriginal objects) or Aboriginal places (declared under section 84) are protected and regulated under the NPW Act. Aboriginal objects are protected under section 86 of the Act. Under section 90 (1) of the Act the Director-General may issue an Aboriginal heritage impact permit for an activity which will harm an Aboriginal

object. As the proposal would impact on Aboriginal heritage items, an Aboriginal heritage impact permit is required under section 90 of the NPW Act and would be required prior to construction.

An assessment of the potential impacts on Aboriginal cultural heritage is provided in section 6.3. Fourteen Aboriginal sites would be removed, either completely or partially during construction. An Aboriginal heritage investigation permit (AHIP) would be required for their disturbance and an AHIP to cover the whole area of direct impact associated with the proposal would be sought (refer to section 6.3). Impacts to one site (a scarred tree) would be avoided via the implementation of the management and mitigation measures outlined in section 6.3.4.

4.3.2 Heritage Act 1977

The *Heritage Act 1977* provides for the protection and conservation of NSW's environmental heritage. The Act establishes under clause 57 the need for approval for the excavation or disturbance of items listed on the State Heritage Register (SHR). The proposal would impact on Orielton, an item listed on the SHR. However, given the impacts are assessed as minor a site specific exemption under clause 57(2) of the Heritage Act would be sought from The Heritage Office prior to commencement of works. An exception under section 139 of the *Heritage Act 1977* would also be obtained for works associated with Narellan Army Camp. Two permits under section 60 and section 140 of the *Heritage Act* would be required to undertake archaeological monitoring at Hillside Drive, and excavation at Mersey Road intersection in relation to Lot 1, DP 234403 respectively.

The Heritage Act also provides for the protection of archaeological remains. The proposal would impact on potential archaeological remains and a permit under section 140 of the Act would be sought from the Heritage Office prior to the commencement of work.

An assessment of the impacts on non -Aboriginal heritage is provided in section 6.4 and Appendix E.

4.3.3 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) provides the legal framework for the management of air, noise, water and waste pollution. Under Part 3.2 of the Act, the carrying out of scheduled development work as defined in Schedule 1 - road construction, (meaning the construction, widening or re-routing of roads) is relevant to the proposal. The clause specifies that an activity is considered a scheduled activity if it results in the existence of four or more traffic lanes (not including bicycle lanes or lanes used for entry or exit) on a road classified or proposed to be classified as a main road (but not a freeway or tollway) under the *Roads Act 1993* for at least five kilometre in any area other than the metropolitan area requires an environmental protection license.

As the proposal involves widening The Northern Road to four lanes and would be about 15 kilometres in length it would be considered a scheduled activity under the POEO Act. Therefore, an Environmental Protection Licence (EPL) is required.

4.3.4 Water Management Act 2000

The *Water Management Act 2000* (WM Act) regulates certain activities in, on or under waterfront land. A controlled activity approval under the WM Act would be

required for certain types of developments and activities carried out in, on or under waterfront land. Waterfront land includes the bed and bank of any river, lake or estuary and all land within 40 metres of the highest bank of the river, lake or estuary. Under the WM Act, a controlled activity includes the erection of a building or the carrying out of a work (within the meaning of the EP&A Act).

Section 91E of the WM Act prohibits the carrying out of a controlled activity on waterfront land (land within 40 metres of a watercourse) other than in accordance with a controlled activity approval. However, under clause 39A of the Water Management (General) Regulation 2004, all public authorities including RMS and local councils are exempt from requiring a Controlled Activity Licence.

In addition, the proposal is covered by a water sharing plan, being the *Greater Metropolitan Region Groundwater Sources* (commenced on 1 July 2011) and the *Greater Metropolitan Region Unregulated River Water Sources* (commenced on 1 July 2011). Should the construction contractor have the need to establish bores for the purposes of investigation, extraction, dewatering, testing or monitoring, a licence would be obtained from OEH prior to the installation of bores.

4.3.5 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the protection of endangered, threatened and vulnerable species, populations, endangered ecological communities, critical habitats and key threatening processes (with the exception of fish and marine plants) in NSW.

In June 2010 the TSC Act and EP&A Act were amended such that activities carried out under Part 5 of the EP&A Act within biodiversity certified land do not require assessments of significance. Biodiversity certification removes the need to progress to the preparation of a Species Impact Statement to seek concurrence or offset impacts in certified areas.

Significance assessments were carried out for threatened species with the potential to occur in non-certified areas or outside the SEPP boundary. The assessments found the proposal would not have a significant impact on threatened species, populations or communities (refer to 4.1.2). Details of the ecological assessment are provided in section 6.2 and Appendix D.

4.3.6 Fisheries Management Act 1994

The objects of the *Fisheries Management Act 1994* (FM Act) are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations, including conserving fish stocks and fish habitat and promoting ecological sustainable development.

The proposal would involve dredging and reclamation work and therefore under section 199 of the FM Act notification would be given to the Minister for Regional Infrastructure and Services jointly with the Minister for Primary Industries and any matters raised by the Ministers would be considered within 28 days after the giving of the notice.

The proposal may temporarily block fish passage during the construction of culverts and bridges and accordingly, a permit to block fish passage would be required under Section 220(1) of the FM Act.

4.4 Commonwealth legislation

4.4.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) a referral would be required to the Australian Government for proposed 'actions that have the potential to significantly impact on matters of national environmental significance or the environment of Commonwealth land. These have been considered in Appendix F.

The assessment of the proposal's impact on matters of national environmental significance and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant matters of national environmental significance. Accordingly, the proposal has not been referred to SEWPaC.

On 20 December 2010, the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities endorsed *Sydney Growth Centres Strategic Assessment Program Report* (DoP 2010) (Strategic Assessment Program). The NSW Government made several additional commitments and undertakings to the program prior to the Minister's endorsement and these are described in the addendum to the report dated January 2012.

The endorsed program provides for all actions associated with development of the Growth Centres, including infrastructure (such as rail and road) and services within the boundaries of the Growth Centres. On 28 February 2012 the Commonwealth Minister approved all actions associated with the development of the Western Sydney Growth Centres as described in the Strategic Assessment Program. The approval is available at:

www.environment.gov.au/epbc/notices/assessments/western-sydney.html.

Approvals under the EPBC Act for the actions set out in the Strategic Assessment Program are not needed, as long as the actions are consistent with the approved program. This is discussed in section 4.1.2.

4.5 Confirmation of statutory position

RMS is the proponent and determining authority for the proposal. By adopting the requirements of the ISEPP and the Growth Centres SEPP, the proposal may be carried out without development consent, and is therefore subject to assessment under Part 5 of the EP&A Act. Consent from council is not required.

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