



2 STATUTORY PLANNING AND OTHER APPROVALS

2.1 Environmental Planning, Assessment Act 1979 and Local Government Act 1993

Planning and development within NSW is regulated by the *Environmental Planning & Assessment Act 1979* (EP&A Act).

The proposed works are permitted without consent under the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (TISEPP), as discussed further in Section 2.2.

Where works do not require development consent but require approval of a Government organisation under any legislation then they are defined as an activity under Part 5 of the EP&A Act. Division 5.1 and Section 5.7 of the EP&A Act requires any such Government body to determine whether the impacts of the activity are likely to be significant. A review of environmental factors (REF) is used to document that determination.

A REF is to meet the requirements of Clause 171 of the *Environmental Planning and Assessment Regulation 2023*.

2.2 State Environmental Planning Policy (Transport and Infrastructure) 2021

The *State Environmental Planning Policy (Transport and Infrastructure) 2021* (TISEPP) provides for the efficient provision of public infrastructure in NSW.

Section 2.109(1),(3) of the TISEPP states that the following with regard to roads and road infrastructure works:

- (1) *Development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land...*
- (3) *In this section and section 2.112, a reference to development for the purpose of road infrastructure facilities includes a reference to development for any of the following purposes if the development is in connection with a road or road infrastructure facilities—*
 - (a) *construction works (whether or not in a heritage conservation area), including—*
 - (i) *temporary buildings or facilities for the management of construction, if they are in or adjacent to a road corridor, and*
 - (ii) *creation of embankments, and*
 - (iii) *extraction of extractive materials and stockpiling of those materials, if—*
 - (A) *the extraction and stockpiling are ancillary to road construction, or*
 - (B) *the materials are used solely for road construction and the extraction and stockpiling take place in or adjacent to a road corridor, and*
 - (iv) *temporary crushing or concrete batching plants, if they are used solely for road construction and are on or adjacent to a road corridor, and*
 - (v) *temporary roads that are used solely during road construction,*

As the proposed works are part of the road, development consent is not required. The works can only be undertaken with Council approval under the *Local Government Act 1993* so they are an activity which must be assessed under Part 5 of the EP&A Act 1979.



2.3 Water Management Act 2000

The *Water Management Act 2000* (WM Act) provides for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations. The WM Act defines principles of water management, sets out water licensing laws and environmental water provisions.

Section 91 (2) states that: **waterfront land** means—...where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance.

This project is being carried out further than 40 metres from the Parramatta River so is exempt from requiring a Controlled Activity Approval in accordance with the Act.

As detailed in Section 5.1.6, groundwater is not anticipated to be encountered during the project therefore additional licensing from Water NSW will not be required.

2.4 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) includes the Biodiversity Offsets Scheme (BOS) that governs how biodiversity offsets will be used to ensure they offset the loss due to development and deliver conservation outcomes. The Act and Regulations also govern the Biodiversity Assessment Method (BAM) as a scientific method that assesses biodiversity losses from impacts at development sites and gains from conserving land at stewardship sites.

Authorities such as Council seeking to undertake an activity under Part 5 of the EP&A Act can voluntarily opt-in to the BOS and BAM scheme or alternatively can elect to undertake an Assessment of Significance and proceed with a Part 5 approval. Council will be required to:

- take serious and irreversible impacts into consideration; and
- determine if there are any additional and appropriate measures that will minimise the impact if the activity is to be carried out or approved.

The potential ecological impacts of the proposal are discussed in Section 5.3 of this REF. It is concluded that the proposal is not likely to have a significant impact on any threatened species, populations, or communities so neither the BOS nor BAM would be required.

2.5 Fisheries Management Act 1994

The provisions of the *Fisheries Management Act 1994* relating to project development and approval processes operate similarly to the BC Act. The Act identifies threatened aquatic species, populations and ecological communities.

Significant impacts trigger the need for a species impact statement for Part 4 and Part 5 projects. The potential ecological impacts of the proposal are discussed in Section 5.3 of this REF report. Key Fish Habitat is mapped nearby in the Parramatta River, but this area is not deemed to be impacted by the construction of this project. It is concluded that the proposal is not likely to have a significant impact on any threatened aquatic species, populations or communities.

2.6 Heritage Act 1977

The *Heritage Act 1977* provides for the protection of non-Aboriginal heritage in NSW.

Items listed on the State Heritage Register, including archaeological heritage, require consent of the Heritage Council to undertake work or development which alters, moves, despoils or damages any part of the heritage item, place, precinct, land, its relics or any vegetation.



The potential heritage impacts of the proposal were part of a separate report written by Extent Heritage, 2023. It was concluded, at this stage, that there are no known heritage places within the subject site. However, both the desktop assessment and site inspection suggested the potential presence of archaeological relics of state significance in the subject site (Extent Heritage, 2023).

2.7 National Parks and Wildlife Act 1974

This Act provides for the protection of Aboriginal heritage. All Aboriginal objects are protected under Section 90 of the *National Parks and Wildlife Act 1974* (NPW Act).

Under Section 90, it is an offence to destroy, deface, damage or desecrate an Aboriginal object or Aboriginal place without the prior issue of an Aboriginal Heritage Impact Permit (AHIP) by Department of Climate Change, Energy, the Environment and Water. The Act requires that reasonable precautions and due diligence must be taken to avoid impacts on Aboriginal objects which includes:

- identifying whether there are, or likely to be any listed Aboriginal objects present in the area;
- determining whether the proposed activities are likely to harm Aboriginal objects (if present); and
- determining whether an Aboriginal Heritage Impact Permit (AHIP) is required.

If an AHIP is required, then consultation must be undertaken with Aboriginal stakeholder groups in accordance with the requirements in clause 80C of the NPW Regulation and the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, Department of Environment, Climate Change and Water NSW, 2010.

A due diligence assessment has been completed (Extent Heritage, 2024) which concluded that the study area retains archaeological potential and that an Aboriginal Cultural Heritage Assessment Report (ACHAR) should be undertaken prior to commencement of development works. This will determine whether an AHIP is required.

2.8 Environmental Protection and Biodiversity Conservation Act 1999

Under the Commonwealth Environment Protection and *Biodiversity Conservation Act 1999* (EPBC Act), Commonwealth approval is required for actions which have, may have or are likely to have a significant impact on Matters of National Environmental Significance (MNES). MNES include nationally threatened species or endangered ecological communities. Under the EPBC Act an assessment of the impact of a proposal on an MNES must be undertaken to determine whether there is likely to be a significant impact. If the assessment concludes there is a significant impact, then it will become a controlled action under the EPBC Act and the proposal must be referred to the Commonwealth. Approval from the relevant Federal Minister is also required for any actions that may have a significant impact on matters of National Environmental Significance, except in circumstances which are set out in the EPBC Act.

Approval from the Commonwealth is in addition to any approvals under NSW legislation.

The potential ecological impacts of the proposal are discussed in Section 5.3 of this REF. It is concluded that the proposal is not likely to have a significant impact on any EPBC listed threatened species, populations or communities and is not likely to impact on any other MNES. The proposal does not require referral to the Commonwealth under the EPBC Act.

2.9 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (PoEO Act) is the primary piece of legislation regulating pollution control and waste disposal in NSW and is administered by the Environment Protection Authority (EPA).

The proposed works will be carried out with appropriate mitigation measures in place so that air, water, noise and waste pollution will be minimal.



Scheduled activities, as defined in Schedule 1 of the Act, requires an Environment Protection License (EPL), for scheduled activities during development. The proposed works are not considered a scheduled activity so do not require an EPL.

2.10 Parramatta Local Environmental Plan 2023

The Parramatta Local Environmental Plan 2023 (PLEP) came into effect on 1 July 2023.

The works are to be conducted in E2 Commercial Centre and MU1 Mixed Zone which is also the zoning of the surrounding land with some land zoned as RE1 Public Recreation further to the north along the Parramatta River foreshore (Figure 2-1).

The objectives of the E2 Commercial Centre zone are:

- To strengthen the role of the commercial centre as the centre of business, retail, community, and cultural activity.
- To encourage investment in commercial development that generates employment opportunities and economic growth.
- To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.
- To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.
- To strengthen the role of Parramatta City Centre as a regional business, retail, and cultural centre and as a primary retail centre in the Six Cities Region.
- To create opportunities to improve the public domain and pedestrian links.
- To retain and create view corridors.
- To protect and enhance the unique character and qualities of special character areas and heritage values in Parramatta City Centre.

The objectives of the MU1 Mixed Zone are:

- To ensure that new development provides diverse and active street frontages.
- To attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To create opportunities to improve the public domain and pedestrian links.
- To protect and enhance the unique qualities and character of special character areas in Parramatta City Centre.

The purpose of these works is to enhance the transport link along Horwood Place with a particular goal of making it more user friendly for pedestrians and cyclists and to create a better public domain. While application of the TISEPP means that the Local Environmental Plan (LEP) cannot restrict or prohibit the works in any of these zones, the project specifically addresses the MU1 and E2 zone objectives with regard to pedestrian traffic, accessibility, amenity and public spaces while being consistent with the other objectives in those zones. It does not compromise the RE1 zone objectives on nearby land.

