

4 Statutory and planning framework

The EP&A Act provides the statutory framework for planning and environmental assessment in NSW.

It contains three parts that impose requirements for planning approval:

- Part 3A provides for control of ‘major infrastructure or other projects’ that require approval from the Minister for Planning.
- Part 4 generally provides for the control of local ‘development’ that requires development consent from local council.
- Part 5 provides for the control of ‘activities’ that do not require development consent and are undertaken or approved by a determining authority.

The applicable approval process is generally determined by reference to the relevant environmental planning instruments and other controls. These include the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), other State Environmental Planning Policies (SEPPs) and local environmental plans (LEPs). The *Environmental Planning and Assessment Amendment Act 2008* received assent on 25 June 2008 (the Amendment Act). The provisions of the Amendment Act relating to environmental planning instruments and associated regulations commenced on 1 July 2009. As of that date regional environmental plans (REPs) no longer exist, with those REPs not repealed becoming deemed SEPPs. Consequently, relevant REPs are referred to in this REF as deemed SEPPs.

4.1 State environmental planning policies

4.1.1 State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

An express aim of the Infrastructure SEPP is to clearly define the environmental assessment and approval process for public infrastructure.

Clause 94 provides:

94 Development permitted without consent—general

(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.

The proposal is appropriately characterised as development for the purposes of a road infrastructure facility, and assessment under Part 5 of the EP&A Act therefore applies. By operation of Clause 94, development consent is not required.

Clauses 13 to 16 of the Infrastructure SEPP require consultation with specified authorities under particular circumstances. Table 4-1 below outlines the issues to be considered when determining whether consultation is required, and their applicability to this proposal.

Table 4-1 Requirements for consultation under the Infrastructure SEPP

Issue to be considered	Is consultation required?
Clause 13	
I(a) The development will have a substantial impact on council stormwater services	No.
I(b) The development is likely to generate traffic to an extent that will constrain the capacity of the road system.	<p>No. The proposed works would introduce some additional construction vehicles while the works are in progress.</p> <p>Following completion of the works, there would be only minor changes to vehicle traffic (removal of the right turn lane along Henley Marine Drive) and cyclist conditions would be improved.</p>
I(c) The development involves connection to, and a substantial impact on a sewerage system.	No.
I(d) The development involves connection to, and use of a substantial volume of water from a council-owned water supply system.	No.
I(e) The development involves the installation of a temporary structure on, or the enclosing of, a council-managed/controlled public place that is likely to cause disruption to pedestrian or vehicular traffic that is not minor or inconsequential.	<p>Yes. The project would impact pedestrian and cyclist traffic flow within Drummoyne and Rozelle during construction.</p> <p>Impacts to traffic along Henley Marine Drive would be minor if night-time works are required, but more substantial during daytime works given the increased traffic volume.</p> <p>The impact to traffic as a result of the closure of the right-turn lane on Henley Marine Drive would be minor.</p>
I(f) The development involves excavation that is not minor or inconsequential of the surface of, or a footpath adjacent to, a road for which council is the roads authority.	<p>Yes. The construction of the cycleway ramp would involve piling works within the Henley Marine Drive road reserve, for which City of Canada Bay is the roads authority. The excavations are not considered minor.</p> <p>The excavations for the remainder of the proposed works would be minor and shallow, and the pavement would be restored upon completion of these works.</p>
Clause 14	
I(a) The development is likely to have an impact that is not minor or inconsequential on a local heritage item or a heritage conservation area.	<p>No. The construction of the shared-use ramp (within a high conservation area) from the proposed new bridge to Henley Marine Drive would reduce foreshore views from the road. However, as the ramp would also enhance views for cyclists and pedestrians, and as the affected portion (up to 60 metres) is insignificant compared to the extensive overall length of the drive and the foreshore, the impact is considered only minor.</p> <p>The remainder of the project is not expected to have a significant impact on any local heritage items or heritage conservation areas (refer Section 6.9).</p>

Clause 15		
2	The development is on flood liable land and will change flood patterns other than to a minor extent.	No. The proposal would not be undertaken on flood liable land or change flood patterns.
Clause 16		
2(a)	The development is adjacent to land reserved under the <i>National Parks and Wildlife Act 1974</i> .	No.
2(b)	The development is adjacent to a marine park declared under the <i>Marine Parks Act 1997</i> .	No.
2(c)	The development is adjacent to an aquatic reserve declared under the <i>Fisheries Management Act 1994</i> .	No.
2(d)	The development is within the foreshore area within the meaning of the <i>Sydney Harbour Foreshore Authority Act 1998</i> .	RTA has consulted with SHFA during the development of the project, and will continue to consult as required.
2(e)	The development comprises a fixed or floating structure in or over navigable waters.	No.
2(f)	The development is for the purposes of an educational establishment, health services facility, correctional centre or group home, or for residential purposes, in an area that is bush fire prone land.	No.

Consultation with the relevant authorities has been undertaken and is documented in Chapter 5.

4.1.2 State Environmental Planning Policy (Major Development) 2005

This SEPP is one of the mechanisms that identify development to which Part 3A of the EP&A Act applies. Item 10 of Schedule 2 of the SEPP identifies development within the nearby White Bay Power Station and Hotel Site (refer Map 6A of the SEPP) as Part 3A development.

The related widening of the shared path at White Bay is within the area identified by Item 10 of Schedule 2.

While impacts associated with the White Bay works (identified in Section 3.4.2) have been assessed as part of this REF, planning approval would be sought separately for some components of these works within the Part 3A framework, as part of the Inner West Busway project. This position is consistent with RTA advice received following consultation with the Department of Planning.

4.1.3 State Environmental Planning Policy 64 advertising and signage

Some changes to advertising panels on bus shelters within Rozelle would be required. The changes are required where a bus shelter is to be moved closer to the kerb as part of this proposal and where the advertising panels on the shelter would consequently obstruct the line of sight of drivers turning from adjacent driveways onto Victoria Road. To maintain the line of sight for drivers it is proposed to remove the advertising panels from two bus shelters at Terry Street and one bus shelter at Wellington Street.

Where appropriate, some static advertising panels may be replaced by scrolling panels. The replacement of panels would be decided in consultation with LMC. Scrolling panels are exactly the same size and shape as the existing panels, but scroll through three separate advertisements with a three second interval.

As the changes to advertising panels are for the purpose of a road project, and not for the purpose of advertising, and as the changes are merely incidental and to existing advertising panels only, consent under SEPP 64 is not considered to be a requirement. In the event that LMC decides to replace fixed panels with scrolling panels instead of removing them, the requirements of the SEPP, as outlined in Schedule 1, have been used to assess the suitability of the proposed changes within the existing environment (refer Table 4-2).

Table 4-2 Assessment of the proposed signage changes against SEPP 64 Schedule 1 assessment criteria

Schedule 1 assessment criteria	Assessment of the proposed works
Character of the area	<ul style="list-style-type: none"> • Almost all bus shelters along Victoria Road, Rozelle, contain at least one advertising panel. • The proposal could decrease the number of advertising panels within the area, but would not change their size or shape. • Where appropriate, advertising panels would be replaced with scrolling panels. No new advertising panels would be introduced into areas that currently don't have advertising panels. • The bus shelters at Darling Street are located adjacent to five billboards that face onto Victoria Road.
Special areas	<ul style="list-style-type: none"> • The Darling Street bus shelters are located within a heritage conservation area designated under the Leichhardt LEP. Given the existing character of the area (ie as a major transport corridor and the adjacent billboards) and the existing signage, the scrolling panel is unlikely to detract from the amenity of the area.
Views and vistas	<ul style="list-style-type: none"> • The bus shelters and accompanying advertising panels have been positioned to maintain sight lines for drivers turning out of nearby driveways. • The advertising panels would not obscure or compromise important views, dominate the skyline, reduce the quality of vistas or interfere with the viewing rights of other advertisers.
Streetscape, setting or landscape	<ul style="list-style-type: none"> • The scale and proportion of the advertising would be exactly the same as existing advertising panels on bus shelters along Victoria Road, only the mechanism for displaying individual signs (a 'scrolling' device) would differ. • The form of the advertising (ie the scrolling panels), while marginally different to the existing panels, is considered appropriate for the urban setting. • The proposal would reduce clutter by removing advertising from two existing bus shelters and concentrating the advertising (using scrolling advertising panels) at two other bus shelters.
Site and building	<ul style="list-style-type: none"> • The scale and proportion of the advertising would be exactly the same as the existing advertising panels on these bus shelters. • The change to scrolling advertising panels is considered compatible with the urban nature of the site. • The advertising would be contained within each bus shelter and therefore would not dominate the existing structure.
Associated devices and logos with advertisements and advertising structures	<ul style="list-style-type: none"> • There would be no additional devices and logos associated with the proposal.

Illumination	<ul style="list-style-type: none"> • Additional illumination is only proposed for the scrolling panels (between about 5.30pm and 7.00am) and would comply with the illumination and reflectance rules outlined in Section 3.2.5 of the Transport corridor outdoor advertising and signage guidelines (DoP, 2007). • The illumination would not result in unacceptable glare or detract from the amenity of any residence. • Given existing lighting within the area, the illumination would not compromise the safety of pedestrians, vehicles or aircraft. However the lighting may improve safety for bus passengers waiting in the bus shelter at night.
Safety	<ul style="list-style-type: none"> • The number of bus shelters with advertising panels could be reduced by the proposal, thus reducing any potential for distraction. • As the bus shelters would be positioned closer to the road they are less likely to cause drivers to turn their heads away from the road in order to read the advertising panels. • The scrolling panels would be designed so that drivers should not expect to see more than one message in the period of exposure, during normal driving conditions (this may not be the case if vehicles are slowing down or stationary at this location). • The advertising would be contained within the bus shelters and would not reduce the safety for cyclists or pedestrians. No new advertising locations are proposed. The changes to advertising panels form part of an overall proposal to improve the safety of cyclists and pedestrians by providing a clearer route behind bus shelters. • Advertising panels have been removed where they impact driver safety.

In 2007, DoP published guidelines regarding outdoor advertising and signage in accordance with SEPP 64. These guidelines provide the following criteria for assessing moving signs (such as scrolling panels) in proximity to a road:

- The speed limit of the road must be no greater than 70 kilometres per hour.
- The display must be completely static from its first appearance to the commencement of a change to another display.
- The driver should not expect to see more than one message in the period of exposure, during normal driving conditions.

The proposed scrolling advertising panels would fulfil all of these criteria.

4.2 Deemed state environmental planning policies

4.2.1 Sydney Regional Environmental Plan No.26 – City West

The Sydney Regional Environmental Plan No. 26 (SREP 26) applies to certain land where Victoria Road and The Crescent intersect. Heritage items identified by SREP 26 that are in proximity to the proposal include the White Bay Power Station complex. Clause 29 of SREP 26 identifies that development of or including a heritage item, in the vicinity of a heritage item, or within a conservation area, must be compatible with the conservation of the heritage significance of the item or the character of the conservation area.

The nature of the works proposed and the distance to the item in question supports the conclusion that its heritage values would not be adversely affected. Nevertheless, an assessment of the proposal against the considerations identified in Clause 30 is provided in Table 4-3 below.

Table 4-3 Assessment of SREP 26 Clause 30 issues

Clause 30 issues to consider	Assessment
The heritage significance of the heritage item or conservation area.	<p>White Bay Power Station is a former coal-fired power station. It is of state heritage significance and is included on the State Heritage Register (SHR). The following is based on the SHR criteria (Heritage Branch, 2004).</p> <p>a) Historical significance: White Bay Power Station is the only power station in NSW to retain in situ a full set of both structures and machinery from early and mid twentieth century.</p> <p>b) Associative significance: The power station has a rare ability to demonstrate once common and standard work practices of the early to middle 20th century. It is a rare surviving element in an area of Sydney which was once almost entirely dependent on such industries for its livelihood.</p> <p>c) Aesthetic significance: As an assemblage of structures, the power station retains exceptional aesthetic value as an icon of early to mid 20th century industry. Its design and construction, while typical for its time, is now a rare surviving example of such industrial buildings and machinery complexes.</p> <p>d) Social significance: The power station has strong associations and meanings for the local community, for former power station workers and for others who have used the site. It is a potent symbol of the area's industrial origins and working traditions.</p> <p>e) Research potential: The power station contributes considerably to our understanding and appreciation of the local area and foreshore as formerly places of heavy industry and intense port activity. As the only surviving assemblage in NSW, it has the potential to yield information not found anywhere else in the State.</p> <p>f) Rarity: It is the only intact power station of its type left in NSW, with one complete power generating system retained in situ for conservation.</p> <p>g) Representativeness: Retaining a complete system of steam turbine generation of electricity from burning of fossil fuel, the White Bay Power Station is highly representative of this generation of power station.</p>

<p>The impact that the proposed development will have on the heritage significance of the heritage item and its setting or the conservation area.</p>	<p>With the implementation of careful construction methods, the widening of the shared-use path would not directly impact on built elements of the White Bay Power Station. Some land would be acquired for the construction of the cantilevered path, but there would be no direct impact on any structures of the power station site.</p> <p>The development would only extend an existing facility in a minor way. Impacts on views to, from and past the White Bay Power Station site would be minimised by the careful design and selection of material for the shared-use path.</p> <p>Therefore impacts on the heritage significance of the White Bay Power Station site are not expected.</p>
<p>The measures proposed to conserve the heritage significance of the heritage item and its setting or the conservation area.</p>	<p>Measures proposed are identified in Section 6.9.3 and include measures such as ensuring workers are made aware of legal obligations in relation to heritage items and are aware of the heritage structures at the site.</p>
<p>Whether any archaeological site or potential archaeological site would be adversely affected.</p>	<p>A site inspection undertaken on Tuesday 31 March 2009 confirmed that the potential for archaeological remains within the footprint of the White Bay Power Station as a result of the proposed development is very low (AHMS 2009).</p>

This assessment (refer Section 6.9.2) concludes that the proposed works at in the vicinity of the White Bay site would be unlikely have any significant impact on the heritage significance of that item. No consent requirements or prohibitions relevant to the proposal are identified.

4.2.2 Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Harbour REP)

Components of the proposed works fall within the area identified by the Harbour REP as Sydney Harbour Catchment. The Harbour REP uses neither the term *public utility undertaking* nor *road* in identifying permissible uses. It does however make provision for unnamed uses and it is therefore not necessary to characterise the proposal for the purposes of the Harbour REP.

Within the catchment particular provisions of the Harbour REP apply to:

- The foreshores and waterways area.
- Various strategic foreshore sites (as shown on the Strategic Foreshore Sites Map of the Harbour REP).
- Various heritage items (as shown on the Heritage Map of the Harbour REP).
- Various wetlands protection areas (as show on the Wetlands Protection Area Map of the Harbour REP).

The proposal would not encroach on zoned foreshore and waterway areas, strategic foreshore sites or wetland protection areas. Iron Cove Bridge is identified as a heritage item by the Harbour REP and would not be impacted by the proposed works.

The works are not specified in the Harbour REP as prohibited and would therefore be ordinarily permissible with the consent of City of Canada Bay Council and LMC. Again, as the Infrastructure SEPP operates to remove otherwise applicable consent requirements and prohibitions, the proposed works are permissible without consent (refer Section 4.1.1).

By operation of Clause 20 of the Harbour REP, the matters specified in Part 3 Division 2 of the Harbour REP must be considered by public authorities before carrying out activities to which Part 5 of the EP&A Act applies. Those matters are considered throughout this document as referenced by Table 4-4 below.

Table 4-4 Matters for consideration under the Harbour REP

Clause	Issue to be considered	Where addressed in REF
21	Biodiversity, ecology and environmental protection	6.2.2 and 6.7.2
22	Public access to, and use of, foreshore and waterways	6.5.2 and 6.6.2
23	Maintenance of working harbour	N/A
24	Inter-relationship of waterway and foreshore uses	N/A
25	Foreshore and waterways scenic quality	6.5.2
26	Maintenance, protection and enhancement of views	6.5.2
27	Boat storage facilities	N/A
53-60	Heritage – non-Aboriginal and Aboriginal	6.8.2 and 6.9.2

4.3 Local environmental plans

The proposal is located within the City of Canada Bay and Leichhardt local government areas (LGAs). The LEP for each LGA is discussed below.

4.3.1 Canada Bay Local Environmental Plan 2008

The Canada Bay LEP contains a definition of *public utility undertaking*. The proposal is considered to be within the scope of that definition which is cast in the following terms:

Public utility undertaking means any of the following undertakings carried on or permitted to be carried on by or by authority of any Government Department or under the authority of or in pursuance of any Commonwealth or State Act:

- (a) railway, road transport, water transport, air transport, wharf or river undertakings,*
- (b) undertakings for the supply of water, hydraulic power, electricity or gas or the provision of sewerage or drainage services,*

and a reference to a person carrying on a public utility undertaking includes a reference to a council, electricity supply authority, Government Department, corporation, firm or authority carrying on the undertaking.

The proposal would occur in the following zones:

- Low density residential (R2).
- Medium density residential (R3).
- Mixed use (B2).
- Public recreation (RE1).

Regardless of the land use zone, development for the purposes of a public utility undertaking is permissible with consent under the Canada Bay LEP land use table (Part 2).

Other consent requirements in the Canada Bay LEP include those relating to the preservation of trees or vegetation (Clause 5.9), and environmental heritage items (Clause 5.10).

Clause 5.9 states that:

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

- (a) development consent, or*
- (b) a permit granted by the Council.*

The Moreton Bay Fig (*Ficus Macrophylla*) adjacent to The Cove at Drummoyne café would be retained, but would require some pruning to enable the construction of the shared-use ramp. The pruning would not significantly impact the life expectancy of the tree (refer Section 6.7.2).

Clause 5.10 states that development consent is required for:

- (a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item or a building, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior...

However, consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature, or is for the maintenance of the heritage item, archaeological site, or a building, work, relic, tree or place within a heritage conservation area, and
 - (ii) would not adversely affect the significance of the heritage item, archaeological site or heritage conservation area...

The following types of work would be undertaken within heritage conservation areas within Drummoyne:

- Painting lanes and cyclist symbols and installing signs along Wrights Road.
- Painting cyclist symbols and installing signs along Renwick Street.

An assessment of the potential impact of these works has been undertaken as part of this REF (refer Section 6.9). The proposed works are considered to be of a minor nature and would not affect the significance of the heritage conservation areas.

Under Clause 5.12, the Canada Bay LEP does 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 without consent under ISEPP. The relevance of the ISEPP is discussed in Section 4.1.1.

4.3.2 Leichhardt Local Environment Plan 2000

The proposal would occur on land to which the Leichhardt Local Environmental Plan 2000 (Leichhardt LEP) applies.

The Leichhardt LEP does not define or use the concept of a *public utility undertaking* in identifying permissible uses. It does however define the term *road* to be a *way open to the public for the passage of vehicles, persons and animals, including... a pathway, footpath or cycleway*. The proposed works may therefore be considered development for the purposes of a road under the Leichhardt LEP.

The works would be undertaken within the road reserve, which is unzoned. Development within the road reserve is permissible only with consent and only for a purpose that is permissible with or without consent in the adjacent land use zones. Development for the purpose of a road is permissible with consent in the adjacent residential, business and industrial land use zones.

Other consent requirements in the Leichhardt LEP include those relating to environmental heritage items (Clause 16). Clause 16 of the Leichhardt LEP states that:

Consent is required for all development on the site of a heritage item.

Consent must not be granted for the demolition, reconstruction, adaptation or erection of a building, the carrying out of a work, or the subdivision of land, within a conservation area unless the consent authority has made an assessment of the extent to which the carrying out of the development would affect the heritage significance of the conservation area, with particular regard to:

- (a) the heritage significance of any building, work, relic, tree or place, archaeological site or potential archaeological site or Aboriginal site that would be affected, and the contribution it makes to the conservation area, and
- (b) the compatibility of the proposed development with the conservation area, including the size, form, scale, orientation, siting, materials, landscaping and details of the proposed development.

The following types of work would be undertaken within heritage conservation areas in Rozelle:

- Resurfacing the existing asphalt shared-use path along the north-eastern side of Victoria Road with asphalt:
 - Between Mackenzie and Ellen streets.
 - For about 40 metres north-west of Darling Street.

- Installing new fencing and paving around new bus shelters (relocated as part of the Inner West Busway along Victoria Road) on Victoria Road between Mackenzie and Evans streets and between Darling and Prosper streets.
- Painting white bicycle symbols and installing signs along a number of local streets.
- Resurfacing the proposed shared-use path and installing signs along Victoria Road between Hornsey Street and Lilyfield Road.

The potential impact of these works has been assessed as part of this REF (refer Section 6.9). The proposed works would not directly impact any heritage items and would not adversely affect the identified conservation areas. It would not result in major change to the existing streetscape or detract from the significance of nearby heritage items. It would be compatible with the existing use of the areas and would be reversible.

As detailed in Section 4.1.1, the ISEPP operates to remove otherwise applicable consent requirements and prohibitions. The proposed works are therefore permissible without consent within the Leichhardt LGA.

4.4 Other relevant legislation

4.4.1 Protection of the Environment Operations Act 1997

Section 120 of the *Protection of the Environment Operations (POEO) Act 1997* prohibits the pollution of waters. The proposal includes measures to address the risk of water pollution (refer Section 6.2).

There is an obligation under Section 148 to notify the Department of Environment, Climate Change and Water (DECCW) when a 'pollution incident' occurs that causes or threatens 'material harm' to the environment.

4.4.2 National Parks and Wildlife Act 1974

The excavating, moving or exhibiting of Aboriginal objects requires a permit under Section 87 of the *National Parks and Wildlife Act 1979*. To knowingly destroy or deface an object or an Aboriginal place requires consent under Section 90.

Aboriginal objects or places are not expected to be affected by the proposal (refer Section 6.8).

4.4.3 Heritage Act 1977

An excavation permit is required to disturb or excavate any land knowing, or having reasonable cause to suspect, that the disturbance or excavation will, or be likely to, result in a relic being discovered, exposed, moved, damaged or destroyed. A permit is also required to disturb or excavate land on which a relic has been discovered or is expected.

There is the potential for remnants of buildings, previous roads, path surfaces and tramlines to exist below the road pavement in Drummoyne and Rozelle. Therefore there is potential that the proposed works (such as potholing and excavating for bus shelter footings and signposts) may encounter these remnants.

However, there are exceptions under the *Heritage Act 1977* where permits are not required. These include works where underground services are to be exposed. In addition, an exception also applies where excavation is likely to have only minor impacts on archaeological relics, or where the excavation involves the removal of unstratified fill. One or more of these exceptions may potentially apply to the proposed works subject to confirmation from the Heritage Branch of DoP. The project archaeologist would consider the detailed design and construction methodology and determine the need for an exception or exemption prior to any works occurring where relics may be uncovered.

4.4.4 Environment Protection and Biodiversity Conservation Act 1979 (EPBC Act)

The primary environmental legislation at the Commonwealth level is the EPBC Act. An action that is likely to result in a significant impact on a matter of national environmental significance or on Commonwealth land must be referred to the Department of Environment, Water, Heritage and the Arts (DEWHA). If the project is subsequently determined to be a controlled action then a requirement for the approval of the Commonwealth Minister for the Environment, Water, Heritage and the Arts arises.

Significant impacts on Commonwealth matters are not expected due to the proposal (refer Table A-2 in Appendix A) and therefore a referral to DEWHA has not been made.

4.5 Confirmation of statutory position

The proposal has been assessed as permissible without development consent under the relevant environmental planning instruments. This position relies on the operation of the Infrastructure SEPP to remove otherwise applicable consent requirements.

The proposal falls within the definition of an activity set by Section 110 of the EP&A Act and is being proposed by a public authority (the RTA). It therefore requires assessment under Part 5 of the EP&A Act.