

2 Planning and statutory requirements

Chapter 2 provides a summary of the statutory planning context of the Proposal including a consideration of the relevant provisions of Part 3A of the Environmental Planning and Assessment Act 1979, the environmental planning instruments applying to it and other approval requirements.

2.1 Planning and approval process

The planning approval process for the Proposal is determined by the provisions of the Act. The Act was amended in 2005 to introduce a new Part 3A (Major Infrastructure and Other Projects). Part 3A applies to the carrying out of major infrastructure development which is declared by a Ministerial Order under Section 75B of the Act. The then Minister for Planning made an Order on 29 July 2005 that the following developments are proposals to which Part 3A applies:

Development that is an activity for which the proponent (that is not a local council or county council) is also the determining authority and that, in the opinion of the proponent, would (but for this order) require an environmental impact statement to be obtained under Part 5.

A determining authority, under Part 5 of the Act is obliged in its consideration of an activity to:

examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. (Section 111)

An environmental impact statement must be obtained if an activity is likely to significantly affect the environment (Section 112(1)).

Development will therefore be a Part 3A project by reason of the Minister's Order if:

- it is an activity subject to Part 5 of the Act for which the proponent is also the determining authority; and
- in the opinion of the proponent, it is likely to significantly affect the environment.

Clause 6(1) of SEPP 63 provides that development for *major infrastructure projects* may be carried out without development consent. The Proposal forms part of the Kingsgrove to Revesby Upgrading which is listed as a major transport project in Sch 1 of SEPP 63. Accordingly the Proposal is an activity under Part 5 of the Act. The Proposal is also an activity for which TIDC is both the proponent and determining authority within the meaning of these terms as defined in Section 110 of the Act.

TIDC has undertaken an assessment of the significance of the impacts of the Proposal (Connell Wagner 2006). As a result of the conclusions of this investigation, TIDC determined

that the Proposal is likely to have a significant impact on the environment. Therefore, the Proposal would, but for the Order, require an EIS under Part 5 of the Act. Consequently, the Proposal is declared by the Order to be a project to which Part 3A of the Act applies.

Part 3A of the Act outlines the key steps for assessment and approval of major infrastructure and other projects in NSW. These are shown on **Figure 2.1**. The Minister for Planning is the approval authority for all projects assessed under Part 3A.

An application to the Minister for Planning for approval of the Proposal under Part 3A of the Act was prepared and submitted on 16 January 2007. This was considered at the Planning Focus Meeting held on 16 January 2007 with relevant State agencies and local councils to provide the key issues to be addressed in undertaking the environmental assessment. Details of the meeting and the process undertaken to define the key environmental issues are included in **Section 11.4**.

Approval for the Proposal must be obtained from the Minister for Planning under Part 3A of the Act.

A separate approval of the Commonwealth Minister for the Environment and Water Resources under the *Environment Protection and Biodiversity Conservation Act 1999* is not required as no item defined under that Act would be affected by the Proposal and, as a result it would not be considered to be a controlled action. This is discussed further in **Section 2.6**.

2.2 Approach to assessment

The assessment and approval process under Part 3A of the Act is divided into three stages:

- Project application and Environmental Assessment.
- Exhibition, consultation and review.
- Director-General's assessment and Ministerial determination.

Project application and environmental assessment

The proponent of a major infrastructure project under Part 3A of the Act must submit a Project Application to the Department of Planning. Information in the application is used to determine whether Part 3A of the Act applies. Under the provisions of Section 75E(2) of the Act, the application must include a description of the Proposal and any other matters required by the Director-General. This would normally include a preliminary assessment to accompany the Project Application.

The *Preliminary Assessment Guidelines* (Department of Planning 2005) provide a detailed method for undertaking the preliminary assessment setting out a systematic process of identifying and ranking environmental issues to provide the basis for the environmental assessment requirements for the Proposal. The preliminary assessment is predominantly a desk top study which also identifies any likely environmental constraints on the site to assist in the formulation of the Proposal.

Project Approval Process under Part 3A

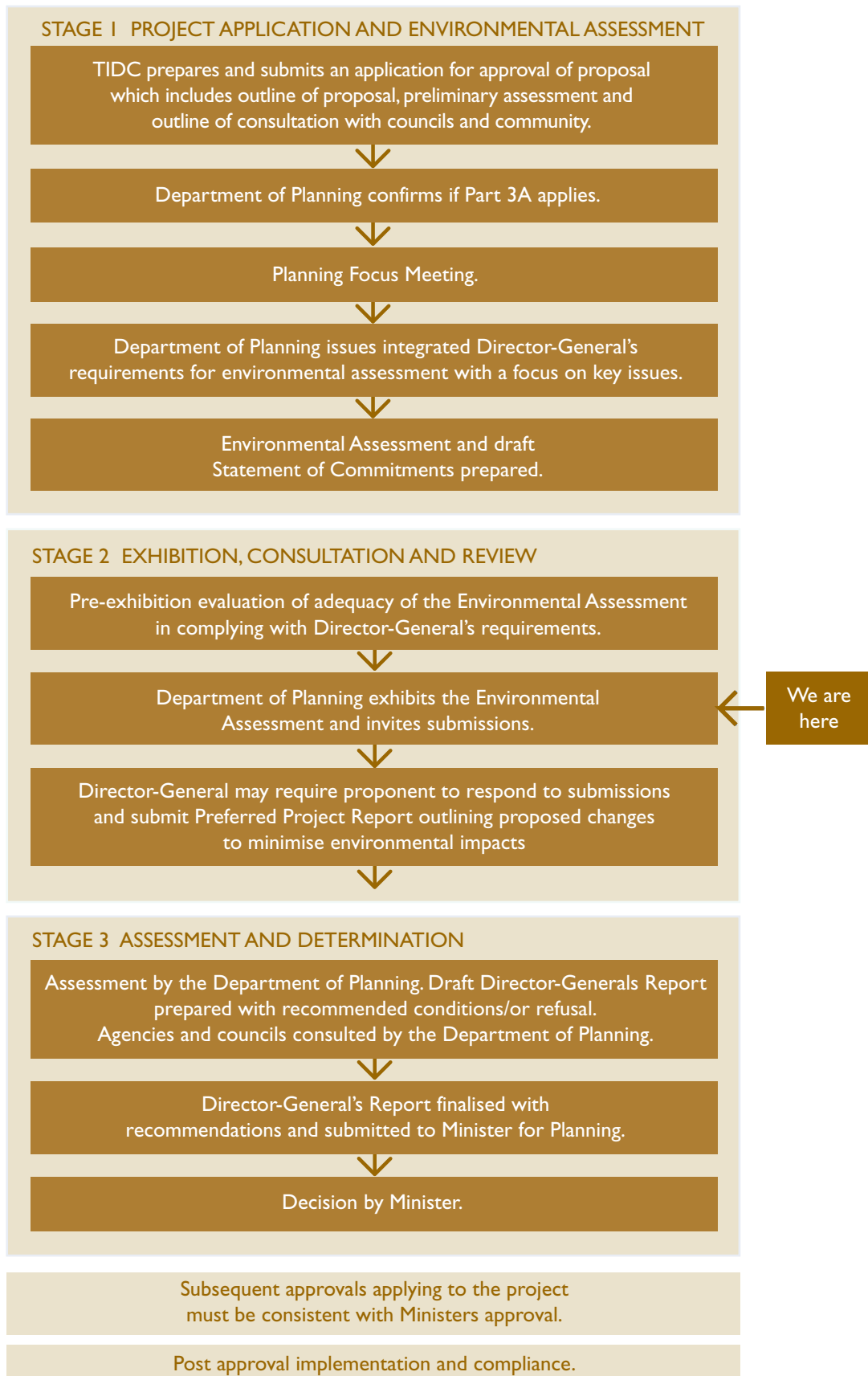


Figure 2.1 Planning and approval process

The Department of Planning consults all relevant government agencies and local councils during the preparation of the environmental assessment requirements under Section 75F(2) of the Act.

The Director-General of the Department of Planning issued the environmental assessment requirements for the Proposal on 20 February 2007. These must be consistent with the guidelines and are publicly available on the Department's web site. The requirements nominate the general contents of the Environmental Assessment, key issues to be addressed, the level of assessment required and the form and contents of the documentation.

The Environmental Assessment is essentially a technical document which identifies the potential environmental risk or benefits of the Proposal so that the approval authorities or a member of the public can understand the implications of the key issues and can evaluate the proponent's commitments to environmental management and mitigation measures for the Project together with any expected residual effects. The assessment should focus on those issues important for the management of the Project in a sustainable manner.

The Environmental Assessment also contains a draft Statement of Commitments indicating the measures that will be undertaken to minimise impacts on the environment should the Proposal be approved. These will provide the basis for the conditions of approval.

Exhibition, consultation and review

Prior to exhibition, the adequacy of the assessment is considered by the Director-General. Additional information may be required at this stage. When considered to be adequate, the Environmental Assessment is exhibited for a minimum of 30 days during which written submissions are invited.

Copies of the submissions are sent to the proponent, the Department of Environment and Climate Change, if a licence is required, and any other relevant public authority. The Director-General may require the proponent to respond to issues raised in the submissions and prepare a Preferred Project Report outlining any changes to the Proposal to minimise its environmental impact and any revised Statement of Commitments.

Assessment and determination

The third stage comprises the Director-General's assessment and the Ministerial determination of the Proposal. The Director-General prepares a report on the Proposal for the Minister for the purposes of the Minister's consideration of the granting of approval to carry out the Project. The Director-General's report includes, among other things, the Environmental Assessment conducted by the proponent, a statement relating to compliance of the Environmental Assessment with the Director-General's requirements, any advice provided by public authorities and any environmental assessment undertaken by the Director-General. The Minister will approve or reject the carrying out of the Proposal having regard to the Director-General's report. In giving approval, the Minister may determine to modify the Proposal or impose conditions of approval including a requirement that the proponent complies with any obligations in its Statement of Commitments.

2.3 Environmental planning instruments

The Director-General's report, which the Minister must consider in deciding whether to approve the Proposal, is required to include a copy of, or reference to, the provisions of any State Environmental Planning Policies that substantially govern the carrying out of the Proposal (Section 75I(2)(d)) and any planning instrument that would (but for Part 3A) substantially govern the carrying out of the Proposal and which have been taken into consideration in the Environmental Assessment (Section 75I(2)(e)). State Environmental Planning Policies and other relevant planning instruments will continue to apply to the Proposal until approval to carry it out has been granted (Section 75R(2) and (3)).

State Environmental Planning Policy 19-Bushland in Urban Areas

State Environmental Planning Policy 19 aims to protect remnant urban bushland for its recreational and natural environmental values. The policy applies to bushland in urban areas zoned under a local environmental plan for public recreation or open space. It applies to the Proposal in relation to the remnant bushland fringing Salt Pan Creek adjacent to the existing rail bridge within Hurstville (eastern side of Salt Pan Creek) and Bankstown (western side).

A consent authority may not approve the disturbance of urban bushland unless:

- it has undertaken an assessment of the need to protect the bushland;
- it is satisfied that the disturbance is essential for a purpose in the public interest and no reasonable alternative is available; and
- it is satisfied that the area to be disturbed is as small as possible and where disturbed will be reinstated on completion of the work.

State Environmental Planning Policy 55-Remediation of Land

State Environmental Planning Policy 55 seeks to promote the remediation of contaminated land in order to reduce the risks to human health and the environment. Where land is contaminated, the policy requires that it is suitably remediated prior to any development taking place on it. Provisions relating to the level of remediation required and the necessary consent mechanisms are contained in the policy.

The policy also contains references to contaminated land planning guidelines which set out the steps to be taken in order to assess whether and to what extent the affected land is contaminated.

The desk top assessment of potential contamination along the rail corridor indicates that the potential exists at a number of locations for the land and/or a number of existing structures to be contaminated. These areas are listed in **Section 14.1.2**. More detailed investigations are required to determine the extent and type of contamination present and to define the necessary remediation measures. A Phase 2 contamination investigation will be undertaken as part of the detailed design process.

State Environmental Planning Policy 63-Major Transport Projects

The Proposal is included as the Kingsgrove to Revesby Upgrading in Schedule 1 of SEPP 63. Development of a major transport project may be carried out without development

consent under Clause 6(1) of the policy. As TIDC is both the proponent and determining authority for the Proposal as defined in Part 5 of the Act, the Proposal is an activity to which Part 5 of the Act applies (but for the Minister's order making it a Proposal to which Part 3A applies).

Draft State Environmental Planning Policy (Infrastructure) 2006

The draft State Environmental Planning Policy (Infrastructure) 2006 is intended to consolidate and update planning processes for new infrastructure. It provides an integrated approach allowing new railway lines, as well as the augmentation of existing railway infrastructure to be developed without consent. This includes railway stations (other than buildings or works associated with residential, retail or commercial purposes unrelated to railway activities) and associated station access facilities, car parks, bus interchanges and public amenities. The provisions also apply to construction activities as well as routine maintenance or emergency works.

Commercial, retail and residential development would be permissible within a railway corridor in the vicinity of a railway station although a number of measures are included to protect rail corridors by requiring consent authorities to consider the implications of adjoining development. The consent authority would need to apply feasible or reasonable conditions to any development likely to be affected by the proximity of a railway corridor to ensure that acceptable night time noise levels are achieved.

The current status of the Proposal under SEPP 63 and Part 3A of the Act means that the provisions of the draft policy would not result in any substantial change to the process under which the Proposal would be assessed and determined. The Part 3A process would prevail and would be essentially unaffected by the changes proposed in the draft policy.

Greater Metropolitan Regional Environmental Plan 2-Georges River Catchment

The aims and objectives of Regional Environmental Plan 2 are to maintain and improve water quality in the Georges River and its tributaries, preserve, protect and encourage the restoration or rehabilitation of regionally significant sensitive natural environments (including mangroves, saltmarsh and seagrass beds) and preserve, enhance and protect freshwater and estuarine ecosystems within the catchment.

The rail corridor is located within the catchments of Salt Pan and Little Salt Pan Creeks, both of which are tributaries of the Georges River. Regional Environmental Plan 2 therefore applies to the site, in particular in relation to potential impacts of construction activities across and adjacent to Salt Pan Creek. Management of water quality is discussed in **Section 14.3.3**.

2.4 Local planning controls

The provisions of SEPP 63 have the effect that the Proposal is permissible without consent. These provisions override any requirements within the local environmental plans governing the permissibility of the Proposal. However, the requirements of the relevant instruments have been considered as they would continue to apply until approval to proceed has been granted.

The Proposal traverses three local government areas (LGAs): Hurstville, Canterbury and Bankstown. Development in these areas is mainly governed by the requirements of the Hurstville Local Environmental Plan 1994, Canterbury Planning Scheme Ordinance 1970 and Bankstown Local Environmental Plan 2001. The rail corridor is located in a Special Uses Zone which identifies land required for rail and related purposes under each of these planning instruments. In each case, either by the adoption of the Environmental Planning and Assessment Model Provisions or by specific provisions in the planning instrument, railway undertakings (except for new railways, railway stations, bridges over roads, access roads and any buildings other than for railway purposes) are permissible in the corridor without council consent.

The Proposal is also considered to be consistent with the planning and land use objectives for the Special Uses Zone as defined in the respective planning instruments. The stated zone objectives are:

Hurstville Local Environmental Plan 1994 (Clause 8)

- a) *to accommodate development for railways and associated purposes on railway land, and*
- b) *to encourage the development of railway land and air space in the vicinity of railway stations to take advantage of public transport accessibility.*

Canterbury Planning Scheme Ordinance 1970

No stated zone objectives.

Bankstown Local Environmental Plan 2001 (Clause 55)

- d) *to identify land owned, used or required to be used by, or under the authority of, a public authority or other semi-public purposes, and*
- e) *to permit a range of uses which are compatible with the locality.*

The Proposal would be consistent with the objectives for each council for the Special Uses Zone applying to the land subject to the Proposal.

2.5 Other approval requirements

Section 75U of the Act specifies certain approvals that are not required for an *approved project* under Part 3A. Section 75A defines an *approved project* as a *project to the extent that it is approved by the Minister under this Part*. Consequently, if the Minister grants approval to carry out the Project (or part of it) under S75J(1) of Part 3A of the Act, the following relevant approvals would not be required:

- Permit under Section 201 (dredging and reclamation), 205 (marine vegetation) or 219 (fish passage) of the *Fisheries Management Act 1994*.
- Approval under Part 4 or an excavation permit under Section 139 of the *Heritage Act 1977*.

- Permit under Section 87 (investigation of Aboriginal objects) or a consent under Section 90 (destruction of Aboriginal objects) of the *National Parks and Wildlife Act 1974*.
- Permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948* relating to excavation within 40 metres of a waterway.
- Water use approval under Section 89, water management work approval under Section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

In addition, under Section 75V(1), the following relevant authorisations cannot be refused if necessary for carrying out an *approved project* and are to be substantially consistent with an approval to carry out the Project given under Part 3A:

- Consent of the NSW Roads and Traffic Authority under Section 138 of the *Roads Act 1993* which may be applicable for bridge construction at King Georges Road, Davies Road and Belmore Road.
- An Environmental Protection Licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* from the Department of Environment and Climate Change to construct specific elements of the Project.

No authorisation under Section 12 of the *Native Vegetation Act 2003* would be required as the Proposal is not located in the areas listed in Part 3 of Schedule 1 of the Act. Similarly, a bush fire safety authority would not be required under Section 100B of the *Rural Fires Act 1997* as the Proposal does not meet the definition of development requiring authorisation under the Act. **Table 2.1** identifies the licences, permits and approvals that may be required for the construction and operation of the Proposal under NSW legislation.

Table 2.1 Summary of potential approval requirements

Provision	Approval requirements	Necessary action	Agency
<i>Protection of the Environment Operations Act 1997</i>			
Section 48 and Sch 1	An Environmental Protection Licence is required for construction of railway systems (installation of track and other systems activities listed in Sch 1) Operation of the proposal would be undertaken in accordance with the existing RailCorp Licence 12208	Apply for an Environmental Protection Licence prior to start of construction	Department of Environment and Climate Change
<i>Roads Act 1993</i>			
Section 138	Consent to erect a structure or carry out a work in, on or over a classified road	Apply for consent	Roads and Traffic Authority

2.6 Commonwealth statutory requirements

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), among other matters, requires approval of the Commonwealth Minister for Environment and Water Resources for actions which will or are likely to result in significant impacts on:

- a matter of national environmental significance;
- the environment of Commonwealth land, even if the action is taken outside Commonwealth land;
- the environment of a Commonwealth Heritage place outside the Australian jurisdiction; or
- the environment anywhere in the world if the action is undertaken by the Commonwealth.

The Proposal would not be carried out on Commonwealth land nor would it be likely to have a significant environmental impact on Commonwealth land. Matters of national environmental significance with potential relevance to the Proposal are:

- nationally threatened species and ecological communities; and
- migratory species protected under international agreements.

Ecological investigations following EPBC Act guidelines, undertaken as part of the Environmental Assessment (see **Technical Paper 2** in Volume Two), concluded that the Proposal would be unlikely to have a significant impact on a matter of national environmental significance (threatened species and migratory species) or potential habitat if appropriate mitigation measures are implemented. Therefore, preparation of a referral under the EPBC Act is not considered to be required.

