

2 Assessment and approval process

This chapter outlines relevant statutory requirements, explains the assessment and approval process, and considers the application of the *Environmental Planning and Assessment Act 1979* and relevant environmental planning instruments.

2.1 Statutory planning context

2.1.1 The Part 3A process

Sydney Metro has requested project approval for the CBD Metro under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Part 3A establishes an assessment and approval regime for major infrastructure projects. Projects to which Part 3A applies are declared either through the State Environmental Planning Policy (Major Development) 2005 or through a Ministerial Order under Section 75B of the EP&A Act.

The Minister for Planning declared the CBD Metro to be a Part 3A project by order published in the NSW Government Gazette (No. 30 at p935, Friday 6 February 2009). The declared project is described as follows:

“The construction and operation of a new electrified passenger metro railway between the Sydney CBD and Rozelle. The project includes development for all associated or ancillary works, activities, uses, structures or facilities including (but not limited to):

- *Construction (including demolition works), and operation (excluding maintenance) of the project.*
- *Any winning, obtaining or disposal of extractive material as part of the construction work of the project including transport of material and any associated access roads/rail tracks and sidings, conveyors, loading facilities and wharf facilities constructed for this purpose.*
- *Temporary batch plants, concrete casting yards, excavated material reprocessing facilities associated with construction activities.*
- *Access for construction, maintenance or operation of the project, including roads, access for pedestrians, cyclists, public transport and vehicles, and emergency egress/access facilities.*
- *Metro stations, including car parks, and associated transport interchanges (i.e. bus, rail, light rail, taxi, coach, ferry, bicycle and kiss and ride facilities) and public amenities.*
- *Retail premises, business premises or community facilities in a metro station complex, including areas in the complex that customers use to gain access to station platforms.*
- *Train stabling, maintenance, administration and control facilities.*
- *Utilities/service installations or diversions, including power supply and protection of existing assets.*
- *Landscaping and public domain improvements; and*
- *Advertising structures.*

This order does not apply to activities comprising of:

- (a) surveys;*
- (b) test drilling;*
- (c) test excavations;*
- (d) preliminary geotechnical investigations,*

or the like, associated with the design and environmental assessments required for the development of the Project prior to the commencement of construction."

Therefore, Sydney Metro has sought project approval for the CBD Metro in accordance with the requirements of Part 3A from the NSW Minister for Planning.

The order detailed above does not relate to approval or permission to construct over-site development as detailed within concurrently exhibited station plans. Such applications, for non-metro related development over operational structures such as stations and service structures, would require separate approval. This is detailed further in section 2.6.

2.1.2 Critical infrastructure

Section 75C of the EP&A Act provides that the Minister for Planning may declare a project to be a critical infrastructure project because it is, in the opinion of the Minister, essential for the state for economic, environmental or social reasons.

On 2 May 2008, the Minister for Planning issued a declaration to the effect that "development for the purpose of a metro rail line to contribute to a metro rail network providing high speed, high frequency mass-transit capacity within the Greater Metropolitan Region" is a critical infrastructure project under section 75C of the EP&A Act. The CBD Metro is within the terms of that declaration and is therefore critical infrastructure.

Section 75R(3) of the EP&A Act excludes the application of the provisions of environmental planning instruments (other than State Environmental Planning Policies (SEPPs)) to "*approved projects*", including approved critical infrastructure projects. Under section 75R(2) of the EP&A Act, a SEPP only applies to the carrying out of a critical infrastructure project, if the SEPP expressly provides that it applies to and in respect of the particular project. There are no SEPPs that expressly provide that they apply to and in respect of the CBD Metro project, with the exception of the Infrastructure SEPP.

The critical infrastructure declaration recognises the importance of the CBD Metro project as the first step of a metro rail network and the NSW Government's commitment to delivering it. It also reflects its importance to the state for economic and social reasons, particularly in securing Sydney's future global position.

2.2 State Environmental Planning Policies

As indicated above, the application of environmental planning instruments (EPIs) to the CBD Metro would be limited, once the project is approved. However, in accordance with section 75J(3) of the EP&A Act, in deciding whether or not to approve the carrying out of a project, the Minister may take into account the provisions of any EPI that would not (but for Part 3A) apply to the project if approved. This section reviews State Environmental Planning Policies (SEPPs) that are relevant to the CBD Metro project.

2.2.1 State Environmental Planning Policy (Major Development) 2005

The *State Environmental Planning Policy (Major Development) 2005* (Major Development SEPP) identifies development to which the development assessment and approval process under Part 3A of the EP&A Act automatically applies. It also identifies development classified as critical infrastructure for the purposes of Part 3A of the EP&A Act.

The CBD Metro project is not listed specifically in the Major Development SEPP as a class of project to which Part 3A would apply. However, as discussed in section 2.1.1 above, by order published in the NSW Government Gazette dated Friday 6 February 2009, the Minister for Planning has declared the CBD Metro to be a project to which Part 3A applies.

Part of the project would be located on land that is identified in Schedule 2 of the Major Development SEPP as a Part 3A major projects specified site – *Port and related employment lands*. Development that is on land identified as a specified site and that also meets certain threshold criteria is subject to Part 3A. As the project is already subject to Part 3A (through an order by the Minister), its partial location on Schedule 2 land has no bearing on the assessment and/or approvals process.

The project would also pass through Barangaroo, which is land that has been identified in Schedule 3 of the Major Development SEPP as a State Significant Site. In general, the listing of the Barangaroo site under Schedule 3 provides for a unique set of zoning and land use controls for that site. However, public utility undertakings (such as this project) that are located within the Barangaroo site would in any case be permissible without consent under the provisions of the Major Development SEPP.

2.2.2 State Environmental Planning Policy (Infrastructure) 2007

The *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) was introduced to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services across NSW. Specifically, clause 79 of the Infrastructure SEPP provides that development for the purpose of "*rail infrastructure facilities*" may be carried out without consent. The CBD Metro project would fall within the definition of "*rail infrastructure facilities*" in clause 78 of the Infrastructure SEPP and may be carried out without consent under the Infrastructure SEPP.

The Infrastructure SEPP also provides protection for the interim rail corridor proposed for the CBD Metro. Specifically, clauses 88A through 88C contain provisions to ensure that development on, or adjacent to land within that corridor, does not adversely affect the viability of the CBD Metro project or any proposed metro station. In addition, consent authorities are required to consider the impact of any major development within interim rail corridors or station extents proposed for the CBD Metro on the viability of the project.

2.2.3 State Environmental Planning Policy No. 55 – Remediation of Land

The aims and objectives of *State Environmental Planning Policy No. 55* (SEPP 55) are to provide a statewide planning approach to contaminated land remediation. It also promotes the remediation of contaminated land to reduce the risk of harm. SEPP 55 applies where consent is being sought for works on potentially contaminated land and/or where remediation works are proposed.

Under SEPP 55, a person must not carry out a 'category 1 remediation work' except with the consent of the consent authority (clause 8(2)). Category 1 remediation works are works that fall within any of a number of specified categories under clause 9. A category 2 remediation work may be carried out without consent (clause 8(2)). Category 2 remediation works are defined in clause 10. If remediation works are carried out under SEPP 55, then certain notification requirements set out in clauses 16, 17 and 18 must be complied with.

The project would not require consent under SEPP 55. Notwithstanding, site contamination issues are considered relevant and are addressed in Chapter 9 and Chapter 12 of this document and Technical Paper 2 *Spoil management*.

2.3 Other NSW legislation

A number of approvals are not required for a project approved under Part 3A of the EP&A Act (section 75U), namely:

- The concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of the Act.
- A permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*.
- An approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*.
- A permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974*.
- An authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation or State protected land.
- A permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*.
- A bush fire safety authority under section 100B of the *Rural Fires Act 1997*.
- 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*.

Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of an approved project.

In addition the following orders or notices cannot be made or given so as to prevent or interfere with the carrying out of an approved critical infrastructure project:

- An interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*).
- An order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*.
- An environment protection notice under chapter 4 of the *Protection of the Environment Operations Act 1997*.
- An order under section 124 of the *Local Government Act 1993*.

Under Section 75V(1) of the EP&A Act, the following relevant authorisations cannot be refused if necessary for the carrying out of an 'approved project' and are to be substantially consistent with an approval to carry out the project given under Part 3A:

- An Environment Protection Licence under chapter 3 of the *Protection of the Environment Operations Act 1997*.
- A consent under section 138 of the *Roads Act 1993* (relating to the excavation or disturbance of a public road).

Notwithstanding this, additional approvals may nevertheless be required under other NSW legislation for the construction and operation of the project, as identified in Table 2.1.

Table 2.1 Potential additional approval requirements under NSW legislation

Legislation	Approval	Applicability
<i>Protection of the Environment Operations Act 1997</i>	An Environment Protection Licence	Sydney Metro or its construction contractor would seek an Environment Protection Licence for the construction of the project. A network licence would be required for the operation of the metro network.
<i>Roads Act 1993/Transport Administration Act 1988</i>	Section 138/ section 55S	In accordance with section 55S of the <i>Transport Administration Act 1988</i> , section 138 of the <i>Roads Act 1993</i> does not apply to anything done by Sydney Metro in relation to a classified road (within the meaning of that Act), for which a council is the roads authority, for the purposes of exercising its functions under this Act. However, Sydney Metro must not do anything referred to in section 138 (1) of that Act in relation to any such road except with the consent of the Roads and Traffic Authority.
<i>Crown Lands Act 1989</i>	Section 34A	Ministerial approval to grant a 'relevant interest' (i.e. lease, licence, permit, easement or right-of-way) over a Crown Reserve if required.
<i>Heritage Act 1977</i>	Section 146	Sydney Metro must notify the Heritage Council if a relic is uncovered during construction and if it is reasonable to believe that the Heritage Council is unaware of the location of the relic.
<i>Management of Waters and Waterside Lands Regulations</i> <i>Ports and Maritime Administration Act 1995</i> <i>Maritime Services Act 1935</i>	Clause 67	Sydney Metro must not use drags, grappling, or other apparatus for lifting any object or material from the bed of a special port, or otherwise disturb such bed in any way, except with the written permission of the Harbour Master and in accordance with the conditions attaching to such permission.

Other legislation of potential relevance to the project includes:

- *Transport Administration Act 1988* – establishes the framework for functions of Sydney Metro, metro railway station plans (see section 2.6) and acquisition of land (refer Chapter 16 and Chapter 17).
- *Contaminated Land Management Act 1997* – the general object of this Act is to establish a process for investigating and (where appropriate) remediating land where the DECCW believes that contamination is significant enough to declare the land to be significantly contaminated.
- *Waste Avoidance and Resource Recovery Act 2001* – an important objective of this Act is to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development. The project would comply with this and other objectives of the Act for the construction and operation stages. This also forms part of the overall sustainability principles applied to the development of the project design, which is detailed in Chapter 6. Further details on waste management during the construction and operation of the CBD Metro project are provided in Chapter 8 and section 19.8.

- *Land Acquisition (Just Terms Compensation) Act 1991 No 22* – the primary aim of this Act is to guarantee that, when land affected by a proposal for acquisition by an authority of the state is eventually acquired, the amount of compensation will be not less than the market value of the land (unaffected by the project) at the date of acquisition. The Act also sets out procedures for the compulsory acquisition of land by authorities of the state to simplify and expedite the acquisition process and encourages the acquisition of land by agreement instead of compulsory processes. Also refer to section 55E of the *Transport Administration Act 1988* for other provisions relating to land acquisition.

2.4 Commonwealth legislation

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), establishes a requirement of Commonwealth environmental assessment and approval for:

- Actions that are likely to have a significant impact on matters of national environmental significance (NES matters).
- Actions that are likely to have a significant impact on the environment of Commonwealth land.
- Actions taken on Commonwealth land that are likely to have a significant impact on the environment anywhere.
- Actions by the Commonwealth that are likely to have a significant impact on the environment anywhere.

Current NES matters are:

- World heritage areas.
- National heritage places.
- Wetlands of international importance (Ramsar sites).
- Threatened species and ecological communities.
- Migratory species.
- Commonwealth marine areas.
- Nuclear actions.

If the Commonwealth Minister for the Environment, Water, Heritage and the Arts determines that an approval is required under the EPBC Act, the proposed action is deemed to be a 'controlled action'. It must then undergo assessment under the EPBC Act and obtain an approval under the Act prior to being undertaken.

No significant impacts in relation to these matters have been identified during the course of the assessment. Accordingly, the project has not been referred to the Department of Environment, Water, Heritage and the Arts.



2.5 Environmental assessment and approval process

The steps in the assessment and approval process under Part 3A of the EP&A Act are summarised below and illustrated in Figure 2.1. For further information on the process for assessment and approval under Part 3A, refer to the website of the Department of Planning (www.planning.nsw.gov.au).

Step 1 – Lodgement of application: On 16 February 2009, Sydney Metro lodged a major project application for the CBD Metro project.

Step 2 – Environmental assessment requirements: On 27 February 2009, the Director-General of the Department of Planning issued the Director-General's requirements (DGRs). The DGRs, which are included at Appendix A, were prepared following consultation with relevant government agencies. The key issues raised in the DGRs are:

- Strategic justification.
- Project justification.
- General construction impacts.
- Operational noise and vibration impacts.
- Operational transport impacts and interactions.
- Social, economic and land use implications.
- Heritage impacts.

The DGRs also specify the need for community and stakeholder consultation and the preparation of an environmental risk assessment.

Step 3 – Preparation of Environmental Assessment: Sydney Metro has prepared this Environmental Assessment in accordance with the DGRs. On 10 August 2009, it was submitted to the Department of Planning for an adequacy review.

Step 4 – Public exhibition (We are here): On 27 August 2009, the Director-General advised Sydney Metro that the Environmental Assessment adequately addresses the DGRs. It has now been placed on public exhibition for a period of not less than 30 days. During this period, any person (including a public authority) may make written submissions to the Director-General.

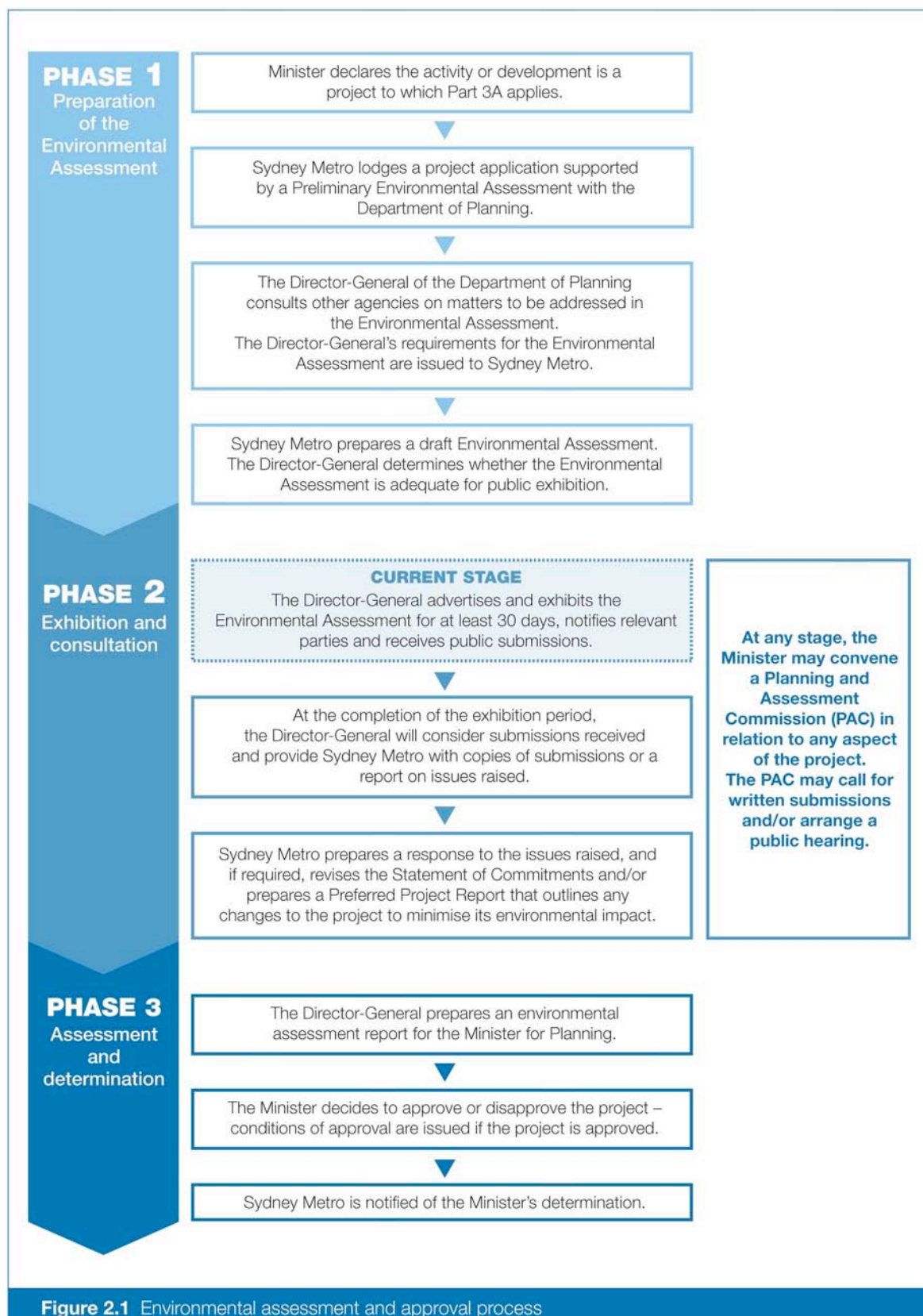
Step 5 – Consideration of public submissions: Following public exhibition, the Director-General will consider the submissions received and will provide copies of submissions to Sydney Metro, or a report on the issues raised in the submissions. The Director-General may then require Sydney Metro to:

- Submit a response to the issues raised in the submissions.
- Prepare a Preferred Project Report that outlines any changes to the project.
- Prepare a revised Statement of Commitments.

Step 6 – Preparation of Director-General's report: The Director-General will prepare a report on the project to assist the Minister for Planning's consideration of the application for project approval.

Step 7 – Decision by the Minister for Planning: Following review of the Director-General's report, the Minister for Planning will decide whether or not to approve the project. The Minister may approve the project with such modifications or on such conditions as the Minister may determine.





2.6 Station precinct planning

2.6.1 Statutory framework

As constituted under the *Transport Administration Act 1988*, Sydney Metro has a number of principal functions that are set out in section 55C. Relevant principal functions include:

(a) to develop metro railway systems, and

(b) to hold, manage and maintain rail infrastructure facilities of metro railways, and

(c) to carry out development, or facilitate, manage or finance development, on land located on, or in the vicinity of, metro railway systems.

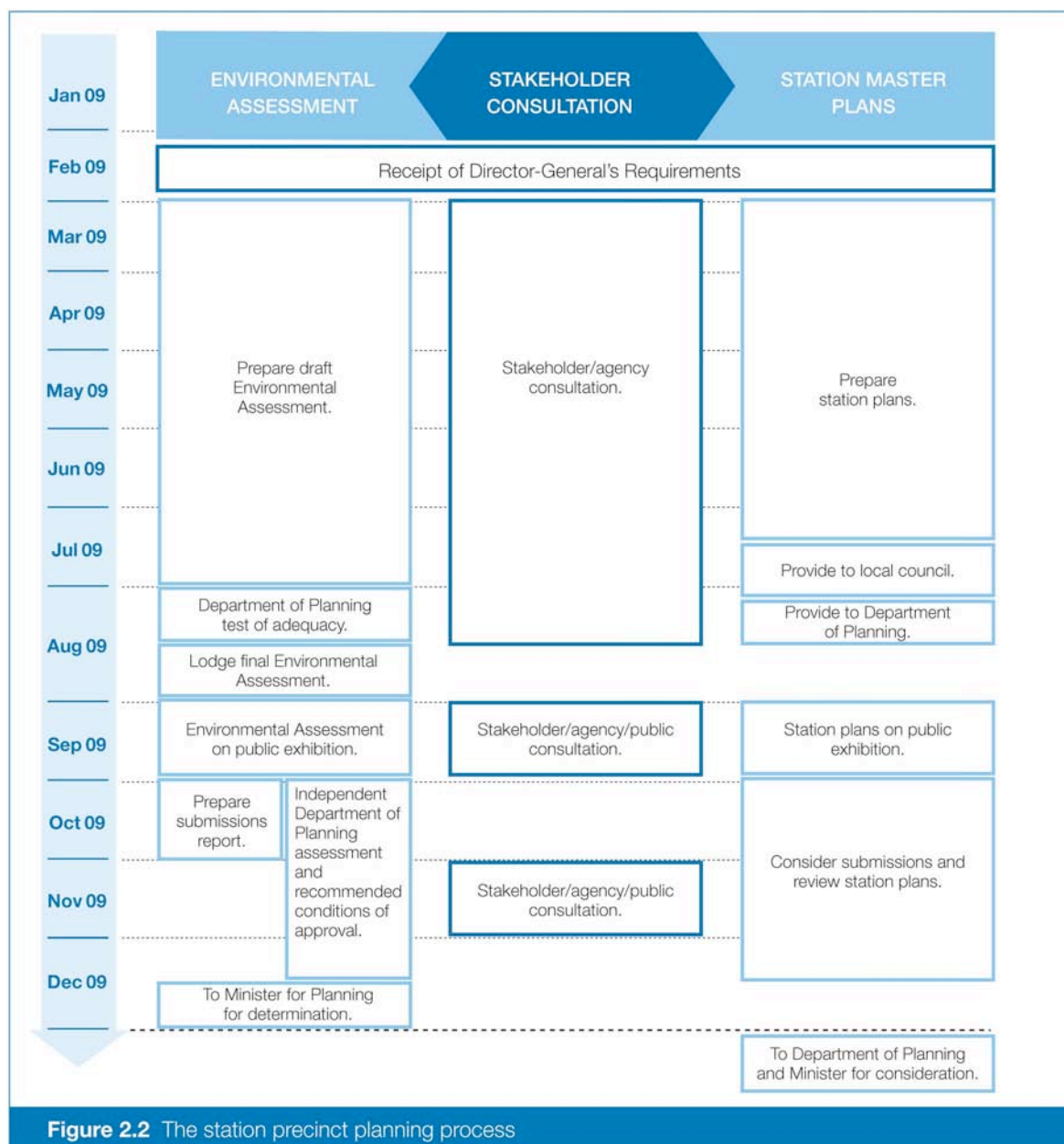
More specifically, section 55D of the *Transport Administration Act 1988* permits Sydney Metro to prepare station plans for land on which metro railway stations are to be situated, and land in the vicinity of such metro railway stations, with respect to the following matters:

- Development on the land, including development for integrated transport facilities such as bus or other transport interchanges.
- Traffic and parking management arrangements.
- Pedestrian links and access facilities.
- Retail and commercial development associated with metro railway stations.
- Public domain amenities and improvements.
- Station design and amenity.
- Other matters ancillary to the operation of metro railway stations and any associated transport or other facilities.

In accordance with the *Transport Administration Act 1988*, Sydney Metro has consulted with other relevant public authorities when preparing station plans. It would also, on request, provide a station plan to the Minister for Planning and other relevant public authorities in connection with the exercise by the Minister or authorities of statutory and other functions relating to the land concerned.

2.6.2 Station planning process and relationship with the project

Station planning is a process to ensure the long-term integration and compatibility of land use surrounding each of the stations (including the proposed Rozelle stabling and maintenance depot). The process aims to ensure that the station complexes are well connected to the local environment, effectively integrated and visually appropriate. The station precinct planning process, which has proceeded in parallel with the environmental impact assessment process, is summarised in Figure 2.2.



In general, areas within a 500-metre radius (about six minutes' walking distance) have been targeted for detailed urban design studies relating to:

- Civic.
- Cultural/entertainment.
- Educational and retail attractors.
- Historic context and heritage features.
- Local planning requirements (land use, height, floor space ratio).
- Landform.

- Open spaces and vegetation.
- Views and streetscapes.
- Pedestrian, cycle and public transport links.
- Shadowing and sun access.

Works planned and proposed for each precinct by other parties, for example public domain upgrades proposed by the local council, have also been identified.

On the basis of these investigations, development opportunities and constraints have been identified for each precinct. Design principles have then been developed addressing key issues such as access and built form, and master plans ('station plans') then formulated, which illustrate the public domain and landscape proposed by Sydney Metro for the station area.

Sydney Metro will receive and consider submissions and review the station plans with a view to submitting final plans to the Department of Planning and the Minister for Planning in the first half of 2010. It should be noted that this Environmental Assessment does not seek to address the impacts of any station plans, and that development which proceeds according to such plans will require separate approval under relevant planning controls, as detailed in Chapter 6.

