

2 Planning and statutory requirements

This chapter describes relevant statutory requirements and explains the steps in the assessment and approval process.

2.1 Approval framework

2.1.1 Environmental Planning and Assessment Act 1979

The RTA is seeking project approval for the M5 West widening project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In accordance with Section 75B(1) of the EP&A Act, the Minister for Planning declared, by Ministerial Order dated 10 March 2010 and published in NSW Government Gazette No.40 on 19 March 2010, that the M5 West widening project is a project to which Part 3A applies. The Minister also declared by Order published in the same NSW Government Gazette, that the project is a critical infrastructure project under Section 75C of the EP&A Act. Copies of the Minister's Orders are provided in Appendix A.

The project requires the approval of the Minister for Planning. The Director-General of the Department of Planning issued their requirements for the environmental assessment of the project on 6 May 2010. The Director-General's Requirements (DGRs) are provided in Appendix B.

The approval process under Part 3A of the *Environmental Planning and Assessment Act 1979* is illustrated in Figure 2.1. Further detail on the Part 3A process can be found on the Department of Planning website at www.planning.nsw.gov.au.

2.1.2 Environmental planning instruments

Section 75R 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. A state environmental planning policy only applies to critical infrastructure projects to the extent that the provisions of the state environmental planning policy expressly provide that they apply to the particular project (*Environmental Planning and Assessment Act 1979* section 75R(2)). There are no state environmental planning policies that expressly relate to the M5 West widening project.

However, in deciding whether or not to approve the carrying out of a project, the Minister for Planning may (but is not required to) take into account the provisions of relevant environmental planning instruments (EPs) that would not (because of section 75R) apply to the project if approved. These include:

- *State Environmental Planning Policy (Infrastructure) 2007*.
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now deemed a SEPP)*.
- *Canterbury Planning Scheme Ordinance 1970*.
- *Bankstown Local Environmental Plan 2001*.
- *Liverpool Local Environmental Plan 2008*.

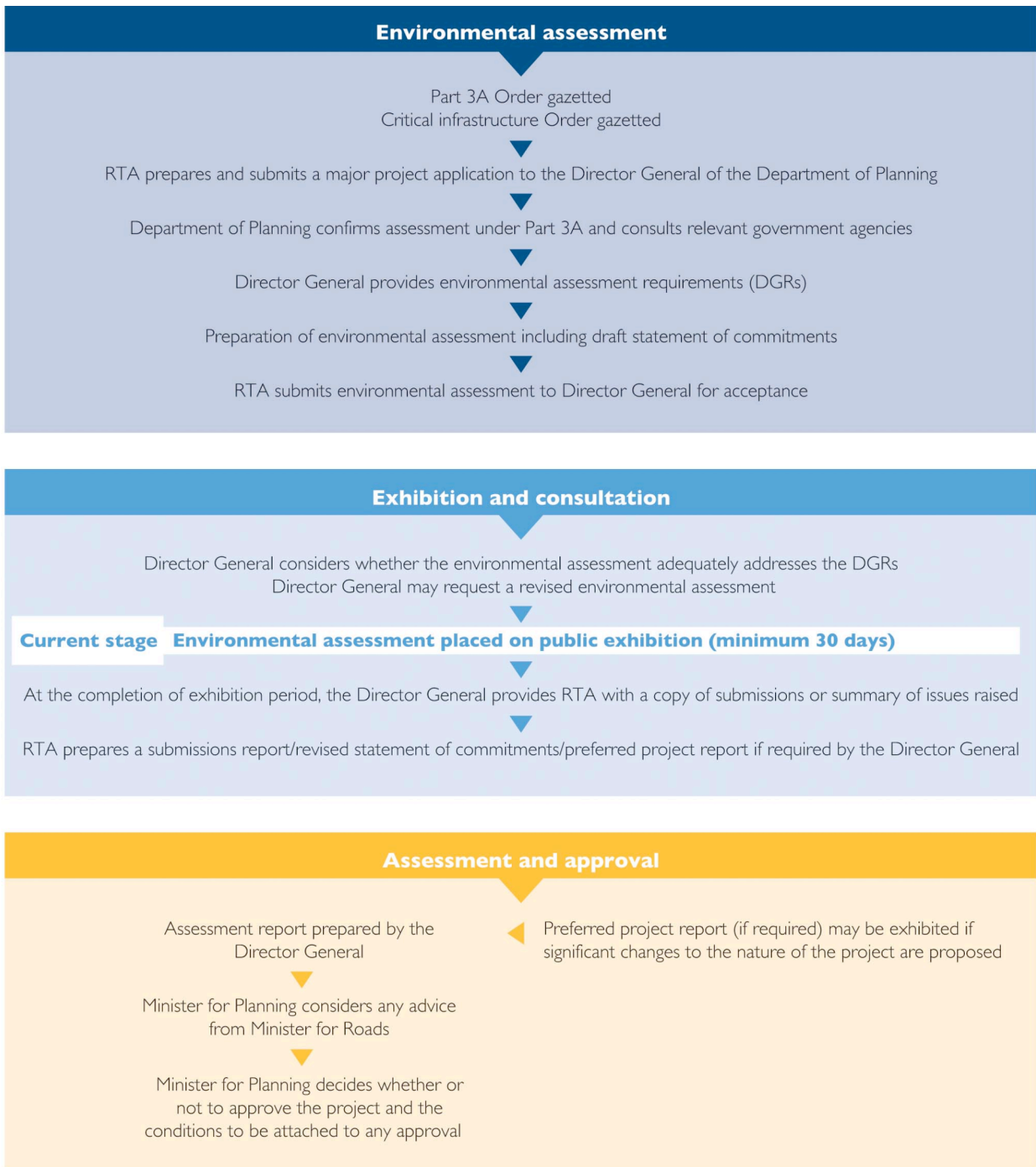


Figure 2.1 Part 3A approval process

Note: Project detail shown is indicative only, subject to detailed design

2.2 Other legislation

2.2.1 NSW legislation

A number of approvals are not required for a project approved under Part 3A of the EP&A Act (section 75U). Exemptions potentially relevant to the project include:

- 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 consent under section 90 of the *National Parks and Wildlife Act 1974*.

The project would require an environment protection licence under chapter 3 of the *Protection of the Environment Operations Act 1997* in accordance with section 75V(1) of the EP&A Act. Such a licence cannot be refused for an approved project and is to be substantially consistent with the Part 3A approval.

Other legislation that may apply to the project includes:

- The *Land Acquisition (Just Terms Compensation) Act 1991 No. 22*. At this stage no land acquisition requirements have been identified. Refer also to section 9.7 of this environmental assessment.
- An approval under the *Water Act 1912* for access to ground or surface water during construction may be required.

2.2.2 Commonwealth legislation

Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Act 1999* (EPBC Act) proposed 'actions' that have the potential to significantly impact on matters of 'national environmental significance', or the environment of Commonwealth land, or that are being carried out by a Commonwealth agency, must be referred to the Australian Government.

If the Minister for the Environment, Water, Heritage and the Arts determines that a referred project is a 'controlled action', the approval of that minister is required for the project in addition to the NSW planning approval.

Matters of national environmental significance of relevance to the project include:

- Nationally threatened species and ecological communities.
- Migratory species listed under the *Environment Protection and Biodiversity Act 1999*.

The M5 West widening project has been considered against these potential *Environment Protection and Biodiversity Act 1999* triggers and the project has been referred to the Department of Environment, Water, Heritage and the Arts. The referral has concluded that the project is not likely to have a significant impact on matters of national environmental significance, nor on the environment of Commonwealth land. The RTA is currently waiting for a determination from the Department of Environment, Water, Heritage and the Arts on the M5 West widening project.

