

5 Assessment process

5.1 Approval framework

5.1.1 Environmental Planning and Assessment Act 1979

RMS is seeking project approval for the proposed Foxground and Berry bypass section of the Princes Highway upgrade under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The Minister for Planning and Infrastructure declared under the then Section 75B of the EP&A Act, by Order published in NSW Government Gazette No. 114 on 10 September 2010, that development for the purpose of the Foxground and Berry bypass is a project to which Part 3A of the EP&A Act applies. A copy of the order is in **Appendix B**.

The NSW Government repealed Part 3A of the EP&A Act on 1 October 2011 and put in place Part 5.1 of the EP&A Act with associated transitional arrangements. The transitional arrangements under Schedule 6A of the EP&A Act provide that the project is a transitional major project to which Part 3A of the EP&A Act continues to apply.

On 24 October 2012 the *Environmental Planning and Assessment Amendment (Transitional Part 3A Projects) Regulation 2012* came into force. This amendment introduces a revised cut-off date for an environmental assessment report to be submitted, failing which a project ceases to be a transitional Part 3A project. Revisions to the period for a response to issues raised in submissions, for preferred project reports and for a revised statement of commitments were also made.

The Director-General's environmental assessment requirements (DGRs) for the project were issued on 11 February 2011, prior to the repeal of Part 3A.

The approval of the Minister for Planning and Infrastructure is required to carry out the project.

The approval process is illustrated in **Figure 5-1**.

5.2 Environmental planning instruments

5.2.1 State Environmental Planning Policies (SEPPs)

The repealed Section 75R(3) of the EP&A Act continues to apply to transitional major projects. This section excludes the application of the provisions of environmental planning instruments (other than State Environmental Planning Policies (SEPPs)) to approved projects.

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

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the effective delivery of infrastructure across the State. Clause 94 of ISEPP permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent. However the project was declared to be subject to Part 3A of the EP&A Act and will require project approval from the Minister for Planning and Infrastructure.

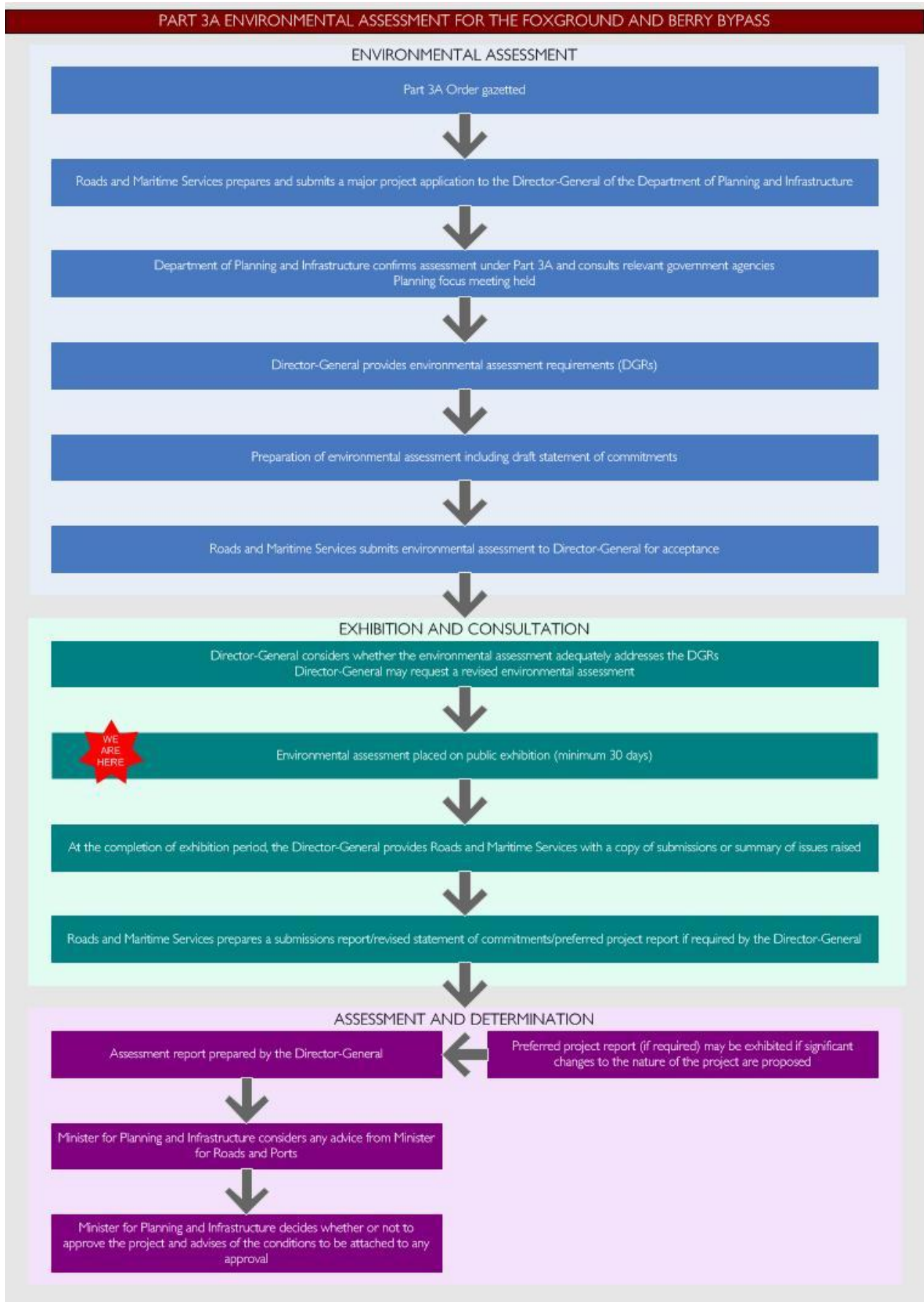


Figure 5-1 Environmental assessment process for the project

State Environmental Planning Policy (Rural Lands) (2008)

While the SEPP does not apply to the consideration of a Part 3A project, the principles in clause eight have been considered in this report in **Section 7.9**. The project is considered to be generally consistent with these principles.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No 44 – Koala Habitat Protection (SEPP 44) does not apply to the project as the project does not require development consent from council. However in accordance with best practice SEPP 44 has been considered. The Minister for Planning and Infrastructure may take into account SEPP 44 when deciding to approve the project. SEPP 44 is considered further in **Section 7.3**.

Illawarra Regional Environmental Plan No. 1 (now a deemed SEPP)

The *Illawarra Regional Environmental Plan No.1*, a deemed SEPP, applies to land in the Kiama and Shoalhaven local government areas (LGAs). The aim of the SEPP is to maximise the opportunities for the people of the region and the State to meet their individual and community, economic and social needs. As the project is a transitional Part 3A project, this SEPP is not applicable. However the impacts on biodiversity and the visual landscape have been considered in **Section 7.3, Section 7.4 and Section 7.6**. Impacts on rural lands have been considered in **Sections 7.9 and 7.10**.

5.2.2 Local Environmental Plans and draft Local Environmental Plans

Local environmental plans (LEP) do not apply in respect of an approved Part 3A project. The Minister for Planning and Infrastructure may take into account the provisions of the LEPs when deciding whether to approve the project under Part 3A. The project lies within two LGAs, the Kiama LGA to the north and the Shoalhaven LGA to the south.

The relevant provisions of the following LEPs are considered in **Section 7.9**.

- *Kiama LEP 2011.*
- *Shoalhaven LEP 1985.*
- *Draft Shoalhaven LEP 2009.*

Under these LEPs and draft LEPs, roads are permitted with consent in all land use zones through which the project passes.

The Minister for Planning and Infrastructure may take into account the objectives of the LEPs when deciding to approve the project.

Environmental planning instruments are further discussed in **Section 7.9 - Land use and property**.

5.3 Other legislation

5.3.1 NSW legislation

A number of approvals are not required for a transitional project approved under Part 3A of the EP&A Act (EP&A Act s.75U). These include:

- A permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*. These types of permit would be required for a project (that is not subject to Part 3A of the EP&A Act) where dredging or reclamation and/or impacts to marine vegetation are proposed as part of a project. It would also be required where fish passage would be temporarily blocked.
Although these permits are not required for this project, the assessment of potential impacts on aquatic species and habitats are discussed further in **Section 7.3**.
- An approval under Part 4 or an excavation permit under section 139 of the *Heritage Act 1977*. An excavation permit would be required for a project (that is not subject to Part 3A of the EP&A Act) where there is the potential to impact on relics not listed on the State Heritage Register or protected by an Interim Heritage Order.
Although this type of permit is not required for this project, the potential impacts on relics by the project are discussed further in **Section 7.8**.
- An Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*. A permit would be required for a project (that is not subject to Part 3A of the EP&A Act) where there is the potential to impact a specified Aboriginal place or object.
Although this type of permit is not required for this project, the impacts on Aboriginal places and objects by the project are discussed further in **Section 7.7**.
- A water use approval under section 89, a water management work approval under section 90 or an activity approval (such as creek or stream diversion) under section 91 of the *Water Management Act 2000*. Water use approvals would be required for a project (that is not subject to Part 3A of the EP&A Act) where the use of water for a particular purpose at a particular location is proposed. Likewise, a water supply, a drainage supply and/or a flood work approval would be required for a specified work at a specified location, or where aquifer interference activities would be required as a result of a project.
Although this type of permit is not required for this project, the impacts on surface water and groundwater by the project are discussed further in **Section 7.4**.

Approvals under other NSW legislation that may apply to the project include:

- An environmental protection licence for road construction 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. This is discussed further in **Chapter 4**, Description of the project.

Other legislation that may apply to the project includes:

- *Land Acquisition (Just Terms Compensation) Act 1991* – applies to the acquisition of any land required for the project. Acquisitions are further discussed in **Section 7.9**.

5.3.2 Commonwealth legislation

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, the environment of Commonwealth land or that are being carried out by a Commonwealth agency must be referred to the Commonwealth Government. If the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities determines that a referred project is a "controlled action", the approval of that minister would be required for the project in addition to the NSW Minister for Planning and Infrastructure's approval.

An assessment of this project's potential impact on threatened species and migratory species (as discussed in **Section 7.3**) found that there is unlikely to be a significant impact on this matter of national environmental significance. The project would not significantly impact any other matter of national environmental significance or the environment of Commonwealth land. Accordingly, the project has not been referred to the Commonwealth Government Department of Sustainability, Environment, Water, Population and Communities.