

Chapter 3

Planning and assessment process

3 Planning and assessment process

This chapter summarises the statutory planning process for the major civil construction work between The Bays and Sydney CBD, and identifies other NSW and Commonwealth legislation and approvals which may apply.

3.1 Overview

Sydney Metro West was declared as State significant infrastructure and critical State significant infrastructure under sections 5.12(4) and 5.13 of the *Environmental Planning and Assessment Act 1979* respectively on 23 September 2020. The Sydney Metro West Concept was approved on 11 March 2021, under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979* Act as a staged State significant infrastructure application.

No significant impacts in relation to Matters of National Environmental Significance have been identified during the assessment. Accordingly, the proposal has not been referred to the Commonwealth Department of Agriculture, Water and the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

3.2 Summary of planning and assessment process

3.2.1 NSW environmental planning approvals

State significant and critical State significant infrastructure

Sydney Metro West was declared as State significant infrastructure and critical State significant infrastructure under sections 5.12(4) and 5.13 of the *Environmental Planning and Assessment Act 1979* respectively on 23 September 2020. The Sydney Metro West Concept and major civil construction work for Sydney Metro West between Westmead and The Bays (Stage 1 of the planning approval process for Sydney Metro West) were approved on 11 March 2021, under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979* as a staged State significant infrastructure application.

This proposal was envisaged in the Sydney Metro West Concept, being primarily for the construction of new passenger rail infrastructure between The Bays and Sydney CBD. Detailed proposals for other additional and separate stages of the Sydney Metro West Concept would be subject to separate future subsequent applications.

Planning approval process under Division 5.2 of the *Environmental Planning and Assessment Act 1979*

The assessment and approval process for the major civil construction work between The Bays and Sydney CBD is summarised in Figure 3-1.

The Secretary's Environmental Assessment Requirements for this proposal were issued on 7 July 2021 (as per section 5.16 of the *Environmental Planning and Assessment Act 1979*). The Secretary's Environmental Assessment Requirements are provided in Appendix A. This Environmental Impact Statement has been prepared in accordance with the Secretary's Environmental Assessment Requirements and the requirements of Schedule 2, Part 3 of the EP&A Regulation (as per section 5.16(2) of the *Environmental Planning and Assessment Act 1979*).

The Department of Planning, Industry and Environment will place the Environmental Impact Statement on public exhibition for a minimum of 28 days (as per Schedule 1, Division 2, clause 12 of the *Environmental Planning and Assessment Act 1979*). During the exhibition period, the community, stakeholders and government agencies will be able to review the Environmental Impact Statement and provide a written submission to the Department of Planning, Industry and Environment for consideration in its assessment of the proposal.

At the completion of the public exhibition period, the Department of Planning, Industry and Environment will collate and provide Sydney Metro with a copy of all submissions received during the exhibition period. After reviewing the submissions, Sydney Metro will prepare a submissions report that responds to the relevant issues raised. If changes are required to the proposal as a result of the issues raised or to minimise environmental impacts, a Preferred Infrastructure Report and/or an Amendment Report may also be required. If this is required, Sydney Metro would prepare the report to address the changes to the design to minimise impacts and submit this for review to the Department of Planning, Industry and Environment. This report may be made available to the public if the Planning Secretary considers significant changes are proposed to the nature of the State significant infrastructure project.

Approval from the Minister for Planning and Public Spaces is required before Sydney Metro can carry out the proposal (as per section 5.14 of the *Environmental Planning and Assessment Act 1979*).

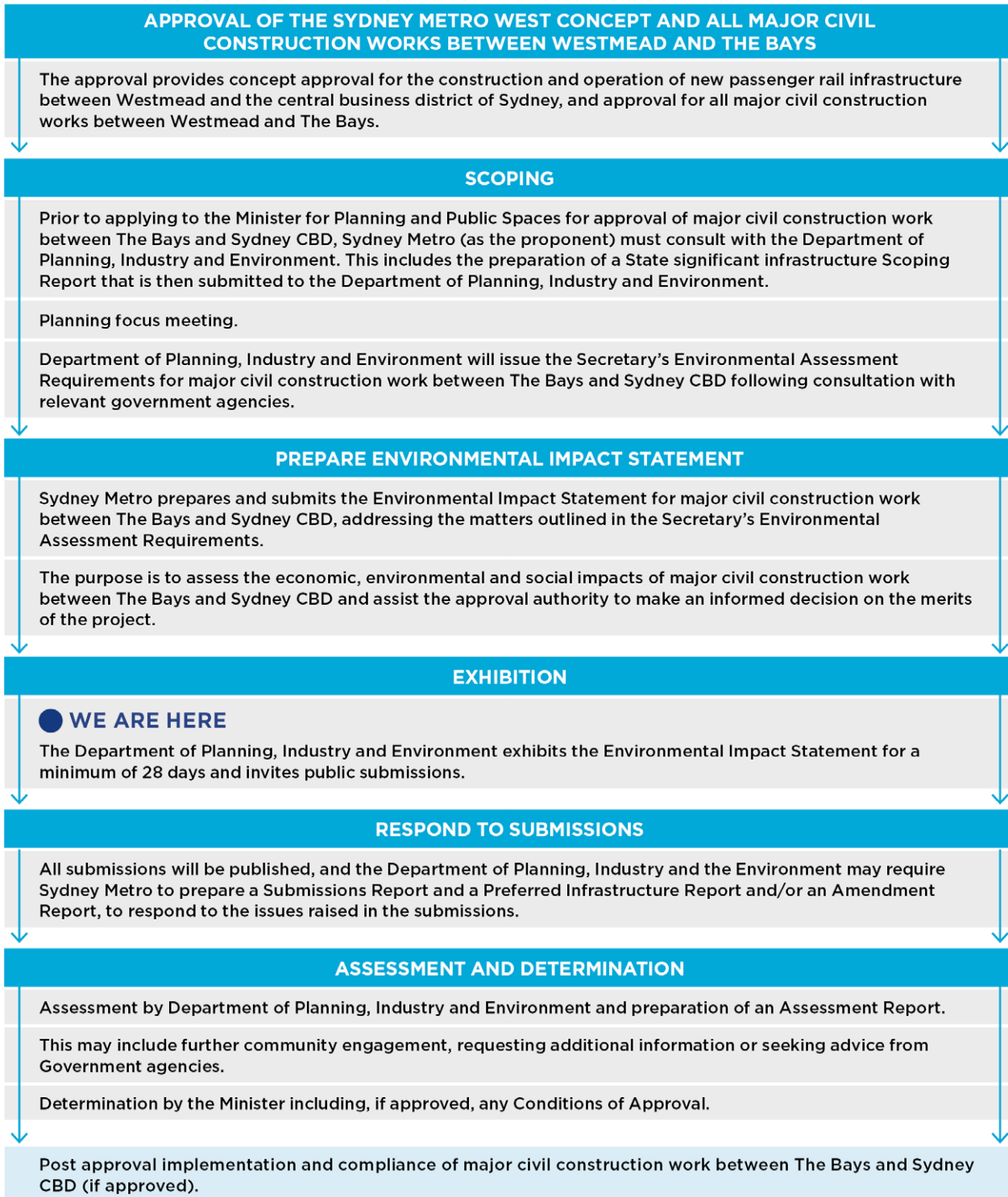


Figure 3-1 The assessment and approvals process for major civil construction work between The Bays and Sydney CBD

3.2.2 NSW environmental planning instruments

Section 5.22 of the *Environmental Planning and Assessment Act 1979* provides that environmental planning instruments (such as local environmental plans and State Environmental Planning Policies) do not, with some exceptions, apply to State significant infrastructure projects. Notwithstanding, the environmental planning instruments that have been considered for consistency are detailed below.

State Environmental Planning Policies

The State Environmental Planning Policies (SEPPs) that would continue to be considered throughout this Environmental Impact Assessment are shown in Table 3-1.

Table 3-1 NSW environmental planning instruments and how they apply to the proposal

Planning instrument	Applicability to the proposal
State Environmental Planning Policy (State and Regional Development) 2011	The State Environmental Planning Policy (State and Regional Development) 2011 identifies development that is State significant development, State significant infrastructure and critical State significant infrastructure. Schedule 5 of this SEPP includes Sydney Metro West as critical State significant infrastructure.
Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005	Some elements of the proposal are within the defined boundary of the Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005. This plan aims to protect, enhance and maintain the catchment, foreshores, waterways and islands of Sydney Harbour for existing and future generations. Matters relevant to the proposal include: <ul style="list-style-type: none"> • Congestion of traffic along waterways and foreshores, as assessed in Chapter 6 (Transport and traffic) • Compatibility of the proposal with maritime land uses, as assessed in Chapter 10 (Property and land use) • Maintenance and protection of the visual qualities of Sydney Harbour, as assessed in Chapter 11 (Landscape and visual amenity) • Development on land comprising acid sulfate soils, as assessed in Chapter 15 (Soils and surface water quality) • Minimising the disturbance of contaminated sediments, as assessed in Chapter 16 (Contamination) • Biodiversity, ecology and environmental protection, as assessed in Chapter 18 (Biodiversity).
State Environmental Planning Policy No. 55 - Remediation of Land	The State Environmental Planning Policy No. 55 provides a state-wide approach to the remediation of contaminated land for the purpose of minimising the risk of harm to the health of humans and the environment. In accordance with Clause 7(1), a consent authority must not consent to the carrying out of development on any land unless: <ul style="list-style-type: none"> • It has considered whether the land is contaminated • If the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or would be suitable, after remediation) for the purpose for which the development is proposed to be carried out • If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land would be remediated before the land is used for that purpose. These matters have been further assessed in Chapter 16 (Contamination).
Sydney Regional Environmental Plan No. 26 - City West	Sydney Regional Environmental Plan No.26 - City West is relevant to The Bays. The Plan repeals local environmental plans and other planning instruments that would otherwise apply to this land. The Plan sets land use, urban design and public domain principles. Consistency with these principles would be considered during the future environmental impact assessment(s) for subsequent stages of Sydney Metro West.
State Environmental Planning Policy (Coastal Management) 2018	The State Environmental Planning Policy (Coastal Management) 2018 gives effect to the objectives of the <i>Coastal Management Act 2016</i> from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the coastal zone. Some elements of the proposal are within the defined boundary of the policy (within land defined as Coastal Environment Area). As the proposal would not impact on mapped areas of wetland, coastal environments, aquatic habitats, or beaches, dunes and foreshores, this SEPP is not further considered in this Environmental Impact Statement.
State Environmental Planning Policy No. 19 - Bushland in Urban Areas.	State Environmental Planning Policy 19 - Bushland in Urban Areas applies to bushland within the urban areas identified in Schedule 1 of the SEPP. The aim of the Policy is to protect and preserve bushland for its natural heritage aesthetic, recreational, educational and scientific resource values. As the proposal would not impact on areas of bushland, this SEPP is not further considered in this Environmental Impact Statement.
State Environmental Planning Policy (Infrastructure) 2007	Sydney Metro has sought Interim Corridor Protection through provisions in the State Environmental Planning Policy (Infrastructure) 2007.

Local environmental plans

The proposal would pass through the local government areas of Inner West (previously Leichhardt) and City of Sydney. These local government areas are regulated by the following local environmental plans:

- Leichhardt Local Environmental Plan 2013
- Sydney Local Environmental Plan 2002.

The *Environmental Planning and Assessment Act 1979* provides that environmental planning instruments (including local environmental plans) do not apply to State significant infrastructure projects. Notwithstanding this, the relevant environmental planning instruments have been considered within this Environmental Impact Statement.

3.2.3 Other NSW legislation

Approvals or authorisations that are not required or cannot be refused

Section 5.23 of the *Environmental Planning and Assessment Act 1979* sets out specific approvals that are not required for approved State significant infrastructure. The approvals or authorisations that would not be required or cannot be refused for this proposal are consistent with those of the Sydney Metro West Concept and the major civil construction work between Westmead and The Bays (Stage 1 of the planning process). These include:

- Permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994*
- Approvals under Part 4 or excavation permits under section 139 of the *Heritage Act 1977*
- Aboriginal heritage impact permits under section 90 of the *National Parks and Wildlife Act 1974*
- Various approvals under the *Water Management Act 2000*, including water use approvals under section 89, water management work approvals under section 90 and activity approvals (other than aquifer interference approvals) under section 91.

In addition, Division 8 of Part 6 of the *Heritage Act 1977* does not apply to prevent or interfere with the carrying out of the State significant infrastructure.

Similarly, section 5.23 of the *Environmental Planning and Assessment Act 1979* specifies directions, orders or notices that cannot be made or given so as to prevent or interfere with the carrying out of approved critical State significant infrastructure. Those that could otherwise apply (if not for Sydney Metro West being State significance infrastructure would be):

- An interim protection order (within the meaning of *National Parks and Wildlife Act 1974*)
- An order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*
- A remediation direction under Division 3 (Remediation directions) of Part 6A of the *National Parks and Wildlife Act 1974*
- An order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016*
- An environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*
- Order under section 124 of the *Local Government Act 1993*.

Section 5.24 of the *Environmental Planning and Assessment Act 1979* identifies approvals or authorisations that cannot be refused if they are necessary for carrying out approved State significant infrastructure and must be substantially consistent with the staged State significant infrastructure application under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979*. Statutory approvals or authorisations of potential relevance to this proposal include:

- An Environment Protection Licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*
- A licence may be sought if required under Part 5 of the *Water Act 1912* if extraction of more than three megalitres of groundwater per year is required for this proposal.

NSW legislation and regulations that may still be applicable

Environmental planning related legislation and regulations that would continue to be considered throughout this Environmental Impact Assessment are shown in Table 3-2.

Table 3-2 NSW legislation and how it applies to the proposal

Act	Applicability to the proposal
<i>Aboriginal Land Rights Act 1983</i>	<p>This Act establishes the NSW Aboriginal Land Council and local Aboriginal land councils. The Act requires these bodies to:</p> <ul style="list-style-type: none"> • Take action to protect the culture and heritage of Aboriginal persons in the council's area, subject to any other law • Promote awareness in the community of the culture and heritage of Aboriginal persons in the council's area. <p>The preamble of the Act states that land was traditionally owned and occupied by Aboriginal people and accepts that as a result of past government decisions, the amount of land set aside for Aboriginal people was reduced without compensation. To redress the loss of land, Aboriginal land councils can claim Crown land which, if granted, is transferred as freehold title.</p> <p>The proposal is located within the Metropolitan Local Aboriginal Land Council land boundaries. Consultation with the Metropolitan Local Aboriginal Land Council is further described in Chapter 9 (Aboriginal heritage).</p>
<i>Biosecurity Act 2015</i>	<p>Under this Act, all plants are regulated with a general biosecurity duty to prevent, eliminate or minimise any biosecurity risk they may pose. Section 22 of the Act requires that any person who deals with any biosecurity matter (e.g. plants), who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised, so far as is reasonably practicable.</p> <p>Biodiversity is further assessed in Chapter 18 (Biodiversity).</p>
<i>Contaminated Land Management Act 1997</i>	<p>This Act outlines the circumstances in which notification to the Environment Protection Authority is required in relation to the contamination of land. This may become relevant during construction of the proposal and future stages of the Sydney Metro West project. Contamination is assessed and further discussed in Chapter 16 (Contamination).</p>
<i>Crown Land Management Act 2016</i>	<p>This Act sets out the requirements for the management of Crown land in NSW, including where councils and other organisations can deal with Crown land.</p> <p>Where the proposal requires the permanent use of Crown land, Sydney Metro would enter into agreements with the relevant NSW Government department regarding the permanent use of this land, including acquisition or lease arrangements.</p>
<i>Greater Sydney Commission Act 2015</i>	<p>This Act establishes the Greater Sydney Commission which has a principal objective of leading metropolitan planning for the Greater Sydney Region.</p> <p>The core functions of the Greater Sydney Commission are to provide advice to Government and assist local councils' plans or proposals relating to development in the Greater Sydney Region.</p> <p>The Greater Sydney Commission will not have a formal statutory role for Sydney Metro West but will be consulted with respect to its core functions.</p>
<i>Heritage Act 1977 (Section 146)</i>	<p>This Act contains protection for heritage items by inclusion on the State Heritage Register. A number of items on the State Heritage Register are potentially impacted by this proposal. In addition, if a relic is discovered or located, the Heritage Council must be notified 'of the location of the relic, unless he or she believes on reasonable grounds that the Heritage Council is aware of the location of the relic'.</p> <p>Heritage is further assessed in Chapter 8 (Non-Aboriginal heritage) and Chapter 9 (Aboriginal heritage).</p>
<i>Land Acquisition (Just Terms Compensation) Act 1991</i>	<p>This Act would apply to the acquisition of land required for Sydney Metro West and is further considered in Chapter 10 (Property and land use).</p>
<i>Marine Pollution Act 2012</i>	<p>This Act includes provisions to protect the sea and waters from pollution by oil and other noxious substances discharged from vessels. Any construction activities requiring the use of a vessel would comply with the requirements of this Act and the Marine Pollution Regulation 2014.</p>

Act	Applicability to the proposal
<i>Native Title (NSW) Act 1994</i>	This Act provides for native title in relation to land or waters. This proposal does not affect land subject to a native title claim or determination, or land to which an Indigenous Land Use Agreement applies.
<i>Protection of the Environment Operations Act 1997</i>	<p>An environment protection licence is required for scheduled activities or development work listed by the Act. Schedule 1 lists activities that require a licence and relevantly includes Part 1, clause 33 railway activities – railway infrastructure construction meaning:</p> <ol style="list-style-type: none"> the construction of railway infrastructure (including the widening or rerouting of existing railway infrastructure) and any related tunnels, earthworks and cuttings, any extraction of materials necessary for that construction, any on site processing (including crushing, grinding or separating) of any extracted materials or other materials used in that construction. <p>The proposal would be declared a scheduled activity as it would result in:</p> <ul style="list-style-type: none"> The extraction or processing (over the life of construction) of more than 150,000 tonnes (about 425,000 cubic metres) of material The construction of a new railway track that is in the metropolitan area that is three kilometres or more in length. <p>Section 120 of the Act prohibits the pollution of waters.</p> <p>Air pollution-related sections 124 to 126 (Chapter 5, Part 5.4, Division 1) of the Act require activities to be conducted in a proper and efficient manner, while section 128 (Chapter 5, Part 5.4, Division 1) of the Act requires that all necessary practicable means are used to prevent or minimise air pollution. Air quality impacts are further assessed in Chapter 19 (Air quality).</p> <p>Pollution of land and waste is covered by Part 5.6 of the Act. It defines offences relating to waste and sets penalties and establishes the ability to set various waste management requirements via the Protection of the Environment Operations (Waste) Regulation 2014.</p>
<i>Protection of the Environment Operations (Waste) Regulation 2014</i>	This regulation provides for exemptions from environment protection licencing for certain resource recovery activities and establishes tracking and reporting requirements for the transport of waste. Any waste generated must be tracked and recorded in accordance with the requirements of the Regulation. Waste impacts are further assessed in Chapter 20 (Spoil, waste management and resource use).
<i>Roads Act 1993</i>	<p>Section 138 of this Act states that a person must not</p> <ol style="list-style-type: none"> erect a structure or carry out a work in, on or over a public road, or dig up or disturb the surface of a public road, or remove or interfere with a structure, work or tree on a public road, or pump water into a public road from any land adjoining the road, or connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority. <p>Under section 38N of the <i>Transport Administration Act 1988</i>, section 138 of the <i>Roads Act 1993</i> does not apply to Sydney Metro activities in relation to classified roads for which the council is the roads authority. However, consent from Transport for NSW is required for those activities described in section 138(1) of the <i>Roads Act 1993</i>, in relation to a classified road.</p>
<i>Royal Botanic Gardens and Domain Trust Act 1980</i>	This Act establishes the Royal Botanic Gardens and Domain Trust and defines its powers, authorities, duties and functions, as well as vesting land and property into the Trust.
<i>Transport Administration Act 1988</i>	This Act provides for compulsory acquisitions for the purpose of Sydney Metro exercising its functions under the Act and is further considered in Chapter 10 (Property and land use).
<i>Waste Avoidance and Resource Recovery Act 2001</i>	This Act encourages the most efficient use of resources in order to reduce environmental harm. Waste impacts are further assessed in Chapter 20 (Spoil, waste management and resource use).

Act	Applicability to the proposal
Water Management Act 2000	Temporary dewatering and construction activities that interfere with aquifers are generally identified as aquifer interference activities in accordance with the <i>Water Management Act 2000</i> and the <i>NSW Aquifer Interference Policy</i> (Department of Primary Industries, 2012). However, the aquifer interference approval provisions of the <i>Water Management Act 2000</i> have not commenced, and licensing of these activities is carried out under Part 5 of the <i>Water Act 1912</i> (subject to any exemptions). In addition, a water access licence may be required for dewatering activity that would require the extraction of more than three megalitres of groundwater per year.

3.2.4 Commonwealth legislation

Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) establishes the Commonwealth's role in environmental assessment, biodiversity conservation and the management of protected areas and matters.

Matters of national environmental significance

Under the *Environment Protection and Biodiversity Conservation Act 1999*, a referral to the Commonwealth Department of Agriculture, Water and the Environment is required for proposed 'actions' that have the potential to significantly impact on any matter of national environmental significance or the environment of Commonwealth land (including leased land).

Current Matters of National Environmental Significance are:

- World heritage properties
- National heritage places
- Wetlands of international importance (often called 'Ramsar' wetlands after the international treaty under which such wetlands are listed)
- Nationally threatened species and ecological communities
- Listed migratory species
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- Nuclear actions (including uranium mining)
- A water resource, in relation to coal seam gas development and large coal mining development.

Issues with respect to Matters of National Environmental Significance are discussed in Chapter 8 (Non-Aboriginal heritage) and Chapter 18 (Biodiversity) of this Environmental Impact Statement. No significant impacts in relation to these matters have been identified during the assessment. Accordingly, this proposal has not been referred to the Commonwealth Department of Agriculture, Water and the Environment.

Actions taken on Commonwealth land

Under section 26 of the *Environment Protection and Biodiversity Conservation Act 1999*, approval is required for:

- An action taken by any person on Commonwealth land (including Commonwealth leased land) that has, will have, or is likely to have a significant impact on the environment (subsection 26(1))
- An action taken by any person outside of Commonwealth land (including Commonwealth leased land) that has, will have, or is likely to have a significant impact on the environment on Commonwealth land (subsection 26(2)).

The *Environment Protection and Biodiversity Conservation Act 1999* defines the 'environment' as:

- Ecosystems and their constituent parts, including people and communities
- Natural and physical resources
- The qualities and characteristics of locations, places and areas
- Heritage values of places
- The social, economic and cultural aspects of a thing mentioned in (a), (b), (c) or (d).

Section 26 of the *Environment Protection and Biodiversity Conservation Act 1999* provides for a broader coverage of environmental and heritage matters relating to activities on Commonwealth land including issues such as noise, pollution, visual amenity or economic impacts.

Based on the nature of the proposal and the type of Commonwealth Land identified within the study area, there are not anticipated to be any significant impacts on the environment on Commonwealth Land. Typically impacts (if they occur) would be limited to Commonwealth leased land. Potential land use and property impacts for the project have been identified and assessed in Chapter 10 (Property and land use) of this Environmental Impact Statement.

Native Title Act 1993

An objective of the Commonwealth *Native Title Act 1993* is to recognise and protect native title. Section 8 states that the *Native Title Act 1993* is not intended to affect the operation of any law of a State or a Territory that is capable of operating concurrently with the Act.

Searches of the registers maintained by the National Native Title Tribunal indicate there are no native title claims or any indigenous land use agreements that apply to land within the area covered by this proposal.

Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* aims to eliminate as far as possible discrimination against persons on the ground of disability in areas including access to premises and the provision of facilities, services and land. This Act would apply to future stages of the Sydney Metro West project, including operation.

Disability Standards for Accessible Public Transport 2002

Section 33.1 of the Disability Standards for Accessible Public Transport 2002 requires all new public transport premises, infrastructure and conveyances to be compliant with the requirements of the standard and referenced to the Australian Standards and Design Rules therein, unless unjustifiable hardship is incurred by implementation. Future stages of the Sydney Metro West project, including operation, would be compliant with the requirements of the Disability Standards for Accessible Public Transport 2002.

3.2.5 Planning approvals for integrated station development

Sydney Metro West stations, including the future Pyrmont Station and Hunter Street Station (Sydney CBD), will include provisions for integrated station development. Typical examples of the infrastructure requirements of integrated station and precinct development include structural elements and space provisioning for building foyers and entrances, lift wells, and building services.

All development that is not described in the approved Concept, the *Sydney Metro West Environmental Impact Statement – Westmead to The Bays and Sydney CBD* (Sydney Metro, 2020a) and this proposal, including further integrated station and/or precinct developments, would be subject to a separate planning approvals process where required, including community and stakeholder engagement in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.