

Chapter 6

Statutory context

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6 Statutory context

6.1 Overview

This environmental impact statement (EIS) has been prepared:

- to address the Secretary's environmental assessment requirements (SEARs) for the Great Western Highway Blackheath to Little Hartley Upgrade (the project)
- in accordance with Division 5, Part 8 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)
- having regard to the State Significant Infrastructure Guidelines, particularly Appendix B – preparing an environmental impact statement (Department of Planning, Industry and Environment, 2022) and the State Significant Project Technical Guidelines.

The assessment and approval process for the project under Division 5.2, Part 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) is shown in Figure 6-1.

The relevant statutory assessment requirements for the project and where they have been addressed in this EIS are identified in Appendix B (Statutory compliance).

6.2 Environmental Planning and Assessment Act 1979

6.2.1 Permissibility

Transport for NSW (Transport) is seeking approval to upgrade the Great Western Highway between Blackheath and Little Hartley (the project) under Division 5.2, Part 5 of the EP&A Act.

The project is defined under Section 2.108 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) as “road infrastructure facilities”. On this basis, Section 2.108 of the Transport and Infrastructure SEPP makes the project permissible without consent on any land because it is development for the purpose of “road infrastructure facilities” being carried by or on behalf of a public authority (Transport).

Part of the project at the Blackheath portal traverses land that was previously reserved under the *National Parks and Wildlife Act 1974* as part of the Blue Mountains National Park. The national parks reservation for this area was revoked by the NSW Parliament in August 2022. As a result, the restrictions on permissibility of development on land reserved under the *National Parks and Wildlife Act 1974* presented in Section 2.109 of the Transport and Infrastructure SEPP do not apply to the project.

6.2.2 Power to grant approval

Transport for NSW is seeking State significant infrastructure and critical State significant infrastructure declaration for the project by the Minister for Planning.

As part of this declaration, Schedule 4 and 5 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) will be amended to include the project. The Minister for Planning is the approval authority for development declared to the State significant infrastructure. Section 5.17 of the EP&A Act requires that Transport, as the proponent for the project, prepare an EIS for the project as per the process shown in Figure 6-1.

6.3 Other approvals

Other approvals required for the project would include:

- an Environment Protection Licence (EPL) for road construction and for road tunnel emissions under the *Protection of the Environment Operations Act 1997* (POEO Act)
- tenure arrangements under the *Crown Lands Management Act 2016*
- consent from Water NSW under the *Water NSW Act 2014*.

Further information is provided in Appendix B (Statutory compliance).

6.4 Commonwealth approval

The triggers for Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and consideration of the project against these triggers is provided in Appendix B (Statutory compliance).

An assessment of the project's potential impacts on threatened species, ecological communities and migratory species (as discussed in Chapter 12 (Biodiversity)), as well as the Blue Mountains World Heritage Area (as discussed in Chapter 17 (Non-Aboriginal heritage)) found that the project's potential impacts on Matters of National Environmental Significance (MNES) would not be significant. On this basis, approval under the EPBC Act would not be required. Notwithstanding, Transport has submitted a referral under the EPBC Act to the Department of Climate Change, Energy, the Environment and Water (DCCEEW). At the time of finalisation of this EIS there has been no decision on whether the project constitutes a controlled action or not.

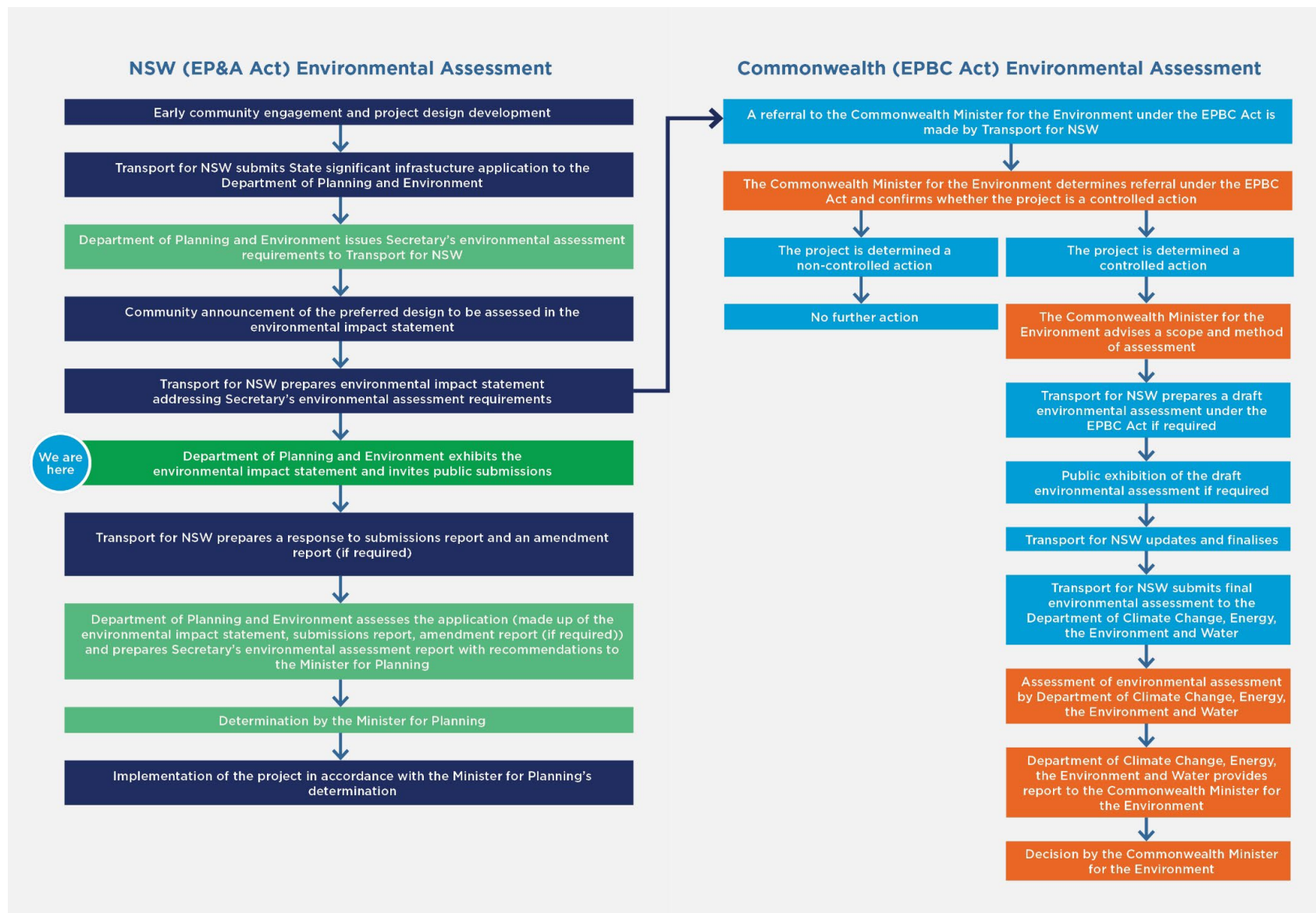


Figure 6-1 New South Wales and potential Commonwealth assessment and approvals processes for the project