

Part A

Planning and assessment process

2

2.0 Planning and assessment process

This chapter describes the statutory planning process for this proposal and identifies other NSW and Commonwealth legislation and approvals that may apply.

2.1 Overview

Sydney Metro West was declared as State significant infrastructure and critical State significant infrastructure under sections 5.12(4) and 5.13 respectively of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) on 23 September 2020. The Concept was approved on 11 March 2021, under Part 5, Division 5.2 of the EP&A Act, as a staged State significant infrastructure application. This proposal was envisaged in the Concept, being primarily for the tunnel fit-out, station construction, operation and maintenance of the metro line between Westmead and the Sydney CBD.

Separate approval for this proposal, as a stage of the Concept, is being sought from the Minister for Planning in accordance with Part 5, Division 5.2 of the EP&A Act.

Other NSW and Commonwealth legislation and approvals that may apply to this proposal include:

- an Environment Protection Licence under the *Protection of the Environment Operations Act 1997* (NSW) is required for the construction of this proposal; the terms of the licence must be substantially consistent with the planning approval
- approval under section 138 of the *Roads Act 1993* (NSW) is required for any works to classified roads; the terms of the approval must be substantially consistent with the planning approval
- notification and approvals would be sought under Section 99B of the *Transport Administration Act 1988* (NSW) (TA Act), if required
- no significant impacts in relation to matters of national environmental significance have been identified during preparation of this Environmental Impact Statement. Therefore, a referral to the Commonwealth Department of Agriculture, Water and the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) is not required.

2.2 NSW environmental planning approvals

The EP&A Act and the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation) (NSW) are the primary pieces of legislation regulating land use planning and development assessment in NSW. This legislation is supported by a range of environmental planning instruments including State environmental planning policies (SEPPs) and local environmental plans.

2.2.1 State significant and critical State significant infrastructure

Sections 5.12 and 5.13 of the EP&A Act provide for the declaration of State significant infrastructure 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 respectively, of the EP&A Act on 23 September 2020. Schedule 5 of the State Environmental Planning Policy (State and Regional Development) 2011 (NSW) has also been amended to include Sydney Metro West as critical State significant infrastructure.

2.2.2 Planning approval process under Part 5, Division 5.2 of the EP&A Act

The assessment and approval process for a State significant infrastructure project is established under Part 5, Division 5.2 of the EP&A Act. The assessment and approval process for Sydney Metro West as State significant infrastructure is detailed in Chapter 4 (Planning and assessment process) of the *Sydney Metro West Environmental Impact Statement – Westmead to The Bays and Sydney CBD* (Sydney Metro, 2020a).

The requirements of Division 5 of Part 8 of the EP&A Regulation for applications seeking approval of the Minister for Planning to carry out State significant infrastructure are provided in Appendix A (Assessment requirements).

As with the approval for the previous Sydney Metro West planning applications (described in Section 1.1 (Overview) of this Environmental Impact Statement), and as per section 5.14 of the EP&A Act, separate approval from the Minister for Planning is required for tunnel fit-out, construction of stations, ancillary facilities, and station precincts, and operation and maintenance of the Sydney Metro West line (this proposal). The assessment and approvals process for this proposal is summarised in Figure 2-1.

The Minister’s Conditions of Approval for the Concept included specific conditions of approval relevant to this proposal. These are discussed, where relevant, in Part B (Environmental assessment) of this Environmental Impact Statement.

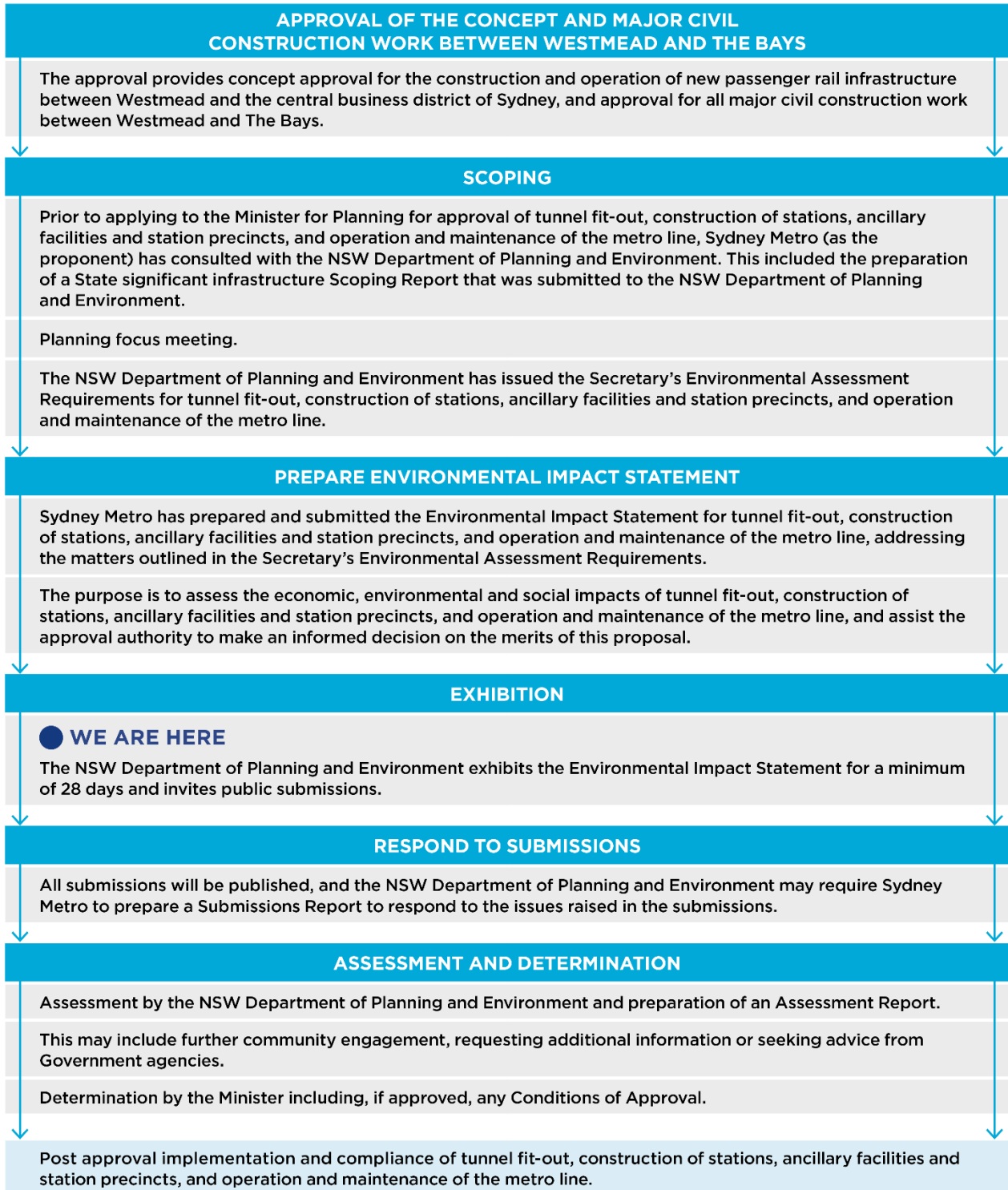


Figure 2-1 Assessment and approvals process for this proposal

2.3 NSW environmental planning instruments

Section 5.22 of the EP&A Act provides that environmental planning instruments (such as local environmental plans and SEPPs) 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.

2.3.1 State Environmental Planning Policies and Regional Environmental Plans

State Environmental Planning Policy consolidation

On 1 March 2022, the majority of SEPPs were consolidated into 14 SEPPs to align with the following nine themed focus areas of the Minister's Planning Principles:

- housing
- transport and infrastructure
- primary production
- biodiversity and conservation
- resilience and hazards
- design and place
- industry and employment
- resources and energy
- planning systems.

In addition, SEPPs that related to precinct planning were consolidated into four geographically aligned SEPPs, collectively referred to as 'precinct SEPPs'. Of relevance to this proposal, are the Central River City State Environmental Planning Policy (Central River City SEPP) and the Eastern Harbour City State Environmental Planning Policy (Eastern Harbour City SEPP).

No substantive policy changes were made to the SEPPs as part of the consolidation process. Rather, the provisions of the pre-existing SEPPs were transferred into new consolidated SEPPs and the intent and provisions remain largely unchanged. At the time of writing, the renumbered schedules, sections and clauses were not available and therefore the below summary uses the schedules, sections and clauses of the previous planning instruments.

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 (NSW) 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 and State significant infrastructure.

The approvals process for future over and/or adjacent station development is separately discussed in Section 2.6.

Sydney Regional Environment Plan (Sydney Harbour Catchment) 2005

Some elements of this proposal would be within the defined boundary of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. This plan aims to (among other things) protect, enhance and maintain the catchment, foreshores, waterways and islands of Sydney Harbour for existing and future generations.

Clause 20 of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 requires public authorities and others to consider the matters listed in clauses 21 to 27B of the SEPP before carrying out activities to which Part 5 of the EP&A Act applies. Those matters relevant to this proposal are listed in Appendix B (Legislative and policy context), along with the sections of this Environmental Impact Statement where the matters have been addressed. Clause 21 to 27B matters, which are not relevant to Sydney Metro West have not been included.

Referral of development proposals not requiring consent

Clause 31 of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 requires a public authority to notify the Foreshores and Waterways Planning and Development Advisory Committee, or in certain instances other public authority(s) responsible for the provision of services (including water, sewerage or stormwater systems), prior to carrying out certain development.

While the provisions of clause 31 of the SEPP do not apply to State significant infrastructure, Sydney Metro would comply with the intent of the policy and would consult with the Foreshores and Waterways Planning and Development Advisory Committee during the development of Sydney Metro West.

Development on land comprising acid sulfate soils

Clause 36 of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 relates to approval for works that involve the excavation, dredging, filling or contouring of, or the extraction of soil or other extractive material that has the potential to impact on acid sulfate soils.

While this provision does not apply to State significant infrastructure, appropriate management of acid sulfate soils would be undertaken for any excavation works proposed to be carried out in those areas with a high probability of encountering acid sulfate soils. Management measures would be consistent with the principles and practices outlined in the Acid Sulfate Soils Assessment Guidelines (NSW Acid Sulfate Soil Management Advisory Committee, 1998) (refer to Part B (Environmental Assessment) of this Environmental Impact Statement and Technical Paper 7 (Contamination)).

Sydney Harbour Foreshores Area Development Control Plan

The Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 (Sydney Harbour Foreshores and Waterways Area DCP) supports the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 by specifying detailed design guidelines for water-based and land-based developments, as well as developments located at the land/water interface.

Part 5 of the Sydney Harbour Foreshores and Waterways Area DCP specifies design guidelines for land-based developments. While the development control plan does not apply to State significant infrastructure, as the development control plan is associated with a deemed State environmental planning policy, the relevant design guidelines would be considered for applicable aboveground elements of this proposal.

State Environmental Planning Policy No. 55 – Remediation of Land

The State Environmental Planning Policy No. 55 – Remediation of Land 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:

- 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 the land would be remediated before the land is used for that purpose.

A contamination assessment has been carried out in accordance with the Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land (NSW Department of Urban Affairs and Planning and Environment Protection Authority, 1998) to inform the design and Environmental Impact Statement for this proposal (refer to Part B (Environmental Assessment) of this Environmental Impact Statement and Technical Paper 7 (Contamination)).

Sydney Regional Environmental Plan No. 26 – City West

Sydney Regional Environmental Plan No. 26 – City West is relevant to The Bays Station. 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 the relevant principles has been considered during preparation of the Environmental Impact Statement and are outlined in Appendix B (Legislative and policy context).

This proposal would be consistent with the *Bays West Place Strategy* (NSW Department of Planning, Industry and Environment, 2021a). An overview of how this proposal would support the strategy is included in Section 13.3 of Chapter 13 (The Bays Station) of this Environmental Impact Statement. Sydney Metro would continue to engage with the NSW Department of Planning and Environment regarding integration of the proposal with the master plan during its development (refer to Chapter 3 (Stakeholder and community engagement) of this Environmental Impact Statement for further detail on consultation to date).

State Environmental Planning Policy (State Significant Precincts) 2005

The State Environmental Planning Policy (State Significant Precincts) 2005 identifies precincts which are of State importance. This policy aims to (among other things) facilitate the orderly use, development or conservation of State significant precincts for the benefit of the State.

Sydney Olympic Park is identified in the State Environmental Planning Policy (State Significant Precincts) 2005 as one such site. This policy takes precedence over the local environmental plan for this area (i.e. Auburn Local Environmental Plan 2010).

The State Environmental Planning Policy (State Significant Precincts) 2005 therefore provides for master planning, zoning, zone objectives, height and floor space controls, and heritage conservation development standards, amongst others for land within this precinct.

Sydney Olympic Park Authority is pursuing an amendment to the *Sydney Olympic Park Master Plan 2030* to accommodate the Sydney Olympic Park metro station as part of the *Draft Sydney Olympic Park Master Plan 2030 (Interim Metro Review)* (Sydney Olympic Park Authority, 2021). To reflect these changes, amendments to the State Environmental Planning Policy (State Significant Precincts) 2005 will also be required. An overview of how this proposal would support the *Draft Sydney Olympic Park Master Plan 2030 (Interim Metro Review)* is provided in Section 9.3 of Chapter 9 (Sydney Olympic Park metro station) of this Environmental Impact Statement.

Sydney Regional Environmental Plan No. 24 – Homebush Bay Area

The Sydney Olympic Park metro station would be within the defined boundary of the Sydney Regional Environmental Plan No. 24 – Homebush Bay Area. The main aims of this plan are to:

- define objectives for the Homebush Bay Area that encourage co-ordinated and environmentally sensitive development of the Homebush Bay Area
- guide and co-ordinate the development of the Homebush Bay Area
- replace planning instruments previously applying to the Homebush Bay Area with a simplified planning framework
- provide flexible development controls by allowing a wide mix of uses in the Homebush Bay Area
- provide for the preparation of detailed planning controls to complement the flexible controls in this plan
- facilitate the development and management of Sydney Olympic Park by the Sydney Olympic Park Authority based on:
 - master plans (whether adopted by the Minister under this Plan or approved by the Minister under section 18 of the *Sydney Olympic Park Authority Act 2001*)
 - other guidelines and management strategies adopted by the Sydney Olympic Park Authority for the management of Sydney Olympic Park
- provide for public consultation in the planning and development of the Homebush Bay Area.

This proposal has taken into consideration the *Sydney Olympic Park Master Plan 2030* (Sydney Olympic Park Authority, 2018) and Sydney Metro has been consulting with Sydney Olympic Park Authority. An overview of how this proposal would support the master plan is provided in Section 9.3 of Chapter 9 (Sydney Olympic Park metro station) of this Environmental Impact Statement.

State Environmental Planning Policy (Coastal Management) 2018

State Environmental Planning Policy (Coastal Management) 2018 gives effect to the objectives of the *Coastal Management Act 2016* from a land use planning perspective, by specifying how development proposals are to be assessed if these fall within the coastal zone. Some elements of this proposal are within the defined boundary of the policy (within land defined as Coastal Environment Area). An assessment of this proposal against the management objectives, as specified in the *Coastal Management Act 2016*, for land defined as Coastal Environment Area is provided in Appendix B (Legislative and policy context).

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 policy. Local government areas of relevance to this proposal that the policy applies to include City of Parramatta, Strathfield, City of Canada Bay, Inner West and City of Sydney. The aim of the policy is to protect and preserve bushland for its natural heritage aesthetic, and recreational, educational and scientific resource values.

An assessment of this proposal against the aims of the policy is provided in Appendix B (Legislative and policy context).

2.3.2 Local environmental plans

This proposal passes through the local government areas of Cumberland, City of Parramatta, Strathfield, City of Canada Bay, Burwood, Inner West and City of Sydney. Development within these local government areas is regulated by the following local environmental plans:

- Holroyd Local Environmental Plan 2011
- Parramatta Local Environmental Plan 2011
- Auburn Local Environmental Plan 2010
- Cumberland Local Environmental Plan 2021
- Strathfield Local Environmental Plan 2012
- Burwood Local Environmental Plan 2012
- Canada Bay Local Environmental Plan 2013
- Leichhardt Local Environmental Plan 2013
- Sydney Local Environmental Plan 2012.

As indicated in Section 2.1, the EP&A Act provides that environmental planning instruments (including local environmental plans) do not apply to State significant infrastructure projects. Notwithstanding this, relevant environmental planning instruments have been considered during design development and within this Environmental Impact Statement, as appropriate (refer also to Appendix B (Legislative and policy context)).

2.4 Other NSW legislation

In accordance with sections 5.23 and 5.24 of the EP&A Act, some environmental and planning legislation does not apply to approved State significant infrastructure or must be applied consistently with an approval for State significant infrastructure (refer to Section 2.2.2).

2.4.1 Approvals or authorisations that are not required or cannot be refused

The approvals or authorisations that would not be required as relevant to this proposal are consistent with those for the approved Concept, and include:

- approvals under Part 4 or excavation permits under section 139 of the *Heritage Act 1977* (NSW)
- Aboriginal heritage impact permits under section 90 of the *National Parks and Wildlife Act 1974* (NSW)
- various approvals under the *Water Management Act 2000* (NSW), 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* (NSW) does not apply to or prevent or interfere with the carrying out of the State significant infrastructure.

Similarly, section 5.23 of the EP&A Act 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 would otherwise apply to this proposal if not for Sydney Metro West being critical State significant infrastructure would be:

- an order or direction under Part 11 (Regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* (NSW)
- an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997* (NSW)
- an order under section 124 of the *Local Government Act 1993* (NSW).

Section 5.24 of the EP&A Act 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 Part 5, Division 5.2 approval. 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* (NSW); and
- a consent under section 138 of the *Roads Act 1993* (NSW).

2.4.2 NSW legislation and regulations that may still be applicable

Environmental planning related legislation and regulations that may still be applicable to approved critical State significant infrastructure and, based on the scope of this proposal, may be relevant include the following:

- *Aboriginal Land Rights Act 1983* (NSW)
- *Biodiversity Conservation Act 2016* (NSW)
- *Biosecurity Act 2015* (NSW)
- *Contaminated Land Management Act 1997* (NSW)
- *Crown Land Management Act 2016* (NSW)
- *Greater Sydney Commission Act 2015* (NSW)
- *Heritage Act 1977* (Section 146) (NSW)
- *Land Acquisition (Just Terms Compensation) Act 1991* (NSW)
- *Marine Pollution Act 2012* (NSW)
- *Native Title (NSW) Act 1994* (NSW)
- *Parramatta Park (Old Government House) Act 1967* (NSW)
- *Protection of the Environment Operations Act 1997* (NSW)
- *Protection of the Environment Operations (Waste) Regulation 2014* (NSW)
- *Roads Act 1993* (NSW)
- *Royal Botanic Gardens and Domain Trust Act 1980* (NSW)
- *Transport Administration Act 1988* (NSW)
- *Waste Avoidance and Resource Recovery Act 2001* (NSW)
- *Water Management Act 2000* (NSW).

These are detailed further in Appendix B (Legislative and policy context).

2.5 Commonwealth legislation

2.5.1 Environment Protection and Biodiversity Conservation Act 1999

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

Matters of national environmental significance

Under the EPBC Act, 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).

No significant impacts in relation to these matters have been identified during preparation of this Environmental Impact Statement. Based on the nature of this proposal and the type of Commonwealth land identified on this proposal alignment, no significant impacts are anticipated on the environment of Commonwealth land. Accordingly, a referral to the Commonwealth Department of Agriculture, Water and the Environment has not been undertaken.

2.5.2 Native Title Act 1993

An objective of the *Native Title Act 1993* (Cth) 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.

2.5.3 Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* (Cth) 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. Sydney Metro West would be designed to be independently accessible and in compliance with the objectives and requirements of the Act.

2.5.4 Disability Standards for Accessible Public Transport 2002

Section 33.1 of the *Disability Standards for Accessible Public Transport 2002* (Cth) 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. Sydney Metro West would be designed to be compliant with the requirements of the *Disability Standards for Accessible Public Transport 2002*.

2.6 Planning approvals for over station development and adjacent station development

Provision for over and/or adjacent station developments would be made at relevant stations. The metro stations would be designed to take into account, and make physical provision for, any design or other requirements associated with future over and/or adjacent station development (where relevant).

Typical examples of the infrastructure requirements for over and/or adjacent station development would include structural elements, space provisioning for building foyers, entrances, lift wells, utilities, building services, and subdivision of the station sites. The station design would be integrated so that future developments can be built efficiently and effectively.

Further details on the provisions for future over and/or adjacent station development included in this proposal is provided in Chapter 5 (Proposal description – operation) and Chapter 6 (Proposal description – construction) of this Environmental Impact Statement.

Future over and/or adjacent station development will be subject to a separate planning approvals process, including community and stakeholder engagement, in accordance with the provisions of the EP&A Act.