

2 Assessment process

This chapter describes the environmental planning assessment and approval process for the project as well as other relevant environmental planning and statutory approval requirements.

2.1 Approval framework

Clause 94 of the *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) provides that development for the purpose of a road or road infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land. The project is characterised as being for the purpose of a road and road infrastructure facilities, and is to be carried out by Roads and Maritime Services (Roads and Maritime). As such, the project is permissible without development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). However, section 115U(2) of the EP&A Act provides that a State Environmental Planning Policy may declare any development or class of development to be State significant infrastructure, which requires approval from the Minister for Planning under section 115W of the EP&A Act regardless of the operation of Part 5.

Clause 14(1) of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) declares development to be State significant infrastructure if the development is permissible without consent under Part 4 of the EP&A Act and is a type of development specified in Schedule 3 of State and Regional Development SEPP. Schedule 3 of the State and Regional Development SEPP includes any infrastructure or other development for which the proponent is also the determining authority and would, in the opinion of the proponent require an environmental impact statement (EIS) to be obtained under Part 5 of the EP&A Act.

Roads and Maritime, as the proponent and possible determining authority for the project within the meaning of Part 5 of the EP&A Act, has formed the view that the impact of the project is likely to significantly affect the environment and, therefore, would require the preparation of an EIS. On this basis, the project is declared to be State significant infrastructure under section 115U(2) of the EP&A Act. The effect of the EP&A Act and the relevant SEPPs is that Roads and Maritime would have been the determining authority for the project under Part 5 of the EP&A Act, were it not for the application of section 115U(2) of the EP&A Act. In this instance, section 115U(2) of the EP&A Act is triggered by reason of the operation of clause 14 and Schedule 3 of State and Regional Development SEPP.

Accordingly, the project is subject to assessment under Division 2, Part 5.1 of the EP&A Act and requires the approval of the Minister for Planning under section 115W of Part 5.1, rather than via determination by Roads and Maritime under Part 5.

Roads and Maritime is seeking the project to be declared by the Minister for Planning as State significant infrastructure and critical State significant infrastructure under sections 115U(4) and 115V of the EP&A Act.

The assessment and approvals process under Part 5.1 of the EP&A Act is illustrated in **Figure 2-1**. Further information on the assessment process is available on the NSW Department of Planning and Environment (DP&E) website (www.planning.nsw.gov.au).

The Secretary's Environmental Assessment Requirements (SEARs) for the project were issued on 5 March 2015 and re-issued on 26 August 2015. The revised SEARs were updated to reflect the decision that the project is a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and to include the requirements of the Commonwealth Department of the Environment, under the EPBC Act. A copy of the SEARs is provided in **Appendix A**.

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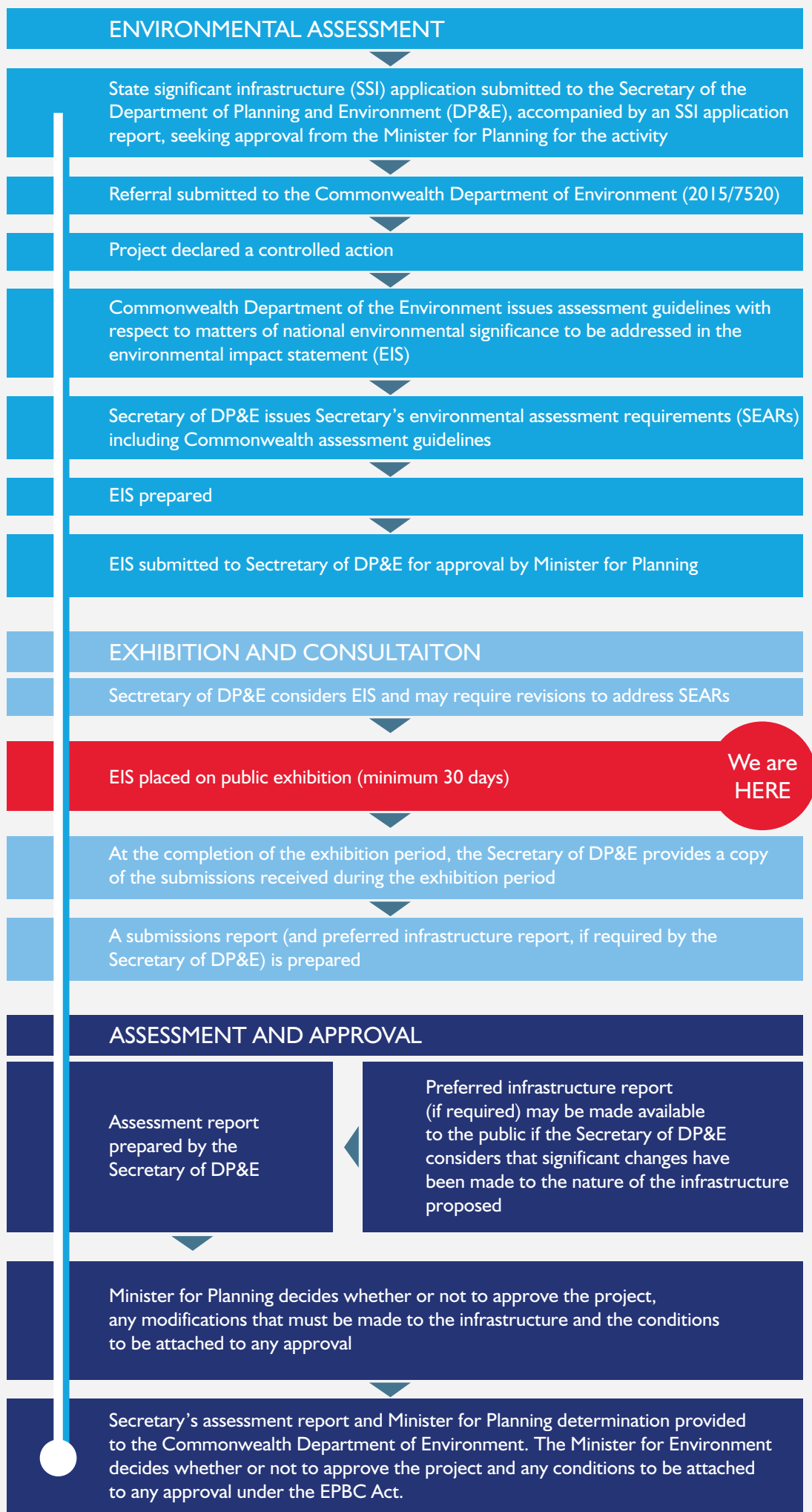


Figure 2-1 Assessment and approval process

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2.2 Environmental planning instruments

2.2.1 State Environmental Planning Policies

Section 115ZF of the EP&A Act excludes the application of environmental planning instruments to State significant infrastructure projects (except as they may apply to the declaration of infrastructure as State significant infrastructure or critical State significant infrastructure). However, consistent with good environmental assessment practice, the provisions of the following relevant State Environmental Planning Policies (SEPPs) have been considered in the relevant parts of this EIS.

State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the State. Clause 94 of the Infrastructure SEPP 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. The project is therefore permissible without development consent (refer to **Section 2.1**).

State Environmental Planning Policy No.19 – Bushland in Urban Areas

State Environmental Planning Policy No.19 – Bushland in Urban Areas (SEPP 19) aims to protect and preserve bushland within urban areas including within the local government areas of Canterbury, Hurstville, Rockdale, Sydney, Marrickville and Botany Bay. Clause 7 of SEPP 19 states that works undertaken by public authorities (such as Roads and Maritime) shall not disturb bushland zoned or reserved for public open space without first considering the aims of SEPP 19. The project would impact some areas of native vegetation located within land zoned for public open space. An assessment of the impacts is provided in **Chapter 21** (Biodiversity).

State Environmental Planning Policy No.33 – Hazardous and Offensive Development

Although *State Environmental Planning Policy No.33 – Hazardous and Offensive Development* (SEPP 33) is not strictly applicable to infrastructure projects, the provisions of the policy have been considered in **Chapter 26** (Hazard and risk) in relation to the storage of hazardous substances and dangerous goods during the construction and operation of the project.

State Environmental Planning Policy No.55 – Remediation of Land

State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55). SEPP 55 aims to provide a State-wide planning approach to the remediation of land. SEPP 55 is considered further in **Chapter 17** (Contamination).

Sydney Regional Environmental Plan No.33 – Cooks Cove

Sydney Regional Environmental Plan No.33 – Cooks Cove (SREP 33), a deemed State Environmental Planning Policy, sets the current land use zoning and development controls for the land subject to the SREP and aims to facilitate the rezoning of the land for employment, conservation, open space and recreational purposes. SREP 33 would apply to the Arncliffe construction compound (C7) and motorway operations complex (MOC3) which would be located within the existing Kogarah Golf Course, south of Marsh Street and east of the M5 East Motorway at Arncliffe. The site would be used for civil construction activities and for tunnelling support. During operation, the site would be occupied by the Arncliffe motorway operations complex (MOC3), including a ventilation facility and water treatment plant. SREP 33 is considered further in **Chapter 13** (Land use and property).

2.2.2 Local Environmental Plans and draft Local Environmental Plans

Local environmental plans (LEPs) do not apply to State significant infrastructure projects. However, for completeness, the EIS has considered the provisions of the relevant LEPs. The project lies within six local government areas: Hurstville, Canterbury, Rockdale, Botany Bay, Marrickville and Sydney.

Provisions of the following LEPs are considered in **Chapter 13** (Land use and property):

- Hurstville Local Environmental Plan 2012
- Canterbury Local Environmental Plan 2012
- Rockdale Local Environmental Plan 2011
- Botany Bay Local Environmental Plan 2013
- Marrickville Local Environmental Plan 2011
- Sydney Local Environmental Plan 2012.

2.3 Other NSW legislation

Approval of a project under Part 5.1 of the EP&A Act means that some other approvals are not required. However, the potential impacts anticipated by those approvals have been assessed as part of this EIS. Approvals not required for the project are:

- Approvals under Part 4 and excavation permits under section 139 of the *Heritage Act 1977* (see **Chapter 20** (Non-Aboriginal heritage))
- Permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994* (see **Chapter 21** (Biodiversity))
- Aboriginal heritage impact permits under section 90 of the *National Parks and Wildlife Act 1974* (see **Chapter 23** (Aboriginal heritage))
- Authorisations under the *Native Vegetation Act 2003* to clear native vegetation or State protected land (see **Chapter 21** (Biodiversity))
- Specified approvals under the *Water Management Act 2000*, namely water use approvals under section 89, water management work approvals under section 90, and activity approvals (other than aquifer interference approvals) under section 91 (see **Chapter 16** (Soil and water quality)).

Approvals under other NSW legislation that may still be required include:

- An environment protection licence for road construction under chapter 3 of the *Protection of the Environment Operations Act 1997*. An environment protection licence would be required for the scheduled activity of road construction, as the project involves the construction of a tollway greater than one kilometre in length in a metropolitan area. In accordance with section 115ZH of the EP&A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with the Part 5.1 approval. This is further discussed in **Chapter 5** (Project description)
- An aquifer interference approval under the *Water Management Act 2000* if construction requires intersection of a groundwater source. The *NSW Aquifer Interference Policy* (Department of Primary Industries, 2012) documents the NSW Government's intention to implement the requirement for the approval of 'aquifer interference activities' under the *Water Management Act 2000*. Although the project would affect a groundwater aquifer, the requirement for an aquifer interference approval has not yet commenced. As such, this approval is not currently required. Notwithstanding this, an assessment of potential groundwater impacts is provided in **Chapter 19** (Groundwater).

Other NSW legislation that would apply to the project includes:

- The *Land Acquisition (Just Terms Compensation) Act 1991*, which applies to the acquisition of land required for the project. Land acquisition requirements are further discussed in **Chapter 13** (Land use and property)
- The *Contaminated Land Management Act 1997*, which outlines the circumstances in which notification of the NSW Environment Protection Authority (EPA) is required in relation to contamination land. This is discussed further in **Chapter 17** (Contamination)
- The *Crown Lands Act 1989*, which applies to the acquisition of land reserved under that Act. The project would not impact Crown land, refer to **Chapter 13** (Land use and property).

2.4 Commonwealth legislation

2.4.1 Environment Protection and Biodiversity Conservation Act 1999

Under the EPBC Act, proposed 'actions' that have the potential to significantly impact on matters of national environmental significance, the environment of Commonwealth land, or are being carried out by a Commonwealth agency must be referred to the Commonwealth Government. If the Commonwealth Minister for the Environment determines that a referred project is a 'controlled action', the approval of that Minister would be required for the project, in addition to the approval of the NSW Minister for Planning.

Matters of national environmental significance include:

- World heritage properties
- National heritage properties
- Wetlands of international importance
- Listed threatened species and ecological communities
- Migratory species protected under international agreements
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- Nuclear actions
- A water resource, in relation to coal seam gas development and large coal mining development.

The project has the potential to impact on:

- A population of Green and Golden Bell Frogs (*Litoria aurea*) known to inhabit the Kogarah Golf Course at Arncliffe
- An area of the Cooks River Castlereagh Ironbark Forest vegetation community in Beverly Hills.

Because the Green and Golden Bell Frog is a listed threatened species under the EPBC Act and the Cooks River Ironbark Forest is a critically endangered ecological community, the project has been referred to the Commonwealth Minister for the Environment (2015/7520).

On 11 August 2015, the Commonwealth Minister for the Environment determined that the project has the potential to significantly impact on a matter of national environmental significance and is therefore a 'controlled action'. This means that approval of the project will be required from the Commonwealth Minister for the Environment in addition to environmental and planning approvals required under State legislation.

Under the *Bilateral Agreement relating to environmental assessment* (February 2015) between the Commonwealth Government and the NSW Government, this EIS has been adopted for the purpose of meeting the assessment requirements of both the Commonwealth EPBC Act and the NSW EP&A Act. The Commonwealth Department of the Environment has issued assessment guidelines (*Guidelines for preparing Assessment Documentation relevant to the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) – WestConnex New M5 Project (EPBC 2015/7520)*) with respect to matters of national environmental significance (refer to **Appendix A** (Secretary's Environmental Assessment Requirements)), which have been addressed in this EIS.

Assessment of potential impacts on threatened species and communities protected by the EPBC Act is provided in **Chapter 21** (Biodiversity) and **Appendix S** (Biodiversity Assessment Report), including assessment of the:

- Cooks River / Castlereagh Ironbark Forest of the Sydney Basin Bioregion, located at Beverly Hills, north of the existing M5 East Motorway. The assessment concluded that the project would result in the permanent removal of 1.4 hectares of Cooks River/ Castlereagh Ironbark Forest
- Turpentine Ironbark Forest in the Sydney Basin Bioregion, located at Kingsgrove, north of the existing M5 East Motorway. The assessment concluded that the vegetation at this location does not meet the EPBC Act threshold criteria and that the vegetation would not be impacted by the project
- Green and Golden Bell Frog population, located at Arncliffe, south-east of Marsh Street and north-east of the M5 East Motorway. The assessment concluded that the project would temporarily modify around 7.82 hectares of foraging, sheltering and dispersal habitat. A smaller proportion would be lost permanently for the provision of operational facilities.

Mitigation measures to reduce the impacts of the project on matters of national environmental significance are presented in **Chapter 21** (Biodiversity) and **Appendix J** (Technical working paper: Biodiversity).

The assessment conducted by the NSW DP&E (and any approval granted by the NSW Minister for Planning) would be forwarded to the Commonwealth Minister for the Environment for consideration. The Commonwealth Minister of Environment will then proceed to make a separate decision on the project under the EPBC Act.

2.4.2 Airports Act 1996

Under section 183 of the *Airports Act 1996*, a controlled activity must not be undertaken in relation to "prescribed airspace" without the approval of the Secretary of the Commonwealth Department of Infrastructure and Regional Development. Controlled activities include:

- The construction of buildings and structures that intrude into prescribed airspace
- Artificial light sources that exceed specified intensity levels
- Activities that result in air turbulence that exceed specified levels
- Activities that involve the emission of smoke, dust, other particulate matter, steam or other gas that exceed specified levels.

"Prescribed airspace" is the airspace above any part of either an Obstruction Limitation Surface or a 'procedures for air navigation systems – aircraft operations' (PANS-OPS) surface for Sydney Airport. The obstacle limitation surface is an invisible level that defines the limits to which objects may project into the airspace around an aerodrome so that aircraft operations may be conducted safely. PAN-OPS protection surfaces are imaginary surfaces in space that establish the airspace that is to remain free of any potential disturbance (including physical objects and other disturbances such as emissions) so that aircraft operations may be conducted safely. Where structures may (under certain circumstances) be permitted to penetrate the obstacle limitation surface, they will not ordinarily be permitted to penetrate any PANS-OPS surface.

Under section 9 of the *Civil Aviation Act 1988*, the Civil Aviation Safety Authority is responsible for the safety regulation of civil air operations in Australian territory. Consequently, the Civil Aviation Safety Authority stipulates requirements for the construction and operation of new infrastructure that has the potential to influence aviation safety. These requirements prohibit discharge of emissions at a velocity of 4.3 metres per second at the PANS-OPS protection surfaces.

The project would include the construction and operation of ventilation facilities at Kingsgrove, St Peters and Arncliffe. Emissions from the Arncliffe and St Peters ventilation facilities have the potential to penetrate the obstacle limitation surface for Sydney Airport.

As a result of the Arncliffe and St Peters ventilation facilities, the project has been deemed a controlled activity and an assessment under the *Airport Act 1996* is required to consider impacts of the project on airport operations. Further, approval of the project by the Secretary of the Commonwealth Department of Infrastructure and Regional Development is required.

The project has been designed to satisfy requirements set by the Commonwealth Department of Infrastructure and Regional Development (refer to **Section 4.6** and **Section 5.8.2**). The results of a ventilation plume rise assessment have been submitted to the Commonwealth Department of Infrastructure and Regional Development for an assessment of the proposed plume rise at Kingsgrove, Arncliffe and St Peters ventilation facilities. The Commonwealth Department of Infrastructure and Regional Development will make a determination as to whether the requirements of the Civil Aviation Safety Authority have been satisfactorily met.

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