

Chapter 2

# Assessment process

## 2 Assessment process

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

### 2.1 Assessment and approval framework

#### 2.1.1 Environmental Planning and Assessment Act 1979

Transport for NSW (formerly Roads and Maritime Services) is seeking approval for the Western Harbour Tunnel and Warringah Freeway Upgrade project as State significant infrastructure under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979*.

Clause 94 of the State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP) applies to development for the purpose of a road or road infrastructure facilities and provides that these types of works are development which is permissible without consent. The project is appropriately classified as being for the purpose of a 'road' and a 'road infrastructure facility' under the Infrastructure SEPP.

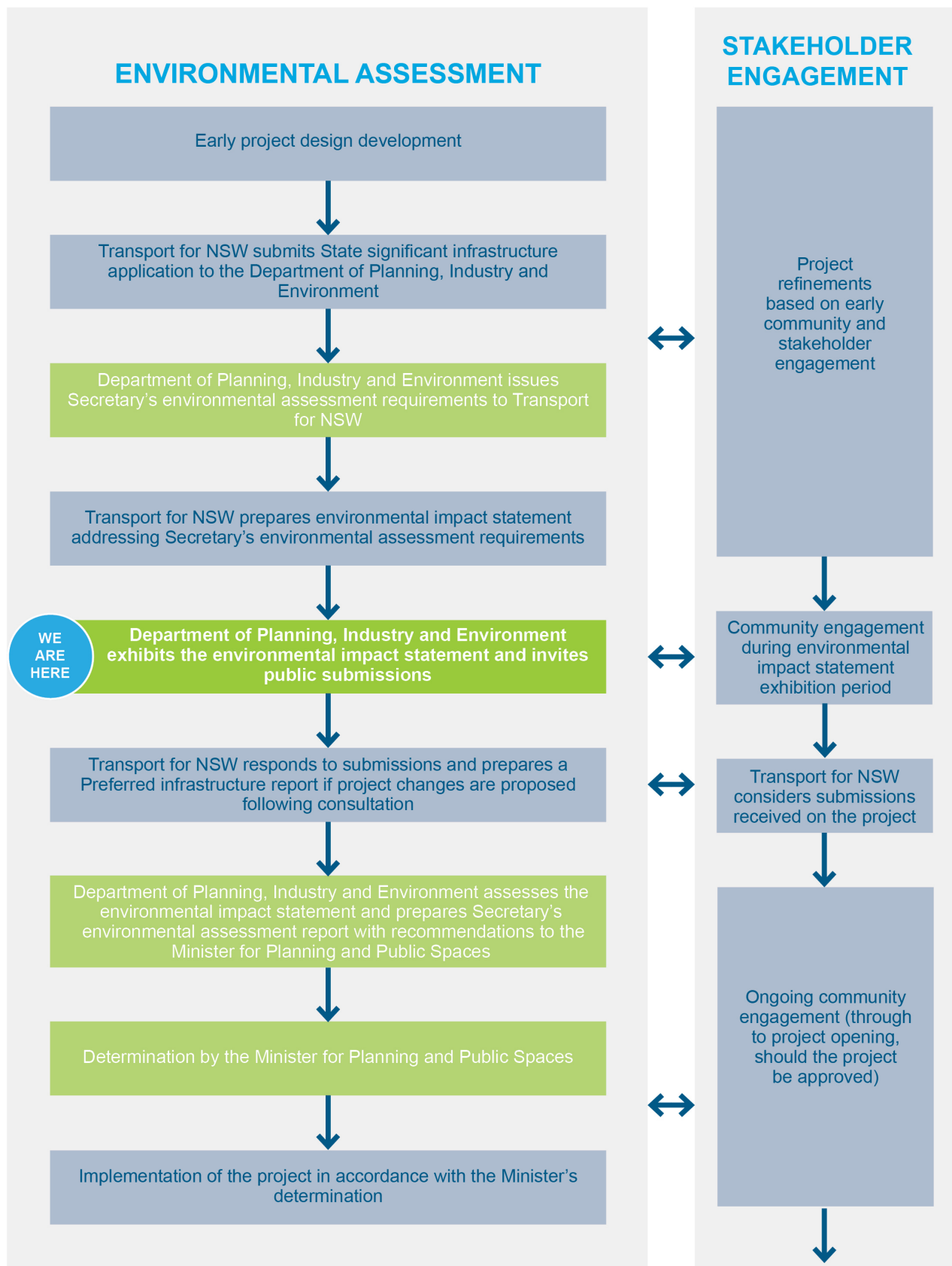
Clause 14 of the State Environmental Planning Policy (State and Regional Development) 2011 (the State and Regional Development SEPP) declares development as State significant infrastructure if it is permissible without consent and specified in Schedule 3.

Transport for NSW has requested that the Minister for Planning and Public Spaces declare the project as critical State significant infrastructure. Section 5.13 of the *Environmental Planning and Assessment Act 1979* provides for the declaration of critical State significant infrastructure by means of an environmental planning instrument. Clause 16 of the State and Regional Development SEPP declares development listed in Schedule 5 to be critical State significant infrastructure. Transport for NSW's request is that the Western Harbour Tunnel and Warringah Freeway Upgrade project be listed in Schedule 5.

The Department of Planning, Industry and Environment (formerly the Department of Planning and Environment) issued the Secretary's environmental assessment requirements for the project on 15 December 2017. A copy of the Secretary's environmental assessment requirements and where they have been addressed in this environmental impact statement is provided in Appendix A (Secretary's environmental assessment requirements checklist).

The assessment and approval process under Division 5.2 of the *Environmental Planning and Assessment Act 1979* is shown in Figure 2-1.

Further information on the assessment process is available on the Department of Planning, Industry and Environment website ([www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)).



**Figure 2-1 The assessment and approval process for the project**

## 2.2 Other legislation

### 2.2.1 NSW legislation

#### **Key approvals**

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

- An environment protection licence for road construction and road tunnel emissions under Chapter 3 of the *Protection of the Environment Operations Act 1997*. In accordance with section 5.24 of the *Environmental Planning and Assessment Act 1979*, such a licence cannot be refused for an approved project and is to be substantially consistent with any approval under Division 5.2.

#### **Other relevant legislation**

Other NSW legislation that would apply to the project includes:

- The *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), which applies to the acquisition of any land by an Authority of the State which is authorised to acquire the land by compulsory process. Acquisition is discussed in Chapter 5 (Project description) and Chapter 20 (Land use and property)
- The *Contaminated Land Management Act 1997* (NSW) outlines the circumstances in which the notification of the NSW Environmental Protection Authority is required in relation to contamination of land. This is discussed in Chapter 16 (Geology, soils and groundwater)
- The *Heritage Act 1977* (section 146) requires that the Heritage Council be notified if a relic is uncovered during construction and if it is reasonable to believe that the Heritage Council is unaware of the location of the relic. This provision has been incorporated into mitigation measures for the project, summarised in Chapter 28 (Synthesis of the environmental impact statement). Non-Aboriginal heritage is further discussed in Chapter 14 (Non-Aboriginal heritage)
- The *Crown Land Management Act 2016* provides for the ownership, use and management of Crown land in NSW. Ministerial approval is required to grant a 'lease, licence, permit, easement or right of way over a Crown Reserve'. Crown land is further discussed in Chapter 20 (Land use and property)
- The *Local Government Act 1993* includes provisions for leases and permits in respect to works on community land that has not been acquired by the project
- The *Native Title (New South Wales) Act 1994* provides for the recognition of native title in NSW in accordance with the Commonwealth *Native Title Act 1993* (see Section 2.2.2). Native title is further discussed in Chapter 15 (Aboriginal cultural heritage) and Chapter 20 (Land use and property)
- *Fisheries Management Act 1994* (section 199) aims to manage dredging and reclamation works to conserve marine biodiversity and fish habitats. Under section 199, a public authority is required to give the Minister for Planning, Industry and Environment written notice of proposed dredging or reclamation work prior to carrying out or authorising the carrying out of such work, and to consider any matters raised by the Minister in response to the notification. Dredging work in Sydney Harbour would be required during installation of the immersed tube tunnels for the project

- The *Marine Pollution Act 2012* includes provisions to protect the sea and waters from pollution by oil and other noxious or harmful substances discharged from vessels. The use of marine vessels in the construction of the project would comply with the requirements of this Act and the Marine Pollution Regulation 2014 to prevent marine pollution. Works requiring access by boat or barge are further discussed in Chapter 6 (Construction work) and Chapter 17 (Hydrodynamics and water quality)
- The provisions in the *Marine Safety Act 1998*, Marine Safety Regulation 2016, *Ports and Maritime Administration Act 1995* and Ports and Maritime Administration Regulation 2012 aim to ensure the safe operation of vessels in ports and other waterways in NSW. A number of authorisations, approvals or permits may be required with respect to the placement of any structures in the water in Sydney Harbour and/or with respect to obstruction to navigation. Permission of the Harbour Master would be required prior to the disturbance of the bed of the harbour under Part 6D of the Ports and Maritime Administration Regulation 2012. Construction activities within Sydney Harbour and potential impacts to navigation are further discussed in Chapter 6 (Construction work) and Chapter 8 (Construction traffic and transport) respectively
- The *Waste Avoidance and Resource Recovery Act 2001* encourages the most efficient use of resources in order to reduce environmental harm in accordance with the principles of ecological sustainable development. Resource use and waste management are further discussed in Chapter 24 (Resource use and waste management).

### **Approvals not required for State significant infrastructure**

A number of approvals are not required for a project approved under section 5.23 of Division 5.2 of the *Environmental Planning and Assessment Act 1979*. Those approvals not required for the project are:

- Permits under sections 201, 205 and 219 of the *Fisheries Management Act 1994*
- Approvals under Part 4 and excavation permits under section 139 of the *Heritage Act 1977*
- Aboriginal heritage 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.

### **Special dispensations for critical State significant infrastructure**

If the project is declared as critical State significant infrastructure, section 5.23(3) of the *Environmental Planning and Assessment Act 1979* precludes the following directions, orders or notices being made to prevent or interfere with the carrying out of the project once approved:

- An interim protection order (within the meaning of the *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*

- An order from a council to demolish or move a building, to repair or make structural alterations to a building, or to do or refrain from doing things under section 124 of the *Local Government Act 1993*.

## 2.2.2 Commonwealth legislation

### ***Environment Protection and Biodiversity Conservation Act 1999***

Under the *Environment Protection and Biodiversity Conservation Act 1999* 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 Australian Government. If the Australian 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 NSW Minister for Planning and Public Spaces' approval.

Based on the results of the environmental investigations carried out for this environmental impact statement, it is considered that matters of national environmental significance and the environment of Commonwealth land are not likely to be significantly impacted by the project. Accordingly, Transport for NSW has determined that no referral is required at this stage.

### ***Environment Protection (Sea Dumping) Act 1981***

The *Environment Protection (Sea Dumping) Act 1981* aims to regulate permitted sea (offshore) disposal activities to ensure environmental impacts are minimised and prohibit the disposal of harmful waste at sea. Offshore disposal is regulated by permits issued by the Commonwealth Department of the Environment and Energy and informed by detailed environmental assessments.

Dredged material associated with the construction of the crossing of Sydney Harbour would be eligible for offshore disposal under the Act. This would comprise dredged sediments that are considered suitable for offshore disposal which have been removed during the construction of cofferdams and immersed tube tunnels within Sydney Harbour.

Transport for NSW has submitted an application to the Department of the Environment and Energy for an offshore disposal permit relating to sediments dredged from Sydney Harbour. The application proposes offshore disposal at a designated disposal site, which is located about 10 to 15 kilometres offshore of Sydney Heads. A detailed assessment has been completed and submitted to the Department of the Environment and Energy, which documents sediments suitable for offshore disposal and details impacts associated with the disposal activity, as required by the permit application process.

Offshore disposal of sediments would be conducted outside NSW and is therefore not regulated under the *Environmental Planning and Assessment Act 1979*. As the offshore disposal grounds, excavation activity and transport to the disposal grounds are regulated by the Department of the Environment and Energy, further details of the offshore disposal assessment, contained within the submission to the Department of the Environment and Energy, are not included in this environmental impact statement.

Daily maximum construction maritime traffic volumes and routes to navigational channels that lead to Sydney Heads, including barge movements for offshore disposal of suitable dredged spoil, are summarised in Chapter 6 (Construction work) and considered in Chapter 8 (Construction traffic and transport) and Section 5.5 of Appendix F (Technical working paper: Traffic and transport). It is anticipated that six barge movements per day would be required for transportation of dredged spoil to the offshore disposal site.



Measures to manage noise from barges would be included in construction noise and vibration planning to be developed during further design development. Barges would be operated and maintained to comply with the Protection of the Environment Operations (Noise Control) Regulation 2017, particularly Clauses 37 and 38 of the regulation which require vessels to have properly maintained noise controls. Noise impacts related to the loading and unloading of barges at water-based construction support sites have been considered in Chapter 10 (Construction noise and vibration) and Appendix G (Technical working paper: Noise and vibration).

Sediments that are not suitable for offshore disposal would be brought to land. These sediments would be managed and, if necessary, made suitable for land disposal before being directed to an appropriately licensed waste facility. Further discussion on disposal of dredged sediments not suitable for offshore disposal is provided in Chapter 24 (Resource use and waste management).

### ***Native Title Act 1993***

The main objective of the *Native Title Act 1993* is to recognise and protect native title. A successful native title claim results in the recognition of the particular rights, interests or uses claimed by the registered party. If a native title claim is recognised under the Act, any actions by Government on that land must be consistent with the claim.

Searches of the register maintained by the National Native Title Tribunal indicate there are no native title claims registered with respect to the land within the project footprint.

Notification requirements under section 24KA of the *Native Title Act 1993* apply where construction work is required on Crown land and where the land has not been acquired by Transport for NSW. Notification in accordance with this section will occur concurrently with the public display of the environmental impact statement.

### ***Airports Act 1996 and Civil Aviation Act 1988***

Under the *Airports Act 1996*, 'prescribed airspace' is the airspace above any part of either an obstruction limitation surface (OLS) or procedures for air navigation systems operations (PANS-OPS) surface for Sydney Airport. Approval is required from the Secretary of the Commonwealth Department of Infrastructure, Transport, Cities and Regional Development if the project affects 'prescribed airspace', either by a structure physically protruding into the airspace or activities that result in disturbance to the airspace, such as turbulence caused by emissions from a ventilation outlet. Through provisions under the *Civil Aviation Act 1988*, the Civil Aviation Safety Authority can stipulate requirements for the design, construction and operation of new infrastructure that has the potential to influence aviation safety that support the provisions of the *Airports Act 1996*.

The emission from the ventilation outlet and motorway facilities at the Rozelle Interchange and at the Warringah Freeway have the potential to affect prescribed airspace.

A plume rise assessment was carried out in accordance with the *CASA Advisory Circular Plume Rise Assessments AC 139-5(1) November 2012* to determine whether plume rise resulting from the operation of these ventilation outlets and motorway facilities would be a controlled activity as defined in section 183 of the *Airports Act 1996*. This assessment considered an expected case, reflective of typical operational conditions of the project, and a capacity case, based on the maximum theoretical airflow that could be discharged from each ventilation outlet. In addition, the assessment also considered the merged ventilation outlets at the Warringah Freeway for the Western Harbour Tunnel and Beaches Link program of works.

The plume extent from the ventilation outlets and motorway facilities would not interfere with the OLS and PANS-OPS surfaces under the expected case scenarios. However, under the capacity

case scenario, the plume from the ventilation outlet and motorway facilities at Rozelle Interchange and at the Warringah Freeway may penetrate the PANS-OPS and OLS layers respectively. As such, a plume rise application would be prepared for approval under the *Airports Act 1996* to cover both the ventilation outlet and motorway facilities at the Rozelle Interchange and at the Warringah Freeway where they may constitute a controlled activity.

Further discussion of potential impacts on prescribed airspace is provided in Chapter 23 (Hazards and risks).

## 2.3 Next steps

As is normally the case for complex major infrastructure projects progressing through an environmental planning and assessment process, the design and construction approach presented in this environmental impact statement is at planning stage and is indicative only. It is subject to refinement once project approval is obtained and the contractor(s) delivering the project have further developed the design and construction methodologies (commonly referred to as detailed design).

Issues raised during exhibition of the environmental impact statement may result in changes to the project design and construction approach, and if so, these would be identified in a Preferred Infrastructure Report.

Any refinements to the approved project during the contractor's detailed design would be reviewed for consistency with the approval. This consistency review would be undertaken to consider whether the refinement would:

- Result in any of the conditions of approval not being met
- Be consistent with the objectives and operation of the project as described in the environmental impact statement
- Result in a significant change to the approved project
- Result in any potential environmental or social impacts of a greater scale or impact than that considered by the environmental impact statement.

Where design refinements do not meet these criteria, a modification would be sought from the Minister for Planning and Public Spaces in accordance with the requirements of Division 5.2 of the *Environmental Planning and Assessment Act 1979*.

### 2.3.1 M4-M5 Link interface

The Rozelle Interchange forms part of the approved M4-M5 Link project. In broad terms, it is proposed that, under the M4-M5 Link project, stub tunnels would be constructed to enable the Western Harbour Tunnel to connect at the Rozelle Interchange. The connection is part of the Western Harbour Tunnel and Warringah Freeway Upgrade project.

The interface of the project with the Rozelle Interchange reflects the arrangement as presented in the environmental impact statement for the M4-M5 Link, and as amended by the proposed modifications.

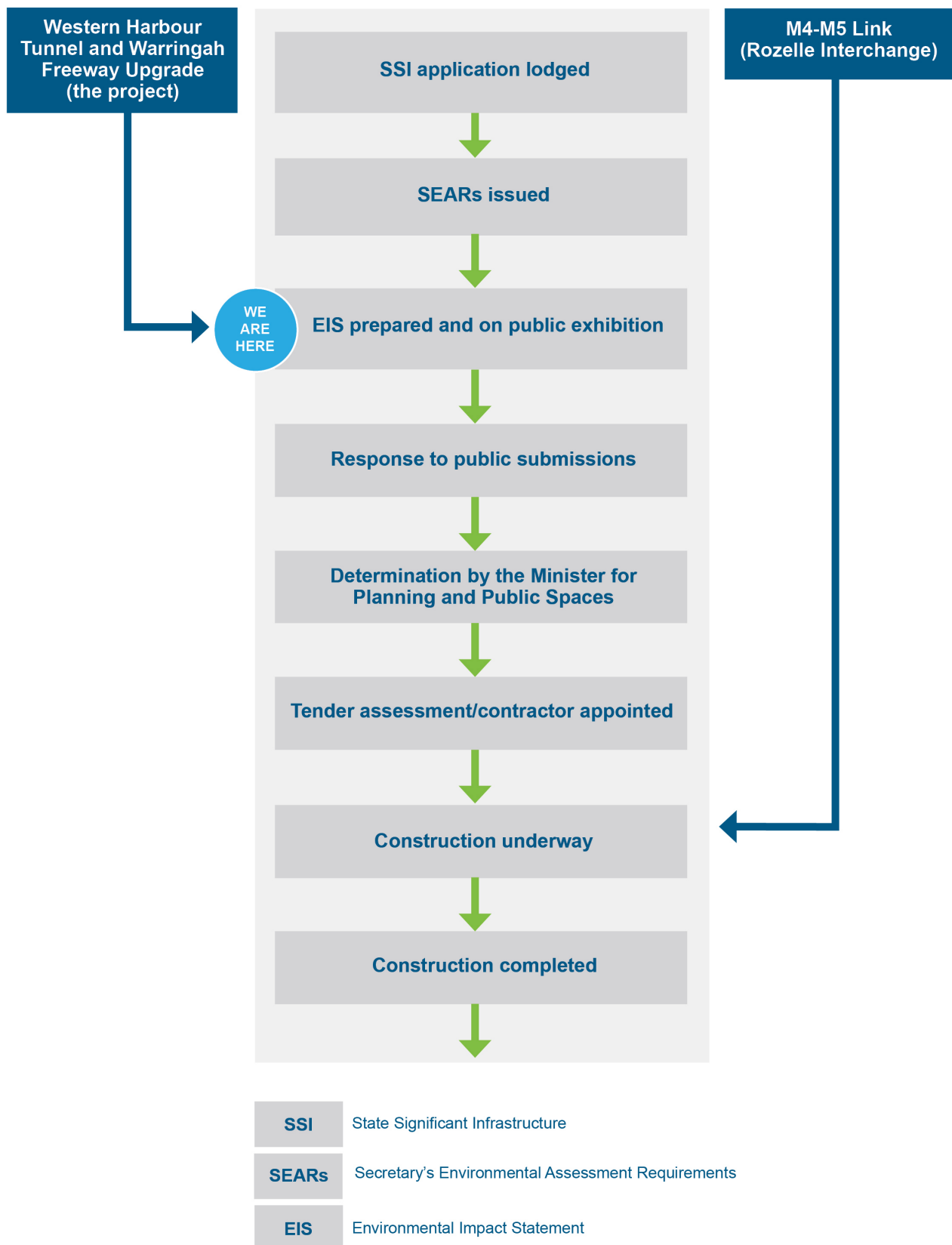
The contractor for the Rozelle Interchange was appointed in December 2018 and has carried out detailed design. The detailed design includes a number of design refinements and optimised arrangements which aim to achieve improved construction and operational outcomes, or are required to meet the conditions of approval granted for the M4-M5 Link.



The ultimate alignment of the Western Harbour Tunnel at the Rozelle Interchange would be in accordance with the now finalised M4-M5 Link design. This final detailed design varies from the project alignment presented in this environmental impact statement due to the timing and different stages of the two projects, with the Western Harbour Tunnel project being at the planning stage and the M4-M5 Link project now being at the detailed design stage. Refinements and adjustments made to the Rozelle Interchange by the contractor during detailed design would be reflected in the Western Harbour Tunnel design in either Western Harbour Tunnel preferred infrastructure report or in a modification. Coordination between the two projects at the M4-M5 Link interface is ongoing.

Any required changes to the project would be considered by following the processes as detailed in Section 2.1 above.

Figure 2-2 shows the relationship between the status of the Rozelle Interchange and the project.



**Figure 2-2 Relationship between the status of the Rozelle Interchange and the project**

