

## 4. Planning and statutory requirements

Director-General's Requirements	Where addressed
<i>An assessment of the key issues, with the following aspects addressed for each key issue (where relevant):</i> <i>Identification of how relevant planning, land use and development matters (including relevant strategic and statutory matters), have been considered in the impact assessment and/or in developing management/mitigation measures.</i>	<i>Chapter 4, Chapter 9, Technical Papers</i>

### 4.1 Approval framework

#### 4.1.1 Environmental Planning and Assessment Act 1979

The RTA is seeking project approval for the M2 Upgrade project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In accordance with Section 75B(1) of the EP&A Act the Minister for Planning declared, by Ministerial Order published in NSW Government Gazette No.44 on 27 February 2009, that the M2 Upgrade project is a project to which Part 3A applies. The Minister also declared under an Order published in the NSW Government Gazette No. 44 on 27 February 2009, that the project is a critical infrastructure project under Section 75C of the EP&A Act. The RTA is seeking an amendment to the Part 3A and critical infrastructure declarations to remove the park and ride facility and include clarification with respect to the proposed access ramps at Herring and Christie Roads. Copies of the current Minister's Orders are provided in Appendix A.

The project requires the approval of the Minister for Planning.

The approval process under Part 3A of the EP&A Act is illustrated in Figure 4. Further detail on the Part 3A process can be found on the Department of Planning website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au).

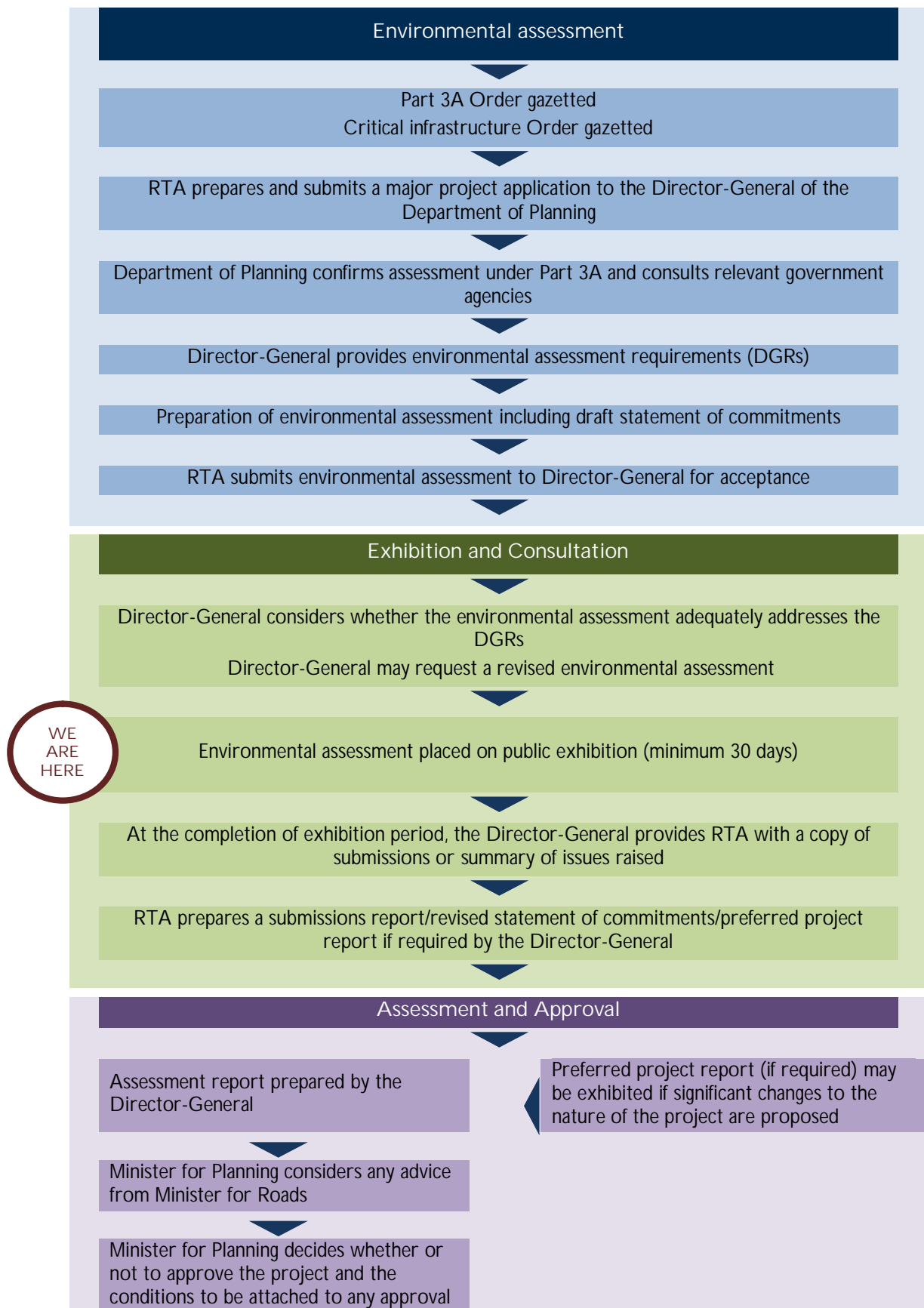
#### 4.1.2 Environmental Planning Instruments

Section 75R of the EP&A Act excludes the application of the provisions of environmental planning instruments (other than SEPPs) to approved projects, including approved critical infrastructure projects. A SEPP only applies to critical infrastructure projects to the extent that the provisions of the SEPP expressly provide that they apply to the particular project (EP&A Act section 75R(2)). There are no SEPPs that expressly relate to the M2 Upgrade project.

However, in deciding whether or not to approve the carrying out of a project, the Minister for Planning may (but is not required to) take into account the provisions of relevant environmental planning instruments (EPIs) that would not (because of Section 75R) apply to the project if approved. Such EPIs include:

- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy No. 18 Public Transport corridor (now deemed a SEPP)
- Baulkham Hills Local Environmental Plan 2005
- Hornsby Shire Local Environmental 1994
- Ryde Planning Scheme Ordinance.

Figure 4 The approval process under Part 3A of the EP&A Act



## 4.2 Other legislation

### 4.2.1 NSW legislation

A number of approvals are not required for a project approved under Part 3A of the EP&A Act (section 75U). Exemptions of relevance to the project include:

- A permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*.
- An approval under Part 4, or an excavation permit under section 139 of the *Heritage Act 1977*.
- A permit under section 87 or consent under section 90 of the *National Parks and Wildlife Act 1974*.
- A permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*.
- A bushfire safety authority under section 100B of the *Rural Fires Act 1997*.
- A water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

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

- An Environment Protection Licence under chapter 3 of the *Protection of the Environment Operations Act 1997* in accordance with section 75V(1) of the EP&A Act. Such a licence cannot be refused for an approved project and is to be substantially consistent with the Part 3A approval.
- An approval under the *Water Act 1912* for access to ground or surface water during construction.
- An approval under the *Crown Lands Act 1989* to grant a relevant interest (licence, permit, easement or right of way) over a Crown Reserve.

Other legislation that may apply to the project includes the *Land Acquisition (Just Terms Compensation) Act 1991 No. 22*. This Act applies to the acquisition of land required for the project. Refer also to Section 10.6.

### 4.2.2 Commonwealth legislation

#### Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) proposed 'actions' that have the potential to significantly impact on matters of national environmental significance, the environment of Commonwealth land or that are being carried out by a Commonwealth agency that is likely to have a significant impact on the environment must be referred to the Australian Government Minister for the Environment, Heritage and the Arts.

Matters of National Environmental Significance (NES), of relevance to the project include:

- Nationally threatened species and ecological communities.
- Migratory species listed under the EPBC Act.

An assessment of this project's potential impact on threatened fauna and flora species, endangered ecological communities and migratory fauna species found that the project was not likely to have a significant impact on relevant matters of national environmental significance. However, a precautionary approach has been taken and the RTA submitted a referral to the Australian Government Department of the Department of Environment, Water, Heritage and the Arts (DEWHA) as a precautionary measure. On 19 February 2010 notification was received from DEWHA of the decision (refer to Appendix G) that the proposed M2 Upgrade project is not a controlled action and does not require further assessment and approval under the EPBC Act before it can proceed.