

5 Assessment process

This chapter discusses the assessment process required to apply for approval for the Devils Pulpit upgrade to proceed. It considers the application of planning legislation at State and federal levels.

5.1 Statutory context

5.1.1 *Environmental Planning and Assessment Act 1979*

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

The Minister for Planning declared under Section 75B of the *EP&A Act*, by Order published in the NSW Government Gazette No. 175 on 8 December 2006 that development for the purpose of upgrading certain segments of the Pacific Highway is a project to which Part 3A of the *EP&A Act* applies.

The Iluka Road to Woodburn upgrade is one of the declared segments under the order and is therefore a project to which Part 3A applies. The Iluka Road to Woodburn upgrade has been declared as a critical infrastructure project under section 75C of the *EP&A Act* by the Minister for Planning under an Order published in the NSW Government Gazette No. 175 on 8 December 2006.

The Devils Pulpit upgrade forms part of the Iluka Road to Woodburn upgrade. The Devils Pulpit upgrade is therefore also a project to which the Part 3A and critical infrastructure declarations apply. Copies of the Minister's Orders are provided in Appendix B.

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 5-11**.

5.2 Environmental planning instruments

Section 75R(3) 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* s.75R(2)). There are no SEPPs that expressly relate to the Devils Pulpit upgrade.

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 any environmental planning instrument that would not (because of section 75R) apply to the project if approved. These include:

- State Environmental Planning Policy (Infrastructure) 2007.
- State Environmental Planning Policy No. 14 – Coastal Wetlands.
- State Environmental Planning Policy No. 71 – Coastal Protection.

- State Environmental Planning Policy (Rural Lands) 2008.
- North Coast Regional Environmental Plan 1988 (now a deemed SEPP).
- Richmond River Local Environmental Plan 1992.

A Draft Clarence Valley Local Environmental Plan is currently in preparation. It should be noted that this LEP is not expected to outline any changes to current land use zoning in the area.

5.2.1 NSW legislation

A number of approvals are not required for a project approved under Part 3A of the *EP&A Act* (*EP&A Act* s.75U). These 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 bush fire 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 environmental protection licence for road construction 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*, should access to ground or surface water be required during construction.

Other legislation that may apply to the project includes:

- *Forestry Act 1916*, which applies to the acquisition of land required for the project in Devils Pulpit State Forest. (Refer to Chapter 10 for a discussion of the statutory requirements for the proposed State Forest acquisition.)
- *Land Acquisition (Just Terms Compensation) Act 1991* No. 22, which applies to the acquisition of any other land required for the project. Acquisitions are further discussed in Chapter 10.

5.2.2 Commonwealth legislation

Under the *Environment Protection and Biodiversity 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

must be referred to the federal government. If the Australian Minister for the Environment, Water, Heritage and the Arts 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 of potential relevance to this project include nationally threatened and migratory species.

An assessment of this project's potential impact on threatened and migratory species (as set out in Chapter 7) found that there is not likely to be significant impacts on a nationally threatened species. However, a precautionary referral to the Australian Government Department of the Environment, Water, Heritage and the Arts is being prepared.

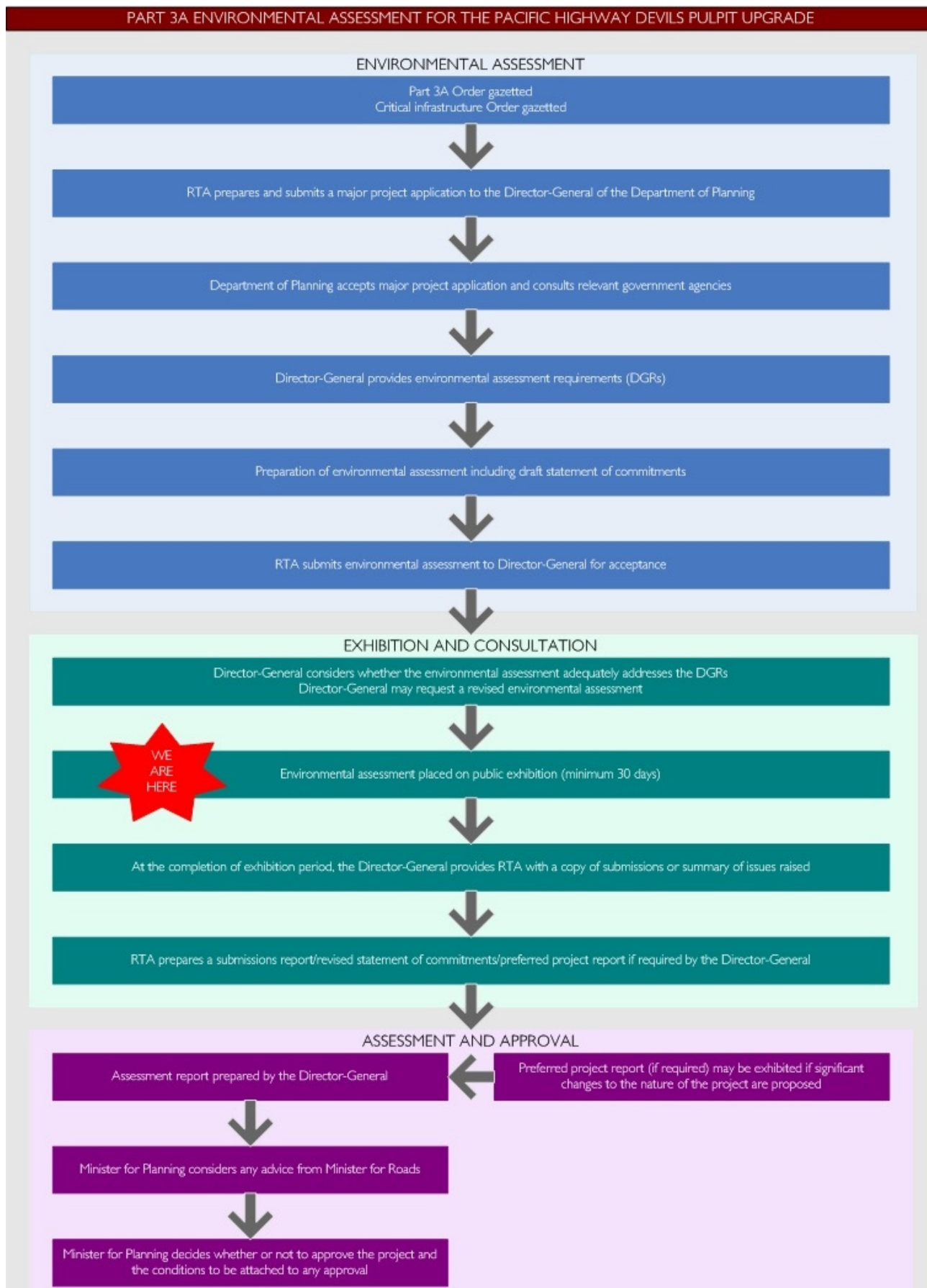


Figure 5-11 Environmental assessment process for Devils Pulpit upgrade