

Chapter 4

Planning and assessment process

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4 Planning and assessment process

This section provides an overview of the statutory schemes that govern the planning and assessment process for the project which relate to works that are located off-airport and on-airport. Appendix B (Statutory approvals framework) provides a more detailed analysis of the planning approvals and environmental planning instruments which are relevant to the project.

4.1 Planning and statutory requirements

There are three principal statutory schemes that govern the planning and approvals process for the project as follows:

- NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) applies to works located outside the boundary of Western Sydney International (off-airport), as discussed in Section 4.1.1
- Commonwealth *Airports Act 1996* (Airports Act) applies to works located within the boundary of Western Sydney International (on-airport), as discussed in Section 4.1.2
- Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act):
 - for works located north of Western Sydney International (off-airport), assessment and approval is required under Part 8 and 9 of the EPBC Act to address impacts on listed threatened species and communities and Commonwealth land
 - for the lands located south of Western Sydney International (off-airport), on matters of national environmental significance (MNES) and Commonwealth land have already been assessed and approved under a strategic assessment in accordance with Part 10 of the EPBC Act (refer to Section 4.1.1).

The land to which the different statutory regimes apply is illustrated in Figure 4-1, and the approvals process is summarised in Figure 4-2. This Environmental Impact Statement provides the assessment required under both the off-airport and on-airport regimes in a single document.

4.1.1 Off-airport approvals process

The EP&A Act and the Environmental Planning and Assessment Regulation 2000 (NSW) (EP&A Regulation) are the primary pieces of legislation regulating land use planning and development assessment in NSW.

The off-airport components of the project are subject to assessment and approval under the provisions of both State and Commonwealth environmental planning requirements, being the EP&A Act and the EPBC Act respectively. Secondary environmental approvals under other NSW legislation would be required post approval but are largely integrated into the assessment and approvals process under the EP&A Act.

State significant infrastructure and critical State significant infrastructure

Section 5.12(4) of the EP&A Act provides for the declaration of specified development on specified land as State significant infrastructure and Section 5.13 of the EP&A Act provides for the declaration of State significant infrastructure as critical State significant infrastructure if the project, in the opinion of the Minister of Planning and Public Spaces, is essential for the State for economic, environmental or social reasons. A declaration is being sought for Sydney Metro – Western Sydney Airport as critical State significant infrastructure under Section 5.13 of the EP&A Act. Should the project be declared as critical State significant infrastructure, Schedule 5 of the *State Environmental Planning Policy (State and Regional Development) 2011* (NSW) (SRD SEPP) would be amended to include Sydney Metro – Western Sydney Airport.

The project would be subject to assessment and approval by the Minister for Planning and Public Spaces under Division 5.2 of the EP&A Act.

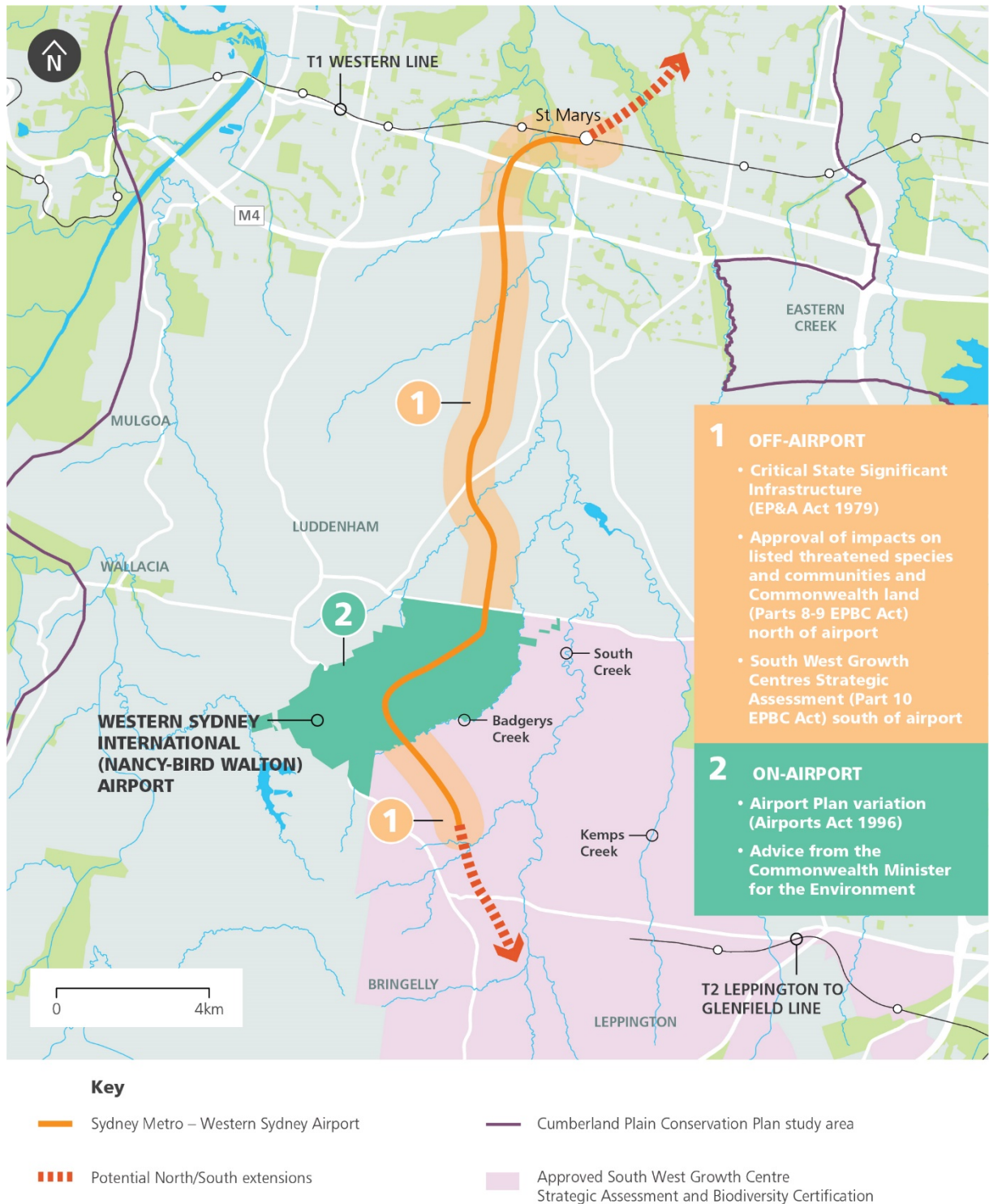


Figure 4-1 Planning approval context

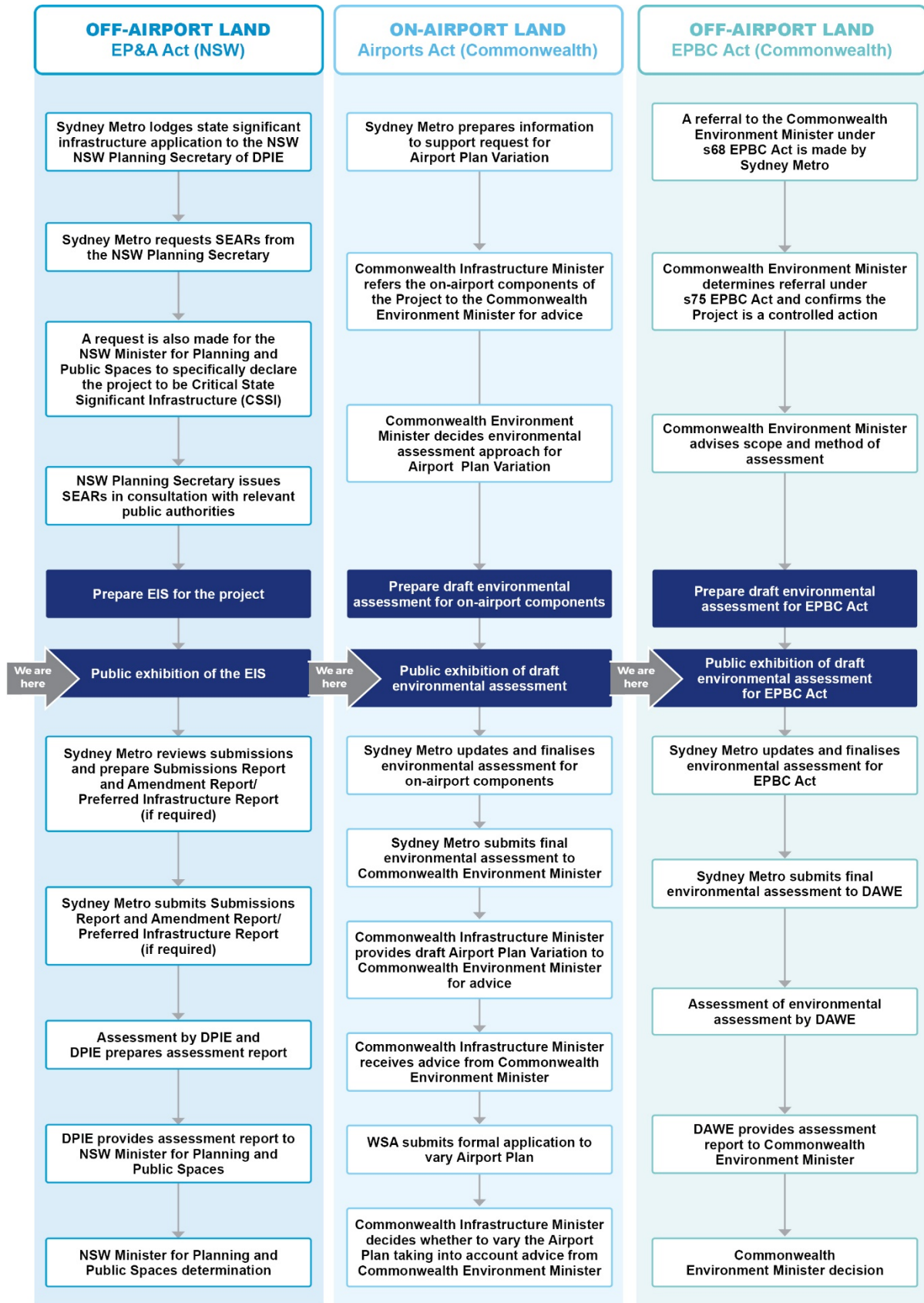


Figure 4-2 Summary of approvals process for the project

Commonwealth Environmental Protection and Biodiversity Conservation Act 1999

In accordance with Part 10 of the EPBC Act, the *Sydney Growth Centres Strategic Assessment: Program Report* (Department of Environment, Climate Change and Water and Department of Planning, 2010c) provided a strategic assessment for the South West Growth Area, located south of Western Sydney International. For the land within the proposed corridor for the project located south of Western Sydney International, impacts on MNES and Commonwealth land protected by the EPBC Act have already been assessed and approved on 28 February 2012 under that strategic assessment. No further approval under the EPBC Act would be required for the project south of Western Sydney International and outside the airport site, including no further approval under s146B of the EPBC Act.

In relation to the area north of the airport site, Department of Planning, Industry and Environment is managing a current process of strategic assessment and conservation planning for land in Western Sydney under Part 10 of the EPBC Act. That strategic assessment specifically excludes the project from its assessment. Therefore, a Commonwealth referral was submitted (reference number: 2020/8687) for the off-airport components of the project to the north of Western Sydney International. The Commonwealth Environment Minister has determined that the project requires approval under Part 9 of the EPBC Act:

- in relation the component north of the airport, because of its impact on listed threatened species and ecological communities (sections 18 and 18A of the EPBC Act);
- in relation to the component on Commonwealth land owned by Defence, because of its impact on the environment, particularly in the context of animal species and vegetation (sections 26 and 27A of the EPBC Act).

This Environmental Impact Statement includes both:

- an assessment in relation to listed threatened species and ecological communities for off-airport works to the north of Western Sydney International in accordance with the requirements of the Commonwealth Environment Minister. The relevant assessment is included in the Biodiversity Development Assessment Report (BDAR) for the project (provided in Technical Paper 3 (Biodiversity Development Assessment Report)), which explains the way in which the relevant impacts on listed threatened species and ecological communities have been dealt with. The BDAR addresses the requirements of the Commonwealth Environment Minister
- an assessment of the environmental impacts on Commonwealth land. Appendix K (EPBC Act Draft Environmental Impact Assessment of on-airport proposed action (EPBC 2019/8541)) provides this assessment and addresses the requirements of the Commonwealth Environment Minister.

Sydney Metro will consult with the Commonwealth Department of Agriculture, Water and the Environment (DAWE) throughout the environmental assessment process of the controlled action in accordance with the relevant Commonwealth guidelines.

4.1.2 On-airport approvals process

The Airports Act regulates certain Commonwealth-owned airports, including the development of airport sites to the exclusion of state planning laws. The Airports Act contains a planning framework under which each airport is required to prepare a master plan for approval by the Commonwealth Infrastructure Minister. For major airport developments, a major development plan is also required to be prepared and approved. For Western Sydney International, a transitional planning instrument, the *Western Sydney Airport – Airport Plan* (Department of Infrastructure and Regional Development, 2016a) (Airport Plan) has been determined under the Airports Act to guide development on the site as a greenfield site until a masterplan is put in place (Part 2 of the Airport Plan – Concept Design) and also to authorise the first stage of airport development subject to conditions (Part 3 of the Airport Plan – Specific Developments).

The Airport Plan was determined by the Commonwealth Infrastructure Minister in December 2016 following preparation and exhibition of an Environmental Impact Statement, and incorporates the conditions specified by the Commonwealth Environment Minister. Those conditions include the requirement for preparation and approval of a Construction Plan and a number of Construction Environmental Management Plans (CEMPs) prior to commencement of main construction works. Initial versions of those plans have been prepared and approved and main construction work on the airport commenced in September 2018.

The development of the project on the airport site will be authorised through a variation of the Airport Plan by the Commonwealth Infrastructure Minister, to include the rail development and any required conditions for the rail development taking account of advice from the Commonwealth Environment Minister. The variation of the Airport Plan will also vary the activities authorised by Part 3 of the Airport Plan. If the existing conditions in the Airport Plan for the Stage 1 airport development are not consistent with the proposed variation to accommodate the rail development (such as the requirement to prepare CEMPs specific to the rail development), the agreement of the Commonwealth Environment Minister would also be required. Approval of the rail development under Part 9 of the EPBC Act will not be required.

The steps required to vary the Airport Plan are illustrated in Figure 4-2. The Commonwealth Environment Minister has advised that the assessment approach to inform the proposed variation of the Airport Plan should be in the form of preliminary documentation. This Environmental Impact Statement includes the assessment in accordance with the requirements of the Commonwealth Environment Minister for the on-airport components of the project. Appendix J (EPBC Act Draft Environmental Impact Assessment of off-airport proposed action (EPBC 2020/8687)) consolidates the assessment for the on-airport components of the project in a single document which meets the requirements of the Commonwealth Environment Minister for the on-airport components of the project.

Developments on the airport site will also require building approvals issued under the *Airports (Building Control) Regulations 1996* (Cth), as well as (potentially) a Part 13 permit under the EPBC Act.

4.2 Additional approvals

Section 5.24 of the EP&A Act provides that certain authorisations which are required to carry out State significant infrastructure cannot be refused and must be consistent with the terms of any approval under Division 5.2 of the EP&A Act. In the context of the project, an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (NSW) would be required.

Section 5.23 of the EP&A Act also provides that certain environmental planning approvals do not apply to or in respect of approved State significant infrastructure. These additional approvals that do not apply are identified in Appendix B (Statutory approvals framework).

Part 13 permits under the EPBC Act may be required for the off-airport components of the project, if a member of a listed threatened species or listed threatened ecological community is to be killed or injured on Commonwealth land. An application for a permit may be made before or after the approval of an action under Part 9 of the EPBC Act.