

## 2 Assessment process

---

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

### 2.1 Approval framework

#### 2.1.1 Environmental Planning and Assessment Act 1979

Roads and Maritime is seeking approval for the project under Part 5.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). On 25 October 2013, the project was declared, by Ministerial Order, to be State significant infrastructure and critical State significant infrastructure under sections 115U (4) and 115V of the EP&A Act. The Order also amended Schedule 5 of *State Environmental Planning Policy (State and Regional Development) 2011*.

The Director-General's environmental assessment requirements (DGRs) for the project were issued on 29 October 2013. The DGRs were re-issued on 11 April 2014 to include the Hills M2 Motorway integration works. A copy of the DGRs is provided in **Appendix A**.

The assessment and approval process for State significant infrastructure under Part 5.1 of the EP&A Act is illustrated in **Figure 2-1**.

### 2.2 Environmental planning instrument

#### 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:

- *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP). The ISEPP aims to facilitate the effective delivery of infrastructure across the State. Clause 94 of the ISEPP 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.
- *State Environmental Planning Policy No 19 — Bushland in Urban Areas* (SEPP 19). SEPP 19 aims to protect and preserve bushland within urban areas including within the local government areas of Hornsby, Ku-ring-gai and The Hills. SEPP 19 is considered further in **Section 7.6** (Biodiversity).
- *State Environmental Planning Policy No 33 — Hazardous and Offensive Development* (SEPP 33). Although SEPP 33 is not strictly applicable to infrastructure projects, the provisions of the policy have been considered in **Section 8.2** (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 44 — Koala Habitat Protection* (SEPP 44). SEPP 44 aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas. SEPP 44 is considered further in **Section 7.6** (Biodiversity).

- *State Environmental Planning Policy No 55 — Remediation of Land* (SEPP 55). SEPP 55 aims to provide a Statewide planning approach to the remediation of land. SEPP 55 is considered further in **Section 7.8** (Hydrogeology and soils).
- *Sydney Regional Environmental Plan No. 20 — Hawkesbury-Nepean River* (No 2 1997) (SREP) (now a deemed SEPP). Part of the project is located within the Hawkesbury-Nepean River catchment. SREP 20 provides a number of general and specific planning policies and general strategies, primarily focussed around water quality, ecology and heritage management. These issues are considered further in **Section 7.9** (Surface water), **Section 7.6** (Biodiversity) and **Section 7.10** (Non-Aboriginal heritage) respectively.
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* (now a deemed SEPP), provides planning principles and development controls for the Sydney Harbour Catchment. Part of the project is located with the Sydney Harbour catchment, however it is not located within a foreshore and waterways area or within any strategic foreshore sites, and would not impact on any of the mapped heritage items or wetland protection areas. As such, these provisions do not apply to the project. Additionally, the project is considered unlikely to result in impacts to the existing qualities of Sydney Harbour.

## 2.3 Local Environmental Plans and draft Local Environmental Plans

Local environmental plans (LEPs) do not apply in respect of State significant infrastructure projects. The Minister for Planning may take into account the provisions of the LEPs when deciding whether to approve the project. The project lies within three local government areas (LGAs): the Ku-ring-gai LGA; the Hornsby Shire LGA and The Hills Shire LGA.

The relevant provisions of the following LEPs are considered in **Section 8.1** (Land use and property):

- *Ku-ring-gai Planning Scheme Ordinance 1971.*
- *Draft Ku-ring-gai Local Environmental Plan 2013.*
- *Hornsby Local Environmental Plan 2013.*
- *The Hills Local Environmental Plan 2012.*

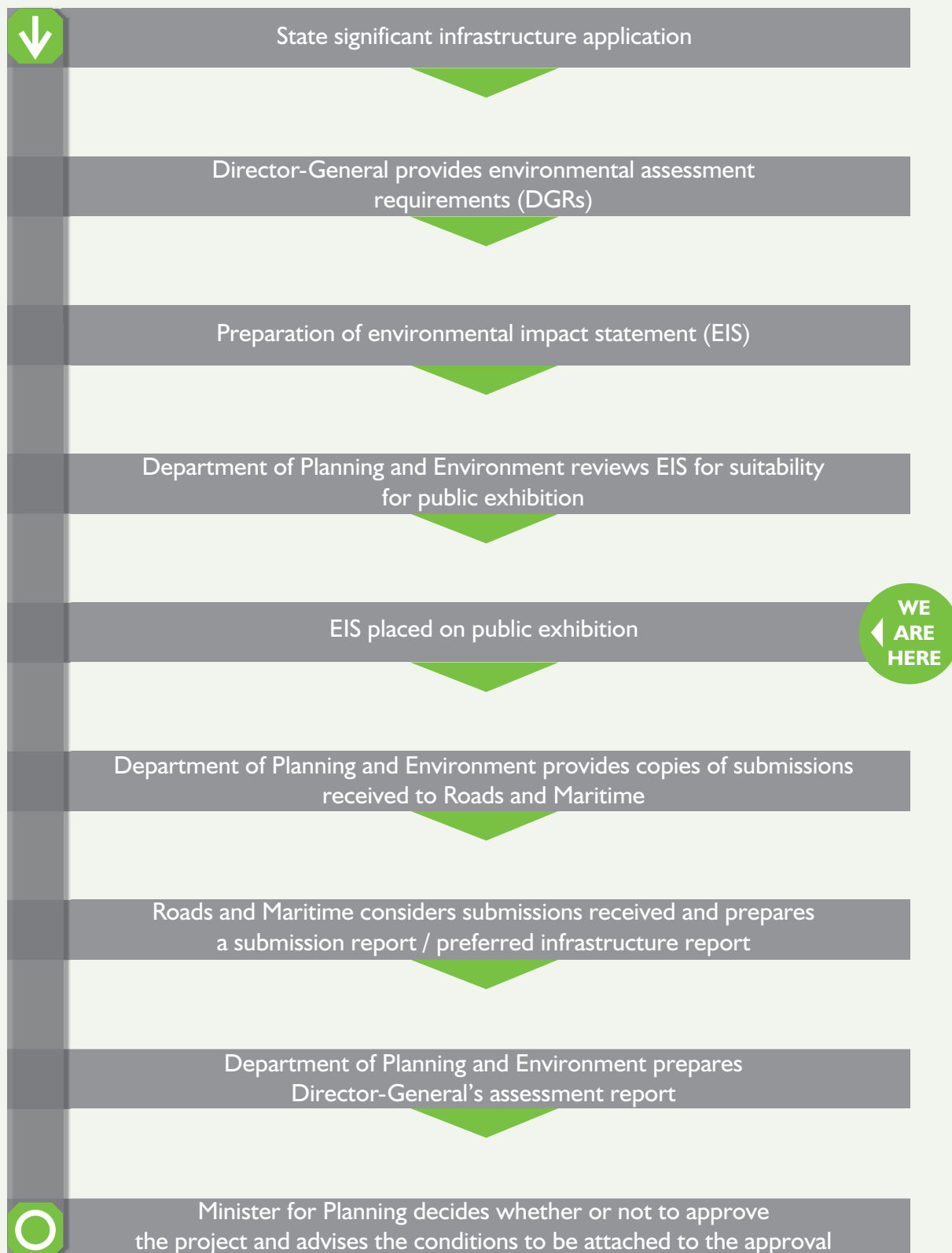


Figure 2-1 Assessment and approval process

(Blank page)

## 2.4 Other legislation

### 2.4.1 NSW legislation

Section 115ZG of the EP&A Act details the approvals under NSW legislation which are not required for a State significant infrastructure project approved under Part 5.1 of the EP&A Act. Additionally, section 115ZH details approvals under other legislation which must be applied consistently to an approved State significant infrastructure project.

Those approvals which are not required by virtue of section 115ZG of the EP&A Act but may ordinarily be required for a project of this sort are outlined in **Table 2-1**. Although these approvals are not required for the project, an assessment of the relevant potential impacts has been undertaken as part of this environmental impact statement.

**Table 2-1 Relevant approvals which are not required for State significant infrastructure**

Legislation	Approval	Requirement	Where addressed
<i>Fisheries Management Act 1994</i>	Section 201	Dredging and reclamation works	<b>Section 7.6</b> (Biodiversity)
	Section 219	Blocking fish passage	<b>Section 7.6</b> (Biodiversity)
<i>Heritage Act 1977</i>	Section 139	Potential impact on relics not listed on the State Heritage Register or protected by an Interim Heritage Order	<b>Section 7.10</b> (Non-Aboriginal heritage)
<i>National Parks and Wildlife Act 1974</i>	Section 90	Aboriginal heritage impact permit	<b>Section 7.11</b> (Aboriginal Heritage)
<i>Water Management Act 2000</i>	Section 89	Water use approval	<b>Section 7.9</b> (Surface water)
	Section 90	Water management work approval	<b>Section 7.9</b> (Surface water)

Those approvals relevant to the project which cannot be refused and must be substantially consistent with the State significant infrastructure approval (by virtue of section 115ZH of the EP&A Act) are outlined in **Table 2-2**.

**Table 2-2 Relevant approvals which must be applied consistently with State significant infrastructure approval**

Legislation	Approval	Requirement
<i>Protection of the Environment Operations Act 1997</i>	Chapter 3	Environment protection licence

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.

The NSW Aquifer Interference Policy (Department of Primary Industries, 2012) document the NSW government's intention to implement the requirement for approval of 'aquifer interference activities' under the *Water Management Act 2000*. Although the project would affect a groundwater aquifer (the main alignment tunnels and on and off-ramp tunnels would intercept a groundwater source) the requirement for aquifer interference approvals has not yet commenced and as such, this approval is not required. Despite this, an assessment of potential groundwater impacts is provided in **Section 7.8** (Hydrogeology and soils).

The *Land Acquisition (Just Terms Compensation) Act 1991* would apply to the acquisition of land required for the project. Land acquisition requirements are further discussed in **Section 8.1** (Land use and property).

#### 2.4.2 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 that are being carried out by a Commonwealth agency must be referred to the Australian Government. 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.

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 any planning approvals required by State legislation.

There is no Commonwealth land within the footprint of the project.

An assessment of this project's potential impact on threatened species, ecological communities and migratory species (as discussed in **Section 7.6** Biodiversity) found that there is unlikely to be a significant impact on relevant matters of national environmental significance. The project would not significantly impact any other matter of national environmental significance or the environment of Commonwealth land. Accordingly, the project has not been referred to the Australian Government Department of the Environment.

### **Native Title Act 1993**

The main objective of the *Native Title Act 1993* is to recognise and protect native title. Section 8 states the Native Title Act is not intended to affect the operation of any law of a State or a Territory that is capable of operating concurrently with the Native Title Act. Searches of the register maintained by the National Native Title Tribunal indicate there is one native title claim registered with respect to land within the area of the project. There is no Crown land within the footprint of the project and, as such the project would not directly affect any Crown land the subject of a native title claim.

(Blank page)