

## 2 Assessment process

### 2.1 Environmental Planning and Assessment Act 1979

Roads and Maritime is seeking approval for the project as State significant infrastructure under Part 5, Division 5.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

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 permissible without consent if being undertaken by a public authority. The project is for the purpose of a 'road' and 'road infrastructure facilities' under the Infrastructure SEPP.

Roads and Maritime has formed the opinion that the project is likely to significantly affect the environment and would require the preparation of an EIS.

On this basis, pursuant to Section 5.12(2) of the EP&A Act, the project is declared to be State significant infrastructure under Clause 14 of the *State Environment Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP).

The project requires approval from the NSW Minister for Planning under Section 5.14 of the EP&A Act.

In November 2017, Roads and Maritime prepared a State significant infrastructure scoping report to support an infrastructure application for the project under section 5.15 of the EP&A Act.

DP&E issued the Planning Secretary's Environmental Assessment Requirements (SEARs) for the project on 23 January 2018. The SEARs identify the assessment requirements for the project. A copy of the SEARs and where they have been addressed in this EIS is provided in **Appendix A** (Statutory requirements).

The assessment and approval process under Division 5.2 of the EP&A Act is shown in **Figure 2-1**. Further information on the assessment process is available on the Department of Planning and Environment website ([www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)).

### 2.2 Critical State significant infrastructure

F6 Extension Stage 1 was declared by Ministerial Order on 26 October 2018 to be State significant infrastructure and critical State significant infrastructure under Sections under Section 5.12(4) and Section 5.13 of the EP&A Act, respectively. The Ministerial Order also amended Schedule 5 of the State and Regional Development SEPP to include the project as critical State significant infrastructure.

### 2.3 Other NSW legislation

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

- An Environment Protection Licence under Part 3 of the *Protection of the Environment Operations Act 1997* (NSW) (POEO Act). In accordance with section 5.24 of the EP&A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with any approval under Division 5.2 of the EP&A Act
- Consent from the relevant roads authority under section 138 of the *Roads Act 1993* (NSW) including to carry out work in, on or over a public road, dig up or disturb the public surface of a public road or connect a road to a classified road.

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 further discussed in **Chapter 6** (Project description) and **Chapter 14** (Property and Land use)
- The *Contaminated Land Management Act 1997* (NSW) outlines the circumstances in which notification of the NSW Environment Protection Authority is required in relation to contamination of land. This is discussed further in **Chapter 16** (Soils, Geology and Contamination).

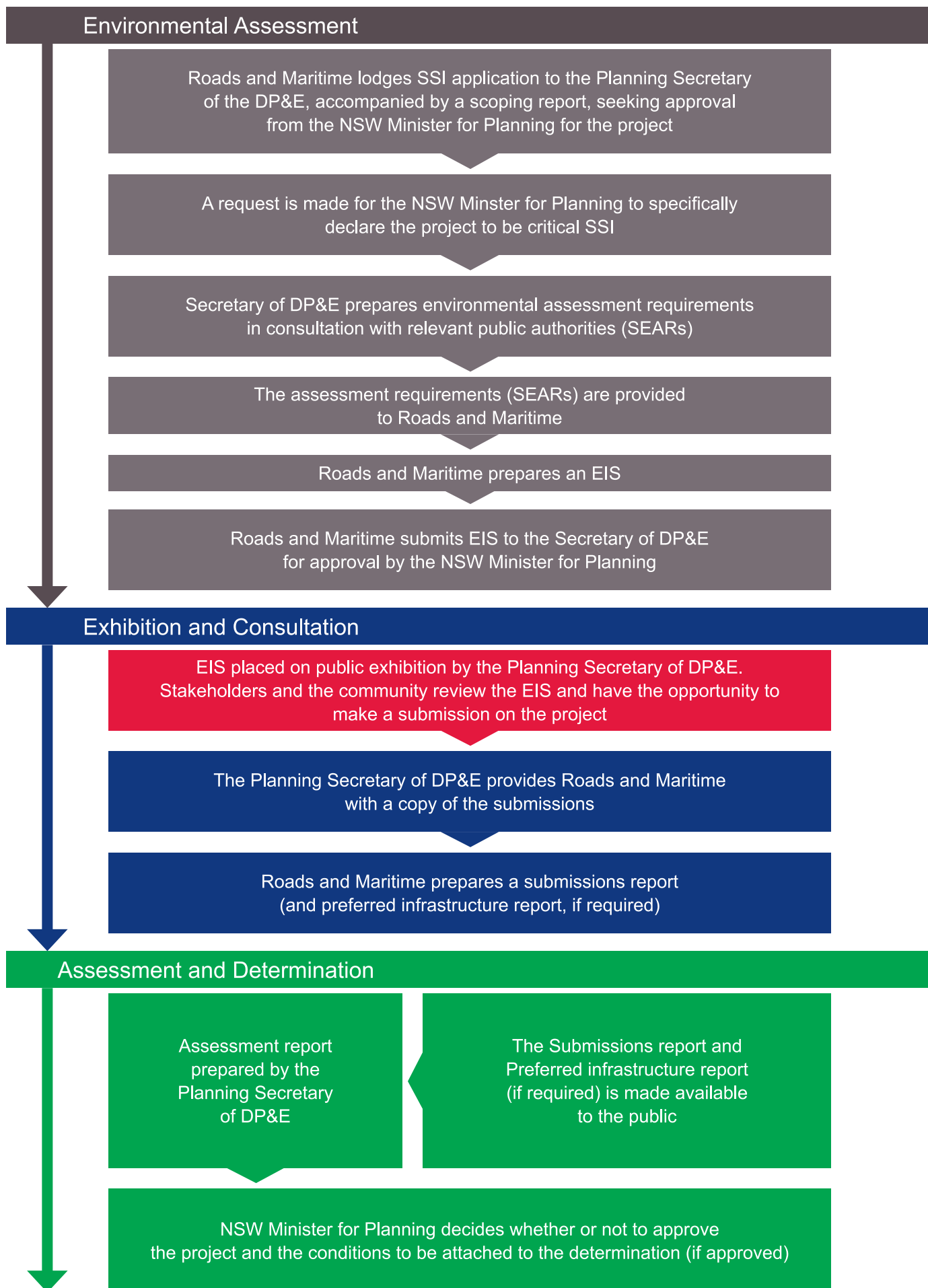


Figure 2-1 Assessment and approval process

A number of approvals are not required for a project approved under Section 5.23 of Division 5.2 of the EP&A Act. Those approvals not required for the project are:

- Permits under sections 201, 205 or 219 of the *Fisheries Management Act 1994*
- Approvals under Part 4 or excavation permits under Section 139 of the *Heritage Act 1977*
- Aboriginal heritage permits under Section 90 of the *National Parks and Wildlife Act 1974*
- A bush fire safety authority under Section 100B of the *Rural Fires Act 1997*.

Water use approvals under Section 89, water management work approvals under Section 90, and activity approvals (other than an aquifer interference approval) under Section 91 of the *Water Management Act 2000*.

## 2.4 Commonwealth legislation

### 2.4.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth) (EPBC Act), proposed 'actions' that have the potential to significantly impact on matters of national environmental significance or the environment of Commonwealth land, or 'actions' that are being carried out by a Commonwealth agency, must be referred to the Australian Government. If the Australian Government Minister for the Environment and Energy determines that a referred project is a 'controlled action', the approval of that Minister will be required for the project in accordance with the EPBC Act, in addition to the approval required from the NSW Minister for Planning under Division 5.2 of the EP&A Act.

Based on the results of the environmental investigations carried out for this EIS, 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 Roads and Maritime has determined that no referral is required at this stage.

### 2.4.2 Airports Act 1996

Under section 183 of the *Airports Act 1996* (Commonwealth), a controlled activity must not be undertaken in relation to 'prescribed airspace' without the approval of the Secretary of the Commonwealth Department of Infrastructure, Regional Development and Cities (the Department of Infrastructure).

'Prescribed airspace' is the airspace above any part of either an Obstacle Limitation Surface or a 'procedures for air navigation systems – aircraft operations' (PANS-OPS) surface for Sydney Airport.

The project would include the construction and operation of a ventilation facility and outlet at Rockdale, and the operation of a ventilation outlet at the Arncliffe ventilation facility constructed as part of the New M5 project. Rising air plumes from both the Rockdale and Arncliffe (F6 Extension Stage 1) ventilation facility have the potential to penetrate the OLS and PANS-OPS for Sydney Airport. The New M5 Arncliffe ventilation facility was assessed in the *Westconnex New M5 Plume Rise Assessment* (Pacific Environment, 2015) which was completed as part of the New M5 project and approval was sought for only the New M5 Project. Approval was not sought at that time for the F6 Extension Stage 1 ventilation outlet from that facility. The plumes from the Rockdale ventilation facility may impact the prescribed airspace and approval to operate it may be required from the Secretary of the Department of Infrastructure, Regional Development and Cities. Approval may also be required for the Arncliffe outlet at the Arncliffe ventilation facility to operate for the F6 Extension Stage 1 project as prior approvals for the operation of this facility were only sought for the New M5 project. The Civil Aviation Safety Authority and Airservices Australia would be consulted on the application for approval.

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