



Roads and Traffic Authority of NSW

Oxley Highway to Kempsey Upgrading the Pacific Highway Environmental Assessment

MAIN VOLUME

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4. Planning and approvals

4.1 Approval framework

4.1.1 Environmental Planning and Assessment Act 1979

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

The Minister for Planning has declared under Section 75B of the EP&A Act, by Order published in 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 Oxley Highway to Kempsey Pacific Highway Upgrade is one of the declared segments under the order and is therefore a project to which Part 3A applies. The Proposal 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 NSW Government Gazette No. 175 on 8 December 2006. Copies of the Minister's Orders are provided in **Appendix C**.

The Proposal requires the approval of the Minister for Planning.

The approval process under Part 3A of the EP&A Act is illustrated in **Figure 4-1**.

4.2 Environmental planning instruments

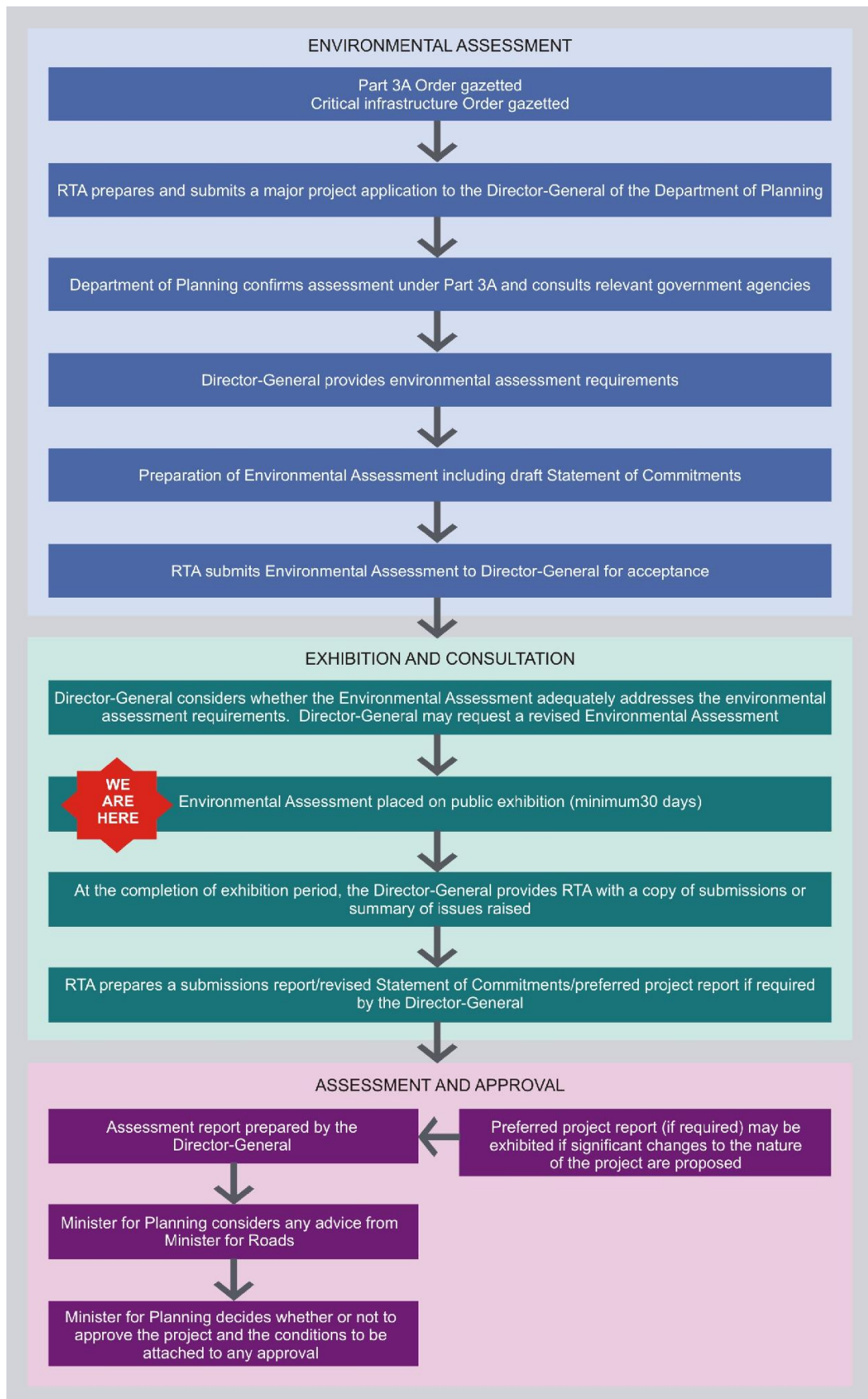
Section 75R(3) of the EP&A Act excludes the application of the provisions of environmental planning instruments (other than State environmental planning policies) to approved projects, including approved critical infrastructure projects. A State environmental planning policy only applies to critical infrastructure projects to the extent that the provisions of the policy expressly provide that they apply to the particular project (EP&A Act section 75R(2)). There are no State environmental planning policies that expressly relate to the Proposal.

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. 44 – Koala Habitat.*
- *State Environmental Planning Policy No. 71 – Coastal Protection.*
- *State Environmental Planning Policy (Rural Lands) 2008.*
- *North Coast Regional Environmental Plan* (now a deemed State environmental planning policy).
- *Hastings Local Environmental Plan 2001.*
- *Kempsey Local Environmental Plan 1987.*

Environmental planning instruments are further discussed in **Chapter 10 Land use and property**.

Figure 4-1 Approvals process under Part 3A of the EP&A Act



4.3 Other legislation

4.3.1 NSW legislation

A number of approvals are not required for a project approved under Part 3A of the EP&A Act (section 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 Proposal include:

- An environment 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. Refer also to **Chapter 7 Construction of the Proposal**.
- An approval under the *Water Act 1912* should access to ground or surface water be required during construction. Refer also to **Chapter 7 Construction of the Proposal**.

Other legislation that may apply to the Proposal includes:

- *National Parks and Wildlife Act 1974* – applies to the acquisition of land required for the Proposal in Cooperabung Creek Nature Reserve. Section 52(1) of the Act requires that any acquisition would need to be provided by an Act of Parliament. Refer to **Chapter 10 Land use and property** for a discussion on the statutory requirements for the proposed acquisition.
- *Forestry Act 1916* – applies to the acquisition of land required for the Proposal in Cairncross, Ballengarra and Maria River state forests. Refer to **Chapter 10 Land use and property** for a discussion on the statutory requirements for the proposed acquisition.
- *Land Acquisition (Just Terms Compensation) Act 1991* – applies to the acquisition of any other land required for the Proposal. Acquisition is further discussed in **Chapter 10 Land use and property**.

4.3.2 Federal legislation

Under the Federal *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 must be referred to the Federal Government. If the Federal Minister for the Environment, 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 NSW Minister for Planning's approval.

Matters of national environmental significance of potential relevance to this project include nationally threatened species, migratory species and ecological communities.

An assessment of the Proposal's potential impact on threatened species, ecological communities and migratory species (as set out in **Chapter 15 Flora and fauna**) found that there is unlikely to be a significant impact on relevant matters of national environmental significance. Accordingly, the Proposal has not been referred to the Federal Department of the Environment, Water, Heritage and the Arts.