2. Planning and statutory context

2.1 Strategic planning context

The Australian Government's document *Securing Australia's Energy Future* ('the White Paper') was released in 2004. The White Paper established the policy framework for energy development in Australia through three main objectives:

- prosperity
- security
- sustainability.

The White Paper and other relevant energy reports are further discussed in Chapter 5.

2.2 Planning under the *Environmental Planning & Assessment Act 1979*

The NSW environmental assessment and planning framework is established by the *Environmental Planning and Assessment Act 1979* (EP&A Act) and relevant planning instruments. The Act controls development in NSW, and environmental planning instruments impose restrictions on the types of development that may be carried out on land.

The project constitutes development for the purpose of the EP&A Act. Development proposals are considered under different parts of the Act, depending on the type of development, the permissibility of the development within the land use zoning and the classification of the applicant.

The project is classified as a major project under the *State Environmental Planning Policy (Major Projects) 2005* (the Major Projects SEPP) (see Section 2.4.2) by virtue of its inclusion in Schedule 1 of the Major Projects SEPP as:

> Development for the purpose of an electricity generation facility that:
>
> a) has a capital investment value of more than $30 million for gas- or coal-fired generation, or co-generation, or bioenergy, biofuels, waste gas, bio-digestion or waste to energy generation, or hydro or wave power generation, or solar power generation, or wind generation.

On 26 February 2008, the Minister for Planning declared projects within the following Schedule to be critical infrastructure projects under section 75C of the EP&A Act:

> Development for the purpose of a facility for the generation of electricity, being development that:
>
> a) has the capacity to generate at least 250 megawatts, and
>
> b) is the subject of an application lodged pursuant to section 75E or section 75M of the *Environmental Planning and Assessment Act 1979* prior to 1 January 2013.

The project meets the above criteria and, as such, is classified as a critical infrastructure project.

2.2.1 Application of Part 3A of the EP&A Act

Part 3A of the EP&A Act commenced on 1 August 2005, and introduced specific environmental assessment and approval provisions for major State Government infrastructure projects, development previously classified as state significant, and other projects, plans or programs of works declared by the Minister.

Projects are declared under Part 3A by either a SEPP or Ministerial Order (section 75B). Section 75B of the EP&A Act states:

> 1) General
>
> This part applies to the carrying out of development that is declared under this section to be a project to which this Part applies:
>
> a) by a State environmental planning policy, or
>
> b) by order of the Minister published in the Gazette.

Additionally, section 75B(3) states:

> If part of any development is a project to which this Part applies, the other parts of the development are (subject to subsection (4)) taken to be a project to which this Part applies.

This project is classified as a major infrastructure project under the Major Projects SEPP (see Section 2.4.2) and, as such, is subject to Part 3A of the EP&A Act. The environmental assessment of Part 3A projects is dealt with under sections 75D–75L of the Act. Declaration of the project as a critical infrastructure project (see Section 2.2) does not remove the need to meet the requirements of Part 3A.

2.2.2 Environmental Planning and Assessment Regulation 2000

Under Part 3A of the EP&A Act, an environmental assessment for a proposed development must be undertaken, focusing on key issues set out in the Director-General's Environmental Assessment requirements (DGRs). The Environmental Assessment report must also include a draft Statement of Commitments, which documents mitigation and management measures to address the identified environmental impacts of the project.

Matters for environmental assessment and Ministerial consideration are provided in clause 8B of the Environmental Planning and Assessment Regulation 2000 (the Regulation). These matters are as follows:

> The Director-General's report under section 75I of the Act in relation to a Part 3A project is to include the following matters (to the extent that those matters are not otherwise included in that report in accordance with the requirements of that section):
>
> a) an assessment of the environmental impact of the project
>
> b) any aspect of the public interest that the Director-General considers relevant to the project
>
> c) the suitability of the site for the project
>
> d) copies of submissions received by the Director-General in connection with public consultation under section 75H or a summary of the issues raised in those submissions.

Clause 8F of the Regulation identifies that the consent of the owner of land upon which a project is to be carried out must be obtained for an application for approval under Part 3A of the EP&A Act, unless the project meets at least one of the exemptions provided for in sub-clause 8(F)1, which are:

a) the application is made by a public authority

b) the application relates to a critical infrastructure project

c) the application relates to a mining or petroleum production project

d) the application relates to a linear infrastructure project

e) the application relates to a project on land with multiple owners designated by the Director-General for the purposes of this clause.

The proposed gas pipeline would be approximately 100 kilometres long, connecting the proposed power station near Wellington to the Central West Pipeline near Alectown (see Figure 1-1 and Chapter 7). The alignment would predominantly pass through cleared agricultural land, affecting an expected 55 private landholders. The pipeline is also expected to affect five public/private authorities. Thus, sub-clause 8F(1)(e) is applicable to this project. Designation of the project for the purposes of clause 8F(1)(e) of the Regulation was sought from the Director-General of the Department of Planning (DoP) in October 2007; this designation was granted on 12 December 2007.

The implication of this designation is that the consent of the owner of land upon which the project is to be carried out is not required for an application for approval under Part 3A of the EP&A Act. However, in accordance with Clause 8F(3)(a) of the Regulation, notification of the application 'to the public by advertisement published in a newspaper circulating in the area of the project before the start of the public consultation period for the project' is required.

Designation of the project as a critical infrastructure project (see Section 2.2) also removes the need for land owner consent for an application for approval. In accordance with Clause 8F(3)(c) of the Regulation, notification of the application 'to the owner of the land before the end of period of 14 days after the application is made' is required. However, because the critical infrastructure declaration was made more than 12 months after the Project Application was submitted to the DoP (and the subsequent release of the DGRs (see Section 4.5)), this notification requirement could not be met. The land owners potentially affected by the project have been consulted throughout the environmental assessment process, and were notified of the release of the Environmental Assessment for public exhibition (see Chapter 4).

2.3 *Pipelines Act 1967*

The *Pipelines Act 1967* was enacted to meet the need for efficient and economical transportation of petroleum and natural gas products over long distances. The Act is flexible enough to provide for the construction and operation of pipelines to carry any substance, whether gaseous, liquid or solid, suitable for transportation by pipe, but does not automatically extend to all types of pipelines (NSW Department of Lands 2007).

No land owner consent for approval of the project is required because the project has been 'designated' under Clause 8(F)(1)(e) of the Regulation (see Section 2.2.2). However, a licence to construct the 100 kilometre gas pipeline would need to be obtained under the

Pipelines Act 1967. Such a licence would need to be obtained in the form set out in Section 13 of the Act, requiring the particulars of any acquisition or easement agreements entered into for all land within the pipeline easement. As part of this process, consultation would be undertaken with all affected land owners. Consultation would also be undertaken with the NSW Department of Environment and Climate Change (DECC) regarding the granting of an easement under section 153 of the *National Parks and Wildlife Act 1974* for the area within a park proclaimed under that Act, should the proposed pipeline pass through such an area.

2.4 Environmental planning instruments

Section 75R(3) of the EP&A Act provides that environmental planning instruments, other than SEPPs, do not apply to a Part 3A project.

However Section 75J(3) of the Act provides that, in deciding whether or not to approve the carrying out of a project, the Minister 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. However, this subsection also provides that the Regulation may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

Clause 8(O) of the Regulation provides that, for the purposes of Section 75J(3), approval for the carrying out of a project may not be given under Part 3A of the EP&A Act for any project, or part of a project, that:

a) is not the subject of an authorisation or requirement under Section 75M of the Act to apply for approval of a concept plan, and

b) is prohibited by an environmental planning instrument that would not (because of Section 75R of the Act) apply to the project if approved.

As the project is not the subject of a concept plan, the permissibility of the proposed development under the applicable environmental planning instruments is a relevant consideration, and is discussed in the following sections. The following sections also provide an assessment against the requirements and objectives of the relevant environmental planning instruments, to assist with the Minister's assessment and determination of the project.

2.4.1 Local environmental plans

Wellington Local Environment Plan 1995

The proposed power station and the eastern portion of the proposed gas pipeline would be located within the Wellington local government area (LGA).

Power station

The land upon which the proposed power station would be located is currently zoned 1(a) (Rural) under the *Wellington Local Environment Plan 1995* (the Wellington LEP). This zone permits, with development consent, the installation of utilities and generating works. The project is therefore a permissible use of the land.

Clause 13 of the Wellington LEP relates to the subdivision of land within Zone 1(a) (Rural). The development of the proposed power station would require the subdivision of land and is proposed to be located on land zoned 1(a) (Rural). It is understood that this subdivision

would be sought under Part 4 of the EP&A Act and, as such, the requirements of Clause 13 would need to be satisfied.

Subclauses 13(7) and 13(8) provide that:

7) Subject to subclause (8), the Council shall not consent to a subdivision of land within Zone Number 1(a) where any allotment to be created by the subdivision is to be used otherwise than for the purposes of agriculture or a dwelling unless, in the opinion of the Council:

   a) none of the land the subject of the application is prime crop and pasture land, and

   b) the area of each allotment to be created by the subdivision is appropriate having regard to the purpose for which it is being created.

8) Nothing in subclause (7) prevents the Council from granting consent to a subdivision of land to create an allotment it is satisfied will be used otherwise than for the purpose of agriculture or a dwelling where the Council is satisfied:

   a) the purpose for which the allotment is to be used involves the supply of goods or services for which there is a demand in the locality,

   b) no other land in the locality could reasonably be used for that purpose, and

   c) the level of demand for the goods or services which are to be supplied from the allotment and the extent to which that allotment is proposed to be used to meet that demand justifies the creation of the allotment despite its agricultural value.

The project satisfies the requirements of Clause 13(8), such that, if required, Council would not be prevented from granting consent to the subdivision of the site. Chapter 5 identifies and discusses the current and predicted energy demands in NSW, particularly during peak periods. This demand for electricity is state-wide, including the locality within which the project is proposed. Chapter 6 identifies the alternative locations considered for the proposed power station, the alternative routes considered for the gas pipeline, and the benefits and advantages of the selected location and route. The level of demand for electricity during peak periods in NSW and the predicted shortfalls in electricity, as discussed in Chapter 5, justify the development of the proposed power station on land that has historically been used for agricultural purposes. Thus, development of the proposed power station meets all the criteria in Clause 13(8), and permission to subdivide the land (zoned 1(a) (Rural)) upon which the proposed power station would be located could be granted by Council if required.

Gas pipeline

The majority of the land through which the proposed gas pipeline would pass is currently zoned 1(a) (Rural) under the Wellington LEP. In the vicinity of the Macquarie River near the Catombal Range, the proposed gas pipeline would also pass through land currently zoned 6 (Open Space) under the Wellington LEP. Construction of a gas pipeline is permissible with consent in both of these zones.

Parkes Local Environmental Plan 1990

The western portion of the proposed gas pipeline would be located within the Parkes LGA. Under the *Parkes Local Environmental Plan 1990*, the proposed gas pipeline would pass through zones within which construction of a gas pipeline would be permissible with consent.

Cabonne Local Environmental Plan 1991

The middle portion of the proposed gas pipeline would be located within the Cabonne LGA. Under the *Cabonne Local Environmental Plan 1991*, the proposed gas pipeline would pass through zones within which construction of a gas pipeline would be permissible with consent.

2.4.2 SEPPs

SEPP (Major Projects) 2005

The aims of the Major Projects SEPP are:

a) to identify development to which the development assessment and approval process under Part 3A of the [EP&A] Act applies,

b) to identify any such development that is a critical infrastructure project for the purposes of Part 3A of the [EP&A] Act,

c) to facilitate the development, redevelopment or protection of important urban, coastal and regional sites of economic, environmental or social significance to the State so as to facilitate the orderly use, development or conservation of those State significant sites for the benefit of the State,

d) to facilitate service delivery outcomes for a range of public services and to provide for the development of major sites for a public purpose or redevelopment of major sites no longer appropriate or suitable for public purposes,

e) to rationalise and clarify the provisions making the Minister the approval authority for development and sites of State significance, and to keep those provisions under review so that the approval process is devolved to councils when State planning objectives have been achieved.

As discussed in Section 2.2, the project has been classified as a major infrastructure project under this SEPP by virtue of its inclusion in Schedule 1 of the Major Projects SEPP. As such, the project is subject to the Part 3A approval process of the EP&A Act (see Section 2.2).

SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007 (the Infrastructure SEPP) became active on 1 January 2008. It was introduced to facilitate the delivery of infrastructure across the state by improving regulatory certainty and efficiency. The Infrastructure SEPP provides a consistent planning regime under the EP&A Act. It has special planning provisions and development controls for an array of infrastructure sectors, including electricity generating works, and gas transmission and distribution.

As discussed in Section 2.4.1, development of the proposed power station and associated gas pipeline is permissible with consent in all zones through which it passes within the Wellington, Parkes and Cabonne LGAs. Consequently, the Infrastructure SEPP does not have any further impact on the permissibility of the project.

SEPP 33 – Hazardous and Offensive Development

SEPP 33 - Hazardous and Offensive Development (SEPP 33) applies to industry developments that are potentially hazardous and/or potentially offensive. The project would likely meet the definition of 'potentially hazardous' under this SEPP and, therefore, preparation of a preliminary hazard analysis is required to demonstrate that the proposed

risk management measures would reduce off-site risk impacts to an acceptable level. The project would also be considered 'potentially offensive' under the SEPP, in recognition of the applicable environment protection licence requirements (see below).

A preliminary hazard analysis has been undertaken in accordance with the *Hazardous Industry Planning Advisory Paper No. 6 – Guidelines for Hazard Analysis* to determine if the project meets the required land use safety criteria stipulated by the DoP. The results of the analysis are summarised in Section 9.7, concluding that, given the proper implementation of the proposed mitigation and safeguard measures, the project would not be considered potentially hazardous or offensive, and would meet the requirements of SEPP 33 and relevant land use safety criteria.

SEPP 44 – Koala Habitat Protection

SEPP 44 – Koala Habitat Protection (SEPP 44):

> Aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:
>
> a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
>
> b) by encouraging the identification of areas of core koala habitat, and
>
> c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

The gas pipeline component of the project would pass through the Cabonne and Parkes LGAs, both of which are identified as land to which SEPP 44 applies.

A detailed flora and fauna assessment undertaken for the proposed power station and gas pipeline route identified that important habitat resources for the Koala would not be removed through development of the project, and that considerable habitat resources are available adjacent to the study area (see Section 9.5).

2.5 Other legislation

A number of additional licences and approvals may be required for the project under other relevant environmental legislation. Under Part 3A, Clause 75U of the EP&A Act, the approval provisions of the following relevant Acts do not apply to an 'approved project':

- *Heritage Act 1977* — approval under Part 4, excavation permit under Section 139
- *National Parks and Wildlife Act 1974* — permit under Section 87 or consent under Section 90
- *Native Vegetation Act 2003* — authorisation under Section 12.
- *Rivers and Foreshores Improvement Act 1948* — permit under Part 3A
- *Water Management Act 2000* — water use approval under Section 89, 90 or 91.

Reference to an approved project under Section 75U includes a reference to any investigative or other activities required to be undertaken for the purpose of complying with any environmental assessment requirements under this Part in connection with an application for approval to carry out a project, or of a concept plan for a project. That is, exemptions under this Part apply to a Part 3A project prior to the granting of Ministerial approval if the activity is to be undertaken in the process of seeking Ministerial approval.

Under Part 3A, Clause 75V of the EP&A Act, the following approvals cannot be refused if the relevant works are necessary for the carrying out of an approved project. These approvals are also required to be substantially consistent with the approval under this Part:

- *Mine Subsidence Compensation Act 1961* — approval under Section 15
- *Protection of the Environmental Operations Act 1997* — environmental protection licence
- *Roads Act 1993* — consent under Section 138.

A summary of the potential licensing and approval requirements relevant to the project is provided in Table 2-1. The need for licensing and approval may change as a result of amendments to the project during the detailed design phase. Therefore, the following assessment is provided for consideration as part of the environmental assessment.

Table 2-1 Summary of potential licensing and approval requirements

Legislation and responsible agency	Relevant provisions	Requirements to gain approval
Protection of the Environment Operations Act 1997 DECC	The Act enforces licences and approvals formerly required under separate Acts relating to air, water and noise pollution, and waste management with a single integrated licence.	As the project would comprise a scheduled activity, being an 'electricity generating works' that supplies, or is able to supply, more than 30 megawatts of electrical power, a licence would be required covering both construction and operation of the facility.
Threatened Species Conservation Act 1995 and *Threatened Species Amendment Bill 2004* DECC	The Act aims to protect threatened flora and fauna, and their habitats. Assessment of impact on threatened species, populations and communities is required in accordance with Section 94 of the Act.	Separate approval is not required under the Act. However, assessment is required as set out by the Act as part of the environmental assessment phase.
Native Vegetation Act 2003 Department of Water and Energy (DWE)	The Act protects state-protected land and native vegetation that is identified by the Minister for Climate Change, Environment and Water.	Pursuant to Section 75U(1) of the EP&A Act, proposals determined under Part 3A of that Act do not require separate approvals under Section 12 of this Act.
Rivers and Foreshores Improvement Act 1948 DWE	Under Part 3A of the Act, approval is required for excavations within 40 metres of a waterway.	Pursuant to Section 75U(1) of the EP&A Act, proposals determined under Part 3A of the EP&A Act do not require separate approvals under Part 3A of this Act.
Water Management Act 2000 DWE	Under the Act, a licence would be required if water was to be extracted from a creek or if any waterways were to be realigned during construction.	Pursuant to Section 75U(1) of the EP&A Act, proposals determined under Part 3A of the EP&A Act do not require separate approvals under Sections 89, 90 or 91 of this Act.
National Parks and Wildlife Act 1974 DECC	The Act aims to prevent the unnecessary or unwarranted destruction of relics, and the active protection and conservation of relics of high cultural significance. This Act covers relics of both Aboriginal and non-Aboriginal habitation in	Pursuant to Section 75U(1) of the EP&A Act, proposals determined under Part 3A of the EP&A Act do not require separate approvals under Sections 87 or 90 of this Act.

Legislation and responsible agency	Relevant provisions	Requirements to gain approval
	NSW.	
Heritage Act 1977 DoP (NSW Heritage Office)	The Act protects heritage items, sites and relics in NSW older than 50 years regardless of cultural heritage significance.	Pursuant to Section 75U(1) of the EP&A Act, proposals determined under Part 3A of the EP&A Act do not require separate approvals under Part 4 or Section 139 of this Act.
Electricity Supply Act 1995 DWE	This Act regulates network operations and electricity supply to establish a competitive retail electricity market so as to promote efficient and environmentally responsible production. The Act confers powers to network operators to enable them to construct, operate, repair and maintain their electricity works.	A licence to supply electricity is required.
Roads Act 1993 NSW Roads and Traffic Authority (RTA)	Consent is required from the RTA for work in, on, under or over a public road.	Construction of the gas pipeline across RTA roads would require consent under Section 138 of the Act. Temporary closure of roads for transport of the gas turbines and other large plant items would also require RTA consent under the Act.
Crown Lands Act 1989 Department of Lands (DoL)	The Act governs the use of Crown land.	The project may cross Crown roads and, therefore, may require approval from DOL for the ongoing operation of the pipeline.
Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA)	Proposals that have the potential to significantly impact on matters of national environmental significance, or the environment of Commonwealth land, must be referred to the Commonwealth Minister for the Environment, Heritage and the Arts.	The project may impact on nationally-listed threatened or endangered species or communities, or internationally-listed migratory species. Referral to, or approval from, the Commonwealth Minister for the Environment, Heritage and the Arts may be required under this Act.
Civil Aviation Safety Regulation 1998 Civil Aviation Safety Authority (CASA)	If a physical structure is greater than 110 metres high or emits gaseous efflux greater than 4.3 metres per second at 110 metres above ground level, CASA will assess the object to determine whether it need be considered an obstacle.	If considered an obstacle, CASA will regulate mitigation measures such as lighting, restricted air access, depiction on charts and notification. As the project is within 15 kilometres of Bodangora Airstrip, and the gaseous efflux from the exhaust stacks is likely to be greater than 4.3 metres per second at 110 metres above ground level, once approved, CASA would be notified of the project for assessment (see Section 9.7).

2.5.1 Commonwealth approval process

EPBC Act 1999

The primary objective of the Commonwealth EPBC Act is to 'provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance'.

An 'action', defined as a project, development, undertaking, activity or series of activities, which is likely to have a significant impact on:

a) matters of national environmental significance (known as 'NES matters') or

b) the environment on Commonwealth land (whether or not the action is occurring on Commonwealth land)

is classed as a 'controlled action' under the EPBC Act and requires environmental approval from the Commonwealth Minister for the Environment, Heritage and the Arts.

Actions with the potential to have significant impacts must be referred to the Commonwealth DEWHA, to determine whether the action constitutes a 'controlled action' and if a Commonwealth approval is required.

Matters of national environmental significance include:

- World Heritage Areas
- National Heritage Areas
- Ramsar wetlands of international importance
- nationally-listed threatened species and ecological communities
- listed migratory species
- nuclear actions
- Commonwealth marine areas
- Commonwealth heritage places.

The referral of a 'controlled action' under the EPBC Act to the Commonwealth does not automatically exempt the action from assessment and approval under State legislation such as the EP&A Act. The effect of this is that environmental assessment and approval of an action often occurs at both the State and Commonwealth levels, and in turn two assessments dealing with the same action are prepared. To simplify and reduce duplication of works in the process of assessing and approving actions falling into the category of 'controlled actions', a bilateral agreement between the Commonwealth and a state/territory can be entered into.

Bilateral agreements

Section 45 of the EPBC Act grants permission to the Commonwealth Minister for the Environment, Heritage and the Arts to enter into a bilateral agreement between the Commonwealth and a state or self-governing territory. Bilateral agreements are defined as written agreements, expressly stating that they are a 'bilateral agreement', which provide for one or more of the following:

i) protecting the environment

ii) promoting the conservation and ecologically-sustainable use of natural resources

iii) ensuring an efficient, timely and effective process for environmental assessment and approval of actions

iv) minimising duplication in the environmental assessment and approval process through Commonwealth accreditation of the processes of the State or Territory (or vice versa).

Section 47 of the Act states that bilateral agreements can declare actions that have been assessed in a specified manner to be exempt from assessment under Part 8 of the Act, but still require that the action be approved by the Minister under Part 9. In such cases, the agreement must provide for the Minister to receive a report stating the relevant impacts of the action. This report serves the purpose of allowing the Minister to make an informed decision, whether or not to approve the action under Part 9 (for the purposes of each controlling provision).

In accordance with sections 46 and 47 of the Act, the Commonwealth and NSW Governments have entered into a bilateral agreement relating to environmental impact assessment. The agreement was signed by both the NSW Minister for Planning and the then Commonwealth Minister for the Environment and Water Resources (now Minister for the Environment, Heritage and the Arts), and came into effect on 18 January 2007. The effect of the agreement is that, for actions that are taking place wholly within NSW and that are deemed to be a 'controlled action' by the Commonwealth, an environmental assessment under Part 8 of the Act need not be completed; only the NSW environmental assessment (generally in accordance with the EP&A Act) will be required.

In addition to completing the NSW assessment under Parts 3A, 4 or 5 of the EP&A Act, Schedule 1 of the bilateral agreement requires the following:

- The NSW Minister, the Director-General or the consent authority must issue guidelines to proponents of 'controlled actions' to ensure that material prepared by the proponent:
  - contains an assessment of all relevant impacts of the controlled action, and incorporates sufficient information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to grant approval
  - addresses the matters outlined in Schedule 4 of the Commonwealth Environmental Protection and Biodiversity Conservation Regulations 2000.
- The assessment must be released for public comment and the public given at least 30 days to provide comments to the consent authority.
- An assessment report must be prepared, which includes a description of:
  - the controlled action
  - the relevant impacts of the controlled action
  - feasible mitigation measures
  - any feasible alternatives to the controlled action that have been identified through the assessment, and their likely impact (to the extent practicable).
- The NSW consent authority submits to the Commonwealth Minister a copy of the assessment report, the State-level approval conditions, any other information available to, or used by, the NSW consent authority in the decision-making process and, if a public statutory inquiry is held, a copy of the inquiry report.

The streamlining of the assessment process by the Commonwealth–NSW bilateral agreement has not affected the approval process for a 'controlled action', in that approval at both State and Commonwealth level is still required.

Application to this project

A biodiversity impact assessment was undertaken for this project. The significance of potential impacts to endangered ecological communities and threatened species of national conservation significance was assessed in accordance with *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* (Department of the Environment and Heritage 2006) (see Section 9.5 and Technical Paper No. 1). The significance assessment concluded that the project is unlikely to result in a significant impact to any ecological community or species. No other matter of national environmental significance would be affected by the project. As such, no referral has been made to the Commonwealth Minister for the Environment, Heritage and the Arts for this project.

Native Title Act 1993

The *Native Title Act 1993* establishes a mechanism for dealing with and determining claims to native title. Under Subdivision P of the Act ('Right to Negotiate'), native title claimants can negotiate with regard to the undertaking of certain activities proposed to be undertaken on publicly-owned land and/or waters (known as 'future acts'), if they have a right to negotiate. Claimants gain the right to negotiate if their native title claim application satisfies the registration test conditions. Rights to native title are extinguished on privately-owned land.

As part of the Aboriginal heritage assessment (see Section 9.6 and Technical Paper No. 2), Australian Museum Business Services conducted a native title search of the National Native Title Tribunal register for the Wellington, Parkes and Cabonne LGAs. Within the Wellington LGA, one claimant application was identified as active, two applications had been discontinued and another was a compensation application that has been discontinued. Within the Parkes LGA, four claimant applications had been discontinued and another compensation application had been discontinued. Within the Cabonne LGA, two claimant applications had been discontinued and another compensation application had been discontinued. No native title claims were identified as currently valid for the study area. Nevertheless, consultation with the local Aboriginal community was undertaken throughout the project following the DECC draft *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC 2005a) (see Section 9.6).