2. Planning and regulatory context

Section 2 outlines the major relevant planning and regulatory framework for the proposed Project. Table 2-1 summarises key NSW legislation that may potentially impact on the proposed Project.

2.1 State legislation

2.1.1 Environmental Planning and Assessment

The key piece of legislation applying to the Project is the New South Wales *Environmental Planning and Assessment Act 1979* (EP&A Act). Relevant State Environmental Planning Policies (SEPP) include the State Environmental Planning Policy (Major Projects) 2005 and State Environmental Planning Policy (Infrastructure) 2007.

This follows as the proposed pipeline is a Project to which Part 3A of the EP&A Act applies. Part 3A applies to Major Projects identified under SEPP (Major Projects) 2005 or works declared as Critical Infrastructure by the Minister for Planning.

Schedule 1 of SEPP (Major Projects) 2005 identifies a range of developments that would constitute a Major Project and would therefore be assessed under Part 3A of the *EP&A Act* including:

> Development for the purposes of a pipeline in respect of which: (a) a licence is required under the Pipelines Act 1967, (clause 26A of Schedule 1).

A licence is required under section 11 of the *Pipelines Act 1967* in order for a person to construct or operate a 'pipeline[1]' unless the person falls within section 5 of that Act. This section contains various categories of excluded pipelines including a pipeline constructed by a 'public authority', being only those public authorities listed in the definition in section 3 or 'any body declared by the Minister, by order published in the Gazette'. As Macquarie Generation is not listed as a public authority under the *Pipelines Act 1967* nor has it been published in the Government Gazette to be a public authority under that Act Macquarie Generation will be required by the *Pipeline Act 1967* to obtain a pipeline licence and that requirement means that the Project falls within the 'Major Projects' developments under clause 26A of schedule 1 of the *SEPP (Major Projects) 2005* with the result that Part 3A applies.

The DoP has confirmed that the Project can be considered under Part 3A. The Director-General's Requirements for the environmental assessment report relating to the proposed development are provided (Appendix A).

The SEPP (Infrastructure) 2007 will also apply to the Project however the SEPP (Major Projects) 2005 prevails in the event of any inconsistency.

[1] *"pipeline" means a pipe or system of pipes for the conveyance of any substance, whether in a gaseous, liquid or solid state but does not include a pipe or system of pipes for the conveyance of petroleum within the adjacent area, as defined in the Petroleum (Offshore) Act 1982.*

2.1.2 Other relevant legislation

Table 2-1 discusses the relationship of key NSW legislation to the proposed pipeline Project.

Table 2-1 NSW legislation

Legislation	Key Requirements	Relevance to the proposed pipeline
Contaminated Land Management Act 1997	Provides a regime for investigating and, where appropriate, remediating land affected by contamination, which represents a significant risk of harm to human health or the environment.	If contaminated land is uncovered by the construction works, it must be assessed and managed in accordance with the Act.
Fisheries Management Act 1974	The objectives of the Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.	Section 75U(1)(b) of the EP&A Act states that a permit is not required under the *Fisheries Management Act 1974*, for dredging or reclamation work, removal of marine vegetation and blocking passage of fish under a Part 3A approval. Adequate environmental safeguards are proposed for crossing of watercourses as discussed in Section 4.2.
Heritage Act 1977	Approval must be gained from the Heritage Council when making changes to a heritage place listed on the State Heritage Register, or when excavating any land in NSW where you might disturb an archaeological relic.	No known heritage items will be adversely affected by the Project (refer to Section 4.4). The pipeline corridor area is heavily disturbed from past activities it is expected that there will not be any heritage items located along the pipeline corridor. As such, it is anticipated that no impact on heritage items would occur.
National Parks and Wildlife Act 1974	The Act aims to prevent the unnecessary or unwarranted destruction of relics and the active protection and conservation of relics of high cultural significance. Pursuant to the Act a permit is required to disturb, excavate or move an Aboriginal object or place and that consent is also required to destroy, damage or deface Aboriginal objects or places.	Under Section 75U(1)(d) Part 3A of the EP&A Act, a permit or consent is not required under the *National Parks and Wildlife Act 1974*.
Native Vegetation Act 2003	The *Native Vegetation Act 2003* requires development approval from the relevant Catchment Management Authority (Hunter/Central Rivers) for the clearing of any natural vegetation. Approval can only be granted under this act for Projects that improve or maintain environmental outcomes.	Under section 75U(1) Part 3A of the EP&A Act an authorisation to clear native vegetation is not required.
Pipelines Act 1967	This Act regulates the construction and operation of pipelines within NSW by requiring that a licence is obtained for certain pipelines outlined under the Act.	Macquarie Generation requires a licence under the *Pipelines Act 1967*.

Legislation	Key Requirements	Relevance to the proposed pipeline
Protection of the Environment Operations Act 1997	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. Development requires a license under the Act, should it meet the assessment criteria outlined within Schedule 1 of the EPA-licensed activities.	A license under the Act is not considered necessary for the proposed pipeline.
Roads Act 1993	Section 138 of the *Roads Act 1993* requires that a person obtain the consent of the appropriate roads authority for the erection of a structure, or the carrying out of a work in, on or over a public road, or the digging up or disturbance of the surface of a public road. If the applicant is a public authority, the roads authority must consult with the applicant before deciding whether or not to grant consent or concurrence.	The proposed development involves the crossing of several public roads, including the Golden and New England Highway and may therefore require approval from the NSW RTA before commencing work. Under Section 75V of the EP&A Act consent under Section 138 of the *Roads Act 1993* cannot be refused if it is necessary for carrying out an approved Project under Part 3A of the AP&A Act.
Rural Fires Act 1997	The Act provides for management of bush fires through prevention, mitigation and protection of life and property.	Under section 75U(1) of the EP&A Act a bushfire safety authority is not required.
Threatened Species Conservation Act 1995	This act requires any threatened plant or animal species, populations or ecological communities associated with a proposed development to be identified and that acceptable recovery and management strategies are implemented a likely significant impact would occur.	Section 5A of the EP&A Act outlines seven points that must be considered in order to determine the significance of the impact of a development or activity on the habitat of threatened species, populations or ecological communities known or considered likely to occur in the study area and environs. Further details on assessment of significance and seven part tests are presented in Section 4.10.
Water Management Act 2000, including the *Rivers and Foreshores Improvement Act 1948* and *Water Act 1912*	Approval is required from the consenting authority for development within 40 m of a declared waterway such as stream, rivers, lake or lagoon, including excavation of land or any works that would detrimentally affect the water flowing in a stream, river, lake or lagoon. 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. Any groundwater dewatering works that occur during the construction process will require a licence under the Act.	Under Section 75U(1)(f) and (h) of the EP&A Act, no approval or permit is required for an approved Part 3A Project, under the *Water Management Act 2000* and a permit under the *Rivers and Foreshores Improvement Act 1948*. No groundwater extraction is anticipated as part of the Project due to the separation depth between the pipeline trench and existing aquifers (see Section 4.2).

2.2 Commonwealth legislation

The only Commonwealth legislation applicable to the proposed pipeline works is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) an action (i.e. Project) will require approval from the Commonwealth Minister for the Environment if the action has, will have, or is likely to have, a significant impact on a matter of national environmental significance (NES), including:

- world heritage
- national heritage
- wetlands of international importance
- listed threatened species and communities
- listed migratory species
- protection of the environment from nuclear action
- certain activities involving the marine environment.

The action to be considered is the construction and operation of a 25 km proposed pipeline to transport coal seam gas for use in the Liddell Power Station.

A 'significant impact' is an impact which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts (DEH, 2006).

A search of the EPBC Protected Matters (National Environmental Significance) database was conducted to determine whether any matters of NES will apply to the proposal. The database search returned Foybrook Cross Beds and the Hunter Estuary Wetlands (DEWR, 2007) as NES issues.

An assessment on the potential impacts of the proposed pipeline on the two NES showed that the pipeline route will avoid the Foybrook Cross Beds and the Hunter Estuary Wetlands, and with the adequate protection measures proposed to minimise any adverse impacts on watercourses, the proposed pipeline will not have a significant impact on matter of NES. Therefore the proposal does not require approval under the EPBC Act.

2.3 Local environmental planning instruments

As shown on Figure 2-1 the project falls within the boundaries of Singleton Shire and Muswellbrook Shire Local Government Areas (LGAs).

2.3.1 Singleton local environmental plan

A large portion of the proposed pipeline route is located within the Singleton LGA and traverses land zoned 1(a) (Rural Zone) under the *Singleton Local Environmental Plan 1996* (Singleton LEP).

The objectives of the 1(a) (Rural Zone) are as follows:

- to protect and conserve agricultural land and to encourage continuing viable and sustainable agricultural land use
- to promote the protection and preservation of natural ecological systems and processes
- to allow mining where environmental impacts do not exceed acceptable limits and the land is satisfactorily rehabilitated after mining
- to maintain the scenic amenity and landscape quality of the area
- to provide for the proper and co-ordinated use of rivers and water catchment areas
- to promote provision of roads that are compatible with the nature and intensity of development and the character of the area.

The Rural Zoning Table under Part 3 Rural Development of the Singleton LEP states that any development included in Clause 2 is permissible without consent and any development other than those included within Clause 4 are permissible with consent. The types of development considered prohibited within the zone are listed as follows:

> …advertising structures (other than as will be permitted by clause 33 of the Environmental Planning and Assessment Model Provisions 1980 if they applied); boarding-houses; bulk stores; bus depots; business premises; car repair stations; dual occupancy-detached; industries other than offensive or hazardous industries; junk yards; light industries; liquid fuel depots; motor showrooms; residential flat buildings; road transport terminals; shops; warehouses…

Pursuant to the provisions of the Singleton LEP the proposed pipeline does not fall under any of the above definitions and is therefore considered permissible within the zone with development consent.

2.3.2 Muswellbrook local environmental plan

The remainder of the proposed pipeline route is located within the Muswellbrook LGA and traverses land zones SP2 (Infrastructure) and RU1 (Primary Production) under the *Draft Muswellbrook Local Environmental Plan 2008*.

Objectives of zone SP2 (Infrastructure) are as follows:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- To recognise existing railway land and to enable future development for railway and associated purposes.
- To prohibit advertising hoardings on railway land.
- To recognise major roads and to enable future development and expansion of major road networks and associated purposes.
- To recognise existing land and to enable future development for utility undertakings and associated purposes.

The Draft Muswellbrook LEP Part 3 Land Use Table states that development is permissible with consent if 'the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose; roads'. Therefore development is permissible with consent.

Objectives of zone RU1 (Primary Production) are as follows:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.
- To maintain the rural landscape character of the land in the long term.
- To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not:
  (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or
  (b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or
  (c) visually intrude into its surroundings, except by way of suitable screening.
- To protect or conserve (or both):
  (a) soil stability by controlling development in accordance with land capability
  (b) trees and other vegetation
  (c) water resources, water quality and wetland areas, and their catchments and buffer areas
  (d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

The Draft Muswellbrook LEP Part 3 Land Use Table states that 'electricity generating works' are permissible within consent in zone RU1 (Primary Production).

2.3.3 Conclusion

The proposed pipeline is not classified as prohibited development under the land zones the pipeline traverses in the Singleton LEP or the Draft Muswellbrook LEP. Under the definitions of each land zone in each LEP the proposed pipeline is considered permissible with consent. Accordingly the proposed development is not wholly prohibited under the meaning of Part 3A of the EP&A Act.