

Statutory Planning – Summary of Key Outcomes

The Buronga Peaking Power Plant Project is subject to the development and assessment processes and requirements of Part 3A of the Environmental Planning and Assessment (EP&A) Act. A Project Application was submitted by IPRA to the Department of Planning on 6th November 2006, including a supporting Preliminary Environmental Assessment.

On 1st August 2007 the Director-General declared that the project was considered a Major Project and therefore to be assessed under the provisions of Part 3A of the Environmental Planning and Assessment (EP&A) Act.

On 10th August 2007 the Acting Executive Director of the Department of Planning issued Environmental Assessment Requirements (EARs).

Other licences and approvals required for the peaking power plant project include:

- Environment Protection Licence under the provisions of the POEO Act; and
- Licence to keep Dangerous Goods from NSW WorkCover under the Dangerous Goods Act 1975 for the storage and handling of licensable quantities of dangerous goods.

The development site is zoned 1 (a) (General Rural Zone) under the Local Environmental Plan (LEP) where energy generation activities are permissible with development consent from the relevant authority.

Chapter 5

Statutory Planning

5.1 Introduction

A number of statutory planning controls need to be addressed for the purposes of the Buronga Peaking Power Plant Project.

This chapter reviews Commonwealth, State and Local planning legislation and policies that apply to the Buronga Peaking Power Plant Project to determine what approvals would be required to allow the proposed development to proceed.

5.2 State Legislation

5.2.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act), and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), provide the framework for development and environmental assessment in NSW. In late 2005 a new Part 3A was inserted into the EP&A Act to provide for a new category of development known as Major Projects. *State Environmental Planning Policy* (SEPP) 2005 (Major Projects SEPP) was prepared and gazetted in conjunction with these new amendments. SEPP Major Projects identifies categories of development which are considered to be Major Projects to which Part 3A of the EP&A Act applies.

The Buronga Peaking Power Plant is considered to be a Major Project pursuant to *clause 24(a) 'Electricity Generation'* of Schedule 1 of the SEPP Major Projects as it is "Development for the purpose of a facility for the generation of electricity using distillate that has a capital investment value of more than \$30 million". This was confirmed in the Record of the Minister's opinion dated 1st August 2007.

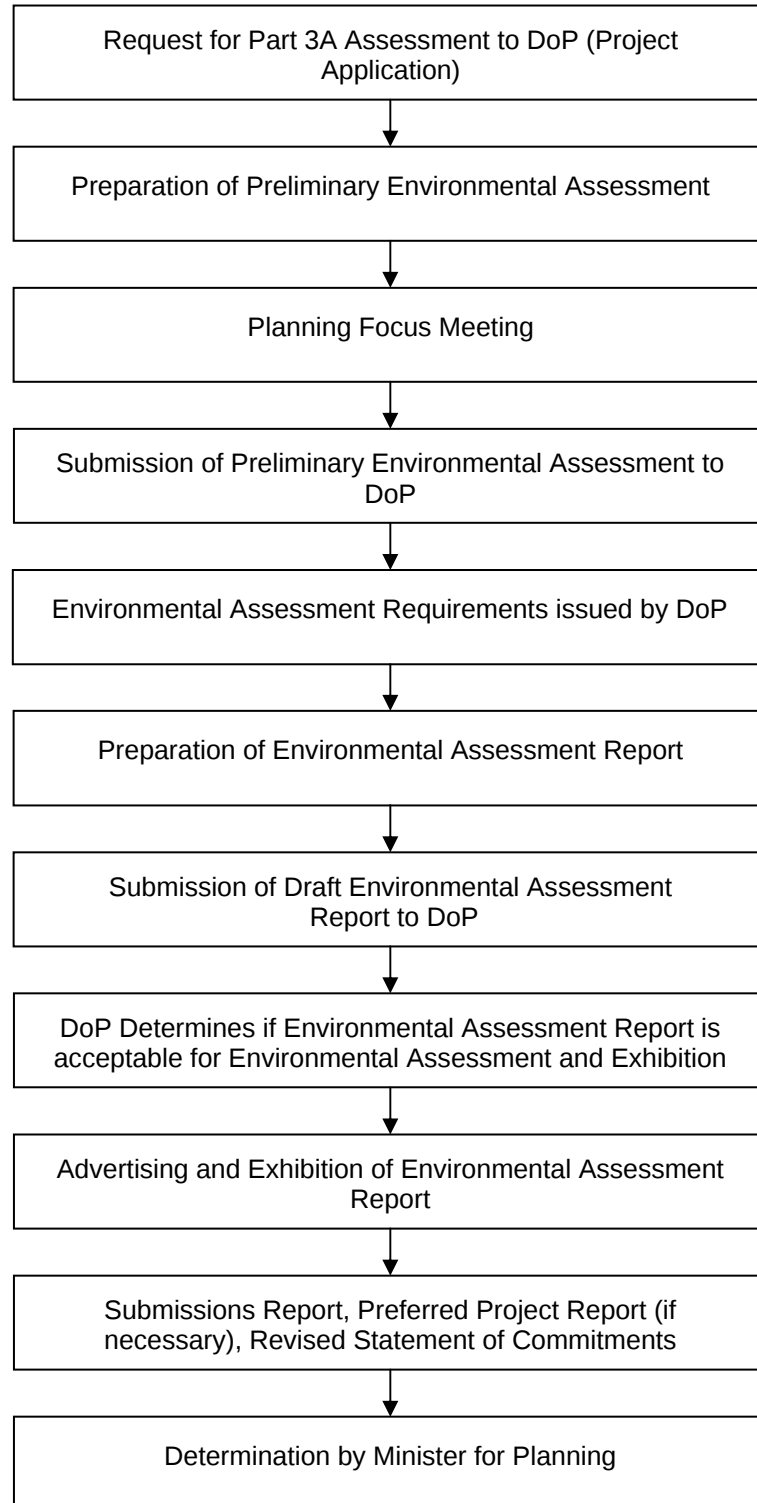
The Buronga Peaking Power Plant is therefore subject to the development and assessment processes and requirements of Part 3A of the EP&A Act. **Figure 5-1** illustrates the development and approvals process under Part 3A for the peaking power plant.

A Planning Focus Meeting (PFM) was held on 28th November 2006. The purpose of the PFM was to communicate the proposals to consultees, to provide an opportunity for consultees to ask questions and comment on the proposals; to assist authorities in preparing requirements for the Environmental Assessment report; and to enable IPRA and URS to integrate these requirements into the project development and approvals process.

On 1st August 2007 the Director-General declared that the project was considered a Major Project and therefore to be assessed under the provisions of Part 3A of the Act (refer to **Appendix A** for the D-Gs declaration).

On 10th August 2007 the Acting Executive Director of DoP, as delegate for the Director-General of DoP, issued Environmental Assessment Requirements (EAR's) pursuant to section 75F(2) of the EP&A Act to IPRA. The EAR's are provided within **Appendix A** of this Environmental Assessment.

Figure 5-1 Approvals Process for Buronga Peaking Power Plant under Part 3A of EP&A Act 1979



Chapter 5

Statutory Planning

5.2.2 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) relates to the management of pollution and waste disposal in NSW and is administered by the NSW Department of Environment and Climate Change (DECC). Under section 48 of the POEO Act, premises-based scheduled activities (as defined in Schedule 1 of the POEO Act) require an Environment Protection Licence (EPL). It is expected that the Buronga Peaking Power Plant would require licensing under the provisions of the POEO Act as it is 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.

5.2.3 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the conservation of threatened species, populations and ecological communities of animals and plants. The URS flora and fauna assessment identified no threatened flora species or communities listed under the TSC Act and there are no previous records of threatened flora occurring on the site (DECC, 2007a).

The URS flora and fauna assessment identified one threatened fauna species (the Hooded Robin) at the site. A further 15 threatened fauna species are likely to occur in the study area based on habitats present on site and recent DECC (2007a) records in the vicinity.

Section 5A of the EP&A Act, although not formally required as part of the Part 3A assessment process, has been addressed as a guide to the consideration of impacts on threatened species, populations and ecological communities listed under the TSC Act.

Accordingly, 7-part tests of significance were performed for those threatened species recorded at the site or considered to have a medium or high likelihood of occurrence in the study area. This assessment of significance concluded that the proposed development is not ‘likely’ to result in a significant impact on any threatened flora or fauna species. This assessment is discussed in **Chapter 12** and presented in **Appendix E**.

5.2.4 Water Management Act 2000

The *Water Management Act 2000* (WM Act) commenced on 1 January 2001 and is administered by the Department of Water and Energy. The Project site is not subject to a water sharing plan created under the WM Act and the licence and approval provisions under the WM Act do not apply to it.

The provisions of the *Water Act 1912* continue to apply to the Buronga Peaking Power Project and continue to control licensing and approvals for water supply works until the Water Management Act is fully implemented.

As water is not proposed to be extracted from a creek or river and no waterways will be realigned during construction, no licence or approval is required under the *Water Act*.

5.2.5 Waste Avoidance and Resource Recovery Act 2001

The objectives of the *Waste Avoidance and Resource Recovery Act 2001* are to encourage the most efficient use of resources, to reduce environmental harm, and to provide for the continual reduction in waste generation in line with the principles of ecologically sustainable development (ESD). To meet the objectives of the Act, a resource management hierarchy has been established, comprising:

- avoiding unnecessary resource consumption;
- recovering resources (including reuse, reprocessing, recycling and energy recovery); and
- disposal (as a last resort).

These measures would be incorporated into both the construction and operation of the proposed development.

5.2.6 Occupational Health and Safety (Amendment) Act 2000

The Occupational Health and Safety (Amendment) Act 2000 (OHS ACT) and the *Occupational Health and Safety Amendment (Dangerous Goods) Regulation 2005 (2005-531)* provide a licensing scheme covering both the premises where substances classified as Dangerous Goods are kept, and also those who transport them. The OHS Act and the Regulations 2005 is administered by NSW WorkCover.

The proposed development would be required to obtain a License to Keep Dangerous Goods from NSW WorkCover under the DG Act for the storage and handling of licensable quantities of dangerous goods.

5.2.7 Soil Conservation Act 1938

The *Soil Conservation Act 1938* (SC Act) administered by the Department of Lands is aimed at encouraging landholders to take soil conservation and erosion prevention measures and, where this fails, to order action to be taken. These matters have been addressed in **Chapter 8** Soils, Geology and Groundwater. The construction and operation of the proposed development would be undertaken pursuant to an approved Environmental Management Plan (EMP) which would manage the potential for soil erosion.

5.2.8 Rural Fires Act 1979

This proposal concerns the construction of a peaking power plant on bush fire prone land. The development is being assessed under Part 3A of the *Environmental Planning and Assessment Act, 1979* (EP&A Act). As such, concurrence from the Commissioner of the Rural Fires Service is not required under either the Sn 100B of the *Rural Fires Act, 1979* (RF Act) or Sn 79BA of the *EP&A Act*. Consultation with the Commissioner is required under Part 3A, however the Minister for Planning has the ultimate discretion in approving this development.

Based on the nature of the proposal, assessment under Part 3A of the EP&A Act and consultation with RFS officers, the approach taken (refer Chapter 13 Bushfire Risk) has demonstrated how the objectives contained with *Planning for Bushfire Protection 2006* (PBP 2006) have been met.

Chapter 5

Statutory Planning

5.2.9 Contaminated Land Management Act 1997

The *Contaminated Land Management Act* (CLM Act) has been established to control the risk of harm to human health and the environment, and sets out criteria to determine whether these risks exist. It provides the Department of the Environment and Conservation with the authority to declare sites for investigation and remediation or voluntary remediation agreements. The proposed development would operate in accordance with the relevant requirements established in the CLM Act.

5.2.10 Noxious Weeds Act 1993

The *Noxious Weeds Act 1993* (NW Act) defines the roles of government, departments and private landholders in the management of noxious weeds. The NW Act establishes categorisation and controls actions for the various listed noxious weeds according to their potential to cause harm to the local environment. Weeds are categorised in Control Classes 1 through 4 and managed accordingly.

The environmental assessment considers these management measures in **Chapter 12** Flora and Fauna and any mitigation measures would be included in the EMP for the construction and operation of the development.

5.2.11 State Environmental Planning Policies

Below is a discussion of the State Environmental Planning Policies that substantially govern the proposed development.

SEPP No. 33 – Hazardous and Offensive Development (SEPP 33)

SEPP 33 applies to development for the purpose of potentially hazardous industries and potentially offensive industries.

The proposed distillate-fired power plant constitutes a potentially hazardous and offensive industry as defined under Clauses 3 and 4 of the SEPP on the basis that if no measures were to be employed, the development would pose a significant risk to property and would emit polluting discharges.

A Preliminary Hazard Analysis has been prepared which found that with the proposed mitigation measures the risk associated with this development is very low. This is discussed in **Chapter 18** and presented in **Appendix H**. As such the proposed Buronga Peaking Power Plant would not be considered potentially hazardous or offensive.

SEPP No. 44 – Koala Habitat Protection (SEPP 44)

SEPP 44 applies to the Buronga Peaking Power Plant because the Development Site is located within Wentworth Local Government Area on land to which Schedule 1 of SEPP 44 SEPP 44 applies.

A flora and fauna assessment has been prepared (refer **Chapter 12** and presented in full in **Appendix E**) which identifies potential koala habitat on the Development Site. Where potential habitat is identified, the area must be investigated for core koala habitat, defined as an area of land with a resident breeding population of koalas, evidenced by attributes such as breeding females and recent sightings and historical records of a population.

Where core koala habitat is found to occur, SEPP 44 requires that a site-specific Koala Plan of Management is prepared. The potential koala habitat is reviewed in **Chapter 12** and as core koala habitat was not identified on the site, a Koala Management Plan is not required under SEPP 44.

SEPP (Major Projects) 2005

According to *State Environmental Planning Policy (Major Projects) 2005* (Major Projects SEPP) development referred to as a 'major project' requires assessment and approval of the Minister for Planning in accordance with Part 3A of the EP&A Act. The SEPP defines certain types of development as comprising major projects. The Buronga Peaking Power Plant comprises a major project under the requirements of the Major Projects SEPP, namely Schedule 1, Clause 24 (a) "Development for the purpose of a facility for the generation of electricity using distillate that has a capital investment value of more than \$30 million". This was confirmed in the Record of Minister's opinion dated 1st August 2007.

Accordingly, the proposed development will be subject to assessment by the Director General of the Department of Planning and determination by the Minister for Planning in accordance with Part 3A of the EP&A Act.

It is noted that the Minister cannot approve the development if it is prohibited under a Local Environmental Plan, Regional Environmental Plan or State Environmental Planning Policy (Section 75J(3)(b) of the EP&A Act). The site of the proposed development is zoned under the Wentworth Local Environment Plan 1993 as Zone 1 (a) (General Rural Zone) where the proposed development is permissible with development consent. Hence, the proposed development is not prohibited under the Plan and the Minister is not prevented from approving the development.

5.3 Commonwealth Legislation

Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides that an action which has, will have or is likely to have a significant impact on a matter of national environmental significance is a 'controlled action' and may not be undertaken without approval from the Commonwealth Minister for the Environment and Heritage, as provided for under the provisions of Part 9 of the EPBC Act. The EPBC Act provides a number of matters of national environment significance for which Ministerial approval is required.

A search of the EPBC database has revealed that the subject site is not a World Heritage property, neither contains nor is close to any wetlands of International significance, and is not a marine environment. Therefore as the proposed development does not involve nuclear activities, the detailed flora and fauna survey then determines whether the Buronga Peaking Power Plant will require referral to the Commonwealth Minister for the Environment.

The flora and fauna survey and assessment found the only matter of national environment significance which is relevant to the Buronga Peaking Power Plant is '*Nationally threatened species and ecological communities*'.

The EPBC Act Policy Statement 1.1 *Significant Impact Guidelines (Matters of National Environmental Significance)* prepared by the Department of Environment and Heritage dated May 2006 set out criteria intended to assist in determining whether an action is a 'controlled action' which requires approval. In particular, the Guidelines contain criteria for determining whether a proposed action is likely to have a significant impact on a matter of national environmental significance.

Chapter 5

Statutory Planning

The flora and fauna assessment contained in **Chapter 12** and presented in **Appendix F** of the Environmental Assessment provides that no threatened species or ecological communities listed under the *EPBC Act* were recorded in the site area. Therefore the Buronga Peaking Power Plant is not likely to have a significant impact on nationally threatened species and ecological communities. The Buronga Peaking Power Plant is therefore not a 'controlled action' under the EPBC Act and does not need to be referred to the Minister for Environment and Heritage.

5.4 Regional Environmental Plans

The Development Site is located in an area which is not subject to any Regional Environmental Plans.

5.5 Local Environmental Planning Instruments

5.5.1 Wentworth Local Environmental Plan (WLEP) 1993

The Development Site is subject to the provisions of the Wentworth Local Environment Plan 1993. The Site is zoned, Zone 1(a) (General Rural Zone) under the WLEP.

The Buronga Peaking Power Plant Project is permissible with development consent.