



Warrell Creek to Urunga Upgrading the Pacific Highway

ENVIRONMENTAL ASSESSMENT

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2. Process for assessment and decision making

This chapter describes relevant statutory requirements and explains the steps in the assessment and approval process.

2.1 Statutory context

2.1.1 NSW Environmental Planning and Assessment Act 1979

The Minister for Planning has declared under Section 75C of the EP&A Act, by Order dated 5 December 2006 published in the NSW Government Gazette (No. 175), that development for the purposes of upgrading segments of the Pacific Highway is a project to which Part 3A of the EP&A Act applies (the declared project). The Minister has also declared by Order dated 8 December 2006 published in the Gazette (No. 175) that the same development is a critical infrastructure project under Section 75C of the EP&A Act.

The Proposal requires the Minister's approval. Copies of the Minister's Orders are included in Appendix F.

2.1.2 Other NSW legislation

In addition to the EP&A Act, other NSW legislation contains requirements that may be relevant to the Proposal. The application of these is limited by the provisions in Part 3A of the EP&A Act, however, requirements which remain potentially relevant include:

- Environmental protection licences under the *Protection of the Environment Operations Act 1997* for road construction and/or for the operation of ancillary facilities.
- Approvals under the *Water Act 1912* for access to ground or surface water during construction.

The RTA would continue liaising with relevant agencies to identify and satisfy any further requirements under NSW legislation prior to the commencement of works. Provisions of other legislation that would have applied to the Proposal, but for the application of Part 3A, have been reviewed and considered, where relevant, in Chapters 10-19.

2.1.3 Commonwealth Environment Protection and Biodiversity Conservation Act 1999

Under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a referral is required to the Australian Government for proposed 'actions' that have the potential to significantly impact on matters of national environmental significance, or the environment of Commonwealth land.

Matters of national environmental significance of potential relevance to the Proposal and potential impacts on nationally threatened species and ecological communities.

The Proposal may be referred to the Australian Minister for the Environment, Heritage and the Arts to determine whether or not the Proposal constitutes a controlled action. If the proposal is determined to be a controlled action, approval is required from the Australian Minister.

Chapter 10 – *Flora and fauna* provides further discussion on the potential impacts of the Proposal on matters of national environmental significance.

2.2 Environmental planning instruments

2.2.1 State environmental planning policies (SEPPs)

SEPPs only apply to critical infrastructure projects where the relevant SEPP expressly provides that it applies to the particular project. To date, there are no SEPPs that expressly apply to the Pacific Highway Warrell Creek to Urunga upgrade.

2.2.2 Other environmental planning instruments

Other environmental planning instruments (i.e. local environmental plans) do not apply in respect of an approved Part 3A project.

The Minister for Planning may take into account the provisions of any environmental planning instrument when deciding to whether or not to approve a project under Part 3A.

The provisions of relevant Local Environmental Plans have been considered in Chapter 11 – *Land use and property*.

2.3 Planning and approval process

2.3.1 Assessment and approval under Part 3A of the EP&A Act

The steps in the assessment and approval process under Part 3A of the EP&A Act are summarised below and shown in **Figure 2-1**. Further information on the assessment process is available on the Department of Planning website (www.planning.nsw.gov.au).

Step 1 – lodgement of major project application (EP&A Act Section 75E)

The RTA lodged a major project application with the Department of Planning in July 2007.

Step 2 – environmental assessment requirements (EP&A Act Section 75F)

The Director General of the NSW Department of Planning issued environmental assessment requirements (DGRs) for the project on 23 September 2007, following a planning focus meeting on 23 August 2007. The DGRs were subsequently reissued by the Department of Planning on 13 October 2009. The DGRs, which are included at Appendix A, were prepared following consultation with relevant government agencies.

Step 3 – preparation and submission of environmental assessment (EP&A Act Section 75H)

This environmental assessment has been prepared in accordance with the DGRs and submitted to the Director-General for adequacy review.

Step 4 – public exhibition (EP&A Act Section 75H)

Once the Director-General concludes that the environmental assessment adequately addresses the DGRs, it is placed on exhibition for a period of not less than 30 days. During this period, any person (including a public authority) may make written submissions to the Director-General on the Proposal.

Step 5 – consideration of public submissions (EP&A Act Section 75H)

Following public exhibition, the Director-General will consider the submissions received and provide copies of submissions to RTA or a report on the issues raised in the submissions. The Director-General may require RTA to:

- Submit a response to the issues raised in the submissions.
- Prepare a preferred project report that outlines any changes to the project to minimise its environmental impact.
- Prepare a revised statement of commitments.

Step 6 – preparation of Director-General's report (EP&A Act Section 75I)

The Director-General, NSW Department of Planning will prepare a report on the project. The purpose of the report is to assist the Minister for Planning in deciding whether to grant approval to carry out the project.

Step 7 – decision (EP&A Act Section 75J)

The Minister for Planning will consider any advice from the Minister for Roads and the Director-General's report.

The Minister for Planning will then decide whether or not to approve the project and the conditions to be attached to any approval.

Figure 2-1 Steps in the Part 3A assessment and approval process

