



PART B Statutory Framework

6. Statutory Framework

6.1 Legislation

6.1.1 *Environmental Planning and Assessment Act 1979*

The *Environmental Planning and Assessment Act 1979* (EP&A Act) forms the statutory framework for planning and Environmental Assessment in New South Wales. Implementation of the EP&A Act is the responsibility of the Minister for Planning, public authorities and local councils.

The EP&A Act contains three parts, which set out requirements for development approval:

- ▶ Part 3A provides for control of 'major infrastructure or other Projects' that require Project approval or other approval from the Minister for Planning;
- ▶ Part 4 provides for control of 'local development' that requires development consent from the local Council; and
- ▶ Part 5 provides for control of activities by public authorities that do not require development consent or approval of the Minister for Planning.

6.1.2 *Part 3A of the Environmental Planning and Assessment Act 1979*

Part 3A consolidates the assessment and approval regime for all major Projects that need the approval of the Minister for Planning. Previously these were dealt with under Parts 4 and 5 of the Act. The new Part 3A applies to certain types of State Government infrastructure Projects, developments previously classed as State significant, and other Projects, plans or programs declared by the Minister as outlined in the *State Environmental Planning Policy (Major Projects) 2005*. It provides a streamlined and integrated development assessment and approvals regime for major infrastructure and other Projects of significance to the State.

The Director-General of the Department of Planning (DoP) has formed the opinion that this Project is development of a kind that is described in Schedule 1 of the *State Environmental Planning Policy (Major Projects) 2005*, namely Clause 23(1)(a). Refer to Section 6.1.4. Accordingly, the Project is declared to be a Major Project under Part 3A of the EP&A Act.

Under Part 3A of the EP&A Act, an Environmental Assessment is required to be prepared and submitted with an application for approval to the NSW DoP.



Section 75U

Section 75U of the EP&A Act outlines approvals and legislation that do not apply when a Project is assessed under Part 3A. These are:

- ▶ The concurrence under Part 3 of the *Coastal Protection Act 1979* (CP Act) of the Minister administering that Part of the Act;
- ▶ A permit under section 205 of the *Fisheries Management Act 1994* (FM Act);
- ▶ An approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*;
- ▶ A permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* (NPW Act);
- ▶ An authorisation referred to in section 12 of the *Native Vegetation Act 2003* (NV Act) (or under any Act to be repealed by that Act) to clear native vegetation; and
- ▶ 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* (WM Act).

These Acts are further addressed in Section 6.3.

A summary of the assessment and approval process under Part 3A of the EP&A Act is provided below.

6.1.3 State Environmental Planning Policy (Infrastructure) 2007

The SEPP (Infrastructure) 2007 commenced on 1 January 2008. The aim of SEPP (Infrastructure) 2007 is to facilitate the effective delivery of infrastructure across NSW. Clause 79 of SEPP (Infrastructure) 2007 states that:

“Development permitted without consent—rail infrastructure facilities generally

- (1) *Development for the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority without consent on any land.”*

Therefore, pursuant to Clause 79 of the SEPP (Infrastructure), the Project is permissible.

6.1.4 State Environmental Planning Policy (Major Projects) 2005

The SEPP (Major Projects) 2005 was gazetted on 25 May 2005. The Major Projects SEPP defines development that comprises major Projects and gives the Minister for Planning the power to declare developments as major Projects in accordance with Part 3A of the EP&A Act.

Under Clause 6 of the State Environmental Planning Policy (Major Projects) (Major Projects SEPP) the Project is considered a Major Project as it meets the following definition under Schedule 1 of the Major Project SEPP:

“23 Rail and related transport facilities

- (1) *Development that has a capital investment value of more than \$30 million for the purpose of:*
 - (a) *heavy railway lines associated with mining, extractive industries or other industry”*



The Project has a capital investment value of more than \$30 million and has been declared a Major Project by the Minister for Planning. As such, the Project is to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and submitted for approval by the Minister for Planning.

6.2 Approvals Process

6.2.1 The Project Application Report

The Project Application Report for the Project was lodged with the NSW Department of Planning on 17 March 2008 pursuant to Section 75E of the EP&A Act. The purpose of the Project Application Report is to apply for Project approval from the Minister for Planning to carry out the described Project.

6.2.2 Director-General's Requirements

Under clause 75F of the Act, the Director-General of Planning is required to prepare and issue the proponent with Director-General's requirements (DGR's) for undertaking the Environmental Assessment. These identify key issues to be addressed and the level of assessment required.

ARTC received the DGR's for the Project's Environmental Assessment on 18 April 2008. A copy of the DGR's is contained within Appendix A.

6.2.3 Environmental Assessment

This Environmental Assessment has been prepared in accordance with the DGR's and addresses the relevant Commonwealth, State and local statutory requirements in order for ARTC to seek Project Approval from the NSW Minister for Planning for the Project. The Environmental Assessment addresses the general requirements and key issues contained within the DGR's. The Environmental Assessment also identifies the potential impacts associated with the Project and proposes environmental mitigation measures.

The environmental mitigation measures proposed in this Environmental Assessment have been formulated to reduce the potential impacts of the Project and mitigate any residual impacts. These measures have been collated in the draft Statement of Commitments, which is contained in Appendix B.

6.2.4 Exhibition

If the Environmental Assessment is considered to meet the DGR's, the DoP would place it on public exhibition for at least 30 days. During the exhibition period, submissions would be invited from relevant agencies and members of the public.

The DoP would provide ARTC with a copy of the submissions or a summary of the issues raised in the submissions. ARTC would be asked to respond to the issues and may modify the Project and the draft Statement of Commitments to minimise impacts on the environment if required.

If the Project or draft Statement of Commitments are modified in response to issues raised, a Preferred Project Report would be prepared to describe the scope of the revised Project. The DoP would make this report available to the public.



6.2.5 Assessment and Determination

Following the exhibition period, the DoP would, on behalf of the Minister, review the Environmental Assessment, any Preferred Project Report, and submissions received. Once the DoP has completed its assessment, a draft assessment report would be prepared for the Director-General, which may include recommended conditions of approval.

The recommended conditions would refer to the draft Statement of Commitments and may modify them and/or add additional provisions.

The assessment report would then be submitted to the Minister for Planning for determination. The Minister may refuse the Project, or approve it with any conditions considered appropriate.

The Minister's determination and the Director-General's report would be published on the DoP's web site immediately following determination and provided to ARTC.

6.2.6 Landowners Consent

Pursuant to Clause 8F (1d) of the *Environmental Planning and Assessment Regulation 2000* (the Regulation), certain applications for approval under Part 3A of the Act do not require the consent of the landowner, including linear Projects. The proponent is however required to give notice of the application. In the case of this Project, as it is a linear Project, notice is required in a newspaper circulating in the locality prior to the commencement of the exhibition period.

The notice required by Clause 8F of the Regulation was placed in the *Singleton Argus* on 7 October 2008.

6.3 State Environmental Planning Requirements

6.3.1 State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) address matters of statewide significance. They can apply to the State or a certain development. SEPPs that are considered relevant to the Project are discussed below.

State Environmental Planning Policy (Rural Lands) 2008

The aim of this policy is to facilitate the orderly and economic use and development of rural lands for rural and related purposes. Part 2 of SEPP (Rural Lands) identifies rural planning principles to be considered.

Part of the Project route is zoned 1(a) Rural pursuant to the *Singleton Local Environmental Plan 1996*. The rural planning principles contained within SEPP (Rural Lands) encourage the protection and promotion of opportunities for productive and sustainable economic activities in rural areas. They also identify that in planning for rural lands, the social, economic and environmental interests of the community are to be balanced.

The Project would result in the loss of some land that is zoned rural. Further, it is unlikely that land acquisition as a result of the Project, being minimal strip acquisition, would compromise the existing economic integrity of current rural land use activities. The Project would result in an outcome where by the social, economic and environmental interests are balanced, as discussed throughout this report.

6.3.2 Fisheries Management Act 1994

The *Fisheries Management Act 1994* (FM Act) lists threatened species of fish and marine vegetation, including endangered populations, ecological communities and key threatening processes.

Examination of threatened species, populations and endangered ecological communities distribution ranges and habitat requirements that are listed on the FM Act indicate that none are likely to occur within the vicinity of the Project. Additionally, no key threatening processes listed on the FM Act apply to the Project.

Therefore, the provisions of the FM Act do not apply and no further assessment is required.

6.3.3 Heritage Act 1977

The *Heritage Act 1977* provides for the protection of items of heritage significance. Such heritage items may include places, buildings, works, relics, moveable objects or precincts which are of historical, scientific, cultural, social, archaeological, natural or aesthetic value to the state. The *Heritage Act 1977* provides for the making of a variety of orders and permits to protect items of environmental heritage, including items classified as relics and is administered by the NSW Heritage Office. The *Heritage Act 1977* is administered by the NSW Heritage Office.

Under part 4 of the *Heritage Act 1997* an approval must be granted for a controlled activity when an interim heritage order or listing on the State Heritage Register applies to a place, building, work, relic, moveable object, precinct, or land. Additionally, under Section 139 of the *Heritage Act 1977*, an excavation permit must be obtained from the NSW Heritage Office for excavation or disturbance of a relic. However, Section 75U of the EP&A Act exempts the need for an approval under Part 4, or an excavation permit under Section 139 of the *Heritage Act 1977* for Part 3A Projects.

The nearest non-indigenous heritage item is 600 metres away from the Project as described in Section 14.3.

6.3.4 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) conserves nature, objects, places or features (including biological diversity) of cultural value within the landscape. The NPW Act also aims to foster public appreciation, understanding and management of national parks, historic sites and certain other areas identified under the Act.

Under the NPW Act, if an identified Aboriginal site or remains need to be removed or destroyed, prior to commencement of works in the area, an approval would need to be obtained under Section 87(1) of the NPW Act. Under Section 90(2) of the NPW Act, an approval would be required for Consent to Destroy permit. However, Section 75U of the EP&A Act exempts the need for a permit under Section 87 and a consent under section 90 of the NPW Act for Part 3A Projects.

Refer to Section 8 for an assessment of the Project's impact on Aboriginal heritage and the potential for disturbance of known Aboriginal heritage sites.



6.3.5 Native Vegetation Act 2003

The *Native Vegetation Act 2003* (NV Act) encourages and promotes the management of native vegetation on a regional basis in the social, economic and environmental interests of the State and prevents broadscale clearing unless it improves or maintains environmental outcomes.

Pursuant to Section 75U of the EP&A Act, ARTC (as a public authority) is exempt from the requirements of the NV Act to obtain an approval for clearing native vegetation for Part 3A Projects.

6.3.6 Noxious Weeds Act 1993

The objectives of the *NW Act* include:

- ▶ Identify noxious weeds in respect of which particular control measures need to be taken;
- ▶ Specify those control measures;
- ▶ Specify the duties of public and private landholders as to the control of those noxious weeds; and
- ▶ Provide a framework for the State-wide control of those noxious weeds by the Minister and local control authorities.

Under this Act, noxious weeds have been identified for Local Government Areas and assigned control categories (e.g. W1, W2, W3 and W4). Part 3 provides that occupiers of land (this includes owners of land) have responsibility for controlling noxious weeds on the land they occupy.

Eleven noxious weeds, listed under the *NW Act* occurred within the study area. Management of these noxious weeds during construction is discussed in the Flora and Fauna Assessment (Appendix E).

6.3.7 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) provides for the issue of an Environment Protection Licence (EPL) for scheduled activities (being activities listed in Schedule 1 of the Act), and generally the control of water, air and noise pollution and the management of wastes.

Activities relating to Railways Systems Activities are identified under clause 33 of Schedule 1 – Scheduled Activities under the POEO Act. ARTC has been issued an Environmental Protection Licence (EPL 3142) by the Department of Environment and Climate Change (DECC) and all works will be undertaken in accordance with the provisions of this licence.

Mitigation measures outlined in the draft SoC (Appendix B) will be implemented to minimise the potential of the Project to result in pollution of the environment.

6.3.8 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for listing of threatened species, populations and ecological communities as well as critical habitat and key threatening processes. It also provides for preparation of Species Recovery Plans and Threat Abatement Plans.

Section 5A of the EP&A Act lists a number of factors, known as the Seven Part Test, to be taken into account in deciding whether there is likely to be a significant impact on threatened species, populations or their habitats or ecological communities listed under the TSC Act and *Fisheries Management Act 1994*, and therefore whether a Species Impact Statement (SIS) is required.

Part 3A Projects do not require the preparation of an SIS. However, to meet the DGR's for the Project and in consideration of the *Draft Guidelines for Threatened Species Assessment* (DECC), a Flora and Fauna Impact Assessment has been prepared (refer to Appendix E). Threatened species and ecological communities potentially affected by the Project have been discussed in Section 7.

6.3.9 Water Act 1912

The *Water Act 1912* facilitates development and use of water, by controlling the extraction of water, the use of water, the construction of works, such as dams and weirs, and the carrying out of activities in or near sources in NSW.

The Project is expected to intercept groundwater during construction; therefore, a licence under Part 5, Section 112 of the *Water Act 1912* and approval for these works would be required. However, no groundwater would be used as a water sources for construction. Negotiations are currently underway with DWE for the requirements of relocating existing farm dams and irrigation wells for the Project.

6.3.10 Water Management Act 2000

The *Water Management Act 2000* (WM Act) aims to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations.

The WM Act also provides for the preparation of water management plans, which contain, much of the detail necessary for the operation of the Act. Water Management Plans address matters such as water sharing, water use, drainage and floodplain management and water source protection.

Part of the Project is located within a declared floodplain, however it does not constitute a flood work and so consent under Section 256 of the WM Act is not required.

A Controlled Activity Approval (CAA) under the WM Act is required for certain types of developments and activities that are carried out in or near a river, lake or estuary. The CAA provisions commenced on 4 February 2008. In accordance with clause 39A of the Water Management Regulations 2004, Public authorities (other than Landcom) and local councils are exempt from a CAA, pursuant to Section 344 (1) (a) of the WM Act in relation to all controlled activities that they carry out in, on or under waterfront land. Accordingly, a CAA would not be required for the Project.



6.3.11 Roads Act 1983

The *Roads Act 1993* regulates a range of activities undertaken on public roads. Any works undertaken within a road reserve would need to obtain permission from the relevant road authority before commencing work in a classified road reserve.

Approval is generally required under Section 138 of the *Roads Act* for works within a public road. However, clause 5 of Schedule 2 provides an exemption for public authorities to obtain a roads authority's consent to the exercise of the public authority's on or over an unclassified road other than a Crown road.

The Project would result in the replacement and realignment of the Golden Highway overbridge. The Golden Highway is listed as a classified road. Accordingly, approval is required from the NSW Roads and Traffic Authority for these works.

6.3.12 Land Acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* applies to the acquisition of land (by agreement or compulsory process) by an authority of the State, which is authorised to acquire the land by compulsory process. The Rail Infrastructure Corporation (RIC) acting as a State Authority and on behalf of ARTC will acquire land affected by the Project in accordance with the statutory requirements of this Act. For more details, refer to Section 9.3.1.

6.3.13 Contaminated Land Management Act 1997

The *Contaminated Land Management Act 1997* (CLM Act) is administered by the Department of Environment and Climate Change (DECC) and local Councils. It provides a regime for investigation and, where appropriate remediation of land affected by contamination that poses a significant risk of harm to human health or the environment. The CLM Act specifies responsibilities for managing contaminated land and the role of the DECC in the assessment of contamination and the supervision of the investigation, remediation and management of contaminated sites.

NSW has a comprehensive suite of guidelines relating to assessment and management of contamination, administered under the Contaminated Land Management Act (CLM Act) 1997 and the Protection of the Environment Operations Act (POEO Act) 1997. These include the following:

- EPA 1994: "Guidelines for Assessing Service Station Sites", NSW EPA, 1994;
- EPA 1995: "Sampling Design Guidelines", NSW EPA, 1995;
- EPA 1997: "Guidelines for Consultants Reporting on Contaminated Sites", NSW EPA, 1997;
- EPA 1999: "Environmental Guidelines: Assessment, Classification & Management Of Liquid & Non-liquid Wastes", NSW EPA, 1999; and
- DECC 2006: "Guidelines for the NSW Site Auditor Scheme", NSW DECC, April 2006.

As discussed in Section 12 a preliminary contamination investigation identified potential areas and sources of contamination both within the rail corridor and on properties proposed for acquisition as part of the Project. Further investigations are being undertaken to assess the lineal extent and level of contamination.

6.4 Commonwealth Environmental Planning Requirements

6.4.1 *Environment Protection and Biodiversity Conservation Act 1999*

The primary object of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is to “provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance”.

Environmental approvals under the EPBC Act may be required for an “action” that has, will have or 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).

Approval for a controlled action would be required from the Commonwealth Minister for Environment, Water, Heritage and the Arts (DEWHA). An “action” is considered to include a project, development, undertaking, activity or series of activities.

There are seven NES matters:

- World Heritage Areas;
- National Heritage Places;
- Ramsar wetlands of international importance;
- Nationally listed threatened species and ecological communities;
- Listed migratory species;
- Nuclear actions; and
- Commonwealth marine areas.

In January 2007, a bilateral agreement between the Commonwealth and the state of NSW commenced. The agreement essentially accredits the NSW assessment process of environmental impact for the purposes of the EPBC Act to encourage an integrated and coordinated approach for actions requiring approval from both the Commonwealth (under the EPBC Act) and the state of NSW. The agreement enables the Commonwealth to rely primarily on the NSW assessment processes in assessing actions under the EPBC Act.

An EPBC Act Protected Matters search (March 2008) identified one Ramsar Wetland, one threatened ecological community, 52 threatened species and 45 migratory species within a 10 km radius of the study area. The Ramsar Wetland is the Hunter Estuary Wetlands, which is located approximately 60 km downstream of the study area. Due to the distance from the study area, it is considered unlikely that the Project would have an impact on the Hunter Estuary Wetlands. The results of the EPBC Act Protected Matters search indicates that the critically endangered Box-Gum Woodlands is likely to occur within the study area, however, vegetation communities within the study area are not characteristic of this threatened ecological community.



An Assessment of Significance was undertaken to assess if the Project is likely to have a significant impact on threatened species, migratory species, populations and ecological communities, and their habitats listed under the EPBC Act. The assessment, which was undertaken in accordance with the EPBC Act Policy Statement 1.1: *Significant Impact Guidelines*, concluded that the Project is unlikely to have a significant impact on local populations of threatened species, migratory species, endangered populations or endangered ecological communities listed on the EPBC Act. There are no World Heritage Properties, Natural Heritage Places or Commonwealth Marine Areas in the vicinity of the Project. The Project does not involve a nuclear action.

Based on the above, it is considered unlikely that the Project would constitute a controlled action under the EPBC Act.

6.5 Regional and Local Environmental Planning Requirements

6.5.1 Hunter Regional Environment Plan

The *Hunter Regional Environmental Plan 1989* (HREP) applies to the Hunter Region, including the Singleton Local Government Area (LGA). The HREP was gazetted in March 1989 to provide a policy framework for development in the Hunter Region over the ensuing twenty years. The HREP includes a number of objectives to guide both local plan preparation and development control.

The Project is consistent with the objectives of the HREP 1989 pursuant to Part 5, Division 1 in that it will encourage the transport of coal by rail. Overall, the Project is consistent with the provisions of the HREP 1989.

6.5.2 Singleton Local Environmental Plan

The Project is located within the Singleton LGA, which is covered by the *Singleton Local Environmental Plan 1996* (LEP). Table 6-1 lists the zones from the Singleton LEP that the Project passes through.

Table 6-1 Singleton LEP, Zonings and Permissibility Table

Zones	Permissibility
1(a) (Rural Zone)	Under this zone rail infrastructure is permissible with development consent
5 – Special Uses and Reservations Zone	Under this zone, roads and utility installations are permissible with development consent. Rail infrastructure would be classified as a utility installation. However as discussed in Section 6.3.1, the Infrastructure SEPP permits rail infrastructure on any land without consent.
Unzoned (rail and road corridors)	The Main Northern Railway, Range Road, Golden Highway and New England Highway corridors are unzoned under the LEP.

6.6 Conclusion

The Project would be assessed under Part 3A of the EP&A Act as a major Project and follow the Part 3A Project approval process.

The Director-General of the DoP identified a number of key and general assessment requirements to be addressed in this Environmental Assessment. These are outlined in Sections 7, 8, 9, 10, 11, 12 and 13 addressing the key environmental issues and Section 14 addressing the of general environmental issues.

Applicable DGR's are listed in the introduction to each of the following sections and identifies where addressed within that section.

A comprehensive set of environmental management measures would be implemented, which aim to minimise potential impacts during construction and operation of the Project. Additionally, these measures would enable the Project to be carried out in accordance with all environmental requirements. These measures are specified in the draft SoC and Draft CEMP.