

2. Statutory planning, approvals and legislation

2.1 Overview

The Project is located in NSW and is subject to the development approval process under NSW legislation. Approval is being sought for the construction and operation of a water transfer scheme that would comprise the following:

- ▶ Approximately 83 km of pipeline to transfer approximately 5 ML/day of either treated or raw water from Wingecarribee Reservoir to Goulburn;
- ▶ A pumping station at the Wingecarribee Reservoir site; and
- ▶ Connections to the Goulburn's town water supply network via the Goulburn WTP or a new reservoir.

The pipeline has been designed to accommodate the transfer of up to 5 ML/day of treated or raw water. The preliminary design considers an option to transfer up to 7.5 ML/day in the future with the addition of a booster pump station. However, as the 5 ML/day transfer meets the current capacity requirements and the proposed booster pump station is unlikely to be required for approximately 10 years, it is not included in the approval.

In addition to the development approval process under NSW legislation, the Commonwealth also has a role in approving projects that would or are likely to cause a significant impact to matters of national environmental significance listed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

This section outlines the relevant NSW and Commonwealth legislation that applies to the Project, with a focus on the principal planning approval requirements.

2.2 Environmental Planning and Assessment Act 1979

The NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) forms the statutory framework for planning approval and environmental assessment in NSW. Implementation of the EP&A Act is the responsibility of the Minister for Planning, statutory authorities and local councils.

The EP&A Act contains three schemes that impose requirements for planning approval:

- ▶ Part 3A provides for control of 'major infrastructure and other projects' that require 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' that do not require approval or development consent under Part 3A or Part 4.

The need or otherwise for development consent is set out in environmental planning instruments – State Environmental Planning Policies (SEPPs), Regional Environmental Plans (REPs) or Local Environmental Plans (LEPs).

2.2.1 Permissibility of the Project

State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) consolidates and updates 20 previous State planning instruments which included infrastructure provisions. It also includes specific planning provisions and development controls for 25 types of infrastructure works or facilities.

Division 24 of the Infrastructure SEPP relates to water supply systems. Clause 125 of the Infrastructure SEPP outlines the consent requirements for water supply systems. Under this clause water reticulation systems may be carried out by or on behalf of a public authority without consent on any land.

Clause 124 defines a water reticulation system as the following:

'a facility for the transport of water, including pipes, tunnels, canals, bores, pumping stations, related electricity infrastructure, dosing facilities and water supply reservoirs.'

Under this definition the Project can be defined as a water reticulation system. As GMC is a public authority, the Project is permissible without consent on any land.

2.2.2 Application of Part 3A

Part 3A of the EP&A Act establishes an assessment and approval regime for development that is declared to be a Part 3A project by either a State Environmental Planning Policy or Ministerial Order (section 75B).

Development may be declared to be a Part 3A project in certain circumstances, one of which is where the development is a major infrastructure that, in the opinion of the Minister for Planning, is *"of State or regional environmental planning significance"*.

On 9 July 2007, the Minister for Planning declared the Project to be a project of regional planning significance, pursuant to section 75B(1) of the EP&A Act, and ordered the Project to be declared as a project to which Part 3A of the Act applies³.

According to section 75D(1) the Minister for Planning is the approval authority for Part 3A projects.

2.3 Approval process and requirements

The approval process for the Project is summarised below.

Agency consultation and planning focus meeting

For some projects, the NSW Department of Planning (DoP) convenes a planning focus meeting with relevant government authorities. The meeting provides a forum for participants to obtain information on the project, and discuss key issues and potential environmental impacts. Following the meeting, the Department seeks written comments from agencies on issues that should be addressed in the Environmental Assessment.

A planning focus meeting was held for the Project on 13 November 2009. The meeting was attended by the Proponent and the following organisations:

- ▶ Department of Planning;
- ▶ Department Environment, Climate Change and Water (DECCW);

³ Official Notice 8368, NSW Government Gazette No. 167,9 November 2007

- ▶ Roads and Traffic Authority (RTA);
- ▶ Sydney Catchment Authority (SCA);
- ▶ Hawkesbury Nepean Catchment Management Authority (HNCMA);
- ▶ Wingecarribee Shire Council (WSC); and
- ▶ Goulburn Mulwaree Council (GMC).

Further details of the consultation process are outlined in Chapter 4.

Addressing the Director General's requirements

Under clause 75F of the EP&A Act, the Director-General is required to prepare and issue the proponent with requirements for undertaking the Environmental Assessment. These identify key issues to be addressed and the level of assessment required.

The DGRs for the Project were issued on 14 December 2009. A copy of the requirements is included in Appendix A. The matters raised by the Director-General for consideration are outlined in Table 2.1 together with the section of this report that addresses the matter.

Table 2.1 Director-General's Requirements

Issue category	Requirement	Document reference
General requirements	Executive summary	Executive Summary
	Detailed description of the proposal:	Chapter 6
	Clear definition of the pipeline corridor during construction and operation	Chapter 6
	Details of construction or operational staging	Chapter 6
	Proposed construction methodology at key watercourse crossings and infrastructure crossings	Chapter 6
	Consideration of any relevant statutory provisions	Chapter 2
	An assessment of the key issues outlined below	Chapters 9 - 26
	A draft Statement of Commitments	Chapter 28
	Conclusion and justification of the Project	Chapter 29
	Certification by the author	Front page
Key assessment requirements	<p>Strategic Planning and Project Justification:</p> <p>The Environmental Assessment must provide a strategic assessment of the Project including justification of the need, scale, scope and location of the Project, with particular reference to the water supply requirements of the region, alternatives considered (including the consequence of not proceeding); and consistency with relevant State and regional planning policies including the <i>Sydney-Canberra Corridor Regional Strategy</i> (DoP, 2008).</p>	Chapter 5

Issue category	Requirement	Document reference
	<p>Analyse the suitability of the Project considering potential conflicts with existing and future landuses and infrastructure (including existing residential and other sensitive landuse, known for future development, infrastructure and utility corridors, land of high agricultural value and land of high conservation value), taking into account local and strategic land use objectives.</p>	
	<p>Ecological Impacts:</p> <p>The Environmental Assessment must include a flora and fauna impact assessment consistent with the <i>Guidelines for Threatened Species Assessment</i> (DEC and DPI 2005) taking into consideration impacts on threatened species, populations, ecological communities, critical habitat and/ or relevant recovery plans; and impacts to local or regional biodiversity corridors; and any impacts on aquatic ecosystems and riparian vegetation at waterways crossings.</p> <p>The assessment shall demonstrate that the Project has been designed to avoid native vegetation disturbance as far as reasonable and feasible and where unavoidable. Clearly quantify the level of disturbance (in hectares) and include a strategy for offsetting biodiversity values consistent with the principles of “improve or maintain”.</p> <p>Sufficient details must be provided to demonstrate the availability of viable and achievable options to offset the biodiversity impacts of the Project in perpetuity.</p> <p>The Environmental Assessment must include a management framework outlining the measures to be implemented to avoid, mitigate, manage, monitor and/or offset flora and fauna impacts during construction and operation, including but not necessarily limited to progressive rehabilitation works.</p> <p>With respect to offsets, the management framework must outline any ongoing management requirements to maintain biodiversity values in perpetuity and associated responsibilities.</p>	Chapter 10
	<p>Heritage Impacts:</p> <p>The Environmental Assessment must include sufficient information to demonstrate the likely impacts on Aboriginal heritage values (archaeological and cultural) and outline proposed mitigation measures consistent with the <i>Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation</i> (DEC, 2005).</p> <p>The Environmental Assessment must demonstrate effective consultation with Aboriginal communities has been undertaken in determining and assessing impacts, developing options and selecting options and mitigation measures.</p>	Chapter 11 Chapter 12
	<p>Surface and Groundwater Impacts:</p>	Chapter 9

Issue category	Requirement	Document reference
	<p>The Environmental Assessment must assess potential risks to surface and groundwater quality during construction and operational activities (including pipeline maintenance), demonstrating the Project can be designed and managed to achieve a neutral or beneficial effect on water quality in the drinking water catchment consistent with the <i>Drinking Water Catchments Regional Environmental Plan No. 1</i>.</p>	<p>Chapter 13 Chapter 14</p>
	<p>The Environmental Assessment must include a framework for the mitigation, management and monitoring of water quality impacts during construction and operation.</p>	
	<p>In addition, the Environmental Assessment must assess the potential for impacts to watercourses which are to be crossed by the pipeline, including a risk assessment justifying the proposed crossing method depending on stream classification and environmental significance and a strategy for the rehabilitation of any watercourses disturbed by the Project to an existing or better standard.</p>	<p>Chapter 15</p>
	<p>Human Amenity Impacts:</p>	<p>Chapter 17</p>
	<p>The Environmental Assessment must include a justified and tiered assessment approach for impacts on human amenity including noise and vibration, air quality (dust) and traffic impacts during construction and operation of the Project (as relevant).</p>	<p>Chapter 18 Chapter 19 Chapter 21 Chapter 22</p>
	<p>The Environmental Assessment must:</p> <ul style="list-style-type: none"> ▶ Identify sensitive receptors that have the potential to be impacted by the Project and the likely significance of impacts; and ▶ Include a framework for the mitigation, management and monitoring of impacts during construction and operation (as relevant) with specific reference to noise and vibration-intensive construction works/ activities (drilling, blasting, bulk excavation) and heavy vehicle movements. 	
	<p>General Environmental Risk Analysis:</p>	<p>Chapter 8</p>
	<p>Notwithstanding the above key requirements, the Environmental Assessment must include an environmental risk analysis to identify potential environmental impacts associated with the Project (construction and operation), an outline of the proposed mitigation measures and potentially significant residual environmental impacts after the application of proposed mitigation measures.</p>	
	<p>Where additional key environmental impacts are identified through this environmental risk analysis, a framework for the consideration of the additional key environmental impact(s) must be included in the Environmental Assessment.</p>	

Issue category	Requirement	Document reference
Consultation requirements	Undertake an appropriate and justified level of consultation with the following parties during the preparation of the Environmental Assessment: <ul style="list-style-type: none"> ▶ DECCW - including the NSW Office of Water ▶ Industry and Investment NSW (I&I NSW) ▶ SCA ▶ HNCMA ▶ RTA ▶ Australian Rail Track Corporation (ARTC) ▶ Wingecarribee Shire Council ▶ Relevant utility and service providers 	Chapter 4
	Appropriate consultation with the local community, particularly directly affected landholders, should be undertaken. The Environmental Assessment must clearly indicate issues raised by stakeholders during consultation and how these matters have been addressed in the Environmental Assessment.	Chapter 4

Exhibition

If the Environmental Assessment is considered to adequately address the DGRs, the Department 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 GMC with a copy of the submissions or a summary of the issues raised. GMC 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 Statement of Commitments were modified in response to issues raised, a Preferred Project Report would be prepared to describe the scope of the revised Project. The Director-General would make this report public.

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 Statement of Commitments and may modify them and/or add additional provisions.

The assessment report would then be submitted to the Minister 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.

2.4 Other relevant environmental planning instruments

2.4.1 State environmental planning policies

State Environmental Planning Policy No. 44 (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.”

Wingecarribee and the former Mulwaree LGAs are listed on Schedule 1 of SEPP 44. SEPP 44 applies to development applications under Part 4 of the EP&A Act. Notwithstanding, the principles of SEPP 44 have been considered, and the results of this assessment are outlined in Chapter 10.

State Environmental Planning Policy No 55 (SEPP 55) - Remediation of Land

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

SEPP 55 only applies to development applications under Part 4 of the EP&A Act. Notwithstanding, the principles of SEPP 55 have been considered in Chapter 13.

State Environmental Planning Policy (Major Development) 2005

The aim of *State Environmental Planning Policy (Major Development) 2005* (SEPP Major Development) is to identify development to which the assessment and approval process under Part 3A of the EP&A Act applies.

The Project does not fall within any of the classes of development identified by SEPP Major Development. Notwithstanding, the Project has been declared to be a Part 3A project as discussed in Section 2.2.2.

State Environmental Planning Policy (Rural Lands) 2008

SEPP (Rural Lands) aims 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. As discussed in Section 2.4.3, the Project route passes through a number of rural zones.

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.

Land use impacts are discussed in Chapter 16. The Project would impact on land that is zoned for rural purposes. However, it is unlikely that these impacts would compromise the existing economic integrity of current rural land use activities. The Project would result in an outcome whereby the social, economic and environmental interests are balanced, as discussed throughout this report.

2.4.2 Regional environmental plans

As of 1 July 2009, REPs are no longer part of the hierarchy of environmental planning instruments in NSW. The removal of the REP layer is intended to simplify the State's planning system. All existing REPs are now deemed SEPPs. The DoP is reviewing all remaining REPs as part of the NSW planning system reforms.

Drinking Water Catchments Regional Environmental Plan No. 1

The Drinking Water Catchments REP is a regional plan for the environmental, social and economic future of the catchments that supply drinking water to Sydney, Blue Mountains and the Illawarra. The catchments extend over 16 000 km² - from the headwaters of the Coxs River north of Lithgow to the Shoalhaven River south of Braidwood.

Part 5 of the REP contains requirements for the assessment and approval of development and activities under Part 4 and Part 5 of the EP&A Act. In particular, Part 5 requires that development and activities have a neutral or beneficial effect on water quality within the drinking water catchment.

The REP does not contain any provisions relating to assessment and approval under Part 3A of the EP&A Act. Notwithstanding, the principles of the Drinking Water Catchments REP have been considered in the preparation of this Environmental Assessment, as outlined in Chapter 14.

2.4.3 Local environmental plans

The Project is located on land that is located within both the Goulburn Mulwaree and Wingecarribee LGA. Land on which the Project is located is currently controlled by the following environmental planning instruments:

- ▶ *Goulburn Mulwaree Local Environmental Plan 2009.*
- ▶ *Wingecarribee Local Environmental Plan 1989.*

A draft LEP has been developed for the Wingecarribee LGA (*Draft Wingecarribee Local Environmental Plan 2009*). This plan has been publicly exhibited and is currently with the DoP for gazettal. As there is potential for the plan to be in force during the term of the Project, this plan has been considered.

The zones on which the Project is located under each of the LEPs are listed below.

Goulburn Mulwaree Local Environmental Plan 2009

Under the Goulburn Mulwaree LEP 2009 the Project is located on land zoned:

- ▶ Zone E2 – Environmental Conservation.
- ▶ Zone E3 – Environmental Management.
- ▶ Zone IN1 – General Industrial.
- ▶ Zone R1 – General Residential.
- ▶ Zone R2 – Low Density Residential.
- ▶ Zone R5 – Large Lot Residential.
- ▶ Zone RE1 – Public Recreation.
- ▶ Zone RE2 – Private Recreation.
- ▶ Zone RU1 – Primary Production.



- ▶ Zone RU2 – Rural Landscape.
- ▶ Zone RU6 – Transition.
- ▶ Zone SP2 – Infrastructure (Public Utility Undertaking)

Wingecarribee Local Environmental Plan 1989

Under the Wingecarribee LEP 1989 the Project is located on land zoned:

- ▶ Zone 1(a) – Rural ‘A’.
- ▶ Zone 1(b) – Rural ‘B’.
- ▶ Zone 5(c) – Special Uses (Water Catchment).
- ▶ Zone 7(b) – Environmental Protection (Landscape Conservation).

Draft Wingecarribee Local Environmental Plan 2009

Under the Draft Wingecarribee LEP 2009 the Project is located on land zoned:

- ▶ Zone E2 – Environmental Conservation.
- ▶ Zone E3 – Environmental Management.
- ▶ Zone RU2 – Rural Landscape.
- ▶ Zone SP2 – Infrastructure.
- ▶ Zone SP2 – Infrastructure (Water Supply System).
- ▶ Zone SP2 – Infrastructure (Rail Infrastructure Facility).
- ▶ Zone SP3 – Tourist.

Relevance of the local environmental plans

Under the relevant LEPs, including the draft Wingecarribee LEP, the Project is permissible with consent within most zones outlined above. In a number of zones, the Project is considered to be prohibited development. The relevant zones and applicable LEPs are listed below:

- ▶ Zone RE1 – Public Recreation (Goulburn Mulwaree LEP);
- ▶ Zone RE2 – Private Recreation (Goulburn Mulwaree LEP);
- ▶ Zone E2 – Environmental Conservation (Goulburn Mulwaree LEP);
- ▶ Zone E3 – Environmental Management (Goulburn Mulwaree LEP and Draft Wingecarribee LEP);
- ▶ Zone RU2 – Rural Landscape (Draft Wingecarribee LEP);
- ▶ Zone SP2 – Infrastructure (Draft Wingecarribee LEP);
- ▶ Zone SP2 – Infrastructure (Rail Infrastructure Facility) (Draft Wingecarribee LEP); and
- ▶ Zone SP3 – Tourist.

As described in Section 2.2.1, the Infrastructure SEPP applies to the Project. As GMC is a public authority the Infrastructure SEPP determines the permissibility of the Project and therefore the Project is permissible on all land.

2.5 Other relevant NSW environmental legislation

Section 75U(1) of the EP&A Act identifies the approvals and licences under other NSW legislation that are not required for an 'approved Project' under Part 3A:

- (a) the concurrence under Part 3 of the Coastal Protection Act 1979 of the Minister administering that Part of the Act,*
- (b) a permit under section 201, 205 or 219 of the Fisheries Management Act 1994,*
- (c) an approval under Part 4, or an excavation permit under section 139, of the Heritage Act 1977,*
- (d) a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974,*
- (e) an authorisation referred to in section 12 of the Native Vegetation Act 2003 (or under any Act to be repealed by that Act) to clear native vegetation or State protected land,*
- (f) a permit under Part 3A of the Rivers and Foreshores Improvement Act 1948,*
- (g) a bush fire safety authority under section 100B of the Rural Fires Act 1997,*
- (h) 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.'*

Section 75U (2) of the Act also states that:

'Division 8 of Part 6 of the Heritage Act 1977 does not apply to prevent or interfere with the carrying out of an approved project.'

Section 75A defines 'approved project' as 'a project to the extent that it is approved by the Minister under this Part, but does not include a project for which only approval for a concept plan has been given'.

Consequently, if the Minister grants project approval to carry out the Project under Part 3A, the approvals identified by section 75U(1) would not be required.

Section 75V of the EP&A Act stipulates approvals and legislation that must be applied consistently to the approval of a Project under Part 3A:

'(1) An authorisation of the following kind cannot be refused if it is necessary for carrying out an approved project and is to be substantially consistent with the approval under this Part:

- (a) an aquaculture permit under section 144 of the Fisheries Management Act 1994,*
- (b) an approval under section 15 of the Mine Subsidence Compensation Act 1961,*
- (c) a mining lease under the Mining Act 1992,*
- (d) a production lease under the Petroleum (Onshore) Act 1991,*
- (e) an environment protection licence under Chapter 3 of the Protection of the Environment Operations Act 1997 (for any of the purposes referred to in section 43 of that Act),*
- (f) a consent under section 138 of the Roads Act 1993,*
- (g) a licence under the Pipelines Act 1967.'*

Relevant legislation that continues to apply to an approved Part 3A project is discussed below.

2.5.1 Pipelines Act 1967

Section 11 of the NSW *Pipelines Act 1967* outlines the licensing requirements for pipelines as follows:

(1) A person shall not:

- (a) commence, or continue, the construction of a pipeline, or*
- (b) alter or reconstruct a pipeline,*

unless the person is, or is acting on behalf of, the registered holder of a licence and the activity is in pursuance of the licence.

(2) A person shall not operate a pipeline:

(a) unless the person is, or is acting on behalf of, the registered holder of a licence and the operation is in pursuance of the licence, and

(b) unless he or she has obtained the consent of the Minister under section 25 to the commencement or resumption, as the case may be, of the operations and commences or resumes the operations and thereafter operates the pipeline in accordance with the conditions, if any, to which the instrument of consent is for the time being subject.'

Section 5 of the NSW *Pipelines Act 1967* identifies those pipelines that do not require a licence under the *Pipelines Act 1967*. This includes 5(1)(d):

'a pipeline constructed or to be constructed for the purpose of the supply of water (including for irrigation), the drainage of land or the conveyance of waste water, mine water, aqueous slurries of minerals, mineral concentrates or mineral tailings.'

As the Project would be constructed for the purpose of supplying water, a licence would not be required for the pipeline under the NSW *Pipelines Act 1967*.

However, section 5(1) goes on to state that:

'...nothing in this section prevents a person from making any application under this Act in respect of any such pipeline or apparatus or works or from being granted and holding a licence in respect of the construction or operation of such a pipeline.'

Section 12 states that:

'Any person who proposes to construct a pipeline may apply to the Minister for a licence.'

The Proponent is not seeking a pipeline licence for the construction and operation of the Project. The investigations for this Environmental Assessment were undertaken by voluntary consent to enter provided by each landholder along the pipeline. The detailed design and required investigations of the pipeline route would be undertaken under an Authority to Survey under Section 5E of the *Pipeline Act 1967*.

There is a however still need to acquire easements or land for the construction and ongoing operations and maintenance of the Project. The easement acquisition negotiation process would be undertaken under the *Local Government Act 1993* and the *Land Acquisition (Just Terms Compensation) Act 1991*.

2.5.2 Local Government Act 1993 and Land Acquisition (Just Terms Compensation) Act 1991

Under Section 24 of the *Local Government Act 1993*, Councils have the power to 'provide goods, services and facilities, and carry out activities, appropriate to the current and future needs within its local community and of the wider public'. Chapter 6 of the *Local Government Act 1993* states that such service functions include 'environmental conservation, protection and improvement services and facilities'.

A permanent easement, approximately 10 m wide, would need to be acquired from landowners within the temporary construction corridor. This would be done under the terms of the *Local Government Act 1993* and the *Land Acquisition (Just Terms Compensation) Act 1991*. The permanent easement would be required for the ongoing operation and maintenance of the pipeline. It is intended that amicable agreement on compensation for the temporary use of land and the permanent easement would be negotiated between GMC and the landowner.

An easement is a legal right to use land for a particular purpose. Ownership of the land remains with the landowner, however the use of the land would be subject to certain conditions.

The likely conditions for the permanent easement would include:

- ▶ The landowner not being permitted to erect any building or permanent structure on the easement;
- ▶ The landowner not being permitted to plant substantial or deep rooted trees on the easement; and
- ▶ Subject to the above, it is likely that the landowner would be able to continue to carry out the following activities on the easement:
 - Normal passage over the easement;
 - Grazing of livestock;
 - Normal cultivation for crops and market gardens etc (excluding orchards); and
 - Normal cultivation and propagation of pasture.

2.5.3 Roads Act 1993

Section 138 of the NSW *Roads Act 1993* states:

- (1) *A person must not:*
- (a) *erect a structure or carry out a work in, on or over a public road, or*
 - (b) *dig up or disturb the surface of a public road, or*
 - (c) *remove or interfere with a structure, work or tree on a public road, or*
 - (d) *pump water into a public road from any land adjoining the road, or*
 - (e) *connect a road (whether public or private) to a classified road,*
- otherwise than with the consent of the appropriate roads authority.'*

Sections of the Project would be constructed within and/or across a number of public road reserves.

Section 138(5) of the *Roads Act 1993* states that section 138 applies '*despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967...*'.



As such, consent under section 138 of the *Roads Act 1993* (a Road Occupancy licence) would be required for the Project as the Proponent is not applying for a pipeline licence under the *Pipelines Act 1967*.

2.5.4 Protection of the Environment Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* regulates water, air, and noise pollution in NSW. The NSW Minister for the Environment administers the *Protection of the Environment Operations Act 1997*. Chapter 3 of the *Protection of the Environment Operations Act 1997* covers the issue of environment protection licences, with Section 43 setting out the purposes for which licences can be issued. Environment protection licences are generally issued for scheduled activities or scheduled development work.

The Project is not specifically defined as either a scheduled activity or as scheduled work by the *Protection of the Environment Operations Act 1997*. However, the Project involves excavation of in excess of 150 000m³ of extractive material. An environment protection licence may therefore be required for the Project.

The local drainage systems near the site are defined as 'waters' pursuant to the *Protection of the Environment Operations Act 1997*. As such, Section 120 of the Act prohibits the pollution of waters by any person, and as such is relevant to this Project; however the holding of a licence is a defence against accidental pollution of waterways during the Project. A licence can be obtained under Section 120 without the Project being a scheduled activity.

2.5.5 Water Management Act 2000 and the Water Act 1912

The NSW *Water Management Act 2000* and NSW *Water Act 1912* control 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 water sources in NSW. The provisions of the *Water Management Act 2000* are being progressively implemented to replace the *Water Act 1912*. Since 1 July 2004 the new licensing and approvals system has been in effect in those areas of NSW covered by operational water sharing plans – these areas cover most of the State's major regulated river systems and therefore the largest areas of water extraction.

The Project is located within the Hawkesbury Nepean Catchment, which is not yet covered by a water sharing plan. The provisions of the *Water Act 1912* therefore apply to the regulation of water in the Hawkesbury Nepean Catchment.

The purpose of the *Water Act 1912* primarily relates to the control of water extraction from streams, and the return of effluent (that is, potentially polluted water) to waterways. GMC would not require a licence under the *Water Act 1912* to extract raw water from Wingecarribee Reservoir as they would be a customer of the SCA who hold and maintain a licence and approvals to operate the storage and supply of raw water to its customers. If the treated water option is pursued, GMC would not be required to obtain a licence, as the raw water extraction would be covered by Wingecarribee Shire Council's extraction licence.

It is likely that water will be needed for construction purposes. A permit under Part 2 of the *Water Act 1912*, which would allow the extraction of water for the construction of the proposed pipeline only, would be obtained from the NSW Office of Water (NOW). NOW has indicated that water licences may be

required under Part 5 of the *Water Act 1912* should groundwater be intercepted during construction in a volume that would necessitate dewatering. As a precautionary measure a licence would be obtained.

2.5.6 Public Health Act 1991

The NSW *Public Health Act 1991* makes reference to the safety of drinking water for human consumption. It is an offence, under Section 101A, to “by means of a reticulated water supply system, supply any other person with drinking water that is not fit for human consumption.”

The Act does not define safe drinking water, or stipulate any water quality requirements for the protection of public health. In NSW, water utilities are expected to satisfy themselves of the safety of the drinking water supply, including microbial, chemical, pesticide and radiological quality. However, Section 5 of the Act does provide a mechanism whereby if “[the Health] Minister considers, on reasonable grounds, that a situation has arisen under which the health of the public is, or is likely to be, at risk”, then NSW Health has certain powers with respect to the provision of safe drinking water. These include powers to:

- ▶ Require the issuing of advice to the public on the safety of a drinking water supply;
- ▶ Require the correction of any misleading information issued to the public;
- ▶ Enter and inspect premises of a supplier of drinking water;
- ▶ Require testing of drinking water;
- ▶ Require production of information including the results of testing; and
- ▶ Order the rectification or closure of a water supply.

The Project does not constitute a reticulated supply in the raw water configuration. The treated water scheme may however constitute a reticulated supply with connections to the Goulburn water supply network. The *Public Health Act 1991* may be relevant depending on whether the raw water or treated water scheme is implemented for the Project.

2.5.7 Other legislation considered in the Environmental Assessment

The NSW legislation presented in Table 2.2 has relevance to the Project, and has been considered in the Environmental Assessment, although in most cases, approvals of permits would not be required if the Project were approved under *Part 3A of the Environmental Planning and Assessment Act 1979*.

Table 2.2 Summary of other legislation considered in the Environmental Assessment

NSW Legislation	Relevance to Project
Contaminated Land Management Act 1997	<p>The <i>Contaminated Land Management Act 1997</i> (CLM Act) establishes a process for investigating and (where appropriate) remediating land that is considered to be significantly contaminated. One objective of the Act is to ensure that contaminated land is managed with regard to the principles of ecologically sustainable development.</p> <p>Under the CLM Act there is a requirement to notify the DECCW of sites that pose a significant risk of harm to human health or the environment. The <i>Contaminated Sites – Guidelines on Significant Risk of Harm and Duty to Report</i> (NSW EPA 1999) supports the implementation of the Act.</p>

NSW Legislation	Relevance to Project
Fisheries Management Act 1994	<p>The primary Act governing the management of fish and their habitat in NSW. The <i>Fisheries Management Act 1994</i> (FM Act) aims to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. NSW Department of Primary Industries (DPI) has jurisdiction over all fish and marine vegetation in State waters.</p> <p>A permit is not required under this Act as the Project is a major project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
Heritage Act 1977	<p>Natural, cultural and built heritage is protected in NSW under the <i>Heritage Act 1977</i>. The Act allows for heritage items or places to be listed on the State Heritage Register, or for interim heritage orders to be made to protect heritage items or places. Approval must be obtained from the Heritage Council or local council before work can be done which might damage the item or place.</p> <p>A separate approval is not required under this Act as the Project will be assessed as a major project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<i>Native Vegetation Act 2003</i>	<p>The <i>Native Vegetation Act 2003</i> and the Native Vegetation Regulation 2005 deliver on the NSW Government's commitment to prevent broad scale clearing unless it improves or maintains environmental outcomes. The Act established property vegetation plans as the negotiated agreements between Catchment Management authorities (CMAs) and landholders to establish areas for clearing, offsets and incentives.</p> <p>A separate approval is not required under this Act as the Project will be assessed as a major project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<i>Threatened Species Conservation Act 1995</i>	<p>The <i>Threatened Species Conservation Act 1995</i> (TSC Act), through Part 8A of the <i>National Parks and Wildlife Act 1994</i> prohibits the harming, picking, possessing, buying or selling of individual threatened species. The Act contains a prohibition against the damage of their habitat and contains provisions to protect endangered populations and threatened ecological communities.</p> <p>A separate permit is not required under this Act as the Project will be assessed as a major project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>.</p>
<i>Waste Avoidance and Resource Recovery Act 2001</i>	<p>The <i>Waste Avoidance and Resource Recovery Act 2001</i> sets out the priorities and methods by which NSW will reduce its waste generation and improve its resource recovery from waste. A <i>Waste Avoidance and Recovery Strategy</i> (2007) has been prepared under the Act.</p> <p>The Project would aim to comply with this strategy.</p>

2.6 Commonwealth statutory framework and approval process

2.6.1 Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth EPBC Act prescribes the Commonwealth's role in environmental assessment, biodiversity conservation and the management of protected areas and species, populations and communities, and heritage items. The EPBC Act applies to all land, waters, seabed and airspace in, under or above Australia.

Approval under the EPBC Act is required for:

- ▶ An action which has, will have, or is likely to have a significant impact on 'matters of national environmental significance';
- ▶ An action by the Commonwealth or a Commonwealth agency which has, will have, or is likely to have a significant impact on the environment;
- ▶ An action on Commonwealth land which has, will have, or is likely to have a significant impact on the environment; or
- ▶ An action, which has, will have, or is likely to have, a significant impact on the environment on Commonwealth land, no matter where it is to be carried out.

Where the proponent considers that an action will have or is likely to have a significant impact on matters of national environmental significance, or on Commonwealth land, a referral is made to the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA). The proponent may also, but is not required to, make a referral where they consider that the action will not have or is not likely to have a significant impact.

If it is determined through the referral process by DEWHA that a project is likely to have a significant impact on a matter of national environmental significance, or on Commonwealth land, then the project is a controlled action and approval from the Commonwealth Minister for the Environment, Heritage and the Arts would be required.

Matters of National Environmental Significance

Matters of national environmental significance include:

- ▶ The World Heritage values of a declared World Heritage property;
- ▶ The National Heritage values of a listed National Heritage place;
- ▶ The ecological character of a declared Ramsar wetland;
- ▶ Listed threatened species and ecological communities;
- ▶ Listed migratory species;
- ▶ The Commonwealth marine environment; and
- ▶ Nuclear actions.

Based on investigations undertaken for the Environmental Assessment, no EPBC Act listed endangered ecological communities (EECs) or threatened flora species would be significantly impacted by the Project. Some potential fauna habitat may be impacted by the Project however the impact is not considered to be significant, and therefore not a controlled action. No Ramsar declared wetlands are present in the vicinity of the Project.

It is considered that the Project would not have a significant impact on matters of national environmental significance and would not be a controlled action under the EPBC Act. Therefore a Referral would not be prepared for the Project.

2.6.2 Native Title Act 1993

The *Native Title Act 1993* administers processes relating to the recognition, protection and determination of native title and dealings with native title land.

Native title is concerned with the rights and interests of Aboriginal and Torres Strait Islander peoples in relation to land and water in Australia and its territories. The Act is administered by the Commonwealth Department of Environment, Water, Heritage and the Arts.

A desktop archaeological assessment was undertaken by Navin Officer (*Highlands Source Project Cultural Heritage Assessment, January 2010*) for the Project. The assessment states that “*Native Title claim number NC97/7 includes part of the Highland Source Pipeline study area. The claim, by the Gundungurra Tribal Council Aboriginal Corporation (#6) is registered and active.*”

2.7 Major regional policies and strategies

2.7.1 Sydney to Canberra Corridor Strategy 2006-2031

The *Sydney–Canberra Corridor Regional Strategy 2006-2031* (DOP, 2008) applies to the local government areas of Wingecarribee, Goulburn Mulwaree, Upper Lachlan, Yass Valley, Palerang and Queanbeyan.

The primary purpose of the Regional Strategy is to accommodate and manage growth while ensuring that the rural landscapes and environmental settings of the Region are not compromised. It seeks to ensure that land is available and appropriately located to sustainably accommodate the projected population growth and associated housing, employment and environmental needs over the period until 2031.

The Project is considered to be in accordance with the strategy as it will facilitate population increases in Goulburn region.

2.7.2 Goulburn Mulwaree Council, Integrated Water Cycle Management Strategy, (IWCM Evaluation Study, December 2009)

The IWCM Evaluation Study, the first phase of the Goulburn Mulwaree Council’s IWCM Strategy, has been prepared by the NSW Public Works of the NSW Department of Services, Technology and Administration (previously the NSW Department of Commerce) with the assistance of the NOW.

The IWCM strategy was commenced in 2005 to meet best practice for NSW Water Utilities as recommended by the then Department of Energy, Utilities and Sustainability. It was also recognised by Council as an important process to address various water and wastewater issues, especially as the concept of indirect potable reuse was being considered.

In 2007, IWCM became a requirement for Council’s to gain subsidy from the NSW Government to assist in the funding of capital work. With the depleting water storages, this continued to be a priority for Council together with the completion of the water management strategy.

The *Draft Concept Study Report* (Parsons Brinkerhoff, 2007) and the *Goulburn Urban Water Plan* (DPWS, 2000) outlined a number of possible options for dealing with the issues associated with the water security and sewerage system especially at Goulburn. Some of these options are equally applicable to Marulan and to a lesser degree to Tarago. A technical feasibility study undertaken identified a number of studies to be shortlisted for consideration in the IWCM process. The water transfer pipeline from the Wingecarribee Reservoir to Goulburn to increase Goulburn's secure yield was identified as one of these options.

The IWCM Strategy describes a number of key catchment, water and urban targets and requirements, which GMC must comply with or have agreed to achieve, which relate to the provision of urban water services within Goulburn Mulwaree Shire.

In order to address the identified yield shortfall, GMC has been reviewing options that optimise the harvest from the existing local surface water source and options that link to external water catchments. The *Water Strategy Review Report* (DoC, 2009) evaluated three options, two based on optimising the harvest from the existing local sources and the third referred to as the 'Highland Source Project' that link to the external Wingecarribee River catchment. Based on the *Water Strategy Review Report* (DoC, 2009) findings, GMC in May 2009 resolved to proceed with the pre-construction activities, this involving detailed design, environmental assessment and a detailed cost estimate relating to the Project.

The IWCM Strategy development phase will be completed in mid March 2010 with the report finalised in late February to early March 2010 and adoption by GMC expected in mid March 2010.

2.8 Summary of approvals and licences required

Table 2.3 provides a summary of the environmental approvals and licences that are likely to be required to enable the Project to be carried out.

Table 2.3 Summary of approvals required

Section of Chapter	Approval	Legislation	Authority
2.2	Part 3A Major Project Approval	<i>Environmental Planning and Assessment Act 1979</i>	NSW Minister for Planning
2.2	Construction Certificate	<i>Environmental Planning and Assessment Act 1979</i>	Principal Certifying Authority
2.5.5	Groundwater licence Intercepting or using groundwater	<i>Water Act 1912</i>	NSW Office of Water
2.5.3	Road occupancy licence	<i>Roads Act 1993</i>	NSW RTA