

Appendix 10

Stuarts Point Sewerage Scheme Statutory Context Summary

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Matter	Statutory Context	Project Compliance
<i>Environmental Planning and Assessment Act 1979</i>	The <i>Environmental Planning and Assessment Act 1979</i> provides the framework for environmental planning and assessment in NSW. Environmental planning instruments are established under the <i>Environmental Planning and Assessment Act 1979</i> to regulate land use and development in NSW. Section 4.15 of the EP&A Act describes the matters for consideration in assessing SSD, which includes the provisions of relevant environmental planning instruments, proposed instruments that have been the subject of public consultation, development control plans, planning agreements and statutory regulations.	The project is state significant development due to the provisions of the <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> (Resilience and Hazards SEPP), as development consent is required for works within coastal wetlands, and the project meets the definition for “sewerage systems” under the <i>State Environmental Planning Policy (Planning Systems) 2021</i> (Planning Systems SEPP). The project will be assessed under Division 4.7 of the <i>Environmental Planning and Assessment Act 1979</i> as a state significant development. The project is consistent with the objectives listed in Section 1.3 of the <i>Environmental Planning and Assessment Act 1979</i>.
Environmental Planning Instruments		
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Division 18, Section 2.126 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> describes the development controls for sewerage systems. Development permitted with or without consent states: (1) <i>Development is carried out in the prescribed circumstances if the development –</i> (a) <i>is carried out by or on behalf of a public authority...</i> The project would be carried out by or on behalf of a public authority (Council) and therefore would be carried out in the prescribed circumstances in the context of the following clauses: (2) <i>Development for the purpose of sewage treatment plants or biosolids treatment facilities may be carried out <u>without consent</u> on land in a prescribed zone in the prescribed circumstances (underline added for emphasis).</i>	The project would be carried out by a public authority (Council) and therefore would be carried out in the prescribed circumstances without development consent. Due to some works required to be undertaken within coastal wetlands mapped under the Resilience and Hazards SEPP, development consent is required.

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<i>State Environmental Planning Policy (Planning Systems) 2021</i>	Section 22 of Schedule 1 of the Planning Systems SEPP defines the following “sewerage systems” as SSD: <i>Development for the purpose of sewerage systems that—</i> <i>(a) handles more than 10,000 EP (equivalent population), or</i> <i>(b) has an estimated development cost of more than \$30 million, or</i> <i>(c) has an estimated development cost of more than \$10 million and is located in an environmentally sensitive area of State significance.</i>	The estimated development cost of the project is valued at over \$30 million. The project therefore triggers clause (b) of Section 2.6(1). As the project requires development consent under the Resilience and Hazards SEPP, and meets the definition of sewerage systems, the project is considered state significant development.
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	Chapter 2 ‘Coastal management’ of the Resilience and Hazards SEPP applies to land within the coastal zone. In accordance with Section 2.4, the Coastal Wetlands and Littoral Rainforests Area Map identifies the coastal wetlands and littoral rainforests area includes as well as identifies the adjoining land as “proximity area for coastal wetlands” and “proximity area for littoral rainforest”. Chapter 3 ‘Hazardous and offensive development’ of the Hazards and Resilience SEPP applies to the development control of potentially hazardous or offensive industry. Chapter 4 ‘Remediation of land’ of the Resilience and Hazards SEPP applies to the development control of remediation works undertaken on contaminated land	The project is a state significant development due to the provisions of the Resilience and Hazards SEPP which requires development consent for works within coastal wetlands. Potential impacts to coastal wetlands and littoral rainforest; the potential for hazardous development; and the potential impacts regarding contamination have been assessed.
<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>	The <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> (Biodiversity and Conservation SEPP) considers vegetation in non-rural areas and koala habitat protection.	The Kempsey LGA is listed under Schedule 2 of Biodiversity and Conservation SEPP as an area to which a Comprehensive Koala Plan of Management (CKPOM) applies under the SEPP. The Kempsey CKPOM has been considered in the project.

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<i>Kempsey Local Environmental Plan 2013</i>	The relevant provisions of the Kempsey Local Environmental Plan 2013 include: • Clause 2.3 - Zone objectives and land use table • Clause 5.10 Heritage conservation • Terrestrial biodiversity • Groundwater vulnerability • Riparian lands and watercourses	Land use zoning, heritage, terrestrial biodiversity, groundwater and waterways have all been considered for the project.
Other NSW Legislation		
<i>Biodiversity Conservation Act 2016</i>	The <i>Biodiversity Conservation Act 2016</i> establishes a framework for assessing and offsetting biodiversity impacts from proposed development. The Act lists threatened flora and fauna species and threatened ecological communities. Entry into the Biodiversity Offset Scheme (BOS) is automatically triggered for SSD projects.	Potential impacts to threatened entities have been assessed for the project. Offset requirements have been calculated for the project in accordance with the BOS scheme as per the <i>Biodiversity Conservation Act 2016</i>.
<i>Protection of the Environment Operations Act 1997</i>	Under Section 48 of the <i>Protection of Environment Operations Act 1997</i> an environment protection licence from the NSW Environmental Protection Authority is required for scheduled activities listed in Schedule 1, which includes sewage treatment.	An environment protection licence for a proposed scheduled activity (sewage treatment) under the <i>Protection of Environment Operations Act 1997</i> will be sought for the project. As this project is a state significant development, under Section 4.42 of the <i>Environmental Planning and Assessment Act 1979</i> any environment protection licence conditions will be granted in a form consistent with the development consent.
<i>Water Management Act 2000</i>	The <i>Water Management Act 2000</i> is in place to protect water sources, their associated ecosystems, ecological processes and biological diversity and their water quality. The Act sets out the provisions and requirements for water management approvals.	Section 4.41 of the <i>Environmental Planning and Assessment Act 1979</i> stipulates that state significant developments do not require a separate planning approval for a water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the <i>Water Management Act 2000</i>. Other water management approvals under the <i>Water Management Act 2000</i>, such as an aquifer interference approval or a water access licence have been

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		assessed and deemed not required for the project.
<i>Coastal Management Act 2016</i>	The <i>Coastal Management Act 2016</i> outlines seven coastal hazards and provides a framework for coastal area management.	The project has mapped the Coastal Vulnerability Area and assessed coastal hazards in accordance with the <i>Coastal Management Act 2016</i> .
<i>Fisheries Management Act 1994</i>	The <i>Fisheries Management Act 1994</i> requires consideration of proposed construction and operation of the project which may affect fish passage or cause adverse impact to threatened fish species.	Aquatic ecology and impacts to key fish habitat have been assessed for the project and no direct impacts to aquatic habitat have been identified. Section 4.41 of the <i>Environmental Planning and Assessment Act 1979</i> stipulates that state significant developments do not require a separate planning approval for a permit under section 201, 205 or 219 of the <i>Fisheries Management Act 1994</i>. No other permits or approvals are required under the <i>Fisheries Management Act 1994</i> for the project.
<i>National Parks and Wildlife Act 1974</i>	Governance, care, control and management of national parks, nature reserves, Aboriginal areas and historic sites are detailed under the <i>National Parks and Wildlife Act 1974</i> .	Section 4.41 of the <i>Environmental Planning and Assessment Act 1979</i> stipulates that state significant developments do not require a separate planning approval for an Aboriginal Heritage Impact Permit (AHIP) under section 90 of the <i>National Parks and Wildlife Act 1974</i>. The project does not involve work in NSW National Parks and Wildlife Service estate. The potential for impacts to biodiversity and heritage values have been assessed for the project.
<i>Heritage Act 1977</i>	The <i>Heritage Act 1977</i> provides for the conservation of environmental heritage items in NSW. It is used to regulate the impacts of development on the State's European and Aboriginal heritage assets	Section 4.41 of the <i>Environmental Planning and Assessment Act 1979</i> stipulates that state significant developments do not require a separate approval under Part 4, or an excavation permit under section 139, of the <i>Heritage Act 1977</i>. The potential for impacts to heritage values has been assessed for the project.

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<i>Native Title Act 1993</i>	Under the <i>Native Title Act 1993</i> , Native Title claimants can make an application to the Federal Court to have their native title recognised by Australian law.	No current Native Title disputes overlap with the SPSS site.
<i>Aboriginal Land Rights Act 1993</i>	Under the <i>Aboriginal Land Rights Act 1983</i> established Aboriginal Land Councils and provides for their ability to make a claim for certain Crown Land.	The NSW Aboriginal Land Council and Kempsey Local Aboriginal Land Council have submitted numerous claims to land impacted by the project. The claims have not been determined.
<i>Crown Land Management Act 2016</i>	Under the <i>Crown Land Management Act 2016</i> , consent from the Land Division, Department of Primary Industries is required for works over Crown Land.	A licence over Crown Land under the <i>Crown Land Management Act 2016</i> will be sought for the project.
<i>Road Act 1993</i>	Consent is required under Section 138 of the <i>Roads Act 1993</i> to permit the erection of a structure or carry out a work in, on or over a public road.	Approval under section 138 of the <i>Roads Act 1993</i> will be sought for the project. As this project is a state significant development, under Section 4.42 of the <i>Environmental Planning and Assessment Act 1979</i> , any approval granted under section 138 of the <i>Roads Act 1993</i> will be granted in a form consistent with the development consent.
<i>Dangerous Goods (Road and Rail Transport Act) 2008</i>	Dangerous goods transportation licences would be required under the <i>Dangerous Goods (Road and Rail Transport Act) 2008</i> for vehicles and drivers if more than 500 litres or 500 kilograms of dangerous goods are required to be delivered to the WWTP site.	A dangerous goods transportation licence under the <i>Dangerous Goods (Road and Rail Transport Act) 2008</i> will be required for vehicles transporting dangerous goods to or from the SPSS site.
<i>Heavy Vehicle National Law (NSW) No. 42a of 2013</i>	Approvals would be required should the project require the transport of any infrastructure by oversize over mass (OSOM) vehicles under the <i>Heavy Vehicle National Law No 42a of 2013</i> .	OSOM vehicles transporting equipment for the project will have a permit under the <i>Heavy Vehicle National Law (NSW) No 42a of 2013</i> .
<i>Rural Fires Act 1997</i>	The <i>Rural Fires Act 1997</i> aims to prevent, mitigate and suppress bush and other fires whilst protecting people, property and infrastructure from damage and having regard to the principles of ecological sustainable development	A bushfire assessment has been completed for the project. Development on bushfire prone land will need to be designed in accordance with the NSW RFS " <i>Planning for Bushfire Protection 2019</i> " and relevant provisions of the <i>Australian Standard AS3959-2009 Construction of buildings on bushfire prone land</i> .

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<i>Contaminated Land Management Act 1997</i>	The <i>Contaminated Land Management Act 1997</i> establishes a process for investigating and where appropriate, remediating land that the EPA considers to be contaminated significantly enough to require regulation.	The potential for existing contamination and for the project to cause contamination has been assessed for the project. There are no locations within the SPSS site that are regulated under the <i>Contaminated Land Management Act 1997</i>.
<i>Soil Conservation Act 1983</i>	The <i>Soil Conservation Act 1938</i> allows for conservation of soil resources and erosion management.	The impacts to soils and the potential for erosion have been assessed for the project.
<i>Local Government Act 1993</i>	Section 60 of the <i>Local Government Act 1993</i> describes the requirement for approval by the Minister for Water, Property and Housing for the construction of sewage and water treatment works.	Approval under Section 60 of the <i>Local Government Act 1993</i> will be sought for the project.
Commonwealth Legislation		
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	Any action which could have a significant impact on any MNES must be referred to the Minister for the Environment and Energy. The nine MNES protected under the EPBC Act are: • World heritage properties • National heritage places • wetlands of international importance (listed under the Ramsar Convention) • listed threatened species and ecological communities • migratory species protected under international agreements • Commonwealth marine areas • The Great Barrier Reef Marine Park • nuclear actions (including uranium mines) • a water resource, in relation to coal seam gas development and large coal mining development.	Approval for a controlled action under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> for potential significant impacts to Matters of National Environmental Significance is being sought for the project. The project is being evaluated under the bilateral agreement between NSW and the Commonwealth.