



Appendix C. Statutory compliance table

Shoalhaven Hydro Expansion Project - Main Works Environmental Impact Statement

SSI-10033

Origin Energy Eraring Pty Ltd

November 2022

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The following statutory compliance table identifies other relevant NSW and Commonwealth statutory requirements for the Project and identifies where they have been addressed in the Environmental Impact Statement (EIS).

Table C – 1. General form and content requirements for the EIS

Legislation	Relevance to the Project	Where addressed in the EIS
NSW legislation		
<i>Aboriginal Land Rights Act 1983</i> (NSW)	<p>The <i>Aboriginal Land Rights Act 1983</i> establishes the NSW Aboriginal Land Council and local Aboriginal land councils. The Act requires these bodies to:</p> <ul style="list-style-type: none"> Take action to protect the culture and heritage of Aboriginal persons in the council's area, subject to any other law Promote awareness in the community of the culture and heritage of Aboriginal persons in the council's area. <p>The preamble of the Act states that land was traditionally owned and occupied by Aboriginal people and accepts that as a result of past government decisions, the amount of land set aside for Aboriginal people was reduced without compensation. To redress the loss of land, Aboriginal land councils can claim Crown land which, if granted, is transferred as freehold title. 'Claimable Crown lands' includes Crown lands that are not lawfully used or occupied and that are not needed, nor likely to be needed, for an essential public purpose.</p> <p>Under Part 2 of the <i>Aboriginal Land Rights Act 1983</i>, claimable Crown lands do not include lands that are the subject of an approved determination of native title.</p> <p>The South Coast People Native Title claimant group have an existing, undetermined native title claim registered on 21 January 2018 which encompasses the Project area.</p>	Native title determinations that apply to land within the Project area are discussed in the ACHAR provided in Appendix G .
<i>Biosecurity Act 2015</i>	<p>The <i>Biosecurity Act 2015</i> provides for the prevention, elimination, minimisation and management of biosecurity risks in NSW. Section 22 of the Act requires that any person who deals with any plant, who knows (or ought to know) of any biosecurity risk, has a duty to ensure the risk is prevented, eliminated or minimised so far as is reasonably practicable.</p> <p>The <i>Biosecurity Act 2015</i> is relevant because of the potential need to manage priority weeds during the construction and operation of the Project.</p>	The management of weeds is addressed in Section 6.1 and Appendix F .

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Legislation	Relevance to the Project	Where addressed in the EIS
<i>Biodiversity Conservation Act 2016</i>	The BC Act identifies threatened species, ecological communities and key threatening processes and establishes a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity. Under section 7.9 of the BC Act, any State significant infrastructure application is to be accompanied by a biodiversity development assessment report unless it is determined that the proposed development is not likely to have any significant impact on biodiversity values.	A BDAR has been prepared and is provided in Appendix F and summarised in Section 6.1 .
<i>Contaminated Land Management Act 1997</i>	The <i>Contaminated Land Management Act 1997</i> outlines the circumstances in which notification to the EPA is required in relation to the contamination of land. This may become relevant during construction and / or operation of the Project.	Contamination is assessed and further discussed in Section 6.4 .
<i>Dams Safety Act 2015</i>	Tallowa Dam (Lake Yarrunga), Fitzroy Falls Dam and Bendeela Pondage are all declared dams under the <i>Dam Safety Act 2015</i> . No changes are proposed to the form or function of these prescribed dams associated with the Project.	The Project's impacts on waterbodies and waterways are provided in the Surface water quality, hydrology and geomorphology technical report and the groundwater technical report in Appendix I and Appendix J respectively.
<i>Fisheries Management Act 1994</i>	The <i>Fisheries Management Act 1994</i> provides for the conservation, protection and management of fisheries, aquatic systems and habitats in NSW. The Act is relevant as the Project may impact aquatic habitats and species.	The biodiversity and surface water assessment have considered the aquatic impacts of the Project. These assessments are provided in Appendix F and Appendix I and summarised in Section 6.1 and 6.5 respectively.
<i>Heritage Act 1977</i>	The <i>Heritage Act 1977</i> provides for the conservation of buildings, works, relics and places that are of historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance to the State. The Act is relevant as listed heritage items may indirectly impacted by the Project.	A historical assessment has been prepared and is provided in Appendix H and summarised in Section 6.3 .

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Legislation	Relevance to the Project	Where addressed in the EIS
<i>Land Acquisition (Just Terms Compensation) Act 1991</i>	<p>The <i>Land Acquisition (Just Terms Compensation) Act 1991</i> controls the acquisition of land on just terms by authorities of the State with the objective of simplifying and expediting the compulsory acquisition process while ensuring compensation on just terms for the owners of land that is acquired by an authority of the State when the land is not available for public sale.</p> <p>Origin intends to negotiate the requisite access and tenure rights over the Project area. In the event that this is not achieved, the Land Acquisition (Just Terms Compensation) Act 1991 would become relevant through the application of the Pipelines Act 1967 as described below.</p>	The land use impacts of the Project are considered in Section 6.4
<i>National Parks and Wildlife Act 1972</i>	<p>The NPW Act provides for the protection of Aboriginal objects and Aboriginal places in NSW. The Project requires the tunnelling under approximately 100 m and reinstatement of full width and use of existing access tracks within the Morton National Park which is reserved under the NPW Act 1974. The NPW Act recognises the Existing Scheme through section 182 which made provision for the revocation and vesting with the Sydney Catchment Authority of land required for the Existing Scheme. Section 182 also allows the minister to grant to the Sydney Catchment Authority such easements and licences over lands within the Park for pipelines, power lines and other purposes as may be necessary for or in connection with the use and operation of the Existing Scheme. While the expansion of the Existing Scheme was always considered, Section 182 of the NPW Act only provides the benefits for the Sydney Catchment Authority and as such a separate means of securing tenure for works in the Morton National Park is required.</p> <p>Part 12 of the NPW Act allows for the granting of leases, licences, easements and rights of way for activities within reserved lands for various purposes. Of most relevance is that Section 153(1) which empowers the Minister administering the NPW Act to grant for joint or several use easements or rights of way through, upon or in a national park, historic site, state conservation area, regional park, nature reserve or karst conservation reserve for the purpose of providing access to any area included in any lease or licence within the park, site, area or reserve, or for the construction of pipelines, or for the erection of standards, posts, wires and appliances for the conveyance or transmission of electricity, or for any other purpose deemed necessary.</p> <p>Origin proposes to seek easements to obtain access and permanent tenure over those areas of the Morton National Park required for the Project.</p> <p>The Act is also relevant because the Project would impact Aboriginal objects and places.</p>	<p>Land tenure in Morton Nation Park is discussed in Section 2.4.2.</p> <p>An ACHAR report has been prepared and is provided in Appendix G and summarised in Section 6.2.</p>
<i>Native Title (New South Wales) Act 1994</i>	The <i>Native Title (New South Wales) Act 1994</i> operates to implement the Commonwealth <i>Native Title Act 1993</i> in NSW and to ensure consistency with the standards set in the Commonwealth Act. The Act maybe relevant to the	Native title determinations that apply to land within the Project

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Legislation	Relevance to the Project	Where addressed in the EIS
<i>Wales) Act 1994</i>	Project as the South Coast People Native Title claimant group have an existing, undetermined native title claim which encompasses the Project area.	area are discussed in the ACHAR provided in Appendix G..
<i>Pipelines Act 1967</i>	<p><i>The Pipelines Act 1967</i> (Pipelines Act) establishes the framework for the construction, licencing and operation of pipelines in NSW, but does not contain provisions for the planning and development approvals in relation to construction of pipelines. These provisions are made under the EP&A Act and its subordinate environmental planning instruments. The Pipelines Act does however provide for 'Authority to Survey' where a proponent requires access to private land in order to survey possible pipeline routes or conduct geotechnical or other testing, including taking of samples.</p> <p>Part 3 of the Pipelines Act outlines licensing requirements for pipelines. Under Part 3 (excluding exempt items which include pipelines for the purpose of water supply) a licence is required to:</p> <ul style="list-style-type: none"> ▪ Commence, or continue, the construction of a pipeline ▪ Alter or reconstruct a pipeline ▪ Operate a pipeline. <p>The Project involves the construction and operation of water pipelines and could obtain, but does not trigger the need for, a license under the Pipelines Act.</p> <p>In the event that the requisite access rights and tenure are not able to be obtained by agreement over the necessary land within the Morton National Park and Shoalhaven Special Area, it is noted that Origin could obtain a licence under the Pipelines Act which would enable those interests to be compulsorily acquired and vested in it as the holder of a pipeline licence.</p>	-
<i>Protection of the Environment Operations Act 1997</i>	<p>The POEO Act is the key piece of environment protection legislation administered EPA. Relevant features of this legislation include protection of the environment policies, integrated environment protection licensing, and regulation of scheduled and non-scheduled activities.</p> <p>The Existing Scheme operates under EPL No. 10595. The power stations are currently classed as "Electricity Generation – Generation of electrical power otherwise than from coal, diesel or gas" with a scale of "0 – 250 GWh generated".</p> <p>An EPL for construction under Chapter 3 of the POEO Act to be obtained prior to the commencement of construction of the Project for scheduled activity of electricity generation and possibly crushing, grinding and separating and associated scheduled development works.</p> <p>The POEO Act is also relevant to the Project as it has the potential to cause land, air, noise and water pollution. An application for an EPL would be made should the Project be approved.</p>	The potential impacts of the Project have been considered in Chapter 6 and appropriate mitigation measures proposed.

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Legislation	Relevance to the Project	Where addressed in the EIS
<i>Roads Act 1993</i>	The <i>Roads Act 1993</i> aims to establish the rights and procedures for using, opening and closing public roads. The Act is relevant because the Project would require consent from the appropriate roads authority under Section 138 of the <i>Roads Act 1993</i> for any works undertaken on public roads.	The impacts of the Project on roads, access and traffic are assessed in Appendix L and summarised in Section 6.7
<i>Rural Fires Act 1997</i>	The <i>Rural Fires Act 1997</i> provides for the prevention, mitigation and suppression of bush fires, and aims to protect environmental, cultural and community assets from damage arising from fires. The Act is relevant because Origin has a duty under the Act to take steps to prevent the occurrence of bush fires on land under its control.	An assessment of bushfire risks is provided in Appendix O summarised in Section 6.12
<i>Waste Avoidance and Resource Recovery Act 2001</i>	The <i>Waste Avoidance and Resource Recovery Act 2001</i> encourages the most efficient use of resources in order to reduce environmental harm. The Act is relevant to the Project as it would generate waste, particularly during the construction phase.	Waste management is considered in Section 6.11 .
<i>Water NSW Act 2014</i>	<p>Part 4 of the <i>Water NSW Act 2014</i> provides for the declaration of Catchment Areas, Special Areas and Controlled Areas. Shoalhaven Catchment Area is proclaimed as Schedule 2 land under the Water NSW Regulation. Section 52 of the <i>Water NSW Act 2014</i> requires the preparation of a plan of management for special areas, which has been satisfied through the adoption of the Special Areas Strategic Plan of Management 2015 (WaterNSW and Office of Environment & Heritage, 2015). Section 53 requires that, subject to the requirements of any other Act or any instrument under any other Act, no operations are to be undertaken by the joint sponsors, being WaterNSW and NPWS, in relation to the lands within the Special Area unless the operations are in accordance with the Plan of Management.</p> <p>Third party projects approved under the EP&A Act do not need to be undertaken in accordance with the Plan of Management and are regulated separately. In particular, Section 51 established that regulations may make provision for or with respect to special areas. It also establishes that the regulations made under Division 2 of Part 4 of the <i>Water NSW Act 2014</i> prevails to the extent of any inconsistency with an instrument made under another act other than a State environmental planning policy under the EP&A Act.</p> <p>Water NSW, as the owner of the land within the Shoalhaven Special Area, has the power to grant access and interests over that land provided the interests granted do not amount to alienating, mortgaging, charging or demising that land, which is prohibited in respect of land in a special area under section 48 of the <i>Water NSW Act</i>. Origin is still considering the form of tenure most appropriate for works proposed within the Shoalhaven Special</p>	The Shoalhaven Special Areas is discussed further in Section 2.4.3

Statutory compliance table

Legislation	Relevance to the Project	Where addressed in the EIS
	<p>Area. At this stage, it is considered that either a licence or easement would be sufficient, both of which are capable of being granted by Water NSW under the Water NSW Act.</p> <p>Various offences are established under the <i>Water NSW Regulation 2020</i>. However, under clause 9, a person does not commit such an offence by reason of anything done with the consent of Water NSW where they comply with the conditions to which the consent is subject. WaterNSW has provided Origin with an access agreement in relation to the ongoing environmental investigations. An extension of this agreement or a separate licence to access and occupy the Project area to cover the proposed scope of the Project is being progressed concurrently with the approval process. Such an agreement would constitute the consent of WaterNSW under clause 10 of the Water NSW Regulation 2020 and, if undertaken in accordance with any conditions of the access agreement, the Project would comply with the requirements of the <i>Water NSW Act 2014</i> and <i>Water NSW Regulation 2020</i>.</p>	
<i>Water Management Act 2000</i>	<p>The <i>Water Management Act 2000</i> presents the framework for sustainable and integrated water management in NSW. In addition to controlled activity approvals, water supply works approvals and water use approvals which are not required for approved SSI in Section 5.23 of the EP&A Act, the <i>Water Management Act 2000</i> requires a water access licence (WAL) to take water from a water source.</p> <p>Origin currently holds a WAL (no. WAL27432) under the water sharing plan for the Greater Metropolitan Regional Unregulated River Water Source to extract water for the purposes of electricity generation (DPI, 2013a). Under the WAL, Origin must adhere to the conditions outlined within the WAL which include volumetric limits for water use between Fitzroy Falls Reservoir and Lake Yarrunga per generation cycle, ensuring the volume of water in Bendeela Pondage does not exceed 880 ML, and divert water to Lake Yarrunga for the purposes of electricity generation when Fitzroy Falls Reservoir is spilling into Yarrunga Creek. The WAL also includes conditions that limit its application to the use of the existing Kangaroo Valley Power Station and Bendeela Power Station.</p> <p>Origin intends to rely on Water Access Licence No. WAL17432 (WAL) issued for the Existing Scheme, for the purposes of the Project. As the concurrent operation of the Project and the Existing Scheme will result in the existing water allocation being drawn and returned over shorter cycles, but no change to the overall volume of water being drawn during a generation cycle, no change is required to the Extraction Component or Share Component of the WAL. However, as the WAL currently only permits water to be interchanged under the WAL utilising the Existing Scheme, Origin proposes to seek an amendment pursuant to Division 3 of Part 2 of the Water Management Act 2000 (WM Act) to the conditions of the WAL to allow for the interchange of water under the WAL utilising both the Existing Scheme and the Project.</p> <p>Additional WALs would be required for construction and operation as follows:</p>	<p>Activities near and within waterways are considered in the Surface water quality, hydrology and geomorphology technical report and the groundwater technical report in Appendix I and Appendix J respectively.</p> <p>Appendix J also identifies the predicted water take for the project</p>

Statutory compliance table

Legislation	Relevance to the Project	Where addressed in the EIS
	<ul style="list-style-type: none"> For surface water take from existing reservoirs for construction make-up water under the Shoalhaven River Water Source of the Water Sharing Plan for the Greater Metropolitan Region Unregulated and Alluvial Water Sources 2011 For groundwater take from the Sydney Basin South Groundwater Source of the Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011 <p>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> will not be required pursuant to Section 5.23 of the EP&A Act.</p> <p>The Project involves works in waterfront land, aquifer interference, water management works and water use.</p>	
Commonwealth legislation		
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	<p>The EPBC Act is the primary Commonwealth legislation relating to the environment and provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, and heritage places. Under Part 3 of the Act, proposed 'actions' that have the potential to significantly impact on matters of national environmental significance, the environment of Commonwealth land, and/or the environment generally when being carried out by an Australian Government agency, must be referred to the Australian Minister for the Environment for assessment. If the Minister determines that a referred Project is a 'controlled action' under the Act, the approval of the Minister would be required.</p> <p>A referral was submitted to the DEECCW to confirm whether the Project requires assessment and approval under the EPBC Act. On 28 September 2022, the Project was determined to be a controlled action, requiring approval under the EPBC Act from the Commonwealth Minister for the Environment due to its potential impact on the following MNES:</p> <ul style="list-style-type: none"> Listed threatened species and communities (sections 18 & 18A). <p>Therefore, the Project would be assessed under the bilateral agreement between the Commonwealth and NSW Governments and DEECCW has issued its assessment requirements which have been incorporated into the SEARs for the Project (refer to Table A-4 in Appendix A).</p> <p>Following consideration of the results of the assessment by the DPE in accordance with the EPBC Act, the Australian Minister for the Environment will make a separate decision whether or not to approve the Project under the EPBC Act.</p>	<p>The potential impacts of the Project on species listed under the EPBC Act are assessed in the BDAR provided as Appendix F and Section 6.1</p>

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Legislation	Relevance to the Project	Where addressed in the EIS
	In accordance with the bilateral agreement, the EIS for the Project must consider the assessment requirements of the EPBC Act for potential impacts on matters of national environmental significance (specifically listed threatened species and ecological communities). The bilateral agreement assessment is required in addition to those listed in the SEARs.	
<i>Native Title Act 1993</i>	<p>The Commonwealth <i>Native Title Act 1993</i> seeks to recognise and protect native title. A successful native title determination results in the recognition of the rights, interests or uses claimed by the registered party, and any actions by government on that land must be consistent with the claim. The <i>Native Title Act 1993</i> provides a framework for the determination of native title claims and for negotiations and decision making regarding the use and management of native title lands and waters. Exclusive rights to land are only available on certain unallocated or vacant Crown lands.</p> <p>This Act maybe relevant as there is an undetermined native title claim which encompasses the Project area.</p>	Native title determinations that apply to land within the Project area are discussed in the ACHAR provided in Appendix G .