

APPENDIX B

Statutory requirements

NARRABRI TO NORTH STAR—PHASE 2 ENVIRONMENTAL IMPACT STATEMENT



Contents

B1	Statutory considerations	1
B1.1	Statutory requirements for the proposal	1
B1.2	Other approvals required for the proposal	2
B1.3	Mandatory matters for consideration	5
B2	Environmental Planning and Assessment Regulation 2021 checklist	6
References		7

Tables

Table B1-1	Statutory requirements for the proposal	1
Table B1-2	Other approvals	2
Table B1-3	Mandatory matters for consideration	5
Table B2-1	Environmental Planning and Assessment Regulation 2021 checklist	6

B1 Statutory considerations

The following section provides a summary of the statutory considerations required for the Narrabri to North Star (N2NS) Phase 2 Moree to Camurra North section of Inland Rail (the proposal) Environmental Impact Statement (EIS) under Section 3.5 of the *State significant infrastructure guidelines – preparing an environmental impact statement* (DPIE, 2021b). These guidelines are an appendix to the overarching *State Significant Infrastructure Guidelines* (DPIE, 2021b), to which proponents must consider under the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

B1.1 Statutory requirements for the proposal

Table B1-1 summarises the statutory requirements for the proposal in accordance with Table 2 of Section 3.5 of the *State significant infrastructure guidelines – preparing an environmental impact statement* (DPIE, 2021a).

TABLE B1-1 STATUTORY REQUIREMENTS FOR THE PROPOSAL

Category	Requirement
Power to grant approval	As Critical State Significant Infrastructure (CSSI), the proposal requires the approval of the NSW Minister for Planning under section 5.14 of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (EP&A Act)
Permissibility	The proposal meets the definition of rail infrastructure facilities, which are defined by clause 2.90 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> (Transport and Infrastructure SEPP). Clause 2.3(2) of the <i>Transport and Infrastructure SEPP</i> defines public authority as having the same meaning as the EP&A Act and in respect of development connected with rail corridors or railway infrastructure facilities, includes the Australian Rail Track Corporation Limited (ACN 081 455 754). Clause 2.91 of the <i>Transport and Infrastructure SEPP</i> identifies that 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; however, in accordance with section 5.13 of the EP&A Act, State Significant Infrastructure (SSI) may be declared to be CSSI if it is of a category that, in the opinion of the Minister, is essential to the state for economic, environmental or social reasons. The proposal was declared as CSSI in 2020 by the (then) Minister for Planning and Public Spaces. As CSSI, the proposal is permissible without consent under clause 2.15 of the <i>State Environmental Planning Policy (Planning Systems) 2021</i> (Planning Systems SEPP). Part 5 of the EP&A Act defines the assessment process for proposals that do not require development consent. Section 5.5 requires a determining authority to ‘<i>examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity</i>’. The proposal, therefore, becomes subject to the assessment and approval process in Division 5.2 of the EP&A Act and, consequently, the proposal would require an EIS. Under clause 7(5) of Schedule 5 of the <i>Planning Systems SEPP</i>, the following are excluded when carried out prior construction of the proposal: ▶ surveys, test drilling, test excavations, geotechnical investigations or other tests, surveys, sampling or investigation for the purposes of the design or assessment of the proposal ▶ the use of an existing rail corridor, or an existing rail facility adjoining an existing rail corridor, for delivery or storage of tracks, sleepers, ballast, posts or culverts ▶ the adjustment, relocation, upgrade or replacement of existing utilities infrastructure, unless existing water flows within or through the existing rail corridor will be permanently affected ▶ the adjustment, relocation, upgrade or replacement of existing utilities infrastructure, carried out before the commencement of construction of the proposal, unless the activity involves clearing native vegetation that is likely to significantly affect threatened species within the meaning of Part 7 of the <i>Biodiversity Conservation Act 2016</i> (NSW) (BC Act). Any such works would be subject to separate assessment and approvals, where required. Under section 5.14 of the EP&A Act, the approval of the Minister for Planning is required for SSI before it can be carried out. In accordance with Division 5.2 of the EP&A Act, the planning and approvals process includes the following key steps: ▶ submission of SSI application with the supporting document to the Secretary of the Department of Planning and Environment (DPE) under section 5.15 of the EP&A Act, to seek the Secretary’s Environmental Assessment Requirements (SEARs) ▶ preparation and submission of an EIS under section 5.16(2) of the EP&A Act, addressing the requirements of the EP&A Act and EP&A Regulation and the matters outlined in the SEARs

Category	Requirement
	▶ public exhibition of the EIS for a minimum of 28 days and preparation of either a Response to Submissions Report (Submissions Report) (if no material changes to the proposal are proposed post-exhibition) or a Submissions and Preferred Infrastructure Report (SPIR) (if material changes to the proposal are proposed post-exhibition), and submission of the report to the DPE assessment of the application, the EIS and the Submissions Report/SPIR by the DPE and preparation of the Secretary's Environmental Assessment Report (section 5.18 of the EP&A Act) determination of the application by the Minister. Clause 181(5) of the Environmental Planning and Assessment Regulation 2021 (NSW) (EP&A Regulation) provides the landowner consent and notification requirements for SSI (including CSSI). In accordance with clause 181(5), as the proposal is SSI being undertaken by a public authority and is also for linear transport infrastructure, the consent of individual landowners is not required for an application; however, the proponent is required to publish a notice of the application on the NSW Planning Portal (planning.nsw.gov.au/About-Us/NSW-Planning-Portal) and must give notice of the application to landowners in accordance with clause 181(6).
Other approvals	Other approvals required for the proposal Table B1-2 identifies the other approvals that are required to carry out the proposal in accordance with Table 2 of Section 3.5 of the <i>State significant infrastructure guidelines – preparing an environmental impact statement</i> (DPIE, 2021a) and indicates where they have been addressed in the EIS. Table B1-2 of this appendix
Pre-conditions to exercising the power to grant approval	N/A
Mandatory matters for consideration	Refer to Table B1-3 of this appendix

B1.2 Other approvals required for the proposal

Table B1-2 identifies the other approvals that are required to carry out the proposal in accordance with Table 2 of Section 3.5 of the *State significant infrastructure guidelines – preparing an environmental impact statement* (DPIE, 2021a) and indicates where they have been addressed in the EIS.

TABLE B1-2 OTHER APPROVALS

Instrument	Requirement and/or considerations	EIS reference
Approvals that should be substantially consistent with approved SSI		
<i>Protection of the Environment Operations Act 1997</i> (NSW)	Schedule 1 of the Act specifies the following rail track related activities as activities that need an EPL: Railway activities—railway infrastructure construction (clause 33) and Railway activities—railway infrastructure operations (clause 33A).	ARTC currently holds a licence to carry out railway systems activities on other parts of the NSW rail network (licence number EPL3142). This licence would either be amended to include the operation of the proposal or a new licence would be obtained. Licensing requirements for the proposal would be considered in consultation with the Environment Protection Authority (EPA). Refer to section 3.4.3.4 of Chapter 3.
<i>Roads Act 1993</i> (NSW)	Under section 138 of the Act, consent from the relevant roads authority is required to disturb, erect a structure, or carry out a work in, on or over a public road. Clause 5(1) of Schedule 2 to the Act exempts public authorities from this requirement, except in relation to works on or over classified and Crown roads. ARTC is not defined as a public authority for the purpose of this exemption.	The proposal would interact with several local, state and Crown roads that are classified under the Act. Separate consents would be sought under section 138 from the relevant road authority for works on each of these roads at level crossings, road bridges, pedestrian bridge tie-in works and other road works, as required. Temporary activities that are likely to impact traffic flow (such as traffic management controls or where lanes would be temporarily closed) and utility works would also require consent under section 138 of the Act. Refer to section 3.4.3.5 of Chapter 3.

Instrument	Requirement and/or considerations	EIS reference
Approvals that are not required for approved SSI		
<i>Fisheries Management Act 1994 (NSW)</i>	A permit under section 201, 205 or 219 for dredging, water land reclamation, harm to marine vegetation or blocking of fish passage.	These approvals are not required in accordance with section 5.23 of the EP&A Act if planning approval is obtained as the proposal has been declared SSI (including CSSI). Further information provided in section 3.4.1 (Approvals not required) in Chapter 3.
<i>Heritage Act 1977 (NSW)</i>	An approval under Part 4 for works on an item listed on the State Heritage Register including an excavation permit under section 139.	
<i>National Parks and Wildlife Act 1974 (NSW)</i>	An Aboriginal heritage impact permit under section 90 to allow harm to an Aboriginal heritage object to take place.	
<i>Rural Fires Act 1997 (NSW)</i>	A bushfire safety authority under section 100B.	
<i>Water Management Act 2000 (NSW)</i>	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.	
<i>National Parks and Wildlife Act 1974 (NSW)</i>	An interim protection order (within the meaning of the Act).	Section 5.23(3) of the EP&A Act precludes these directions, orders or notices being made to prevent or interfere with the carrying out of the proposal if planning approval is obtained, as the proposal has been declared as CSSI.
	An order under Division 1 (stop work orders) of Part 6A.	
	A remediation direction under Division 3 (remediation directions) of Part 6A.	
<i>Fisheries Management Act 1994 (NSW)</i>	Division 7 (stop work orders) of Part 7A.	
<i>Biodiversity Conservation Act 2016 (NSW)</i>	An order or direction under Part 11 (regulatory compliance mechanisms).	
<i>Protection of the Environment Operations Act 1997 (NSW)</i>	An environment protection notice under Chapter 4.	
<i>Local Government Act 1993 (NSW)</i>	An order from a council to demolish or move a building, to repair or make structural alterations to a building, or to do or refrain from doing things under section 124.	
Environment Protection and Biodiversity Conservation Act 1999 (Cth) approval		
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>	Proposed 'actions' that have the potential to significantly impact on matters of national environmental significance (MNES), the environment of Commonwealth land, or that are being carried out by an Australian Government agency, must be referred to the Australian Government Minister for the Environment for assessment.	A referral decision has determined that the proposal constitutes a controlled action and impacts to EPBC-listed entities are to be assessed under the bilateral agreement with NSW. Refer section 3.5 in Chapter 3 and section 10.4.10 in Chapter 10.

Instrument	Requirement and/or considerations	EIS reference
Other approvals		
<i>Aboriginal Land Rights Act 1983</i> (NSW)	Consideration of land rights on claimable Crown land (Crown lands that are not lawfully needed for an essential public purpose) for Aboriginal persons and representative Aboriginal Land Councils in the state.	Preliminary searches have been carried out and would be confirmed when the final land requirements are determined in detailed design. Based on searches to date, no claimable Crown lands have been identified that would be affected by the proposal.
<i>Biodiversity Conservation Act 2016</i> (NSW)	Preparation of a biodiversity development assessment report in accordance with section 7.9.	A biodiversity development assessment report for the proposal is included as Technical Paper 1: BDAR and summarised in Chapter 10: Biodiversity.
<i>Biosecurity Act 2015</i> (NSW)	Consideration of biosecurity risks, including both weeds and pests, posed by biosecurity matter, which is defined in section 10.	The potential biosecurity risks are considered in Chapter 9: Land use and property and Chapter 10: Biodiversity.
<i>Crown Land Management Act 2016</i> (NSW)	Authorisation under the Act to allow occupation of Crown land (including short-term occupation).	The proposal site occupies Crown land in several locations along the proposal site. All acquisition of Crown land would be undertaken in accordance with the requirements of the Act. The potential impacts of the proposal on land use, including Crown land, are considered in Chapter 9: Land use and property.
<i>Contaminated Land Management Act 1997</i> (NSW)	Consideration of the provisions and requirements of the Act, including the circumstances in which notification of the Environment Protection Authority (EPA) is required in relation to the contamination of land.	The requirements of the Act may become relevant during construction of the proposal. Consideration of the provisions and requirements of the Act is in Chapter 20: Soils and contamination.
<i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW)	Consideration of provisions for acquisition of land by an authority of the state when the land is not available for public sale.	It is estimated that a total of about 9 hectares (ha) from eight parcels of Crown land would be required to construct the proposal. This includes travelling stock routes (TSRs) held by the state of NSW, as well as road reserve. The area of privately owned land that is likely to be acquired is about 4 ha in total. All acquisitions of privately owned land and Crown land would be undertaken in consultation with landowners and in accordance with the requirements of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<i>Marine Safety Act 1998</i> (NSW)	Consideration of regulations that may prohibit or regulate the conduct of aquatic activities conducted in or on any navigable waters and that restricts the availability of those waters for normal use by the public, under section 18 authorisation or approval from Transport for NSW (TfNSW) under the Act with respect to any obstruction to navigation.	During construction, waterway access beneath the Gwydir River bridge would be restricted for construction and safety purposes. Depending on the final construction method, authorisation or approval from TfNSW may be required with respect to any obstruction to navigation. No commercial vessels operate within the Gwydir or Mehi rivers; however, to ensure that any adverse outcomes to navigation for recreational vessels are minimised as much as is practical, a Marine Traffic Management Plan would be prepared. The other waterways crossed by the proposal site have been identified as not navigable waters, as defined in the Act. Potential transport impacts are considered in Chapter 11: Transport and traffic.

Instrument	Requirement and/or considerations	EIS reference
<i>Native Title New South Wales Act 1994</i> (NSW)	Consultation with native title holders or registered native title claimants where relevant in accordance with the Act.	A search of the National Native Title Tribunal on 6 July 2021 did not identify any registered native title claims, applications or Indigenous land use agreements within or impacted by the proposal site.
<i>Transport Administration Act 1988</i> (NSW)	Consideration of procedures to close any level crossing under section 99B.	As described in Chapter 7: Proposal features and operation, the proposal includes changes to a number of level crossings. ARTC is undertaking, and would continue to undertake, necessary consultation to confirm the changes required. One private level crossing would be permanently closed as part of this proposal.
<i>Water Management Act 2000</i> (NSW)	Water access licences under the Act and the associated regulations for dewatering and any other taking of water from a water source exceeding three megalitres (ML) per year.	The provisions of the Act and water sharing plans have been considered as part of the assessment in Chapter 14: Groundwater, including an assessment against the NSW <i>Aquifer Interference Policy</i> (Department of Primary Industries, 2012). Extraction from bores and surface water is not anticipated to be required at this stage of construction planning. If ARTC determines that groundwater is required to supply construction demand, then it would be sourced through on-market purchases from willing sellers with existing registered and licensed bores, within the regulated allocations of the related water allocation licences.
<i>Waste Avoidance and Resource Recovery Act 2001</i> (NSW)	Consideration of the waste hierarchy and other provisions under the Act for efficient use of resources to reduce environmental harm.	The provisions of the Act have been considered as part of the assessment of waste and resources management in section 3.4.3.9 of Chapter 3 and Chapter 21: Waste.
<i>Native Title Act 1993</i> (Cth)	Consideration of the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements and mediating native title claims.	A search of the National Native Title Vision database was completed on 20 July 2020. One Native Title claim (Gomeri People NC2011/006) is registered across the proposal site. Aboriginal heritage matters are considered in detail in Chapter 15: Cultural heritage, and the <i>Native Title Act 1993</i> is addressed in section 3.5.2 of Chapter 3.

B1.3 Mandatory matters for consideration

Table B1-3 identifies the matters that the approval authority is required to consider in deciding whether to grant approval in accordance with Table 2 of Section 3.5 of the *State significant infrastructure guidelines – preparing an environmental impact statement* (DPIE, 2021a) and indicates where they have been addressed in the EIS.

TABLE B1-3 MANDATORY MATTERS FOR CONSIDERATION

Instrument	Considerations	EIS reference
State environmental planning policies		
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Permissibility of the proposal as development for the purpose of a railway or rail infrastructure facilities carried out by or on behalf of a public authority.	Table B1-1 of this appendix Section 3.3.1 of Chapter 3: Statutory context
<i>State Environmental Planning Policy (Planning Systems) 2021</i>	Permissibility of the proposal as CSSI.	Table B1-1 of this appendix Section 3.3.2 of Chapter 3: Statutory context

Instrument	Considerations	EIS reference
<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>	Contaminated land remediation requirements.	Chapter 20: Soils and contamination
	Potential impacts associated with hazardous materials, as defined by the guidelines to the Resilience and Hazards SEPP developed under the EP&A Act.	Chapter 25: Health and safety
Local environmental planning policies		
<i>Moree Plains Local Environmental Plan 2012</i>	The proposal is located on land designated under <i>the Moree Plains Local Environmental Plan (LEP) 2012</i> ; however, the Moree Plains LEP does not apply, as the proposal is assessed under Division 5.2 of the EP&A Act.	Chapter 3: Statutory context

B2 Environmental Planning and Assessment Regulation 2021 checklist

Table B2-1 identifies the form and content requirements of the EIS in accordance with Section 190 and 192 of the EP&A Regulation and indicates where they have been addressed in the EIS.

TABLE B2-1 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021 CHECKLIST

Requirement	EIS reference
6. Form of the environmental impact statement	
1 An environmental impact statement must contain the following information:	
a the name, address and professional qualifications of the person by whom the statement is prepared,	Included in the certification at front of the EIS
b the name and address of the responsible person,	
c the address of the land:	
i in respect of which the development application is to be made, or	
ii on which the activity or infrastructure to which the statement relates is to be carried out,	
d a description of the development, activity or infrastructure to which the statement relates,	
e an assessment by the person by whom the statement is prepared of the environmental impact of the development, activity or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule,	
f a declaration by the person by whom the statement is prepared to the effect that:	
i the statement has been prepared in accordance with this Schedule, and	
ii the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and	
iii that the information contained in the statement is neither false nor misleading.	
7. Content of environmental impact statement	
2 An environmental impact statement must also include each of the following:	
a a summary of the environmental impact statement,	Proposal summary
b a statement of the objectives of the development, activity or infrastructure,	Chapter 1: Introduction
c an analysis of any feasible alternatives to the carrying out of the development, activity or infrastructure, having regard to its objectives, including the consequences of not carrying out the development, activity or infrastructure,	Chapter 6: Inland Rail Program development, alternatives and the proposal

Requirement	EIS reference
d an analysis of the development, activity or infrastructure, including:	
i a full description of the development, activity or infrastructure, and	Chapter 7: Proposal features and operation and Chapter 8: Construction of the proposal
ii a general description of the environment likely to be affected by the development, activity or infrastructure, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and	Chapter 2: General biophysical and cultural environment and Chapters 9–26 (technical chapters)
iii the likely impact on the environment of the development, activity or infrastructure, and	Chapters 9–26 (technical chapters)
iv a full description of the measures proposed to mitigate any adverse effects of the development, activity or infrastructure on the environment, and	Chapter 27: Environmental management
v a list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out,	Chapter 3: Statutory context
e a compilation (in a single section of the environmental impact statement) of the measures referred to in item (d) (iv),	Chapter 27: Environmental management
f the reasons justifying the carrying out of the development, activity or infrastructure in the manner proposed, having regard to biophysical, economic and social considerations, including the principles of ecologically sustainable development set out in subclause (4).	Chapter 28: Conclusion and justification of the proposal

References

- ▶ DPI (2012). *NSW Aquifer Interference Policy*
- ▶ DPIE (2021a). *Preparing an Environmental Impact Statement – State Significant Infrastructure Guide*
- ▶ DPIE (2021b). *State Significant Infrastructure Guidelines*