

APPENDIX

C

Statutory compliance

ALBURY TO ILLABO ENVIRONMENTAL IMPACT STATEMENT

ARTC

INLAND
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C.1 Statutory considerations

This section provides a review of the relevant legislative and statutory considerations required for the Albury to Illabo proposal. This appendix supports the information provided in Chapter 4: Statutory context as well as the assessment chapters in this Environmental Impact Statement (EIS). The review is consistent with the requirements of *State Significant Infrastructure Guidelines* (DPIE, 2021c), to which proponents must consider under the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

C.1.1 Statutory requirements for the proposal

Table C–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, 2021d).

TABLE C–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 Transport and Infrastructure SEPP 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 Transport and Infrastructure SEPP 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 2021 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). Under clause 7(5) of Schedule 5 of the Planning Systems SEPP, the following are excluded when carried out prior construction of the proposal are excluded: ▶ 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. Clause 181(5) of the <i>Environmental Planning and Assessment Regulation 2021</i> (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	Refer to Table C–2 of this appendix
Pre-conditions to exercising the power to grant approval	N/A
Mandatory matters for consideration	Refer to Table C–3 of this appendix

C.1.2 Other approvals required for the proposal

Table C–2As detailed in Chapter 4: Statutory context of this EIS, in accordance with sections 5.23 and 5.24 of the EP&A Act, some environmental and planning legislation does not apply to approved critical State significant infrastructure or must be applied consistently with an approval for critical State significant infrastructure. Environmental planning related legislation and regulations that may still be applicable to approved critical State significant infrastructure and, based on the scope of this proposal, may be relevant are outlined in Table 2.

TABLE C–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 (NSW)</i>	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 (licence number EPL3142) within the Albury to Illabo rail corridor. This EPL will be amended to include the operation of the proposal. A separate EPL will be obtained by the construction contractor for the construction of the proposal. Licensing requirements for the proposal would be considered in consultation with the EPA. Rollingstock operators on ARTC's network in NSW are regulated by the NSW EPA and may require a separate EPL.
<i>Roads Act 1993 (NSW)</i>	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 the following: ▶ Level crossing works: ▶ Sladen Street (LX625), Henty ▶ Plunkett Street (LX622), Yerong Creek ▶ Yarragundry Street (LX616), Uranquinty ▶ Waterworks Road (LX606), Wantinol ▶ Womes Gate Lane (LX1472), Wantinol and its connection with the Olympic Highway ▶ Shire and Carter property access road (LX605), Illabo and its connection with the Olympic Highway ▶ Brabins Road, Illabo (LX604) ▶ Olympic Highway, Illabo (LX603). ▶ Road bridge works and other road works: ▶ Townsend Street, South Albury ▶ Edmondson Street, Turvey Park ▶ Erin Street, Turvey Park ▶ Best Street, Wagga Wagga ▶ Little Best Street, Wagga Wagga ▶ Kemp Street, Junee ▶ Joffre Street, Junee ▶ Pretoria Avenue, Junee ▶ Seignior Street (Olympic Highway), Junee ▶ Railway Parade, Junee ▶ Ducker Street, Junee ▶ Edgar Street, Junee. ▶ Pedestrian bridge tie-in works: ▶ Railway Place, Albury ▶ Cassidy Parade, Turvey Park. Consent would not be required for works at the Dampier Street level crossing at Bomen as the crossing has been closed. 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.

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)
<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 place	
<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, the environment of Commonwealth land, or that are being carried out by a Australian Government agency, must be referred to the Australian Government Minister for the Environment for assessment	The proposal is a not controlled action, and hence approval under the Act is not required. Refer to Section 4.4.1 of Chapter 4
Other approvals		
<i>Aboriginal Land Rights Act 1983 (NSW)</i>	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 finalised. Based on searches to date, no claimable Crown lands have been identified that would be affected by the proposal. Refer to Chapter 10: Aboriginal heritage and Chapter 12: Land use and property
<i>Biodiversity Conservation Act 2016 (NSW)</i>	Preparation of a biodiversity development assessment report in accordance with section 7.9	A biodiversity development assessment report for the proposal is included Technical Paper 8 and summarised in Chapter 16: Biodiversity

Instrument	Requirement and/or considerations	EIS reference
<i>Biosecurity Act 2015 (NSW)</i>	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 12: Land use and property
<i>Crown Land Management Act 2016 (NSW)</i>	Authorisation under the Act to allow occupation of Crown land (including short-term occupation)	The proposal site occupies Crown land beyond the ARTC lease area in several locations along the proposal site. The potential impacts of the proposal on land use, including Crown land, are considered in Chapter 12: Land use and property
<i>Contaminated Land Management Act 1997 (NSW)</i>	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 (NSW)</i>	Consideration of provisions for acquisition of land by an authority of the state when the land is not available for public sale	At this stage, it is not expected that any privately owned land would need to be permanently acquired to accommodate the proposal. An easement (25 metres in width) would be established on private property (Lot 2 DP543801) at the Edmondson Street bridge enhancement site to accommodate a relocated electrical power line. This would be located in the north-eastern corner of the property. Further discussion of potential land acquisition associated with the proposal is discussed in Chapter 8: Construction of the proposal and Chapter 12: Land use and property
<i>Marine Safety Act 1998 (NSW)</i>	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 under the Act with respect to any obstruction to navigation	During construction, waterway access beneath the Murray River bridge would be partially restricted for construction and safety purposes. Depending on the final construction method, authorisation or approval from Transport for NSW may be required with respect to any obstruction to navigation. To ensure that any adverse outcomes to navigation for commercial and 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 ephemeral and are not navigable waters as defined in the Act. Potential traffic impacts are considered in Chapter 9: Transport and traffic
<i>Native Title New South Wales Act 1994 (NSW)</i>	Consultation with native title holders or registered native title claimants where relevant in accordance with the Act (DECCW, 2010a)	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. Aboriginal heritage matters are considered in Chapter 10: Aboriginal heritage
<i>Transport Administration Act 1988 (NSW)</i>	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. No level crossings would be permanently closed as part of this proposal.

Instrument	Requirement and/or considerations	EIS reference
<i>Water Management Act 2000 (NSW)</i>	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 19: Groundwater, including an assessment against NSW Aquifer Interference Policy (Department of Primary Industries, 2012a). Dewatering is estimated to exceed 3 ML at one location (Kemp Street bridge enhancement site). Therefore, a water access licence may be required. Dewatering estimates and the need for a licence would be confirmed during detailed design. Extraction from bores and surface water is not anticipated to be required at this stage of construction planning. If extraction is required, further relevant licences and approvals would be sought.
<i>Waste Avoidance and Resource Recovery Act 2001 (NSW)</i>	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 Chapter 23: Waste and resource management of this EIS.
<i>Native Title Act 1993 (Cth)</i>	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	There are currently no registered native titles, native title claims or indigenous land use agreements over the proposal site Aboriginal heritage matters are considered in Chapter 10: Aboriginal heritage
<i>Disability Discrimination Act 1992 (Cth) (DDA)</i>	Consideration of accessibility to public places for people with a disability under the Act. Places under construction do not need to be made accessible if this will cause major difficulties or excessive costs to a person or organisation.	New pedestrian bridges have been designed and would continue to be designed to comply with the requirements of the Act. The required gradients at the proposed road bridges at Edmondson Street, Wagga Wagga, and Kemp Street, Junee, do not satisfy DDA requirements for pedestrians. Compliance has not been achieved as this would have required a significantly larger structure with increased property and infrastructure impacts to meet the vertical clearance requirements. Further consultation with Wagga Wagga City Council and Junee Shire Council has confirmed the requirement for achieving DDA-compliant pedestrian access at the Edmondson Street bridge and Kemp Street bridge enhancement sites. ARTC is committed to revising the existing design to achieve DDA compliance. To achieve this, it is expected that a footbridge independent of the road bridge may be required as a substitute for the footpath on one side of the road bridge.

C.1.3 Mandatory matters for consideration

As noted in Chapter 4: Statutory context of this EIS, section 5.22 of the EP&A Act provides that environmental planning instruments (such as local environmental plans, state environmental planning policies (SEPPs) and regional environmental plans) do not, with some exceptions, apply to State significant infrastructure projects. Notwithstanding, an approval authority will consider certain matters within these instruments in deciding whether to grant approval. A complete list of the environmental planning instruments that have been considered is provided in Table C–3. Table C–3

TABLE C–3 MANDATORY MATTERS FOR CONSIDERATION

Instrument	Considerations	EIS reference
State Environmental Planning Policies		
State Environmental Planning Policy (Transport and Infrastructure) 2021	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 C–1 of this appendix Chapter 4: Statutory context, section 4.2.4
State Environmental Planning Policy (Planning Systems) 2021	Permissibility of the proposal as CSSI	Table C–1 of this appendix

Instrument	Considerations	EIS reference
		Chapter 4: Statutory context, section 4.2.4
State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)	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 24: Hazards
Local Environmental Planning Policies		
Albury Local Environmental Plan 2010	Aboriginal places of heritage significance	Chapter 10: Aboriginal heritage
Greater Hume Local Environmental Plan 2012	Registered heritage items and conservation areas	Chapter 11: Non-Aboriginal heritage Chapter 17: Landscape and visual amenity
Lockhart Local Environmental Plan 2012	Land zoning	Chapter 12: Land use and property
Wagga Wagga Local Environmental Plan 2010	Flood-related planning controls	Chapter 18: Hydrology, flooding and water quality
Junee Local Environmental Plan 2012		

C.2 Environmental Planning and Assessment Regulation 2021 checklist

Table C– 4 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 C– 4 ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021 CHECKLIST

Requirement	EIS reference
190. 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 who prepared the statement,	Refer to certification at the front of the EIS
b. the name and address of the responsible person,	
c. the address of the land: i to which the development application relates, or ii on which the activity or infrastructure to which the statement relates will be carried out,	
d. a description of the development, activity or infrastructure	
e. an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division.	
2 The person preparing the statement must consider—	Preparation of the EIS has had regard to the State Significant Infrastructure Guidelines (DPIE, 2021c) whilst meeting the requirements of the SEARs (issued October 2020).
2. for State significant infrastructure—the State Significant Infrastructure Guidelines.	
3 An environmental impact statement must also contain a declaration by the person who prepared the statement of the following—	Refer to certification at the front of the EIS.
a. the statement has been prepared in accordance with this Division, and	
b. the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure, and	
c. the information contained in the statement is not false or misleading.	
192. Content of environmental impact statement	
4 An environmental impact statement must contain the following—	

Requirement	EIS reference
a. a summary of the environmental impact statement,	Executive summary
b. a statement of the objectives of the development, activity or infrastructure,	Chapter 1: Introduction
c. an analysis of feasible alternatives to the carrying out of the development, activity or infrastructure, considering its objectives, including the consequences of not carrying out the development, activity or infrastructure,	Chapter 6: Alternatives and proposal options
d. an analysis of the development, activity or infrastructure, including—	Chapter 7: Proposal features and operation Chapter 8: Construction of the proposal
i a full description of the development, activity or infrastructure, and	
ii a general description of the environment likely to be affected by the development, activity or infrastructure and a detailed description of the aspects of the environment that are likely to be significantly affected, and	Chapter 3: Location and setting Chapters 9 to 26: Impact assessment
iii the likely impact on the environment of the development, activity or infrastructure, and	Chapters 9 to 26: Impact assessment
iv a full description of the measures to mitigate adverse effects of the development, activity or infrastructure on the environment, and	Chapters 9 to 26: Impact assessment Chapter 27: Approach to mitigation and management
v a list of the approvals that must be obtained under another Act or law before the development, activity or infrastructure may lawfully be carried out,	Chapter 4: Statutory context
e. a compilation, in a single section of the environmental impact statement, of the measures referred to in paragraph (d)(iv),	Chapter 27: Approach to mitigation and management
f. the reasons justifying the carrying out of the development, activity or infrastructure, considering biophysical, economic and social factors, including the principles of ecologically sustainable development set out in section 193.	Chapter 28: Justification of the proposal