

CHAPTER 4 - STATUTORY CONTEXT



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4. Statutory context

This chapter provides a summary of the planning approval requirements for the project under relevant legislation. The approval pathway and permissibility of the project are summarised, relevant planning instruments and legislation are described, and approval considerations are outlined. The statutory compliance table is provided in Appendix D.

4.1 Approval pathway and permissibility

The project has been declared by the Minister for Planning and Public Spaces as critical State significant infrastructure in accordance with Part 5, Division 5.2, section 5.13 of the EP&A Act and has been listed as such in clause 34 of Schedule 5 of State Environmental Planning Policy (Planning Systems) 2021 (the Planning Systems SEPP). Section 2.15 of the Planning Systems SEPP provides that development specified in Schedule 5 may be carried out without consent and is also declared to be State significant infrastructure for the purposes of the EP&A Act.

As critical State significant infrastructure, the project is subject to Division 5.2 of the EP&A Act. The NSW Minister for Planning and Public Spaces is the approval authority for the project.

4.2 Other approvals

4.2.1 Approvals under NSW legislation

Approvals not required

In accordance with section 5.23 of the EP&A Act the following approvals, which may otherwise have been required, are not required for critical State significant infrastructure:

- a permit under sections 201, 205 and 219 of the *Fisheries Management Act 1994*
- an approval under Part 4 or an excavation permit under section 139 of the *Heritage Act 1977*
- an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
- 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 *Water Management Act 2000*.

Approvals that must be applied consistently

In accordance with section 5.24 of the EP&A Act, approvals under other specified NSW legislation that may apply to the project cannot be refused and must be applied consistently with the approval for the critical State significant infrastructure.

The only approval listed in section 5.24 that is relevant to the project is a licence under the Pipelines Act. Part 3 of the Pipelines Act provides the licensing requirements for pipelines. In accordance with section 11, a licence is required to construct, alter, reconstruct and operate a pipeline. Project approval under the EP&A Act is required prior to the pipeline licence being granted.

A pipeline constructed and operated pursuant to a licence under the Pipelines Act does not require a section 138 approval under the *Roads Act 1993* (the Roads Act) by virtue of the exemption in section 138(5) of the Roads Act. However, section 26 of the Pipeline Regulation 2023 provides that a licensee of a licence under the Pipelines Act must ensure the carrying out of activities authorised by the licence does not interfere with the use of a public road unless the interference is approved by the public or local authority responsible for the road. Accordingly, approval of the relevant road authority is required, and will be sought, for works that have the potential to interfere with use of a public road.

Other approvals and requirements

In addition to the approvals required, there is a range of other legislation that applies to the design, construction and operation of the project. This legislation, which defines matters such as requirements for notifications, utility connections, construction safety and design requirements, and water access licences, includes but is not limited to the *Contaminated Land Management Act 1997*, *Crown Land Management Act 2016* and *Water Management Act 2000*.

4.2.2 Approvals under Commonwealth legislation

Environment Protection and Biodiversity Conservation Act 1999

In accordance with the EPBC Act, proposed actions with the potential to significantly impact matters protected by the EPBC Act must be referred to the Australian Minister for the Environment and Water to determine whether they are controlled actions and require approval from the Minister. The following matters are defined as protected matters by Part 3 of the EPBC Act:

- matters of national environmental significance
- the environment of Commonwealth land where an action is taken on Commonwealth land or impacts Commonwealth land
- the environment in general if an action is being carried out by an Australian Government agency.

The project is not being carried out by an Australian Government agency and no significant impacts on the environment of Commonwealth land have been identified.

The project has the potential to impact matters of national environmental significance (threatened species and endangered communities listed by the EPBC Act). The project was referred to the Australian Minister for the Environment and Water and Santos was notified, by decision made on 7 February 2025, that the project is a controlled action, requiring assessment and approval under the EPBC Act. The relevant controlling provisions that apply to the project are listed threatened species and endangered communities.

The impacts on matters protected under the EPBC Act are assessed by this EIS in accordance with the bilateral assessment agreement between the Australian and NSW governments. Supplementary SEARs detailing the environmental assessment requirements for these matters were issued on 3 March 2025 (see Appendix A (SEARs compliance table)).

The results of the assessment of potential impacts on matters of national environmental significance (threatened species and ecological communities) are summarised in chapter 6 (Biodiversity).

4.3 Pre-conditions and mandatory considerations

The statutory pre-conditions relevant to the application for approval of the project, which must be met by Santos before the approval authority can exercise its power to grant approval, are listed in Table 4.1.

Mandatory considerations are the matters the approval authority is required to consider in deciding whether to grant approval. These considerations are also listed in Table 4.1, together with a reference to where relevant information is provided in the EIS.

Section 5.22(2)(a) of the EP&A Act provides that environmental planning instruments (such as State environmental planning policies and local environmental plans) do not apply to or in respect of State significant infrastructure, except where they apply to the declaration of State significant infrastructure. The application of the Planning Systems SEPP to the declaration of the project as critical State significant infrastructure is considered in section 4.1.

Table 4.1 Pre-conditions and mandatory considerations

Reference	Requirement/consideration	Where addressed in the EIS
EP&A Act Section 1.3 Objects of Act	The objects of the EP&A Act are guiding principles that need to be considered by planning authorities when making decisions under the Act.	Table D.3 in Appendix D (Statutory compliance).
EP&A Act Division 5.2	Section 5.14(1) provides that the approval of the Minister for Planning is required to carry out State significant infrastructure. Section 5.17(1) provides that the proponent must submit an EIS for approval to carry out the State significant infrastructure.	This chapter. This EIS has been prepared in accordance with the requirements of Division 5.2.
Environmental Planning and Assessment Regulation 2021 Part 8, Divisions 4 and 5	The SEARs (General Requirements) require the EIS to meet the minimum form and content requirements prescribed by Part 8 of the EP&A Regulation (see Appendix A (SEARs compliance table)). Divisions 4 and 5 of the EP&A Regulation provide requirements for environmental assessment for State significant infrastructure and requirements for environmental impact statements. Relevantly, section 184 of Division 4 provides a requirement for a proponent preparing an EIS for State significant infrastructure on land less than 200 kilometres from the Siding Spring Observatory to consider the <i>Dark Sky Planning Guideline</i> . Sections 190 and 192 of Division 5 provide the form and content requirements for an EIS. Section 191 of Division 5 requires the EIS to comply with the SEARs.	Appendix A documents where the requirements of the SEARs have been addressed in the EIS. Appendix D (Table D.1) documents where the requirements of sections 190 and 192 have been addressed in the EIS. As part of the project is located less than 200 kilometres from the Siding Spring Observatory, the EIS has considered the <i>Dark Sky Planning Guideline</i> (DPE, 2023) (see chapter 14 (Landscape and visual)).
<i>Biodiversity Conservation Act 2016</i>	Sections 7.9(1) and 7.9(2) provide that an application for approval of State significant infrastructure must be accompanied by a biodiversity development assessment report unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values. Section 7.14(2) provides that, when determining an application in accordance with the EP&A Act, the Minister for Planning and Public Spaces must take into account the likely impact of a proposed development on biodiversity values as assessed in the biodiversity development assessment report.	A Biodiversity Development Assessment Report has been prepared (Technical Report 1). Potential biodiversity impacts are considered in chapter 6 (Biodiversity).

4.4 Assessment process and requirements

The key steps in the assessment process, in accordance with the EP&A Act, EP&A Regulation and the *State Significant Infrastructure Guidelines* (DPHI, 2024), are outlined below and shown on Figure 4.1.

4.4.1 Environmental assessment requirements

In accordance with section 5.15(2) of the EP&A Act, an application for State significant infrastructure needs to describe the infrastructure and contain any other matter required by the Planning Secretary. The SEARs for the project define the matters the Secretary requires the EIS to address. The SEARs were issued on 8 February 2023 and their expiry date was subsequently extended to 9 December 2025. Supplementary SEARs (Attachment 1 of the SEARs), defining the assessment requirements for EPBC Act matters of national environmental significance, were issued on 3 March 2025.

The requirements detailed in the SEARs, together with where they are addressed by this EIS, are provided in Appendix A.

4.4.2 Public exhibition and submissions

If the EIS is considered to meet the SEARs, the Department of Planning, Housing and Infrastructure (DPHI) will place it on public exhibition for at least 28 calendar days and invite submissions. At the end of the exhibition period, DPHI will provide Santos with a copy of the submissions and may ask Santos to provide a response to the issues raised in submissions. DPHI may also request that a preferred infrastructure report be prepared in accordance with section 5.17(6)(b) of the EP&A Act. The preferred infrastructure report may be made available to the public.

Santos may also elect to provide an amendment report that outlines any proposed changes to the project to minimise its environmental impact or deal with other issues raised during the assessment of the application. The amendment report may be made available to the public.

Further information on consultation undertaken for the project and EIS, and the proposed approach to consultation during the exhibition period, is provided in chapter 5 (Engagement).

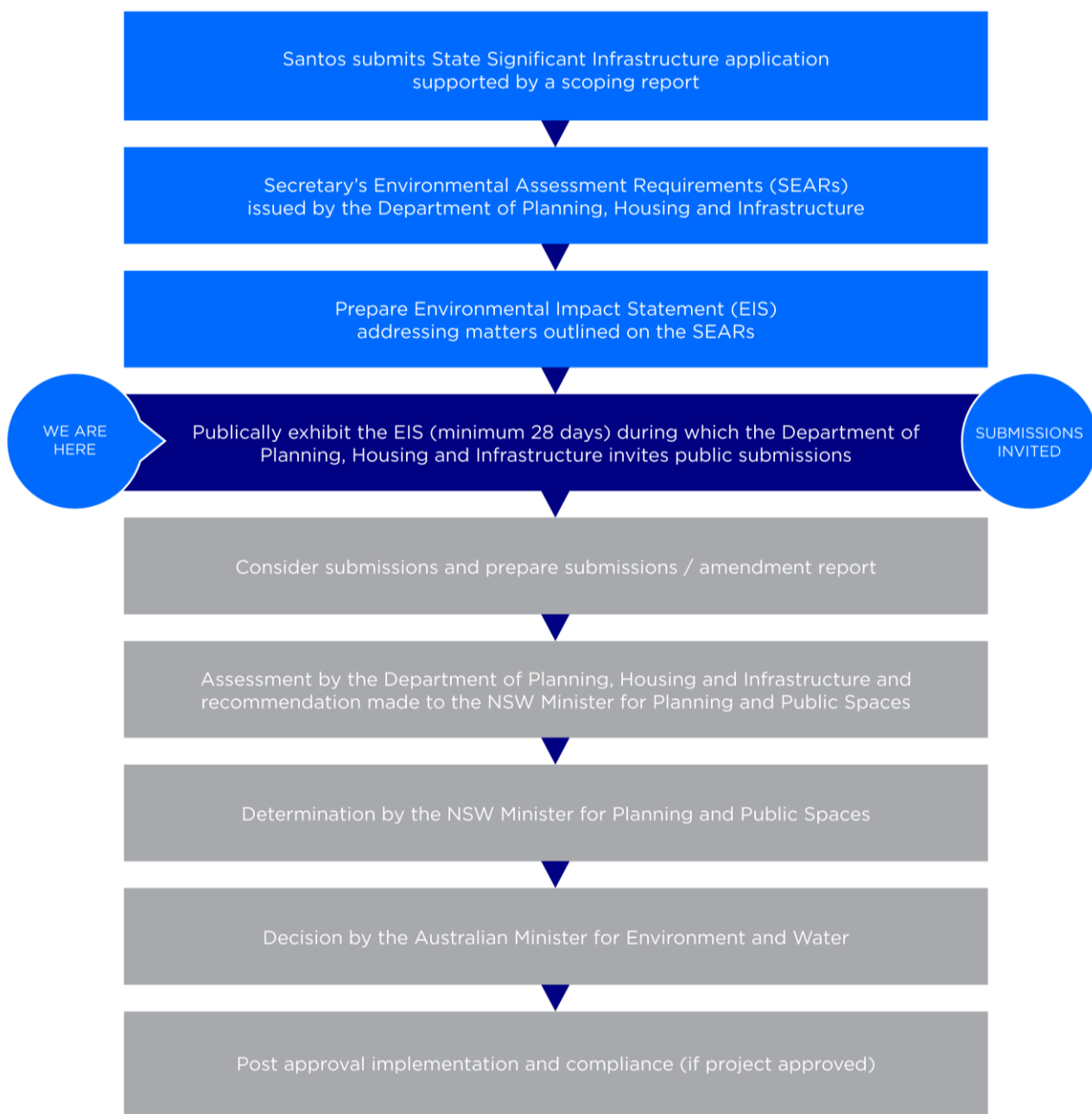


Figure 4.1 Assessment and approval process

4.4.3 Assessment and approval

Following the exhibition period, DPHI will, on behalf of the Minister for Planning and Public Spaces, review the EIS, the submissions report and any amendment report or preferred infrastructure report. DPHI will prepare an assessment report, which is submitted to the Minister for Planning and Public Spaces for consideration. The Minister may refuse the project or approve it with such conditions and modifications as the Minister may determine. The Minister's decision and the assessment report will be published on DPHI's Major Projects website following determination.

The EPBC Act referral notification confirmed the potential impacts of the project on matters of national environmental significance listed by the EPBC Act will be assessed under the assessment bilateral agreement between the Australian and NSW governments. Following consideration of the results of the assessment by DPHI, the Australian Minister for the Environment and Water will make a separate decision whether to approve the project under the EPBC Act.