



Artist's Impression

## Environmental Impact Statement – Chapter 2: Statutory and planning framework

# Warragamba Dam Raising

Reference No. 30012078  
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## 2 Statutory and planning framework

This chapter describes the planning approval process for the Project as well as other relevant environmental and statutory approval requirements. The relevant SEARs for this chapter are presented in Table 2-1.

Table 2-1. Secretary's Environmental Assessment Requirements (SEARs): Statutory and planning framework

Desired performance outcome	Secretary's Environmental Assessment Requirements <sup>1</sup>	Where addressed
<b>2. Environmental impact statement</b> The project is described in sufficient detail to enable clear understanding that the project has been developed through an iterative process of impact identification and assessment and project refinement to avoid, minimise or offset impacts so that the project, on balance, has the least adverse environmental, social and economic impact, including its cumulative impacts.	The EIS must include, but not necessarily be limited to, the following: (o) statutory context of the project as a whole, including: <ul style="list-style-type: none"> <li>how the project meets the provisions of the EP&amp;A Act and EP&amp;A Regulation;</li> <li>a list of any approvals that must be obtained under any other Act or law before the project may lawfully be carried out;</li> </ul>	This chapter

1. This chapter specifically addresses SEAR 2(o) in addition to those general requirements of the SEARs applicable to all chapters and as identified as such in Chapter 1 (Section 1.5, Table 1-1).

### 2.1 NSW planning approval framework

Section 5.12(2) of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) provides that a State Environmental Planning Policy (SEPP) may declare any development or class of development to be State Significant Infrastructure (SSI), which requires approval from the NSW Minister for Planning and Public Spaces under section 5.14 of the EP&A Act. The Project is SSI and accordingly requires approval from the Minister under Part 5, Division 5.2 of the EP&A Act for the reasons set out below.

- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP) provides that works for the purpose of water storage facilities (clause 125(2)) and flood mitigation (clause 50(1)) could be undertaken by WaterNSW without obtaining development consent under Part 4 of the EP&A Act
- clause 14(1) of State Environmental Planning Policy (State and Regional Development) 2011 declares development to be SSI if the development is permissible without consent under Part 4 of the EP&A Act and is a type of development specified in Schedule 3 of the State and Regional Development SEPP. Schedule 3 includes:
  - clause 1(1) *Infrastructure or other development that...would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Part 5 of the Act*
  - clause 4(1) *development for the purposes of water storage...carried out by or on behalf of a public authority that has a capital investment value of more than \$30 million.*

Accordingly, the Project is subject to assessment and approvals process under Part 5, Division 5.2 of the EP&A Act. The main steps in this process are summarised in Figure 2-1 and include Early Consultation, Prepare EIS, Exhibit EIS, Respond to Submissions, Assess SSI and Determine SSI.

WaterNSW prepared a Preliminary Environmental Assessment report (PEA) for the Project under section 5.15 of the EP&A Act (WaterNSW 2016). The PEA described the Project, identified and considered the potential environmental issues. The purpose of the PEA is to support the request the Secretary's Environmental Assessment Requirements (SEARs) under section 5.16 of the EP&A Act. The SEARs for the Project were issued on 30 June 2017 and re-issued on 13 March 2018. The locations of where the matters identified in the SEARs are addressed in the EIS is provided in Chapter 1 and in detail in Appendix A.



Figure 2-1. Assessment and approvals process under Part 5, Division 5.2 of the EP&amp;A Act



Source: <https://www.planningportal.nsw.gov.au/major-projects/assessment/state-significant-infrastructure/ssi-process>

Any SSI project may also be declared to be Critical State Significant Infrastructure (CSSI) under section 5.13 of the EP&A Act if it is of a category that ... *in the opinion of the Minister for Planning, is essential for the State for economic, environmental or social reasons.*

## 2.2 State environmental planning policies

Section 5.22 of the EP&A Act excludes the application of environmental planning instruments to SSI projects (except as those instruments apply to the declaration of SSI). Notwithstanding this, the provisions of the following SEPPs have been considered with reference to the Project.

### 2.2.1 State Environmental Planning Policy (State and Regional Development) 2011

One of the objectives of the State and Regional Development SEPP is to identify development that is SSI and CSSI. Clause 14(1) of the State and Regional Development SEPP declares development to be SSI if the development is, by the operation of a SEPP, permissible without consent under Part 4 of the EP&A Act and is a type of development specified in Schedule 3 of the State and Regional Development SEPP. The Infrastructure SEPP prescribes that the Project can be carried out without development consent under Part 4 of the EP&A Act (this is discussed in more detail in Section 2.2.2 below). Clause 1(1) in Schedule 3 to the State and Regional Development SEPP includes any infrastructure or other development for which the proponent is also the determining authority and would, in the opinion of the proponent, require an EIS to be obtained under Part 5 of the EP&A Act.

WaterNSW, as the proponent and a determining authority for the Project within the meaning of Part 5 of the EP&A Act, has formed the view that the impact of the Project is likely to significantly affect the environment and, therefore, would require the preparation of an EIS. On this basis, the Project is considered to be declared SSI under section 5.12(2) of the EP&A Act and approval is required for the Project under Part 5, Division 5.2 of the EP&A Act. In this instance, section 5.12(2) of the EP&A Act is triggered by reason of the operation of clause 14 and Schedule 3 to the State and Regional Development SEPP.

Further, clause 4(1) Schedule 3 to the State and Regional Development SEPP requires that development for the purposes of water storage carried out by or on behalf of a public authority that has a capital investment value of more than \$30 million be considered SSI. As such, the Project could also be declared to be SSI on this basis.

### 2.2.2 State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to facilitate the effective delivery of infrastructure across the state. Clause 125(2)(b) of the Infrastructure SEPP applies to development for the purpose of 'water storage facilities'. It provides that these types of works are development that is permissible without consent, if undertaken by WaterNSW on land within the Sydney catchment area. The Project is appropriately classified as being for the purpose of 'water storage facilities' under the Infrastructure SEPP. Clause 50 of the Infrastructure SEPP also allows the development by a public authority for the purposes of flood mitigation to be undertaken without consent. However, as discussed in Section 2.1, approval is required for the Project under Part 5, Division 5.2 of the EP&A Act.

### 2.2.3 State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (Sydney Drinking Water Catchment SEPP) aims to:

- a) provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal
- b) provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality
- c) support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.

The Sydney Drinking Water Catchment SEPP requires consideration of whether an activity will have a neutral or beneficial effect on water quality. The impacts of the Project on water quality are considered in Chapter 27 (Water quality).

Section 5.22 of the EP&A Act states that environmental planning instruments (such as SEPPs) do not apply to SSI. Consequently, formal approval for the Project under this SEPP is not required.

### 2.2.4 Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)

The aim of Sydney Regional Environmental Plan No. 20 (Sydney REP 20) is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The Project would be in the area covered by Sydney REP 20 and a consent authority is required to consider the matters listed in clause 5 and clause 6 of the Plan when determining a development application in the Sydney REP 20 area. These matters include:

- the aims of the REP
- the strategies of the Hawkesbury-Nepean Environmental Planning Strategy action plan

- policies related to total catchment management, environmentally sensitive areas, water quality, water quantity, cultural heritage, flora and fauna, riverine scenic quality, agriculture/aquaculture and fishing, rural residential development, urban development, recreation and tourism and metropolitan strategy.

While the provisions of Sydney REP 20 do not apply to SSI due to section 5.22(2) of the EP&A Act, relevant matters have been considered as part of the environmental impact assessment of the Project.

## 2.3 Local environment plans

Warragamba Dam is located within the Wollondilly Local Government Area (LGA) to which the Wollondilly LEP 2011 applies. Local environmental plans (LEPs) do not apply to SSI projects; this notwithstanding, relevant provisions of the Wollondilly LEP 2011 are considered in Chapter 21 (Socio-economic, land use and property).

Wollondilly Shire Council has been consulted during the development of the Project and preparation of the EIS. Further details on consultation carried out for the EIS are provided in Chapter 6 (Consultation).

## 2.4 Other NSW legislation

### 2.4.1 Authorisations not required

Approval of a project under Part 5, Division 5.2 of the EP&A Act (section 5.23) means that certain other authorisations are not required as they would be addressed within the EIS, as follows:

- permits under sections 201, 205, and 219 of the *Fisheries Management Act 1994* (NSW) to carry out dredging and reclamation works, to harm marine vegetation in a protected area, or to block fish passage (refer to Chapter 11 (Aquatic ecology))
- approvals under Part 4 (to disturb or excavate a place, building, work, relic, moveable object, precinct or land to which an interim heritage order or listing on the State Heritage Register applies) and excavation permits under section 139 of the *Heritage Act 1977* (NSW) (Heritage Act) (refer to Chapter 17 (Non-Aboriginal heritage))
- Aboriginal heritage impact permits under section 90 of the *National Parks and Wildlife Act 1974* (NSW) (NPW Act) to harm an Aboriginal object or place (refer to Chapter 18 (Aboriginal cultural heritage))
- various approvals under the *Water Management Act 2000* (NSW), namely water use approvals under section 89, water management work approvals under section 90, and activity approvals (other than aquifer interference approvals) under section 91. However, Warragamba Dam has existing approvals under this Act, which may require minor modifications. This is further discussed in Section 2.4.7.

Other NSW legislation relevant to the Project is discussed as follows.

### 2.4.2 Dams safety legislation

The Project has been developed to comply with the *Dams Safety Act 2015*, the objectives of which are to:

- ensure that any risks that may arise in relation to dams (including any risks to public safety and to environmental and economic assets) are of a level that is acceptable to the community
- promote transparency in regulating dam safety
- encourage proper and efficient management in matters relating to dam safety
- encourage the application of risk management and the principles of cost benefit analysis in relation to dam safety.

Dams Safety NSW (formerly the NSW Dams Safety Committee under the previous Act) has been established under the Act and is responsible for examining the location, design, construction, operation, and maintenance of prescribed dams, including any proposed changes.

Dams Safety NSW has been and will continue to be consulted on the design, construction and changes in operation of Project. Chapter 16 (Health and safety) discusses compliance with Dams Safety NSW guidance.

### 2.4.3 Fisheries Management Act 1994

The objectives of the *Fisheries Management Act 1994* (FM Act) are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. More detailed objectives relevant to the Project include:

- (a) to conserve fish stocks and key fish habitats
- (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation
- (c) to promote ecologically sustainable development, including the conservation of biological diversity.

As noted in Section 2.4.1, certain separate approvals under the FM Act are not required if the Project is approved under Part 5.1 of the EP&A Act. However, the other requirements of the FM Act would need to be considered including:

- impacts on threatened fish and aquatic species and key fish habitat
- key threatening processes to aquatic ecosystems and species needs to be considered.

Chapter 11 (Aquatic ecology) assesses these issues.

Section 218 of the FM Act requires projects involving alteration of a dam, weir or reservoir, or involving blockage to fish passage to conduct an assessment to identify the potential impacts. The Project must also be referred to the Minister responsible for the FM Act and, if requested, involve inclusion of a suitable fishway or bypass. Consultation with the Minister is detailed in Chapter 6 (Consultation) and the assessment of potential impacts and proposed mitigation measures is presented in Chapter 11 (Aquatic ecology).

### 2.4.4 National Parks and Wildlife Act 1974

The NPW Act provides for the protection of Aboriginal sites and designated conservation areas as well as the flora and fauna within conservation areas. Conservation areas declared under the NPW Act that are within the study area include:

- Kanangra-Boyd and Nattai Wilderness Areas (see Section 2.4.9 regarding the *Wilderness Act 1987*)
- Kowmung, Colo and Grose Rivers (sections of which are designated wild rivers)
- Kanangra-Boyd, Blue Mountains and Nattai National Parks
- Burragorang, Yerranderie and Nattai State Conservation Areas
- Yerranderie Regional Park.

While works associated with the Project would not occur directly in any conservation area declared under the NPW Act, conservation areas both upstream and downstream may be impacted by changes in temporary inundation and flooding. The potential impacts of any changes in inundation and flooding due to the Project on conservation areas are assessed in Chapter 20 (Protected and sensitive lands) and Chapter 21 (Socio-economic, land use and property).

Under section 153 of the NPW Act, the relevant Minister is prohibited from granting a lease, licence, easement or right of way for the purposes of inundation of any land which is protected under the NPW Act and is land to which the *Sydney Water Catchment Management Act 1998* applies. However, the *Water NSW Act 2014*, excludes the need for a lease, licence, easement or right of way under the NPW Act from the relevant Minister for temporary inundation of the Warragamba Dam catchment. This is further discussed in Section 2.5.8.

Impacts to wild rivers have been assessed in Chapter 20 (Protected and sensitive lands).

Issues raised by and advice from the Minister are detailed in Chapter 6 (Consultation).

Potential impacts to critical habitat, habitat for threatened species and endangered ecological communities, in protected areas have been assessed in Chapters 8 to 12 (Biodiversity).

Potential impacts to Aboriginal heritage items and locations have been assessed in Chapter 18 (Aboriginal cultural heritage). The Environment, Energy Science (EES) branch and Aboriginal groups and individuals were consulted during the project development, preparation of the EIS and the preparation of the Aboriginal Cultural Heritage Assessment Report.



#### 2.4.5 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) regulates noise, waste, soil pollution, air pollution, and water pollution in NSW. Under Chapter 3 of the Act, an environment protection licence (EPL) may be issued to allow the carrying out of scheduled activities which cause pollution or to regulate water pollution.

An EPL for the construction of the Project may be required. The construction of a water storage is not a scheduled activity requiring an EPL and the construction of the Project would be below the activity thresholds detailed in Schedule 1 to the POEO Act for cement handling and other relevant activities. However, under section 43 of the POEO Act, an EPL may be issued to control non-scheduled activities for the purpose of regulating water pollution. As the construction of the Project has the potential to cause water pollution it an EPL may be issued. In accordance with section 5.24 of the EP&A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with any approval granted to the Project under Part 5, Division 5.2 of the EP&A Act.

#### 2.4.6 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) was repealed when the *Biodiversity Conservation Act 2016* (BC Act) commenced on 25 August 2017. However, transitional arrangements allow SSI projects to be considered under previous legislation if the SEARs were issued before 25 August 2017. The SEARs for the Project were first issued on 30 June 2017 and therefore the TSC Act still applies.

The TSC Act provides for the identification, conservation and recovery of threatened species and their populations and communities. A licence/approval is required under the Act, the NPW Act or the EP&A Act for any action which would harm a threatened species, population or ecological community.

There are threatened ecological communities (TECs) and threatened flora and fauna species in the upstream, downstream and construction study areas. The presence and impacts of the project on TECs and threatened flora and fauna species are assessed in Chapters 8 to 13 (Biodiversity). Mitigation measures to minimise and manage negative impacts are also discussed in these chapters.

#### 2.4.7 Water Management Act 2000

The objective of the *Water Management Act 2000* (WM Act) is to provide for the sustainable and integrated management of water sources in NSW for the benefit of both present and future generations. Warragamba Dam is operated under an existing water supply works and water use approval (Number: 10CA117212) and water access licence (Number: WAL27431), which were approved under the WM Act. There is also a water sharing plan for the Hawkesbury-Nepean River prepared and approved under section 50 of the WM Act which includes Warragamba Dam and its tributaries. The water access licence, which specifies the volume of water captured and used for drinking water supply, would not require modification. Even though the Project would result in the capture of additional water, any water above the full supply level would be released into the downstream receiving water once the rain event had ceased. Therefore, its capture would be temporary. The water supply works and water use approval would need to be changed to reflect the revised design and operation of Warragamba Dam.

Both the water supply works and water use approval, and the water sharing plan contain detailed information on existing environmental flow releases from other Hawkesbury-Nepean River dams. Both would need to be updated to include the proposed new environmental flow releases from Warragamba Dam. Discharges from the dam after flood events would not require any changes to water supply works and water use approval, or the water sharing plan.

#### 2.4.8 Water NSW Act 2014

The *Water NSW Act 2014* (Water NSW Act) enabled WaterNSW to be established as a legal entity. Under the Act, the former State Water Corporation became WaterNSW and the functions from the previous Sydney Catchment Authority were transferred to WaterNSW. As a result, Water NSW is the responsible authority for and owner of Warragamba Dam. It should be noted that Water NSW is the official legal entity and WaterNSW is the trading name of the same entity.

Under the Water NSW Act, WaterNSW has the power to operate and modify works within its control (including Warragamba Dam) for the purposes of catchment management, subject to approval under the EP&A Act. The Water NSW Act also allows dams and their catchments to be declared as catchment areas, special areas and controlled areas. These declared areas are established to provide the appropriate water management authority, the Minister and/or NSW Parliament powers to control development, access, and ownership of land in and around water supply dams. A large part of the Warragamba dam catchment has been declared a special area under the provisions of the Act.



Part 5A of the Water NSW Act exempts the need for the Project to obtain a lease, licence, easement, or right of way for the temporary inundation of land protected under the NPW Act. However, before the temporary inundation of any land protected by the NPW Act can occur, WaterNSW must prepare an environmental management plan (EMP) to the satisfaction of the Minister responsible for the NPW Act. The Minister responsible for the NPW Act, with the concurrence of the Minister responsible for the Water NSW Act, also has powers to direct WaterNSW:

- (a) *to take specified action in relation to the temporary inundation of national park land resulting from the Project, including action relating to the monitoring of risks associated with the temporary inundation and relating to the rehabilitation or remediation of land,*
- (b) *to prepare a draft amendment of an approved EMP, or a new draft EMP, for approval under this Part,*
- (c) *to conduct a review of an approved EMP and report on the outcome of the review.*

Before the Project commences operation, WaterNSW would be required to have an approved EMP in place.

#### 2.4.9 Wilderness Act 1987

The objectives of the *Wilderness Act 1987* (Wilderness Act) are to:

- provide for the permanent protection of wilderness areas
- provide for the proper management of wilderness areas
- promote the education of the public in the appreciation, protection and management of wilderness.

Development cannot occur in a wilderness area subject to a wilderness protection agreement or conservation agreement unless subject to written consent under section 15 of the Wilderness Act from the Minister administering the Act. Development under the Wilderness Act is defined as ‘the use of that area’ and temporary inundation could be defined in this way.

Some areas of the Lake Burragorang catchment are in the Kanangra-Boyd and Nattai Wilderness Areas which would experience increased temporary inundation due to the operation of the Project. However, these areas are not subject to either a wilderness protection agreement or conservation agreement. Therefore, consent under section 15 of the Wilderness Act from the Minister administering the Act would not be required.

## 2.5 Policies and guidelines

### 2.5.1 NSW Weirs Policy

The goal of the State Weirs Policy is to halt and, where possible, reduce and remediate the environmental impact of weirs (including dams). The Policy sets expected outcomes in relation to expansion and management of existing weirs and dams including:

- no approval should be granted to an expansion unless it is demonstrated that the primary component of the project is necessary to maintain essential social and economic needs of the affected community
- weirs (and dams) that continue to provide significant benefits should be subject to structural changes to reduce their environmental impact.

An assessment of the social and economic benefits of the Project is presented in Chapter 21 (Socio-economic, land use and property). The Project would be essential to social and economic needs of the community in the downstream floodplain. Under the FM Act, the Minister has been consulted about the need for measures to allow fish passage (see Chapter 6 (Consultation)). Other aquatic biodiversity impacts of the project are assessed in Chapter 11 (Aquatic ecology) and Appendix F4 (Aquatic ecology).

### 2.5.2 Policy and Guidelines for Fish Habitat Conservation and Management

The *Policy and Guidelines for Fish Habitat Conservation and Management* (Fairfull 2013) focus on the sustainable management of marine, estuarine and freshwater habitats and riparian vegetation which is vital to healthy and productive fisheries. It also outlines policies and guidelines that have been developed to maintain and enhance fish habitat and to address threatening processes for the benefit of native fish species, including threatened species, in marine, estuarine and freshwater environments.

The Policy and Guidelines also establish a framework for classifying and assessing fish habitat as well as principles and measures to minimise impacts on aquatic ecosystems for specific activities. The classification and assessment

framework has been used in the aquatic ecology assessment (Chapter 11) and the impact minimisation principles in the development of the Project.

### 2.5.3 Habitat Protection Plan No.3: The Hawkesbury-Nepean River System

*Habitat Protection Plan No. 3* (Hannan 1998) has been prepared to guide activities within the Hawkesbury-Nepean River system that may or have an impact on fish habitat. It has been prepared under the Fisheries Management Act 1994 and is a relevant assessment requirement as part of the EP&A Act assessment and approvals process. The Plan has application for several activities, including flood mitigation and river control works that may have negative impacts on fish habitats within the river system. The potential impact of the Project on fish habitat in the river system including consideration of the Plan has been assessed in Chapter 11 (Aquatic ecology).

### 2.5.4 NSW Cold Water Pollution Strategy: Guidelines for Managing Cold Water Releases from High Priority Dams

The *NSW Cold Water Pollution Strategy* provides guidance to operators of water supply works and dams in relation to the operational management of cold water releases (NSW Office of Water 2011). It is primarily aimed at dams identified to be 'high priority' by the NSW Government (not including Warragamba Dam) but can be used for all facilities involving cold water releases. The multi-level offtake proposed as part of the environmental flows works is designed to minimise temperature variation of the discharged flows and would meet the principles of the strategy. Water quality issues are addressed in Chapter 27 (Water quality).

### 2.5.5 NSW Water Quality and River Flow Objectives

The *NSW Water Quality and River Flow Objectives* are the agreed environmental values and long-term goals for NSW's surface waters (Department of Environment, Climate Change and Water (DECCW) 2006). These include recreational use, healthy aquatic ecosystems, and water for drinking and irrigation. Any proposed changes to the operation of Warragamba Dam would need to be consistent with these objectives. The impact of the Project on the water quality and river flow objectives has been assessed in Chapter 27 (Water quality) and Chapter 15 (Flooding and hydrology).

## 2.6 Commonwealth legislation

### 2.6.1 Environment Protection and Biodiversity Conservation Act 1999

The Project was referred to the then Commonwealth Department of the Environment and Energy (DoEE)<sup>1</sup> by WaterNSW and was determined to be a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) (see Figure 2-2). The referral was accompanied by a preliminary consideration of relevant MNES, principally those relating to biodiversity and heritage. This includes the areas of the Greater Blue Mountains World Heritage Area (GBMWH), which would be impacted by temporary increased inundation during significant flood events due to the operation of the Project. The relevant MNES under the EPBC Act that could be potentially impacted are:

- World Heritage properties (sections 12 and 15A)
- National Heritage Places (sections 15B and 15C)
- listed threatened species and communities (sections 18 and 18A).

After the referral, the *NSW Biodiversity Conservation Act 2016* (BC Act) came into effect on 25 August 2017, repealing the TSC Act. One effect of this was to remove the legislative basis for the bilateral assessment agreement between the Commonwealth and NSW governments, which provided for an EIS prepared under the EP&A Act for SSI to be also used for an EIS under the EPBC Act for a controlled action, where directed by the Commonwealth Minister for the Environment. This was rectified on 24 March 2020 when the NSW Government and the Australian Government finalised amendments to the NSW Bilateral Agreement under the EPBC Act, to respond to the introduction of the NSW BC Act. The assessment and approval process under the bilateral agreement and the EPBC Act is shown in Figure 2-3.

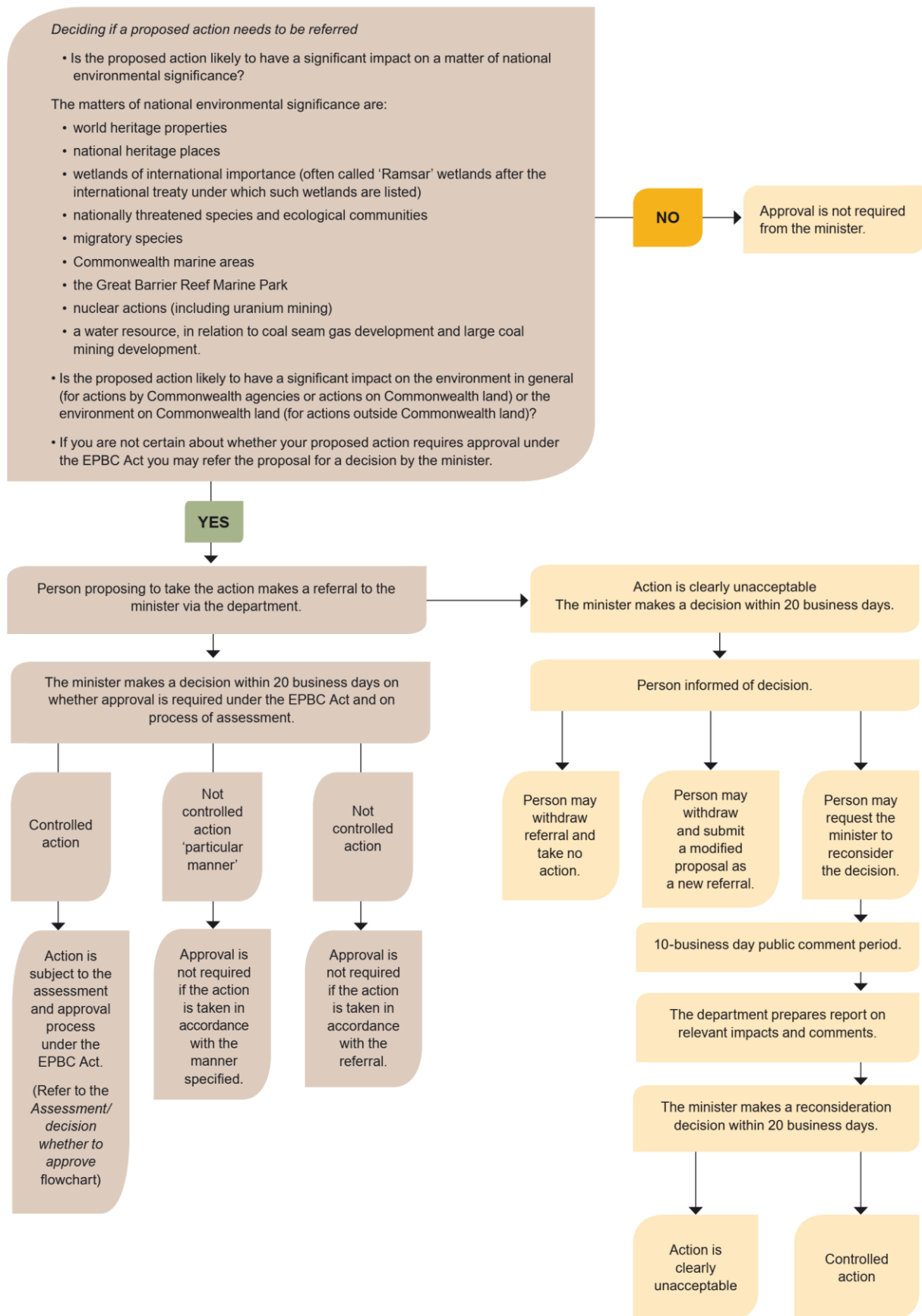
The matters specified in clause 6 of the former bilateral assessment agreement have been addressed in preparing the EIS. Appropriate consideration has also been given to relevant Commonwealth guidelines for the EIS information requirements.

<sup>1</sup> The Environment portfolio within DoEE was transferred to the new Department of Agriculture, Water and the Environment (DAWE) which commenced operation on 1 February 2020. Reference to DoEE in this chapter should also be taken to refer to DAWE as relevant.

Revised SEARs were issued by the former Department of Planning and Environment on 13 March 2018 which contained the EPBC Act assessment requirements provided by DoEE. Attachment A to the SEARs provided additional information on the assessment requirements for the EPBC Act.

Potential impacts on listed threatened species and communities are addressed in Appendix F5 (Matters of National Environmental Significance – Biodiversity) and Chapter 12 (Matters of national environmental significance – biodiversity), on National Heritage Places in Chapter 17 (Non-Aboriginal heritage), and on World Heritage in Appendix J (World Heritage assessment report) and Chapter 20 (Protected and sensitive lands).

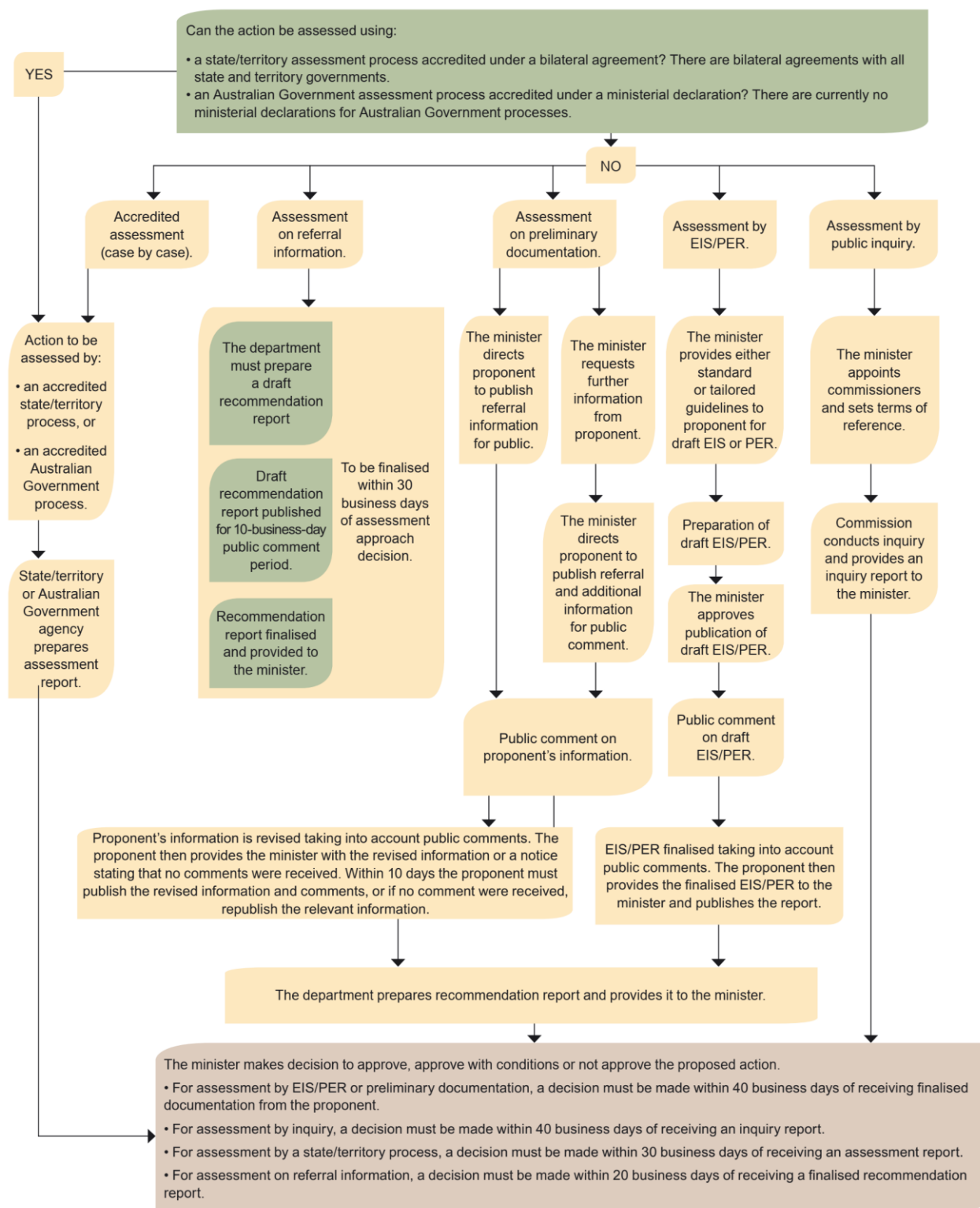
Figure 2-2. Referral process under the EPBC Act



Source: <https://www.environment.gov.au/system/files/resources/38fc57cd-c744-4727-8fa0-51ecbd6e879b/files/flow-chart.pdf>



Figure 2-3. Assessment and approval process under the EPBC Act



Source: <https://www.environment.gov.au/system/files/resources/38fc57cd-c744-4727-8fa0-51ecbd6e879b/files/flow-chart.pdf>

## 2.6.2 Native Title Act 1993

The *Native Title Act 1993* (NT Act) provides for a national system for the recognition and protection of Native Title and its coexistence with the national land management system. A Native Title claim over a large area of land that includes

the Warragamba Dam site and catchment was lodged by three organisations representing the Gundungurra people in 1997, with the claim being registered in 2000.

One of the mechanisms provided for under the NT Act is an indigenous land use agreement (ILUA) entered between native title claimants and government agencies for managing the use of land and waters. An ILUA was entered between the Gundungurra People, Gundungurra Tribal Council Aboriginal Corporation, Gundungurra Aboriginal Heritage Association Inc. and various NSW Government agencies in February 2015.

The ILUA includes the establishment of a consultative committee and input by the Gundungurra people for management of land and waters covered by the ILUA, including Lake Burragorang and the Warragamba area. Consultation has been undertaken with this committee as part of the Project development and approval processes (Chapter 6). Issues identified during the consultation have been addressed in the design, operation and mitigation measures developed for the Project.

## 2.7 Summary of statutory position

The Project would require the following statutory approvals, consents and licenses to proceed:

- assessment and approval by the NSW Minister for Planning and Public Spaces under Part 5, Division 5.2 of the EP&A Act
- assessment and approval by the Commonwealth Environment Minister under the EPBC Act
- an EPL for construction of the Project issued under section 43 of the POEO Act may be required for regulating water pollution
- changes to the existing Water Supply Works and Water Use approval under the WM Act for the modified design and operation of the dam.

## local people global experience

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