

CHAPTER

05

INLAND
RAIL 

Planning and Assessment Process

NORTH STAR TO NSW/QUEENSLAND BORDER ENVIRONMENTAL IMPACT STATEMENT

**ARTC**

The Australian Government is delivering
Inland Rail through the Australian
Rail Track Corporation (ARTC), in
partnership with the private sector.

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5. Planning and Assessment Process

The context for this chapter is established by the Secretary's Environmental Assessment Requirements (SEARs) requirement 2.1 that the Environmental Impact Statement (EIS) must include, but not necessarily be limited to, the following (o) statutory context of the project, including:

- ▶ How the North Star to NSW/Queensland Border (NS2B) project (the proposal) meets the provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act) and *Environmental Planning and Assessment Regulation 2000* (NSW) (EP&A Regulation)
- ▶ A list of any approvals that must be obtained under any other act or law before the project may lawfully be carried out.

5.1 Overview of the approval pathway

Australian Rail Track Corporation (ARTC) has been prescribed as a 'public authority' under Part 5 of EP&A Act through the effect of clause 277(1)(b) of the EP&A Regulation in relation to development for the purposes of 'ARTC rail infrastructure facilities', but only for the purpose of making ARTC a 'determining authority' in relation to such development where it is subject to Part 5 of the EP&A Act.

The proposal would be permitted without development consent in accordance with Clause 79 of the *State Environmental Planning Policy* (Infrastructure SEPP) 2007, and is subject to assessment under Part 5 of the EP&A Act.

Section 5.12 of the EP&A Act provides for development to be state-significant infrastructure through a Ministerial Order or through a SEPP. Clause 14 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) provides for development specified in Schedule 3 of the SEPP to be state-significant infrastructure. The types of development listed in Schedule 3 include, 'Development for the purpose of rail infrastructure by or on behalf of the Australian Rail Track Corporation that has a capital investment value of more than \$50 million' (clause 3). The proposal is therefore subject to approval under Division 5.1 of the EP&A Act. Approval requirements under the EP&A Act are described in Section 5.2.

Other approvals and permits are also required, including approval as a controlled action under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). The requirements under other legislation are described in Sections 5.3 and 5.4.

5.2 State legislation

5.2.1 Environmental Planning and Assessment Act 1979 (NSW)

The EP&A Act and the EP&A Regulation provide the framework for development assessment in NSW and include provisions to ensure that the potential environmental impacts of a development are considered in the decision-making process.

Key requirements of the EP&A Act in relation to the assessment and determination of the proposal are considered below.

5.2.2 State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP clarifies the consent arrangements for infrastructure projects. According to clause 8(1), 'if there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this policy, this policy prevails to the extent of the inconsistency'. As a result of clause 8(1), the Infrastructure SEPP overrides Local Environmental Plans (LEPs). LEPs are described in Section 5.2.5.

The proposal meets the definition of rail infrastructure facilities, which are defined by clause 78 of the Infrastructure SEPP as, 'railway tracks, associated track structure, rail freight terminals, sidings and freight intermodal facilities'.

Clause 79(1) provides that development for the purpose of a railway, or for rail infrastructure facilities, may be carried out on behalf of a public authority without consent, on any land. Under clause 79 of the Infrastructure SEPP, construction works, ancillary works and environmental management works in connection with a rail infrastructure facility are permissible without consent. This clause also specifies the conditions whereby such development can be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* (NSW) (NPW Act). As the proposal site is not reserved under the NPW Act, these conditions do not apply, and the proposal is permissible without consent.

As described in Section 5.2.1, ARTC has been prescribed as a 'public authority' under the EP&A Act.

5.2.3 State Environmental Planning Policy (State and Regional Development) 2011

Sections 4.36 and 5.12 of the EP&A Act provide that a SEPP may declare any development, or any class or description of development, to be state-significant infrastructure. The State and Regional Development SEPP provides definitions of state-significant infrastructure.

Clause 14 of the State and Regional Development SEPP provides that development is state-significant infrastructure if it is wholly or partly permissible without development consent under Part 4 of the Act, by virtue of the operation of a SEPP, and it meets the definitions provided in Schedule 3 to the State and Regional Development SEPP.

As noted above, the Infrastructure SEPP provides that the proposal is permissible without consent. Schedule 3 Clause 3 of the State and Regional Development SEPP includes the following definition of 'rail infrastructure': '*Development for the purpose of rail infrastructure by or on behalf of the Australian Rail Track Corporation that has a capital investment value of more than \$50 million*'. The capital investment value of the proposal is over \$50 million. As the proposal meets the requirements of clause 14 it is defined as state-significant infrastructure.

As discussed above, ARTC has formed the opinion that the proposal is likely to significantly affect the environment and, as such, an EIS is required to support the proposal in accordance with Section 112 of the EP&A Act. The proposal is declared to be state-significant infrastructure in accordance with Section 5.12 of the EP&A Act, as well as Clause 3 of Schedule 3 of the State and Regional SEPP.

5.2.4 State-significant infrastructure

Section 5.12 of the EP&A Act provides for development to be state-significant infrastructure through a Ministerial Order or through a SEPP. Clause 14 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) provides for development specified in Schedule 3 to the SEPP to be state-significant infrastructure.

Clause 3 of Schedule 3 provides, '*Development for the purpose of rail infrastructure by or on behalf of the Australian Rail Track Corporation that has a capital investment value of more than \$50 million*'.

The proposal meets the criteria specified in Clause 3 and, accordingly, is state-significant infrastructure.

This document provides the information required to support the proponent's application for approval of the proposal. In accordance with the requirements of Section 5.15 of the EP&A Act, it addresses the Secretary's Environmental Assessment Requirements (refer Section 5.7.1).

Section 5.13 of the EP&A Act provides for the declaration of critical state-significant infrastructure.

Critical state-significant infrastructure projects are high-priority infrastructure projects that are essential to the state. Section 5.13 of the EP&A Act provides that any state-significant infrastructure may also be declared to be critical state-significant infrastructure, if it is '*...of a category that, in the opinion of the Minister, is essential for the State for economic, environmental or social reasons*'.

As critical state-significant infrastructure, the proposal would be permissible without consent under clause 16(a) of the State and Regional Development SEPP. ARTC are currently seeking the project to be declared critical state-significant infrastructure by the Minister under the *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*, and this matter is still currently undetermined. If declared, the proposal remains subject to assessment under Part 5.2 of the EP&A Act and requires the approval of the Minister for Planning.

5.2.5 Local environmental plans

Section 5.22(2) of the EP&A Act provides that environmental planning instruments do not apply to, or in respect of, state-significant infrastructure, with the exception of the Infrastructure SEPP and State and Regional Development SEPP, which apply to the declaration of infrastructure as state-significant infrastructure.

LEPs are a type of environmental planning instrument that guide planning decisions for local government areas (LGAs). They do this through the allocation of land-use zones and associated development controls, which provide a framework for the way that land can be used.

The proposal is situated within Moree Plains Shire Council to the north and Gwydir Shire Council to the south. These LGAs are covered by the *Moree Plains Local Environmental Plan 2011* (Moree Plains LEP) and *Gwydir Local Environmental Plan 2013* (Gwydir LEP). The study area is within the Rural Zone—RU1 Primary Production under both LEPs. The intent of this land-use zone is to encourage rural and primary industry production within the region.

As the proposal is considered state-significant infrastructure, the Moree Plains LEP and Gwydir LEP do not apply; however, the intent and objectives of land impacted by the proposal has been considered by the EIS. Table 5.1 outlines the objectives of the Rural Zone—RU1 Primary Production in the Moree Plains LEP and Gwydir LEP. Table 5.2 provides commentary of the proposal with respect to the objectives of both LEPs.

TABLE 5.1 OBJECTIVES OF RURAL ZONE—RU1 PRIMARY PRODUCTION

Gwydir Local Environmental Plan	Moree Plains Local Environmental Plan
<ul style="list-style-type: none"> ▶ To encourage sustainable primary industry production by maintaining and enhancing the natural resource base ▶ To encourage diversity in primary industry enterprises and systems appropriate for the area ▶ To minimise the fragmentation and alienation of resource lands ▶ To minimise conflict between land uses within this zone and land uses within adjoining zones 	<ul style="list-style-type: none"> ▶ To encourage sustainable primary industry production by maintaining and enhancing the natural resource base ▶ To encourage diversity in primary industry enterprises and systems appropriate for the area ▶ To minimise the fragmentation and alienation of resource lands ▶ To minimise conflict between land uses within this zone and land uses within adjoining zones ▶ To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere ▶ To protect significant agricultural resources in recognition of their value to the long-term economic sustainability of Moree Plains ▶ To maintain the rural character of the land

TABLE 5.2 ASSESSMENT OF THE PROPOSAL AGAINST THE OBJECTIVES OF THE RURAL ZONE—RU1 PRIMARY PRODUCTION

Objectives of Rural Zone—RU1 Primary Production	Relevance to the proposal
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposal forms a part of the largest freight rail infrastructure project in Australia. It will encourage sustainable primary industry production and enhance the natural resource base by enabling connectivity to Goondiwindi and the broader region.
To encourage diversity in primary industry enterprises and systems appropriate for the area	The proposal will enable diversity in the primary industry production by providing supply chain benefits and substantial transport cost savings for producers.
To minimise the fragmentation and alienation of resource lands	<p>The study area has been developed to meet both engineering and operational requirements, while aiming to minimise environmental and social impacts.</p> <p>Approximately 75 per cent of the of the proposed permanent disturbance footprint is within the existing non-operational Boggabilla rail corridor, thus minimising the fragmentation and alienation of resource lands.</p> <p>Where the proposed permanent disturbance footprint deviates from the existing non-operational Boggabilla rail corridor, it has been designed to align with cadastral boundaries to reduce the severance of land parcels and maintain farm operational arrangements (where possible).</p>
To minimise conflict between land uses within this zone and land uses within adjoining zones	<p>The study area has been developed to meet both engineering and operational requirements, while aiming to minimise environmental and social impacts.</p> <p>Approximately 75 per cent of the proposed permanent disturbance footprint is within the existing non-operational Boggabilla rail corridor, thus minimising the need to traverse other land uses.</p> <p>Where the proposed permanent disturbance footprint deviates from the existing non-operational Boggabilla rail corridor, it has been designed to align with cadastral boundaries.</p>
To permit development for certain purposes if it can be demonstrated that suitable land or premises are not available elsewhere	<p>The proposal will largely be confined to the existing non-operational Boggabilla rail corridor. As rail operations have previously been undertaken in the study area, the proposal is considered generally compatible with land use.</p> <p>The proposal has also undergone an iterative process of option selection, design development and evaluation, which has included:</p> <ul style="list-style-type: none"> ▶ Working together with local governments to better understand issues such as sensitive receivers, flooding, roads, traffic patterns, utilities and services, as well as opportunities for regional freight ▶ Meeting with local industry to gain a better understanding of local conditions ▶ Completing preliminary investigations of the study area to understand the existing environmental features and technical challenges ▶ Conducting project information sessions with the community and stakeholders. <p>The proposal will continue to be refined during the detailed design phase, through further investigations and the consideration of economic, environmental and social aspects associated with study area.</p>
To protect significant agricultural resources in recognition of their value to the long-term economic sustainability of Moree Plains	The proposal will traverse significantly less than 1 per cent of agricultural land in Moree Plains, thus protecting significant agricultural resources within the LGA.
To maintain the rural character of the land	The proposal will maintain the rural character of the land, as it will be largely confined to the existing non-operational Boggabilla rail corridor. Furthermore, the proposal is also able to co-exist with rural uses within the study area, with surrounding properties continuing to be used for grazing and cropping activities.

5.2.6 Landowners consent and notification requirements

Clause 193 of the EP&A Regulation provides owner's consent and notification requirements for state-significant infrastructure projects. Clause 193(1) specifies that:

'The consent of the owner of the land on which state-significant infrastructure is to be carried out is required for an infrastructure application or modification request unless the application or request relates to any of the following:

- (a) state-significant infrastructure proposed to be carried out by a proponent that is a public authority*
- (b) Critical state-significant infrastructure*
- (c) State-significant infrastructure comprising any one or more of the following:*
 - (i) Linear transport infrastructure*
 - (ii) Utility infrastructure*
 - (iii) Infrastructure on land with multiple owners designated by the Secretary for the purposes of this clause by notice in writing to the person making the application or request.'*

As the application for the proposal is being made by a public authority and is state-significant infrastructure, the consent of individual landowners will not be required to make the application; however, the proponent needs to give notice of the application in accordance with the requirements of clause 193(4).

'This clause requires:

- (1) If the consent of the owner of the land is not required for an infrastructure application or modification request under this clause, the proponent is required to give notice of the application or request:*
 - (a) By written notice to the owner of the land before, or no later than 14 days after, the application or request is made, or*
 - (b) By advertisement published in a newspaper circulating in the area in which the infrastructure is to be carried out:*
 - (i) In the case of an infrastructure application - at least 14 days before the environmental impact statement that relates to the infrastructure is placed on public exhibition, or*
 - (ii) In the case of a modification request - no later than 14 days after the request is made.'*

5.2.7 Environmental Planning and Assessment Regulation 2000

Clauses 6 and 7 of Schedule 2 of the EP&A Regulation set out requirements for the form and content of an EIS. These requirements are included in Appendix A: Basis of Assessment.

5.3 Other state legislative requirements

5.3.1 Approvals not required

The following approvals are not required for approved state-significant infrastructure (in accordance with Section 5.23 of the EP&A Act):

- ▶ A permit under Section 201, 205 or 2019 of the *Fisheries Management Act 1994* (NSW)
- ▶ An approval under Part 4, or an excavation permit under Section 139, of the *Heritage Act 1977* (NSW)
- ▶ An Aboriginal heritage impact permit under Section 90 of the NPW Act
- ▶ 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* (NSW)
- ▶ A bushfire safety authority under Section 100B of the *Rural Fires Act 1997* (NSW)
- ▶ An environment protection licence under Schedule 1, Clause 19 of the *Protection of the Environment Operations Act 1997* (NSW) for extractive activities including cut-and-fill operations or the excavation of foundations or earthworks that are ancillary to development that is subject to development consent or approval under the EP&A Act
- ▶ Division 8 of Part 6 of the *Heritage Act 1977* (NSW) (relating to making heritage orders) does not apply to prevent or interfere with the carrying out of approved state-significant infrastructure.

5.3.2 Approvals to be applied consistently

The following approvals cannot be refused if necessary for the carrying out of approved state-significant infrastructure (in accordance with Section 5.24 of the EP&A Act):

- ▶ An environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (NSW)
- ▶ Consent under Section 138 of the *Roads Act 1993* (NSW).

The approval requirements of these acts as they relate to the proposal are summarised below.

5.3.3 Consideration of requirements under other New South Wales Acts

5.3.3.1 Protection of the Environment Operations Act 1997 (NSW) and Protection of the Environment Operations (Waste) Regulation 2014

The *Protection of the Environment Operations Act 1997* (NSW) establishes, among other things, the procedures for issuing licences for environmental protection on aspects such as waste, air, water and noise pollution control. Environment protection licences are generally required for scheduled activities or scheduled development work. The definitions of scheduled activities provided in Schedule 1 include:

'Clause 33 Railway activities – railway infrastructure construction

- (1) *This clause applies to railway activities – railway infrastructure construction, meaning the following-*
 - (a) *The construction of railway infrastructure (including the widening or rerouting of existing railway infrastructure) and any related tunnels, earthworks and cuttings,*
 - (b) *Any extraction of materials necessary for that construction,*
 - (c) *Any on site processing (including crushing, grinding or separating) of any extracted materials or other materials used in that construction.*
- (2) *The activity to which this clause applies is declared to be a scheduled activity if the activity results in one or more of the following-*
 - (a) *The extraction or processing (over the life of the construction) of more than-*
 - (i) *50,000 tonnes of materials in the case of premises in the regulated area or in the local government areas of Bega Valley, Eurobodalla, Goulburn Mulwaree, Queanbeyan-Palerang Regional or Snowy Monaro Regional, or*
 - (ii) *150,000 tonnes of material in any other case,*
 - (b) *The construction of new railway track that is-*
 - (i) *In the metropolitan area—3 kilometres or more in length, or*
 - (ii) *Outside the metropolitan area—5 kilometres or more in length.*
- (3) *For the purposes of calculating the length of a railway track, individual tracks constructed alongside one another are not to be added together.*

Clause 33A Railway activities – railway infrastructure operations

- (1) *This clause applies to railway activities—railway infrastructure operations, meaning the operation or the on-site repair, maintenance or replacement of existing railway infrastructure.*
- (2) *However, this clause does not apply to any of the following-*
 - (a) *Railway activities—railway infrastructure construction to which clause 33 applies*
 - (b) *The operation of rolling stock to which clause 33B applies*
 - (c) *The operation or on-site repair, maintenance or replacement of existing railway infrastructure used solely by any of the following-*
 - (i) *Light railway vehicles, including trams,*
 - (ii) *Inclined railway vehicles,*
 - (iii) *Monorail vehicles,*
 - (iv) *Railway vehicles that are used solely for heritage purposes,*
 - (d) *The operation of signalling, communication or train control systems,*
 - (e) *Any activity at any of the following places-*
 - (i) *A railway station building (including platforms and offices),*
 - (ii) *A railway workshop,*
 - (iii) *A freight depot or centre,*
 - (iv) *A railway fuel depot.*
- (3) *The activity to which this clause applies is declared to be a scheduled activity if it involves a continuous or connected length of track greater than 30 kilometres that is operated by the same person.*
- (4) *For the purposes of calculating the length of a railway track, individual tracks constructed alongside one another are not to be added together.*

Clause 33B Railway activities – rolling stock operations

- (1) *This clause applies to railway activities – rolling stock operations, meaning the operation of rolling stock.*
- (2) *The activity to which this clause applies is declared to be a scheduled activity if it is carried out on railway infrastructure, the operation of which is a scheduled activity by virtue of clause 33A.'*

The proposal meets these definitions and would therefore require an environment protection licence to carry out railway infrastructure construction, railway infrastructure operations and rollingstock operations on the NSW rail network. In relation to operation, ARTC currently holds a licence to carry out railway infrastructure operations on other parts of the NSW rail network (Environment Protection Licence (EPL) EPL3142). Licensing requirements for the proposal would be considered in consultation with the NSW Environment Protection Authority (NSW EPA).

ARTC currently holds an exemption issued by the NSW EPA under clauses 91 and 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* and an order issued by the NSW EPA under clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014* that are valid until 1 May 2022. The exemption and order cover ARTC-excavated material that is, or is intended to be, applied to land for the purposes of:

- ▶ Earthworks during construction activities on land zoned for industrial uses
- ▶ Building or maintaining railway infrastructure or public-road related activities within the road corridor, including road construction, maintenance and installation of public road infrastructure facilities.

It may be appropriate to either amend this exemption and order to include the duration of construction for the proposal or to obtain a new (or revised) exemption in consultation with the NSW EPA.

5.3.3.2 Roads Act 1993 (NSW)

Under Section 138 of the *Roads Act 1993* (NSW), approval from the relevant roads' authority is required to impact, or carry out work on or over, a public road. The proposal would involve works to Crown roads. Approval would be sought under Section 138 for these works. As noted in Section 5.3.2, approval under Section 138 of the *Roads Act 1993* (NSW) cannot be refused if it is necessary to carry out a state-significant infrastructure project.

5.3.3.3 Water Management Act 2000 and Water Act 1912 (NSW)

The *Water Management Act 2000* (NSW) and *Water Act 1912* (NSW) control the extraction of water, the use of water, the construction of works such as dams and weirs and the carrying out of activities in or near water sources in NSW. The provisions of the *Water Management Act 2000* (NSW) are being progressively implemented to replace the *Water Act 1912* (NSW). Since 1 July 2004, the new licensing and approvals system has generally been in effect in those areas of NSW covered by operational water-sharing plans.

Temporary dewatering and construction activities that interfere with aquifers are generally identified as aquifer interference activities in accordance with the *Water Management Act 2000* (NSW) and the *NSW Aquifer Interference Policy* (Department of Primary Industries (DPI), 2012); however, the aquifer interference approval provisions of the *Water Management Act 2000* (NSW) have not commenced, and licensing of these activities is carried out under Part 5 of the *Water Act 1912* (NSW).

It is noted above that 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* (NSW) are not required for a state-significant infrastructure project.

Under Section 89, a water-use approval confers a right on its holder to use water for a particular purpose at a particular location and authorises the use of water taken from another source outside NSW for purposes within NSW.

Water-management work approvals relate to water-supply works, drainage and flood works.

A water-supply work approval enables the construction and use of water-supply work at a specified location. Drainage works and flood works approvals allow construction and use of a specified drainage, or flood work at a specified location, respectively.

Section 91 applies to two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.

A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land. Controlled activities include the erection of a building or carrying out of a work, the removal of material or vegetation, the deposition of material or the carrying out of any other activity that affects the quantity of water or flow of water in a water source. An aquifer interference approval enables the carrying out of one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.

In this instance, an aquifer interference approval is not required for large-scale activity that involves excavation.

A licence under Part 5 of the *Water Act 1912* (NSW) is required for any dewatering activity that would require the extraction of more than three mega litres of groundwater per year. Excavation would be undertaken as part of the proposal. Although groundwater may be intercepted, it is unlikely that any dewatering would exceed three mega litres (ML) of groundwater per year (ML/year).

A licence would be sought under Part 5 if extraction of more than three ML/year of groundwater is required to construct the proposal.

Further discussion on how the exemptions under the *Water Management Act 2000* (NSW) apply to the *Floodplain Management Plan for the Border Rivers Valley Floodplain* are detailed in Chapter 13: Surface Water and Hydrology.

5.3.3.4 Crown Land Management Act 2016 (NSW)

The *Crown Land Management Act 2016* (NSW) sets out how Crown land is to be managed. In relation to actions affecting Crown land, the objectives of the Act are to:

- ▶ Provide for the ownership, use and management of Crown land
- ▶ Provide clarity concerning the law applicable to Crown land
- ▶ Require that environmental, social, cultural heritage and economic considerations are to be taken into account in decision-making about Crown land
- ▶ Provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of NSW
- ▶ Facilitate the use of Crown land by the Aboriginal people of NSW because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land
- ▶ Provide for the management of Crown land having regard to the 'principles of Crown land management'.

In summary, the principles of Crown land management are that, as appropriate:

- ▶ Environmental protection principles be observed
- ▶ Natural resources be conserved wherever possible
- ▶ Public use and enjoyment, and multiple use, be encouraged
- ▶ The land and its resources be sustained in perpetuity
- ▶ It be occupied, sold, or otherwise dealt with consistent with these principles.

An authorisation under the *Crown Land Management Act 2016* (NSW) to allow occupation of Crown land must be obtained. The potential impacts on land use, including Crown land, are considered in Chapter 22: Land Use and Property.

5.3.3.5 Land Acquisition (Just Terms Compensation) Act 1991 (NSW)

The *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) provides the framework for acquisition of all land within NSW. Compulsory acquisition must be carried out by an authority of the state in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW). Section 4 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) outlines an 'authority of the state' to mean:

- (a) a Minister of the Crown
- (b) a statutory body representing the Crown
- (c) council, a county council or a joint organisation within the meaning of the *Local Government Act 1993*
- (d) any other authority authorised to acquire land by compulsory process.

The proposal will involve the acquisition of parcels of privately owned and Crown land. ARTC does not have the power to compulsorily acquire land as it is not an 'authority of the state' under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); however, ARTC has the capacity to acquire land. Under the acquisition protocol, Transport for NSW could be called on by ARTC to act as the acquiring authority to compulsorily acquire land under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

The acquisition protocol is currently being negotiated between ARTC and Transport for NSW (TfNSW). Further potential impacts on land use, including direct property impacts and acquisition requirements, are considered in Chapter 22: Land Use and Property.

5.3.3.6 Transport Administration Act 1988 (NSW)

The *Transport Administration Act 1998* (NSW) provides for the administration and management of transport infrastructure and transport agencies in NSW. Under Section 99B of the *Transport Administration Act 1998* (NSW), a rail infrastructure owner may close any level crossing provided that, prior to closing the crossing, it notifies Roads and Maritime, within TfNSW, and the local government, and receives ministerial approval.

TfNSW reviews all applications for level-crossing closures before they are submitted to the Minister for Transport, to ensure that the relevant issues have been considered, and adequate consultation has been undertaken.

As described in Chapter 6: The Proposal, the proposal includes changes to several level crossings. ARTC is undertaking, and will continue to undertake, necessary consultation to confirm the changes required. Approval for closures, if required, would be obtained in accordance with the requirements of the *Transport Administration Act 1998* (NSW).

ARTC has several powers set out under Schedule 6A of the *Transport Administration Act 1988* (NSW) including, but not limited to, access, entry and protection of rail infrastructure facilities and railway buildings.

5.3.3.7 Disability Discrimination Act 1992 (Cth)

The *Disability Discrimination Act 1992* (Cth) aims to eliminate, as far as possible, discrimination against persons on the grounds of disability in areas including access to premises and the provision of facilities, services and land. The proposal would be designed to be independently accessible and in compliance with the objectives and requirements of the *Disability Discrimination Act 1992* (Cth).

5.3.3.8 Native Title (New South Wales) Act 1994 (NSW)

The *Native Title (New South Wales) Act 1994* (NSW) is in accordance with the *Native Title Act 1993* (Cth) (refer Section 5.4.2) to validate any past acts, invalidated because of the existence of native title and to confirm certain native title rights. The purpose of the *Native Title (New South Wales) Act 1994* (NSW) is to ensure NSW law is consistent with standards set by the *Native Title (New South Wales) Act 1994* (NSW).

Further information on native title determinations along the proposal is provided in Chapter 22: Land Use and Property.

Further information on the *Native Title Act 1993* (Cth) is provided in Section 5.4.2.

5.3.3.9 Contaminated Land Management Act 1997 (NSW)

The *Contaminated Land Management Act 1997* (NSW) enables the NSW EPA to respond to contamination that could potentially be considered significant enough to warrant regulation and declare land as being contaminated. The *Contaminated Land Management Act 1997* (NSW) has the capacity to implement the following activities related to the proposal if certain contamination, meeting relevant thresholds, are identified on land within the proposal area:

- ▶ Undertake a preliminary site investigation on suspected land
- ▶ Order remediation of contaminated land
- ▶ Duty to notify.

5.3.3.10 Biodiversity Conservation Act 2016 (NSW)

The *Biodiversity Conservation Act 2016* (NSW) came into effect on the 25 August 2017 and repealed the *Threatened Species Conservation Act 1995* (NSW), the *Native Vegetation Act 2003* (NSW) and components of the NPW Act.

The *Biodiversity Conservation Act 2016* (NSW) aims to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development (described in the *Protection of the Environment Administration Act 1991* (NSW) and Section 516A of the EPBC Act).

ARTC proposes to provide its offset obligation under the *Biodiversity Conservation Act 2016* (NSW) post-EIS, following the detailed design and before the construction phases. Detailed offset will be in multiple stages to align with the schedule of disturbance. The rail alignment and associated construction infrastructure (such as individual borrow pits) will be subject to retiring 'biodiversity credits' prior to the commencement of each stage of the proposal independently.

Further information on biodiversity impacts, including the assessment of potential impacts on NSW receptors listed under the *Biodiversity Conservation Act 2016* (NSW), is provided in Chapter 11: Biodiversity.

5.4 Commonwealth requirements

5.4.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Under the EPBC Act, proposed 'actions' that have the potential to significantly impact on matters of national environmental significance (MNES), the environment of Australian Government land, or that are being carried out by an Australian Government agency, must be referred to the Australian Minister for Environment for assessment. If the Minister determines that a referred project is a 'controlled action' under the EPBC Act, the approval of the Minister would be required.

An EPBC Act protected matters search was undertaken on 4 April 2016 for an area within a 10 km radius of the proposal site. The results of the search indicated that the proposal has the potential to impact on two protected matters:

- ▶ Threatened ecological communities—five EPBC Act listed threatened ecological communities have the potential to be impacted
- ▶ Threatened species—26 EPBC Act listed fauna species and one flora species have the potential to be impacted.

As the proposal has potential to impact on matters protected under the EPBC Act, it was referred to the (then) Australian Minister for the Environment on 12 June 2018. On 17 July 2018, the Australian Minister for Environment notified that the proposal is a controlled action, with the controlling provision being 'listed threatened species and communities' (under section 18 of the EPBC Act) (referral reference 2018/8222).

As part of the overall approval process for the proposal, the proposal will be assessed by the Department of Planning, Industry and Environment (DPIE) in accordance with, '*the Bilateral agreement made (between New South Wales and the Commonwealth) under section 45 of the EPBC Act relating to environmental assessment*'. The assessment requirements are defined by the SEARs. Following this assessment, the Australian Minister for Environment will make a separate decision as to whether to approve the proposal under the EPBC Act.

Further information on biodiversity impacts, including the assessment of potential impacts on EPBC Act listed threatened species and communities, is provided in Chapter 11: Biodiversity.

5.4.2 Native Title Act 1993 (Cth)

The *Native Title Act 1993* (Cth) provides the legal principles for the recognition of native title and the integration of this form of property rights into the existing land title system. The *Native Title Act 1993* (Cth) provides for the validation of past Commonwealth acts and makes the same provision for the states and territories. The *Native Title Act 1993* (Cth) also establishes the processes involved in having native title recognised and the role and responsibilities of the different bodies involved in this process. The *Native Title Act 1993* (Cth) also establishes the ways in which future development affecting native title may proceed.

The *Native Title Act 1993* (Cth) adopts the common law definition of 'native title' and establishes the National Native Title Tribunal, which governs how native title is dealt with across Australia.

Native title interests and rights may exist over land that is unallocated state or Crown land, some state forests, national parks and public reserves, waters that are not privately owned and/or some leases, such as non-exclusive pastoral and agricultural leases, or on land held by or for Aboriginal people or Torres Strait Islanders. The *Native Title Act 1993* (Cth) prescribes a statutory process to allow the parties to reach agreement and for the state and territory governments to grant interest over that land to native title claimants.

Further information on native title determinations along the proposal is provided in Chapter 22: Land Use and Property.

5.5 Post-Environmental Impact Statement approvals

A summary of the potential post-EIS approvals is provided in Table 5.3.

TABLE 5.3 POTENTIAL POST ENVIRONMENTAL IMPACT STATEMENT APPROVALS AND REGULATORY MEASURES

Approval	Trigger	Administering authority	Timing
Commonwealth			
Provisions of offsets <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)	Significant impacts to matters of national environmental significance (MNES) under the EPBC Act	Department of Environment and Energy	Post EIS, prior to construction
Native title obligations <i>Native Title Act 1993</i> (Cth)	Works undertaken within land where native title has not been extinguished To be confirmed	Relevant registered native title party and/or representative Aboriginal and Torres Strait Islander body	Prior to construction
State			
Notification of the NSW Environment Protection Authority (NSW EPA) <i>Contaminated Land Management Act 1997</i> (NSW)	Certain contamination meeting relevant thresholds identified on land within proposal area	NSW EPA	Prior to construction
Acquisition and access on Crown land <i>Crown Land Management Act 2016</i> (NSW)	The proposal requires the acquisition of Crown land	Department of Industry—Lands and Water	Prior to construction
Land acquisition and access <i>Land Acquisition (Just terms Compensation) Act 1991</i> (NSW)	The proposal will involve the acquisition of parcels of privately owned and Crown land	TfNSW	Prior to construction
Environment protection license <i>Protection of the Environment Operations Act 1997</i> (NSW)	Proposal meets the definition of a scheduled activity ('Railway Systems Activities') provided in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> (NSW)	NSW EPA	Prior to construction
Consent from relevant roads authority for works impacting classified road <i>Roads Act 1993</i> (NSW)	Carrying out of work on or over a public road	TfNSW with consultation from relevant road authority (Gwydir Shire Council and Moree Plains Shire Council)	Prior to construction
Approval for level crossing closures <i>Transport Administration Act 1988</i> (NSW)	Proposal includes changes to level crossings	TfNSW with consultation from relevant road authority (Gwydir Shire Council and Moree Plains Shire Council)	Prior to construction
Licence for groundwater extraction <i>Water Management Act 2000</i> (NSW) and <i>Water Act 1912</i> (NSW)	If construction requires the extraction of more than 3 ML/year	NSW Department of Planning, Infrastructure and Environment (DPIE)	Prior to construction
Water Access Licence <i>Water Management Act 2000</i> (NSW)	The proposal requires the extraction of water from rivers or aquifers	NSW DPIE	Prior to construction
Retirement of offsets <i>Biodiversity Conservation Act 2016</i> (NSW)	Clearing of native vegetation and the loss of habitat	NSW DPIE	Post EIS, prior to construction
Excavated material exemption and order <i>Protection of the Environment Operations (Waste) Regulation 2014</i>	Actual or intended application of excavated material to land as engineering fill	NSW EPA	Prior to construction

5.6 Summary of approvals and notification requirements

In summary:

- ▶ The proposal is permissible without consent under the Infrastructure SEPP
- ▶ An environment protection licence under the *Protection of the Environment Operations Act 1997* (NSW) is required for the construction of the proposal
- ▶ Landowners need to be notified in accordance with clause 193(4) of the EP&A Regulation, which allows for the notification by written notice to the landowner or by advertisement published in a newspaper circulating in the area
- ▶ Approval to close level crossings may be required under s99B of the *Transport Administration Act 1998* (NSW)
- ▶ A licence would be sought under Part 5 of the *Water Act 1912* (NSW) if extraction of more than 3 ML/year of groundwater is required to construct the proposal
- ▶ The proposal is a controlled action under the EPBC Act and required approval under the EPBC Act from the Australian Minister for Environment.

5.7 Summary of the assessment process

5.7.1 Environmental assessment requirements

Under section 5.16(1) of EP&A Act, 'When an application is made for the Minister's approval for state-significant infrastructure, the Planning Secretary is to prepare environmental assessment requirements in respect of the infrastructure'. These identify the general requirements and key issues to be assessed for the EIS.

The SEARs for the proposal were issued by the DPIE on 8 August 2018. The requirements of the SEARs, together with where they are addressed by this EIS, are provided in Appendix A: Basis of Assessment.

5.7.2 Public exhibition and submissions

When the EIS is considered to meet the SEARs, the DPIE would place the EIS on public exhibition for at least 28 days and invite submissions. The DPIE would provide ARTC with a copy of the submissions and ask ARTC to respond to the issues raised. ARTC may modify the proposal to minimise impacts on the environment if required and practicable. If the proposal is modified in response to the issues raised, a preferred infrastructure report would be prepared to describe the scope of the revised proposal. Otherwise, a submissions report would be prepared. The department would then make the report public.

Further information on consultation during the exhibition period is provided in Chapter 8: Consultation.

5.7.3 Assessment and determination

Following the exhibition period, the DPIE will, on behalf of the Minister for Planning, review the EIS and the submissions/preferred infrastructure report. The DPIE will prepare an assessment report, which is submitted to the Minister for Planning for determination. The Minister may refuse the proposal or approve it with any conditions considered appropriate. The Minister may also make modifications to the proposal in the course of giving approval. The Minister's approval and the assessment report will be published on the DPIE's Major Projects website following determination. Approval under the EPBC Act from the Australian Minister for Environment will be advised separately.