

CHAPTER 03

Statutory context

ILLABO TO STOCKINBINGAL ENVIRONMENTAL IMPACT STATEMENT

ARTC

INLAND
RAIL
An Australian Government Initiative

Contents

3.	Statutory context	3-1
3.1	Overview of the planning approval pathway	3-1
3.2	Environmental Planning and Assessment Act 1979 (NSW)	3-1
3.2.1	Objects of the EP&A Act	3-2
3.2.2	Division 5.2 of the Environmental Planning and Assessment Act	3-3
3.2.3	Critical State Significant Infrastructure	3-4
3.2.4	Landowners' consent and notification requirements	3-4
3.2.5	Environmental Planning and Assessment Regulation 2021	3-4
3.3	NSW environmental planning instruments	3-4
3.3.1	State Environmental Planning Policy (Transport and Infrastructure) 2021	3-4
3.3.2	State Environmental Planning Policy (Planning Systems) 2021	3-4
3.3.3	Other environmental planning instruments	3-4
3.4	Other NSW legislative requirements	3-5
3.4.1	Approvals not required	3-5
3.4.2	Approvals to be applied consistently	3-5
3.4.3	Consideration of requirements under other NSW Acts	3-5
3.5	Commonwealth requirements	3-8
3.5.1	Environment Protection and Biodiversity Conservation Act 1999	3-8
3.5.2	Native Title Act 1993	3-8
3.6	Summary of approval and notification requirements	3-9
3.7	Summary of the assessment process	3-9
3.7.1	Environmental assessment requirements	3-9
3.7.2	Public exhibition and submissions	3-9
3.7.3	Assessment and determination	3-9

Tables

Table 3-1:	Objects of the EP&A Act of relevance to the proposal	3-2
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3. Statutory context

This chapter reviews the legislation and environmental planning instruments that are relevant to the environmental assessment and approval of the Inland Rail Illabo to Stockinbingal project (the proposal). The permissibility and planning approval pathway is summarised, and other planning instruments and legislation relevant to the assessment and approval of the proposal are considered. This chapter is supported by Appendix B: Statutory compliance (Appendix B).

3.1 Overview of the planning approval pathway

The proposal is declared to be State Significant Infrastructure (SSI) and would be assessed under Division 5.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). In summary:

- ▶ under *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP), the proposal is classified as ‘development for the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority’. ARTC is defined as a public authority for these purposes through the effect of Schedule 1(1) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), so the proposal may be carried out without development consent under the EP&A Act
- ▶ where development is permissible without consent, it can be declared to be SSI by a SEPP, usually *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP)
- ▶ relevantly, section 5.12 of the EP&A Act provides for development to be declared SSI through a Ministerial Order or through a SEPP, in this case the Planning Systems SEPP. The Planning Systems SEPP provides for the proposal to be declared SSI:
 - ▶ where development is for the purpose of rail infrastructure, ARTC is carrying out the proposal and the capital investment value is greater than \$50 million (Schedule 3, Clause 3 of the Planning Systems SEPP).

Accordingly, the proposal would be SSI under section 5.12 of the EP&A Act and Schedule 3, Clause 3 of the Planning and Systems SEPP and is subject to approval by the NSW Minister for Planning.

In addition, the Minister declared the proposal to be Critical State Significant Infrastructure (CSSI) under section 5.13 of the EP&A Act by Order made on 3 March 2021 (see section 3.2.3).

The sections below provide more detail on the EP&A Act and its operation in respect of the proposal.

3.2 Environmental Planning and Assessment Act 1979 (NSW)

The EP&A Act and EP&A Regulation establish a framework for the assessment and approval of developments in NSW. They include provisions to ensure that the potential environmental impacts of a development are considered in the decision-making process, prior to proceeding to construction. They also provide for the making of environmental planning instruments, including SEPPs and local environmental plans (LEPs), which determine the permissibility and approval pathway for development proposals and form a part of the environmental assessment process (see section 3.3).

The key requirements of the EP&A Act in relation to the approval and assessment of the proposal are described in section 3.2.1 to 3.2.5 below.

If any proposed design variations are not consistent with the future conditions of approval, appropriate modifications to the project approval would be sought in accordance with the requirements of the EP&A Act (refer to Chapter 27: Approach to environmental mitigation and management).

3.2.1 Objects of the EP&A Act

The objects of the EP&A Act (section 1.3) establish the statutory framework within which the justification of the proposal can be considered. Table 3-1 outlines how the proposal is consistent with those objects of particular relevance to the proposal.

TABLE 3-1: OBJECTS OF THE EP&A ACT OF RELEVANCE TO THE PROPOSAL

EP&A Act objective	Comment
To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the state's natural and other resources	The proposal has been designed to avoid impacts on the environment and to minimise the need for land acquisition, as well as impacts on existing infrastructure and local communities. The proposal has been designed to conserve the state's natural and other resources. During construction and operation of the proposal, opportunities would be taken to reduce material use and maximise the use of materials with low embodied environmental impact, where practical (refer to Chapter 21: Waste and Chapter 23: Sustainability).
To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	Sustainability is an important consideration for the proposal (refer to Chapter 23: Sustainability). The proposal will be guided by the <i>Inland Rail Sustainability Strategy</i> (ARTC, 2020c) and <i>Environment and Sustainability Policy</i> (ARTC, 2021a), which outline sustainability objectives, targets and commitments for the proposal, and encompass economic, environmental and social considerations. A Sustainability Management Plan would also be prepared. Further details on addressing the principles of ecologically sustainable development are also provided in Chapter 28: Justification of the proposal.
To promote the orderly and economic use and development of land	Inland Rail is needed to improve the efficiency of freight moving between Melbourne and Brisbane. This is expected to increase the competitiveness of rail transport relative to road transport. In addition, Inland Rail would encourage growth and investment in regional areas along the route, through improved freight connections. Without additional investment in rail infrastructure capacity (such as Inland Rail), the repercussions of ever-increasing levels of traffic congestion will be felt at state and national levels. The proposal has been designed to minimise impacts to the surrounding natural and built environments, and to minimise disruption to existing development patterns.
To protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The approach to design development has included a focus on avoiding and/or minimising the potential for impacts during all key phases of the proposal. Direct impacts on biodiversity (terrestrial and aquatic) have been largely avoided and/or minimised through design by shifting the alignment or by reducing the disturbance footprint to avoid areas of important biodiversity and/or maintain connectivity between moderate to high quality vegetation (refer to Chapter 6: Alternatives and proposal options). The proposal's impacts on terrestrial and aquatic ecology have been assessed in detail and measures to avoid, mitigate and offset potential impacts on native animals and plants have been developed (refer to Chapter 10: Biodiversity).
To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The design development of the proposal has included a focus on avoiding or minimising potential Aboriginal and non-Aboriginal heritage impacts. This has included shifting the alignment or reducing the disturbance footprint to avoid potential direct impacts to areas of Aboriginal archaeological sensitivity (refer to Chapter 6: Alternatives and proposal options). Impacts on heritage items would be minimised during construction and works would be carried out in accordance with relevant mitigation and management strategies where impacts are unavoidable (refer to Chapter 15: Cultural heritage).
To promote good design and amenity of the built environment	Landscape character and visual amenity impacts from the proposal would be managed in accordance with the landscape and rehabilitation strategy and through the Construction Environmental Management Plan, which specifies measures to reduce visual and lighting impacts to surrounding receivers (refer to Chapter 19: Landscape and visual impacts). Visual, community and property impacts were considered as part of the design development, as provided in Chapter 6: Alternatives and proposal options.

EP&A Act objective	Comment
To provide increased opportunity for community participation in environmental planning and assessment	An objective of community and stakeholder engagement for the proposal is to provide information about the planning approvals process and encourage community participation. The proposal team has developed the ARTC Inland Rail Communications and Engagement Strategy to proactively engage with local communities, key stakeholders and government agencies during and following exhibition of this EIS (refer to Chapter 4: Engagement).

3.2.2 Division 5.2 of the Environmental Planning and Assessment Act

Division 5.2, Part 5 of the EP&A Act establishes an assessment and approval regime for SSI. Division 5.2 applies to development that is declared to be SSI.

Under section 5.12(3), development cannot be SSI unless it is of a kind that may be carried out without development consent under Part 4 of the EP&A Act and comprises:

- a) *infrastructure, or*
- b) *other development that (but for this Part and within the meaning of Part 5) 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.*

As indicated in section 3.1, the proposal satisfies these requirements.

Under section 5.14 of the EP&A Act, the approval of the Minister is required for SSI before it can be carried out. In accordance with section 5.15 (Application for approval of SSI):

- '(1) The proponent may apply for the approval of the Planning Minister under this Part to carry out State significant infrastructure;*
- (2) The application is to:*
 - (a) describe the infrastructure, and*
 - (b) contain any other matter required by the Secretary;*
- (3) The application is to be lodged with the Secretary.'*

Under Division 5.2 of the EP&A Act, the planning and approvals process includes the following key steps:

1. submission of a SSI application with the supporting document to the Secretary of the Department of Planning and Environment (DPE) under section 5.15 of the EP&A Act, to seek the Secretary's Environmental Assessment Requirements (SEARs)
2. preparation and submission of an EIS under section 5.16(2) of the EP&A Act, addressing the requirements of the EP&A Act and EP&A Regulation and the matters outlined in the SEARs
3. public exhibition of the EIS for a minimum of 28 days
4. preparation of either a Response to Submissions report (RtS) (if no material changes to the proposal are proposed post-exhibition) or a Submissions and Preferred Infrastructure Report (SPIR) (if material changes to the proposal are proposed post-exhibition), and submission of the report to the DPE
5. assessment of the application and EIS by the DPE and preparation of the Secretary's environmental assessment report (section 5.18 of the EP&A Act)
6. determination of the application by the Minister. The Minister may refuse the proposal or approve it with any modifications and conditions considered appropriate.

Clause 192 of the EP&A Regulation requires that an application for approval of the Minister to carry out SSI must include:

- ▶ details of any approval that would be required for the carrying out of the SSI but are not required because of section 5.23 of the EP&A Act (see section 3.4.1)
- ▶ details of any authorisations that must be given under section 5.24 of the EP&A Act if the application is approved (see section 3.4.2)
- ▶ a statement as to the basis on which the proposed infrastructure is SSI, including, if relevant, the capital investment value of the proposed infrastructure.

3.2.3 Critical State Significant Infrastructure

In accordance with section 5.13 of the EP&A Act, SSI may also be declared to be CSSI if it is of a category that, in the opinion of the Minister, is essential for the state for economic, environmental or social reasons. The Minister declared by Order made on 3 March 2021 that the proposal is CSSI. The terms of the declaration are set out in Schedule 5 clause 7 of the Planning Systems SEPP.

As CSSI, the proposal is permissible without consent under clause 2.15(a) of the Planning Systems SEPP. It would remain subject to assessment and approval under Division 5.2 of the EP&A Act.

3.2.4 Landowners' consent and notification requirements

Clause 181(5) of the EP&A Regulation provides that consent of individual landowners would not be required to make the SSI application because the proposal:

- ▶ is by a proponent that is a public authority
- ▶ is for linear transport infrastructure.

As the application for the proposal is for linear transport infrastructure, the consent of individual landowners would not be required to make the application; however, the proponent must give notice of the application to landowners no later than 14 days prior to the publication of the EIS or by way of newspaper advertisement at least 14 days prior to the publication of the EIS.

3.2.5 Environmental Planning and Assessment Regulation 2021

Clauses 190 and 192 the EP&A Regulation set out requirements for the form and content of an EIS. These requirements are included in Table B.4 of Appendix B.

3.3 NSW environmental planning instruments

Section 5.22(2)(a) of the EP&A Act provides that environmental planning instruments (such as SEPPs and LEPs) do not apply to, or in respect of, SSI except where 'they apply to the declaration of infrastructure as SSI or as CSSI (and to the declaration of development that does not require consent)'. The SEPPs that are relevant are outlined in the following section.

3.3.1 State Environmental Planning Policy (Transport and Infrastructure) 2021

The Transport and Infrastructure SEPP aims to assist in the delivery of public infrastructure across the state through consistent planning and assessment regimes for public infrastructure. Clause 2.91(1) of the Transport and Infrastructure SEPP permits development on any land for 'the purpose of a railway or rail infrastructure facilities may be carried out by or on behalf of a public authority without consent.'

As noted in section 3.1, ARTC is a 'public authority' under the EP&A Act for the purposes of these provisions of the Transport and Infrastructure SEPP. Accordingly, the proposal is permissible without consent.

Typically, the provisions of the Transport and Infrastructure SEPP prevail over other environmental planning instruments, unless the work is located on land reserved under the *National Parks and Wildlife Act 1974* (NPW Act) or is regulated *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP). As the proposal is not located on land reserved under the NPW Act, nor under the Resilience and Hazards SEPP, these conditions do not apply, and the proposal is permissible without consent.

3.3.2 State Environmental Planning Policy (Planning Systems) 2021

Clause 2.15(a) of the Planning Systems SEPP provides that the development listed in Schedule 5 is permissible without consent and is declared SSI if not otherwise, declared as CSSI.

As detailed in section 3.3.1, the Transport and Infrastructure SEPP provides that the proposal is permissible without consent. Schedule 5, Clause 7(1C) (of the Planning Systems SEPP identifies '*Development for the purposes of the Illabo to Stockinbingal project being the construction of approximately 37 kilometres of new rail line between the existing rail line north-east of Illabo and the existing rail line west of Stockinbingal, in the Junee and Cootamundra–Gundagai Regional local government areas*'. Accordingly, the proposal is declared to be CSSI.

3.3.3 Other environmental planning instruments

Section 5.23 and 5.24 of the EP&A Act provides that, from a statutory perspective, environmental planning instruments (EPIs) do not apply to, or in respect of SSI, except where they apply to the declaration of infrastructure

as SSI; however, in accordance with the (then) Department of Planning, Infrastructure and Environment's (DPIE) *State Significant Infrastructure Guidelines – preparing an environmental impact statement* (DPIE, 2021b) (now the Department of Planning and Environment), the technical provisions of EPIs, including identification of matters for assessment, require consideration. As such, the relevant EPIs, and how they have been considered in this EIS is outlined in Table B.3 of Appendix B: Statutory compliance.

3.4 Other NSW legislative requirements

3.4.1 Approvals not required

The following approvals are not required for SSI for which planning approval has been granted (in accordance with section 5.23 of the EP&A Act):

- ▶ a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994* (FM Act)
- ▶ an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977* (Heritage Act)
- ▶ an Aboriginal heritage impact permit under section 90 of the NPW Act
- ▶ a bushfire safety authority under section 100B of the *Rural Fires Act 1997*
- ▶ 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* (Water Management Act).

Division 8 of Part 6 of the Heritage Act (relating to making heritage orders) does not apply to prevent or interfere with the carrying out of approved SSI.

3.4.2 Approvals to be applied consistently

The following approvals cannot be refused if necessary for the carrying out of SSI for which planning approval has been granted and must be consistent with the CSSI approval (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* (POEO Act)
- ▶ consent under section 138 of the *Roads Act 1993* (Roads Act).

As the proposal is classified as CSSI, the following directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of approved CSSI (in accordance with section 5.23(3) of the EP&A Act):

- ▶ an interim protection order (within the meaning of the NPW Act)
- ▶ an order under Division 1 (stop work orders) of Part 6A of the NPW Act or Division 7 (stop work orders) of Part 7A of the FM Act
- ▶ a remediation direction under Division 3 (remediation directions) of Part 6A of the NPW Act
- ▶ an order or direction under Part 11 (regulatory compliance mechanisms) of the *Biodiversity Conservation Act 2016* (BC Act)
- ▶ an environment protection notice under Chapter 4 of the POEO Act
- ▶ an order under section 124 of the *Local Government Act 1993*.

The approval requirements of these Acts as they relate to the proposal are summarised in the following sections.

3.4.3 Consideration of requirements under other NSW Acts

Other NSW environmental planning legislation that is directly relevant to the approval and assessment of the proposal is outlined in the following sections and expanded on in Table B.2 of Appendix B.

3.4.3.1 Biodiversity Conservation Act 2016

The BC Act aims to conserve biodiversity at a bioregional and state scale and lists a number of threatened species, populations and ecological communities to be considered in deciding whether the proposal is likely to have a significant impact on threatened biota, or their habitats. The BC Act provides for the assessment of impact on these listed matters and a scheme for offsetting impacts.

A Biodiversity Development Assessment Report (BDAR) has been prepared in accordance with section 7.9 of the BC Act as part of the EIS. The report is in Technical Paper 1: Biodiversity Development Assessment Report and summarised in Chapter 10: Biodiversity.

3.4.3.2 Contaminated Land Management Act 1997

The *Contaminated Land Management Act 1997* (CLM Act) outlines the circumstances in which notification of the Environment Protection Authority (EPA) is required in relation to the contamination of land and provides a scheme for the management of contaminated land, primarily through powers given to the EPA.

Further consideration of the provisions and requirements of the CLM Act is in Chapter 20: Soils and contamination.

3.4.3.3 Protection of the Environment Operations Act 1997

The POEO Act 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 in Schedule 1 include:

33 Railway activities—railway infrastructure construction

1. *This clause applies to railway activities—railway infrastructure construction, meaning:*
 - (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.*

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.*
- (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.*

The proposal meets the above definitions identified in Schedule 1 as railway activities—railway infrastructure construction and railway infrastructure operations and, therefore, an environment protection licence (EPL) would be obtained for construction and operation of the proposal.

In relation to operation, ARTC currently holds a licence to carry out railway systems activities on other parts of the NSW rail network (licence number EPL3142). ARTC would be required to obtain a new licence for the operation of the proposal as it includes new rail through greenfield sites. Licensing requirements for the proposal would be confirmed in consultation with the NSW EPA. From August 2020, rollingstock operators on ARTC's network in NSW will require an EPL issued by the NSW EPA. This change means that rollingstock operators' environmental performance outcomes will be regulated by the NSW EPA.

In accordance with section 5.24(1) of the EP&A Act, approvals that are potentially required for the proposal, including an EPL under Chapter 3 of the POEO Act, cannot be refused and must be granted on terms that are substantially consistent with the SSI approval.

3.4.3.4 Waste Avoidance and Resource Recovery Act 2001

The *Waste Avoidance and Resource Recovery Act 2001* encourages the most efficient use of resources to reduce environmental harm. The Act provides for the development of a state-wide waste strategy and introduces a scheme to promote extended producer responsibility for the life cycle of a product.

The provisions of this Act have been considered as part of the assessment of waste, energy and resources management in Chapter 21: Waste.

3.4.3.5 Roads Act 1993

Under Section 138, Part 9, Division 3 of the *Roads Act 1993* (Roads Act) consent from the relevant road's authority is required to impact, or carry out work on or over, a public road or to connect a road to a public road. Clause 5(1) of Schedule 2 of the Roads Act exempts public authorities from this requirement in relation to unclassified roads (unless they are Crown roads), but this exemption does not apply to ARTC. For classified roads, the roads authority must also obtain Transport for NSW's (TfNSW) concurrence under section 138. The proposal would involve works

to the Burley Griffin Way, which is a state road (Main Road 84), as part of the proposed road overbridge near Stockinbingal, as well as works to other local roads that intersect the proposal. Consent would be sought under section 138 from TfNSW for these works. As noted in section 3.4.2, approval under section 138 of this Act cannot be refused if it is necessary to carry out a SSI project and must be consistent with the SSI approval.

3.4.3.6 Water Management Act 2000 and Water Act 1912

The Water Management Act and *Water Act 1912* (the Water Act) control the taking of water, the use of water, the construction of water storage and water transport 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 are being progressively implemented to replace the Water Act. Since 1 July 2004, the Water Act licensing and approvals system has been in effect in those areas of NSW covered by operational water sharing plans.

The Water Management Act provides regimes for water access licences (WALs) and various works-related and use-related approvals. A WAL is required to 'take' water from a water source or a water management area (including overland flow), which is subject to a water sharing plan made under the Water Management Act (with some limited exceptions). The concept of taking water is very broad, and it would include dewatering activities associated with excavation. A WAL will authorise the taking of a volume of water, which is initially determined by the value of the entitlement in that WAL. Entitlements can be traded within an applicable catchment area. Usually, WALs with capacity to authorise the taking of water cannot be obtained by application, but must be sourced from an existing WAL holder in the water trading market for the relevant catchment.

Temporary dewatering and construction activities that interfere with aquifers are generally identified as aquifer interference activities in accordance with the Water Management Act and the *NSW Aquifer Interference Policy* (DPI, 2012). However, the aquifer interference approval provisions of the Water Management Act have not commenced, and licensing of these activities is often carried out under either Part 5 of the Water Act or other approval provisions in the Water Management Act.

A licence under Part 5 of the Water Act will generally be required where there is no water sharing plan, and in some cases where there is a water sharing plan. The Water Management Act will generally apply where there is a water sharing plan. While the Water Act has some operation even where water sharing plans are in place (for example, where provisions requiring water supply work approvals have not been 'switched on'), most areas in NSW are subject to the Water Management Act.

Excavation would be undertaken as part of the proposal. Although groundwater may be intercepted, it is unlikely that any dewatering would exceed 3 megalitres of groundwater per year, meaning that licences or approvals under the water regulatory regimes may not be required. Extraction of groundwater is proposed as part of the requirements for water during construction, as described in Chapter 8: Proposal description—construction. Relevant licences and approvals would be sought, if required. In this regard, it is important to note that water management work approvals under sections 89, 90 and 91 of the Water Management Act are not required for SSI projects such as the proposal.

3.4.3.7 Crown Land Management Act 2016

The *Crown Land Management Act 2016* (Crown Land Act) sets out how Crown land is to be managed. In relation to actions affecting Crown land:

- ▶ all actions are to be consistent with the 'principles of Crown land management'
- ▶ an assessment must be carried out prior to any dealings in Crown land (such as a lease)
- ▶ specific use of Crown land generally needs to be authorised by a lease, licence or other permit.

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
- ▶ the land be occupied, sold, or otherwise dealt with consistent with these principles.

An authorisation under the Crown Land Act to allow occupation of Crown land must be obtained. The potential impacts of the proposal on land use, including Crown land, are considered in Chapter 19: Landscape and visual impacts.

3.4.3.8 Transport Administration Act 1988

The *Transport Administration Act 1988* (Transport Administration Act) provides for the administration and management of transport infrastructure and transport agencies in NSW. Under section 99B of the Transport Administration Act, a rail infrastructure owner may close any level crossing provided that, prior to closing the crossing, it notifies TfNSW and the local council, and receives Ministerial approval.

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

As described in Chapter 7: Proposal description—operation, the proposal includes changes to a number of level crossings. ARTC is undertaking, and would continue to undertake, necessary consultation to confirm the changes required. Approval for closures, if required, would be obtained in accordance with the requirements of the Transport Administration Act.

3.5 Commonwealth requirements

3.5.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), proposed 'actions' that are likely to significantly impact on matters of national environmental significance or the environment on Commonwealth land, or that are being carried out by an Australian Government agency and are likely to significantly impact the environment, are 'controlled actions' and need the approval of the Australian Government Minister for the Environment under the EPBC Act. The EPBC Act requires a proponent that thinks that a proposed action is or may be a 'controlled action' to refer that action. If the Minister determines that a referred project is a 'controlled action' under the EPBC Act, the approval of the Minister would be required.

As a result of the potential for impacts on protected matters, the proposal was referred to the (then) Australian Government Minister for the Environment in June 2018 (EPBC Referral No 2018/8233). On 6 August 2018, the (then) Australian Government Department of the Environment and Energy notified that the proposal is a controlled action, with the controlling provisions being 'listed threatened species and communities' (under section 18 & 18A of the EPBC Act).

The EPBC Act provides various possible assessment pathways for a controlled action. However, the Australian Government and NSW Government have signed a bilateral agreement under the EPBC Act, which provides for the assessment of controlled actions by means of an accredited SSI assessment pathway under the EP&A Act instead of another EPBC Act pathway. As such, the proposal would be assessed under an Accredited Assessment under Part 5, Division 5.2 of the EP&A Act.

Further information on potential biodiversity impacts, including the assessment of the potential impacts on EPBC Act listed threatened species and communities, is in Chapter 10: Biodiversity.

3.5.2 Native Title Act 1993

The Commonwealth *Native Title Act 1993* provides the legislative framework that:

- ▶ recognises and protects native title
- ▶ establishes ways in which future dealings affecting native title may proceed, and to set standards for those dealings, including providing certain procedural rights for registered native title claimants and native title holders in relation to acts which affect native title
- ▶ establishes the National Native Title Tribunal.

The National Native Title Tribunal has a number of functions under the Act, including maintaining the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements and mediating native title claims. The NSW *Native Title Act 1994* was introduced to ensure that the laws of NSW are consistent with the Commonwealth *Native Title Act 1993*.

3.6 Summary of approval and notification requirements

In summary:

- ▶ the proposal is permissible without consent through the effect of the Transport and Infrastructure SEPP. The proposal is SSI, and it requires approval from the Minister for Planning under Division 5.2 of the EP&A Act
- ▶ the proposal has been declared to be critical state significant infrastructure under section 5.13 of the EP&A Act and is permissible without consent under clause 2.15(a) of the Planning Systems SEPP
- ▶ notice of the application for planning approval must be given in accordance with clause 181 of the EP&A Regulation
- ▶ an EPL under the POEO Act is required for the construction and operation of the proposal
- ▶ approval to close level crossings may be required under section 99B of Transport Administration Act
- ▶ a licence would be sought under the relevant water regulatory regime if required
- ▶ the proposal is a controlled action under the EPBC Act and requires approval under the EPBC Act from the Australian Government Minister for the Environment, and the assessment for that request for approval will be carried out under Division 5.2 of the EP&A Act and the NSW–Australian Government bilateral agreement under the EPBC Act
- ▶ consent under section 138 of the Roads Act to impact or carry out work on the Burley Griffin Way (state road) and a number of local roads where those roads are classified roads, concurrence from Transport for NSW would also be sought.

3.7 Summary of the assessment process

3.7.1 Environmental assessment requirements

Under section 5.6(1) of EP&A Act, *'When an application is made for the Minister's approval for State significant infrastructure, the Secretary is to prepare environmental assessment requirements in respect of the infrastructure'*. These identify the general requirements for the EIS, and the key issues to be assessed. The SEARs were originally issued on 19th September 2018 (application number SSI 18_9406), however these expired prior to completion of the EIS, and revised SEARs were issued on 30 April 2021 (ref. SSI-9406).

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

3.7.2 Public exhibition and submissions

The EIS is required to be placed on public exhibition for a minimum of 28 days. During the exhibition period, submissions would be invited from relevant agencies and members of the public. DPE would provide ARTC with a copy of the submissions and request a response to the issues raised in a response to submissions report. Should ARTC modify the proposal in response to the issues raised by submissions, ARTC would also prepare an amendment report. If the Planning Secretary identifies that changes are needed to address issues raised during the exhibition period, then a preferred infrastructure report would be prepared, which would describe the scope of the revised proposal. The response to submissions and any amendment report/preferred infrastructure report would be made public.

Further information on the proposed approach to consultation during the exhibition period is provided in Chapter 4: Engagement.

3.7.3 Assessment and determination

Following the exhibition period, DPE would, on behalf of the NSW Minister for Planning, review the EIS and the submissions report. Under section 5.18 of the EP&A Act, the Planning Secretary is required to prepare an assessment report which would be submitted to the NSW Minister for Planning to inform determination of the proposal. The Minister may refuse the proposal or approve it with any modifications and conditions considered appropriate. The Minister's approval and the assessment report would be published on DPE's Major Projects website following determination. Assessment and determination under the EPBC Act from the Australian Government Minister for the Environment would be advised separately.