



## SECTION 4.0

### Statutory Provisions

## 4.0 Statutory Provisions

This section identifies the relevant applicable State and Commonwealth legislation, including the relevant planning approval process, applicable to the Project.

### 4.1 New South Wales Legislation

#### 4.1.1 Environmental Planning and Assessment Act 1979

As noted in **Section 1.0**, a modification to the 2007 Project Approval is sought under Section 75W of the EP&A Act. The 2007 Project Approval was given under Part 3A of the EP&A Act as it is of a class of development listed in Schedule 1 of the State Environmental Planning Policy (SEPP) (Major Development) 2005. As the 2007 Project Approval was given under Part 3A of the EP&A Act, the Section 75W path is the appropriate statutory path for the proposed modification to enable the construction and operation of the Stage 4 Project.

However, Section 75R(1) of the EP&A Act provides that environmental planning instruments, other than SEPPs, do not apply to Major Projects under Part 3A of the Act, other than as detailed below.

##### *Permissibility*

The Newcastle Local Environmental Plan 2003 (the LEP) is relevant to the permissibility of the Project. Section 75J(3)(b) of the EP&A Act and clause 8O of the Environmental Planning & Assessment Regulation 2000 provides that the Minister cannot approve the carrying out of a project that would be wholly prohibited under an environmental planning instrument.

The KCT site is zoned Port and Industrial 4(b) under the LEP. The primary objective of this zoning is:

To accommodate port, industrial and maritime industrial and bulk storage facilities, which by their nature or scale of their operations require separation from residential areas and other sensitive land uses.

The Project is consistent with the objectives of the LEP and is permissible with development consent.

The road reserve associated with Teal Street is zoned 5(a) Special Uses under the LEP as it has been identified as an arterial road. The objectives of this zoning include:

- a. To accommodate major transport networks and facilities;
- b. To accommodate large scale facilities and services, together with ancillary activities;
- c. To accommodate large scale community establishments, together with ancillary activities;
- d. To require development to be integrated and reasonably consistent in scale and character with surrounding natural, rural or urban environments.

As shown on **Figure 3.1**, it is proposed to construct a conveyor bridge over Teal Street as part of the Project. Within the 5(a) Special Uses zone, this aspect of the Project is prohibited under the provisions of the LEP. The current provisions of the EP&A Act, and associated Regulations, preclude the Minister from approving a project that is prohibited by an environmental planning instrument. At the time of the granting of the 2007 project approval,

the relevant provisions of the EP&A Act and associated regulations did not preclude the Minister from approving a project that was prohibited by an environmental planning instrument. Legal advice has indicated that the 2007 project approval may lawfully be modified despite the prohibition in the LEP for the conveyor crossing of Teal Street as, despite subsequent changes in the law, a planning approval may be modified on the basis of the law as it stood at the time of the grant of the approval. As such, it would be available to the Minister to approve the proposed Section 75W modification to enable the construction and operation of the Project.

In addition to approval under Part 3A of the EP&A Act, the Project may also require approvals under a number of additional Acts or assessment under State Environmental Planning Policies.

Under Section 75U of the EP&A Act, if the Project is granted project approval under Part 3A of the EP&A Act, the following approvals, which may otherwise have been relevant, will not be required to carry out the Project.

**Table 4.1 - Approvals Legislation which does not apply**

Act	Approval
<i>Fisheries Management Act 1994</i> (FM Act)	Permit for works or structures within a waterway
<i>Heritage Act 1977</i> (Heritage Act)	Disturbance to an item listed on State Heritage Register or Interim Heritage Order; Excavation permit
<i>National Parks &amp; Wildlife Act 1974</i> (NP&W Act)	Preliminary research permit; consent to destroy relics
<i>Water Management Act 2000</i> (WM Act)	Water use approval, water management work approval or activity approval

If the Project is granted project approval under Part 3A of the EP&A Act, the following approvals, which will be required for the Project, must not be refused by the relevant approval authority and must be substantially consistent with the terms of the Project approval.

**Table 4.2 - Approvals Legislation to be applied consistently**

Act	Approval	Authority
<i>Protection of the Environment Operations Act 1999</i> (PoEO Act)	Environmental Protection Licence	Department of Environment and Climate Change (DECCW)
<i>Roads Act 1993</i> (Roads Act)	Permit to impact on a public road	State roads – NSW Roads and Traffic Authority (RTA) Local roads – Singleton Council

## 4.1.2 Other Legislation

### 4.1.2.1 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) is administered by DECCW and establishes the procedures for issue of licences for environmental protection including waste, air, water and noise pollution control. The owner or operator of a premises that is engaged in scheduled activities is required to hold an Environment Protection Licence (EPL) and comply at all times with the conditions of that licence.

PWCS currently holds an EPL for KCT that defines the air quality monitoring methodology and reporting requirements. Modification to this licence will not be required for the Project.

#### **4.1.2.2 Roads Act 1993**

The *Roads Act 1993* is administered by either the Roads and Traffic Authority (RTA), local Council or the Department of Lands. The RTA has jurisdiction over major roads, the local Council over minor roads and the Department of Lands over Crown Roads. Under Section 138 of Part 9, Division 3 of the Act, a person must not undertake any works that impact on a road, including connecting a road (whether public or private) to a classified road, without approval of the relevant authority.

The proposed construction of a conveyor bridge over Teal Street has the potential to impact on the road and an approval under this Act will be required from the RTA.

#### **4.1.2.3 Water Act 1912**

A licence under Part 5 of the *Water Act 1912* will be required for groundwater interception and management as part of construction activities for the project.

### **4.1.3 State Environmental Planning Policies**

#### **4.1.3.1 State Environmental Planning Policy (Major Development)**

As outlined in **Section 4.1.1**, the Major Development SEPP establishes that development for the purposes of port facilities is development to which Part 3A of the EP&A Act applies. In addition, the land on which the Stage 4 project is situated has been declared a state significant site for the purposes of the EP&A Act under Schedule 3 of the Major Projects SEPP.

The state significant site declaration for KCT lands includes a range of relevant planning provisions for development within the Newcastle Port area. In general, these provisions primarily relate to the development other than development to which Part 3A applies.

#### **4.1.3.2 State Environmental Planning Policy 33 Hazardous and Offensive Development**

SEPP No. 33 – Hazardous and Offensive Development requires the consent authority to consider whether an industrial proposal is a potentially hazardous industry or a potentially offensive industry. The existing PWCS operation is not considered as hazardous or offensive under SEPP 33. The proposal will not result in the KCT facility being classed as hazardous or offensive. A hazard assessment is not considered necessary.

#### **4.1.3.3 State Environmental Planning Policy 44 Koala Habitat Protection**

SEPP No. 44 restricts the granting of development consent for proposals on land identified as core koala habitat without preparation of a plan of management. There is minimal clearing required for this development and no off-site impacts on koala habitat (refer to **Section 6.3.4**); therefore this SEPP does not apply.

## 4.2 Commonwealth Legislation

### 4.2.1 Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is administered by the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA).

Under the EPBC Act, approval of the Commonwealth Minister for the Environment and Heritage is required for any action that may have a significant impact on matters of national environmental significance. The relevant provision of this legislation relates to potential impacts on migratory and threatened species listed in the EPBC Act, and RAMSAR listed wetlands.

Actions that are considered to have a significant impact on a matter of national environmental significance are defined under the EPBC Act as a 'controlled action'. The determination of whether an action is a 'controlled action' and requires further assessment is made through a preliminary referral process.

KCT is located adjacent to a RAMSAR wetland (Kooragang Nature Reserve) and a number of migratory and threatened species listed in the EPBC Act are known to occur in the area (refer to **Section 6.3.4**). The Stage 4 Project involves minor changes to the approved footprint, and is on previously disturbed land. Predicted off-site impacts (noise, dust and water) are also consistent with, or lower than, existing approved levels. On this basis, it is anticipated that the Stage 4 Project will not have a significant impact on the wetland or listed migratory and threatened species, and therefore will not need to be assessed as a 'controlled action' under the EPBC Act.

A Preliminary Referral will be made to the DEWHA to confirm that approval of the Commonwealth Minister for Environment is not required for the Stage 4 Project.