

2. Statutory provisions

The following section provides consideration of the relevant applicable State and Commonwealth legislation, environmental planning instruments, strategies and guidelines, including the relevant planning approval process, applicable to the project.

2.1 Commonwealth legislation

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 (formerly the Department of Environment and Water Resources). Under the EPBC Act, approval from the Commonwealth Minister for the Environment is required for any action that may have a significant impact on matters of national environmental significance. Matters of national environmental significance include, without limitation, World Heritage areas, national heritage places, wetlands of international importance (Ramsar wetlands), ecological communities listed in the EPBC Act, migratory species listed in the EPBC Act, nuclear actions and actions affecting the Commonwealth marine environment.

In January 2007, the Commonwealth and NSW governments signed a bilateral agreement to allow the assessment processes under Parts 3A, 4 and 5 of the NSW *Environmental Planning and Assessment Act* 1979 (EP&A Act) to be automatically accredited under the EPBC Act. The bilateral agreement applies to matters that are determined to be ‘controlled actions’ by the Commonwealth Government and means that a separate assessment process is not required.

A controlled action is an action that needs approval under the EPBC Act if the Commonwealth decides:

- it is likely to have a significant impact on matters of national environmental significance;
- it is likely to have a significant impact on the environment of Commonwealth land;
- it is to be undertaken on Commonwealth land and is likely to have a significant impact on the environment anywhere; or
- it is an action to be undertaken by the Commonwealth that is likely to have a significant impact on the environment anywhere.

The project will not impact upon any of the following matters of national environmental significance: World Heritage properties, Ramsar wetlands, Commonwealth marine areas and endangered ecological communities. It also does not involve any nuclear actions, nor is it likely to have a significant impact on the environment of Commonwealth land. Accordingly, no further assessment of these triggers is required.

As detailed in Sections 7.7 and 8.7, consideration has been given to whether any nationally threatened or migratory species in the vicinity of the proposed project site would be significantly affected as a result of the proposed works and whether referral to the Department of Environment, Water, Heritage and the Arts is required. For the reasons set out in Sections 7.7 and 8.7 of this environmental assessment, it was concluded that the project would not significantly impact on any migratory or threatened species and, consequently, no separate approval under the EPBC Act is required.

2.2 State legislation

2.2.1 Environmental Planning and Assessment Act 1979

Development in NSW is subject to the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The EP&A Act establishes three types of environmental planning instruments to control land use: local environmental plans, regional environmental plans and State environmental planning policies. The environmental planning instruments applicable to the project are discussed below.

Major Project

In accordance with the *State Environmental Planning Policy (SEPP) (Major Projects) 2005* (Major Projects SEPP), the Minister for Planning has formed the opinion that the project, being a development for the purposes of electricity generation as defined in clause 24(a) of Schedule 1 to the Major Projects SEPP, is appropriately classified as a “major project” to which Part 3A of the EP&A Act applies (see letter dated 15 September 2007 in **Appendix A**).

Specifically, clause 24(a) of Schedule 1 applies to projects that involve:

“Development for the purpose of a facility for the generation of electricity or heat or their co-generation (using any energy source, including gas, coal, bio-fuel, distillate and waste and hydro, wave, solar or wind power), being development that:

(a) has a capital investment value of more than \$30 million, or.....”

The Minister for Planning is the relevant approval body responsible for assessing and determining project applications under Part 3A of the EP&A Act.

In accordance with the requirements of Part 3A, a Project Application has been submitted to the Department of Planning (DoP) which outlined the proponent's proposal and a preliminary environmental assessment of the project. The DoP has consulted with relevant government agencies and the local council regarding the Project Application and has prepared integrated requirements for an Environmental Assessment (EA). These requirements were provided to the proponent by the Director-General of Planning on 31 October 2007 (attached at **Appendix A**). The proponent must now prepare and present an EA (this document), along with a draft Statement of Commitments to the DoP.

Once the EA is submitted to the DoP, the following process will apply to the assessment of the project under Part 3A:

- the EA is exhibited for public comment;
- the DoP receives and addresses submissions made during the public exhibition and provides copies to the proponent who considers and addresses the submissions in a Submission Report provided to the DoP. The proponent may modify the proposal to address concerns raised and to minimise impacts and, if so, provides a Preferred Project Report to the DoP; and
- the proposal is assessed by the DoP and a report is prepared for the project and submitted to the Minister for his decision.

Critical Infrastructure Project

As of 26 February 2008, all new power stations in NSW with a generation capacity greater than 250MW have been declared as 'critical infrastructure' under section 75C of Part 3A of the EP&A Act. This declaration applies to all project applications for power stations lodged prior to 1 January 2013, irrespective of fuel source and whether the plant provides peaking, intermediate or base load generation.

The declaration has been made in an attempt to secure the State's future energy needs by providing the power generation industry with a robust and predictable planning process regarding the development of new power generation facilities.

As the proposed power station will have a generation capacity greater than 250MW, the project proposal will be assessed by the Minister for Planning as a "critical infrastructure" project under Part 3A. Whilst there are some differences which apply to the assessment of projects declared to be critical infrastructure projects under Part 3A, the environmental assessment process is the same as that which applies to other Part 3A projects.

Application of Environmental Planning Instruments

The proposed location of the project is wholly within the area to which the *Wollongong Local Environmental Plan 1990* (Wollongong LEP) and *Illawarra Regional Environmental Plan No.1* (Illawarra REP) apply. Section 75R of the EP&A Act provides, however, that environmental planning instruments, other than State environmental planning policies (SEPPs) that specifically relate to the particular project, do not apply to critical infrastructure projects under Part 3A of the Act.

No SEPP specifically relates to this project. Consequently, the provisions of the Wollongong LEP and the Illawarra REP will not apply to the development. In deciding, however, whether or not to approve the project, the Minister for Planning may take the provisions of these instruments into account in accordance with section 75 J(3) of the EP&A Act.

In this regard, it is noted that the proposed development is consistent with the objectives and zoning of the site as “5(a) Special Uses” under the Wollongong LEP.

2.2.2 Other NSW approvals

Section 75U of the EP&A Act specifies certain approvals that are not required for an approved project under Part 3A. Consequently, if the Minister grants approval to carry out the project under section 75J(1) of the Act, the following approvals would not be required:

- an approval under Part 4 or an excavation permit under section 139 of the *Heritage Act 1977*;
- a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974* in relation to Aboriginal objects or places; and
- a water use approval under section 89, water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

Under section 75V of the EP&A Act, if the project is granted project approval under Part 3A of the EP&A Act, certain approvals, if necessary for carrying out the approved project, cannot be refused by the relevant approval authority and such approvals must be substantially consistent with the terms of the project approval.

These approvals are outlined in **Table 2-1**.

■ **Table 2-1 - Approvals Legislation to be applied**

Act	Comments	Approval
<i>Protection of the Environment Operations Act 1997 (POEO Act)</i>	The POEO Act is administered by the Department of Environment and Climate Change (DECC). The Act relates to pollution and waste disposal in NSW and provides for the licensing of certain types of development.	It is anticipated that the proposed project would require licensing under the provisions of the POEO Act.
<i>Roads Act 1993</i>	Access to the project site currently exists off the Princes Highway via Yallah Bay Road. If this access changes as a result of the project, an application would be made to the Roads and Traffic Authority (RTA) and Wollongong City Council. Heavy equipment and plant components (including turbines) will be transported to the site via road from Port Kembla port. The RTA will be consulted regarding traffic management for this activity.	A licence under section 138 of the Roads Act is required in order to undertake works within a road reserve.
<i>Pipelines Act 1967</i>	The <i>Pipelines Act 1967</i> is administered by the Department of Water and Energy (DWE). The Act was enacted to meet the need for efficient and economical transportation of petroleum and natural gas products over long distances. The Act is flexible enough to provide for the construction and operation of pipelines to carry any substance, whether gaseous, liquid or solid, suitable for transportation by pipe, but does not automatically extend to all types of pipelines.	An application for a pipeline licence will need to be made to DWE under section 12 of the Pipelines Act for the fitting line.

The environmental assessment of the Tallawarra Stage B power station has been undertaken in accordance with the relevant guidelines for assessment (refer to **Chapter 7** and **Chapter 8**).