

5 Assessment process

This chapter describes relevant statutory requirements and explains the steps in the assessment and approval process.

5.1 Statutory context

5.1.1 Environmental Planning and Assessment Act 1979

The Minister for Planning has declared under Section 75C of the *Environmental Planning and Assessment Act 1979* (EP&A Act), by order dated 5 December 2006 published in the NSW Government Gazette (No. 175), that development for the purposes of upgrading segments of 'Pacific Highway is a project to which Part 3A of the EP&A Act applies (the declared project). One of the segments is the Wells Crossing to Iluka Road upgrade. As a part of the Wells Crossing to Iluka Road segment, the Glenugie upgrade forms part of the declared project and is therefore a project to which Part 3A applies. The Minister has also declared by Order dated 8 December 2006 published in the Gazette (No. 175) that the same development is a critical infrastructure project under Section 75C of the EP&A Act. The Glenugie upgrade is also critical infrastructure, as part of the Wells Crossing to Iluka upgrade.

The project requires the Minister's approval. Copies of the Minister's Orders are included in Appendix B.

5.1.2 Other NSW legislation

In addition to the EP&A Act, other NSW legislation contains requirements that may be relevant to the project. The application of these is limited by the provisions in Part 3A of the EP&A Act, however, requirements which remain potentially relevant include:

- Environmental protection licences under the *Protection of the Environment Operations Act 1997* for road construction and/or for the operation of ancillary facilities.
- Approvals under the *Water Act 1912* for access to ground or surface water during construction.

The RTA would continue liaising with relevant agencies to identify and satisfy any further requirements under NSW legislation prior to the commencement of works. Provisions of other legislation that would have applied to the project but for the application of Part 3A have been reviewed and considered where relevant in Chapters 7, 8 and 10.

5.1.3 Commonwealth Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a referral is required to the Australian Government for proposed 'actions' that have the potential to significantly impact on matters of national

environmental significance, or the environment of Commonwealth land.

Matters of national environmental significance of potential relevance to the project include nationally threatened species and ecological communities.

Based on investigations to date, RTA submitted a referral to the Australian Government Department of the Environment, Water, Heritage and the Arts (DEWHA) on 15 July 2009 to determine whether or not the project constitutes a controlled action. DEWHA has indicated that the project is likely to be a controlled action due to the impact on *Eucalyptus tetrapleura*. If the project is determined to be a controlled action, the approval of the Australian Government Minister for the Environment, Heritage and Arts is required in addition to the approval of the NSW Minister for Planning.

5.2 Environmental planning instruments

5.2.1 State environmental planning policies (SEPPs)

SEPPs only apply to critical infrastructure projects where the relevant SEPP expressly provides that it applies to the particular project. To date there are no SEPPs that expressly apply to the Pacific Highway Glenugie upgrade project.

5.2.2 Other environmental planning instruments

Other environmental planning instruments (ie local environmental plans) do not apply in respect of an approved Part 3A project.

The Minister for Planning may take into account the provisions of any environmental planning instrument when deciding to whether or not to approve a project under Part 3A.

The provisions of the Ulmarra Local Environmental Plan have been considered in Section 8.2.

5.3 Planning and approval process

5.3.1 Assessment and approval under Part 3A of the EP&A Act

The steps in the assessment and approval process under Part 3A of the EP&A Act are summarised below and shown in **Figure 5-1**. Further information on the assessment process is available on the Department of Planning website (www.planning.nsw.gov.au).

Step 1 – lodgement of major project application (EP&A Act Section 75E)

The RTA lodged a major project application with the Department of Planning on 7 April 2009.

Step 2 – environmental assessment requirements (EP&A Act Section 75F)

The Director General, Department of Planning issued environmental assessment requirements (DGRs) for the project on 16 April 2009, following a

planning focus meeting on 9 April 2009. The DGRs, which are included at Appendix A, were prepared following consultation with relevant government agencies.

Step 3 – preparation and submission of environmental assessment (EP&A Act Section 75H)

This environmental assessment has been prepared in accordance with the DGRs and submitted to the Director-General for acceptance.

Step 4 – public exhibition (EP&A Act Section 75H)

Once the Director-General concludes that the environmental assessment adequately addresses the DGRs, it is placed on exhibition for a period of not less than 30 days. During this period, any person (including a public authority) may make written submissions to the Director-General on the project.

Step 5 – consideration of public submissions (EP&A Act Section 75H)

Following public exhibition, the Director-General will consider the submissions received and provide copies of submissions to RTA or a report on the issues raised in the submissions. The Director-General may require RTA to:

- Submit a response to the issues raised in the submissions.
- Prepare a preferred project report that outlines any changes to the project to minimise its environmental impact.
- Prepare a revised statement of commitments.

Step 6 – preparation of Director-General's report (EP&A Act Section 75I)

The Director-General of the Department of Planning will prepare a report on the project. The purpose of the report is to assist the Minister for Planning in deciding whether to grant approval to carry out the project.

Step 7 – decision (EP&A Act Section 75J)

The Minister for Planning will consider any advice from the Minister for Roads and the Director-General's report. The Minister for Planning will then decide whether or not to approve the project and the conditions to be attached to any approval.

■ **Figure 5-1 Steps in the Part 3A assessment and approval process**

