



Transport
Roads & Maritime
Services

ENVIRONMENTAL ASSESSMENT AND DECISION-MAKING BY NSW ROADS AND MARITIME SERVICES

**STRATEGIC ASSESSMENT – *UNDER PART 10, ENVIRONMENT
PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999***

Supplementary Report - FINAL

MAY 2015

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Roads and Maritime Services

Environmental assessment and decision-making by NSW Roads and Maritime Services

Strategic Assessment – *under Part 10, Environment Protection and
Biodiversity Conservation Act 1999*

Supplementary Report – FINAL

May 2015

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1 Introduction

On 14 August 2014 the Australian Government Department of the Environment and the NSW Roads and Maritime Services (Roads and Maritime) agreed to undertake a Strategic Assessment of road and traffic management works assessed under Part 5 of the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act). The purpose of the Strategic Assessment was to consider the impacts of Roads and Maritime processes and commitments with respect to environmental assessment and decision-making for activities subject to Part 5 of the EP&A Act (the Program) on Specified Protected Matters.

For the purposes of the Strategic Assessment the Specified Protected Matters are:

- Nationally listed threatened species and ecological communities protected by Sections 18 and 18A of the EPBC Act
- Listed migratory species protected by Sections 20 and 20A of the EPBC Act.

Currently, Roads and Maritime integrates the assessment and consideration of potential impacts to the Specified Protected Matters as part of the environmental assessment framework for projects that are subject to Part 5 of the EP&A Act.

The aim of the Strategic Assessment is to improve efficiencies in decision-making by avoiding duplication and ensure standards in environmental assessment and protection continue to be maintained.

The Strategic Assessment provides the basis for the Minister for the Environment to consider endorsing the Program. If endorsed, the Minister may then approve the taking of actions in accordance with the Program. For actions that fall within the scope of this approval, Roads and Maritime will no longer need to seek separate approval under the EPBC Act.

The Program

The Program comprises Roads and Maritime processes and commitments with respect to environmental assessment and decision-making for activities subject to Part 5 of the EP&A Act. These are summarised and documented in the Program Report. The Program is given practical effects by Roads and Maritime through the application of a range of policies and procedural guidelines.

The class of actions covered by the Program includes all road and traffic management works assessed and determined by Roads and Maritime under Part 5 of the EP&A Act.

Current status of Strategic Assessment

The Roads and Maritime Strategic Assessment comprises the following:

- **The Program Report**, which describes the Program pursuant to Section 146 of the EPBC Act, including outlining Roads and Maritime commitments and undertakings to ensure adequate protection of the Specified Protected Matters during Program implementation.
- **The Strategic Assessment Report**, which provides a comprehensive assessment of the impact of the Program on the Specified Protected Matters and the extent to which the Program meets the objects of the EPBC Act. The Strategic Assessment Report was developed in accordance with the Terms of Reference agreed between the Department of the Environment and Roads and Maritime. The Report will assist the Minister for the

Environment to determine whether to: endorse the Program under Part 10 of the EPBC Act; and approve a class of actions associated with the Program.

- **The Supplementary Report** (this document), which considers and provides responses to public submissions, including identification of any changes to the Program and/or Strategic Assessment Report resulting from consultation. The Supplementary Report has been prepared in accordance with the agreement established under Section 146 of the EPBC Act.

Public consultation

Public consultation on the draft Program and Strategic Assessment Reports is a requirement of the Strategic Assessment process under the EPBC Act. There is a minimum 28 day consultation period.

The draft Program and Strategic Assessment Reports were available for public comment from 18 December 2014 until 13 February 2015. Public notice of the consultation period was provided in the Sydney Morning Herald, Daily Telegraph and the Australian newspapers on 18 December 2014. A reminder notice was placed in the same newspapers on 6 February 2015.

Electronic copies of the draft Program and Strategic Assessment Reports were available on the Roads and Maritime website. Hard-copies were also available for review during business hours at the Roads and Maritime head office public reception area, Department of Planning and Environment information centre, and Nature Conservation Council of NSW. The public notices also provided an email address to enable hard copies of the documents to be requested.

In addition to the public display and notification, an invitation to comment and a copy of the draft Program and Strategic Assessment Reports was sent directly to the following stakeholders:

- Nature Conservation Council
- NSW Environmental Defenders Office
- Local Government NSW
- Office of Environment and Heritage
- Department of Primary Industries
- Department of Planning and Environment.

Submissions

Six written submissions were received by the close of the consultation period. No late submissions were received and no extensions of time were requested.

Submissions were provided by the individuals and organisations listed below. Three submissions were from non-government organisations, two from NSW Government agencies, and one was from private individuals. No submission authors requested that their details remain confidential and not be published.

Roads and Maritime provided acknowledgment of the receipt of submissions to all submission authors.

Table 1.1 Submissions received

Sub. No	Date received	Author	Organisation
1	5 February 2015	T Daly	Department of Primary Industries
2	11 February 2015	D Michel and J McCain	N/A
3	12 February 2015	W Olling	Cumberland Land Conservancy Inc
4	12 February 2015	T Bailey	Office of Environment and Heritage
5	13 February 2015	N Sahukar	NSW Environmental Defenders Office
6	13 February 2015	L Vass	Friends of the Koala Inc

2 Response to key issues

The key issues identified in the written submissions are summarised and responded to in Table 2.1 below. Actions undertaken to revise or amend the Strategic Assessment documents in response to the submissions are also identified.

Given the limited number of submissions received, each submission is considered separately (rather than on the basis of themes or issues common across a range of submissions).

Table 2.1 Response to key issues raised in submissions

Issues and discussion		Actions
Submission 1 – NSW Department of Primary Industries		
Issue 1	<p>General comment</p> <p>The submission notes that the strategic assessment focuses on nationally listed biodiversity matters and does not affect existing NSW legislative requirements with respect to state-listed biodiversity. The submission states that no objection is raised to the potential Federal Government approval of the Strategic Assessment.</p> <p><u>Response</u> The submission is noted and no action or proposed amendments to the Strategic Assessment are proposed.</p>	<ul style="list-style-type: none"> • Nil
Submission 2 – D Michel and J McCain		
Issue 1	<p>Historical examples of road projects</p> <p>The submission provides examples and commentary on a range of prior road projects, raising concerns with approaches to project planning, environmental assessment, community participation and decision-making.</p> <p><u>Response</u></p>	<ul style="list-style-type: none"> • Nil

Issues and discussion	Actions
<p>The issues and concerns raised by the submission with respect to previous Roads and Maritime projects are noted. Over the last several years Roads and Maritime has developed a number of environmental policies and procedures aimed at ensuring projects are subject to comprehensive assessment, community consultation and to improve overall environmental performance.</p> <p>No actions or proposed amendments to the Strategic Assessment are proposed in response to the matters raised.</p>	
<p>Issue 2 Improved decision-making</p> <p>The submission queries whether removing duplication will improve EIA or decision-making.</p> <p><u>Response</u> The aim of the Strategic Assessment process is to both improve efficiencies in decision-making by avoiding duplication and to ensure existing standards for environmental assessment and protection are maintained. This is consistent with arrangements and commitments made under existing bilateral agreements between the Australian and NSW Governments.</p>	<ul style="list-style-type: none"> • Nil
<p>Issue 3 Commitments</p> <p>The submission observes that the 14 commitments in the Strategic Assessment may or may not be honoured.</p> <p><u>Response</u> The commitments outlined in the Strategic Assessment documents provide the core elements of the Program proposed by Roads and Maritime. If the Strategic Assessment receives approval, Roads and Maritime will be obliged to ensure these commitments are fulfilled with respect to activities being assessed under Part 5 of the EP&A Act. If Roads and Maritime subsequently proposes to undertake an activity that may not be capable of meeting these commitments then it will not be subject to the Strategic Assessment approval, and would require referral to, and approval of, the Federal Minister for the Environment.</p> <p>The evaluation and review mechanisms outlined in the exhibited Strategic Assessment Report provide on-going opportunities to assess delivery of the commitments. In addition, Roads and Maritime has further reviewed and provided additional detail on appropriate assurance mechanisms for the Strategic Assessment to ensure compliance. These are detailed in Section 7 of the Strategic Assessment Report and Section 4 of the Program Report.</p>	<ul style="list-style-type: none"> • Section 7 of the Strategic Assessment Report and Section 4 of the Program Report have been revised to provide additional information with respect to assurance mechanisms.

Issues and discussion		Actions
Issue 4	<p>Strategic context</p> <p>The submission raise concerns that the strategic level priorities informing Roads and Maritime projects are related solely to investment and infrastructure delivery, and that whether environment protection can be achieved by a self-regulating body is unclear.</p> <p><u>Response</u> As stated in the Strategic Assessment documents, the strategic context for Roads and Maritime project is informed by priorities laid out by the NSW Government (for example, via the State Infrastructure Strategy or NSW Long Term Transport Master Plan). Delivery of these priorities is always subject to compliance with relevant environment protection requirements and statutory obligations.</p> <p>Roads and Maritime does operate as a determining authority for activities it intends to undertake. This occurs in accordance with the provisions of Part 5 of the EP&A Act, which also apply to other public authorities. As outlined in the Strategic Assessment, Roads and Maritime has developed extensive procedures to ensure it comprehensively fulfils the environmental assessment obligations of Part 5, supported by clear processes for community consultation and engagement during project design and to inform final decision-making. These procedures are publicly available via the Roads and Maritime website at: http://www.rms.nsw.gov.au/about/environment/planning-assessment/index.html</p>	<ul style="list-style-type: none"> • Nil
Issue 5	<p>Area of operations and duration</p> <p>The submission states concerns at the environmental outcomes after completion of Roads and Maritime projects, such as management of roadside areas, bushland and private tollway corridors. On-going remediation and maintenance is brief.</p> <p><u>Response</u> Roads and Maritime projects incorporate a range of requirements for rehabilitation and environmental management, as part of the approach to ensuring impacts are minimised and mitigated. Roads and Maritime also commits extensive resources towards on-going management of the road network and associated assets, including roadside vegetation.</p>	<ul style="list-style-type: none"> • Nil
Issue 6	<p>Audits, monitoring and reporting</p> <p>The submission states that the “key legislative elements” identified in Figure 1-1 go no further than auditing and monitoring, and raise concerns that there is no action to address impacts identified by such monitoring.</p> <p><u>Response</u> Figure 1-1 of the draft Program Report provides only a broad summary of legislative requirements and Roads and Maritime’s</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion	Actions	
	<p>approach to environmental assessment. As stated in Section 3 of the Strategic Assessment Report, Roads and Maritime has systems in place for: undertaking environmental inspections and reporting; incident management; and project monitoring. In particular, it is noted that the role of monitoring is to ensure that results are used to inform and improvement environmental management for a project, consistent with the principle of adaptive management.</p>	
<p>Issue 7</p>	<p>Description of actions</p> <p>The submission queries who is responsible for identifying “minimal impact activities” and “maritime activities” and what oversight and action applies to these.</p> <p><u>Response</u> As identified in Section 1.7.1 of the Program Report, minimal impact activities are typically identified as exempt development in an environmental planning instrument while maritime activities involve projects such as ferry wharf development. The Report is also clear that these are not within scope of the Program being assessed by the Strategic Assessment.</p>	<ul style="list-style-type: none"> • Nil
<p>Issue 8</p>	<p>Program outcomes</p> <p>The submission queries whether avoiding impacts to the Specified Protected Matters was considered, or just the avoidance of unacceptable or unsustainable impacts.</p> <p><u>Response</u> The Strategic Assessment documents clearly indicate that avoiding impacts to the Specified Protected Matters is the highest priority. This is identified in Section 3.2 of the Strategic Assessment Report, Section 2.1.2 of the Program Report, and Program Commitment Two.</p>	<ul style="list-style-type: none"> • Nil
<p>Issue 9</p>	<p>Describing impacts and process to review assessments</p> <p>The submission expresses concern regarding the lack of secondary review of project impacts and application of safeguards using the SMARTA approach.</p> <p><u>Response</u> As part of the Strategic Assessment, Roads and Maritime has committed to implementing best practice approaches to EIA that provide full consideration of all matters relevant to the proposal, potential impacts and application of appropriate safeguards. This is detailed in Section 3.3 of the Strategic Assessment Report and Program Commitment Four.</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Issue 10	<p>Unacceptable impacts</p> <p>The submission queries the basis for determining an unacceptable impact and decision-making responsibilities.</p> <p><u>Response</u> The criteria for determining whether an unacceptable impact will occur are detailed in Section 5.6 of the Strategic Assessment Report. They include: whether there is a real risk of the activity threatening long-term survival of specific protected matters; consistency with relevant threat abatement and recovery plans and other conservation guidance; and whether suitable offsets can be secured. Roads and Maritime has updated its decision-making processes to ensure these matters are specifically taken into account.</p>	<ul style="list-style-type: none"> • Nil
Issue 11	<p>Review of Program</p> <p>The submission also queries the arrangements for periodic review and program modification.</p> <p><u>Response</u> Arrangements for ongoing review and reporting in relation to Program commitments are set out in Section 7 of the Strategic Assessment Report and Section 4 of the Program Report. As noted in response to Issue 3 above, additional information has been included in the Strategic Assessment with respect to assurance mechanisms.</p>	<ul style="list-style-type: none"> • Nil (refer to Issue 3 above)
Issue 12	<p>Second level of approval</p> <p>The submission concludes that a second level of approval is of benefit when dealing with sensitive environmental matters.</p> <p><u>Response</u> As noted above, the Australian and NSW Governments are committed to working together to avoid unwarranted duplication in environmental assessment and decision-making, and the maintenance of environmental protection standards. The Program which is subject to the current Strategic Assessment includes a range of commitments to ensure these outcomes are achieved with respect to activities undertaken by Roads and Maritime that are subject to assessment under Part 5 of the EP&A Act.</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Submission 3 – Cumberland Land Conservancy		
Issue 1	<p>Decision-making</p> <p>The submission raises concern that decisions on habitat retention are made by the entity building the infrastructure, and that there will be a reduced level of scrutiny compared to existing requirements.</p> <p><u>Response</u></p> <p>Roads and Maritime, like all other NSW public authorities, assesses the environmental impacts of activities in accordance with the requirements of Part 5 of the EP&A Act and is a determining authority for activities it intends to undertake.</p> <p>As outlined in the Strategic Assessment, Roads and Maritime has developed extensive procedures to ensure it comprehensively fulfils the environmental assessment obligations of Part 5, supported by clear processes for community consultation and engagement during project design and to inform final decision-making. These procedures are publicly available via the Roads and Maritime website at: http://www.rms.nsw.gov.au/about/environment/planning-assessment/index.html</p>	<ul style="list-style-type: none"> • Nil
Issue 2	<p>Offset arrangements</p> <p>Roads and Maritime should consider offsets for biodiversity losses, and opportunities to work with community organisations to conserve flora and fauna habitat.</p> <p><u>Response</u></p> <p>The Strategic Assessment contains clear commitments from Roads and Maritime to avoid biodiversity impacts as the highest priority and to provide offsets for residual unavoidable significant impacts in accordance with an accepted, scientifically based method. As part of its support for community engagement in project planning, opportunities to work with community organisations to conserve flora and fauna habitat will continue to be explored by Roads and Maritime.</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Submission 4 – NSW Office of Environment and Heritage		
Issue 1	<p>Other matters of national environmental significance</p> <p>The submission suggests that Roads and Maritime may wish to clarify the assessment and approval process for other MNES that are not subject to the Strategic Assessment.</p> <p><u>Response</u> The Strategic Assessment only applies to the Specified Protected Matters; namely nationally listed threatened species, ecological communities and migratory species. If a Roads and Maritime activity will impact other MNES, then the existing requirements to refer and assess the proposal in accordance with the EPBC Act will remain. Section 1 has been amended to clarify this.</p>	<ul style="list-style-type: none"> Section 1 of the Strategic Assessment Report has been revised to include clarifying text.
Issue 2	<p>Consistency in applying the “avoid, minimise, mitigate, offset” hierarchy</p> <p>The submission notes some inconsistencies in application of the hierarchy and offset arrangements between the Strategic Assessment Report and Program Report. These should be consistent and recognise requirements of the NSW bilateral agreement.</p> <p><u>Response</u> The documents have been reviewed, including consideration of the NSW bilateral agreement applying to environmental assessment. No revisions to the Strategic Assessment documents are proposed. However, as identified in the Strategic Assessment Report, Roads and Maritime is updating a range of policies and procedures to support implementation of the hierarchy and delivery of appropriate offsets.</p>	<ul style="list-style-type: none"> No changes required to the Strategic Assessment documents.
Issue 3	<p>Offset policy</p> <p>The submission requests an opportunity to work with Roads and Maritime to develop a consistent set of offsetting principles and alignment of practices.</p> <p><u>Response</u> Roads and Maritime continues to work with OEH and other agencies to implement common approaches to offsetting. As noted above (Issue 2), Roads and Maritime is also updating its guidelines and procedures to support consistency in offsetting</p>	<ul style="list-style-type: none"> Nil

Issues and discussion		Actions
	via the use of agreed methodologies. Further detail is provided in Section 4 of this document.	
Submission 5 – NSW Environmental Defenders Office		
Issue 1	<p>Positive elements</p> <p>The submission welcomes the approach to: ESD; best practice environmental management; application of the “avoid, minimise, mitigate, offset” hierarchy; exhibition of some Part 5 activities; and the level of transparency and explanation in the reports.</p> <p><u>Response</u> The submission is noted.</p>	<ul style="list-style-type: none"> • Nil
Issue 2	<p>Oversight</p> <p>The submission identifies concern with the lack of arms-length oversight of Roads and Maritime environmental assessments or decision-making. This is relevant to both processes and decisions and reviews of the Program</p> <p><u>Response</u> As discussed above, the Australian and NSW Governments are committed to working together to avoid unwarranted duplication in environmental assessment and decision-making, and the maintenance of environmental protection standards. The Program which is subject to the current Strategic Assessment includes a range of commitments to ensure these outcomes are achieved with respect to activities undertaken by Roads and Maritime that are subject to assessment under Part 5 of the EP&A Act.</p> <p>In addition, as outlined in the Strategic Assessment, Roads and Maritime has developed extensive procedures to ensure it comprehensively fulfils the environmental assessment obligations of Part 5, including a clear priority on avoiding impacts to nationally listed biodiversity and to offsetting unavoidable residual impacts. This is supported by processes for community consultation and engagement during project design and to inform final decision-making. These procedures and processes are publicly available via the Roads and Maritime website at: http://www.rms.nsw.gov.au/about/environment/planning-assessment/index.html</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Issue 3	<p>Rigour</p> <p>The submission queries whether REFs are rigorous enough to replace federal assessment, including consideration of significant impacts.</p> <p><u>Response</u></p> <p>Reviews of Environmental Factors (REFs) provide a mechanism for Roads and Maritime to ensure that the full range of potential environmental impacts associated with an activity are documented, assessed and evaluated, prior to making a decision on whether to proceed. This ensures Roads and Maritime fulfils the environmental assessment obligations of Part 5, specifically requirements under Section 111 of the EP&A Act to “examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity” and Section 112 in making decisions on the likely significance of any environmental impacts. It is appropriate that the REF also include consideration of impacts on the Specified Protected Matters, and that will include consideration of the significance of such impacts in accordance with federal guidelines and policies.</p>	<ul style="list-style-type: none"> • Nil
Issue 4	<p>Consultation</p> <p>The submission notes that the EP&A Act does not require public consultation prior to decision-making. It is argued that all Roads and Maritime Part 5 activities (or all activities affecting threatened species) should require public consultation.</p> <p><u>Response</u></p> <p>The Strategic Assessment commits to public exhibition of REFs for activities that are assessed as likely to have a significant impact on nationally listed threatened species, ecological communities and migratory species. This is considered appropriate and meets existing EPBC Act requirements for controlled actions.</p> <p>For activities not having a significant impact on nationally listed biodiversity, Roads and Maritime may still determine on a case-by-case basis to publicly notify the REF for comment. This process is outlined in the environmental assessment procedures developed by Roads and Maritime and publicly available via the Roads and Maritime website at: http://www.rms.nsw.gov.au/about/environment/planning-assessment/index.html</p>	<ul style="list-style-type: none"> • Nil
Issue 5	<p>Enforceability</p> <p>The submission is concerned at the lack of enforceability of the strategic assessment commitments, compared with EPBC Act protections.</p>	<ul style="list-style-type: none"> • Section 7 of the Strategic Assessment Report has

Issues and discussion		Actions
	<p><u>Response</u></p> <p>Noted. The commitments outlined in the Strategic Assessment documents provide the core elements of the Program proposed by Roads and Maritime. If the Strategic Assessment receives approval, Roads and Maritime will be obliged to ensure these commitments are fulfilled with respect to activities being assessed under Part 5 of the EP&A Act. If Roads and Maritime subsequently proposes to undertake an activity that may not be capable of meeting these commitments then it will not be subject to the Strategic Assessment approval, and will require referral to, and approval of, the Federal Minister for the Environment.</p> <p>The evaluation and review mechanisms outlined in the exhibited Strategic Assessment Report provide on-going opportunities to assess delivery of the commitments. In addition, Roads and Maritime has further reviewed and provided additional detail on appropriate assurance mechanisms for the Strategic Assessment.</p>	<p>been revised to provide additional information with respect to assurance mechanisms</p>
Issue 6	<p>Equivalence</p> <p>The submission queries how the strategic assessment preserves legal rights under the EPBC Act for community consultation; public access to court oversight and enforcement, and offences such as providing false and misleading information.</p> <p><u>Response</u></p> <p>As discussed above (Issue 4) the Strategic Assessment commits to community consultation on activities likely to have a significant impact on the Specified Protected Matters, with public display for a minimum of thirty days. This is consistent with existing EPBC Act requirements for controlled actions.</p> <p>The Strategic Assessment does not affect the operation of other parts of the EPBC Act regarding avenues for legal review or enforcement of offences.</p>	<ul style="list-style-type: none"> • Nil
Issue 7	<p>Offsets</p> <p>It is not clear that the Roads and Maritime Guideline for Biodiversity Offsets complies with the EPBC Offsets Policy.</p> <p><u>Response</u></p> <p>The Roads and Maritime Guideline for Biodiversity Offsets is being reviewed and updated to ensure the commitments to offset significant unavoidable impacts on the Specified Protected Matters are clear. The revisions have also taken into account the provisions of the NSW bilateral agreement for environmental assessment, which acknowledges the application of</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
	appropriate biodiversity offset methods. Further discussion of this matter is provided in Section 4 of this report.	
Issue 8	<p>Critical habitat</p> <p>It is not clear how the Strategic Assessment will ensure Part 5 activities do not impact habitat critical to the survival of the Specified Protected Matters.</p> <p><u>Response</u></p> <p>As stated in Program Commitments Two and Four, the Strategic Assessment commits to avoid impacts as the highest priority and to implementing a comprehensive approach to the assessment of biodiversity impacts. Roads and Maritime procedures have been reviewed and revised to support these outcomes, and to ensure that suitable offsets are provided where residual significant and unavoidable impacts are likely to occur.</p>	<ul style="list-style-type: none"> • Nil
Issue 9	<p>Significant impacts</p> <p>The submission queries whether there are examples or statistics available on when Part 5 activities have: not proceeded due to unacceptable impacts; been found to be significant enough to warrant an EIS; and required concurrence from the Office of Environment and Heritage (OEH).</p> <p><u>Response</u></p> <p>This information request is considered outside the scope of the Strategic Assessment. However, as discussed in the response to Issue 1 in Submission No.2, Roads and Maritime has worked over several years to continuously improve its environmental performance, including focusing on avoiding impacts as the first priority.</p> <p>Roads and Maritime activities that are considered to be of significant environmental impact under Part 5 of the EP&A Act are automatically dealt with under the State Significant Infrastructure provisions of the Act, and details can be found on the Department of Planning and Environment development register.</p> <p>Similarly, activities that are likely to have a significant impact on state listed threatened biodiversity require the preparation of species impact statement (SIS) and OEH concurrence before they can proceed. This process does not provide an approval for nationally listed biodiversity matters.</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Issue 10	<p>Other MNES</p> <p>The submission queries how Part 5 projects affecting other MNES will be dealt with.</p> <p><u>Response</u></p> <p>The Strategic Assessment only applies to nationally listed threatened species, ecological communities and migratory species. Any activity that may impact on other MNES will be subject to relevant requirements of the EPBC Act and any applicable bilateral agreements. Clarifying text has been included in Section of the Strategic Assessment Report.</p>	<ul style="list-style-type: none"> Section 1 of the Strategic Assessment Report has been revised to include clarifying text.
Issue 11	<p>Enforcement</p> <p>The submission queries how the strategic assessment will affect the Federal approach or ability to monitor and enforce the EPBC Act, including potential breaches. It also seeks information on how many instances of enforcement action have been taken in the last 10 years.</p> <p><u>Response</u></p> <p>The Strategic Assessment does not affect opportunities for monitoring or enforcement available under the EPBC Act. The Strategic Assessment details arrangements with respect to project monitoring, inspections, audits, incident management, and adaptive management.</p> <p>The request for information on previous enforcement actions is considered outside the scope of the Strategic Assessment. Information on compliance and enforcement actions taken under the EPBC Act is available on the Federal Department of Environment web-site at: http://www.environment.gov.au/epbc/compliance-and-enforcement</p>	<ul style="list-style-type: none"> Nil
Issue 12	<p>Audit recommendations</p> <p>The submission refers to the NSW Audit Office 2002 review of Roads and Maritime, and whether the recommendations arising have been addressed.</p> <p><u>Response</u></p> <p>The outcomes of the review and a discussion on the recommendations are beyond the scope of this Supplementary Report. As noted in the Strategic Assessment, Roads and Maritime applies a comprehensive infrastructure lifecycle management approach to support timely and efficient delivery of road projects, taking account of environmental risks through all stages of a</p>	<ul style="list-style-type: none"> Nil

Issues and discussion		Actions
	project.	
Issue 13	<p>Parallel process</p> <p>The submission queries the relationship between the Strategic Assessment and the NSW bilateral agreement.</p> <p><u>Response</u></p> <p>The Strategic Assessment, if approved, will provide a specific agreement applying to Roads and Maritime Part 5 activities. The NSW bilateral agreement regarding environmental assessment will not be applicable in so far as it applies to Roads and Maritime projects being assessed under Part 5 of the EP&A Act, and with respect to nationally listed biodiversity matters.</p>	<ul style="list-style-type: none"> • Nil
Issue 14	<p>General comments</p> <p>The submission recommends a range of steps to strengthen the rigour and operation of the EPBC Act, arising from the previous Hawke review.</p> <p><u>Response</u></p> <p>These matters are beyond the scope of the Strategic Assessment as they relate to the overall operation of the EPBC Act.</p>	<ul style="list-style-type: none"> • Nil
Submission 6 – Friends of the Koala Inc		
Issue 1	<p>General comments</p> <p>The submission notes the organisation’s active role in working to achieve protection of the koala under the EPBC Act.</p> <p><u>Response</u></p> <p>The submission is noted.</p>	<ul style="list-style-type: none"> • Nil

Issues and discussion		Actions
Issue 2	<p>Referral of environmental powers</p> <p>The organisation opposes the transfer of any environmental powers under EPBC Act to state governments and agencies, including Roads and Maritime.</p> <p><u>Response</u></p> <p>The submission is noted.</p>	<ul style="list-style-type: none"> • Nil
Issue 3	<p>Support EDO comments</p> <p>The submission states support for matters raised in the EDO submission, including lack of arms-length oversight, rigour, statutory consultation and enforceability.</p> <p><u>Response</u></p> <p>The comments are noted. Further detailed discussion is provided in the response to issues raised in Submission 5.</p>	<ul style="list-style-type: none"> • Nil (refer to responses to Submission 5)

3 Outcomes of consultation

As discussed in Section 2 above, stakeholder submissions identified a range of issues during the consultation process. All issues have been considered and responses identified.

The majority of issues raised were not considered to warrant revisions or updating of the Strategic Assessment documents. On balance, the matters raised were either adequately addressed by the Strategic Assessment and the commitments provided, or were beyond the scope of this process.

The following changes to the Strategic Assessment have been made, both after considering stakeholder submissions and following review of the Program commitments and updating of relevant Roads and Maritime procedures and guidelines:

- Section 1 of the Strategic Assessment Report has been revised to include clarifying text regarding other matters of national environmental significance.
- Section 7 of the Strategic Assessment Report and Section 4 of the Program Report have been revised to provide additional information with respect to assurance mechanisms. That includes arrangements with respect to annual reporting, compliance and program reviews.

Revisions arising from other relevant matters are discussed below (Section 4). These take account of new information and policy developments that have occurred in the period during and after public exhibition of the draft Strategic Assessment documents.

4 Related issues

As discussed above, updated information and policy considerations relevant to the Strategic Assessment have also been considered in finalising the Strategic Assessment Report and Program Report. These are discussed as follows.

Offset method

Under Program Commitment 2, offsets are to be provided where residual unavoidable impacts occur, with the offset to be determined in accordance with a method identified in a Bilateral Agreement or otherwise endorsed by the Federal Minister for the Environment.

A revised NSW bilateral agreement regarding environmental assessment came into effect in February 2015. Under clause 7.2 of the agreement offsets for actions that will have a residual significant impact on nationally listed threatened species, ecological communities and migratory species will be based on either:

1. the NSW Biodiversity Offsets Policy and accompanying Framework for Biodiversity Assessment, or
2. the Biobanking assessment methodology established under the Threatened Species Conservation Act 1995 or Fisheries NSW Policy and Guidelines for Fish Habitat Conservation and Management.

In accordance with Program Commitment 2, Roads and Maritime intends to provide offsets that are calculated using the methods described above. No changes are proposed or necessary to the Strategic Assessment to give effect to this commitment. Roads and Maritime will implement this commitment via updated internal guidelines and procedures.

Relationship to Western Sydney Growth Centres Strategic Assessment

The Western Sydney Growth Centres Strategic Assessment was endorsed by the Federal Environment Minister in December 2011. The Assessment relates to the undertaking of a class of actions associated with the development of the Growth Centres.

To support delivery of the Western Sydney Growth Centres Strategic Assessment, and to ensure there is no duplication or confusion, the description of actions subject to the Roads and Maritime Strategic Assessment has been amended to exclude any Roads and Maritime Part 5 activities within the Growth Centres.

Impact profiles

Appendix F2 of the Strategic Assessment Report provides impact profiles (including risk assessments) for each of the grouped plant species, animal species and ecological communities that were used to support assessment of the Program.

These have been revised to address a range of technical comments provided by the Federal Department of the Environment.

In addition, a final review of current EPBC Act listings for threatened species, ecological communities and migratory species has been undertaken to ensure the Strategic Assessment has taken into account all current listings. That review identified that additional listings and listing

reviews had occurred after the exhibition of the draft Strategic Assessment as set out below. The Species Impact Profiles included in the Strategic Assessment Report have been updated to take into account these listings where relevant.

- **Cooks River Castlereagh Ironbark Forest ecological community** - listed under the EPBC Act as Critically Endangered on 17 March 2015 incorporated into the 'Dry sclerophyll vegetation communities' profile.
- **Castlereagh Scribbly Gum and Agnes Banks Woodlands of the Sydney Basin Bioregion** – listed under the EPBC Act as Endangered on 17 March 2015 incorporated into the 'Dry sclerophyll vegetation communities' profile.
- ***Atrichornis rufescens* (Rufous Scrub-bird)** – listed under the EPBC Act as Endangered on 6 November 2014 incorporated into the 'Rainforest fauna' profile.
- ***Pommerhelix duralensis* (Dural Land Snail)** – listed under the EPBC Act as Endangered on 9 April 2015 incorporated into the 'Dry sclerophyll groundcover-dependent fauna' profile.
- ***Corunastylis insignis* (Wyong Midge Orchid 1, Variable Midge Orchid 1)** – listed under the EPBC Act as Critically Endangered on 19 July 2014 incorporated into the 'Dry sclerophyll groundcovers' profile.
- ***Corunastylis* sp. Charmhaven (NSW 896673) (Wyong Midge Orchid 2)** – listed under the EPBC Act as Critically Endangered on 19 July 2014 incorporated into the 'Dry sclerophyll groundcovers' profile.
- ***Diuris flavescens* (Pale Yellow Doubletail, Wingham Doubletail)** – listed under the EPBC Act as Critically Endangered on 15 January 2014 incorporated into the 'Dry sclerophyll groundcovers' profile.
- ***Thelymitra adorata* (Wyong Sun Orchid)** – listed under the EPBC Act as Critically Endangered on 19 July 2014 incorporated into the 'Dry sclerophyll groundcovers' profile.
- **Shale Sandstone Transition Forest of the Sydney Basin Bioregion** – reviewed listing under the EPBC Act as Critically Endangered from Endangered on 16 December 2014 updated in the 'Dry sclerophyll vegetation communities' profile.
- ***Posidonia australis* seagrass meadows of the Manning-Hawkesbury ecoregion** – listed under the EPBC Act as Endangered on 7 May 2015 and included in a new species impact profile.
- **Central Hunter Valley eucalypt forest and woodland** – listed under the EPBC Act as Critically Endangered on 7 May 2015 and has been incorporated into the 'Dry sclerophyll vegetation communities' impact profile.
- **Upland Basalt Eucalypt Forests of the Sydney basin Bioregion** has been relocated from 'Dry sclerophyll communities' to 'Wet sclerophyll vegetation communities' impact profile.
- 'Forested wetland communities' has now been renamed to 'Wetland communities'.
- **Shale/Sandstone Transition Forest** has an updated listing under **Shale Sandstone Transition Forest of the Sydney Basin Bioregion**.
- **Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions** has been relocated from 'Grassy woodland communities' to 'Dry sclerophyll communities' impact profile.
- **Weeping Myall – Coobah – Scrub Wilga Shrubland of the Hunter Valley** has an updated listing under **Hunter Valley Weeping Myall (*Acacia pendula*) Woodland** and has been relocated from 'Shrubland vegetation communities' to 'Grassy woodland communities' impact profile. 'Shrubland vegetation communities' impact profile has been subsequently removed.

The effect of these new and updated listings with respect to actions that will be implemented under the Program has been considered. It is concluded that the Program commitments will also support protection of these listed biodiversity matters, and minimise the risk of Roads and Maritime activities having unacceptable impacts.

Management measures

Roads and Maritime has committed in the Strategic Assessment to apply the “avoid, minimise,

mitigate and offset” hierarchy in undertaking road and traffic management activities. Mechanisms to achieve this outcome are embedded in a range of Roads and Maritime policies and procedures, including the *Biodiversity Guidelines*. The impact profiles (discussed above) also reference relevant measures contained in guidelines for species and groupings of plants, animals and ecological communities.

Examples of how the hierarchy and management measures are applied in practice are provided in the case studies in the Strategic Assessment Report.

Following feedback provided by the Federal Department of the Environment, additional information has also been included in Appendix G to the Strategic Assessment Report to highlight and summarise the broad range of avoidance and management measures that are typically applied for Roads and Maritime Part 5 activities.

Public consultation

The draft Strategic Assessment committed to the public notification and display of REFs for Roads and Maritime Part 5 activities that were assessed as likely to significantly impact the Specified Protected Matters. The commitment to public display continues to be a key feature of the final Strategic Assessment documents.

However, recognising that the form of environmental assessment may change over the twenty five year duration of the Strategic Assessment (if approved), the reference to public display of REFs has been revised to refer to “project environmental assessment documentation”.

Timing of commencement of Strategic Assessment

To support a managed transition to implementation of the Strategic Assessment, Roads and Maritime proposes that (if is approved), it should come into effect after but as close to 1 July 2015 as possible. This will align with existing project and budget planning arrangements for road proposals and facilitate compliance with future reporting requirements.

Roads and Maritime recognises that ultimately the decision to grant an approval, and the timing of any approval, is a matter for the Federal Minister for the Environment.

5 Summary of changes

As identified above, the following changes have been made to the Strategic Assessment after considering submissions and related relevant matters.

Exhibited document and section	Change in final documents
Strategic Assessment Report <ul style="list-style-type: none"> Section 1 	Additional text has been included to provide clarity that the Strategic Assessment does not apply to other MNES beyond the Specified Protected Matters.
Strategic Assessment Report <ul style="list-style-type: none"> Section 2.3 Program Report <ul style="list-style-type: none"> Section 1.5.3 	Additional text has been added to clarify the operation of the Strategic Assessment with respect to Roads and Maritime Part 5 activities being undertaken in the Western Sydney Growth Centres.
Strategic Assessment Report <ul style="list-style-type: none"> Section 3.2 Program Report <ul style="list-style-type: none"> Section 2.1.2, including Commitment 2 	Amendments to clarify the approach to offsetting Specified Protected Matters, in particular in relation to application of 'like for like' offsets, providing consistency with the NSW Bilateral Agreement, and ensuring the timeframes and arrangements for finalising the offset are set out in the environmental assessment documentation.
Strategic Assessment Report <ul style="list-style-type: none"> Section 3.4 Strategic Program Report <ul style="list-style-type: none"> Section 2.3, including Commitment 7 	The text has been revised to refer to public notification of project environmental assessment documentation for a minimum thirty day period.
Strategic Assessment Report <ul style="list-style-type: none"> Executive Summary Section 4.4 Section 4.6.3 Section 5.3 	Amendment of the number of listed species and threatened ecological communities to reflect current EPBC Act listings. New text in section 4.6.3 - <i>Practical delivery of Program commitments</i> . This includes reference to a new Appendix G (see below), which provides a summary of the range of typical management measures applied to protect biodiversity during the planning and implementation of Roads and Maritime projects, drawing on recent real-life examples.
Strategic Assessment Report <ul style="list-style-type: none"> Section 4.6 	Amendment of the risk analysis statistics after the incorporation of newly listed species and threatened ecological communities and reassessment of risks in impact profiles.
Strategic Assessment Report <ul style="list-style-type: none"> Table 5.1 Program Report <ul style="list-style-type: none"> Table 3.1 	Minor amendments to clarify the approach to offsetting Specified Protected Matters, in particular in relation to application of 'like for like' offsets.

Exhibited document and section	Change in final documents
Strategic Assessment Report <ul style="list-style-type: none"> Section 7 Program Report <ul style="list-style-type: none"> Section 4 	Additional information has been included regarding program evaluation and on-going review mechanisms.
Strategic Assessment Report <ul style="list-style-type: none"> Appendix C 	Removal of Appendix C – Guideline for Biodiversity Offsets (under review) and consequential amendment of Appendix numbering.
Strategic Assessment Report <ul style="list-style-type: none"> Appendix D 	Now Appendix C
Strategic Assessment Report <ul style="list-style-type: none"> Appendix E 	Now Appendix D
Strategic Assessment Report <ul style="list-style-type: none"> Appendix F 	Now Appendix E
Strategic Assessment Report <ul style="list-style-type: none"> Appendix G – Impact Profiles 	Now Appendix F. Incorporation of newly listed and reviewed listings, including: <ul style="list-style-type: none"> Cooks River Castlereagh Ironbark Forest ecological community incorporated into ‘Dry sclerophyll vegetation communities’. Castlereagh Scribbly Gum and Agnes Banks Woodlands of the Sydney Basin Bioregion incorporated into ‘Dry sclerophyll vegetation communities’. <i>Atrichornis rufescens</i> (Rufous Scrub-bird) incorporated into ‘Rainforest fauna’. <i>Pommerhelix duralensis</i> (Dural Land Snail) incorporated into ‘Dry sclerophyll groundcover-dependent fauna’. <i>Corunastylis insignis</i> (Wyang Midge Orchid 1, Variable Midge Orchid 1) incorporated into ‘Dry sclerophyll groundcovers’. <i>Corunastylis</i> sp. Charmhaven (NSW 896673) (Wyang Midge Orchid 2) incorporated into ‘Dry sclerophyll groundcovers’. <i>Diuris flavescens</i> (Pale Yellow Doubletail, Wingham Doubletail) incorporated into ‘Dry sclerophyll groundcovers’. <i>Thelymitra adorata</i> (Wyang Sun Orchid) incorporated into ‘Dry sclerophyll groundcovers’. Shale Sandstone Transition Forest of the Sydney Basin Bioregion updated in ‘Dry sclerophyll vegetation communities’. <i>Posidonia australis</i> seagrass meadows of the Manning-Hawkesbury ecoregion – listed under the

Exhibited document and section	Change in final documents
	<p>EPBC Act as Endangered on 7 May 2015. Included in a new species impact profile.</p> <ul style="list-style-type: none"> • Central Hunter Valley eucalypt forest and woodland – listed under the EPBC Act as Critically Endangered on 7 May 2015 and incorporated into the ‘Dry sclerophyll vegetation communities’ impact profile. • Upland Basalt Eucalypt Forests of the Sydney basin Bioregion has been relocated from ‘Dry sclerophyll communities’ to ‘Wet sclerophyll vegetation communities’ impact profile. • Forested wetland communities has now been renamed to ‘Wetland communities’. • Shale/Sandstone Transition Forest has an updated listing under Shale Sandstone Transition Forest of the Sydney Basin Bioregion. • Buloke Woodlands of the Riverina and Murray-Darling Depression Bioregions has been relocated from ‘Grassy woodland communities’ to ‘Dry sclerophyll communities’ impact profile. • Weeping Myall – Coobah – Scrub Wilga Shrubland of the Hunter Valley has an updated listing under Hunter Valley Weeping Myall (<i>Acacia pendula</i>) Woodland and has been relocated from ‘Shrubland vegetation communities’ to ‘Grassy woodland communities’ impact profile. ‘Shrubland vegetation communities’ impact profile has been subsequently removed. <p>Amendment of the number of listed species and threatened ecological communities to reflect current EPBC Act listings.</p>
<p>Strategic Assessment Report</p> <ul style="list-style-type: none"> • New Appendix 	<p><u>Appendix G</u></p> <p>A summary of typical avoidance and management measures applied to Roads and Maritime Part 5 activities has been included.</p>

6 Conclusion

The Program has been developed to support improved efficiencies in decision-making by avoiding duplication while ensuring standards in environmental assessment and protection continue to be maintained. The Program comprises Roads and Maritime processes and commitments with respect to environmental assessment and decision-making for activities subject to Part 5 of the EP&A Act.

Consultation identified a range of issues that have been taken into account in finalising the Strategic Assessment to enable consideration by the Federal Minister for the Environment. That includes matters arising from public submissions together with a number of related issues that have been addressed to improve the overall functioning of the Strategic Assessment.

The Program outlined in the Strategic Assessment will provide a robust and transparent process to support avoiding and minimising impacts to the Specified Protected Matters, apply appropriate mitigation measures and to deliver offsets where residual significant unavoidable impacts are likely. In conjunction with a range of commitments regarding assessment processes, community consultation, decision-making, and project implementation, implementation of the Program will be consistent with the principles of ESD and the objects of the EPBC Act.