

8. Other approvals and conditions

8.1 Relevant state government planning legislation

8.1.1 Environmental Planning and Assessment Act 1979

Overview

The *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the statutory basis for planning and environmental assessment in NSW. The Minister for Planning and Infrastructure, statutory authorities and local councils are responsible for implementing the EP&A Act. The EP&A Act provides the framework for environmental planning and development approvals and includes provisions to ensure that the potential environmental impacts of a development are assessed and considered in the decision making process.

The EP&A Act contains three parts that impose requirements for planning approval. These are generally as follows:

- Part 4 provides for control of 'local development' that requires development consent from the local Council. State Significant Development is also assessed under Part 4 (Division 4.1).
- Part 5 provides for control of 'activities' that do not require approval or development consent under Part 4.
- Part 5.1 provides for control of State Significant Infrastructure.

The need or otherwise for development consent is set out in environmental planning instruments – State Environmental Planning Policies (SEPPs), or Local Environmental Plans (LEPs).

Part 5 environmental assessment and determining authority

The proposal constitutes an activity and is permissible without development consent under *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) (see section 8.1.2). The proposal is therefore subject to part 5 of the EP&A Act.

Part 5 of the EP&A Act provides for the control of 'activities' that do not require development consent or the approval of the Minister for Planning and Infrastructure.

Section 110 of the EP&A Act defines 'determining authority' as follows:

'determining authority means a Minister or public authority and, in relation to any activity, means the Minister or public authority by or on whose behalf the activity is or is to be carried out or any Minister or public authority whose approval is required in order to enable the activity to be carried out.'

The EP&A Act's definition of 'public authority' (section 4) includes: '(a) a public or local authority constituted by or under an Act'.

For the purposes of the proposal, Roads and Maritime is the proponent and determining authority in accordance with the EP&A Act.

The duties of the determining authority are set out in section 111 of the EP&A Act. Section 111(1) requires that a determining authority '...examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.'

Section 112 provides that a determining authority shall not approve or carry out an activity that is likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats, unless it has considered an environmental impact statement in respect of the activity. In addition, if the proposal was to be carried out on land that is critical habitat, or if the determining authority decides the proposal would be likely to significantly affect a threatened species, population or ecological community or its habitat, then it must obtain and consider a species impact statement.

Section 5A of the EP&A Act includes an assessment of significance, which uses seven factors to assist in determining if the proposed development or activity 'is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats'. These seven factors must be taken into account by a consent or determining authority when considering a development proposal or development application. This enables a decision to be made as to whether there is likely to be a significant effect on the species, population or ecological community, and hence if a species impact statement is required.

Environmental assessment and compliance of the proposal

The REF (GHD 2013a) has been prepared to consider whether the proposal would have a significant impact upon the environment under Section 111 of the EP&A Act. Factors that need to be taken into account when considering the likely impact of an activity on the environment are outlined in clause 228 of the *Environmental Planning and Assessment Regulation 2000* and are discussed in the REF.

The REF found that the proposal is likely to have a significant effect on a threatened ecological community. A species impact statement (GHD 2013b) has therefore also been prepared.

The REF and species impact statement contain safeguards and management measures that have been prepared with consideration of the likely environmental impacts of the proposal. The safeguards and management measures have been prepared to prevent, minimise and manage the impacts as much as possible.

8.1.2 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the effective delivery of infrastructure across the State.

Clause 94 of the ISEPP permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent.

As the proposal is for a new road and road infrastructure facilities and is to be carried out by Roads and Maritime, it can be assessed under Part 5 of the EP&A Act. Development consent from a local council is not required.

Part 2 of the ISEPP contains provisions for public authorities to consult with local councils and other public authorities before the commencement of certain types of development. Consultation, including consultation as required by the ISEPP, is discussed in Chapter 5 of the REF.

8.2 Approvals obtained or required from State agencies and conditions that apply to the proposal

The proposal will require the concurrence of the Director-General of the NSW Office of Environment and Heritage due to likely significant impacts on Box-Gum Woodland. A species impact statement has been prepared in accordance with the requirements of the Director-General and Division 2 of Part 6 of the TSC Act. It is anticipated that the concurrence of the Director-General would be subject to conditions.

8.3 Monitoring, enforcement and review procedures that apply to the proposal

As described in section 5.12, the CEMP will include inspection and monitoring requirements to validate the impacts predicted for the proposal, and to measure the effectiveness of safeguards and management measures and the implementation of the CEMP.

Specifically, the CEMP will include procedures to monitor and measure, on a regular basis, environmental management performance and to evaluate compliance with Roads and Maritime *QA Specification G36 – Environmental Protection (Management System)*.

Regular site environmental inspections will be undertaken by the construction contractor to assess the adequacy and effectiveness of the environmental safeguards and management measures. The site environmental inspections would cover:

- High risk activities and processes.
- Work in environmentally sensitive areas.
- Site preparedness for adverse weather conditions, including adequacy of environmental controls and availability of emergency equipment.

The CEMP will include a risk-based auditing program. The purpose of auditing will be to verify compliance with the CEMP and subplans, other approval requirements and any relevant legal requirements. All internal and external environmental audits for the proposal will be in accordance with AS/NZS ISO 19011.

In addition to the above, the construction contractor will be required to periodically review the effectiveness and proper implementation of the CEMP and identify opportunities for continual improvement of the environmental management processes and practices.

Roads and Maritime may also conduct regular surveillance and inspections of the development site during construction. Environmental inspections are an important proactive tool for ensuring that the Roads and Maritime construction activities comply with contractual and legislative requirements. Surveillance and inspections of the development site by the Roads and Maritime will be in accordance with *RMS Guidance Note: Environmental Inspection Report*.

8.4 Roads and Maritime Services

8.4.1 Profile

Roads and Maritime is a NSW statutory authority established on 1 November 2011 under the *Transport Legislation Amendment Act 2011*. It works to deliver customer focused services in a cost effective manner to achieve transport outcomes. Roads and Maritime is a multi-modal transport agency within the broader transport cluster that has Transport for NSW at its centre.

Roads and Maritime's primary responsibilities are to:

- Manage the road network and travel times.
- Provide capacity and maintenance solutions for road and maritime infrastructure.
- Test and licence drivers and vessel operators, and register and inspect vehicles and vessels.
- Improve road and maritime safety.

Within this context the Roads and Maritime (including the former Roads and Traffic Authority) has a good environmental record, with few infringements over the last decade. This is due

largely to the commitment of Roads and Maritime and its staff to environmental outcomes and the systems it has put in place.

8.4.2 Environmental history

Roads and Maritime is committed to carrying out its business in an environmentally responsible manner by effectively identifying and managing any risks which may potentially impact the environment. However, there have been occasions where successful proceedings have been brought against Roads and Maritime and where penalty infringement notices have been issued. In such instances, Roads and Maritime has instituted measures to ensure that appropriate lessons are communicated to its staff and/or contractors and that any necessary changes are made to management systems and operating procedures. A complete list of successful proceedings is provided in the referral to Department of the Environment (GHD 2013c).