

3. Planning and approvals

3.1 Part 3A and the project approval process

3.1.1 Overview

The RTA has requested project approval for the proposed upgrade under Part 3A of the EP&A Act.

Part 3A applies to development that is declared to be a Part 3A project by either a state environmental planning policy (SEPP) or a Ministerial Order published in the Government Gazette (under Section 75B of the EP&A Act).

The following types of development may be declared to be a project to which this Part applies:

- a) major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance.
- b) major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent would (but for this Part) require an environmental impact statement to be prepared under that Part.

The proposed upgrade was declared to be a project to which Part 3A applies and a critical infrastructure project by separate orders made by the Minister for Planning pursuant to Sections 75B and 75C of the EP&A Act on 5 December 2006.

The proposed upgrade will, therefore, be assessed under Part 3A as a major project and follow the Part 3A project approval process. The RTA is seeking 'project approval' for this 'critical infrastructure' project. These two terms are explained in the following sections.

The Part 3A approval process is illustrated in Figure 3-1 and described below.

3.1.2 What is critical infrastructure?

Critical infrastructure projects are projects that are considered by the Minister for Planning to be essential to the State for economic or social reasons, and formally declared by the Minister as such.

The proposed upgrade, along with 12 other sections of the Pacific Highway between Hexham and the Queensland border, were declared critical infrastructure projects for economic and social reasons given the projects would:

- Deliver significant social benefits to the State and regions by addressing key safety concerns for all road users along the remaining single carriageway sections of the Pacific Highway, with 85% of fatal car crashes occurring along these sections. The completion of the upgrade along the remaining single carriageway sections would substantially improve road safety and reduce the risk of such incidences occurring.
- Deliver clear economic benefits to the State and region by significantly improving the performance and efficiency of the principal road freight and passenger corridor between Sydney, Newcastle and Brisbane.

- Make a significant contribution in delivering the State Government’s commitment to the AusLink National Network initiative, generating broader benefits to the State by providing enhanced capacity and interstate connectivity for the road freight industry and other road users.
- Enable the State Government to achieve a key transport priority of the *State Infrastructure Strategy – New South Wales 2006/7 to 2015/16*.

Figure 3-1 Part 3A approvals process



Part 3A of the EP&A Act provides a streamlined assessment and approvals process to ensure that critical infrastructure is delivered as quickly as possible without compromising environmental or community outcomes.

In accordance with Section 75J(3), the Minister cannot approve the carrying out of a project that:

- is not a critical infrastructure project, and
- would (but for this Part) be wholly prohibited under an environmental planning instrument by the operation of Section 76B.

As the proposed upgrade has been declared a critical infrastructure project and is not wholly affected by a zoning that would otherwise prohibit the construction of a road, any prohibition issues relevant to road construction raised under the *Kempsey Local Environmental Plan 1987* and *Nambucca Local Environmental Plan 1995* do not directly affect the Minister's decision in considering approval of the proposal.

Relevant environmental planning instruments have been addressed in Section 3.2.

3.1.3 What is project approval?

The RTA has requested project approval for the proposed upgrade under Part 3A of the EP&A Act. The process of project approval commenced in August 2006 when a Project Application was lodged with the Department of Planning nominating key environmental issues and seeking requirements for the preparation of the Environmental Assessment.

Project approval recognises the project is at an advanced stage of planning in comparison to a project seeking 'concept' approval. This means that detailed information about the proposed upgrade is available to be included and the key environmental impacts can be addressed in detail in the Environmental Assessment.

Project approval from the Minister for Planning would allow the RTA to progress the proposed upgrade to the construction phase, subject to the Conditions of Approval, without the need for further approval from the Department of Planning. In accordance with Section 75(V) of the EP&A Act, some other environmental approvals must be obtained, if relevant to the proposal. These have been identified in Section 3.2.

3.1.4 The Project Application and Project Application Report

Prior to preparation of this Environmental Assessment, the RTA was required to submit a 'Project Application' for the proposed upgrade to the NSW Department of Planning. The Project Application also provided the opportunity for the RTA to nominate the issues that it believed would require further consideration in the Environmental Assessment.

The Project Application was supported by a report, called a Project Application Report (NSW Roads and Traffic Authority 2006a), which described the route selection and concept design development process, outlined key environmental issues, nominated a proposed scope of work for the Environmental Assessment and identified a set of draft commitments to mitigate the potential impacts of the project.

Field investigations and technical reporting were completed for the proposed upgrade prior to the introduction of Part 3A of the EP&A Act. Therefore, the RTA was in a position to provide detailed information on the specific environmental impacts of the proposed upgrade in the form of supporting documentation to the Project Application Report.

The Project Application, Project Application Report and supporting information were exhibited on the NSW Department of Planning website during August 2006 for a period of 21 days. These documents were also placed on the RTA's project website (www.rta.nsw.gov.au/pacific - click on Kempsey to Eungai Upgrade), where they are still available to members of the public.

3.1.5 Planning focus meetings

Two planning focus meetings were held during the concept design phase of the project. The first planning focus meeting, involving key government agency and council stakeholders, was held in December 2004 in Kempsey.

In response to the introduction of new requirements under Part 3A of the EP&A Act, a second planning focus meeting was held in August 2006. After the exhibition of the Project Application, the Department of Planning invited key government and local stakeholders to a meeting in Kempsey to:

- Discuss the project as detailed in the Project Application Report.
- Consider the scope of the Environmental Assessment provided in the Project Application Report.
- Discuss any further work that may be required to assess the environmental impacts of the proposed upgrade.

A full list of participant organisations at the planning focus meeting is provided in Section 4.3.2.

3.1.6 Environmental Assessment requirements

Using information provided in the Project Application documentation and discussions during the planning focus meeting held in August 2006, the Department of Planning, in consultation with local and state government agencies, issued requirements for the preparation of the Environmental Assessment. A copy of the Environmental Assessment requirements is provided in Appendix A.

3.1.7 The Environmental Assessment

As stated in Section 1.3.1, this Environmental Assessment was written in response to the requirements in Appendix A. It provides a description of the proposed upgrade, the changes likely to result from construction and operation of the proposed upgrade, and how the RTA proposes to mitigate or manage any residual impacts associated with these changes.

The Environmental Assessment focuses on the key issues identified during the Project Application phase and briefly describes 'other issues' that can be mitigated through the use of standard environmental management measures.

The Environmental Assessment also contains a draft Statement of Commitments (see Appendix D).

3.1.8 Assessment and determination

Prior to the exhibition of this Environmental Assessment, the NSW Department of Planning, in accordance with Section 75H of the EP&A Act, and in consultation with other government agencies, determined whether the Environmental Assessment adequately addressed the requirements stipulated in the Environmental Assessment requirements. Following the adequacy review of the documentation, the Environmental Assessment has been placed on public exhibition.

Public submissions are invited during the minimum 30-day statutory exhibition period. A Submissions Report will then be prepared, collating and responding to the key issues identified in submissions. If the Department of Planning considers that submissions require changes to the project, the RTA would be required to prepare a Preferred Project Report, which would be made available to the public if the changes are significant. The Director-General would then prepare a detailed report for the Minister for Planning.

The Minister for Planning will then consider whether to approve the proposed upgrade based on:

- The Project Application and supporting information.
- The Environmental Assessment.
- The Submissions Report (and Preferred Project Report, if required).
- The report from the Director-General of the Department of Planning.
- Any advice that may be presented by the Minister for Roads.

The Minister may grant approval with conditions or refuse approval.

The Chief Executive of the RTA will then determine whether to proceed with the project based on the decision of the Minister for Planning and any conditions associated with approval of the project.

3.2 Other approvals and relevant planning documents

3.2.1 NSW Government approvals

In addition to project approval under Part 3A of the EP&A Act, Table 3-1 identifies the licences, permits and approvals that would be required for the construction and operation of the proposed upgrade under NSW legislation.

Table 3-1 Summary of potential approval requirements under NSW legislation

Provision	Approval requirements	Required action	Agency
Protection of the <i>Environment Operations Act 1997</i> (Section 48 and Schedule 1)	The Act enforces licences and approvals formerly required under separate acts relating to air, water and noise pollution, and waste management within a single integrated licence.	As the proposed upgrade is a scheduled activity, being a 'freeway or tollway construction', an Environmental Protection Licence would be required covering construction under Chapter 3 of the Act. The operation of ancillary activities such as concrete batching plants would also require an Environmental Protection Licence.	Department of Environment and Conservation (Environment Protection Authority) (recently renamed the Department of Environment and Climate Change)

Section 75U of the EP&A Act states that a number of authorisations are not required for an 'approved project' for which Part 3A applies.

3.2.2 Commonwealth approvals

EPBC Act

The Commonwealth EPBC Act is the key piece of Commonwealth legislation of relevance to the proposed upgrade. Under this Act, proposals that have the potential to significantly impact on matters of national environmental significance, or the environment of Commonwealth land,

must be referred to the Commonwealth Minister for the Environment and Water Resources. Matters of national environmental significance include:

- World heritage properties.
- National heritage places.
- Wetlands of international significance.
- Listed threatened species and ecological communities.
- Listed migratory species.
- Commonwealth marine areas.
- Nuclear actions (including uranium mining).

An assessment under the EPBC Act was completed for two listed threatened plant species identified during the Environmental Assessment preparation. The assessments for *Arthraxon hispidus* (Hairy Joint Grass) and *Persicaria elatior* (Knotweed) concluded that the proposed upgrade would not have a significant impact on these species. An assessment was also carried out for two migratory bird species that are considered to be declining in the area: the Osprey and the Square-tailed Kite. Again, these assessments concluded that the impact on these species would not be significant.

The proposed upgrade has not, therefore, been referred to the Commonwealth Minister for the Environment and Water Resources for approval. No other Commonwealth matters of national environmental significance are affected.

More detailed information on impacts on threatened species is provided in Chapter 11 – *Biodiversity*.

3.2.3 Other relevant planning instruments

The following table summarises all environmental planning instruments relevant to the proposed upgrade.

Table 3-2 Environmental planning instruments

Environmental planning instrument	Aim/Purpose	Application/consistency
<i>State Environmental Planning Policy No. 14 — Coastal Wetlands</i>	<i>State Environmental Planning Policy No. 14 — Coastal Wetlands (SEPP No. 14) aims to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the state.</i>	There are two <i>SEPP No. 14 — Coastal Wetlands</i> in the vicinity of the proposed upgrade. These form part of an important network across the Macleay River floodplain. As shown in Figure 1.3, there is a large wetland area between Collombatti and Clybucca, north-east of the current alignment. Another smaller wetland area exists to the north of Frederickton. The proposed upgrade does not directly affect the <i>SEPP No. 14</i> wetlands.

Environmental planning instrument	Aim/Purpose	Application/consistency
<i>State Environmental Planning Policy No. 44 — Koala Habitat Protection</i>	<i>State Environmental Planning Policy No. 44 — Koala Habitat Protection</i> (SEPP44) aims to encourage the proper conservation and management of natural Koala habitat to ensure that there is a permanent free-living population of Koalas throughout their present range and to reverse the current trend of population decline.	Kempsey local government area is listed under Schedule 1 of SEPP 44. Ecological investigations undertaken for the proposed upgrade indicate that potential Koala habitat exists in the study area including Koala feed trees listed under Schedule 2 of the SEPP. However, there was no core Koala habitat identified within proximity of the proposed upgrade (refer Chapter 11 - Biodiversity).
<i>State Environmental Planning Policy No. 71 — Coastal Protection</i>	The broad aims of <i>State Environmental Planning Policy No. 71 (SEPP No. 77) — Coastal Protection</i> are to: <ul style="list-style-type: none"> • Ensure that the coastal zone is protected in accordance with ecologically sustainable development principles. • Ensure that development is appropriate and suitably located. • Establish a clear and consistent development assessment framework for the coastal zone. 	SEPP No. 71 — Coastal Protection does not apply to the proposed upgrade because it is not classed as a state-significant development and is not located in a sensitive coastal location (as defined in Schedule 1).
<i>North Coast Regional Environmental Plan</i>	<i>The North Coast Regional Environmental Plan</i> establishes a regional framework for the development of the NSW North Coast region. Part 5 of the Plan identifies the strategic importance of improving regional infrastructure along the NSW North Coast. It recognises the need to safeguard the role and efficiency of the major arterial road system and the need to facilitate maintenance and improvement of transport across the region.	The proposed upgrade would reduce existing traffic congestion, reduce travel times, provide for efficient transport of goods and services, and improve safety for motorists. The proposed upgrade provides a suitable response to meeting the need to facilitate transport across the region and would complement the strategic planning for the North Coast region envisaged under the Plan.
<i>Kempsey Local Environmental Plan 1987 and Nambucca Local Environmental Plan 1995</i>	Local environmental plans (LEPs) are initiated by local councils and are concerned with matters considered to be of significance for environmental planning within a defined local government area.	The proposed upgrade is a permissible use (with development consent) under the zoning provisions of both the Kempsey and Nambucca LEPs (refer to Section 3.1.2).

As previously discussed, Section 75U of the EP&A Act states that a number of authorisations are not required for an 'approved project' for which Part 3A applies.

3.2.4 Other relevant local planning documents

Kempsey Industrial Lands Review 2004

Kempsey Shire Council has identified land to the north of the proposed South Kempsey interchange in its *Industrial Lands Review 2004* for future industrial zoning (Kempsey Shire Council 2004). This would extend the town's industrial area to the south. This new area is intended to focus on transport/haulage-related industry (Kempsey Shire Council 2005b).

The proposed upgrade includes provision for access from the eastern roundabout of the South Kempsey interchange to proposed industrial land at South Kempsey. The RTA has worked closely with the Kempsey Shire Council and land owners to ensure that existing land uses retain their development potential.