

4 Process for assessment and decision-making

This chapter summarises Commonwealth and State planning processes applicable to the Proposal. Issues covered include the status of the Proposal, submission of the project application report and the next steps following exhibition of this report.

4.1 NSW environmental legislation

4.1.1 Project approval process

On 5 December 2006, the Minister for Planning under 75B(1) of the *Environmental Planning and Assessment Act 1979* declared by order 13 components of the Pacific Highway upgrade, including the Sapphire to Woolgoolga upgrade, to be a project to which Part 3A of the Act applies. Therefore, the NSW Roads and Traffic Authority (RTA) has sought project approval for the upgrade in accordance with the requirements of Part 3A of the Act.

This report has been prepared in order to comply with the environmental assessment requirements issued for the Proposal by the Director-General of the NSW Department of Planning on 15 December 2006.

The *Environmental Planning and Assessment Act 1979* also provides that any project to which Part 3A applies can be declared to be a Critical Infrastructure project if it is of a category that, in the opinion of the Minister for Planning, is essential for the State for economic, social or environmental reasons.

On 5 December 2006, the Minister for Planning also declared the same 13 components of the Pacific Highway upgrade to be essential for the State for economic and social reasons and were deemed to be a Critical Infrastructure project under Section 75C of the Act.

The order and declaration were gazetted in the NSW Government Gazette No.175 on 8 December 2006.

The assessment and approval process for Critical Infrastructure is similar to other Part 3A projects. However some notable differences include:

- Section 75T of the *Environmental Planning and Assessment Act 1979* excludes third-party appeals in relation to a critical infrastructure project.
- Sections 75K, 75L and 75Q exclude certain proponent or objector appeals in respect of the determination of an application for approval of a critical infrastructure project.

Under Section 75R(3) of the *Environmental Planning and Assessment Act 1979*, environmental planning instruments (other than State environmental planning policies) do not apply to or in respect of an approved project.

Under Section 75J(3) of the *Environmental Planning and Assessment Act 1979*, in deciding whether or not to approve the carrying out of a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved.

Section 75J(3) also states that the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that an environmental planning instrument would otherwise prohibit. However, as this project is a critical infrastructure project, those regulations are not relevant to the assessment of the project.

4.2 Commonwealth environmental legislation

4.2.1 Matters of national environmental significance

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides controls for impacts on:

- Matters of national environmental significance; and
- The "environment" (the latter only if the Proposal is being undertaken by the Commonwealth or a Commonwealth agency or on Commonwealth land).

If the proponent considers that there is likely to be a significant impact on any of these matters (or if the proponent is unsure if a significant impact would occur), a referral is required to be made to the Commonwealth Minister for the Environment and Water Resources in order to determine if the Proposal is considered a "controlled action". If the Proposal is determined to be a "controlled action", then approval to carry out the Proposal must be sought from the Commonwealth Minister. This approval is additional to any necessary State approval.

Matters of national environmental significance are identified in Part 3, Division 1 of the EPBC Act. Those of relevance to the Proposal are:

- Threatened species and ecological communities.
- Migratory species.

An assessment of the potential impacts of the Proposal on relevant matters of national environmental significance was carried out in accordance with the *Significant Impact Guidelines – Matters of National Environmental Significance* (Commonwealth Environment and Water Resources, 2006). The conclusion reached was that the Proposal was unlikely to result in a significant impact on any identified Commonwealth listed species. Notwithstanding this conclusion, the RTA decided to adopt a precautionary approach by submitting a referral to the Commonwealth Department of Environment and Water Resources for the Commonwealth Minister's determination as to whether the Proposal is a controlled action. Details regarding this referral are provided in Section 4.3.3.

4.2.2 Relationship to the Register of the National Estate

Section 28 of the EPBC Act states that the Commonwealth must not take an action that has, will have or is likely to have a significant impact on the "environment" (inside or outside Australia) unless approval is given under Part 9 of the EPBC Act.

The term "environment" is defined in Section 528 of the EPBC Act to include the "heritage value of places" and a note to the definition states that the "places" included in the definition include

places listed on the Register of the National Estate. Therefore an action by the Commonwealth that is likely to have a significant impact on the heritage values of a place listed on the Register of the National Estate may be an action requiring an approval under Part 9 of the EPBC Act (a "controlled action").

The Proposal is identified as affecting the Solitary Islands Marine Park which is listed on the Register of the National Estate. The potential impacts on the Solitary Islands Marine Park are discussed in Chapter 13 of this report.

Although the Proposal would have a minor effect on the Solitary Islands Marine Park, Commonwealth approval is not required because:

- The action would be undertaken by the RTA and not the Commonwealth or a Commonwealth agency.
- The portion of the Solitary Islands Marine Park affected by the Proposal is not located on Commonwealth land and is not a Commonwealth marine area.

The Proposal would be undertaken using funding provided by both the NSW Government and the Commonwealth Government. However, Section 524A of the EPBC Act states that the provision of funding by the Commonwealth by way of grant is not defined as an "action".

The Proposal is not an action undertaken by the Commonwealth and therefore Section 28 of the EPBC Act is not applicable to the proposed project.

4.3 Planning approval process

Figure 4.1 shows the Part 3A environmental assessment process.

4.3.1 Project application report

The project application report outlined the Proposal and provided background on the development process for the project, including a preliminary assessment of environmental impacts and a preliminary Statement of Commitments.

The project application report was formally accepted by the Department of Planning on 1 November 2006.

4.3.2 Planning focus meeting

On the same day that the project application report was formally accepted, a planning focus meeting was convened by the Department of Planning. Attendees included:

- Department of Planning (DoP).
- Roads and Traffic Authority (RTA).
- Department of Environment and Climate Change (DECC – formerly the Department of Environment and Conservation).
- Department of Primary Industries (DPI).
- Department of Natural Resources (DNR).
- Marine Parks Authority.
- Community Relations Commission.
- Forests NSW.
- Coffs Harbour City Council.

The planning focus meeting provided an opportunity for key government agencies to be briefed and to gain an understanding of the Proposal being submitted. Such a meeting is also the catalyst



FIGURE 4.1 PART 3A ENVIRONMENTAL ASSESSMENT PROCESS

for the Department of Planning to request that the government agencies forward their requirements for the project's environmental assessment. Following consideration of these issues, the Director-General of the Department of Planning issued the environmental assessment requirements on 15 December 2006.

4.3.3 Referral to the Department of Environment and Water Resources

A referral has been submitted to the Commonwealth Minister for Environment and Water Resources for determination as to whether the Proposal is a controlled action; based on:

- Removal of known habitat of four migratory bird species (White-bellied Sea Eagle, White-throated Needletail, Black-faced Monarch and Rufous Fantail).
- Removal of known foraging habitat of the Grey-headed Flying-fox.
- Indirect impact to two plant species identified as "threatened" under the EPBC Act: *Quassia sp. B* (Moonee Quassia) and *Marsdenia longiloba* (Slender Marsdenia) which are located in proximity to the Proposal.

The assessment of the potential impacts of the Proposal on the migratory birds, the Grey-headed Flying-fox and the threatened plant species was carried out in accordance with the *Significant Impact Guidelines – Matters of National Environmental Significance* (Commonwealth Environment and Water Resources, 2006). The conclusion reached was that the Proposal was unlikely to result in a significant impact on any identified Commonwealth listed species. Notwithstanding this conclusion, the RTA decided to adopt a precautionary approach by submitting a referral to the Commonwealth Minister for Environment and Water Resources. This referral will ensure further independent consideration of the matter and confirmation or otherwise of the conclusion of the assessment undertaken.

If the Commonwealth Minister determines that the Proposal is *not* a controlled action, the approval of the Commonwealth Minister would *not* be required. Requirements for NSW assessment and approval would remain unchanged.

If the Commonwealth Minister determines that the Proposal is a controlled action, approval of the Commonwealth Minister would be required, in addition to NSW assessment and approval. In this event, the Commonwealth Department of Environment and Water Resources would indicate if any further information and assessment were required.

4.4 Approach to this report

A considerable amount of assessment (including a number of detailed technical working papers) was undertaken on the Proposal during the route option investigation stage and in the development of the concept design for the preferred route. This covered an extensive range of issues, including bio-physical aspects as well as community, social and economic issues. It also drew on considerable input from the community as well as key government stakeholders, to ensure that potential impacts were avoided, minimised or managed.

Environmental assessment requirements have subsequently been issued by the Department of Planning. This report addresses those requirements, but also reflects the RTA's broader commitment to the monitoring and management of environmental issues. This approach remains fundamental to the assessment of the project and is captured in the draft Statement of Commitments contained in Appendix A.

4.4.1 Environmental assessment requirements

The environmental assessment requirements for the Proposal were issued on 15 December 2006 by the Director-General of the Department of Planning. The key issues to be addressed in this assessment, as identified by the Director-General are:

- Planning and land use.
- Traffic and access.
- Noise and vibration.
- Biodiversity.
- Heritage.
- Economic and social impacts.
- Soil and water.
- Urban design and landscaping.

A comprehensive checklist of the requirements for the environmental assessment can be found in Appendix B. This appendix cross-references the environmental assessment requirements with the chapters in this report and associated working papers. Working papers are located at Appendix F.

4.4.2 Draft Statement of Commitments

A preliminary Statement of Commitments was included in the project application report.

As a result of further studies and the refinement of the concept design during the assessment process, an updated draft Statement of Commitments has been prepared and is included at Appendix A.

4.5 Other potential statutory approvals required

4.5.1 Marine Parks Act 1997

Schedule 4, Part 2 of the (NSW) *Marine Parks Act 1997* defines the boundary of the Solitary Islands Marine Park. The boundary, as it relates to the Proposal, is taken as the mean high water mark both at the coast and at the tidal limit of creeks draining into the marine park, including the lower reaches of Double Crossing Creek and Cunninghams Creek. The Proposal crosses Cunninghams Creek and Double Crossing Creek downstream of the tidal limit and therefore, where the Proposal crosses these creeks, it is also traversing the Solitary Islands Marine Park. A description of the potential impacts on the Solitary Islands Marine Park is discussed in detail in Chapter 13.

The zone of the Solitary Islands Marine Park that would be affected by the Proposal is the habitat protection zone. The objects of the habitat protection zone are:

- a) *to provide a high level of protection for biological diversity, habitat, ecological processes, natural features and cultural features (both Aboriginal and non-Aboriginal) in the zone, and*
- b) *where consistent with paragraph (a), to provide opportunities for recreational and commercial activities (including fishing), scientific research, educational activities and other activities, so long as they are ecologically sustainable, do not have a significant impact on fish populations within the zone and have a negligible impact on other animals, plants and habitat.*

The Proposal would comply with these objectives, the design taking into account biological, habitat, ecological processes, natural features and cultural features along its entire length. The

Proposal does not prohibit or remove any opportunities for recreational and commercial activities within the marine park.

Under clause 11(1) of the *Marine Parks Regulation 1999*, a person must not, while in the habitat protection zone of a marine park:

- a) *harm, or attempt to harm, any animal (other than fish);*
- b) *harm, or attempt to harm, any plant; or*
- c) *damage, take or interfere with, or attempt to damage, take or interfere with, any part of the habitat (including soil, sand, shells or other material occurring naturally within the zone), except with the consent of the "relevant Ministers".*

The term "harm" is defined in the *Marine Parks Regulation* as follows:

- *in the case of any animal – to take, interfere with, injure or otherwise harm the animal; and*
- *in the case of a plant – to gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm the plant (or any part of it).*

The term "habitat" is defined in the *Marine Parks Regulation* to mean any area occupied, or periodically or occasionally occupied, by animals or plants (or both), and includes any biotic or abiotic component.

Considering that the parts of Double Crossing and Cunninghams creeks relevant to the Proposal are within the habitat protection zone, aspects of the Proposal which may cause harm or damage as described under clause 11(1) of the *Marine Parks Regulation* and therefore require the consent of the relevant Ministers include:

- Removal of the existing piers from Cunninghams Creek and Double Crossing Creek.
- Placement of the northern abutment of the northbound off-ramp bridge over Double Crossing Creek partially within the defined mean high water mark.
- Any other intrusion into the creeks for the purpose of construction or removal of the bridges.
- Possible erosion of exposed soils from nearby construction areas and release of sediments into the creeks.
- Possible spillages from construction activity which may enter the creeks.

The "relevant Ministers" for the purposes of the *Marine Parks Regulation* are the Minister administering the *National Parks and Wildlife Act 1974* (NSW) and the Minister administering the *Fisheries Management Act 1994* (NSW).

The objects of the *Marine Parks Act 1997* are:

- a) *to conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks,*
- b) *to maintain ecological processes in marine parks,*
- c) *where consistent with the preceding objects:*
 - i) *to provide for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks, and*
 - ii) *to provide opportunities for public appreciation, understanding and enjoyment of marine parks.*

The Proposal would comply with these objectives, the design having taken into account the sensitive nature of the marine park. Water quality control structures and various other measures to minimise the impact on the Solitary Islands Marine Park are outlined in Chapter 13. Where possible, bridges have been designed to clear span any watercourses that form part of the Solitary Islands Marine Park.

In accordance with the requirements of the *Marine Parks Act* and the *Marine Parks Regulation*, the RTA would seek the consent of the Ministers who administer the *National Parks and Wildlife Act 1974* and the *Fisheries Management Act 1994* for those activities impacting on the Solitary Islands Marine Park. Consent from those Ministers would be required prior to commencement of any construction associated with the Proposal within the Solitary Islands Marine Park.

4.5.2 Forestry Act 1916

The Proposal would require the acquisition of approximately 47 hectares of state forest land. The process for approvals and acquisition of state forest land is legislated under the *Forestry Act 1916*.

As the land area to be acquired is greater than 20 hectares, approval of both Houses of Parliament is required under Section 19 of the *Forestry Act*. This allows revocation from being dedicated as state forest, and the land can then be sold under the *Crown Lands Act 1989*.

Under Section 16A of the *Forestry Act*, the Minister may enter into an agreement for the sale or other disposal of land dedicated as state forest in exchange for other land either for the purpose of a state forest or for access to an existing state forest (subject to compliance with the conditions of section 16A(3) of the *Forestry Act*). Once the dedication has been revoked, the RTA can then acquire the land and dedicate it as a public road under the *Roads Act 1993*.

However, action under this Act is not required prior to or during the environmental assessment period. The acquisition approval process under the *Forestry Act* would not take place until it is known whether the Proposal has been approved and the RTA begins land acquisition prior to commencement of construction.

4.6 Exhibition of the environmental assessment

Prior to the exhibition of this report, the NSW Department of Planning, in accordance with Section 75H of the *Environmental Planning and Assessment Act*, and in consultation with other government agencies, determined that this report adequately addressed the requirements stipulated in the Environmental Assessment requirements.

In accordance with the *Environmental Planning and Assessment Regulation 2000*, this report is to be placed on exhibition for a period of no less than 30 days. Submissions are invited from the public.

This report is available, to view on the project website (www.rta.nsw.gov.au/pacific) and is available in hard copy or CD format upon request to the RTA. This report and working papers has been placed on exhibition (for view only) at the following locations:

- NSW Department of Planning, Information Centre, 23-33 Bridge Street, Sydney.
- NSW Roads and Traffic Authority, Ground floor, Centennial Plaza, 260 Elizabeth Street, Surry Hills.
- RTA Motor Registry, 34 Gordon Street, Coffs Harbour.
- Coffs Harbour City Council, corner of Coff and Castle Streets, Coffs Harbour.
- Woolgoolga Public Library, Ganderton Street, Woolgoolga.
- Sapphire Service Station, Pacific Highway, Sapphire.
- Yarrowarra Cultural Centre, 170 Red Rock Road, Corindi Beach.
- RTA Pacific Highway Office, 21 Prince Street, Grafton.
- The Nature Conservation Council of NSW, Level 2, 301 Kent St, Sydney, NSW 2000.

Locations for staffed displays include:

- Woolgoolga Public Library Meeting Room, Ganderton Street, Woolgoolga.
- Shop 16, Moonee Beach Shopping Centre, Moonee Beach.

Copies of this report are available at:

- Department of Planning and RTA websites.
- Coffs Harbour City Council, corner of Coff and Castle Streets, Coffs Harbour.
- Public Library, Ganderton Street, Woolgoolga.
- RTA Pacific Highway Office, 21 Prince Street, Grafton.

Written submissions on this environmental assessment should be sent to:

The Director
Major Infrastructure Assessments
Department of Planning
GPO Box 39
Sydney NSW 2001

4.7 Submissions report and decision-making process

At the conclusion of the exhibition process, the Director-General will provide to the RTA a summary of the submissions received, and/or copies of the submissions received.

The RTA will have an opportunity to respond to the issues raised (as a result of exhibition of this report) in the form of a submissions report. The submissions report, together with an updated Statement of Commitments will be lodged with the Department of Planning for its consideration. Should any design changes be required to address issues raised in any submissions, a Preferred Project Report would also be prepared and made available to the public which would also detail modifications, if any, to the Proposal as a result of the submissions received.

The Minister for Planning would then decide whether to approve the Proposal, with or without conditions; or refuse it.

4.8 Post-determination process

If the Proposal is approved by the Minister for Planning, the Chief Executive of the RTA would then determine whether to proceed with the Proposal.

If the decision is made to proceed, the RTA would undertake the following tasks:

- Notify the local community of the decision.
- Notify affected property owners and acquire the properties required for the Proposal.
- Prepare the detailed design plans and an environmental management plan for construction of the project.
- Take action under the *Forestry Act 1916* to revoke the area of state forest required for the proposal, acquire the land and dedicate it as a public road under the *Roads Act 1993*.
- Prepare the detailed design and environmental management plans for construction of the project.
- Construction of the project.
- Preparation of environmental management plans for the operation of the project.
- Operation of the project.