

4. Statutory and planning framework

This chapter provides the statutory and planning framework for the proposal and considers the provisions of relevant state environmental planning policies, local environmental plans and other legislation.

4.1 Environmental Planning and Assessment Act 1979

4.1.1 State Environmental Planning Policies

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 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 road infrastructure facilities and is to be carried out by Roads and Maritime, it can be assessed under Division 5.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Development consent from council is not required.

The proposal is not located on land reserved under the *National Parks and Wildlife Act 1974* and does not require development consent or approval under the State Environmental Planning Policy (Coastal Management) 2018, State Environmental Planning Policy (State and Regional Development) 2011 or State Environmental Planning Policy (State Significant Precincts) 2005.

Part 2 of the ISEPP contains provisions for public authorities to consult with local councils and other public authorities prior to the commencement of certain types of development. Consultation, including consultation as required by ISEPP (where applicable), is discussed in Section 5 of this REF.

4.1.2 Local Environmental Plans

Singleton Local Environment Plan 2013 (LEP 2013)

The proposal is located within the Singleton LGA. There are two local environmental planning instruments that apply to the Singleton LGA. These are the:

- Singleton Local Environmental Plan 1996 (Singleton LEP 1996)
- Singleton Local Environmental Plan 2013 (Singleton LEP 2013).

The Singleton LEP 1996 remains in force for portions of the Singleton LGA which are identified as deferred matters on the Singleton LEP 2013 land zoning maps. No elements of the proposal would be on land that is identified as a deferred matter in the Singleton LEP 2013, therefore no further consideration of the Singleton LEP 1996 is required.

Clause 5.10 of the Singleton LEP 2013 provides for the protection of heritage items within the Singleton LGA. There are four heritage items within the proposal area that are listed in the Singleton LEP 2013, including the Cokes Ovens, Former Pumping Station, Bebeah, and the Woolpack Inn. An assessment of the potential impacts of the proposal on these heritage items is provided in Section 6.9.

As outlined in Section 4.1.1, Clause 94 of ISEPP overrides the requirement for development consent from Singleton Council and therefore the consent requirements of the Singleton LEP 2013 do not apply.

Nevertheless, the land uses prescribed by the Singleton LEP 2013 have been considered in development of the proposal and are discussed below.

Under the Singleton LEP 2013, the proposal would be located on land zoned:

- RU1 Primary Production
- RE2 Private Recreation
- R1 General Residential
- SP2 Infrastructure - Classified Road and Railway.

RU1 Primary Production

The objectives of this zone under the Singleton LEP 2013 are to encourage diverse and sustainable primary industry production, to minimise the fragmentation of resource lands and to minimise conflict between land uses.

The proposal would be primarily located on land zoned RU1 Primary Production. The proposal has been designed to minimise the extent of land fragmentation where possible, however the proposal would involve the acquisition of some properties zoned and used for agricultural purposes. As described in the assessment of socio-economic impact of the proposal in Section 6.12, the impact to agricultural productivity within the Singleton LGA is considered to be minor.

RE2 Private Recreation

The objectives of this zone under the Singleton LEP 2013 are to enable the use of land for recreational purposes and to provide a range of recreational settings.

The proposal traverses an area of land zoned RE2 Private Recreation located to the north of the Hunter River and to the west of the Main North railway line. Given the lack of access to this land for private recreation and the availability of higher amenity recreational land in the area, impacts to private recreational land in the Singleton LGA as a result of the proposal would be minor.

R1 General Residential

The objectives of this zone under the Singleton LEP 2013 are to provide a variety of housing types and densities to suit the needs of the community and to enable other land uses that provide facilities and services to meet the needs of residents.

The proposal traverses an area of land zoned R1 General Residential, located to the south of the Gowrie Gates to the west of the Main North railway line. The proposal would lead to a reduction in the available R1 zoned land within the Singleton LGA, however the impact on residential land supply would be minor given the size of the parcel of land affected.

SP2 Infrastructure:

The objectives of this zone under the Singleton LEP 2013 are to provide for infrastructure and related land uses and to prevent development that is not compatible with infrastructure.

The proposal would meet the objectives of this zone.

4.2 Other relevant NSW legislation

4.2.1 Roads Act 1993

The objects of the *Roads Act 1993* (Roads Act) include classifying roads, declaring Roads and Maritime Services and other public authorities as roads authorities, and regulation of various activities on public roads.

Under section 143 of the Roads Act, a roads authority can use a public road in the exercise of a function conferred by the Roads Act, so long as the function is exercised in a way that will not unduly interfere with the rights of passage and access that exist with respect to the public road. As outlined in Section 6.6 of this REF, there would be short term impacts to traffic movements as a result of the proposal, however safe access would be maintained throughout the construction period.

4.2.2 Biodiversity Conservation Act 2016

The purpose of the *Biodiversity Conservation Act 2016* (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community consistent with the principles of ecologically sustainable development.

Under Part 2 of the BC Act it is an offence to harm animals and plants; damage areas of outstanding biodiversity value; damage habitat of threatened species or ecological communities. Under Part 2, Division 2 of the BC Act it is a defence to a prosecution if the harm or damage was necessary for the carrying out of a Division 5.1 EP&A Act activity undertaken in compliance with the determination, or undertaken consistent with a state significant infrastructure approval under Division 5.2 of the EP&A Act.

Section 7.3 of the BC Act establishes a test to determine whether a proposed development or activity is 'likely to significantly affect threatened species'. If an activity under Division 5.1 of the EP&A Act is likely to significantly affect threatened species then a Species Impact Statement (SIS) or a Biodiversity Development Assessment Report (BDAR) is required to be prepared.

An assessment of the potential impacts to biodiversity and measures to manage potential impacts are discussed in Section 6.1. The assessment found that the proposal is unlikely to have a significant impact on any threatened species or communities under the BC Act therefore an SIS or BDAR is not required for the proposal.

4.2.3 Biosecurity Act 2015

The *Biosecurity Act 2015* (Biosecurity Act) covers all biosecurity risks, including pest animals, plant diseases and noxious weeds and introduces the legally enforceable concept of a General Biosecurity Duty. As outlined in Section 6.1 of this REF, a number of weed species have been identified in the proposal area during biodiversity inspections. Management measures have been recommended to manage these weed species in accordance with the requirements of the Biosecurity Act.

4.2.4 Fisheries Management Act 1994

The *Fisheries Management Act 1994* (FM Act) provides for the protection of threatened fish and marine vegetation and for the management of associated threatening processes. Part 7A Division 4 of the FM Act

prohibits, without a licence or permit, activities that damage habitats or harm threatened species, populations or ecological communities.

The proposal would impact the Hunter River which is an identified 'Key Fish Habitat' under the FM Act. Activities which may require a permit under the FM Act include, but are not limited to, dredging works, reclamation work and works that would block fish passage.

The construction of temporary in stream structures during construction may be considered to be reclamation work in accordance with the definition at s198A of the FM Act. However, section 199 of the FM Act states that an approval is not required for a public authority to undertake dredging or reclamation work. The public authority is required to give the Minister written notice of the proposed work and consider any matter received from the Minister within 21 days of the notice.

Section 219 of the FM Act makes it an offence to obstruct fish passage without a permit issued under Part 7 of the FM Act. The proposal will require in-stream structures in the Hunter River, such as rock platforms, which may obstruct fish passage subject to the extent of works. The detailed work methodology will be determined during detailed design, however these in stream structures are not expected to obstruct the full width of the Hunter River and therefore would not obstruct fish passage.

Consultation regarding the proposal has already been carried out with the Department of Primary Industries, NSW Department of Planning, Industry and Environment (DPIE) as summarised in Section 5.5.

4.2.5 Water Management Act 2000

The *Water Management Act 2000* (WM Act) provides for the management of surface water and groundwater in NSW. The proposal is located within the area of the Water Sharing Plan for the Hunter Regulated River.

Section 56 of the WM Act establishes access licences for the take of water within a particular water management area. Under clause 21(1) of the Water Management (General) Regulation 2018 (Water Management Regulation) and schedule 4 part 1, Roads and Maritime, as a 'roads authority', is exempt from the need to obtain an access licence in relation to water required for road construction and road maintenance.

Sections 89 to 91 of the WM Act establish three types of approvals that a proponent may be required to obtain. These are water use approvals, water management work approvals (including water supply work approvals, drainage work approvals and flood work approvals) and activity approvals (including controlled activity approvals and aquifer interference approvals).

'Controlled activities' include the erection of a building or carrying out of a work, removal of material or vegetation, the deposition of material, and the carrying out of an activity that affects the quantity or flow of water in a water source. Typically a controlled activity approval would be required under section 91E(1) of the WM Act to allow for construction within 40 metres of a watercourse. However, Clause 41 of the Water Management Regulation, exempts public authorities such as Roads and Maritime from section 91E(1) of the WM Act in relation to all controlled activities that they carry out in, on or under waterfront land. This allows Roads and Maritime to carry out controlled activities on waterfront land.

Under the NSW Aquifer Interference Policy, the proposal is exempt from requiring an aquifer interference approval. Section 3.3 of the policy states that cuttings trenches and pipelines (intersecting the water table) would be considered as having a minimal impact on water-dependent assets, if a water access licence is not required. Therefore, the proposal would be defined as a minimal impact aquifer interference activity given that a water access licence is not required.

An assessment of the potential impacts to surface water and groundwater and measures to manage potential impacts are discussed in Section 6.8.

4.2.6 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NP&W Act) governs the establishment, preservation and management of national parks, state reserves, historic sites and certain other areas, and the protection of certain fauna, native plants and Aboriginal heritage.

The NP&W Act, administered by the Heritage Division, Department of Premier & Cabinet, is the primary legislation for the protection of Aboriginal cultural heritage in NSW. The NP&W Act gives the Secretary of the Department of Premier & Cabinet responsibility for the proper care, preservation and protection of 'Aboriginal objects' and 'Aboriginal places'. Section 86 of the NP&W Act identifies offences relating to the harm of Aboriginal objects or places. An Aboriginal Heritage Impact Permit (AHIP) issued under section 90 of the NP&W Act is required if impacts to Aboriginal objects and/or places cannot be avoided.

Potential impacts to Aboriginal cultural heritage as a result of the proposal have been assessed in accordance with Roads and Maritime's *Procedure for Aboriginal Cultural Heritage Consultation and Investigation* (NSW Roads and Maritime Services, 2011) (PACHCI).

A total of 25 Aboriginal archaeological sites and one Aboriginal cultural site have been identified within the proposal area. Of these sites, disturbance activities as a result of the proposal were anticipated to impact 16 of the 25 Aboriginal archaeological sites and one of the cultural sites. An AHIP will be required for sites to be impacted by the proposal. A summary of the Aboriginal cultural heritage assessment undertaken for the proposal are summarised in Section 6.8.

4.2.7 Heritage Act 1977

The *Heritage Act 1977* (Heritage Act) aims to protect and conserve non-Aboriginal cultural heritage, including scheduled heritage items, sites and relics. The Heritage Act makes provision for a place, building, work, relic, moveable object, precinct, or land to be listed on the State Heritage Register. If an item is the subject of an interim listing, or is listed on the State Heritage Register, a person must obtain approval under section 60 of the Heritage Act for works or activities that may impact on these items.

A non-Aboriginal heritage assessment was completed to inform the REF and is summarised in Section 6.9. No items listed on the State Heritage Register or on a register under section 170 of the Heritage Act were identified within the proposal area.

Under section 139 of the Heritage Act, approval is also required prior to the disturbance or excavation of land if it would, or is likely to, result in a relic being discovered, exposed or damaged. Prior to ground disturbance impacts at the Former Pumping Station (I21), a permit under Section 140 of the *Heritage Act 1977* would be obtained given the potential for archaeological relics at this location.

4.2.8 Contaminated Lands Management Act 1997

The *Contaminated Lands Management Act 1997* (CLM Act) establishes a process for investigating and remediating land where required. The CLM Act allows the NSW Environmental Protection Authority (EPA) to declare land as significantly contaminated land. The EPA may order a public authority to carry out actions or prepare a plan of management for significantly contaminated land. The CLM Act imposes a duty on landowners to notify the EPA and potentially investigate and remediate land contamination if levels are above EPA guidelines.

A Phase 1 Preliminary Site Investigation was carried out to inform the REF and is summarised in Section 6.5. A search of the list of NSW contaminated sites notified to the EPA identified that there are no areas of declared contamination within the proposal area. One EPA listed site (the former Singleton Gasworks) is located 300 metres north-east of the proposal area. The assessment of potential impacts to contaminated

land is described in Section 6.5 and includes measures recommended to manage risks associated with unexpected contamination finds.

4.2.9 Protection of the Environment and Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* (POEO Act) aims to protect, restore and enhance the environments of NSW and reduce potential risks to human health and the environment. The POEO Act outlines pollution offences relating to land, water, air and noise pollution and includes a duty to report pollution incidents.

Under the provisions of the POEO Act, Roads and Maritime is required to notify the EPA if a 'pollution incident' occurs that causes or threatens 'material harm' to the environment.

Under Section 120 of the POEO Act a person who pollutes any waters is guilty of an offence and Roads and Maritime is obliged not to pollute during the construction period or when the site is operational.

Under Part 3.2 of the POEO Act, an environmental protection licence is required for scheduled activities or scheduled development work as defined in Schedule 1. Schedule 1, Clause 35 (road construction) is potentially relevant to the proposal. Road construction is defined by Clause 35(1) as '*...the construction, widening or re-routing of roads, but does not apply to the maintenance or operation of any such road*'. Road construction is considered a scheduled activity under Clause 35(3)(a)(i) where extraction of more than 50,000 tonnes of materials is proposed over the life of the proposal, where the proposal will be carried out in the regulated area. The POEO Act regulated area definition includes the Singleton LGA and the proposal is expected to require extraction of approximately 557,000 cubic metres of material, which is over the 50,000 tonnes threshold. This would require the proposal to be carried out under an Environmental Protection Licence.

4.2.10 Land Acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* (The Land Acquisition Act) applies to the acquisition of land (by agreement or compulsory process) by a public authority authorised to acquire the land by compulsory process. It provides a guarantee that, when a public authority requires the acquisition of land, the amount of compensation will not be less than the market value of the land. The Land Acquisition Act would apply to the acquisition of any land required for the proposal. Property acquisition is further discussed in Section 6.11.

4.2.11 Aboriginal Land Rights Act 1983

The Aboriginal Land Rights Act 1983 (ALR Act) provides for the land rights for Aboriginal persons and for representative Aboriginal Land Councils in New South Wales.

Crown Land parcel Lot 2 DP883810 adjacent to the Hunter River within the proposal area, was subject to an Aboriginal land claim under the ALR Act. The claim was lodged on 3 March 2015 by the NSW Aboriginal Land Council and was refused by the Crown Lands Minister on 13 December 2018.

4.3 Commonwealth legislation

4.3.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) a referral is required to the Australian Government Department of the Environment and Energy for proposed actions that have the potential to significantly impact on matters of national environmental significance or the environment of Commonwealth land. These are considered in Appendix A and chapter 6 of the REF.

A referral is not required for proposed road activities that may affect nationally listed threatened species, endangered ecological communities and migratory species. This is because requirements for considering impacts to these biodiversity matters are the subject of a strategic assessment approval granted to Roads and Maritime under the EPBC Act by the Australian Government in September 2015.

However potential impacts to these biodiversity matters are considered as part of chapter 6 of the REF and Appendix A.

Findings – matters of national environmental significance (other than biodiversity)

The assessment of the proposal's impact on matters of national environmental significance and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant matters of national environmental significance or on Commonwealth land. Accordingly, the proposal has not been referred to the Australian Government Department of the Environment and Energy under the EPBC Act.

Findings – nationally listed biodiversity matters (where the strategic assessment applies)

The assessment of the proposal's impact on nationally listed threatened species, endangered ecological communities and migratory species found that there is likely to be a significant impact on the Central Hunter Valley eucalypt forest and woodland listed as critically endangered under the EPBC Act. Roads and Maritime's strategic assessment has been applied to the proposal as described above. Chapter 6 of the REF describes the safeguards and management measures to be applied to minimise or mitigate impacts. Chapter 6.1 also details the Biodiversity Offset Strategy to be implemented to address residual significant impacts on nationally listed biodiversity matters.

4.3.2 Other relevant Commonwealth legislation

Native Title Act 1993

The proposal is located within an area subject to a registered claim NC2013/006 made by the Plains Clans of the Wonnarua People under the Commonwealth *Native Title Act 1993* (Native Title Act). Consultation with the Plains Clans of the Wonnarua People was undertaken in accordance with Roads and Maritime PACHCI, as detailed in Section 5.3 of this REF.

4.4 Confirmation of statutory position

The proposal is categorised as development for the purpose of a road and road infrastructure facilities and is being carried out by or on behalf of a public authority. Under Clause 94 of the ISEPP the proposal is permissible without consent. The proposal is not State significant infrastructure or State significant development. The proposal can be assessed under Division 5.1 of the EP&A Act.

Roads and Maritime is the determining authority for the proposal. This REF fulfils Roads and Maritime's obligation under clause 5.5 of the EP&A Act including to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the activity.

Under the POEO Act an Environmental Protection Licence would be required from the NSW EPA for road construction.

Under the NP&W Act, an AHIP is required for the proposal.