

**ARTC**

Melbourne–Brisbane  
Inland Rail Alignment Study

Final Report July 2010

Appendix I  
Legislation Review and  
Planning Approvals Strategy



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# 1. Introduction

## 1.1 Background

The Melbourne to Brisbane inland rail project is a multi-jurisdictional project, crossing three states and numerous local government areas. A preliminary review of Commonwealth, state and local legislation and relevant key planning instruments and potential planning approval pathways for the project was undertaken early in the Inland Rail Alignment Study. Following further development of the alignment and a preliminary assessment of environmental impacts, further consideration of statutory and land use planning instruments has been undertaken to identify the key land use issues associated with the project.

This appendix provides a discussion of the key relevant legislation and presents a preferred approvals strategy for the project, incorporating Commonwealth and state approval requirements.

Whilst the project spans the states of Victoria, NSW and Queensland this assessment focuses on the NSW and Queensland sections of the alignment. In Victoria, the project does not involve any construction works or changes to rail operations, and hence no approvals or environmental assessment are required under either the Victorian *Environmental Effects Act 1978*, the *Planning and Environment Act 1987* or the *Environment Protection Act 1970*.

## 1.2 Objectives

The objectives of this appendix are to:

- Identify the key Commonwealth, state and local legislation that may be triggered by the project, and present a summary in the context of the project
- Identify any potential land use conflicts between the project and other developments either approved, proposed or otherwise committed to within the project area
- Identify the likely statutory approvals required for the project and provide an overarching approvals framework for the project and indicative approval timeframes to inform project delivery scheduling
- Outline the key planning and land use issues and considerations and suggest strategies to achieve the efficient and timely delivery of the project

## 1.3 Outline

This appendix comprises three main sections: presented in sections 2, 3 and 4, briefly described below.

### Summary of land use and environmental issues

To determine possible future land use in the vicinity of the project area, it was necessary to:

- Identify potential future land uses by reviewing strategic planning sections of relevant planning documents (i.e. South East Queensland Regional Plan 2009-2031)
- Obtain details of existing development applications, recent investigations/studies undertaken and valid development consents/approvals
- Identify the potential future land use impacts and constraints associated each section of the project alignment.

### **Review of statutory planning policies, approvals and licensing**

A review was conducted of the relevant statutory development standards and controls that apply to land both within and directly adjacent to the project area, and the project itself within both Queensland and NSW. The section of the alignment within Victoria has not been included in the scope as there are no proposed construction works or changes to rail operations in Victoria.

In order to identify a preferred staging and delivery strategy that facilitates the securing of approvals in an efficient and timely manner, it was necessary to:

- Identify the key issues and considerations critical to the efficient and timely securing of project approvals
- Identify the likely approval requirements for the project at the Commonwealth level
- Identify the likely state approvals pathway for the project within NSW
- Undertake an options analysis to identify the preferred state approvals pathway for the project within Queensland.

### **Summary of planning approval framework and strategy**

The recommended staging and delivery strategy was formulated based on identifying the key issues and overarching principles that are considered to be critical to the successful and timely delivery of the project. Based on these key issues and overarching principles, the likely approvals processes at the Commonwealth and state levels (NSW) were identified. For the section of the project subject to Queensland legislation, a detailed options analysis was undertaken given the multiple approvals pathways that are potentially available.

## 2. Land use and environmental issues

### 2.1 Existing land use and environmental issues

Table 2-1 provides a summary of each section of the proposed inland rail project, broken down into individual alignment sections identified for the purposes of alignment concept development. Table 2-1 provides a brief summary of land use zoning, the works involved for each alignment section, and whether the works involve track upgrades, new greenfield rail corridor development or a combination of both. Table 2-1 also lists relevant environmental legislation as a precursor to the discussion in section 3.

**Table 2-1 Route section zoning and potential legislation**

Section	Zoning	Potential Impact	Relevant legislation	Refer- -ence
Inland railway – whole route	n/a	Construction of railway and associated impacts	<ul style="list-style-type: none"> <li><i>Environment Protection and Biodiversity Conservation Act 1999</i></li> </ul>	3.2.1
		Native title	<ul style="list-style-type: none"> <li><i>Native Title Act 1993</i></li> </ul>	3.2.2
Inland railway – NSW	n/a	Construction of railway and associated impacts	<ul style="list-style-type: none"> <li><i>Environmental Planning and Assessment Act 1979</i></li> <li><i>State Environmental Planning Policy (Infrastructure) 2007</i></li> </ul>	3.4.2 3.4.4
		Operation of railway	<ul style="list-style-type: none"> <li><i>Protection of the Environmental Operations Act 1997</i></li> </ul>	3.4.3
		Impacts to potentially contaminated land	<ul style="list-style-type: none"> <li><i>Contaminated Land Management Act 1997</i></li> <li><i>State Environmental Planning Policy 55 - Remediation of Land</i></li> </ul>	3.4.3 3.4.4
		Crown land	<ul style="list-style-type: none"> <li><i>Crown Lands Act 1989</i></li> </ul>	3.4.3
		Heritage items/relics	<ul style="list-style-type: none"> <li><i>Heritage Act 1977</i></li> </ul>	3.4.3
Inland railway – Queensland	n/a	Construction of railway and associated impacts	<ul style="list-style-type: none"> <li><i>Sustainable Planning Act 2009</i></li> <li><i>State Development and Public Works Organisation Act 1971</i></li> </ul>	3.3.2 3.3.2
		Operation of railway	<ul style="list-style-type: none"> <li><i>Environmental Protection Act 1994</i></li> </ul>	3.3.3
		Impacts to potentially contaminated land	<ul style="list-style-type: none"> <li><i>Environmental Protection Act 1994</i></li> </ul>	3.3.3
		State land	<ul style="list-style-type: none"> <li><i>Land Act 1994</i></li> </ul>	3.3.3
		Heritage items/relics	<ul style="list-style-type: none"> <li><i>Queensland Heritage Act 1992</i></li> </ul>	3.3.3
Melbourne to Illabo (no works, no change to rail operations)	Rural, rail corridor / special uses	n/a	<ul style="list-style-type: none"> <li><i>n/a</i></li> </ul>	

Section	Zoning	Potential Impact	Relevant legislation	Refer- -ence
Illabo to Stockin-bingal (greenfield alignment)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
		Threatened species	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> </ul>	3.4.3 3.4.3
		Aboriginal sites	<ul style="list-style-type: none"> <li>National Parks and Wildlife Act 1974</li> </ul>	3.4.3
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3
Stockin-bingal to Parkes (no works)	Rural, rail corridor / special uses	n/a	<ul style="list-style-type: none"> <li>n/a</li> </ul>	
Parkes to Narromine (upgrade of existing track)	Rural, rail corridor / industrial	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
Narromine to Curban (greenfield alignment)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
		Threatened species / removal of vegetation / koala habitat	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> <li>State Environmental Planning Policy 44 - Koala Habitat Protection</li> </ul>	3.4.3 3.4.3 3.4.4
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3
		Indigenous sites / places	<ul style="list-style-type: none"> <li>National Parks and Wildlife Act 1974</li> </ul>	3.4.3
		Land with Mineral Exploration Leases	<ul style="list-style-type: none"> <li>Mining Act 1992</li> </ul>	3.4.3
Curban to Gwabegar (greenfield alignment)	Rural, environmental protection	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
		Threatened species/ removal of vegetation/ koala habitat	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> <li>State Environmental Planning Policy 44 - Koala Habitat Protection</li> </ul>	3.4.3 3.4.3 3.4.4
		Impact on state forests	<ul style="list-style-type: none"> <li>Forestry Act 1916</li> </ul>	3.4.3
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3

Section	Zoning	Potential Impact	Relevant legislation	Refer-ence
Gwabegar to Narrabri west (greenfield alignment)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
		Threatened species/ removal of vegetation/ koala habitat	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> <li>State Environmental Planning Policy 44 - Koala Habitat Protection</li> </ul>	3.4.3 3.4.3 3.4.4
		Impact on state forests	<ul style="list-style-type: none"> <li>Forestry Act 1916</li> </ul>	3.4.3
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3
Narrabri bypass (greenfield alignment)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	Roads Act 1993	3.4.3
		Threatened species/ removal of vegetation	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> </ul>	3.4.3 3.4.3
		Indigenous sites / places	<ul style="list-style-type: none"> <li>National Parks and Wildlife Act 1974</li> </ul>	3.4.3
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3
Narrabri to Camurra (upgrade of existing track)	Rural, special uses	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
Camurra deviation (greenfield alignment)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3
		Threatened species/ removal of vegetation	<ul style="list-style-type: none"> <li>Threatened Species Conservation Act 1995</li> <li>Native Vegetation Act 2003</li> </ul>	3.4.3 3.4.4
		Property impacts	<ul style="list-style-type: none"> <li>Land Acquisition (Just Terms Compensation) Act 1991</li> </ul>	3.4.3
Camurra (north) to North Star (upgrade of existing track)	Rural	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>Water Management Act 2000</li> <li>Fisheries Management Act 1994</li> </ul>	3.4.3 3.4.3
		Road crossings	<ul style="list-style-type: none"> <li>Roads Act 1993</li> </ul>	3.4.3

Section	Zoning	Potential Impact	Relevant legislation	Refer-ence
North Star to Yelarbon (greenfield alignment)	Rural	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Management Act 2000</i> (NSW)</li> <li>• <i>Fisheries Management Act 1994</i> (NSW)</li> <li>• <i>Water Act 2000</i> (Queensland)</li> <li>• <i>Fisheries Act 1994</i> (Queensland)</li> </ul>	3.4.3 3.4.3 3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Roads Act 1993</i> (NSW)</li> <li>• <i>Transport Infrastructure Act 1994</i> (Queensland)</li> </ul>	3.4.3 3.3.3
		Threatened species/ removal of vegetation/ regional ecosystems	<ul style="list-style-type: none"> <li>• <i>Threatened Species Conservation Act 1995</i> (NSW)</li> <li>• <i>Native Vegetation Act 2003</i> (NSW)</li> <li>• <i>Nature Conservation Act 1992</i> (Queensland)</li> <li>• <i>Vegetation Management Act 1999</i> (Queensland)</li> </ul>	3.4.3 3.4.3 3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW)</li> <li>• <i>Acquisition of Land Act 1967</i> (Queensland)</li> </ul>	3.4.3 3.3.3
		Indigenous sites / places	<ul style="list-style-type: none"> <li>• <i>National Parks and Wildlife Act 1974</i> (NSW)</li> <li>• <i>Aboriginal Cultural Heritage Act 2003</i> (Queensland)</li> </ul>	3.4.3 3.3.3
Yelarbon to Inglewood (upgrade / dual gauging of existing track)	Rural, special uses	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
Inglewood to Millmerran (greenfield alignment)	Rural, special uses	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation/ regional ecosystems	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
		Impact on state forests	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> </ul>	3.3.3
		Indigenous sites / places	<ul style="list-style-type: none"> <li>• <i>Aboriginal Cultural Heritage Act 2003</i></li> </ul>	3.3.3
Land with Mineral Development Licences	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3		

Section	Zoning	Potential Impact	Relevant legislation	Refer- -ence
Millmerran to Brookstead (upgrade / dual gauging of existing track)	Special uses	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
Brookstead to Yargullen (greenfield alignment)	Rural, special uses, minor area of residential	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation/ regional ecosystems	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
		Indigenous sites/places	<ul style="list-style-type: none"> <li>• <i>Aboriginal Cultural Heritage Act 2003</i></li> </ul>	3.3.3
Oakey bypass (greenfield alignment)	Rural	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation/ regional ecosystem	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
Oakey to Gowrie (upgrade / dual gauging of existing track)	Rural, minor area of residential	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
Gowrie to Helidon (greenfield alignment)	Rural, special uses and residential	River/creek/waterway crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation/ regional ecosystem	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3

Section	Zoning	Potential Impact	Relevant legislation	Refer- -ence
		Indigenous sites/places	<ul style="list-style-type: none"> <li>• <i>Aboriginal Cultural Heritage Act 2003</i></li> </ul>	3.3.3
Helidon to Laidley (upgrade / dual gauging – of existing track)	Rural and special uses	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
Laidley to Grandchester / Rosewood (greenfield alignment and upgrade / dual gauging of existing track)	Rural, special uses and residential	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation/ regional ecosystems	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
		Aboriginal sites	<ul style="list-style-type: none"> <li>• <i>Aboriginal Cultural Heritage Act 2003</i></li> </ul>	3.3.3
Grandchester / Rosewood to Kagaru (greenfield alignment)	Rural, special uses, industrial	River/creek/water-way crossings	<ul style="list-style-type: none"> <li>• <i>Water Act 2000</i></li> <li>• <i>Fisheries Act 1994</i></li> </ul>	3.3.3 3.3.3
		Road/rail crossings	<ul style="list-style-type: none"> <li>• <i>Transport Infrastructure Act 1994</i></li> </ul>	3.3.3
		Threatened species/ removal of vegetation	<ul style="list-style-type: none"> <li>• <i>Nature Conservation Act 1992</i></li> <li>• <i>Vegetation Management Act 1999</i></li> </ul>	3.3.3 3.3.3
		Impact on Koala habitat		
		Property impacts	<ul style="list-style-type: none"> <li>• <i>Acquisition of Land Act 1967</i></li> </ul>	3.3.3
		Indigenous sites/places	<ul style="list-style-type: none"> <li>• <i>Aboriginal Cultural Heritage Act 2003</i></li> </ul>	3.3.3
Kagaru to Acacia Ridge (no works)	Special use	n/a	<ul style="list-style-type: none"> <li>• <i>n/a</i></li> </ul>	

## 2.2 Future land use

There are a number of proposed and committed major infrastructure projects within the vicinity of the project alignment, which are either currently under investigation by various parties or have recently been approved. A number of these projects/studies are identified through a review of the Queensland Department of Infrastructure and Planning's Key

Infrastructure Project Register, NSW Department of Planning's Major Project Register and relevant local council planning and development systems, and summarised in Table 2-2, along with a description of the potential constraints and opportunities that they pose to the delivery of the project.

**Table 2-2 Approved and proposed major projects in the vicinity of the project**

Project	Description	Relevance to Inland Rail
<p>Queensland Hunter Gas Pipeline (NSW/ Queensland) (approved)</p>	<p>Construction of an 831 km natural gas pipeline between Wallumbilla Gas Hub in Queensland and Newcastle in NSW. The pipeline will facilitate the delivery of competitively priced gas to Eastern Australia to meet the growing demand.</p> <p>The project has been granted approval under both Queensland and NSW State legislation and was approved under Commonwealth legislation (<i>Environment Protection and Biodiversity Conservation Act 1999</i>) in December 2008.</p>	<p>The indicative pipeline route lies to the east of, and parallel to the project alignment (i.e. the existing rail alignment) between Narrabri and Moree.</p>
<p>Parkes Intermodal Terminal (NSW) (approved)</p>	<p>An Intermodal terminal facility for large-scale transport and storage of freight containers between the national road and rail networks. The project involves building a best-practice complex in Parkes which is being promoted as a significant interchange point in the movement of freight within Australia.</p> <p>The Terminal will be located approximately 5 km west of Parkes on a 365 hectare site at the junction of the Main Western and Parkes – Narromine railway lines. The project is part of an overall strategic plan prepared by Parkes Shire Council to develop a multi-modal freight logistics hub in Parkes. The plan also includes:</p> <ul style="list-style-type: none"> <li>• Industrial precincts located in proximity to existing rail infrastructure</li> <li>• Development of a ring road around Parkes to service the hub and divert heavy vehicle traffic.</li> </ul> <p>The project is a joint initiative between Parkes Shire Council and the RTA. It is being planned in two stages: the first stage (1-5 years) aims to achieve freight handling capacity of up to 240,000 twenty foot equivalent units; the second stage aims to raise this to 530,000 twenty foot equivalent units.</p> <p>The Parkes Intermodal Terminal project was approved under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> in March 2007.</p>	<p>The Terminal site will be located immediately adjacent to the existing railway line. Whilst the Terminal does not pose any direct land use conflicts with the project, new access roads, grade separations and upgrades to level crossings are proposed to the existing railway line. Once completed and operational, the Terminal will play a valuable support role to the project and opportunities for integration between the Terminal and the project should be encouraged.</p>
<p>Narrabri Coal Project (NSW) (approved)</p>	<p>Construction and operation of an underground coal mine and associated facilities on the western side of the Kamilaroi Highway, approximately 30 km south-south-east of Narrabri.</p> <p>The project will be delivered in two stages with construction of stage one works underway. Stage one involves the establishment of surface facilities to support the railway line and a rail loop linking into the existing North Western Branch railway line. Pending further technical studies, stage two will involve the conversion of the mine to a longwall mine pending further environmental assessment.</p>	<p>The Narrabri Mine site is located approximately 15 km south of Narrabri, along the existing North Western branch line between Emerald Hill and Narrabri. The mine is not expected to conflict with the Inland Rail project if the proposed Narromine – Narrabri alignment is adopted. The status of the Narrabri Coal Project should be reviewed during the detailed design phase to identify possible conflicts or potential for delays to the project.</p>

Project	Description	Relevance to Inland Rail
<p>Southern Regional Water Pipeline (Queensland) (approved)</p>	<p>Development of a high pressure water transmission network to provide a potable bulk water supply network for the South East Queensland region. The project is being delivered by the Southern Regional Water Pipeline Co. (SRWPCo) whose shareholders include SEQ Water and the Councils of Brisbane City, Ipswich City, Gold Coast City and Scenic Rim Regional.</p> <p>The SRWP will connect the Mt Crosby Treatment Plant and the Kuraby Reservoir with the Gold Coast Water Treatment Plant at Molendinar.</p> <p>The SRWP project was declared a 'significant project' requiring an environmental impact statement (EIS) in September 2005 and a 'controlled action' (Cameron's Hill to Molendinar section) under the <i>Environment Protection and Biodiversity Conservation Act 1999 Act</i>.</p> <p>An EIS was prepared and the project was approved in August 2006, however, changes to the project required that the Coordinator General evaluate the proposed changes in accordance with the <i>State Development and Public Works Organisation Act 1971</i>. Upon completion of the evaluation, the Co-ordinator General's change report concluded that the project could still proceed with an amendment to requirements relating to Koala protection.</p>	<p>The SRWP will traverse the northernmost section of the project alignment in Queensland between Kagaru and Acacia Ridge. While the project proposes to utilise the existing railway line without any upgrades, the construction methodology for the SRWP project may interfere with the functioning of the rail line. The status of the SRWP project should be confirmed during the detailed design phase of the project to determine if any land use conflicts are likely to occur.</p>
<p>Marinna Ethanol Refinery (NSW) (proposed)</p>	<p>A Preliminary Environmental Assessment report has been lodged with the Department of Planning (DoP) under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> for the construction and operation of an ethanol plant and associated infrastructure with a production capacity of 500 million litres of ethanol per year. The facility is proposed to comprise an ethanol refinery, co-generation unit, animal feed and drying process and liquid fertiliser process.</p> <p>The proposed development site comprises 80 hectares and is located approximately 7 km north of Junee. The Director-General's requirements for an environmental assessment (EA) were issued to the Proponent in June 2009.</p>	<p>The site adjoins the existing rail line. The proposed refinery is unlikely to pose a land use constraint to the project.</p>
<p>Tomingley Gold Project (NSW) (proposed)</p>	<p>A Preliminary Environmental Assessment report has been lodged with the Department of Planning, for construction and operation the Tomingley Gold Project, 53 km south-west of Dubbo. The project would include the extraction of ore from three open-cut pits for six years in addition to the development of three waste rock emplacement areas, haul roads, water pipeline, transmission line and other associated infrastructure. The project has been declared a Major Project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> and the Director-General's Requirements for an EA were released in September 2009.</p>	<p>The proposed mine site is located within 5 km of the existing railway line between Parkes and Narromine and is unlikely to pose a land use constraint to the project.</p>

Project	Description	Relevance to Inland Rail
Newell Highway Moree Town Centre Bypass (NSW) (proposed)	Proposed realignment of the Newell Highway to facilitate the removal of 1,600 heavy vehicles a day from the Moree town centre. The bypass includes the upgrading of intersections, a new road bridge crossing the Mehi River, provision for pedestrians and entry statements at the north, south and Gwydir Highway town entry points.  Approval for the bypass was granted by the Minister for Planning in July 2004; however, modifications to the project were made following community consultation for the EIS. The Director-General's requirements for a Part 3A Modification were issued in May 2005.	While the Newell Highway Moree Town Centre Bypass would be located in proximity to the inland railway, it is not expected to generate any future land use conflicts with the project.
Southern Freight Rail Corridor (Queensland) (planning stage)	Between Rosewood and Kagaru, the Queensland Department of Transport and Main Roads (DTMR) has been conducting a study known as the Southern Freight Rail Corridor (SFRC) Study. The SFRC is a dedicated freight-only corridor connecting the western rail line near Rosewood to the interstate railway north of Beaudesert. The project is not yet committed and a \$4 million study is currently underway to identify a possible route. The study has included extensive public consultation with affected parties	The route identified by DTMR has been adopted for the proposed inland railway.
Gowrie to Grandchester Rail Study (Queensland) (planning stage)	Between Gowrie and Grandchester, the route finalised by Queensland Transport in 2003 was designed to allow for future higher speed passenger services as well as the transport of freight west of Brisbane.  Strategic environmental and cultural heritage studies, together with an extensive public consultation program were completed in 2003 to determine the most appropriate corridor; however, no plans to commence construction have been prepared.	This study has identified an alternative route for the inland railway between Gowrie and Grandchester, with specifications more appropriate to operation of intercapital freight trains.

## 2.3 Land use issues summary

A project of the size and scale of the inland railway would inevitably affect land use in the areas through which it travels. Although it would use existing rail corridor in parts, the proposed route for the project partly involves creating a new major transport corridor across two states, mostly across rural land with very low overall concentrations of population or density of development. However, much of the land that would be affected is valuable agricultural land or wildlife habitat, or a combination of the two. In other areas the project would affect developed land on the fringes of rural centres, some of which would be 'sensitive' to the intrusion of new infrastructure and some of which would not.

The major impact on agricultural land is likely to be severance of properties. Rural landholdings in remote areas tend to be large, and the available information on which this report is based is limited with regard to tenure. It is inevitable that the alignment of the proposed rail corridor would result in some property severance, with potential implications for the productive capacity of individual parcels of land, and hence land values. The project would also affect property access, and potentially isolate some parcels of land. A key objective for future stages of design development of the inland railway corridor would be to collect information on land tenure so that these impacts can be minimised through refinement of the proposed alignment. This information would also assist in minimising the extent of land acquisition required for the project. Land acquisition is in itself a significant and potentially sensitive land use issue for the project, as large amounts of land will need to be acquired if the project is to proceed. Achieving a balance between the amount of land

required, and the potential severance and access impacts of the project, will be critical to the overall success of the project.

### 2.3.1 State forest lands

Where possible, the proposed alignment has avoided major areas of intact vegetation, including land within the estates of the relevant NSW and Queensland state forest and national park agencies. While the environmental incentive to avoid disturbance of these areas is self-evident, there are also sound legislative and statutory reasons for avoiding encroachment on state-owned forest and recreation resource lands. In both Queensland and NSW, encroachment into state forest land requires an Act of Parliament to revoke the dedication of that land. While this process is feasible, it is also lengthy and complex.

The proposed inland rail alignment includes three locations where encroachment into state forests would be required, including into the Bringalily State Forest (north of Inglewood, Queensland), the Merriwindi State Forest (west of Gwabegar, NSW) and the Quegobla State Forest (east of Gwabegar, NSW). In NSW, the sale or other disposal of state forest lands less than 20 hectares would not be required to pass through both houses of Parliament. The relevant legislative triggers for this process are in the Queensland *Nature Conservation Act 1992*, and the New South Wales *Forestry Act 1916*.

Should resumption of state forest land be unavoidable, it would require Parliamentary approval, and enactment of special legislation in order to proceed. As part of the process, the Proponent would be required to negotiate the provision of an offset, to compensate the state for any loss of land within the forest estate. There are very specific requirements for offsets in terms of the size of the parcel affected, the relative biological values and biophysical qualities of the land being resumed and the land being offered as compensation, the distance between the affected land and the offset parcel, the connectivity (for habitat) between the two areas of land, the surrounding land uses, and other factors such as the presence and quality of waterways, and so on.

Should the above alignments be pursued further as potentially feasible inland railway alignments, consultation with the relevant agencies in each state should commence early in the process, to ensure understanding of the requirements, and to ensure that the resumptions themselves can be feasible given the legislative requirements and other considerations.

### 2.3.2 National parks and nature reserves

Lands within the respective NSW and Queensland national parks estate impose greater restrictions on encroachment by developments, to the extent that any such encroachment should be avoided at all costs. Resumption of land within the national parks estate also requires Parliamentary intervention (in NSW and Queensland) and is considered an option of last resort. The proposed alignment does not impact directly on any lands within the national parks estate of either NSW or Queensland. However, in northern NSW, the alignment would skirt the Warrumbungle Mountains in close proximity to the Pilliga National Park, and the Merriwindi, Pilliga and Pilliga West State Conservation Areas. For future stages of design development, it is important that these areas be recognised as key physical constraints on the final choice of alignment.

## 2.4 Future development and impacts to the corridor

Depending on when the inland railway proceeds to planning and design there may be a need to ensure that the proposed alignment is protected from inappropriate development within or adjacent to the corridor. This is especially relevant for new sections outside of existing rail corridors. Landowners may propose development that would detrimentally affect construction and operation of the project by way of land use conflict; additional costs associated with land acquisition or compensation; or future land use zoning that would facilitate such development.

The proposed safeguarding of the route will require statutory mechanisms within both the NSW and Queensland legislative frameworks as land use and planning controls are within State jurisdiction.

### 2.4.1 New South Wales

The relevant legislative framework for land use planning in NSW is the Environmental Planning and Assessment Act 1979 (EP&A Act) and subordinate regulations and environmental planning instruments. There are two main mechanisms available to the NSW Government to recognise the proposed rail alignment and ensure future development is consistent with its delivery:

- Ministerial Direction under section 117 of the EP&A Act (s.117 Direction)
- State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).

#### ***S 117 Ministerial Direction***

This Direction from the Minister for Planning is to relevant planning authorities (including local Councils) that require consideration of specified issues in planning proposals for rezoning or changes to land use controls.

A s117 Direction is generally used as a strategic planning tool to ensure a matter is given due consideration prior to a Council rezoning land or changing development controls.

A s117 Direction could include provisions requiring the relevant planning authority, prior to rezoning land, to consult with the proponent and consider or impose criteria defined by the proponent. This could include, for example prohibiting development within the corridor, limiting particular uses within a certain distance of the corridor or defined setbacks for all development from the corridor.

Public consultation associated with the introduction of a new s117 Direction is at the discretion of the Minister. Generally only a comprehensive review of all the Directions is subject to wider consultation and exhibition. One-off Directions or modifications to Directions are often only the subject of targeted consultation with affected government agencies, councils or industry groups.

#### ***Infrastructure SEPP***

The Infrastructure SEPP is generally used to ensure actual development proposals do not affect the proposed infrastructure corridor, i.e. at the development application stage.

The Infrastructure SEPP includes provisions for defining rail corridors that have yet to be approved or implemented (as 'interim rail corridors', e.g. South West Rail Link) and notification and consultation procedures for development within and adjacent to the corridors.

To reserve the route of the inland railway through the Infrastructure SEPP, it would be necessary for the Infrastructure SEPP to be amended to include the inland rail project as an interim rail corridor.

Clause 88 of the Infrastructure SEPP provides that, where development is proposed within or adjacent to an interim rail corridor, the development consent authority (e.g. council) must consult with the relevant rail authority to seek the concurrence of the relevant rail authority prior to granting development consent.

In determining whether to provide concurrence, the relevant rail authority is to take into account the likely effect of the development on the practicability, cost (including land acquisition and construction costs) and safety aspects on the project.

The Infrastructure SEPP (Clause 89) also provides for a review process where the interim rail corridors are reviewed every two years to determine whether any amendments to the corridor (e.g. land to be excluded or included) are required.

Public consultation for an amendment to a SEPP is at the Minister's discretion. For single issue amendments such as listing an interim rail corridor, it is likely that the Minister would consult within government and possibly with affected local councils. It is unlikely the amendment would be publicly exhibited.

### **Summary**

The NSW Planning system provides relatively straightforward mechanisms for protecting the rail corridor alignment both through strategic planning (s117 Direction) and development control (Infrastructure SEPP).

The processes are not likely to require additional environmental assessment or public consultation.

### **2.4.2 Queensland**

The relevant legislation for land use planning in Queensland is the Sustainable Planning Act 2009 (SP Act). The Queensland legislative framework differs from that in NSW in that it places greater emphasis on the strategic planning in order to streamline the development approval process.

In Queensland, there are a number of potential avenues for statutory protection of the proposed rail corridor:

- Community Infrastructure Designation
- Integrated Transport Plans
- State Planning Policy.

#### ***Community Infrastructure Designation (CID)***

CID allows land, such as corridors for future railways, to be reserved for community infrastructure purposes. It is the principal mechanism used in Queensland to protect strategic rail corridors from land use conflict. Under CID, the land for the rail alignment would be included in local government planning schemes to protect it for the future and provide certainty to the community about its location. A section of the proposed alignment of the inland railway (the Southern Freight Rail Corridor) is already in the CID process.

Unlike the NSW mechanisms, the CID process involves a formal strategic level of environmental assessment and the Minister, before designating land, must be satisfied that

there has been an adequate level of public consultation and that issues raised by the community have been addressed.

The key benefit of the designation is that that the ultimate development does not require approval under a local planning scheme nor meet any scheme requirements. However state level legislation and approval would still apply. Land acquisition or compensation may be required, nevertheless, where a landowner can demonstrate hardship arising from the designation.

### ***Integrated Regional Transport Plans (IRTP)***

The Queensland Government is currently in the process of updating its Integrated Transport Framework which is a guide to transport planning in Queensland and will inform land use planning decisions. Integrated Transport Plans will be prepared or updated for each region. These plans identify transport infrastructure requirements of each region and devise actions for their implementation and funding.

While in themselves the plans do not provide statutory protection to infrastructure corridors, they inform local councils' strategic land use planning processes and are prepared by the Department of Transport and Main Roads in close collaboration with local councils. Recognition of the inland rail corridor in IRTPs would assist in influencing council land use decisions in local plan making.

### ***State Planning Policy***

Similar to the NSW process, State Planning Policies in Queensland can be drafted to control land use decisions surrounding key infrastructure. Presently the only State Planning Policy to fulfil this role is State Planning Policy 1/02 which protects major airports from incompatible development and requires referral of certain development to Commonwealth agencies. An argument could be put to the NSW Government that the inland railway is an important Commonwealth initiative requiring State Planning Policy protection to safeguard the proposed corridor.

It should however be noted that the Queensland Government has not to date used the State Planning Policy Process to protect their own linear infrastructure corridors, preferring the CID process.

### ***Summary***

In contrast to the NSW Planning system, the Queensland Planning system places far greater emphasis on strategic planning processes, resolving land use conflict as part of the plan-making process. This then enables greater streamlining of the development approval process. The process used by the Queensland Government to protect strategic rail corridors is the CID process which requires a level of environmental assessment and public consultation prior to the corridor being granted a level of protection through local plans.

## 3. Statutory planning policies, approvals and licensing

### 3.1 Introduction

The following section of this report outlines the relevant legislation and policies that apply to the project at Commonwealth and state levels (including regional and local levels), and the statutory planning assessment and approvals pathways that are likely to be followed to secure approval (or approvals) for the project to proceed.

A number of key Commonwealth legislation and policy documents will apply to the project, specifically in respect of Native Title and matters of ‘national environmental Significance’. However, while Commonwealth approval is likely to be required, particularly in respect of environmental issues and impacts, the overall approvals pathway will be determined by the relevant legislation in each state. Should a Commonwealth environmental approval be required, it is likely that the state process(es) for assessment and approval would also satisfy Commonwealth requirements, and would be formally accredited as such.

For each state, the discussion focuses on legislative approvals at two levels.

First, the focus is upon how an overall project approval might be secured. This process is likely to require preparation of an environmental impact assessment including a detailed investigation of the project’s environmental, social and economic feasibility. Given the different jurisdictions, it is likely that separate approvals will be required in NSW and Queensland, and the respective processes are explained.

Second, there is also discussion of the likely ‘second tier’ approvals (including licences, permits and relevant works approvals) that would be required prior to construction commencing. These approvals, which would be triggered after an environmental assessment process has been completed and project approval granted, would cover operational matters such as vegetation clearing and rehabilitation, stormwater runoff and water quality, interference with waterways, fauna protection, pollution control, and construction site management.

#### 3.1.1 Major projects

In both NSW and Queensland, planning approvals legislation makes provision for projects at many levels. In each state, decisions regarding land use and development are mostly made at the local government level, within a local planning framework as documented in a local environmental plan (NSW) or a Planning Scheme (Queensland). The state in most cases has no role to play in assessing or approving most day-to-day applications for development of land.

However, a project such as the inland railway has potential implications for state and national economic development, and its assessment needs to take this into account. Further, by its nature the project crosses many local jurisdictions, whose planning frameworks may not permit a consistent (or efficient) approach to its assessment. State planning legislation allows for such projects through statutory mechanisms that give the states specific powers to ‘declare’ them as being either ‘Major Projects’ (NSW) or ‘State Significant’ projects (Queensland). These projects, therefore, trigger planning approvals processes at the state level where the relevant Minister has the ultimate authority to determine whether a project should proceed.

The following sections of this report recognise the potential significance of the project, and outline the processes in each state that are likely to be triggered. The processes are complex, and require input from many stakeholders. In each state (but in Queensland in particular), the process involves more than one piece of legislation, and many individual statutory approvals, before a project can commence. However, in each state a 'generic' process can very broadly be summarised as follows:

- The proponent signals an intention to proceed with the project, and approaches the State agency responsible for overseeing the development of major projects
- The state issues guidelines or terms of reference for assessing environmental impacts
- The proponent develops a concept or reference design, upon which the environmental assessment is based
- The proponent consults with the community and other stakeholders with regard to the concept/reference design and its potential impacts
- The environmental impacts are documented and the assessment document is exhibited for public comment
- Comments and submissions are considered, and if necessary the project is modified in response
- The responsible Minister considers the environmental impact assessment and the issues raised in public submissions before making a decision as to whether the project may proceed; the Minister may impose conditions of approval.

The key points about this process are that where major projects are concerned, decisions are made at the state level. While the process assumes a level of acknowledgment and respect for land use planning at the local level, and seeks land use compatibility, local planning instruments and the councils that implement them do not have the statutory power to greatly influence planning for major infrastructure projects.

### 3.1.2 The project proponent

Central to the process of achieving statutory planning approvals for the project is the issue of the project's proponent. Depending on a range of factors including the preferred delivery model, sources of funding, and the (potential) respective roles of the states, ARTC, which has commissioned this study, may or may not ultimately be the proponent. This issue carries importance because the statutory requirements may differ depending upon whether the proponent is a state or Commonwealth government entity or a private entity. For the purposes of this analysis, it is assumed that the proponent will be a 'public authority' (as defined under the NSW *Environmental Planning and Assessment Act 1979*) or a 'public sector entity' (as defined under the Queensland *Sustainable Planning Act 2009*).

## 3.2 Commonwealth legislation and approvals

The Commonwealth legislation and policy relevant to the project includes the following:

- Environment Protection and Biodiversity Conservation Act 1999
- Native Title Act 1993
- Nation Building Program (National Land Transport) Act 2009.

### 3.2.1 *Environment Protection and Biodiversity Conservation Act 1999*

#### Overview

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides that any action (i.e. a project, development, undertaking, activity or series of activities) that has, will have or is likely to have a significant impact on a matter of national environmental significance or other matter protected under the Act such as the environment of Commonwealth land, requires approval from the Commonwealth Environment Minister (the Minister). If the Minister decides that approval is required, the proposed action is termed a 'controlled action'. The proposal is then required to undergo a formal assessment process before it can proceed.

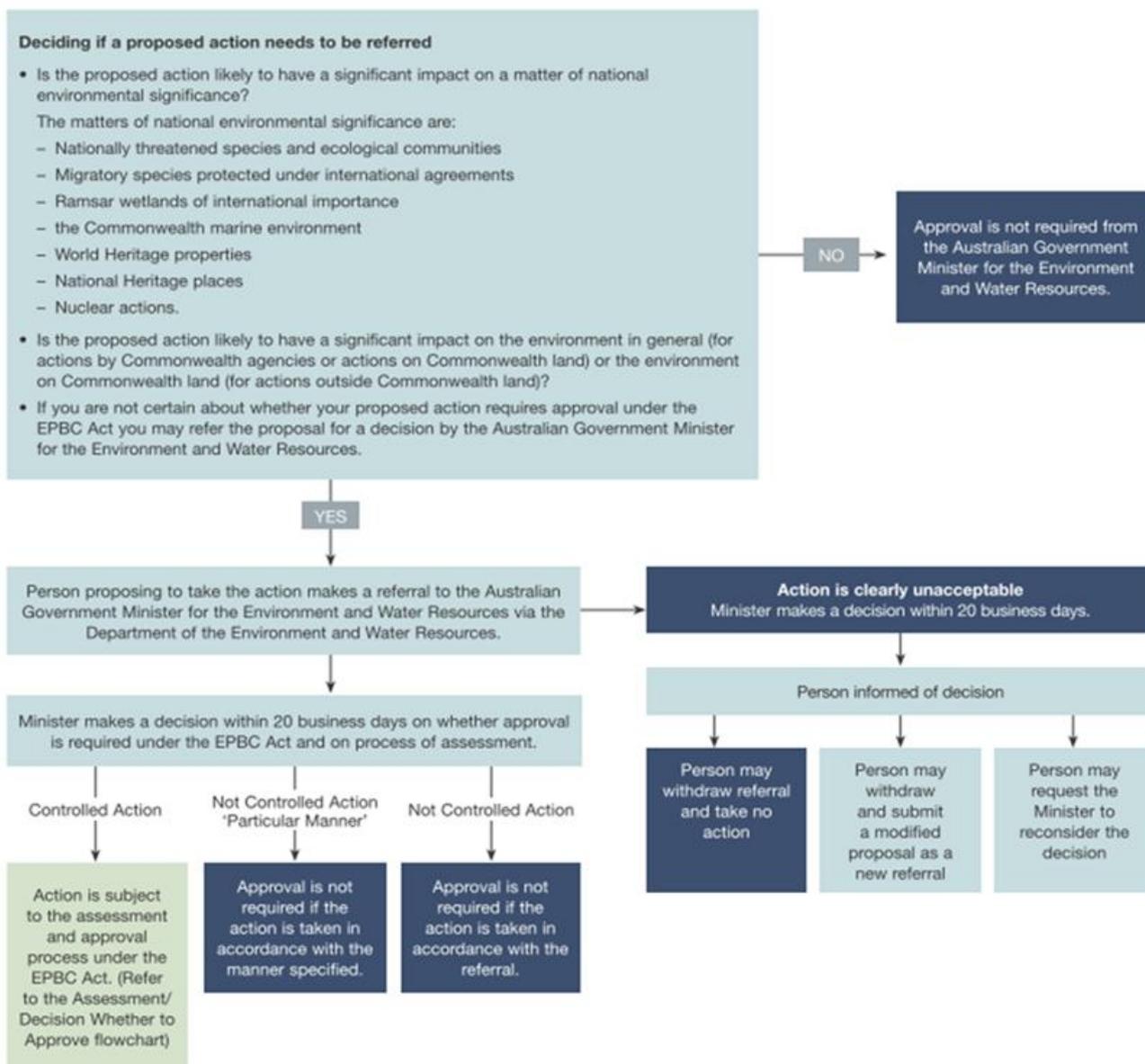
The EPBC Act identifies the following matters of national environmental significance as triggers for potential Commonwealth assessment and approval:

- World Heritage properties (Sections 12 and 15A)
- National Heritage places (Sections 15B and 15C)
- Wetlands of international importance (Sections 16 and 17B)
- Listed threatened species and communities (Sections 18 and 18A)
- Listed migratory species (Sections 20 and 20A)
- Protection of the environment from nuclear actions (Sections 21 and 22A)
- Marine environment (Sections 23 and 24A)
- The environment, if the action involves Commonwealth land (Sections 26 and 27A),
- The environment, if the action is taken by the Commonwealth (Section 28)
- Commonwealth Heritage places outside the Australian jurisdiction (Sections 27B and 27C).

If a project is likely to impact on any of these matters of national environmental significance a referral, under the EPBC Act must be made to the Minister. Figure 3-1 provides an outline the specific steps involved in a referral under the EPBC Act.

Subsequent to the receipt of a referral the Minister will determine whether the proposed action is a 'controlled action' or not. If the action is considered a controlled action an environmental assessment must be submitted to the Minister for approval. This environmental assessment can proceed through a bilateral agreement that accredits a state or territory assessment process, a ministerial declaration that accredits another Commonwealth agency or through assessment determined by the Minister.

The Minister must decide whether or not to approve the taking of the action within 30 business days of receiving the assessment report or 40 business days of receiving a report of a commission that has conducted an inquiry under the Act. The details for the Minister's approval are prescribed in Section 133. The Minister may attach conditions to the approval to protect a matter of national environmental significance or to repair or mitigate damage to a matter of national environmental significance.



**Figure 3-1 EPBC Act referral process**

Source: <http://www.environment.gov.au/epbc/assessments/flowchart.html> (as amended)

### Relevance to the project

There are numerous sections along the alignment where the project has the potential to result in impacts upon matters of national environmental significance under the EPBC Act. In Queensland the project has greatest potential to impact on environmentally sensitive areas between Toowoomba and Brisbane, where the alignment traverses mountainous and/or densely vegetated land. Similarly in NSW, the potential for impact on matters of national environmental significance exists in densely vegetated, mountainous country around the Warrumbungle Mountains, south-west of Narrabri.

Given that the project has been identified as having potential to impact upon matters of national environmental significance, together with the overall scale of the project and diversity of environments/landscapes that the route impacts, it is recommended that a referral be made to the Commonwealth Minister seeking a determination on whether these impacts are likely to be deemed significant, and whether the project is a 'controlled action' requiring assessment under the EPBC Act.

### **3.2.2 Native Title Act 1993**

#### **Overview**

The *Native Title Act 1993* provides the legal principles for the recognition of native title and the integration of this form of property right into the existing land title system. The Act provides for the validation of past Commonwealth acts (s.14) and makes the same provision for the states and territories (s.19). The Act establishes the processes involved in having native title recognised and the role and responsibilities of the different bodies involved in this process.

The *Native Title Act 1993* adopts the common law definition of 'native title'. The Act establishes the National Native Title Tribunal and governs how native title is dealt with across Australia. The Commonwealth *Native Title Amendment Act 1998* made extensive amendments to the *Native Title Act 1993* including confirmation that native title rights and interests may exist over land that is, or has been, subject to a pastoral lease and other types of leases.

#### **Relevance to the project**

In accordance with the *Aboriginal Cultural Heritage Act 2003* (Queensland) and the *National Parks and Wildlife Act 1974* (NSW), the relevant native title claimants and Cultural Heritage Bodies for the project will need to be notified and invited to be involved in preparing a cultural heritage management plan as part of the environmental assessment process for the project.

The cultural heritage management plan would be prepared under the relevant state legislation; the *Native Title Act 1993* itself does not prescribe a requirement for preparation of a cultural heritage management plan. However it does provide the legal basis for identification of native title claimants and registration of claims, and therefore, by default provides the means through which the relevant Aboriginal parties can be approached to participate in preparation of a cultural heritage management plan.

A cultural heritage management plan would be prepared by the project's proponent, with input from native title claimants in respect of the lands affected by the project. This process would commence during the environmental assessment stage, and a cultural heritage management plan would need to be completed prior to construction commencing. Approval or certification of the cultural heritage management plan would be through the relevant state agency having responsibility for administering aboriginal cultural heritage legislation in each state.

### 3.3 Queensland legislation and approvals

This section discusses state-level planning and environmental legislation as it relates to the project and highlights the key statutory approvals likely to be triggered.

At the strategic planning approvals level there are two key pieces of legislation in Queensland that will be critical to the project — the *State Development and Public Works Organisation Act 1971*, and the *Sustainable Planning Act 2009*. The question of whether the project secures state government approval would be governed by processes (described in following sections) under one or both of these Acts.

If the project is approved at the state level, it will then progress to more detailed design and ultimately to construction. Before construction can commence in Queensland, however, the project will be subject to a number of approvals under subordinate legislation. The following legislation, plans and State planning policies are likely to be relevant to the Queensland portion of the project:

- *Sustainable Planning Act 2009*
- *Fisheries Act 1994*
- *Water Act 2000*
- *Coastal Protection and Management Act 1995*
- *Environmental Protection Act 1994*
- *Vegetation Management Act 1999*
- *Transport Infrastructure Act 1994*
- *Nature Conservation Act 1992*
- *Aboriginal Cultural Heritage Act 2003*
- *Acquisition of Land Act 1967*
- *Land Act 1994*
- *South East Queensland Regional Plan 2009-2031*
- *South East Queensland Infrastructure Plan and Program 2009-2026*
- *South East Queensland Koala State Planning Regulatory Provisions*
- State planning policies:
  - Development and the Conservation of Good Quality Agricultural Land – SPP 1/92
  - Development in the Vicinity of Certain Airports and Aviation Facilities – SPP 1/02
  - Mitigating the Adverse Impacts of Flood, Bushfire and Landslide – SPP 1/03
  - Protection of Extractive Resources and Guidelines – SPP 2/07
  - Planning and Managing Development Involving Acid Sulfate Soils – SPP 2/02
  - Draft Queensland Coastal Plan 2009.

#### 3.3.1 Planning approval pathways

Under the Queensland State planning framework, there are multiple pathways that can apply when seeking State government approval for a major project. These pathways include:

- Seeking a declaration as a 'Significant Project' and preparing an Environmental Impact Statement (EIS) under the *State Development and Public Works Organisation Act 1971*
- Seeking a designation as 'Community Infrastructure' under the *Sustainable Planning Act 2009*
- Undertaking of an environmental impact assessment (EIA) under the *Sustainable Planning Act 2009*.

These processes are summarised below, followed by a discussion regarding the relevance of each pathway to the project and an assessment of the eligibility of each option.

In summary, given the size and nature of the project, it is most likely to be assessed under the provisions of the *State Development and Public Works Organisation Act 1971*. However, this will be subject to a declaration by the Coordinator-General of a 'Significant Project' (the criteria for which are listed below). If not declared a Significant Project, it is recommended that the project be assessed under the *Sustainable Planning Act 2009* for designation as 'Community Infrastructure'.

### 3.3.2 Key planning approval legislation

#### *State Development and Public Works Organisation Act 1971*

##### Overview

- The *State Development and Public Works Organisation Act 1971* establishes the framework for environmental assessment of major projects in Queensland. The *State Development and Public Works Organisation Act 1971* provides the Coordinator-General with the power to coordinate the environmental assessment of major projects through declaring them 'Significant Projects,' which require the preparation of an EIS (s26). Declaration of a project as a 'Significant Project' is based on one or more of the following criteria:
  - Complex approval requirements, including local, state and Commonwealth Government involvement
  - A high level of investment in the state
  - Potential effects on infrastructure and/or the environment
  - Provision of substantial employment opportunities
  - Strategic significance to a locality, region or the state.

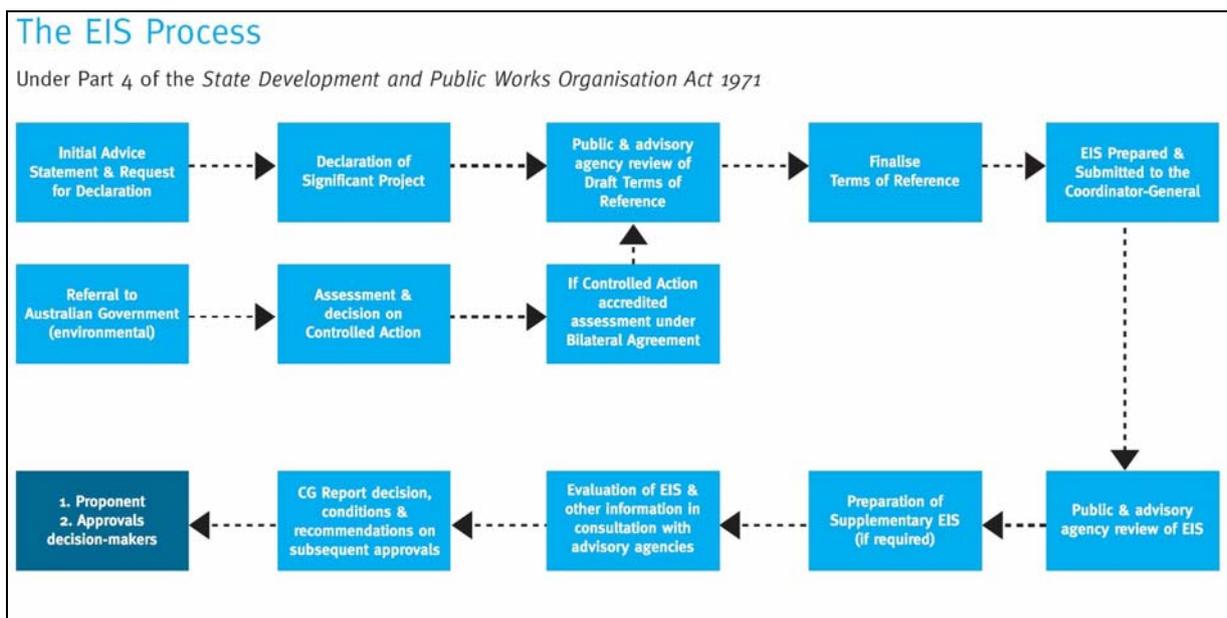
Figure 3-2 provides an outline of the *State Development and Public Works Organisation Act 1971* EIS process. Upon completion of the EIS process, an application under the Integrated Development Assessment System (IDAS - see below) for a Material Change of Use can then be made, and the IDAS process skips the Information and Referral Stage and Notification Stage and proceeds directly from Application Stage to the Decision Stage.

In evaluating the EIS the Co-ordinator General may state conditions or make recommendations to impose on the proposed project or alternatively refuse the project. The Evaluation Report links the approval processes in other legislation such as the EPBC Act, the *Sustainable Planning Act 2009* and other State legislation.

Under the *State Development and Public Works Organisation Act 1971*, projects that are declared 'Significant' can also be declared as 'Prescribed Projects' by the Minister. 'Prescribed Projects' are projects that the Minister considers:

- Are economically or socially significant to the state or the region in which the project is to be undertaken or
- Affect an environmental interest of the state or a region.

During the IDAS assessment phase of a prescribed project, the Co-ordinator General can influence the assessment by directing the assessment manager (e.g. a local council) to progress an application or make a determination within a certain period. The Co-ordinator General also has authority to 'step in' and assess and decide the application himself/herself.



**Figure 3-2 EIS Process under Part 4 of the *State Development and Public Works Organisation Act 1971***

Source: [http://www.dip.Queensland.gov.au/images/mp\\_EIS\\_diagram.JPG](http://www.dip.Queensland.gov.au/images/mp_EIS_diagram.JPG) - 12/3/09

Further to these powers, if the Minister considers the prescribed project is critical or essential to the state for economic, environmental or social reasons then the Minister can declare the prescribed project to be a ‘critical infrastructure project’, enabling easements to be created to facilitate the implementation of the project.

### Relevance to project

Given the scale, impact and significance of the project both for Queensland and nationally, it is likely to satisfy the eligibility criteria items and be declared by the Minister as a ‘Significant Project’ and a ‘Prescribed Project’ under the *State Development and Public Works Organisation Act 1971*.

### **Sustainable Planning Act 2009**

As well as the EIS process under Part 4 of the *State Development and Public Works Organisation Act 1971* described above, there are two possible approval pathways under the *Sustainable Planning Act 2009*. These are outlined in the following sections.

### **Community Infrastructure Designation — overview**

Under the *Sustainable Planning Act 2009* a Minister or local government may designate land for ‘Community Infrastructure’. Through the identification of land for community infrastructure, the community infrastructure designation process facilitates the effective integration of land use and infrastructure planning, for the cost-effective provision of necessary infrastructure. The community infrastructure designation process enables larger projects, which are beyond the scope of local government planning schemes, to be considered at the state level.

There are two tests to determine whether a proposal qualifies for designation. The first is whether the proposal meets the *Sustainable Planning Act 2009* definition of community infrastructure, which includes ‘*railway lines, stations and associated facilities*’.

The second test is whether the infrastructure will:

- Facilitate the implementation of legislation and policies about environmental protection or ecological sustainability
- Facilitate the efficient allocation of resources
- Satisfy statutory requirements or budgetary commitments of the state or local government for the supply of community infrastructure or
- Satisfy the community's expectations for the efficient and timely supply of the infrastructure.

The intent of this second test is to ensure that designated community infrastructure is planned and justified in terms of being beneficial to the public.

Under the Guidelines for a new designation, the process includes six steps:

1. Initial assessment report
2. Initial consultation
3. Finalising an initial assessment report
4. Public notification and second consultation
5. Preparation of a final assessment report
6. Forwarding the final assessment report to the Minister.

Before assigning a community infrastructure designation, the Minister must consider the adequacy of the environmental assessment, any issues raised in public consultation, as well as any state planning policies, regional plans or relevant planning schemes. There are no statutory timeframes under the *Sustainable Planning Act 2009* within which the Minister is obliged to make a decision regarding the designation of land.

Regardless of the proponent, once land is designated for community infrastructure, the proposed infrastructure is exempt from obtaining all approvals under the relevant local government planning schemes. Although land may be designated for community infrastructure, the relevant state approvals must be obtained before proceeding with development.

Further, community infrastructure designations must be noted on local government planning schemes, with Ministerial designations also required to be listed on a community infrastructure designation database.

A designation lapses after six years if it has not been acted upon, for example, if construction has not commenced or a notice of intention to resume the land has not been given. Notwithstanding, a Minister may give a council written notice reconfirming a Ministerial designation.

Unlike the *Sustainable Planning Act 2009* EIS process (see below), the community infrastructure designation process is not accredited under the Commonwealth-state bilateral agreement. Therefore, if the project triggers a 'controlled action' under the EPBC Act, the proponent will be required to undertake two separate environmental assessment processes, at the state level (the community infrastructure designation process) and at the Commonwealth level.

### **Community Infrastructure Designation — relevance to the project**

The project is likely to be considered eligible for assessment under a community infrastructure designation, given that the project should fall within the definition of community infrastructure and given that the process would assist to satisfy the community's expectations for the efficient and timely delivery of the project. In addition, a community infrastructure designation would facilitate the efficient allocation of resources to the project given that the project crosses many local government areas. Although the project may not be considered strictly 'community infrastructure' owing to the fact that it is for freight rather than public passenger services, the overall impact that it is anticipated to have in terms of reducing the traffic congestion on existing passenger lines is likely to lead to an overall public benefit.

### **Environmental Impact Statement — Overview**

The purpose of the *Sustainable Planning Act 2009* EIS process is to facilitate the assessment of the impacts of a development, together with the measures proposed to minimise potential adverse environmental impacts.

The *Sustainable Planning Act 2009* EIS process applies to development prescribed under a regulation, if the development is:

1. Is proposed to be, the subject of a development application
2. For community infrastructure intended to be carried out on land proposed to be designated for the infrastructure or
3. Is proposed to be the subject of a master plan application.

The process is also accredited under the State-Commonwealth bilateral agreement, which means that if the project is a 'controlled action' under the EPBC Act, it can be assessed under the *Sustainable Planning Act 2009* EIS process, and one environmental assessment processes will satisfy the requirements of both state and Commonwealth legislation.

The statutory process for an EIS under the *Sustainable Planning Act 2009* requires that a proponent apply first to the Chief Executive (Department of Infrastructure and Planning) for the Terms of Reference. The Chief Executive prepares draft Terms of Reference and releases them for public comment, before finalising and providing them to the proponent.

Once it has been accepted by the Chief Executive, the proponent places the draft EIS on public display for at least 30 business days. The Chief Executive then considers the EIS, and any submissions and comments received, and issues a notice to the proponent to either (a) alter the draft EIS or (b) stating that the EIS has been accepted for the development.

The Chief Executive then prepares an EIS assessment report, which may recommend conditions on which any approval required for the development may be given.

On completion of the EIS process, an IDAS application for a Material Change of Use can then be made, but the Information and Referral, and Notification Stages under IDAS can be skipped.

### **Environmental Impact Statement – relevance to the project**

The project meets the eligibility requirements for the *Sustainable Planning Act 2009* EIS process given that it would be the subject of a development application. However, the *Sustainable Planning Act 2009* EIS process may not be the most appropriate approval pathway for a project such as the inland railway, because, first, to be deemed 'properly

made', a development application would require land owner consent for every lot, in addition to 'Evidence of Resource Entitlement' from the state. This would be an onerous undertaking over the length of the project within Queensland. Second, this process does not remove the requirement to obtain additional approvals under the IDAS process (i.e. for Material Change of Use, operational works/permits/licences). By comparison, the *State Development and Public Works Organisation Act 1971* EIS process allows Material Change of Use (MCU) approvals to be fast-tracked, and not all stages of the IDAS process are required.

### **Integrated Development Assessment System (IDAS)**

The IDAS has been established under the *Sustainable Planning Act 2009* as a means of integrating the assessment and approvals process for development applications involving an MCU or operational works. Large projects commonly require approval under a number of pieces of different legislation, and IDAS is a checklist-driven mechanism which aims to streamline the process where a number of different government agencies or regulatory authorities are involved. IDAS nominates a single assessment manager whose responsibility is to notify the development application, refer it to agencies either for advice or concurrence, to process the application and issue approvals. The assessment manager is often a local council, but in certain circumstances may also be a government agency.

### **Major project approval process: summary**

Based on the above discussion of the possible statutory processes, the preferred approach to the assessment and approval of the project in Queensland is the 'Significant Project' EIS process under the *State Development and Public Works Organisation Act 1971*. This is because the *State Development and Public Works Organisation Act 1971* process gives the Coordinator-General certain powers to coordinate the assessment of the project at all levels, to fast-track the required approvals and licences, and to intervene if required in resolving disputes between state agencies or to ensure that applications are dealt with expediently. The Coordinator-General's involvement would signal a level of government support for the project and cement its priority status.

Further, for a 'Significant Project' the *State Development and Public Works Organisation Act 1971* process allows all (subsequent) applications for Material Change of Use under a planning scheme to be fast-tracked.

While the community infrastructure designation process has the benefit of exemption from land use approvals under local planning schemes, and no requirement to obtain landowners' consent or evidence of Resource Entitlement (to achieve the designation), its relative disadvantages include:

- The community infrastructure designation process is not accredited under the Commonwealth-state bilateral agreement, therefore for a controlled action (under the EPBC Act), it would be necessary to undergo two separate environmental assessment processes
- Once the designation has been granted, there is no substantial government involvement in or support for the project, and no additional government or ministerial powers of intervention
- While community infrastructure designation would give the project exemption from obtaining approvals under planning schemes (i.e. for land use), there are no exemptions from or opportunity for fast-tracking of environmental approvals which, for this project, would be considered the critical approvals and therefore higher risk
- There are no statutory timeframes on the decision process by the Minister

- The designation lapses after six years unless acted upon
- The project would still require approvals under state legislation as well as operational works permits under the relevant local planning schemes, and landowner consent and evidence of Resource entitlement are required for these applications.

The EIS process under the *Sustainable Planning Act 2009* is similar to that under the *State Development and Public Works Organisation Act 1971*, but without any of the benefits afforded by the Coordinator-General's involvement and increased powers. There are no exemptions from planning scheme approval requirements, and no ability to fast-track these applications.

Therefore, based on the above, and given the current status of planning approvals legislation in Queensland, it is considered that to achieve greater certainty about the project's outcomes, ARTC should pursue a declaration of the project as a 'Significant Project' in Queensland so that it can be assessed and approved under the *State Development and Public Works Organisation Act 1971*.

### 3.3.3 Other planning and operational approvals legislation

The following section provides a brief summary of other Queensland legislation relevant to the project, and approvals that may be required. It should be noted that the approvals and legislation listed below become necessary only after the project has been assessed under one of the major project approvals processes discussed above. Consequently, while these approvals are essential for construction and operation of the project, they are not considered critical in terms of the overall government decision that the project should (or should not) proceed.

#### ***Sustainable Planning Act 2009***

##### **Overview**

In addition to obtaining overall project approval at the state level, development permits will also be required under the *Sustainable Planning Act 2009*.

Development that is prescribed as Assessable Development under Schedule 3 of the *Sustainable Planning Regulation 2009* and/or is assessable under a planning scheme requires an application for development approval under the *Sustainable Planning Act 2009*, with the Assessment Manager identified in Schedule 6 of the *Sustainable Planning Regulation 2009*. Therefore, any Material Change of Use (e.g. environmentally relevant activities) or Operational Works (e.g. constructing or raising a waterway barrier, marine plant removal) development that is associated with the project will be required to be assessed under the *Sustainable Planning Act 2009* if matters covered under Schedule 8 are triggered. These triggers are generally contained in other related environmental legislation.

##### **Relevance to the project**

All development applications for works made assessable development by Schedule 3 of the *Sustainable Planning Regulation 2009* (for example those works identified in Table 2-1) would need to be lodged with the relevant agencies once overall approval of the project has been granted through one of the three approvals pathway options detailed in section 3.2.1 and subsequent to commencement of the detailed design phase of the project.

As such, these approvals are relevant in that they are critical to authorising the construction and operational phases of the project but not to obtaining overall project approval.

## **Fisheries Act 1994**

### **Overview**

The *Fisheries Act 1994* provides for the management, use, development and protection of fisheries resources and fish habitats, and the management of aquaculture activities. The Act holds provisions for the following:

- Removal, damage or disturbance to marine plants, including mangroves
- Works in a declared fish habitat
- Waterway barrier works
- Tidal water, fresh and marine aquaculture operations.

Schedule 3, Part 1, Table 4 of the *Sustainable Planning Regulation 2009* specifies that operational work for the purposes of the above activities under the *Fisheries Act 1994* is assessable development. Fisheries development approvals for the above works are required under the *Sustainable Planning Act 2009*.

### **Relevance to the project**

Numerous waterways are located along the project alignment. Approvals under the *Fisheries Act 1994* will be required if construction works involve the constructing or raising of a waterway barrier or if any works result in the removal, destruction or damage of marine plants.

The likelihood of the project triggering such approvals can be minimised in a number of ways. These include the implementation of a construction process that avoids waterway barrier works when installing culverts and bridges or for providing direct access to the project site for construction. In addition, works can be designed so that they avoid areas known to contain marine plants.

## **Water Act 2000**

### **Overview — IDAS**

The *Water Act 2000* fulfils Queensland's responsibilities under the 1994 Water Resources Policy of the Council of Australian Governments. The Act provides a legislative base for the sustainable planning of Queensland's non tidal waters.

Schedule 3, Part 1, Table 4, Item 3 of the *Sustainable Planning Regulation 2009* specifies that operational works for the purpose of taking or interfering with water under the *Water Act 2000* is assessable development.

Under IDAS, certain water related development, such as taking from or interfering with a watercourse or artesian water, is assessable under the *Water Act 2000* and requires assessment and approval under the *Sustainable Planning Act 2009* for most works in a watercourse (pumps, gravity diversion, stream diversion, weirs, barrages and dams).

### Overview — non-IDAS

In addition to the approvals triggered under Schedule 3 of the *Sustainable Planning Regulation 2009*, the *Water Act 2000* also regulates the undertaking of works that involve the removal of vegetation, excavating or placing fill in a water course, lake or spring. Under the Act, a proponent must obtain a Riverine Protection Permit in order to lawfully undertake these works. These works are permitted if they are undertaken by an approved entity and carried out in accordance with the *Guideline for Activities in a Watercourse, Lake or Spring* (the Guideline).

### Relevance to the project — IDAS

The project traverses a number of watercourses. Approvals under the *Water Act 2000* will be required for works (i.e. vegetation removal, culvert, earthworks). Applications for specific approvals will be required to be made during the detailed design phase of the project.

The extent to which the project takes or interferes with overland flow in addition to the requirement for any stream diversions should be confirmed during the detailed design phase. If triggered, development permits will be required under the *Sustainable Planning Act 2009*.

### Relevance to the project — non-IDAS

The extent of required works within watercourses should be confirmed during the detailed design phase, as there is potential for Riverine Protection Permits to be required. However, it is recommended that the likelihood of the project triggering this requirement be re-assessed once the project has progressed to the development of construction methodologies.

## **Coastal Protection and Management Act 1995**

### Overview

The *Coastal Protection and Management Act 1995* provides for the protection, conservation, rehabilitation and management of the coast, including its resources and biological diversity.

Under Schedule 3 of the *Sustainable Planning Regulation 2009*, tidal works (works in, on or above land under tidal water or land that will or may be under tidal water because of development on or near the land) are assessable.

### Relevance to the project

There is a very small likelihood that the project will traverse tidal waterways. However, any operational work involving tidal works, including reclaiming land, will require a development permit under the *Sustainable Planning Act 2009* prior to construction.

## **Environmental Protection Act 1994**

### Overview — IDAS

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment and to promote ecologically sustainable development.

The *Environmental Protection Act 1994*, together with the *Sustainable Planning Act 2009*, provides a licensing and approval regime for a range of environmentally relevant activities where these activities have the potential to cause environmental harm through release of contaminants.

The *Environmental Protection Act 1994* requires that any person carrying out an environmentally relevant activity must hold, or be acting under, a registration certificate for the activity. All operators are also required to have a development permit approval for the activity, unless a code of environmental compliance applies to the activity. Development permit approvals are granted under the *Sustainable Planning Act 2009*.

### **Overview — non-IDAS**

In addition to the provisions under the *Environmental Protection Act 1994* relating to the assessment and management of contaminated land, the Act also contains requirements for the lawful disposal of contaminated soil (non-IDAS).

### **Relevance to project — IDAS**

Of relevance to the project is the management of contaminated land. The proposed rail alignment may pass through areas of recorded contaminated soil. Development for a Material Change of Use or reconfiguration of a lot on any land identified as being contaminated will require approval under the *Sustainable Planning Act 2009*.

Approval for environmentally relevant activities will take the form of development permits granted under the *Sustainable Planning Act 2009* and Registration Certificates granted under the *Environmental Protection Act 1994*. Registration Certificates may be required to be obtained from the Department of Environment and Resource Management under the *Environmental Protection Act 1994* for operational environmentally relevant activities.

### **Relevance to the project — non-IDAS**

Under section 424 of the *Environmental Protection Act 1994*, a person proposing to remove and dispose of contaminated soil from land that is recorded on either the Environmental Management Register or the Contaminated Land Register to an off-site location must obtain a disposal permit from the Department of Environment and Resource Management in order to lawfully undertake the works. Disposal permits enable appropriate and legal disposal and tracking of contaminated soil or materials.

## **Vegetation Management Act 1999**

### **Overview**

The *Vegetation Management Act 1999* regulates the conservation and management of vegetation communities. Under the *Vegetation Management Act 1999*, a Regional Ecosystem is defined as a vegetation community in a bioregion that is consistently associated with a particular combination of geology, land form and soil.

The *Vegetation Management Act 1999* aims to conserve remnant Endangered and Of Concern Regional Ecosystems, prevent land degradation and the loss of biodiversity, manage the environmental effects of land clearing and reduce greenhouse emissions. The *Vegetation Management Act 1999* is administered through the *Sustainable Planning Act 2009* and the Department of Environment and Resource Management.

The *Vegetation Management Act 1999* does not apply to the clearing of vegetation on:

- A forest reserve under the *Nature Conservation Act 1992*
- A protected area under the *Nature Conservation Act 1992* section 28
- An area declared as a state forest or timber reserve under the *Forestry Act 1959*
- A forest entitlement area under the *Land Act 1994*.

Broad-scale clearing of remnant vegetation was phased out in December 2006. However, applications for ongoing clearing purposes can be made to the Department of Environment and Resource Management, if the Chief Executive is satisfied that the clearing is for a project declared to be a 'Significant Project' under Section 26 of the *State Development and Public Works Organisation Act 1971*.

### **Relevance to the project**

The project will require the removal of Regional Ecosystems as defined by the Department of Environment and Resource Management under the *Vegetation Management Act 1999*. Also, clearing vegetation on state land (including leases, roads and reserves) will require a permit to clear, irrespective of whether the vegetation is shown as remnant on the Regional Ecosystem maps, except where the activity is listed under Schedule 3, Part 1 of the *Sustainable Planning Regulation 2009*.

The clearing of vegetation for construction of rail infrastructure (by Queensland Rail) is not exempt under the *Vegetation Management Act 1999*, unless the land is owned by the Department of Transport and Main Roads and subsequently leased to Queensland Rail, and is required for maintenance reasons (not construction).

## **South East Queensland Koala State Planning Regulatory Provisions**

### **Overview**

The South East Queensland Koala State Planning Regulatory Provisions (finalised on 1 July 2009) seek to address the steep decline in South East Queensland's koala population and has been implemented as an interim measure until the proposed state planning policy for koala conservation is in place.

The regulatory provisions apply to land identified as being within the interim koala habitat protection area (within the South East Queensland urban footprint). These provisions largely add to the existing development assessment criteria for development in an urban koala area under the Koala Plan (*Nature Conservation Act, 1992*).

Under the regulatory provisions, the Queensland Department of Infrastructure and Planning can require developers to offset the unavoidable clearing of mature koala habitat trees felled in the interim koala habitat protection area. The provisions also require the designs and layouts of developments to allow koalas to move safely within and through the development sites.

### **Relevance to the project**

A section of the project (Grandchester / Rosewood to Kagaru) is likely to encroach upon an area identified as koala habitat. Applicability of these provisions should be confirmed once the Koala State Planning Policy is gazetted and if any changes are made to the alignment or if future upgrades are proposed.

Development that is declared to be a significant project under section 26(1)(a) of the *State Development and Public Works Organisation Act 1971* is exempt from these regulatory provisions.

## **Transport Infrastructure Act 1994**

### **Overview**

The overall objective of the *Transport Infrastructure Act 1994* is consistent with the objective of the *Transport Planning and Coordination Act 1994*, which is to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure.

In particular, the objectives of this Act are to allow the Government to have a strategic overview of the provision and operation of all transport infrastructure including roads, rail, ports, air, public marine transport, busways and light rail.

### **Relevance to the project**

The *Transport Infrastructure Act 1994* is relevant to the road and rail infrastructure proposed or likely to be affected by the project.

The project would involve modification of State controlled roads to incorporate the rail infrastructure. Under the *Transport Infrastructure Act 1994* an assessment would, therefore, be required unless the activity is for a significant project under the *State Development and Public Works Organisation Act 1971* (s49). In addition, assessments would be required for ancillary works and encroachments (s50) and where access is required between individual properties and state controlled roads (s62).

Any works associated with the project that interfere with a railway will require approval from Queensland Rail, as railway manager, prior to undertaking the works. This would apply, for example, where an adjoining property owner requires access across a railway corridor in order to gain access to or from their land.

## **Nature Conservation Act 1992**

### **Overview**

The *Nature Conservation Act 1992* provides for the conservation and management of nature through two mechanisms:

- Declaration and management of protected area
- The protection of native wildlife that is not found within a protected area.

The Act provides for interim conservation orders to conserve, protect or manage wildlife, habitat or areas subject to a threatening process likely to have a significant detrimental effect.

The *Nature Conservation (Protected Plants) Conservation Plan 2000* and the *Nature Conservation Regulation 1994* apply to the clearing of protected plants in the wild. All native plants in Queensland are protected plants.

State forests in Queensland are 'protected areas' under the *Nature Conservation Act 1992*. Revocation of land dedicated as a protected area in a state forest is governed by the *Nature Conservation Act 1992*, and can only occur if the Legislative Assembly has, on a motion of which at least 28 days notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

### **Relevance to the project**

The project is likely to require a permit under the *Nature Conservation Act 1992* for the following:

- Interference with native animals and plants
- Potential impact on koala habitat
- Potential impact on state forest (triggering the revocation process under the *Nature Conservation Act 1992*).

The requirement for these permits would need to be fully assessed once detailed design of the project has been undertaken. The revocation of state forest land is discussed in section 2.3.1 of this report in respect of other requirements before the Parliamentary resolution can be made.

### **Aboriginal Cultural Heritage Act 2003**

#### **Overview**

The *Aboriginal Cultural Heritage Act 2003* binds all persons, including the state, to provide effective recognition, protection and conservation of Aboriginal cultural heritage.

The *Aboriginal Cultural Heritage Act 2003* requires the development of a cultural heritage management plan if:

- An EIS is required
- An environmental authority is required under a different Act, or
- Under the *Sustainable Planning Act 2009*, if a development application is made for the project or the chief executive is a Concurrence Agency.

#### **Relevance to the project**

The project is likely to require an EIS, and therefore a cultural heritage management plan will need to be developed in accordance with the Act. In addition, under the provisions of the *Aboriginal Cultural Heritage Act 2003*, the relevant traditional owner groups are required to be identified and invited to be involved in the cultural heritage management plan process.

### **Queensland Heritage Act 1992**

#### **Overview**

The *Queensland Heritage Act 1992* (QH Act) aims to preserve Queensland's cultural heritage, and regulate developments affecting the cultural heritage significance of registered places. It establishes the Queensland Heritage Council and makes specific reference to keeping the Queensland Heritage Register and local heritage registers.

The QH Act requires that where relevant, impacts on heritage items be considered in any development application and provides that in some circumstances, damage to or destruction of a heritage item or its significance is grounds for refusal of a development application.

#### **Relevance to project**

It is likely that the project will impact on heritage items at some locations and therefore IDAS approvals under the QH Act are likely to be required.

## **Acquisition of Land Act 1967 and Land Act 1994**

### **Overview**

The *Acquisition of Land Act 1967* and the *Land Act 1994* provide for the acquisition and resumption of land, and give the State powers to acquire land for public purposes (as identified under the *Acquisition of Land Act 1967*). State leasehold land is usually acquired under the *Land Act 1994*, while freehold land is acquired under the *Acquisition of Land Act 1967*.

The *Acquisition of Land Act 1967* sets out the processes for identification of land to be acquired, the valuation of the land and the compensation that property owners are entitled to.

Under the *Acquisition of Land Act 1967* there is currently no provision to compensate property owners that are not directly affected by a project. In assessing the compensation to be paid, regard is given to the value of the land taken, severance, injurious affection and disturbance. In a resumption situation only the land required for the project and immediately impacted will be acquired.

### **Relevance to the project**

Both the *Acquisition of Land Act 1967* and the *Land Act 1994* control the process of acquiring land for public works in Queensland. The project proponent will be required to undertake any acquisitions of land in accordance with these provisions.

## **Land Act 1994**

### **Overview**

The *Land Act 1994* applies to all non-freehold land in Queensland, and outlines the state's powers in respect of reservation of state land for 'community purposes', which include environmental purposes, Aboriginal/Torres Strait Islander purposes, natural resource management (including mineral resources), recreation, roads, travelling stock routes and buffer zones. The Act also sets out the requirements in respect of leases of State lands for community purposes, and the terms and conditions of those leases.

### **Relevance to project**

State Forest declarations are made under the *Forestry Act 1959*, but lands declared as State Forest are subject to lease in accordance with the requirements of the Land Act. Therefore, any resumption of land within a state forest in Queensland (see section 2.3.1) will involve modification of any respective lease agreements. With regard to 'mining interests' which, under the *Land Act* include all mining leases and exploration licences, these interests are not affected by any dealings the state may have in unallocated state land. In other words, any new reservation by the state of unallocated state land or any new leases entered into, will have no bearing on mining interests or the rights of the holder of a mining interest.

The project will not trigger any approvals under the *Land Act 1994*.

## ***South East Queensland Regional Plan 2009-2031***

### **Overview**

The *South East Queensland Regional Plan 2009-2031* addresses regional planning issues in *South East Queensland Regional Plan 2009-2031* and provides the framework for managing growth, change, land use and development to the year 2031, taking into consideration population growth and future demand.

The *South East Queensland Regional Plan 2009-2031* provides the framework for managing growth, land use and development in the South East Queensland region to the year 2031. In particular, the plan seeks to:

- Promote land use efficiency by setting targets for infill development across the South East Queensland region
- Encourage the integration of land use, transport and economic activity through the promotion of development around transport infrastructure.

### **Relevance to the project**

The project traverses areas of land identified in the *South East Queensland Regional Plan 2009-2031* as being 'urban footprint', 'rural living areas', the Gatton North Local Development Area and Ebenezer Regional Development Area respectively. Any assessment of the project will have to take into account the Regional Plan framework, but the location of the project alignment through these development areas is unlikely to trigger any significant legislative requirements.

## ***South East Queensland Infrastructure Plan and Program 2009-2026***

### **Overview**

The *South East Queensland Infrastructure Plan and Program 2009-2026* outlines the State Government's program of infrastructure and major projects and supports the *South East Queensland Regional Plan 2009-2031*. Updated annually, *South East Queensland Infrastructure Plan and Program 2009-2026* represents a long-term commitment to infrastructure delivery whilst remaining relevant to the latest planning and budgetary commitments. Specifically, *South East Queensland Infrastructure Plan and Program 2009-2026* sets timeframes and budgets to ensure infrastructure is delivered to support the region's growth.

Within the transport infrastructure class, *South East Queensland Infrastructure Plan and Program 2009-2026* identifies current investigations of rail network capacity necessary for future optimum freight movement within and through South East Queensland. In addition, it also identifies specific rail infrastructure projects including the Gowrie to Grandchester Rail Line and Southern Freight Rail Corridor Study and their corresponding delivery timeframes.

### **Relevance to the project**

Currently, *South East Queensland Infrastructure Plan and Program 2009-2026* does not identify the inland rail project as a funding priority. However, the Southern Freight Rail Corridor Study (whose alignment has been adopted as the inland rail alignment between Rosewood and Kagaru), undertaken by Queensland Transport in 2008, was identified in the plan and program to the extent that the study itself would be completed. No commitment has been made by the Queensland government beyond the completion of the study.

### 3.3.4 Queensland State Planning Policies

A state planning policy is a statutory instrument developed by the State Government under the *Sustainable Planning Act 2009* on matters of state interest. State planning policies apply when development is assessed, land is designated for community infrastructure and when new planning schemes are made or amended under the *Sustainable Planning Act 2009*. Unless otherwise stated within the policy, each state planning policy has effect throughout the state.

#### ***Development and the Conservation of Good Quality Agricultural Land - SPP 1/92***

##### **Overview**

The State Planning Policy for the Development and the Conservation of Good Quality Agricultural Land (SPP1/92) 'addresses the conservation of good quality agricultural land and provides guidance to local authorities on how this issue should be addressed when carrying out their range of planning duties'.

When considering development on good quality agricultural land, the assessment manager should consider whether it can be demonstrated that there is an overriding need for the development in terms of benefit to the community.

##### **Relevance to the project**

Large sections of the proposed inland rail alignment are likely to affect good quality agricultural land. Clearly there would be an issue of compatibility of a railway development on land identified as having productive agricultural value or potential, and local councils would normally have the authority to refuse a development application for an incompatible development on good quality agricultural land, unless:

- The proponent can demonstrate an overriding need in community terms for the development, or
- The subject land is located so that farming, either alone or in association with surrounding parcels, is not practicable: for example, a small isolated parcel of land surrounded by urban land uses.

The nature and scale of the project are such that broader community, social and economic criteria will play a significant part in determining the final alignment, and the overall viability of the project. However, a key objective of the inland rail alignment development process has been to minimise the extent to which good quality agricultural land becomes sterilised, isolated, severed or otherwise removed from productive agricultural capacity. It will be important to ensure that a balance is maintained between the land requirements of the project, and the need to preserve good quality agricultural land as far as practicable.

#### ***Development in the Vicinity of Certain Airports and Aviation Facilities – SPP 1/02***

##### **Overview**

This state planning policy aims to protect certain airports and aviation facilities whose efficient operation is an essential element of Queensland's transport infrastructure network or Australia's national defence system. In order to achieve this aim, the state planning policy and the accompanying guidelines determine the necessary land use and development controls for various areas around certain airports and aviation facilities. The state planning policy generally applies to land:

- Beneath, or in the vicinity of, the airports' operational airspace
- In the vicinity of aviation facilities
- Within areas defined by the 20 Australian noise exposure forecast contour at and around each airport
- Identified as public safety areas.

#### **Relevance to the project**

The airports within the vicinity of the project are:

- Oakey Army Air Base (within 5 km of the Oakey Deviation alignment)
- Toowoomba Aerodrome (within 3 km of the Gowrie to Gatton alignment).

The obstacle limitations surface (and the Procedures for Air Navigation Services – Aircraft Operational Services) requirements in relation to these aviation facilities will need to be taken into consideration for the project. Given the project is a rail line, proposed works are unlikely to trigger any specific requirements under this state planning policy.

### ***Mitigating the Adverse Impacts of Flood, Bushfire and Landslide - SPP 1/03***

#### **Overview**

The SPP 1/03 sets out the state's interest in ensuring that the natural hazards of flood, bushfire, and landslide are adequately considered when making decisions about development.

#### **Relevance to the project**

This state planning policy would be relevant to the project in so far as protection could be built in to the design of new or upgraded rail alignments. The design process would ensure, for example, that a reasonable buffer zone is provided on either side of the railway corridor for fire protection and also for general safety precautions. The policy would require that these matters be considered in the approach to planning and design, but would not preclude any aspect of the project from proceeding.

### ***Protection of Extractive Resources and Guidelines - SPP 2/07***

#### **Overview**

The State Planning Policy 2/07 Protection of Extractive Resources and Guidelines identifies extractive resources of State or regional significance and aims to protect those resources from incompatible developments (e.g. residential) that might constrain current or future extraction of required resources. The policy identifies the location of extractive resources as a key resource area, which contain three elements — a resource/processing area, a separation area and an associated transport route. SPP 2/07 seeks to ensure as far as practicable, that development is compatible with existing or future extractive industries.

#### **Relevance to the project**

Sections of the proposed alignment for the project pass through or near to lands identified as being subject to existing mining leases or exploration licences, for example near Millmerran and near Ebenezer. In developing the preferred inland railway alignment further, it will be necessary to consider the existence of mining leases and/or exploration licences to ensure that key resource areas are not sterilised from future development for extraction purposes. This will involve early consultation with lease/licence holders and an understanding of their future intentions to develop those resources. In some instances the prospect of new rail

infrastructure in the vicinity of a resource deposit may be considered a benefit in terms of ready access to transport. However, it will be necessary to seek a balance in this regard.

The policy would require that these matters be considered in the approach to planning and design, but would not preclude any aspect of the project from proceeding.

### **Planning and Managing Development Involving Acid Sulfate Soils - SPP 2/02 Overview**

This state planning policy sets out the State's interests concerning development involving acid sulfate soils in low-lying areas. The purpose of SPP2/02 is to ensure that development:

- Avoids the release of acid and associated metal contaminants into the environment when undertaking works
- Does not disturb acid sulfate soils when excavating or removing soil or sediment, extracting groundwater or filling land or
- The disturbance of any acid sulfate soils and drainage waters is managed correctly.

SPP 2/02 applies to 'land, soil and sediment at or below 5 m Australian height datum (AHD) where the natural ground level is less than 20 mAHD' within local government areas listed in Annex 1. Development within these areas that involves excavating or filling of land involving large quantities of material with an average depth of 0.5 m or greater is to be in accordance with SPP 2/02.

#### **Relevance to the project**

There is potential for the railway alignment to pass over areas of acid sulfate soils. Where excavation or filling is proposed in areas where acid sulfate soils or potential acid sulfate soils are found to be present, an acid sulfate soils management plan will be required to be prepared and implemented, in accordance with state planning policy standards.

#### **3.3.5 Queensland local planning**

Local councils in Queensland would become involved in the approvals process for the project only after completion of the *State Development and Public Works Organisation Act 1971* EIS process or the CID process. In other words, local approvals would only become necessary once the project has secured an overall state government approval. Applications for MCU and operational works under IDAS would be submitted to the respective councils, and those councils would exercise the function of assessment manager including notification of applications (where required), referral to other agencies for advice or concurrence, assessment and issue of approval notices.

### **3.4 NSW legislation and approvals**

The following section identifies the key pieces of legislation relevant to the project at the NSW State level. Specifically, this section discusses the legislation as it relates the project and highlights the key statutory approvals likely to be triggered including:

- *Environmental Planning and Assessment Act 1979*
- *Threatened Species Conservation Act 1995*
- *Protection of the Environment Operations Act 1997*
- *National Parks and Wildlife Act 1974*
- *Native Vegetation Act 2003*
- *Heritage Act 1977*
- *Water Management Act 2000*
- *Fisheries Management Act 1994*

- *Forestry Act 1916*
- *Roads Act 1993*
- *Contaminated Land Management Act 1997*
- *Crown Lands Act 1989*
- *Land Acquisition (Just Terms Compensation) Act 1991*
- *Mining Act 1992*
- *State environmental planning Policies:*
  - State Environmental Planning Policy (Major Projects) 2005
  - State Environmental Planning Policy (Infrastructure) 2007
  - State Environmental Planning Policy 44 - Koala Habitat Protection
  - State Environmental Planning Policy 55 - Remediation of Land.

### 3.4.1 Planning approval pathway

Under the NSW State Planning Framework, the assessment and approval of development is governed by the *Environmental Planning and Assessment Act 1979*. The *Environmental Planning and Assessment Act 1979* prescribes different planning approval pathways for developments according to size, capital value, type, as well as their 'significance' to the State, and their likely impact on the environment. The *Environmental Planning and Assessment Act 1979* operates in conjunction with a number of key state environmental planning policies that determine how, and by whom a project should be assessed.

This section provides a discussion on the approval pathways under the *Environmental Planning and Assessment Act 1979*, namely Part 3A, 4 and 5, and the relevance of each process to the project. As discussed above, due to the size and nature of the project it would most likely be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. However, it should be noted that further stages of the project including only minor upgrades, subsequent to Part 3A (concept plan approval) may be suitable to be assessed under Part 5 of the *Environmental Planning and Assessment Act 1979*.

*Environmental Planning and Assessment Act 1979* The *Environmental Planning and Assessment Act 1979* is NSW's principal legislation overseeing the planning, environmental impact assessment and approval processes throughout the state. Under the *Environmental Planning and Assessment Act 1979* development is assessed in three main categories Part 3A, Part 4 and Part 5. Each of these approvals processes are accredited under the Commonwealth-state bilateral agreement and can, therefore, be used to address both Commonwealth and state statutory requirements in the single assessment process (for example if the project is a 'controlled action' requiring assessment under the Commonwealth EPBC Act).

The relevance of these sections of the *Environmental Planning and Assessment Act 1979* to the development assessment of the project is discussed below.

#### Part 3A

##### Overview

Part 3A of the *Environmental Planning and Assessment Act 1979* establishes a planning methodology for the assessment of 'state significant' projects. The Minister for Planning is the responsible determining authority for approval of applications under Part 3A.

A project may be declared to be a project to which Part 3A applies, by either:

- A state environmental planning policy or
- An order from the Minister for Planning which has been published in the Government Gazette.

State Environmental Planning Policy (Major Projects) 2005 (the Major Projects SEPP) is the primary environmental planning instrument that identifies (under Schedule 1-3) the types of development that would be considered as a major project, and therefore, assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*.

Schedule 1 of the Major Projects SEPP lists the following 'rail and related transport facilities' as developments to which Part 3A of the *Environmental Planning and Assessment Act 1979* would apply:

(1) *Development that has a capital investment value of more than \$30 million for the purpose of:*

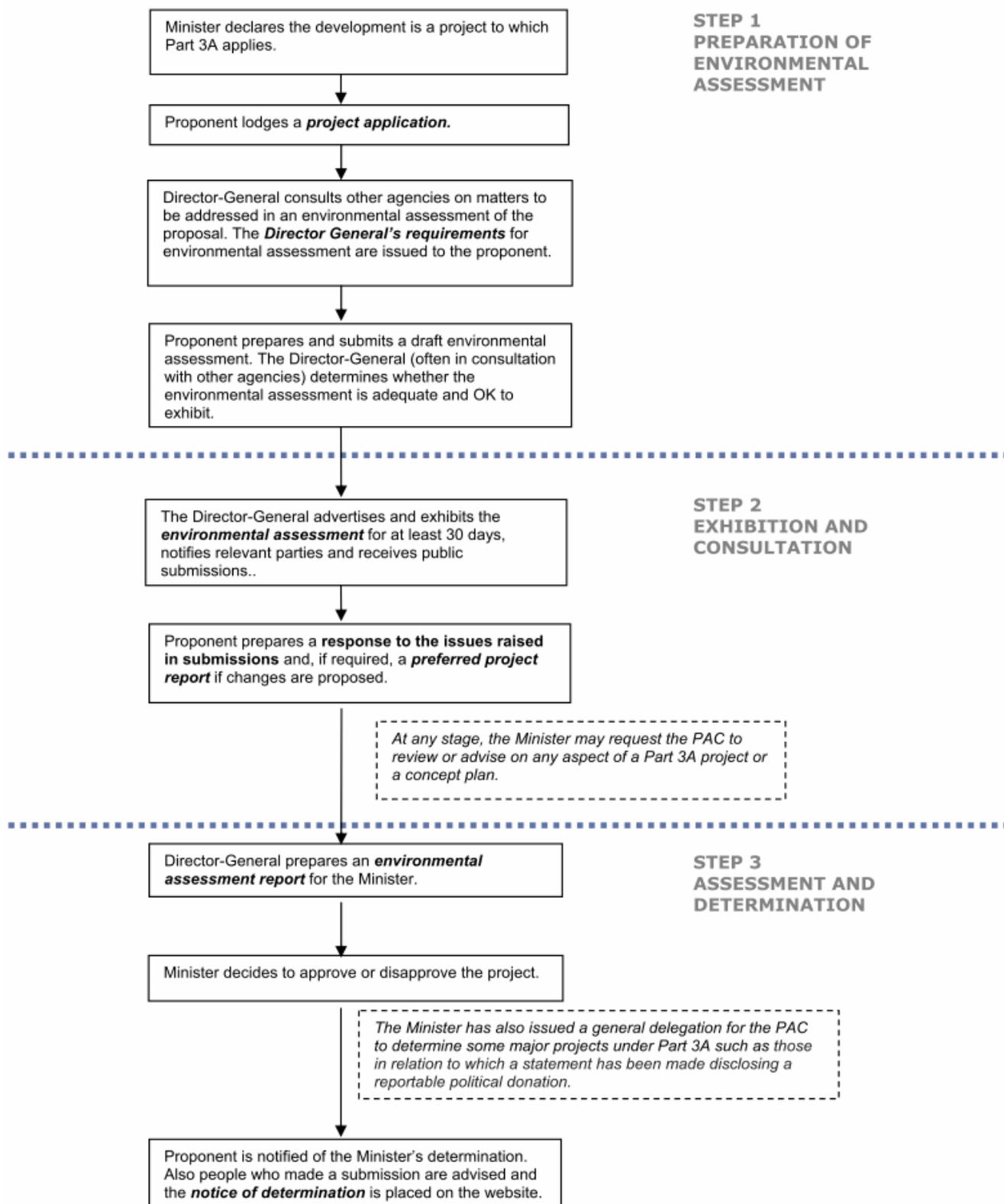
- (a) *heavy railway lines associated with mining, extractive industries or other industry, or*
- (b) *railway freight facilities or inter-modal terminals.*

Under 75B(2) of the *Environmental Planning and Assessment Act 1979* the Minister for Planning may declare the following kinds of developments to be a project to which Part 3A applies (in addition to the list of development types identified in Schedule 1 of the Major Projects SEPP):

- Major infrastructure or other development that, in the opinion of the Minister, is of state or regional planning significance, or
- Major infrastructure or other development that is an activity for which the proponent is also the Determining Authority (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) and that, in the opinion of the Proponent, would (but for this Part) require an Environmental Impact Statement to be obtained under that Part.

It is likely that, regardless of the projects eligibility under Schedule 1 of the Major Projects SEPP, the project would be considered to be of state and/or regional significance and would therefore be deemed 'major infrastructure' under Section 75B(2) of the *Environmental Planning and Assessment Act 1979* and as such a project to which Part 3A applies.

Figure 3-3 provides an outline of the Part 3A approval process. A key step to the declaration of a proposal as a Part 3A Project is the submission of a preliminary environmental assessment to the Minister. The Minister will subsequently decide, based on the preliminary environmental assessment, whether the project is a Part 3A Project. If the project is to be dealt with under this Part, the Director General identifies the requirements that must be complied with as well as the key issues that need to be addressed in an Environmental Assessment (EA) of the project.



**Figure 3-3 Part 3A approval process under the *Environmental Planning and Assessment Act 1979***

Source: Major projects assessment system Fact sheet 2 (NSW Department of Planning, October 2009)

Once a proposal has been declared by the Minister under Part 3A of the Act, the proponent may choose to either lodge an EA for one of the following applications:

- Concept plan application — this provides a broad overview of a project and seeks to establish a framework for a more detailed development of the project subject to further approvals. These further approvals may relate to approvals under Part 3A (project approval, Part 4 and Part 5 of the *Environmental Planning and Assessment Act 1979*)
- Project application — this provides a more detailed analysis of the proposed development and likely impacts, seeking approval for the construction and operation of the proposed development.

In addition the Minister for Planning may also declare development subject to Part 3A to be a 'critical infrastructure project' if it is of a category that, in the opinion of the Minister is essential to the state for economic, environmental or social reasons.

It should be noted, that, in accordance with Section 75U of the *Environmental Planning and Assessment Act 1979* approved Part 3A applications are exempted from certain other approvals and authorities under other NSW legislation (refer to discussion in sections below).

#### **Relevance to the project**

The development proposed in the project or the proposed site locations are not listed under Schedule 1-3 of the Major Project SEPP. Notwithstanding this, it is considered that given the type, location, scale and strategic importance of the development, the project is likely to prompt the Minister for Planning to declare it to be of state significance and subsequently gazette the project in accordance with Section 75(B) of the *Environmental Planning and Assessment Act 1979*. The Part 3A approval process is therefore considered to be the most likely approval process for the project within NSW.

It should be noted that Part 3A approval may not be required for all stages of the project approval. Concept plan approval may be sought initially for the project alignment with a mix of Part 3A project approvals and Part 5 approvals to follow for operation and construction.

### ***Part 4, Environmental Planning and Assessment Act 1979***

#### **Overview**

Part 4 of the *Environmental Planning and Assessment Act 1979* applies to development that requires development consent under an environmental planning instrument (e.g. a local environment plan). Development under Part 4 requires the applicant (either private or public) to lodge a development application with the relevant consent authority (e.g. council, and in some instances the Minister). The consent authority will then assess the impacts of the proposed development taking into account the matters of consideration stipulated under Section 79(C) of the *Environmental Planning and Assessment Act 1979*.

Part 4 applies to development that is not assessed under Part 3A or Part 5 of the *Environmental Planning and Assessment Act 1979*.

#### **Relevance to the project**

Given the large scale, multi-jurisdictional nature of the project, it is unlikely that Part 4 of the *Environmental Planning and Assessment Act 1979* will apply.

## **Part 5, Environmental Planning and Assessment Act 1979**

### **Overview**

Part 5 of the *Environmental Planning and Assessment Act 1979* applies to certain types of development that do not require assessment under Part 3A or 4 of the *Environmental Planning and Assessment Act 1979*, but may still require some form of environmental assessment. Part 5 applies predominately to development that is to be carried by or on behalf of a public authority.

Part 5 of the *Environmental Planning and Assessment Act 1979* generally applies where a project is an 'activity' that requires some other form of approval from a 'determining authority'. Under Part 5 the determining authority, that decides whether or not approval should be granted for the activity, can either be a relevant Minister or a Public Authority.

In considering approval, a Determining Authority must consider Section 111 of the *Environmental Planning and Assessment Act 1979* ('Duty to consider environmental impact') which requires that a determining authority take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity. The factors which must be taken into account for any such assessment are identified within Clause 228 of the Environmental Planning and Assessment Regulation 2000.

In the preparation of a Part 5 EIS consideration should be given to Section 111 of the *Environmental Planning and Assessment Act 1979*, which is based on whether there is to be a 'significant' effect on any threatened species, populations or ecological communities or habitats identified in the *Threatened Species Conservation Act 1995*. If there is a significant impact on any species, population, ecological community or habitat then a Part 5 project would need to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*.

### **Relevance to the project**

Given the project's scale, its significance to the State, its potential for environmental impact and likelihood of triggering assessment under Part 3A of the *Environmental Planning and Assessment Act 1979*, assessment under Part 5 for the initial stage of approval is unlikely. However, subsequent to concept plan approval, Part 5 may apply for works that do not result in a 'significant impact' on ecological communities (under the *Threatened Species Conservation Act 1995*). Part 5 approvals would most likely be sought for those sections where the project requires upgrading of existing track within an existing rail corridor

It should be noted that any part of the project for which Part 5 approval is sought must be undertaken by or on behalf of a public authority. Consideration of the proponent should be undertaken to determine whether Part 5 approvals are applicable to the project.

### **3.4.2 Other planning approvals legislation**

In addition to obtaining overall project approval at the state level under the *Environmental Planning and Assessment Act 1979*, additional development permits/licences/consents will also be required under a number of other pieces of state legislation. The following section identifies the legislation relevant to the project, and approvals which may be triggered.

These approvals would need to be sought during the detailed design phase of the project and as such, are relevant in that they are critical to authorising the construction and operational phases of the project and not to obtaining overall project approval.

As referred to above, a project that has been approved under Part 3A of the *EP& A Act* will be exempt from the requirement to obtain certain approvals and licences under other legislation, including:

- Concurrence under Part 3 of the *Coastal Protection Act 1979*
- A permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*
- An approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*
- A permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974*
- An authorisation referred to in section 12 of the *Native Vegetation Act 2003*
- A permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*
- A bush fire safety authority under section 100B of the *Rural Fires Act 1997*
- A water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.

### **Threatened Species Conservation Act 1995**

#### **Overview**

The *Threatened Species Conservation Act 1995* sets out a number of key objectives relating to the conservation of biological diversity and the promotion of ecologically sustainable development. The *Threatened Species Conservation Act 1995* protects the following as listed within the Schedules to the Act:

- Endangered species, endangered populations and ecological communities and species presumed to be extinct
- Critically endangered species and ecological communities
- Vulnerable species and ecological communities
- Key threatening processes.

The *Threatened Species Conservation Act 1995* also provides for the declaration and mapping of habitats that are critical to the survival of those identified threatened species, populations and ecological communities that are classified as endangered (critical habitats).

The *Threatened Species Conservation Act 1995* amends other Acts to provide for the facilitation of the appropriate assessment, management and regulation of actions that may damage critical or other habitat or otherwise significantly affect threatened species, populations and ecological communities. For example the Act adds species impact statement requirements to the *Environmental Planning and Assessment Act 1979* and extends the coverage of interim protection orders and conservation agreements under the *National Parks and Wildlife Act 1974* for purposes of the conservation of threatened species, populations and ecological communities, and their habitats.

#### **Relevance to the project**

As discussed above, the *Threatened Species Conservation Act 1995* has a key role in determining the approval pathway for the project. The project is likely to warrant the preparation of a flora and fauna assessment or a species impact assessment. The significance of impact that the project has on ecology under the *Environmental Planning and Assessment Act 1979*, in association with other considerations will determine whether the project is assessed under Part 3A or Part 5 of the *Environmental Planning and Assessment*

*Act 1979*. A flora and fauna assessment or species impact assessment would be required to be submitted any approval for the project.

### ***Protection of the Environment Operations Act 1997***

#### **Overview**

The *Protection of the Environment and Operations Act 1997* consolidates the key pollution statutes relating to air, water, noise, pollution and environmental offences and establishes a duty to notify either the Environmental Protection Authority (part of the Department of Environment, Climate Change and Water) or the local council where incidents are likely to cause material harm to the environment. In addition, the Act provides for integrated environmental licensing arrangement for scheduled activities.

Schedule 1 of the *Protection of the Environment and Operations Act 1997* identifies a list of activities that require an environmental protection licence.

#### **Relevance to the project**

'Railway Systems Activities' are Scheduled Activities under the *Protection of the Environment and Operations Act 1997* that are likely to be carried out during the construction and operational phases. These activities will require an environmental protection licence from the NSW Department of Environment, Climate Change and Water in accordance with this Act.

### ***National Parks & Wildlife Act 1974***

#### **Overview**

The *National Parks & Wildlife Act 1974* provides for the control and management of all national parks, historic sites, nature reserves, reserves, wetlands and other state reserves. Under the *National Parks & Wildlife Act 1974*, approval is required to be obtained from Department of Environment, Climate Change and Water to investigate or knowingly destroy, deface or damage or knowingly cause or permit the destruction of or damage to an Aboriginal object or Aboriginal place.

#### **Relevance to the project**

A number of Aboriginal objects and sites have been identified within the vicinity of the project area. Any proposed works and operations which are likely to impact upon these objects or sites will trigger the requirement for an Aboriginal heritage impact permit together with the undertaking of Aboriginal community consultation in accordance with this Act.

It should be noted that a permit or consent under the *National Parks & Wildlife Act 1974* is not required for an approved project under Part 3A of the *Environmental Planning and Assessment Act 1979*.

## **Heritage Act 1977**

### **Overview**

The *Heritage Act 1977* provides for the protection of items of local, regional and state heritage significance throughout NSW. Through the NSW Heritage Office, the Act establishes a list of State Heritage Items and outlines processes for approval of development, which may impact upon items of heritage significance. Under the Act, authorisation is required for disturbance of a heritage item.

### **Relevance to the project**

It is likely that the project will impact on heritage items at some locations, and therefore, approvals under this Act would be required. However, should approval for the project be granted under Part 3A of the *Environmental Planning and Assessment Act 1979*, then no approvals under this Act would be required.

## **Water Management Act 2000**

### **Overview**

The *Water Management Act 2000* replaced the provisions of the *Rivers and Foreshores Improvement Act 1948* coming into effect from February 2008. The *Water Management Act 2000* provides for the protection of river and lakeside land in NSW and aims to provide for the sustainable management of the water sources throughout NSW.

The *Water Management Act 2000* provides for the granting of various licenses and approvals, including for the use of water and water supply works. Generally speaking the following approvals may be required under the *Water Management Act 2000*:

- A water access licence — which entitles the holder to a share of available water in a river or aquifer (groundwater body)
- Water use approval — which authorises use of water on land for a particular purpose at a particular location, or
- Water management works approval — which authorise construction and use of water supply works such as bores, pumps, dams and channels.

In addition, the Act identifies the provisions relating to 'controlled activities' which includes (among other definitions) the carrying out of any activity that affects the quantity or flow of water in a water source or land fronting a waterway.

### **Relevance to the project**

The project is likely to impact watercourses along numerous sections of the alignment. Any works that are carried out in or near a river, lake or estuary (i.e. bridges, culverts, structures) will require approval under the relevant sections of the *Water Management Act 2000*. In addition, the supply of water during construction (i.e. dust suppression, potable water drinking) will require approval prior to the commencement of construction. However, should approval for the project be granted under Part 3A of the *Environmental Planning and Assessment Act 1979*, then a licence under the *Water Management Act 2000* is not required.

## ***Fisheries Management Act 1994***

### **Overview**

The *Fisheries Management Act 1994* provides for the protection of threatened fish and marine vegetation and is administered by the Department of Industry and Investment. The Act, in conjunction with the *Threatened Species Conservation Act 1995* aims to conserve, develop and share fishery resources and conserve marine species, habitats and diversity.

Section 7A of the Act relates to the conservation of threatened aquatic species. Section 220ZZ of the Act allows for the issue of environmental licences to harm threatened species or damage habitats. Licences are issued by the Director General based on either a species impact statement (for works proposed on land that is critical habitat) or in accordance with key criteria (for works proposed on land that is not critical habitat).

### **Relevance to project**

Given the numerous waterways located within the project area, the project is likely to require an assessment of impacts on threatened species, populations and communities in accordance with Part 7A of the *Fisheries Management Act 1994*. It is likely that a licence would be required under this Act as a result of the project. This would require the preparation of an EA, an aquatic assessment report. However, should approval for the project be granted under Part 3A of the *Environmental Planning and Assessment Act 1979*, then a licence under this Act is not required.

## ***Forestry Act 1916***

### **Overview**

The *Forestry Act 1916* regulates management of state forests. Of particular relevance is Section 16A of the Act that discusses the change of land dedicated as State Forest. This Section permits the Minister, on behalf of the Crown, to enter into an agreement for the sale or disposal of state forest land. Any agreement made under this section may be subject to provisions, stipulations, covenants, terms and conditions that the Minister sees fit for the sale of this land. Further, section 16A(3)(c) states that a copy of a proposed sale agreement for land that exceeds 20 hectares in area would need to be laid before both Houses of Parliament prior to undertaking any sale.

### **Relevance to the project**

The project would affect two areas of state forest in NSW (refer section 2.3.1 for details). Discussions would have to be held with the relevant department in the first instance to determine whether this land can be purchased, and if so, whether any conditions would apply to the purchase.. It is noted that the proposed areas of land that would be affected are less than 20 hectares in area, and therefore, in accordance with this Act any future sale transaction would not need to go before both houses of Parliament.

## ***Native Vegetation Act 2003***

### **Overview**

In 2005 the NSW Government introduced the *Native Vegetation Act 2003* as a way of preventing large-scale land clearing across NSW unless the overall result of the clearing improves or maintains the environment. Under the *Native Vegetation Act 2003*, all clearing requires approval through either a property vegetation plan or a development consent, unless it is on land:

- That is excluded from the *Native Vegetation Act 2003* (including national parks and conservation areas, state forests and reserves and urban areas) as listed in Schedule 1 of the *Native Vegetation Act 2003*
- Which is categorised as excluded clearing or
- Is a permitted clearing activity.

Significant habitat compensatory measures are applicable to be provided by the proponent should the clearing of native vegetation be required by a proposed development.

It is important to note that the provisions of the *Native Vegetation Act 2003* only apply to developments that require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (as identified in Section 25 of the Act).

### **Relevance to the project**

The project is likely to include requiring the clearing of native vegetation on land regulated under this Act. Notwithstanding this, as discussed above the project is likely to be assessed under either Part 3A and/or Part 5 of the *Environmental Planning and Assessment Act 1979*, and therefore, approval under this Act is not required.

## ***Roads Act 1993***

### **Overview**

The *Roads Act 1993* gives provisions for the regulation of road classification, public access along public roads and the establishment of procedures for opening and closing a public road. It also provides for the declaration of the Roads and Traffic Authority as a 'road authority' for both classified and unclassified roads, and regulates the carrying out of various activities on public roads.

Under Section 138 of the Act a number of works require approval before they can be carried out on a public road.

### **Relevance to the project**

It is likely that numerous sections of the project will be required to pass either over or under various public roads and as such require permits under Section 138 of the Act. Under Part 3A of the *Environmental Planning and Assessment Act 1979*, permits under Section 138 of the *Roads Act 1993* are still required to be obtained. However, if a project has been approved under Part 3A, an application for a Section 138 permit cannot be refused.

## **Contaminated Land Management Act 1997**

### **Overview**

The *Contaminated Land Management Act 1997* enables the Environmental Protection Agency (under the Department of Environment, Climate Change and Water) to investigate and respond to contamination that causes a significant risk of harm to both human health and the environment, and sets out criteria for determining whether such a risk exists.

The Act relates closely to the provisions of State Environmental Policy 55 – Remediation of Land (SEPP 55) which is a state policy providing a state-wide approach to the remediation of contaminated land. While SEPP 55 establishes the processes for determining whether remediation is required, and the process for remediation, the Act sets out accountabilities for management of contaminated land, the role of the Environment Protection Authority, and accreditation for site auditors.

The Act gives the Environment Protection Authority the power to:

- Declare an investigation site and order an investigation
- Declare a remediation site and order remediation to be undertaken
- Agree to a voluntary proposal to investigate or remediate a site
- Direct a public authority to investigate or remediate contaminated land.

### **Relevance to the project**

It is likely that the project will be located on contaminated land. Once a preferred alignment has been chosen, investigations will be required to determine the presence of any contaminated land, and if so the extent and nature of contamination. Consideration of any contaminated sites within the project area will need to be given during the development approvals process. The Environment Protection Authority's powers under the *Contaminated Land Management Act 1997* are not altered by the project's status under Part 3A of the *Environmental Planning and Assessment Act 1979*.

## **Crown Lands Act 1989**

### **Overview**

The *Crown Lands Act 1989*, administered by the Land and Property Management Authority ensures that Crown land is managed for the benefit of the people of NSW.

Under Part 3 of the Act, a land assessment is required to be undertaken before a number of actions are undertaken over Crown land (i.e. sale, licence or lease). However, there is no statutory link between the land assessment process and the approvals process under the *Environmental Planning and Assessment Act 1979*.

### **Relevance to the project**

Once a preferred alignment has been chosen for the project, the instance of Crown Land being located within the project footprint should be investigated. An application would be required to be made under the *Crown Lands Act 1989*

## **Land Acquisition (Just Terms Compensation) Act 1991**

### **Overview**

The *Land Acquisition (Just Terms Compensation) Act 1991* gives provisions for the acquisition of land by an authority of the state that is authorised to acquire the land for a public purpose. Overall, the Act seeks to:

- Guarantee that, when land affected by a proposal for acquisition by an authority of the state is eventually acquired, the amount of compensation will not be less than the market value of the land (unaffected by the proposal) at the date of the acquisition
- Ensure compensation on just terms for the owners of land that is acquired by an authority of the state when the land is not available for public sale
- Establish new procedures for the compulsory acquisition of land by authorities of the state to simplify and expedite the acquisition process
- Require an authority of the state to acquire land designated for acquisition for a public purpose where hardship is demonstrated
- Encourage the acquisition of land by agreement instead of compulsory process.

Specifically, the Act itself does not contain provisions to empower a public authority to acquire land compulsorily. A public authority must be given the power to be an 'acquiring authority' through separate legislation such as the *Electricity Supply Act 1995*, *Transport Administration Act 1988*, *Crown Lands Act 1989* or the *Local Government Act 1993*. Such acts are identified as 'Empowering Acts' for the purposes of the land acquisition process.

An Empowering Act will contain provisions relating to the purposes for which land can be acquired and will identify the relevant public authority with the power to act as an acquiring authority. In most instances, this authority can include a Minister, department head, statutory body or agent of the state.

Under the Act, the land acquisition process can occur in two ways:

- **By landowner agreement:** An acquiring authority may approach a landowner for the purpose of reaching a commercial agreement to purchase the land. In some instances, the acquiring authority will also commence the compulsory acquisition process at the same time in order to avoid any potential timing delays. If an agreement is reached with the land owner, then transfer of the land can be facilitated through a sale contract or compensation agreement.
- **By compulsory acquisition:** The compulsory acquisition process is initiated when an acquiring authority issues a proposed acquisition notice to the land owner and any other person with a registered interest in the land (including a lawful occupier). Pursuant to Section 13 of the Act, the proposed acquisition notice must allow a period of no less than 90 days before the land can be acquired. This period can only be reduced by obtaining the consent of the landowner or Ministerial approval.

Once the proposed acquisition notice period has lapsed, the acquiring authority must acquire the land by compulsory process or by agreement or withdraw the proposed acquisition notice. Should an agreement not be reached with the landowner, the acquisition must occur by a notice in the NSW Government Gazette and if practicable, publishing a copy of the notice in at least one newspaper circulating in the district in which the land concerned is

situated. On the day the notice is published in the Government Gazette the land (or interest) being acquired becomes vested in the acquiring authority.

Under Section 14 of the Act, should the acquiring authority decide to withdraw the proposed acquisition notice, then a new proposed acquisition notice in relation to that acquisition cannot be issued for a period of 12 months after the date of withdrawal.

### **Relevance to the project**

The *Land Acquisition (Just Terms Compensation) Act 1991* controls the process of acquiring land by an authority of the state for a public purpose in NSW. The project will require acquisition of land, and the proponent will be required to undertake any land acquisitions in accordance with these provisions.

## **Mining Act 1992**

### **Overview**

The *Mining Act 1992* provides for the control and management of mining operations, leases and exploration licences throughout NSW. Of particular relevance is Clause 82 of the Act that discusses certain resumptions, conveyances and transfers not to affect a mining lease. This Clause states that any conveyance, transfer or compulsory acquisition of land under this Act or law does not affect a mining lease or rights held under a mining lease. Therefore a mining lease exists regardless of land acquisition and a mining lease cannot be compulsorily acquired (e.g. in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*).

### **Relevance to project**

The project has the potential to affect existing mining leases. The presence of these mining leases should be considered in the project's design phase. Separate agreements should be made with mining lease holders as required. It should be noted that compulsory acquisition is not an option for the acquiring of a mining lease.

## **NSW state environmental planning policies**

State environmental planning policies (SEPP) deal with issues significant to the state and people of NSW. They are made by the Minister for Planning and may be exhibited in draft form for public comment before being gazetted as a legal document.

As part of improvements to simplify the state's planning system, as of 1 July 2009, regional environmental plans are no longer part of the hierarchy of environmental planning instruments in NSW. All existing regional environmental plans are now deemed state environmental planning policies.

## **State Environmental Planning Policy (Major Projects) 2005 (Major Projects SEPP)**

### **Overview**

This policy defines certain developments that are major projects to be assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*. It also provides planning provisions for state significant sites and critical infrastructure projects throughout the state.

The Major Projects SEPP is closely linked to Part 3A of the *Environmental Planning and Assessment Act 1979* as discussed in section 3.3.

### **Relevance to the project**

Relevance of this state environmental planning policy to the project has been covered in the summary for the *Environmental Planning and Assessment Act 1979* in section 3.3.

### **State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP)**

#### **Overview**

The Infrastructure SEPP provides a consistent planning regime for the efficient delivery of infrastructure and the provision of services (i.e. education, hospitals, roads, railway and water supply) throughout the state. In addition, the state environmental planning policy identifies the relevant environmental assessment category to which different types of infrastructure and services development fall and gives provisions for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

The policy also contains specific planning provisions and development controls for 25 types of infrastructure works and facilities including railways (rail infrastructure facilities and development within rail corridors) under Division 15.

Under Division 15 of the state environmental planning policy, development for rail infrastructure facilities generally, may be carried out by or on behalf of a public authority without consent on any land. However, such development may be carried out without consent on land reserved under the *National Parks & Wildlife Act 1974* only if the development:

- a) *is authorised by or under that Act, or*
- b) *is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or*
- c) *is on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.*

In referring to development for rail infrastructure facilities, the following development for any of the following purposes is included, if the development is in connection with a railway or rail infrastructure facilities:

- Construction works (whether or not in a heritage conservation area), including:
  - temporary crushing plants or concrete batching plants, if they are used solely in connection with railway construction and in or adjacent to a rail corridor
  - track support earthworks
  - alteration, demolition or relocation of a local heritage item
  - alteration or relocation of a State heritage item and
  - temporary buildings or facilities for the management of railway construction that are in or adjacent to a rail corridor
- Emergency works, or routine maintenance works, carried out in the rail corridor of an existing railway or on land that is adjacent to such a corridor
- Maintenance or repair of an existing rail infrastructure facility
- Environmental management works.

Under Section 82, development for certain purposes (i.e. investigations, maintenance, emergency works) is exempt development if it is carried out by or on behalf of a public authority, is in connection with a railway or rail infrastructure facilities and complies with requirements of exempt development as defined below:

Exempt development:

- Must be of minimal environmental impact

- Cannot be carried out in critical habitat of an endangered species, population or ecological community (identified under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*) and
- Cannot be carried out in a wilderness area (identified under the *Wilderness Act 1987*).

### **Relevance to the project**

A number of exemptions may be applicable to the project should the proponent be a public authority (e.g. a road, rail or energy authority such as the Roads and Traffic Authority, RailCorp, or Integral Energy). Project eligibility should be confirmed once the project proponent is known.

## **State Environmental Planning Policy 44 - Koala Habitat Protection (SEPP 44)**

### **Overview**

SEPP 44 encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure that permanent free-living populations are maintained over their present range. The policy outlines development controls that apply to land for which a development application has been made, and which is more than one hectare in size. Under these provisions, local councils cannot approve development within an area affected by the policy without undertaking koala habitat investigations to determine whether the land subject to development constitutes 'potential' or 'core' koala habitat.

### **Relevance to the project**

The project is located within numerous local government areas which are subject to SEPP 44, and as such, would likely trigger the requirement to undertake detailed koala habitat investigations as part of the environmental assessment for the project to determine the impact upon core koala habitat areas.

## **State Environmental Planning Policy 55 - Remediation of Land (SEPP 55)**

### **Overview**

SEPP 55 introduces state-wide planning controls for the remediation of land. Under these provisions, planning authorities must, when undertaking their assessment process, consider the potential for contamination to adversely affect the suitability of the site for its proposed use. The policy states that contaminated land must not be developed if the proposed use is unsuitable. Further, the policy requires that if land is deemed unsuitable, then remediation works must take place before the land can be developed.

The policy applies to all land throughout the state, defines when consent is required, sets out standards for remediation, details the requirements for land to be investigated if contamination is suspected and for the notification of all proposed remediation work to the relevant local councils.

As discussed previously in this section, SEPP 55 is closely related to the provisions of the *Contaminated Land Management Act 1997*, and that Act provides a technical and legislative framework under which SEPP 55 applies.

### **Relevance to the project**

SEPP 55 applies only in relation to development being assessed under Part 4 of the *Environmental Planning and Assessment Act 1979*. Therefore, the policy does not apply in respect of the project being assessed under Part 3A. However, as discussed above in

reference to the *Contaminated Land Management Act 1997*, it is likely that historical use of existing and former railway corridor lands will have resulted in some contamination of that land, which will require remediation if the project would result in any disturbance of the land.

### 3.4.3 Local environmental plans

#### Overview

Land use in NSW is governed primarily by the provisions of local environmental plans, which are statutory planning instruments prepared by and for local government under the provisions of the *Environmental Planning and Assessment Act 1979* to guide development in each local government area. In a very small number of local government areas, planning and development is still guided by Planning Scheme Ordinances which pre-date the *Environmental Planning and Assessment Act 1979* but are deemed under the Act to have similar status as local environmental plans. Local environmental plans embody a Council's long-term land use strategies, usually through land use zoning and provisions regarding permissibility of land uses in each zone, and the density or intensity of development.

Local environmental plans prescribe the uses of land that are either permissible with consent, permissible without consent, or prohibited, depending on how that land has been zoned. All of the new 'greenfield' alignments within NSW affect land zoned for rural purposes. Sections of existing rail corridor, which are proposed to be upgraded, are zoned for 'Special Uses' (and in some cases, specifically for special uses – railways). A typical land use zoning provision for rural land is contained in the *Narrabri Local Environmental Plan 1992*. Clause 9 of the Narrabri Local Environmental Plan allows:

2 *Without development consent*

*Agriculture (other than ancillary dwellings and intensive livestock keeping establishments); forestry (other than ancillary dwellings and pine plantations); rural levees.*

3 *Only with development consent*

*Any purpose other than a purpose included in item 2 or 4.*

4 *Prohibited*

*Motor showrooms; residential flat buildings; shops (other than general stores not exceeding 100 square metres in gross floor area).*

Also of note under the Narrabri Local Environmental Plan is clause 6, which adopts (with minor exclusions) the Environmental Planning and Assessment Model Provisions 1980.

Narrabri Local Environmental Plan is typical of the local environmental plans applying to all rural councils in NSW that are potentially affected by the inland rail project. For all councils except Cootamundra, local environmental plans adopt the Model Provisions. Cootamundra Shire Council's primary planning document, Cootamundra Interim Development Order No. 1 1976 (as amended), does not contain savings provisions, or adopt the Model Provisions. It is apparent from the Order that the project would be permissible only with the consent of Council within Cootamundra Shire (however, this provision would be overridden if the project is assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*).

Clause 35 of the Model Provisions states:

*35 Savings*

*Nothing in the local environmental plan shall be construed as restricting or prohibiting or enabling the consent authority to restrict or prohibit:*

*(a) the carrying out of development of any description specified in Schedule 1.*

These provisions have the effect of making those developments in Schedule 1 (including 'railway undertakings') development without consent, which put simply means that councils do not have any statutory role in assessing or determining whether or not such developments can proceed.

Under Part 5, Section 110 of the *Environmental Planning and Assessment Act 1979*, 'activity' has a specific definition that excludes 'any act, matter or thing for which development consent under Part 4 is required or has been obtained'. It also excludes anything that is prohibited under an local environmental plan (or other planning instrument). In regard to this project, the effect of Section 110 is to capture 'activities' for which development consent is not required, and to trigger the requirements of Part 5 of the *Environmental Planning and Assessment Act 1979*, whereby a proponent is obliged to assess the environmental impacts of an activity before it can be approved.

As already discussed in section 3.3 above, Part 3A of the *Environmental Planning and Assessment Act 1979* contains provisions governing the assessment of major infrastructure projects. Prior to the inclusion of Part 3A into the *Environmental Planning and Assessment Act 1979*, such projects were typically assessed under Part 5.

**Relevance to the project**

The above discussion demonstrates the statutory basis for the removal of a major infrastructure project such as the inland railway from the planning powers of local councils. In practice, consultation with councils is routinely undertaken during the planning and assessment of a major infrastructure project. However, the legislation also recognises that the assessment of a project that crosses local government boundaries and has implications for economic and social development of the state is outside the scope of local government political, economic and social responsibility. Therefore, the provisions of local environmental plans will have little relevance to the project if it is assessed under Part 3A of the *Environmental Planning and Assessment Act 1979*.

## 4. Approvals summary and strategy

### 4.1 Delivery Strategy and Staging

The following section outlines the preferred staging and delivery strategy for the project at both the Commonwealth and state levels. The project's environmental and planning process considers three main processes:

- **Commonwealth approvals** — referral to the Commonwealth Minister for the Environment, Heritage and the Arts under the EPBC Act to determine if the project is a 'controlled action'. If it is deemed a controlled action, approval under Part 8 of the EPBC Act would be required.
- **Project approval under primary state planning legislation** — securing overall project approval under NSW and Queensland legislation.
- **Additional approvals under other state planning legislation** — obtaining any additional development approvals/permits/consents required to authorise the construction and operational phases of the project.

In preparing the preferred staging and delivery strategy, a number of key issues and considerations relating to the approvals process have been identified to inform the decision making process and highlight the recommendation of key strategies to address these issues and concerns. Further, given the complexity and multiple approval pathways for the project within Queensland, an options analysis has been completed to determine the pathway most suited to facilitating the delivery of the project in a timely and efficient manner whilst considering the potential risks to construction timeframes.

#### 4.1.1 Key issues and considerations

Table 4-1 below identifies the key issues and considerations in developing a preferred approvals strategy for the project.

**Table 4-1 Key issues and considerations**

Issue/consideration	Description
Political nature of the project and community consultation	Commonwealth support will be critical to driving the project and ensuring that consultation does not unnecessarily delay the project. Level of local community support/opposition to the project has the potential to significantly impact upon the approval process at State Government level. In securing State Government support, it may be necessary to identify and resolve any potential conflicts between the State Government's existing infrastructure commitments and the project.
Managing risk, approvals and project certainty	To ensure an acceptable level of risk regarding potential impacts on construction package requirements, certainty and clarity regarding approvals timeframes is needed. State Government and/or Commonwealth support is considered critical to the successful delivery of the project given the extensive number of local government areas that are involved and the limited scope of council decision making on projects of state/regional importance.
Timing of approvals and construction works	Consideration will need to be given regarding the currency periods attached to many development approvals and consents. Approvals that have lapsed will require the submitting of a new application, significantly impacting upon construction timeframes. Consideration will also need to be given regarding the currency periods for granted Resource Entitlements in Queensland. Typically these are only for a six month period and once lapsed must be reapplied for. Given that there are

Issue/consideration	Description
	no statutory obligations upon state departments to issue a Resource Entitlement within a certain timeframe, re-applying could result in costly delays to the project.
Legislative exemptions and the proponent	<p>The issue of who the proponent of the project will be has implications for the number of approval exemptions in both Queensland and NSW.</p> <p>The preferred Queensland state project approvals strategy would ideally be one that facilitates the greatest number of exemptions for the proponent and/or the covering off of multiple approvals at once.</p> <p>The preferred NSW project approval strategy would ideally be that which provides the greatest certainty of outcome, with the flexibility to enable the project to be staged in accordance with planning and financial imperatives.</p>
Approvals and mandatory information	<p>In many instances development applications can only be made once detailed design has been finalised. In addition, approval requirements may not be able to be confirmed until final design/alignments are known and the full impact of the proposed works is understood.</p> <p>Potential impacts to project timeline if designs/alignments change and trigger the resubmitting of material or lengthy information request periods.</p>
Additional approvals	Risk that some sections may pose related to unforeseen approvals being required once construction has commenced. For example, sections with identified Indigenous cultural heritage sites/items may pose a higher risk of additional items/sites being found than sections with no known instances.

#### 4.1.2 Key strategies to be implemented

Table 4-1 has identified a number of key risks and considerations for delivering the preferred approval strategy for the project. These risks and considerations have been addressed through a number of high-level strategies described below. These strategies are recommended to be adopted to provide a holistic approach to the planning and approval pathways for this multi-jurisdictional project. The project would, therefore, benefit from targeted strategies to progress and coordinate the multi-jurisdictional environmental planning approvals process that exist for this proposal and encourage the efficient, transparent and collaborative approach to managing this critical element of the project.

#### *Issue — Political nature of the project and community consultation*

##### **Strategy 1: Consultation with key stakeholders:**

- A planning strategy meeting (held prior to, or as an early component of the planning focus meeting) would engage key political, government and community stakeholders in a roundtable forum to discuss the project challenges from a multi-jurisdictional perspective
- The meeting should be held with all agencies, approval bodies and key stakeholders across each jurisdiction to discuss the project and their role/interest in delivering the approvals pathway (framework)
- This high-level meeting would help to identify current hold points (planning risks) and lessons learned from similar multi-jurisdictional projects
- A stakeholder involvement strategy would be delivered as an outcome of the planning strategy meeting, focussed on defining how stakeholder input into the defined environmental planning approvals pathway will occur on the project.

### ***Issue — Managing risk, approvals and project certainty***

#### **Strategy 2: Environmental approvals steering committee:**

- A co-ordinated approach between the jurisdictions is required to align the approvals pathway against assessment criteria, timeframes, and the need for other licences/permit approvals and to facilitate efficient and effective communication between local, state and Commonwealth agencies. A steering committee would be formed to drive this co-ordinated approach across the jurisdictions
- The steering committee's role would be to oversee and co-ordinate the planning approvals approach across the affected jurisdictions. Key planners, project managers or process drivers would collectively track progress, identify and resolve key risks (such as hold points in the process) and assist in the frequent communications between agencies at the local, state and Commonwealth levels
- The steering group would also have direct input into an over-arching approvals coordination framework which would outline the strategic approach.

#### **Strategy 3: Approvals delivery framework approach**

- An overarching approval delivery framework document should provide a high level approach to gaining approvals across jurisdiction in parallel with each state and Commonwealth regime. The framework would outline a flowchart of key activities and tasks (relating to the three phases identified in section 4.1) that need to be directed and managed by the steering committee
- Elements of the framework would be provided to each key stakeholder who has a fundamental involvement in the environmental planning and assessment process for the project. This framework would support the steering committee and guide key stakeholders in understanding the need to work together to achieve approval for the project in the most time and resource efficient means.

### ***Issue — Timing of approvals and construction works***

#### **Strategy 4: Confirming specified timeframes:**

- Legislated timeframes are to be contained in the approval delivery framework and the steering committee is to identify and resolve key planning approval hold-points relating to time delays and 'stop the clock' provisions. Through holding risk workshops, initiated as a possible planning strategy meeting, issues relating to potential time delays and significant differences in jurisdictional processes can be raised and addressed with key agencies and approval bodies.

### ***Issue — Approvals (including additional approvals) and mandatory information***

#### **Strategy 5: Dedicated project manager, state planning coordinator:**

- This role will primarily work on driving the approvals process at a day to day level, working within the home jurisdiction's nominated approval pathway to move the process forward. The project manager will report to the steering committee and work with other project manager's in other jurisdictions to understand timing, any additional approvals to be granted and ensure 'unforseen' approval requirements are dealt with efficiently, with support from the steering committee.

### 4.1.3 Commonwealth approvals strategy

The proponent will be required to assess the project in terms of whether or not any action that is proposed is likely to require Commonwealth approval under the EPBC Act. Once the proponent is ready to proceed with the final project alignment, a referral to the Commonwealth Minister for the Environment, Heritage and the Arts will be required to determine whether the proposed action is a 'controlled action' requiring approval under the EPBC Act.

Should the project be determined a 'controlled action' requiring approval under the EPBC Act, the Commonwealth Minister will advise the proponent of the controlling provisions relevant to the action and the required assessment approval process under Part 8 of the Act. It is likely that should the project be determined a 'controlled action' the Minister will approve the assessment of the project through each of the respective NSW and Queensland state assessment processes accredited under the Commonwealth/State bilateral agreement. Undertaking environmental assessment of the project under the bilateral agreement is the preferred approval pathway given that it facilitates the assessment of the project at both the Commonwealth and state level in one process.

If the project is determined to be 'not a controlled action', the project will not require environmental assessment at the Commonwealth level and will proceed straight to the respective state processes.

### 4.1.4 Queensland state approvals strategy

As part of the approvals delivery framework, the project will involve obtaining approvals under the relevant Queensland legislation. To enable this, the identification of a preferred approval option under Queensland legislation is to be confirmed. As stated earlier, this is likely to be State Significant EIS process under the *State Development and Public Works Organisation Act 1971*. In determining the most appropriate option, an options analysis covering each of the four processes to which the project is eligible to be assessed under, will be completed.

As identified in the approvals options analysis, the 'State Significant' EIS process under the *State Development and Public Works Organisation Act 1971* is the preferred approval option for the Queensland component of the project.

### 4.1.5 NSW state approvals strategy

The staging and delivery strategy for the NSW component of the project's state approvals will be required to be undertaken through the Part 3A process of the *Environmental Planning and Assessment Act 1979* (see Figure 3-3). This is the preferred option owing to the project being of a multi-jurisdictional and large scale nature that is generally unsuitable for the Part 4 and 5 approvals processes.

As stated in section 3.4, it is likely that, on receipt of a preliminary environmental assessment, the Minister for Planning would declare the project to be a 'Major Project' for assessment under Part 3A of the *Environmental Planning and Assessment Act 1979*.

#### 4.1.6 Environmental approvals during rail operations

##### Queensland

Under Queensland legislation, the project would require certain environmental approvals for operation, to manage the potential environmental impacts of an operating freight rail line. These approvals would be secured under the *Environmental Protection Act 1994* and are referred to in the legislation as environmentally relevant activities (ERAs; see section 3.3.3). Under Schedule 2 of the *Environmental Protection Regulation 2008*, activities that have the potential to release contaminants to the environment (for example, bulk material handling or storage; storage or transportation of fuels, chemicals or regulated waste; workshop operations; activities relating to railway maintenance) are classified as ERAs and are therefore subject to assessment and approval.

The extent and scope of ERA approvals required for the project to operate would be determined during detailed design and operations planning phases.

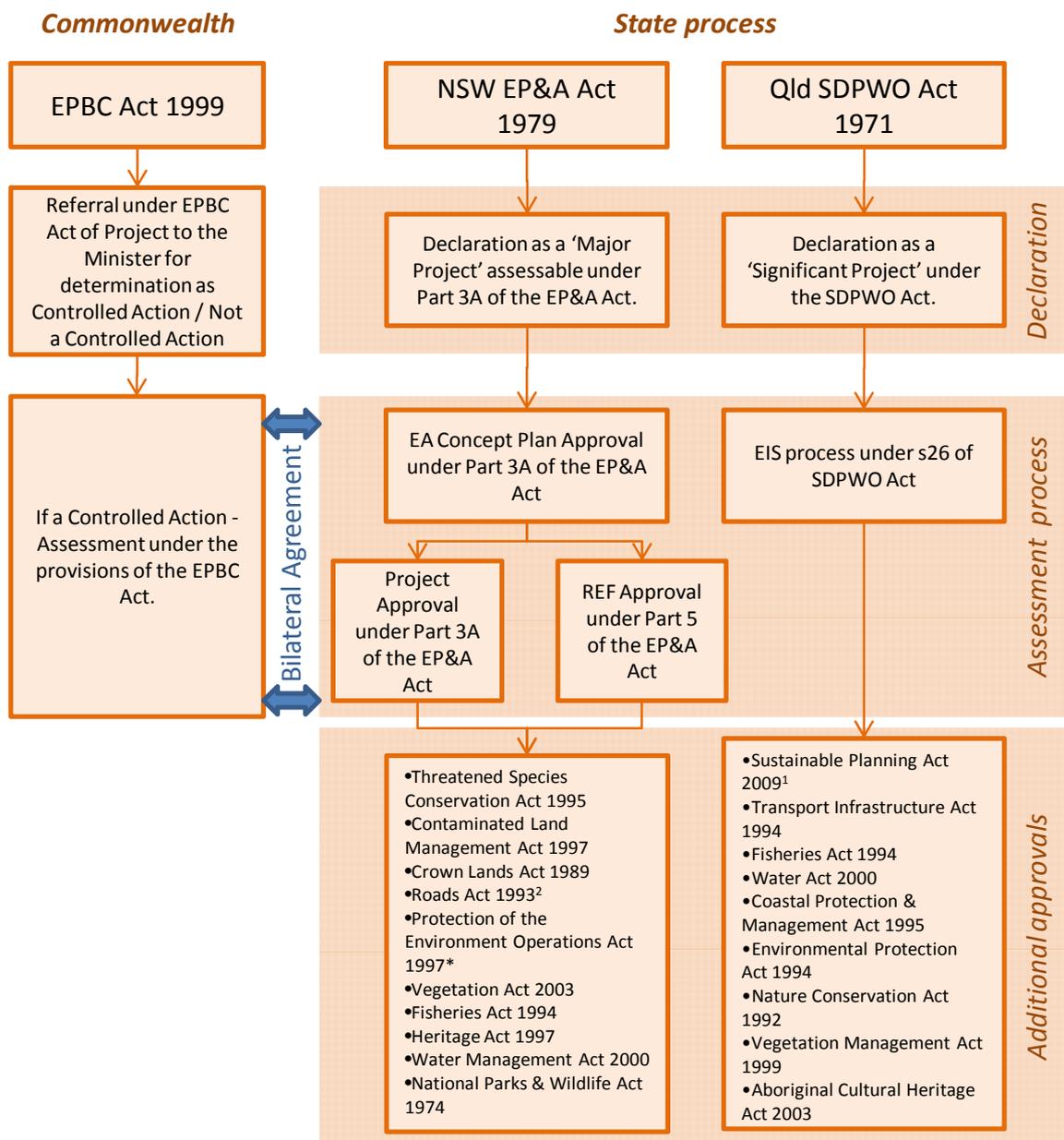
##### New South Wales

Under the *Protection of the Environment and Operations Act 1997* the inland rail project would be classified as a Scheduled Activity – Railway Systems Activities, where Railway Systems Activities includes track maintenance and operation of rolling stock on track.

The project would therefore require an environmental protection licence (EPL) from the NSW Department of Environment, Climate Change and Water to regulate, as required, air, water, noise, pollution and environmental offences during operations and maintenance activities. In addition, the EPL would establish a duty to notify the Department of Environment, Climate Change and Water or the local council where incidents are likely to cause material harm to the environment.

## 4.2 Approvals delivery framework

The process described above, and the recommended statutory approvals pathway for the project taking into account Commonwealth, Queensland and NSW legislation, can be summarised according to Figure 4-1. While the figure is perhaps over-simplistic, it serves to demonstrate the linkages between the stages in the process.



**Figure 4-1 Approvals delivery framework**

1 Land Use Approvals from local councils under the Sustainable Planning Act 2009.

2 Authorisations for activities necessary to carry out an approved project which cannot be refused (s75V of the Environmental Planning and Assessment Act 1979).

**4.2.1 Timing**

The likely program for securing all of the relevant project approvals is difficult to determine accurately, as there are a number of variables including:

- The time taken by the proponent to refine the preferred alignment and develop concept designs
- Time allowed for land acquisitions to occur, and in particular for resumption of land within state forests

- Whether approval is being sought for 'greenfield' sections of the alignment, or track upgrades within an existing corridor
- Response times from government agencies and regulatory authorities
- Whether the project is staged and if so, how each stage is defined
- The extent of consultation undertaken with communities and other stakeholders
- The proponent's preferred delivery model, and how this impacts on the timing of design development, land acquisition.

However, within broad assumptions based on typical timeframes for approvals processes for other large linear infrastructure projects, it is considered that approximately 12 months should be allowed for completion of an EIS/Part 3A EA, and an additional 12 months to secure additional approvals under other legislation and regulations. Table 4-2 presents indicative timeframes for the necessary primary approvals for the project as a whole and for each route section. The timeframes listed in Table 4-2 are inclusive of the commencement of the process until project determination or approval but do not include subsequent approvals, permits or licences under other legislation. The timeframes presented are for each separate route section. However if route sections were combined for project approval purposes, for example, a single project approval for Narromine to Narrabri, the longest estimated approval duration would apply.

The role of the project manager and steering committee will be to help minimise time delays and differences in timeframes for each jurisdiction through close communication with agencies and approval bodies to ensure timing does not differ too greatly between jurisdictions.

**Table 4-2 Approval summary by route section**

Section	Jurisdiction	Primary approval	Approximate duration <sup>1</sup>
Inland rail – whole route	NSW/ Queensland	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	9 months <sup>2</sup>
Inland rail	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – concept approval)</i>	9 months <sup>3</sup>
Inland rail	Queensland	<i>State Development and Public Works Organisation Act 1971; or</i>	24 months <sup>4</sup>
		<i>Sustainable Planning Act 2009 (Community Infrastructure Designation)</i>	24 months <sup>4</sup>
Illabo to Stockinbingal	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – project approval)</i>	12 months
Stockinbingal to Parkes	NSW	n/a	-
Parkes to Narromine	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 5)</i>	3-6 months
Narromine to Curban	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – project approval)</i>	12 months
Curban to Gwabegar	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – project approval)</i>	18-24 months <sup>4</sup>
Gwabegar to Narrabri west	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – project approval)</i>	18-24 months <sup>4</sup>
Narrabri bypass	NSW	<i>Environmental Planning and Assessment Act 1979 (Part 3A – project approval)</i>	12 months

Section	Jurisdiction	Primary approval	Approximate duration <sup>1</sup>
Narrabri to Camurra (south)	NSW	n/a	-
Camurra deviation	NSW	<i>Environmental Planning and Assessment Act 1979</i> (Part 3A – project approval)	12 months
Camurra (north) to North Star	NSW	<i>Environmental Planning and Assessment Act 1979</i> (Part 5)	3-6 months
North Star to Yelarbon	NSW / Queensland	<i>Environmental Planning and Assessment Act 1979</i> (Part 3A – project approval) (NSW); and <i>State Development and Public Works Organisation Act 1971</i> (Queensland)	12 months
Yelarbon to Inglewood	Queensland	<i>Sustainable Planning Act 2009</i> (DA for Operational Works approvals)	3-6 months
Inglewood to Millmerran	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	18-24 months <sup>4</sup>
Millmerran to Brookstead	Queensland	<i>Sustainable Planning Act 2009</i> (DA for Operational Works approvals)	3-6 months
Brookstead to Yargullen	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	12-18 months
Oakey bypass	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	12-18 months
Oakey to Gowrie	Queensland	<i>Sustainable Planning Act 2009</i> (DA for Operational Works approvals)	3-6 months
Gowrie to Helidon	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	18-24 months
Helidon to Laidley	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	12-18 months
Laidley to Grandchester/Rosewood	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	12-18 months
Grandchester / Rosewood to Kagaru	Queensland	<i>State Development and Public Works Organisation Act 1971</i>	18-24 months

1. Duration from commencement of process until project determination or approval. Does not include subsequent approvals, permits or licences under other legislation.

2. Can be prepared in conjunction with Part 3A concept or project approvals (NSW) and with SDPWO, community infrastructure designation, *Integrated Planning Act 1997* processes (Queensland)

3. Concept approval would be required prior to subsequent Part 3A project approvals and approvals under part 5 of *Environmental Planning and Assessment Act 1979*)

4. Includes time to undergo process of revocation of state forest land (Curban – Gwabegar, Gwabegar – Narrabri, Inglewood – Millmerran)

### 4.3 Approvals staging

Given the scale and extent of the project it is likely that the project will need to be packaged up in sections and delivered in separate stages through a series of design and construct contracts, as described in Appendix J. Following the primary approval process in each state, that is, Part 3A concept approval under the *Environmental Planning and Assessment Act 1979* and approval of an EIS under the s26 of the *State Development and Public Works Organisation Act 1971*, subsequent approvals would be staged also.

Such an approach is likely to have numerous benefits to the project, including that:

- A staged approach would facilitate the delivery of the project to coincide with funding availability
- Sections of the alignment may be considered higher priority than others or may be dependent upon the completion of other sections prior to starting the new section of work. A staged approach would ensure that the statutory approvals for priority sections are secured in a timely manner
- In many instances, project approvals have currency periods (particularly in Queensland). A staged approach may reduce the risk of some approvals lapsing before work is able to commence (i.e. delays as a result of changes to detailed design)
- A strategic approach to the packaging of certain sections of the alignment into a single stage could avoid the requirement to obtain some approvals, resulting in fast-tracking of the delivery of the project. For example, the community infrastructure designation process could replace the 'Significant Project' process as the preferred approvals pathway for one or more sections of the alignment within Queensland, resulting in a reduction of the number of additional statutory approvals required and facilitating the earlier commencement of construction.

However, where the alignment triggers assessment under the EPBC Act, consultation with the Department of Environment, Water, Heritage and the Arts should take place to assess the appropriateness of staging project approvals.

#### 4.4 Corridor reservation

If the project is delayed for a significant period of time, or indefinitely, future development along or adjacent to the inland railway alignment may compromise the viability of the route by increasing costs associated with land acquisition or compensation, affecting the operations of the railway (e.g. safety, journey time, etc) or require amendments to the route.

Steps to reserve the inland railway alignment under the relevant state legislation (as described in section 2.4) could be considered to ensure that future development or land zoning does not compromise the corridor and ultimately the viability of the project.

Initially this would include consultation with the relevant state planning authorities (e.g. NSW Department of Planning and the Queensland Department for Infrastructure and Planning) to determine the preferred mechanism for corridor reservation. Subject to these discussions, the most likely strategies would include:

- Within NSW the corridor should be included on the State Environmental Planning Policy (Infrastructure) 2007 as an 'interim rail corridor' to ensure that the proponent is aware of any future development applications within or adjacent to the railway corridor
- Within Queensland further environmental assessment should be undertaken to the level required to enable the corridor to be reserved as a strategic rail corridor under the *Sustainable Planning Act 2009* Community Infrastructure Designation.