

Code of Practice for Environmental Impact Assessment of Development Proposals in NSW

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1 Introduction

This is the Code of Practice required for ARTC under clause 244F of the Planning Regulation.

1.1 Purpose

The purpose of this Code is to provide a framework for the assessment process which ARTC will follow in carrying out an EIA, and for public involvement in that process, in respect of Development for the purposes of ARTC Rail Infrastructure Facilities, where that Development:

- is subject to Part 5 of the Planning Act; and
- does not require an EIS.

Generally speaking, Development which is governed by Part 5 of the Planning Act is known as an "Activity". In the case of an Activity for the purposes of Rail Infrastructure Facilities which is subject to Part 5 of the Planning Act, ARTC will be required, by section 111 of the Planning Act, to "examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity".

Section 112 of the Planning Act relevantly provides that an EIS is required for:

- an Activity which is prescribed, or of a kind prescribed, for the purposes of section 112; or
- an Activity which is "likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats" (subject to the requirements of section 112(1C)).

This Code does not apply if an EIS is required under Part 5 of the Planning Act¹.

1.2 Context

Under the ARTC SEPP, Development for the purposes of "ARTC rail infrastructure facilities" (as defined in the ARTC SEPP) in many circumstances may be carried out without development consent being obtained under the Planning Act. In those circumstances, development consent and the environmental impact assessment ("EIA") process specified in Part 4 of the Planning Act are not required. However, the assessment and approval processes in Part 3A or Part 5 of the Planning Act may apply instead.

ARTC has been prescribed as a "public authority" under the Planning Act in relation to Development for the purposes of "ARTC rail infrastructure facilities", but only for the purpose of making ARTC a "determining authority" in relation to such Development where it is subject to Part 5 of the Planning Act. As a "determining authority", ARTC may be required to undertake an EIA in respect of such Development in accordance with Part 5 of the Planning Act² and, in the course of doing so, to determine whether an EIS is required, whether a proposal should or should not proceed, and, if a Proposal is to proceed, what conditions (if any) might be imposed on a Proposal.

¹ In such circumstances, Part 3A of the Planning Act may apply. See section 3.2 of this Code.

² Part 5 of the Planning Act includes sections 110-115S.

ARTC recognises the importance of its EIA obligations under the Planning Act. ARTC also acknowledges that the Planning Act provides for civil and criminal enforcement of these obligations in certain circumstances.

1.3 Composition of this code

In accordance with clause 244F(6) of the Planning Regulation, this Code identifies:

- classes of Activities for the purposes of the application of this Code;
- assessment requirements for specified Activities or classes of Activities;
- procedures for carrying out assessments;
- protocols for consultation;
- requirements for consideration of any advice given by the Planning Director- General;
- requirements for consideration of environmental management procedures in relation to effects on the environment of Activities;
- requirements for documentation;
- protocols for the availability of documentation to the Planning Minister, the Planning Director-General and the public; and
- protocols for auditing the performance of and compliance with this Code.

1.4 Interpretation

a) Definitions

In this Code, subject to sub-clause (b) (on page 7 below):

"Activity" means:

- the use of land; and
- the subdivision of land; and
- the erection of a building; and
- the carrying out of a work; and
- the demolition of a building or work; and
- any other act, matter or thing referred to in section 26 of the Planning Act that is prescribed by the regulations for the purposes of the equivalent definition in the Planning Act,

but does not include:

- any act, matter or thing for which development consent under Part 4 of the Planning Act is required or has been obtained; or
- any act, matter or thing that is prohibited under an Environmental Planning Instrument made under the Planning Act; or
- exempt development; or
- Development carried out in compliance with an order under Division 2A of Part 6 of the Planning Act; or

- any Development of a class or description that is prescribed by the regulations under the Planning Act for the purposes of the equivalent definition in the Planning Act.

"**ARTC**" means Australian Rail Track Corporation Ltd (ACN 081 455 754).

"**ARTC Arrangement**" has the meaning given to that term in the Transport Act.

"**ARTC EMS**" means the EMS used or adopted by ARTC from time to time.

"**ARTC Rail Infrastructure Facilities**" means Rail Infrastructure Facilities owned by ARTC or a rail authority that are:

- situated on land subject to an ARTC Arrangement; or
- subject to an ARTC Arrangement.

"**ARTC SEPP**" means the *State Environmental Planning Policy (ARTC Rail Infrastructure) 2004*.

"**Class 3 Proposal**" means a Proposal which satisfies the criteria in section 3.2(c) of this Code.

"**Class 4 Proposal**" means a Proposal which satisfies the criteria in section 3.2(d) of this Code.

"**Code**" means this Code of Practice.

"**Decision Report**" means a document which formally records a final determination made by ARTC based on an EIA conducted by ARTC:

- as to whether an EIS or an SIS is required for a particular Proposal; or
- as to whether to carry out, or whether to approve, a particular Class 4 Proposal.

"**Development**" means:

- the use of land; and
- the subdivision of land; and
- the erection of a building; and
- the carrying out of a work; and
- the demolition of a building or work; and
- any other act, matter or thing referred to in section 26 of the Planning Act that is controlled by an Environmental Planning Instrument made under the Planning Act,

but does not include any Development of a class or description prescribed by the regulations under the Planning Act for the purposes of the equivalent definition in, and on the basis of the Planning Act.

"**DoP**" means the Department of Planning.

"**EIA**" means an environmental impact assessment. (Care should be taken to avoid confusion with the term "EIS", which is separately defined below.)

"**EIA Document**" means a final document in which the EIA for a Proposal is recorded, and on the basis of which a decision which must be recorded in a Decision Report is made.

"**EIS**" means an environmental impact statement. (Care should be taken to avoid confusion with the term "EIA", which is separately defined above.)

"**EIS Proposal**" means a Proposal which would require an EIS under Part 5 of the Planning Act.³

"**Eligible Document**" means:

- a final document which records and forms the basis of a determination by ARTC that a particular Proposal is a Class 3 Proposal;
- a final document which records and forms the basis of a determination by ARTC that an EIS and/or an SIS is required for a particular Proposal;
- a Decision Report which contains a determination that a particular Class 4 Proposal may proceed;
- an EIA Document for a particular Class 4 Proposal;
- an Environmental Management Document for a particular Class 3 Proposal or a Class 4 Proposal where ARTC determines that the Proposal must be carried out in accordance with the terms of that document;
- the document(s) which set out the Standard Environmental Management Measures which are current at the time.

"**Emergency Proposal**" means a Proposal which ARTC considers must be carried out immediately to avoid or reduce any adverse impact on public safety, any ARTC assets or the environment, to prevent harm or likely harm to persons, property or the environment, or to avoid or reduce substantial disruption of railway services.

"**EMP**" means environmental management plan.

"**EMS**" means environmental management system.

"**Environmentally Sensitive Land**" means:

- land identified in an Environmental Planning Instrument as an environment protection zone, such as for the protection or preservation of habitat, plant communities, escarpments, wetland or foreshore or land protected or preserved under *State Environmental Planning Policy No 14- Coastal Wetlands* or *State Environmental Planning Policy No 26 - Littoral Rainforests*;
- land reserved as a national park or an historic site or dedicated as a nature reserve or declared as wilderness under the *National Parks and Wildlife Act 1974*;
- an area declared to be an aquatic reserve under Division 2 of Part 7 of the *Fisheries Management Act 1994*;
- land declared to be critical habitat under the *Threatened Species Conservation Act 1995*;
- land reserved or dedicated within the meaning of the *Crown Lands Act 1989* for the preservation of flora, fauna, geological formations or for other environmental protection purposes;

³ The relevant triggers for an EIS, which are provided in section 112 of the Planning Act, are outlined in section 1.1 of this Code.

- land declared as wilderness under the *Wilderness Act 1987*; and
- any other land identified by the Planning Director-General for the purposes of this definition, after consulting with ARTC.

"Environmental Management Document" means a document which has been prepared for the purpose of setting out measures to manage the environmental impacts of a Proposal. Examples include EMPs for the construction or operational stages of a Proposal, construction method statements, site control plans and inspection and test plans.

"Environmental Planning Instrument" means a State environmental planning policy, a regional environmental plan, a local environmental plan or any other instrument deemed by the Planning Act to be an environmental planning instrument (such as a planning scheme ordinance).

"EPA" means the Environment Protection Authority, now part of the Department of Environment and Conservation.

"Planning Act" means the *Environmental Planning and Assessment Act 1979*.

"Planning Director-General" means the Director-General of DoP.

"Planning Minister" means the Minister for Planning.

"Planning Regulation" means the *Environmental Planning and Assessment Regulation 2000*.

"Principles of ESD" means the following principles:

- i. the precautionary principle, namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- A. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - B. an assessment of the risk-weighted consequences of various options.
- ii. inter-generational equity, namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.
 - iii. conservation of biological diversity and ecological integrity, namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.
 - iv. improved valuation, pricing and incentive mechanisms, namely, that environmental factors should be included in the valuation of assets and services, such as:
 - A. polluter pays, that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - B. the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - C. environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

"Proposal" means a proposal which is covered by this Code, as described in section 1.1 of this Code, and includes a modified Proposal where relevant.

"Protected Item" means an item of indigenous or non-indigenous heritage which is protected by the *Heritage Act 1977* or the *National Parks and Wildlife Act 1974*.

"Rail Infrastructure Facilities" means:

- railway track and associated track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings and service roads,
- signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables,
- rolling stock maintenance facilities, maintenance depots, storage yards,
- platforms, stations (other than buildings used for residential, retail or commercial purposes unrelated to railway purposes), associated car parks, bus interchanges, public amenities, station access facilities (other than facilities in a building not part of a railway station),
- freight centres or freight depots.

"REF" means a document called a Review of Environmental Factors.

"SEMMs" means Standard Environmental Management Measures.

"SIS" means a species impact statement.

"Standard Environmental Management Measures" or **"SEMMs"** means the measures described in section 3.2(f) of this Code.

"Transport Act" means the *Transport Administration Act 1988*.

b) Updating definitions

If an amendment to any of the Planning Act, the Planning Regulation, the ARTC SEPP or the Transport Act is made, so that one of those instruments contains a definition of a term in sub-clause (a) above which differs from the definition of that term in sub-clause (a) above, then ARTC may adopt the amended definition in that instrument.

The text of this Code may be updated from time to time to incorporate any such amended definitions.

c) Other rules of interpretation

In this Code:

- i. headings are for convenience only and do not affect interpretation;
and unless this Code otherwise provides:
- ii. any other term defined in the Planning Act, the Planning Regulation, the ARTC SEPP or the Transport Act will have the meaning given to that term in that instrument when used in this Code;
- iii. words importing the singular include the plural and vice versa and words denoting a given gender include all other genders;

- iv. the expression "**person**" includes an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- v. a reference to any statute or to any statutory provision includes any statutory amendment or modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and other statutory documents issued under it;
- vi. a reference to any position or office which may be occupied by a person includes any position or office which replaces or succeeds it and any person to whom relevant functions or powers from it are delegated.

1.5 Procedure Owner

The Environment Manager is the Procedure Owner and is the initial point of contact for all queries relating to this procedure.

1.6 Responsibilities

The Environment Manager is responsible for the implementation of this procedure.

1.7 Reference Documents

This Code is to be read in the context of:

- a) Division 8 of Part 14 of the Planning Regulation; and
- b) the ARTC SEPP,

which provide the regulatory framework for Development for the purpose of ARTC Rail Infrastructure Facilities.

In addition to this Code, ARTC is also preparing the ARTC EMS. At the date of approval of this Code, the EMS of each of Rail Services Australia and Rail Infrastructure Corporation has been adopted by ARTC pending the implementation of an ARTC specific EMS. The ARTC EMS will contain references to certain other documents relevant to the EIA processes including, for example, ARTC's Environment Protection Licence No. 3142, standard EMPs and Pollution Reduction Plans. The ARTC EMS and related documents will be located on ARTC's intranet.

ARTC also recognises that other agencies have prepared or adopted other documents which relate to EIA or environmental management. ARTC will have regard to these documents in the course of its EIA where ARTC considers it appropriate to do so in order to satisfy its EIA obligations under the Planning Act.

2 Principles of ESD

ARTC will have regard to the Principles of ESD in carrying out any EIA under this Code.

3 Preliminary Matters for Environmental Assessment

3.1 Overview

The purpose of carrying out an EIA is to enable ARTC to consider the potential environmental consequences of carrying out the Development contemplated by a Proposal. The level of assessment required for a particular Proposal will depend upon the likely impacts of the Proposal on the environment and the classification of the Proposal under this Code.

Section 3.2 of this Code describes the various Classes of Proposals. There are five Classes of Proposals. Only two of those Classes are subject to specific requirements under this Code - Class 3 and Class 4.

As indicated in section 3.2 of this Code, Classes 1 and 2 concern matters which will not be subject to any requirements under this Code.

The criteria for determining whether a Proposal falls within Class 3 are set out in section 3.2(c) of this Code.

Class 5 concerns activities which are subject to Part 5 of the Planning Act and which constitute EIS Proposals. Class 5 Proposals will not be subject to this Code.

A Class 4 Proposal will comprise an Activity which does not fall within any other Class described in section 3.2 of this Code. The EIA considerations for a Class 4 Proposal are outlined in section 4 of this Code.

A separate assessment process is provided for Proposals which are classified as "Emergency Proposals", recognising the special nature of these Proposals (see section 7.1 of this Code).

This Code will not require anything in relation to a Proposal to the extent that ARTC is not required to carry out EIA under section 111 of the Planning Act, as a result of the operation of section 111A(a) or (c) of the Planning Act.⁴

It should also be noted that Part 3A of the Planning Act provides a separate assessment and approval regime for certain major infrastructure and other projects.

⁴ Section 111A relevantly states: "*A determining authority [which may include ARTC] is not under a duty under section 111 (despite its terms) to consider the environmental impact of the following activities:*

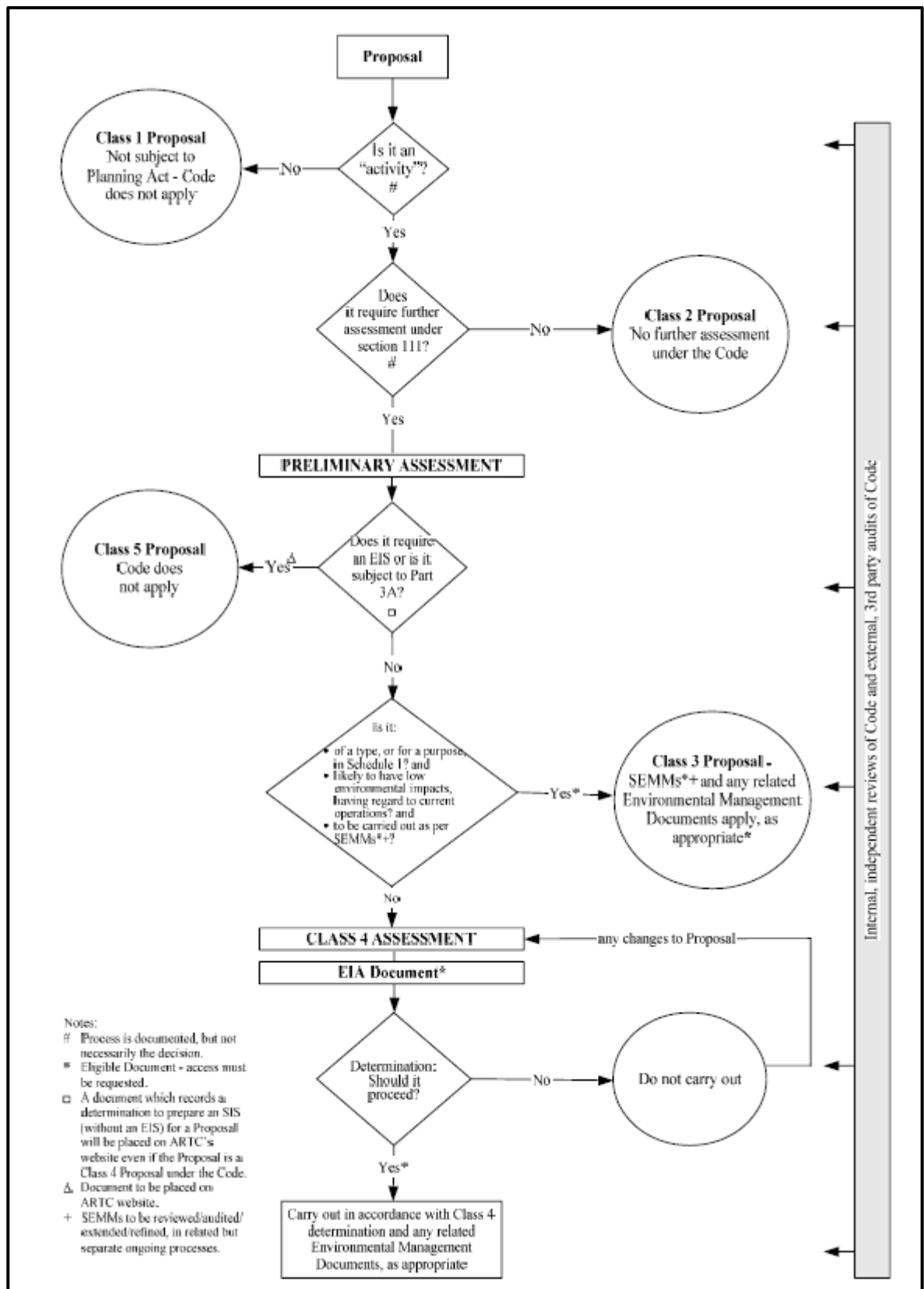
- (a) *a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,*
- (c) *an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Part."*

In some circumstances, Part 3A will apply to Proposals which would otherwise be governed by Part 5.⁵ Notwithstanding anything else in this Code, if, at any point in time, a Proposal is or becomes subject to Part 3A, then nothing further will be required under this Code in relation to that Proposal to the extent that it is subject to Part 3A.

A flowchart providing an example overview of the EIA process is set out on the following page

⁵ Among other things, Part 3A will apply to a Proposal if there is an applicable declaration under section 75B(1).

On 29 July 2005, the Planning Minister declared, under section 75B(1), that Part 3A will apply to all "*Development that is an activity for which the proponent (that is not a local council or county council) is also the determining authority and that, in the opinion of the proponent, would (but for this order) require an environment impact statement to be obtained under Part 5*".



3.2 Classes of Proposals and Preliminary Assessment

This Code identifies five Classes of Proposals:

- Class 1: not subject to the Planning Act, because the Proposal does not comprise "Development" or an "Activity" under the Planning Act → no further formal assessment is required (see paragraph (a) below);
- Class 2: further EIA not required (for example, because it is covered by a prior process of EIA or approval of a Development or Activity) → no further formal assessment is required (see paragraph (b) below);
- Class 3: Standard Environmental Management Measures (or "**SEMMs**") to be adopted and no further formal assessment is required (see paragraphs (c) and (f) below);
- Class 4: further formal assessment under this Code is required (see paragraph (d) below); and
- Class 5: EIS Proposal → EIS required or Part 3A of the Planning Act applies → this Code will not apply to EIS Proposals (see paragraph (e) below).

The first issue to determine in applying this Code is whether a Proposal is subject to the Planning Act and, if it is subject to the Planning Act, whether a further EIA is required for the Proposal (ie. whether either of the first two Classes applies).

If neither of the first two Classes applies to a Proposal, then ARTC will carry out a preliminary assessment with a view to determining whether the Proposal is a Class 3 Proposal, a Class 4 Proposal or a Class 5 Proposal.

Each of the Classes is described in paragraphs (a) - (e) below, and an outline of the operation of the SEMMs is also provided in paragraph (f) below.

a) Class 1: Proposals not subject to the Planning Act

It is important to note that many actions carried out by or on behalf of ARTC will not comprise a "development" or an "activity" under the Planning Act.

The law recognises that it is not the purpose or intention of the Planning Act to regulate every action on land. The definitions of a "development" or an "activity" under the Planning Act must be interpreted in a common sense manner, so as to determine whether, as a question of fact and degree in the particular circumstances, a particular Proposal will fall within those definitions. Among other things, it may be relevant to consider the essential nature of the acts involved and their relative magnitudes of scale and intensity.

In this regard, the carrying out of day-to-day routine actions by or on behalf of ARTC in the course of the ordinary use of a railway, and maintenance and repair actions associated with ARTC rail infrastructure facilities, are unlikely to comprise "development" or an "activity" under the Planning Act. Consequently, in many circumstances, the Proposals identified in paragraphs (a), (b), (c), (d) and (e) of Schedule 1 of this Code are unlikely to fall within the definitions of "development" or an "activity" under the Planning Act.⁶

⁶ The examples given are not intended to limit the range of situations identified in section 3.2 of this Code. Consideration of whether a Proposal falls within this Class will depend on the circumstances of that Proposal.

In such a case, it will not be necessary to carry out any further EIA under the Planning Act and, in those circumstances, nothing further will be required under this Code.

ARTC will prepare its own internal procedures, protocols or guides to assist in determining whether a Proposal falls within this Class. The procedures, protocols or guides will be available to a person conducting an audit or review under section 8 of this Code.

b) Class 2: Non-assessable Proposals

It is also important to note that, although some works, erection or demolition of a building or uses of land comprise a "development" or an "activity" under the Planning Act, these will not require separate EIA under the Planning Act.

An example is an Activity which has already been the subject of an appropriate EIA or other assessment or approval process (for example, there is an existing approval which permits the work or use as part of a larger project authorised by the approval)⁷. In many circumstances, the Proposals identified in paragraphs (a), (b), (c), (d) and (e) of Schedule 1 of this Code are likely fall within this Class 2 (if they do not fall within Class 1), because they are day-to-day routine actions in the course of the ordinary use of a railway, and maintenance and repair actions associated with ARTC rail infrastructure facilities.

In such a case, it will not be necessary to carry out any further EIA under the Planning Act and, in those circumstances, nothing further will be required under this Code.

ARTC will prepare its own internal procedures, protocols or guides to assist in determining whether a Proposal falls within this Class. The procedures, protocols or guides will be available to a person conducting an audit or review under section 8 of this Code.

c) Class 3 Proposals

A Proposal will only fall within Class 3 if ARTC determines that, in its opinion, each of the following criteria is satisfied:

- the Proposal is an Activity of a kind, or for a purpose, identified in Schedule 1 of this Code; and
- the Proposal is likely to have low environmental impacts, having regard to the day-to-day routine activities in the ordinary use of a railway and actions associated with the ARTC rail infrastructure facilities; and
- the Proposal will be carried out in accordance with SEMMs (see paragraph (f) below) and any other additional environmental management measures which ARTC considers appropriate.

In considering whether a Proposal is likely to have low environmental impacts in this sense, ARTC will have regard to the matters which are prescribed in clause 228(2) of the Planning Regulation. Those matters are set out in Schedule 2 of this Code for ease of reference.

Class 3 Proposals will be implemented having regard to:

- the SEMMs which ARTC considers are appropriate for that Proposal; and

⁷ The examples given are not intended to limit the range of situations identified in section 3.2 of this Code. Consideration of whether a Proposal falls within this Class will depend on the circumstances of that Proposal.

- any other Environmental Management Documents which ARTC applies to that Proposal.

d) Class 4 Proposals

If ARTC determines that a Proposal requires an EIA under the Planning Act, and it does not fall within any other Class described in section 3.2 of this Code, then the Proposal will be a Class 4 Proposal.

Section 4 of this Code will apply only to Class 4 Proposals.

e) Class 5 Proposals

Class 5 Proposals are EIS Proposals.

The Planning Regulations state that this Code will not apply to an EIS Proposal.

As indicated in section 1.1 of this Code, section 112 of the Planning Act relevantly provides that an EIS is required for:

- an Activity which is prescribed, or of a kind prescribed, for the purposes of section 112; or
- an Activity which is *"likely to significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats"* (subject to the requirements of section 112(1C)).

This Code does not apply if an EIS is required under Part 5 of the Planning Act.

An EIS Proposal will either:

- require an EIS (and may also require an SIS) under Part 5 of the Planning Act; or
- be subject to the assessment and approval regime in Part 3A of the Planning Act, if the Planning Minister has made a declaration under section 75B(1) of the Planning Act which applies to the Proposal.⁸

f) Standard Environmental Management Measures

ARTC is preparing a series of SEMMs, which it considers are appropriate to protect the environment in circumstances in which a Class 3 Proposal may be carried out. The SEMMs identify various environmental aspects of Class 3 Proposals, environmental impacts which may arise from those aspects, and management measures to address those impacts.

The SEMMs are recorded in separate documents, and do not form part of this Code.

ARTC recognises that the environment, and approaches to environmental management, are dynamic and are therefore subject to change. ARTC may review, revise, amend and add to the SEMMs from time to time, with a view to updating its environmental requirements to suit changing circumstances, and consistent with its commitment to the Principles of ESD.

The document(s) which set out SEMMs may be made publicly available subject to the procedures in section 7 of this Code. The SEMMs will be available to a person conducting an audit or review under section 8 of this Code.

⁸ See the discussion on Part 3A and Part 5 in section 3.1 of this Code.

4 Class 4 Assessment

For convenience, the assessment process for Class 4 Proposals has been described in this Code as involving five phases:

- scoping and legislative review;
- assessment and evaluation;
- consultation;
- determination;
- implementation.

These phases are described in more detail in sections 4.1 to 4.5 of this Code.

These phases will not necessarily be clearly divisible and they will not necessarily take place in the order specified above. For example, it may be that:

- further actions identified in the evaluation phase may be carried out as a result of information obtained in the consultation phase; and/or
- further actions identified in the scoping and legislative review phase may be carried out as a result of information obtained in the consultation phase or the evaluation phase (eg. a refinement of the Proposal description as a consequence of public consultation or consideration of mitigation measures); and/or
- two or more phases may be carried out concurrently (eg. the consultation phase may occur during the assessment and evaluation phase).

The purpose of identifying phases is to facilitate a satisfactory EIA process and, therefore, the phases are not intended to be prescriptive of the EIA process or the manner in which it will be undertaken.

4.1 Phase 1: Scoping & Legislative Review

ARTC will, where it considers it appropriate to do so:

- carry out a legislative review to determine whether any statutory requirements apply to the Proposal (see section 5.2 of this Code); and
- determine the scope of the investigations and key issues for the assessment and evaluation phase (see this section 4.1 and section 4.2 of this Code).

The scoping and legislative review may involve the following:

- **Proposal analysis** - identification of the characteristics of the Proposal and potential sources of environmental impacts;
- **Site analysis** - identification of the environmental characteristics of the proposed site of the Proposal and the sensitivity of any neighbouring areas;
- **Community analysis** - identification of the likely level of community interest in the Proposal;
- **Control measures analysis** - identification of the existing or available environmental management measures which are elements of the Proposal.

One of the possible outcomes of the assessment of environmental impacts is that the Proposal may be re-classified as a Class 3 Proposal or as a Class 5 Proposal. This Code will not apply to a Class 5 Proposal.

a) Proposal analysis

The analysis of the Proposal may involve the following elements, having regard to the nature of the Proposal:

- i. **Need** - The need for, and the justification of, the Proposal may be considered. This would involve a consideration of the objectives of the Proposal.
- ii. **Alternatives** - The alternatives (if any) to the Proposal may be considered, so as to identify a preferred option. This may involve, among other things, consideration of the extent to which each alternative fulfils any objectives identified in paragraph (i) above.
- iii. **Components** - The components of Development which form part of the Proposal may be identified. This may include, for example, the nature of any investigation, construction, operation, ancillary works (eg. earth works, fencing, land clearing and temporary buildings), impact mitigation measures (where they are already proposed), and (as part of the "operation" component) future use and maintenance requirements (eg. access, vegetation trimming).
- iv. **Characterisation** - The Proposal will be properly characterised according to the Planning Act. In other words, the character and purpose of the Proposal will be considered. Among other things, this will assist in determining whether the Proposal (or part of it) is subject to Part 3A, Part 4 or Part 5 of the Planning Act (see section 1.2 of this Code). The characterisation will be relevant for the review of Environmental Planning Instruments (see "Site Analysis" below).

If the character of a Proposal is considered to be Development for a purpose which is subject to Part 5 of the Planning Act, then it may be that components of that Proposal which might otherwise be subject to Part 4 of the Planning Act, if examined alone, will be assessed under Part 5 as ancillary or incidental to the Proposal.

However, in some situations, where part of a Proposal will be subject to Part 4 of the Planning Act and part of the Proposal will be subject to Part 5 of the Planning Act, this Code will apply to the Proposal only to the extent to which the Proposal is subject to Part 5.

- v. **Nature and scale** - An estimate, in general terms, may be made of the nature and scale of the Proposal, including (where appropriate) matters such as the scale of the site of any works and operations involved, the intensity of any impacts of the Proposal, the duration and timing of any construction and operational components of the Proposal, the proposed hours of activity, the plant and equipment involved, and the likely products or by-products of the Proposal.
- vi. **Impacts** - The possible impacts, in general terms, of the Proposal may be considered where it is considered that this would facilitate the assessment process.

b) Site analysis

The site analysis may involve the following:

- i. **Relevant environment** - The key environmental characteristics of the site of any works and operations involved, and characteristics of the surrounding area, may be considered. The extent of the consideration will depend on the location of the Proposal, but may include relevant aspects of the natural, biophysical, social and economic environment.

- ii. **Environmentally Sensitive Land** - Where appropriate, a determination will be made of whether the site of any works and operations involved is on or near Environmentally Sensitive Land.
- iii. **Environmental Planning Instruments** - Relevant Environmental Planning Instruments will be reviewed to determine:
 - what zoning applies to the site of any works and operations involved;
 - whether the Proposal (or part of it) is subject to Part 3A, Part 4 or Part 5 of the Planning Act (see section 1.2 of this Code); and
 - whether the Environmental Planning Instruments contain any other provisions which should be considered in the EIA.
- iv. **Contamination** - Consideration will be given to the issue as to whether the Proposal will or is likely to involve any disturbance of any contamination. This may include consideration of current and previous use(s) of the site or any works and operations involved on neighbouring land, and whether any such site is identified as contaminated on any public register maintained by the EPA or a local council.

c) Community and Stakeholder Analysis

Consideration may be given to the likely level of community interest in the Proposal and to potential stakeholder groups. Relevant factors in this assessment may include, but will not necessarily be limited to:

- the proximity of residential, commercial or public buildings;
- the presence or absence of a Protected Item on the site of any works and operations involved;
- the need (if any) for the acquisition of interests in land;
- the degree (if any) of community disruption in connection with the Proposal;
- the experience of the relevant local community with similar activities;
- any appropriate resident, commercial, government, non-government or other stakeholder group; and
- any community feedback concerning the Proposal or other activities associated with Rail Infrastructure Facilities in the vicinity of the Proposal.

d) Control Measures Analysis

The availability and adequacy of measures, as elements of the Proposal, to control or eliminate environmental impacts of the Proposal may be considered in this phase, at least at a preliminary level.

4.2 Phase 2: Assessment & Evaluation

For Class 4 Proposals, the environmental impacts of the Proposal (incorporating any control measures) identified during the scoping and legislative review phase (see section 4.1 of this Code) will be evaluated.

a) Assessment of likely environmental impacts

The environmental impacts of the Proposal will be considered.

In assessing the likely impacts and the significance of the identified impacts of a Proposal, it may be useful to consider the matters which are prescribed in clause 228(2) of the Planning Regulation. For convenience, these matters are set out in Schedule 2 of this Code.

One of the possible outcomes of the assessment of environmental impacts is that the Proposal may be re-classified as a Class 3 Proposal or a Class 5 Proposal. This Code will not apply to Class 5 Proposals.

b) Environmental management measures

When likely adverse environmental impacts of a Proposal are identified, consideration will be given to the availability and appropriateness of measures which may mitigate those impacts. The selection and application of environmental management measures will depend on factors such as the reasonableness and feasibility of those measures in the context of the Proposal and its identified likely environmental impacts.

Consideration may be given to the incorporation of appropriate environmental management measures as part of the description of the Proposal, to assist in reducing the impact threshold of a Proposal so that it is not an EIS Proposal, with the consequence that the need for an EIS therefore may not arise (see also section 4.1(d) of this Code).

c) Is an EIS required?

Where appropriate, consideration will be given in this phase to the provisions of the Guideline published by DoP entitled *Is an EIS required?*. In some circumstances, it may not be necessary to work through the process in this Guideline because it may be clear, from the assessment carried out, that a particular Proposal is or is not an EIS Proposal.

It may be that, for any particular Proposal, most of the analysis and evaluation required by the Guideline has already been carried out in the other phases identified within section 4 of this Code.

d) Is an SIS required?

ARTC recognises that an SIS will be required for any Proposal which:

- is in respect of land which is, or is part of, critical habitat; or
- is likely to significantly affect threatened species, populations or ecological communities, or their habitats.

In order to determine whether a Proposal is likely to significantly affect threatened species, populations or ecological communities, or their habitats, ARTC will, where appropriate, consider the factors prescribed by section 5A of the Planning Act (known as the "**eight part test**"). It may be appropriate to obtain internal or external advice in order to carry out an eight part test.

A requirement for an SIS may remove the need for an EIS, if an EIS would be required because the Proposal is likely to significantly affect threatened species, populations or ecological communities, or their habitats but is not prescribed for the purposes of section 112, and would not otherwise be likely to significantly affect the environment. In such situations, this Code may continue to apply if the Proposal is still considered to be a Class 4 Proposal and not a Class 5 Proposal.

e) EIA Document

An EIA Document will be prepared for all Class 4 Proposals. The structure and content of the EIA Document will vary depending on the EIA carried out and the issues which may arise.

In some circumstances, ARTC may, where ARTC considers it appropriate to do so, prepare one or more "generic" EIA Documents for a series of Class 4 Proposals. Such an approach may be appropriate, for example, where the Proposals in the series will involve essentially the same Proposal description and characterisation and similar environmental impacts and environmental management measures.

4.3 Phase 3: Consultation

If ARTC considers that a Class 4 Proposal is likely to substantially affect residential areas in the vicinity of that Proposal, or affect other areas to the extent that ARTC considers that notification or public exhibition using the following procedures is necessary, then ARTC will implement either or both of the following procedures:

- a) **notification** - ARTC will conduct notification to residents and consultation with relevant local councils on the following basis:
- i. residents on properties adjacent to land on which the Proposal is to be carried out will be notified prior to carrying out the Proposal, and such notification would include the following details:
 - A. a general description of the Proposal;
 - B. identification of the area in which the Proposal is proposed to be carried out;
 - C. identification of the proponent of the Proposal;
 - D. contact details for feedback in relation to the carrying out of the Proposal; and
 - ii. relevant local councils may be consulted prior to carrying out the Proposal where:
 - A. the Proposal would involve work outside a rail corridor; or
 - B. ARTC's environmental assessment indicates that substantial road traffic delays are likely as a consequence of the Proposal.
- b) **public exhibition** - ARTC may conduct a public exhibition of any Proposal. For example, a public exhibition may be undertaken where:
- work is scheduled on site for more than five consecutive days; or
 - ARTC considers that there will be substantial impacts on local road traffic.

Public exhibition may be given in the following manner:

- i. the Proposal would be advertised:
 - A. in a local newspaper on at least two occasions - one at the commencement of, and one during, the public exhibition period; and
 - B. on ARTC's website (www.artc.com.au);
- ii. local councils would be notified prior to carrying out the Proposal (see details below); and
- iii. any EIA Document for the Proposal would be made available for inspection by members of the public

The public exhibition for the purposes of paragraph (b) above will generally be carried out as follows:

- the advertisement and notification to councils will include:
 - a general description of the Proposal;
 - identification of the area in which the Proposal will be carried out;
 - identification of the proponent of the Proposal;
 - a statement that the EIA Document may be inspected at a nominated location for a specified period (which will be for a period of at least 14 days (and which may commence on the date of the advertisement) during the ordinary office hours at the specified location);
 - a statement that any person may, during the period specified in the advertisement, make a written submission in relation to the Proposal, and contact details for this purpose; and
- any submissions made in response to the consultation phase would be taken into account in a further evaluation phase and/or the determination phase, as ARTC considers appropriate.

All submissions would be subject to the following terms (whether or not an advertisement for the purposes of paragraph (b) includes a note to the following effect):

"All information in submissions may be used as ARTC considers necessary or appropriate in connection with its environmental impact assessment or as part of another legal or administrative process which is related to that assessment in some way. ARTC will take reasonable steps to keep information provided to it as part of an assessment process confidential where requested by the provider, but may still release that information in such circumstances if there is legal justification to do so."

If ARTC considers that additional notification and/or consultation is appropriate for a particular Proposal, ARTC may carry out further notification and/or consultation as it considers appropriate in the circumstances. This may include consultation with Government agencies such as DoP and/or the Department of Environment and Conservation and/or other stakeholders (which may include, for example, local businesses or community groups).

If it is proposed that a Proposal be substantially modified after the "determination" phase, then ARTC will undertake notification/public exhibition for the modification substantially in the same way as any notification/public exhibition for the initial Proposal was undertaken.

4.4 Phase 4: Determination

Following the evaluation process and the consideration of any submissions made in accordance with section 4.3 of this Code, ARTC may make a determination with respect to the Proposal. An ARTC officer who did not prepare the EIA Document for a particular Proposal will be authorised by ARTC to review the EIA Document for that Proposal and make a determination, on behalf of ARTC, on the following matters:

- whether the Proposal as assessed is subject to Part 5 of the Planning Act;
- whether an EIS or an SIS is required⁹; and
- whether the Proposal should proceed (either in its original form or in a form which includes modifications¹⁰ made following the consultation phase) and, if so, whether conditions should be included in the decision to proceed in addition to the matters specified in the EIA Document.

The determination, and any conditions which the reviewing ARTC officer considers appropriate, will be recorded in a Decision Report.

4.5 Phase 5: Implementation

This phase applies only to Proposals which are being carried out by or on behalf of ARTC. Implementation of Proposals by third parties should be addressed by those third parties. This is because ARTC will be responsible only for the implementation of Proposals which are being carried out by or on behalf of ARTC¹¹.

It is anticipated that no physical work in relation to a Class 4 Proposal, other than work which may be required for EIA purposes (such as geotechnical and other investigations), will be carried out until a Decision Report has been signed. Certain work which may be required for EIA purposes may itself form a Proposal, and separate EIA processes may apply to such a Proposal.

ARTC expects that a Proposal which has been the subject of an EIA Document and/or a Decision Report will be carried out in accordance with any conditions imposed and any commitments made in the EIA Document and/or a Decision Report (as the case may be). This would include any Environmental Management Documents which are incorporated in, or required by, those conditions or commitments. The EIA Document and any Decision Report for a Proposal will be available to the people implementing or managing the implementation of a Proposal.

In some circumstances, an EMP may be prepared for a Proposal. This may be a "generic" EMP (which covers a series of Proposals), an EMP for the whole of a Proposal, or a component EMP (for part of a Proposal). EMPs do not form part of this Code.

⁹ It is acknowledged that, in order to comply with the requirements of the Planning Act, it may be necessary to determine whether an EIS or an SIS is required before the "determination" phase. This is discussed in sections 4.2(c) and 4.2(d) respectively of this Code.

¹⁰ If a modification is made, then the modification should be described and its environmental impacts should also be assessed in accordance with ARTC's EIA obligations under Part 5 of the Planning Act.

¹¹ This does not change, limit, restrict or constrain ARTC's legal obligations under any other legislation with respect to the activities of third parties on its land.

Circumstances in which an EMP may be prepared include, for example, where an SEMM which is implemented as part of a Class 3 Proposal, recommends that a particular EMP be used to manage particular environmental aspects of a Proposal.

The requirements of the implementation phase may involve contractors carrying out parts or all of a Proposal. As noted above, ARTC will be responsible for the implementation of Proposals which are being carried out by or on behalf of ARTC.

4.6 Changes to a Proposal after Determination

Sometimes it may be necessary or desirable to change a Proposal after a decision to proceed has been made. This may even occur during the implementation phase (see section 4.5 of this Code). For example, during the implementation phase, it may become apparent that:

- the impacts of the Proposal are more substantial or less substantial than originally determined during the assessment phase;
- a new impact on the environment is identified that was not previously assessed (for example, a new heritage item or threatened species);
- a new technology becomes available which could alter the way in which the Proposal is carried out or the impacts of the Proposal;
- a new alignment option becomes available which would reduce the impacts of the Proposal.

The above are examples only and are not exhaustive of the circumstances where consideration could be given to a change in the Proposal.

In circumstances where a change to a Proposal is being considered, some or all of the processes outlined in section 4 of this Code may be re-applied as ARTC considers appropriate to address the proposed change and the circumstances in which it is proposed.

It is recognised that changes to a Class 4 Proposal could result in re-classification of that Proposal under this Code. In such cases, the appropriate process as outlined in this Code would apply.

5 Other Matters Relating to EIA

5.1 Emergency Proposals

Sometimes circumstances will require an urgent response, and it may not be practicable to follow the processes outlined in sections 3 and 4 of this Code. Without limiting the range of such circumstances, examples of such circumstances include incidents involving Rail Infrastructure Facilities and responses to natural events such as storms, flooding, debris on track and fires. In many instances, issues of safety or other matters of public interest may arise. In such circumstances, ARTC's response may involve an Emergency Proposal.

ARTC recognises that its EIA obligations under the Planning Act continue to apply to Emergency Proposals. Of course, the nature and scope of any obligation which ARTC may have under section 111 of the Planning Act, to *"examine and take into account to the fullest extent possible all matters likely to affect the environment by reason of the activity"*, will necessarily reflect the circumstances in which that obligation arises.

The first step is to determine whether a Proposal is an Emergency Proposal. Section 1.4(a) of this Code contains a definition of the term *"Emergency Proposal"*.

In circumstances in which an Emergency Proposal is proposed, ARTC will:

- a) **before carrying out the Proposal** -
 - i. consider whether the Proposal falls within the definition of *"Emergency Proposal"* as set out in section 1.4(a) of this Code; and
 - ii. if the Proposal does fall within that definition, consider any environmental impacts of the Emergency Proposal, and any measures to manage those impacts, as far as practicable having regard to the emergency circumstances of the matter;
- b) if time allows, identify and notify, as soon as practicable, any government agencies which ARTC considers appropriate to notify, and endeavour to comply (as far as practicable in the circumstances) with any requirements which those agencies would be entitled to impose if the Proposal was not an Emergency Proposal;
- c) **when carrying out the Proposal** - implement those measures which were identified in the process described in paragraphs (a) and (b) above (where appropriate);
- d) **during or after carrying out the Proposal** - where appropriate, give further consideration, either during or as soon as practicable after the circumstances requiring an urgent response have passed, to the impacts of the Emergency Proposal and any means by which those impacts may be further managed and/or mitigated; and
- e) **after carrying out the Proposal** - undertake any long term management and/or mitigation measures as ARTC considers appropriate having regard to the application of this Code.

The above steps will be documented during, or as soon as practicable after, carrying out the Emergency Proposal.

ARTC recognises that the process described above will apply only in the case of an emergency. In some cases, the most efficient and effective way to respond to a situation described above might be to bring forward the timing of works which are already programmed to occur at a later time. However, ARTC will not utilise this process to avoid other requirements of this Code simply because ARTC would like to bring forward the timing of works in circumstances which do not require an urgent response.

ARTC will ensure that appropriate and suitably qualified person(s) is/are accountable for any determination that a Proposal is an Emergency Proposal and for documenting the reason(s) for the decision and the implementation of the process described above.

5.2 Other Legislation

ARTC recognises that other legislation may also apply to a Proposal in addition to the planning Act, irrespective of the Class into which the Proposal falls under this Code. Relevant legislation will be considered during the scoping and legislation review phase in accordance with section 4.1 of this Code.

6 Advice by the Planning Director - General

It is acknowledged that from time to time the Planning Director-General may provide advice concerning the implementation of the Planning Act with respect to Development and Activities for the purposes of Rail Infrastructure Facilities.

In recognition of the above, ARTC will consider any advice provided by the Planning Director-General in writing as soon as practicable after receiving the advice.

If ARTC decides not to adopt any advice given by the Planning Director-General under this section 6 of this Code, then ARTC will provide written reasons for its decision to the Planning Director-General.

If the Planning Director-General, acting reasonably and having regard to the reasons provided by ARTC, is not satisfied with any such reasons provided by ARTC, then the Planning Director-General (or his/her nominee) and the Chief Executive Officer of ARTC (or his nominee) will meet as soon as practicable to resolve any dispute in relation to the Planning Director-General's advice.

If the dispute is not resolved by this means, any outstanding matters on which dispute remains will be referred to the Planning Minister, who will consult with the Chief Executive Officer of ARTC (or his nominee) and will make a decision on the matter(s) in dispute having regard to the matters raised in consultation. Any such decision will be final.

7 Availability of Documents

ARTC will place a copy of this Code on its website, www.artc.com.au. ARTC may also place on its website copies of Eligible Documents for Proposals for which ARTC is the proponent.

In addition, ARTC will make available relevant documents relating to any EIA process carried out by ARTC in compliance with this Code in the following manner, where those documents are not placed on ARTC's website.

7.1 Applications

- a) Any person may apply to ARTC for access to an Eligible Document.
- b) Applications will need to be made in writing and addressed as follows:

The Environment Officer
Australian Rail Track Corporation Ltd
GPO Box 14
Sydney NSW 2001
- c) The application must include the name and contact details for the person requesting access.
- d) The application should refer to this Code and should identify the mode of access sought for the Eligible Document(s) to which access is requested. The available modes of access are identified in section 7.3 of this Code.
- e) ARTC will endeavour to process each application as soon as practicable after receiving it, subject to the other provisions of this section 7 of this Code.
- f) ARTC may refuse an application if ARTC considers that the request in the application is unduly onerous. An application may be unduly onerous if the work involved in dealing with the application would unreasonably divert ARTC's resources away from its functions. However, before doing so, ARTC will contact the applicant, inform the applicant of ARTC's view, and give the applicant an opportunity to refine the scope of the application.
- g) ARTC will notify each applicant of ARTC's determination of the applicant's application in writing as soon as practicable after ARTC makes the determination.

7.2 Principles of Determination

ARTC will grant access to each Eligible Document to which access is requested, subject to the other clauses in section 7 of this Code, unless an Eligible Document falls within any of the following categories:

- a) it is subject to legal professional privilege;
- b) it is already publicly available by other means;
- c) it contains information concerning the personal or business affairs of a third party and that third party has informed ARTC that the third party does not consent to the release of that information;
- d) it is a document whose disclosure is reasonably likely, in ARTC's opinion, to give rise to:
 - i. a non-compliance with any law;
 - ii. a breach by ARTC of any agreement between ARTC and any other parties; or

- iii. any other right to make a claim in law against ARTC;
- e) it contains information which has been obtained in confidence and the disclosure of which could reasonably be expected to affect adversely the future supply of similar information;
- f) it contains information the disclosure of which could reasonably be expected to have an adverse effect on the management of the economic, financial or property interests of ARTC or any of its subsidiaries;
- g) it is the subject of a declaration referred to in section 161 of the *National Parks and Wildlife Act 1974*;
- (h) it contains matter that either:
 - i. the Director-General under the Threatened Species Conservation Act 1995 has determined should not be disclosed to the public under section 146 of that Act; or
 - ii. the Scientific Committee under that Act has recommended to the Minister should not be disclosed to the public under section 146A of that Act and the Minister has accepted that recommendation.

7.3 Mode(s) of Access

- a) ARTC may grant an applicant access to an Eligible Document in one or more of the following ways:
 - i. by giving the applicant a reasonable opportunity to inspect a copy of the Eligible Document at the offices of ARTC or another person at ARTC's nomination;
 - ii. by giving the applicant a copy of the document,provided that ARTC will not do anything which may give rise to an infringement of intellectual property rights.
- b) *If:*
 - i. part only of an Eligible Document does not fall within a category in section 7.2 of this Code; and
 - ii. it is reasonable to separate that part of the Eligible Document from the rest of the document;
then:
 - iii. ARTC may grant access to that document except for those parts which fall within one of the categories; and
 - iv. the grant of access to part of the document cannot be construed as a waiver of any privilege or right to non-disclosure in respect of any other parts of that document.

7.4 Costs of Determination and Grant of Access

- a) ARTC may require an applicant to pay:
 - i. ARTC's reasonable costs of responding to the application and granting access to any documents requested by that applicant; and
 - ii. ARTC's costs for copying of documents to which ARTC has granted access and copies of which that applicant has requested.

In determining the amount of costs that it may require an applicant to pay, ARTC will have regard to its actual costs of processing the application, and providing access to and copies of the relevant documents.

- b) ARTC may withhold:
 - i. access to documents if the costs to which paragraph (a)(i) above refers are notified to the applicant and are not paid by the applicant before access is granted to the applicant; and
 - ii. copies of documents if the costs to which paragraph (a)(ii) above refers are notified to the applicant and are not paid by the applicant before the copies are delivered to the applicant.
- c) If ARTC believes that the costs to which paragraph (a) above refers may exceed \$100, then:
 - i. ARTC will endeavour to notify the applicant of that belief and give the applicant an opportunity to revise or withdraw the application;
 - ii. ARTC may request an advance payment to cover those costs, in an amount which ARTC may determine having regard to that belief; and
 - iii. if ARTC requests an advance payment under paragraph (ii) above, ARTC will not be obliged to continue to process the application, or to provide access to or copies of any documents, until either the advance payment or another amount acceptable to ARTC is paid.

8 Audit and Review

8.1 Audits

ARTC will commission an audit within 12 months of the date on which this Code is approved by the Planning Minister, and then as otherwise reasonably required by the Planning Director-General and only after consultation with ARTC.

The audit will be carried out by an independent person or firm specialising in EIA processes and will cover:

- the performance of the Code;
- ARTC's compliance with the Code; and
- areas for improvement, including any recommended amendments and any associated implementation plans.

It is intended that an auditor will have regard to the audit provisions of ISO14000 when conducting the audit.

ARTC will provide a copy of the audit report to the Planning Director-General as soon as practicable after receiving it.

ARTC will consider all recommendations made in the audit report. If ARTC considers it impracticable or unreasonable to implement a particular recommendation, ARTC will advise the Planning Director-General in writing accordingly. Such advice will include reasons for ARTC's position.

If the Planning Director-General, acting reasonably and having regard to the reasons provided by ARTC, is not satisfied with any such reasons provided by ARTC, then the Planning Director-General (or his/her nominee) and the Chief Executive Officer of ARTC (or his nominee) will meet as soon as practicable to resolve any dispute in relation to the Planning Director-General's advice.

If the dispute is not resolved by this means, any outstanding matters on which dispute remains will be referred to the Planning Minister, who will consult with the Chief Executive Officer of ARTC (or his nominee) and will make a decision on the matter(s) in dispute having regard to the matters raised in consultation. Any such decision will be final.

8.2 Reviews

ARTC will also commission reviews every two years, with the first review to be commissioned two years after the date of the first audit report under section 8.1 of this Code. A review will be carried out by a person or firm specialising in EIA processes and will cover:

- the performance of the Code;
- ARTC's compliance with the Code; and
- areas for improvement, including any recommended amendments and any associated implementation plans.

It is recognised that a review is generally less detailed than an audit.

The results of any review will be reported to the ARTC Chief Executive Officer.

9 Phasing in Period

It is acknowledged that ARTC will need a period of time to prepare documents and establish internal practices in order to comply with this Code.

Accordingly, for 3 months after the date on which this Code is approved by the Planning Minister, ARTC will use all reasonable endeavours to comply with this Code, whilst preparing documents and establishing internal practices to facilitate compliance with this Code.

No enforcement action of any kind may be taken and no litigation may be commenced to the extent that it relates to allegations of non-compliance with this Code during that 3 month period unless the Planning Minister, following consultation with ARTC, considers that ARTC has not used all reasonable endeavours to comply with this Code.

10 Schedule 1

(see Section 3.2 of this code).

- a) Inspection and testing of Rail Infrastructure Facilities and related infrastructure, plant or equipment.
- b) Maintenance and repair of Rail Infrastructure Facilities, including (without limitation) any repairs to, or any alteration, replacement, removal, renewal, re-instatement or repositioning of, or upgrading or enhancement of, any existing Rail Infrastructure Facilities and related infrastructure, plant or equipment.
- c) Correction of defects and removal of flaws in Rail Infrastructure Facilities and related infrastructure, plant and equipment. (For example, spot replacement of, or repairs to, sleepers, spot tamping of ballast, rail welding.)
- d) Vegetation and debris control and clearance.
- e) Construction and repairs, maintenance or upgrading of fences.
- f) Demolition or de-commissioning of any Rail Infrastructure Facilities or any related infrastructure, plant and equipment.
- g) Removal of any Rail Infrastructure Facilities or any related infrastructure, plant and equipment.
- h) The construction, operation and use of minor Rail Infrastructure Facilities (including, without limitation, rail sidings, loops, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables and associated works or structures).
- i) Investigations and preparatory works for more substantial Proposals, including (among other things) geotechnical investigations.

Interpretation notes:

1. Each of the above items is specified independently of the other items, and none of the items is intended to limit or qualify any of the other items in any way.
2. In many circumstances, a Proposal which consists of one of the above matters may not require an EIA under the Planning Act, including for reasons that it does not constitute a "*development*" or an "*activity*" within the meaning of the Planning Act, or that it has already been the subject of an appropriate EIA or other assessment or approval process (see Class 1 and Class 2 respectively in section 3.2 of this Code). This is especially relevant for the Proposals described in paragraphs (a) to (e) above.

11 Schedule 2 - Clause 228(2) Factors

(See sections 3.2(c) and 4.2(a) of this Code.)

- a) any environmental impact on a community,
- b) any transformation of a locality,
- c) any environmental impact on the ecosystems of the locality,
- d) any reduction of the aesthetic, recreational, scientific or other environmental quality or value of a locality,
- e) any effect on a locality, place or building having aesthetic, anthropological, archaeological, architectural, cultural, historical, scientific or social significance or other special value for present or future generations,
- f) any impact on the habitat of protected fauna (within the meaning of the *National Parks and Wildlife Act 1974*),
- g) any endangering of any species of animal, plant or other form of life, whether living on land, in water or in the air,
- h) any long-term effects on the environment,
- i) any degradation of the quality of the environment,
- j) any risk to the safety of the environment,
- k) any reduction in the range of beneficial uses of the environment,
- l) any pollution of the environment,
- m) any environmental problems associated with the disposal of waste,
- n) any increased demands on resources (natural or otherwise) that are, or are likely to become, in short supply,
- o) any cumulative environmental effect with other existing or likely future Activities.