

# **Appendix C**

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## **Statutory planning assessment**

## C.1 Statutory planning requirements

This appendix outlines the statutory requirements and explains the environmental impact assessment and planning approval process for the proposal. This appendix also outlines the environmental planning instruments applicable to the proposal.

Environmental planning approval for the proposal is required in accordance with the (NSW) *Environmental Planning and Assessment Act 1979* (EP&A Act). Consideration of the NSW environmental planning legislation and approvals requirements is provided in Section C.1.1. A referral under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was also submitted for the proposal which determined the proposal to be a controlled action. Commonwealth assessment and approval under the EPBC Act is considered in Section C.2.1.

A summary of the overall assessment and approval process for the proposal is shown in Figure C-1 and described in greater detail in the following sections.

### C.1.1 NSW Environmental planning legislation and approvals

The EP&A Act and the EP&A Regulation are the primary pieces of legislation regulating land use planning and development assessment in NSW. This legislation is supported by a range of environmental planning instruments including State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

Part 5, Division 5.2 of the EP&A Act establishes the assessment and approval regime for SSI and CSSI.

The requirements of Clause 192 of the EP&A Regulation for applications seeking approval of the Minister for Planning and Public Spaces to carry out SSI are also addressed in the following sections.

### C.1.2 Permissibility

The proposal is permissible without development consent under clause 41 of *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) being 'development for the purpose of an electricity transmission or distribution network, carried out by, or on behalf of, an electricity supply authority or public authority without consent on any land'.

The proposal is characterised as an electricity transmission network under the Infrastructure SEPP which defines an 'electricity transmission or distribution network' to include:

- > above or below ground electricity transmission or distribution lines (and related bridges, cables, conductors, conduits, poles, towers, trenches, tunnels, ventilation and access structures)
- > above or below ground electricity kiosks or electricity substations, feeder pillars or transformer housing, substation yards or substation buildings.

TransGrid is defined as an electricity supply authority under clause 40 of the Infrastructure SEPP being a transmission operator under the *Electricity Supply Act 1995*. Therefore, the proposed electricity transmission and distribution works is permissible without consent pursuant to clause 41 of the Infrastructure SEPP.

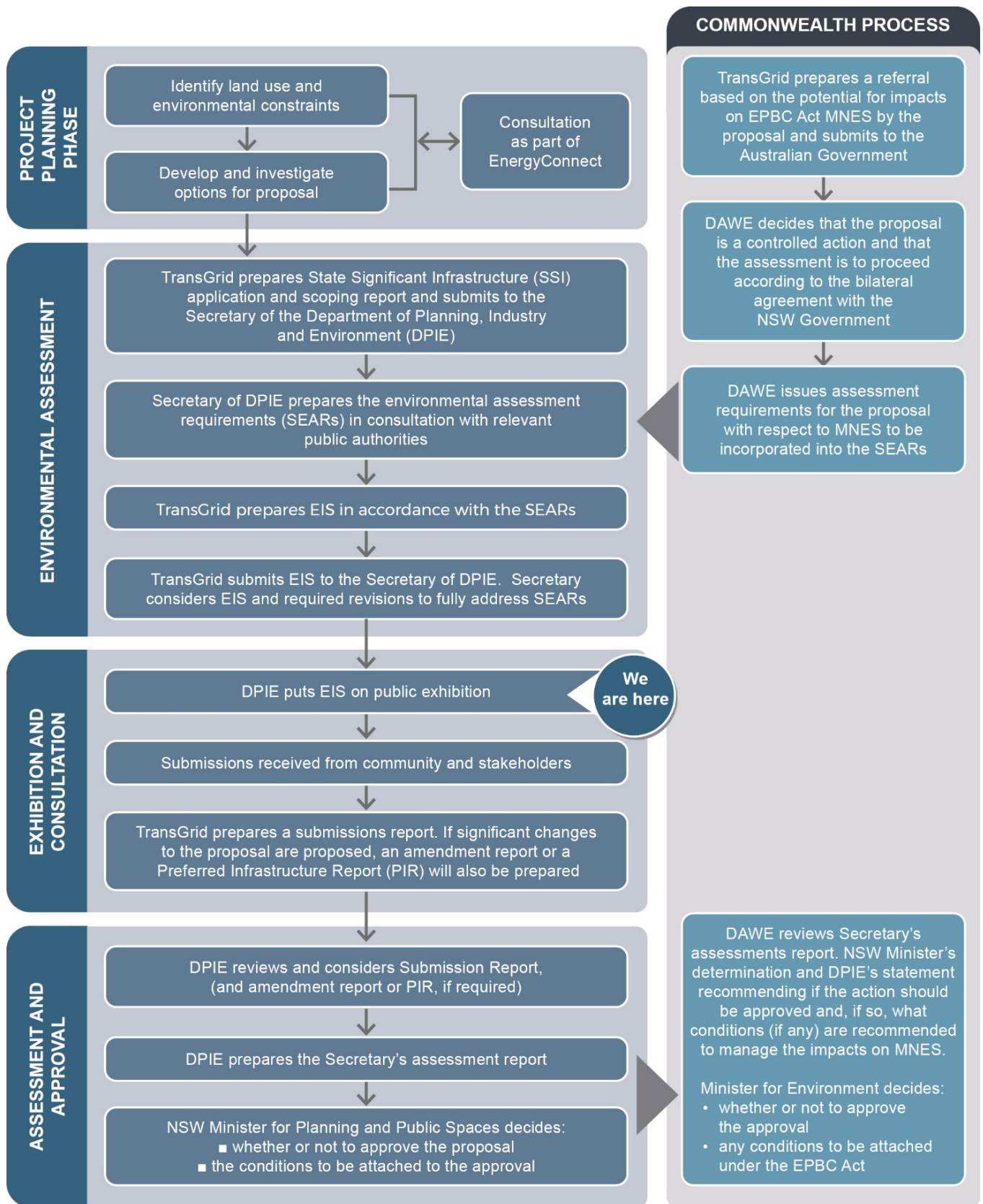


Figure C-1 Assessment and approval process for the proposal

### C.1.3 NSW State Significant Infrastructure

As stated above, Clause 41 of the Infrastructure SEPP permits development for the purpose of an electricity transmission or distribution network to be carried out by, or on behalf of, a public authority without consent, provided that the project is not carried out on land reserved under the NSW *National Parks and Wildlife Act 1974* (NP&W Act). The proposal study area does not contain any land reserved under the NP&W Act. Therefore, the proposal can be assessed under Part 5 of the EP&A Act. Development consent (under Part 4 of the EP&A Act) is not required.

TransGrid, as the proponent, has however formed the view that the proposal is likely to significantly affect the environment (as a result of potential impacts including, but not limited to, biodiversity, Aboriginal heritage, land use and visual impacts) and therefore requires the preparation of an EIS. This determination triggered clause 1 of Schedule 3 of *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) and the proposal was declared State significant infrastructure and is controlled by Part 5, Division 5.2 of the EP&A Act.

The Minister for Planning and Public Spaces has also declared EnergyConnect (which includes the proposal) to be a Critical State Significant Infrastructure (CSSI) project under section 5.13 of the EP&A Act. Schedule 5 the SRD SEPP has been amended to include the project as CSSI.

On this basis, the proposal will be assessed as a CSSI project and this EIS has been prepared to support the application under Division 5.2 of the EP&A Act.

### C.1.4 Planning approval process under Part 5 of the EP&A Act

#### SSI and supporting document

An SSI application was submitted to the Secretary of the NSW Department of Planning, Industry and Environment (DPIE) on 15 May 2020 seeking the Secretary's environmental assessment requirements for the preparation of the EIS for EnergyConnect (NSW - Western Section) (the proposal). The application was accompanied by a supporting document, the *Environmental Scoping Report, EnergyConnect (NSW – Western Section)* (TransGrid, May 2020).

The supporting document provided an overview of the proposal, outlined the key likely environmental impacts during the construction and operation of the proposal, and proposed an indicative scope for the EIS.

#### Secretary environmental assessment requirements

After consultation with the relevant State and local government authorities, and using information provided in the supporting document, the Secretary issued his environmental impact assessment requirements (SEARs) for the proposal on 31 July 2020.

A copy of the SEARS and where they are addressed in this EIS is provided as Appendix A.

#### Preparation of the EIS

This EIS documents the description of the proposal, identification of the existing environment, assessment of the likely environmental impacts, and outlines the proposed mitigation measures to minimise the likely impacts of the proposal.

#### Form and content of the EIS

The form and content of this EIS has been prepared to address the SEARs and the requirements of Schedule 2, Part 3 of the (NSW) Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) (as per section 5.16 of the EP&A Act). The SEARs also require compliance with Schedule 2, Part 3.

Consideration of the EP&A Regulation is provided in Appendix B.

## Public exhibition and invitation to make submissions

Pursuant to Section 5.17 of the EP&A Act, the EIS is to be made available for public review for a period of no less than 28 days. During the exhibition period, the community, affected landowners, local businesses, public authorities and other stakeholders are invited to make submissions to the DPIE in response to the proposal.

Further details regarding the proposed activities and public exhibition of the proposal is provided in Chapter 7 of this EIS.

## Consideration of submissions

Copies of all submissions received by DPIE during the exhibition period are provided to the proponent and any relevant public authorities. All submissions regarding the EIS are treated as public information unless the submission specifically requests that certain details are not made public.

Following the exhibition period, TransGrid may be required to prepare and submit the following to the Secretary:

- > a submissions report providing responses to issues raised in submissions made to DPIE during the exhibition period
- > a preferred infrastructure report or an amendment report outlining any proposed changes to the proposal, including any to reduce environmental impacts, in response to issues raised in submissions during the exhibition period. If the changes to the proposal are considered to be significant, the preferred infrastructure report / amendment report may also be made available to the public, at the discretion of the Secretary, for comment prior to determination.

## Determination

As a CSSI project, the Minister for Planning and Public Spaces will be the decision maker for the proposal.

Following the exhibition period and TransGrid's response to any issues raised in submissions, the Secretary will prepare a report to the Minister for Planning and Public Spaces in accordance with the provisions of section 5.18 of the EP&A Act. The Secretary's assessment report must be considered by the Minister's in determining whether or not to approve the carrying out of the proposal. The Minister's approval may be subject to conditions of approval, in accordance with section 5.19 of the EP&A Act.

### C.1.5 Applicable NSW environmental planning instruments

Section 5.22 of the EP&A Act provides that environmental planning instruments (EPIs, such as LEPs and SEPPs) other than *State Environmental Planning Policy (Infrastructure) 2007* and the SRD SEPP, do not apply to SSI and CSSI projects. Notwithstanding, the key environmental planning instruments have been considered with respect to the proposal for consistency.

These instruments are discussed in Table C-1.

Table C-1 Environmental Planning Instruments of potential relevance to the proposal

Environmental planning instruments	Relationship to EnergyConnect
<p><i>State Environmental Planning Policy (State and Regional Development) 2011</i></p>	<p>Amongst other provisions, <i>State Environmental Planning Policy (State and Regional Development) 2011</i> identifies development that is SSI. As discussed in Section C.1.1. above, the <i>Environmental Planning and Assessment Amendment (Project EnergyConnect (SA to NSW Electricity Interconnector)) Order 2019</i> was made by the Minister for Planning and Public Spaces on 30 August 2019.</p> <p>The order amended Schedule 5 of the SRD SEPP to include the proposal (as part of the broader EnergyConnect project) as critical SSI (note that clause 16 of the SRD SEPP provides that proposals listed under Schedule 5 as Critical SSI are also deemed SSI).</p>
<p><i>State Environmental Planning Policy (Koala Habitat Protection 2019)</i></p>	<p>This SEPP aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. The policy applies to a number of LGAs across NSW, including the Wentworth LGA.</p> <p>While the requirements of this SEPP would not apply to the proposal (as it would not be subject to council consent), TransGrid have considered potential impacts to koala populations as part of the EIS process and biodiversity impact assessment for the proposal (refer to Chapter 9 and Technical Paper 1).</p>
<p><i>State Environmental Planning Policy No. 55 – Remediation of Land</i></p>	<p>This SEPP provides a State-wide approach to the remediation of contaminated land for the purpose of minimising the risk of harm to the health of humans and the environment. In accordance with Clause 7(1) of SEPP 55, a consent authority must not consent to the carrying out of development on any land unless:</p> <ul style="list-style-type: none"> <li>&gt; it has considered whether the land is contaminated</li> <li>&gt; if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or would be suitable, after remediation) for the purpose for which the development is proposed to be carried out</li> <li>&gt; if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land would be remediated before the land is used for that purpose.</li> </ul> <p>A Phase 1 contamination investigation has been undertaken for the proposal to inform the design and EIS process. The outcomes of the contamination investigations concluded that based on the available data, the proposal study area is considered suitable for the proposal subject to implementation standard measures and management controls during site development. Operational phase contamination risk management was also considered to be manageable with standard controls and procedures. Further consideration of contamination is addressed in Chapter 20 of this EIS.</p>

Environmental planning instruments	Relationship to EnergyConnect
<p><i>State Environmental Planning Policy (Primary Production and Rural Development) 2019</i></p>	<p>This SEPP aims to facilitate the orderly economic use and development of land for primary production and reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources. The SEPP is also intended to identify land which has been declared to be State Significant agricultural land (currently no land identified by the SEPP).</p> <p>Overall, the proposal would not adversely affect the objectives of this SEPP. As discussed in Chapter 3 (Proposal design development), the proposal has been designed to minimise impacts on important agricultural lands, and where possible, utilise previously disturbed corridors such as existing electrical easements or road corridors. Further condition of impacts to agricultural land is provided in Chapter 12 of this EIS.</p>

### C.1.6 Local Environmental Plans

The proposal would be located within Wentworth local government area (LGA) and would therefore fall under the *Wentworth Local Environmental Plan 2011* (Wentworth LEP).

The Wentworth LEP provides for development standards, zoning and planning controls for development in the Wentworth LGA. The zoning which is applicable to the proposal includes the following:

- > RU1 Primary Production (consisting of a majority of the land on which the proposal would be located)
- > SP2 Infrastructure (at the crossing points of the Silver City Highway and the Sturt Highway)
- > E2 Environmental Conservation (between the Darling River and Pooncarie Road, Ellerslie)
- > W1 Natural Waterways (at the crossing point of the Darling River west of Pooncarie Road, Ellerslie)

While the LEP guides local development within the LGA, the EP&A Act expressly provides that LEPs do not apply to SSI or CSSI projects. Therefore, the remaining provisions of the Wentworth LEP have not been considered further in this EIS. However, the assessment has considered heritage items listed under the LEP in Chapter 11 (Non-Aboriginal heritage) and has considered impacts to land use in Chapter 12 (Land use and property).

### C.1.7 Other NSW Legislation

Table C-2 discusses other NSW legislation that would be, or may be, applicable to the proposal regardless of the proposal being declared CSSI. The applicability would be confirmed in the EIS.

**Table C-2 Other NSW planning legislation of potential relevance to the Proposal**

Legislation	Requirement
<p><i>Aboriginal Land Rights Act (NSW) 1983</i></p>	<p>The purpose of the <i>Aboriginal Land Rights Act (NSW) 1983</i> includes providing land rights for Aboriginal persons and representative Aboriginal Land Councils in the State. This Act applies to Crown lands that are not lawfully needed for an essential public purpose; referred to as claimable Crown land.</p> <p>No claimable Crown lands have been identified that would be affected by the proposal.</p>
<p><i>Biodiversity Conservation Act 2016 (BC Act)</i></p>	<p>The BC Act aims to conserve threatened species, populations and ecological communities through ensuring appropriate assessment, management and regulation of actions that may damage critical or other habitat for a listed threatened species, or may otherwise significantly affect a threatened species, population or ecological community.</p> <p>Under this Act, State significant infrastructure projects are required to prepare a biodiversity development assessment report (BDAR) to identify and assess biodiversity impacts under the provisions of the BC Act and offset those impacts by retiring biodiversity credits, determined using the Biodiversity Assessment Methodology.</p> <p>Biodiversity impacts associated with the proposal have been assessed in accordance with the <i>Biodiversity Conservation Act 2016</i>. The results of this assessment are presented in the BDAR for the proposal (Technical paper 1) and summarised in Chapter 9.</p>
<p><i>Biosecurity Act 2015 (Biosecurity Act)</i></p>	<p>The Biosecurity Act provides for the prevention, elimination, minimisation and management of biosecurity risks in NSW posed by biosecurity matter, which is defined in section 10 of the Bio Act. It replaces the former <i>Noxious Weeds Act</i>.</p> <p>Under the Biosecurity Act, weeds are defined as a plant that is a pest and a biosecurity risk exists where invasive weeds, now termed priority weeds under the Biosecurity Act, have the potential to negatively impact on the environment.</p> <p>The Biosecurity Act introduces a responsibility for landowners or land managers to control and prevent the introduction and spread of these priority weeds, which is to be known as a General Biosecurity Duty.</p> <p>As discussed above, the EIS for the proposal has included an assessment of biodiversity impacts including consideration of noxious weeds (refer to Chapter 9 and Technical paper 1).</p>



Legislation	Requirement
<p><i>Contaminated Land Management Act 1997</i> (CLM Act)</p>	<p>The CLM Act outlines the circumstances in which notification of the NSW Environment Protection Authority (EPA) is required in relation to the contamination of land.</p> <p>A Phase 1 contamination investigation (Technical paper 11) has been undertaken for the proposal to inform the design and EIS process. The outcomes of the contamination investigations concluded that based on the available data, the proposal study area is considered suitable for the construction and operation of the proposal.</p> <p>Further consideration of contamination is summarised in Chapter 20 of this EIS.</p>
<p><i>Crown Land Management Act 2016</i></p>	<p>This Act sets out the requirements for the management of Crown land in NSW, including where councils and other organisations can deal with Crown land.</p> <p>There are areas of Crown Land that would be affected by the proposal.</p> <p>Impacts to Crown Land have been discussed in greater detail in Chapter 12 of this EIS.</p>
<p><i>Heritage Act 1977</i></p>	<p>The Heritage Council must be notified if a relic is uncovered during construction and if it is reasonable to believe that the Heritage Council is unaware of the location of the relic. The Heritage Council must also be notified if an item listed on a Government Agency's Section 170 Heritage Register is demolished.</p> <p>Section 139 specifies that a person must not disturb or excavate land knowing, or suspecting, that the action may result in the discovery, exposure, movement, damage or destruction of a relic, unless the work is undertaken in accordance with an excavation permit. Additionally, section 146 requires that the discovery or location of a relic must be notified to the Heritage Council unless the Heritage Council is aware of the relic's location.</p> <p>Under the State significant infrastructure provisions for the proposal, exemptions and permits that would otherwise be required under Part 4 and section 139 of the Heritage Act are not required for approved State significant infrastructure projects by reason of section 5.23 of the EP&amp;A Act.</p> <p>Notwithstanding, heritage impacts associated with the proposal have been assessed in accordance with the Heritage Act 1977. The results of this assessment are presented in the <i>Cultural Heritage Assessment</i> (Technical paper 2) and summarised in Chapter 10 (Aboriginal heritage) and Chapter 11 (Non-Aboriginal heritage).</p>

Legislation	Requirement
<p><i>Land Acquisition (Just Terms Compensation) Act 1991</i> (Land Acquisition Act)</p>	<p>The Land Acquisition Act was introduced in relation to the acquisition of land on just terms by authorities of the State with the objective of simplifying and expediting the compulsory acquisition process while ensuring 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.</p> <p>The provisions of the Land Acquisition Act apply to the proposal. Some of the land on which the proposal is proposed to be located is privately owned and may need to be acquired to accommodate the proposal. Further discussion of potential land acquisition associated with the proposal is discussed in Chapter 5 and Chapter 12 of the EIS.</p>
<p><i>National Parks and Wildlife Act 1974</i> (NPW Act)</p>	<p>The NPW Act establishes statutory provisions for the preservation and management of national parks, historic sites and certain other areas, as well as the protection of certain Aboriginal objects. The NPW Act provides for the conservation of elements of the natural environment, as well as the conservation of objects, places or features of cultural value to Aboriginal people and the people of NSW. Under the provisions of section 86 of the NPW Act, a person must not harm or desecrate a known Aboriginal object unless authorised by an Aboriginal heritage impact permit issued under section 90 of that Act.</p> <p>The proposal is Critical State significant infrastructure. Under the provisions of section 5.23(1) of the EP&amp;A Act, a permit that would otherwise be required under section 90 of the NPW Act is not required for approved State significant infrastructure projects.</p> <p>Notwithstanding, a detailed assessment of potential impacts to Aboriginal heritage associated with the proposal has been undertaken. The results of this assessment are presented in the <i>Cultural Heritage Assessment</i> (Technical paper 2) and summarised in Chapter 10.</p>
<p><i>Native Title (NSW) Act 1994</i></p>	<p>This Act provides for native title in relation to land or waters. The <i>Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010</i> (DECCW 2010a) stipulates that where relevant, consultation must be conducted with Native title holders or registered native title claimants in accordance with the <i>Native Title Act 1994</i>.</p> <p>The EIS for the proposal has included an assessment of native title and Aboriginal heritage impacts (refer to Chapter 10 and Technical paper 2).</p>

Legislation	Requirement
<p><i>Roads Act 1993</i> (Roads Act)</p>	<p>The principal object of the Roads Act of relevance to the proposal is the regulation of the carrying out of various activities on public roads.</p> <p>Part 9 of the Roads Act nominates the requirements for undertaking works within a public road, including the requirement to obtain consent under section 138 for carrying out works in, on or over a public road (this includes the erection of structures), and the digging up or disturbance of the surface of a public road.</p> <p>The proposal would potentially require temporary/partial closure of classified and unclassified roads for the construction of the proposal, and may require works to connect new access points. TransGrid will require consent to undertake work on classified roads. However, by reason of clause 5(1) of Schedule 2 of the Roads Act, TransGrid is not required to obtain consent to carry out work on unclassified roads.</p>
<p><i>Rural Fires Act 1997</i> (RF Act)</p>	<p>The objects of the RF Act are focused on the prevention, mitigation and suppression of bush and other fires in rural fire districts, and the co-ordination of firefighting and prevention across the State.</p> <p>Section 100B applies to bush fire prone land and empowers the Commissioner of the NSW Rural Fire Service to issue a bush fire safety authority. The bush fire authority authorises certain types of development, subject to compliance with matters considered by the Commissioner to be necessary to protect persons, property or the environment.</p> <p>Potential hazards associated with bush fire risk to the proposal (including during construction), have been considered as part of a <i>Bushfire Impact Assessment</i> (Technical paper 10) and summarised in Chapter 19.</p>
<p><i>Waste Avoidance and Resource Recovery Act 2001</i> (WARR Act)</p>	<p>The WARR Act aims to encourage the most efficient use of resources to reduce environmental harm in accordance with the principles of ecologically sustainable development.</p> <p>The proposal would consume some natural resources and would produce waste. Waste and resource impacts associated with the proposal have been considered in Chapter 21 of this EIS.</p>

Legislation	Requirement
<p><i>Water Management Act 2000</i> (WM Act)</p>	<p>The overarching objective of the WM Act is to provide for the sustainable and integrated management of the water resources of the State and including the application of the principles of ecologically sustainable development.</p> <p>Water use approvals, which authorise and confer a right on the holder of the approval to use water for a particular purpose at a particular location, are dealt with in section 89 of the WM Act. Section 90 of the WM Act identifies three kinds of water management works approvals, being a water supply work approval, a drainage work approval and a flood works approval, with all three of these approvals conferring a right on the holder of the approval to construct and use the specified works at a specified location.</p> <p>There are two kinds of activity approvals that are dealt with in section 91 being a controlled activity and aquifer interference, both of which confer a right on the holder to carry out the specified activity at the specified location.</p> <p>The proposal is Critical State significant infrastructure. Under the provisions of section 5.23(1) of the EP&amp;A Act, a water use approval pursuant to section 89 of the WM Act, a water management work approval pursuant to section 90 of the WM Act, and an activity approval (other than an aquifer interference approval) pursuant to section 91 of the WM Act are not required and accordingly, do not apply to approved State significant infrastructure project.</p> <p>As discussed in Chapter 15 of the EIS, water would be sourced from existing regulated sources, purchased from the existing water market or council facilities and accessed via existing, licensed water extraction infrastructure only.</p> <p>Additionally, the NSW <i>Aquifer Interference Policy</i> (Department of Primary Industries, 2012) documents the NSW Government’s intention to implement the requirement for approval of ‘aquifer interference activities’ under the <i>Water Management Act 2000</i>, however, the provisions for aquifer interference approvals have not been enacted.</p> <p>It is not anticipated that the proposal would interfere with any aquifers as the proposal would not likely require excavation to a sufficient depth to intercept an aquifer or result in drawdown. Consideration of the NSW <i>Aquifer Interference Policy</i> has been included in Chapter 20 and Technical paper 12.</p>

### C.1.8 Approvals or Authorisations that are not required or cannot be refused

In accordance with Section 5.23 of the EP&A Act some planning legislation does not apply to Critical State significant infrastructure or must be applied consistently with an approved Critical State significant infrastructure project.

Approvals of potential relevance to the proposal which are not required under section 5.23(1), include:

- > permits under Sections 201, 205 and 219 of the *Fisheries Management Act 1994* (FM Act)
- > approvals under Part 4, or an excavation permit under Section 139 of the *Heritage Act 1977*
- > Aboriginal heritage impact permits under Section 90 of the NP&W Act
- > various approvals under the *Water Management Act 2000*, including water use approvals under Section 89, water management work approvals under Section 90, and activity approvals (other than aquifer interference approvals) under Section 91.

Section 5.23 of the EP&A Act also specifies directions, orders or notices cannot be made or given so as to prevent or interfere with the carrying out of approved CSSI. Of relevance to the proposal would be:

- > an interim protection order under (within the meaning of the NP&W Act or the *Biodiversity Conservation Act 2016*)
- > an order under Division 1 (Stop work orders) of Part 6A of the NP&W Act or Division 7 (Stop work orders) of Part 7A of the FM Act
- > an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997* (POEO Act)
- > an order under section 124 of the *Local Government Act 1993*.

Section 5.24 of the EP&A Act identifies approvals or authorisations that cannot be refused if they are necessary for carrying out approved SSI and are substantially consistent with the Part 5.2 approval, including:

- > environment protection licences (EPLs) under Chapter 3 of the POEO Act
- > consent (Road Occupancy Licence) under Section 138 of the *Roads Act 1993* from the relevant roads authority for the erection of a structure, or the carrying out of work in, on or over a public road, or the digging up or disturbance of the surface of a road.

With respect to EPLs, Schedule 1 of the POEO Act, does not define electrical transmissions lines or substations as a scheduled activity requiring an EPL.

With respect to Road Occupancy Licences, the proposal would potentially require temporary/partial closure of classified and unclassified roads for the construction of the proposal. TransGrid will require consent to undertake work on classified roads. The contractor would be responsible for this. However, by reason of clause 5(1) of Schedule 2 of the Roads Act, TransGrid is not required to obtain consent to carry out work on unclassified roads.

### C.1.9 Ecologically sustainable development

Part 3, Schedule 2 (clause 7(4)) of the EP&A Regulation and section 6(2) of the *Protection of the Environment Administration Act 1991* outlines the four principles of ecologically sustainable development (ESD). The four ESD principles comprise the precautionary principle; intergenerational equity; conservation of biological diversity and ecological integrity; and improved valuation, pricing and incentive mechanisms.

TransGrid has considered the principles of ESD in the design development of the proposal. A discussion of how the proposal has considered ESD principles is included in Section 24.2 of the EIS. Section 23.2 of the EIS identifies how sustainability will be incorporated into the proposal.

### **C.1.10 Commonwealth legislation**

The EPBC Act is the Australian Government's key piece of environmental legislation. It enables the Australian Government to join with the states and territories in providing a truly national scheme of environment and heritage protection and biodiversity conservation. The EPBC Act focuses Australian Government interests on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance.

Key parts of the EPBC Act that are relevant to the proposal are:

- > Part 3 – requirements for environmental approvals
- > Part 5 – bilateral agreements
- > Part 7 – whether an approval is needed
- > Part 8 – assessing the impacts of a controlled action
- > Part 9 – the approval of actions

Part 3 of the EPBC Act provides for the referral to the Commonwealth Minister for the Environment and Energy a proposal that is likely to have a significant impact on the following:

- > Matters of National Environmental Significance (NES) (refer to Section C.1.2.1)
- > an action by the Commonwealth or a Commonwealth agency which has, will have or is likely to have a significant impact on the environment
- > an action which has, will have or is likely to have a significant impact on the environment on Commonwealth land, no matter where it is to be carried out.

TransGrid is not a Commonwealth agency and a preliminary assessment of the proposal indicates no Commonwealth land would be affected. As such, this potential trigger was not considered further.

### **C.1.11 Matters of National Environmental Significance**

Under the EPBC Act, a proposal is required to be referred to the Commonwealth Department of Agriculture, Water and the Environment (DAWE) for activities that have the potential to significantly impact on matters of NES. If the proposal is considered likely to significantly affect matters of NES, the Minister can deem the proposal a controlled action, and their approval is required prior to proceeding to construction. A controlled action may comprise a project, development, undertaking, activity or series of activities.

A summary of the potential impacts to matters of NES as a result of the proposal is presented in Table C-3. As detailed in Chapter 9 (Biodiversity) and Appendix A of this EIS, the proposal would not have a significant impact on EPBC listed threatened species and ecological communities, or EPBC listed migratory species.

Table C-3 Matters of NES under the EPBC Act

Matters of NES	Matters which may be affected by the proposal
World heritage properties	None
National heritage places	None
Wetlands of international importance	<p>No wetlands of international importance (RAMSAR wetlands) have been identified within the proposal study area.</p> <p>The nearest RAMSAR wetland is the Riverland Wetland located within Chowilla Game Reserve in SA. This is located approximately three kilometres south-west of the proposal study area.</p>
Great Barrier Reef Marine Park	None
Commonwealth listed threatened species and ecological communities	<p>Based on broad scale state vegetation mapping and database searches a total of two candidate threatened ecological communities listed under the EPBC Act were considered likely to occur. These are:</p> <ul style="list-style-type: none"> <li>&gt; Buloke (<i>Allocasuarina luehmannii</i>) Woodlands of the Riverina and Murray-Darling Depression Bioregions</li> <li>&gt; Coolibah (<i>Eucalyptus coolabah</i>) – Black Box (<i>Eucalyptus largiflorens</i>) Woodlands of the Darling Riverine Plains and the Brigalow Belt of South Bioregion.</li> </ul> <p>Neither of these, or any other threatened ecological communities listed under the EPBC Act, were recorded within the proposal study area during surveys for the proposal. The plant community types found within the proposal study area do not correspond to any EPBC Act listed threatened ecological communities.</p> <p>Five threatened flora and 17 threatened fauna species have a moderate or higher likelihood of occurrence within the proposal study area.</p> <p>As documented in Technical paper 1, the proposal is unlikely to lead to a significant impact on any threatened species and/or their habitat listed under the EPBC Act.</p>
Commonwealth listed migratory species	<p>The results of likelihood of occurrence assessments for these migratory and marine bird species identify that 26 species have a moderate or higher likelihood of occurrence within the proposal study area.</p> <p>As documented in Technical paper 1, the proposal is considered unlikely to substantially modify, destroy or isolate an area of important habitat for any EPBC Act listed migratory species and is unlikely to seriously disrupt the lifecycle of an ecologically significant proportion of a population of migratory birds.</p>
Nuclear action	The proposal would not result in any nuclear action nor would any nuclear activity need to be undertaken.
Commonwealth marine area	None

## Bilateral agreement

Based on the potential impacts to the listed threatened species identified in Table C-3, a referral under the EPBC Act was submitted on 27 May 2020. Determination by the DAWE on 25 June 2020 confirmed the proposal to be a controlled action and would be subject to the bilateral agreement under section 45 of the EPBC Act.

Part 5 provides for a written agreement between the Commonwealth and a State that is aimed at minimising duplication in the environmental assessment and approval process through the accreditation of that State's processes.

In February 2015, the Commonwealth and NSW entered into a bilateral agreement under section 45 of the EPBC Act. Since entering into that agreement, NSW has amended the accredited process through the repealing of the *Threatened Species Conservation Act 1995* and the commencement of the BC Act and the *Environmental Planning and Assessment Amendment Act 2017*. The current agreement provides for certain actions that are State significant development or State significant infrastructure within the meaning of the EP&A Act to be accredited for the purposes of meeting the requirements for assessment and public exhibition of an action under the provisions of the EPBC Act.

The requirements to meet this bilateral process have been included within the SEARs provided by the DPIE for the proposal (refer to Appendix A).

### C.1.12 Airports Act 1996

Part 12 of the Airports Act 1996 (Airports Act) and the Airports (Protection of Airspace) Regulations 1996 (the Airspace Regulations) establish a framework for the protection of airspace at, and around airports.

Section 181(1) of the Airports Act defines the prescribed airspace as '...an airspace specified in, or ascertained in accordance with, the regulations, where it is in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of an airport for the airspace to be protected under this Part'. The Airspace Regulations define the 'prescribed airspace' around Mildura Airport.

The prescribed airspace consists of the obstacle limitation surface (OLS) and the Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface. The OLS provides a protected space that is free of obstructions for aircraft flying into and out of the airport. It defines the lower limits of an airport's airspace, which should be kept free of obstacles during the initial and final stages of flight or manoeuvring. Intrusions into the OLS require approval under the Airports Act.

The PANS-OPS protects aircraft flying into and out of the airport when the flight is guided solely by instruments in conditions of poor visibility. The PANS-OPS surface is generally situated above the OLS. Intrusions into the PANS-OPS surface are prohibited.

The Airports Act (section 183) defines any activity that intrudes into an airport's prescribed airspace to be a 'controlled activity', which requires approval. Controlled activities include:

- > permanent structures, such as buildings, intruding into the protected airspace;
- > temporary structures such as cranes intruding into the protected airspace; or
- > any activities causing intrusions into the protected airspace through glare from artificial light or reflected sunlight, air turbulence from stacks or vents, smoke, dust, steam or other gases or particulate matter.

Carrying out a controlled activity without approval is an offence under Section 183 of the Airports Act.

The proposal is not located in the obstacle limitation surface (OLS) for Mildura Airport. As such no further approval is required.