

# Part C

## Planning and Assessment Process





# Planning and Assessment Process

This chapter identifies and reviews the statutory requirements for the environmental assessment and approval of the Tillegra Dam project under NSW and Commonwealth legislation.

## 8.1 New South Wales

### 8.1.1 Environmental Planning and Assessment Act 1979

*The Environmental Planning and Assessment Act 1979* (EP&A Act) provides the framework for environmental planning and assessment in NSW. Part 3A of the EP&A Act provides an assessment and approval process for State significant projects including major infrastructure projects such as Tillegra Dam.

Major infrastructure or other development that, in the opinion of the Minister for Planning, is of State or regional planning significance, may be declared under Section 75B of the EP&A Act to be a project to which Part 3A applies.

The Minister for Planning made an Order which was published in the NSW Government Gazette (No. 46/2007, 16 November 2007) declaring that the Tillegra Dam Project is a project to which Part 3A applies. A copy of the Order is provided as Appendix 2 to the EA Report.

The Director-General of the Department of Planning made an Order on 20 November 2007 pursuant to clause 8F(1)(e) of the *Environmental Planning and Assessment Regulation 2000* declaring the Project to be one that relates to multiple landowners, requiring notice of the development to be made to the public by advertisement prior to commencement of the public exhibition period.

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

The Minister declared the Tillegra Dam Project to be a critical infrastructure project under Section 75C of the EP&A Act on 9 January 2009. A copy of the Order is provided as Appendix 3 to the EA Report.

Section 75T of the EP&A Act provides that certain legal proceedings can not be taken in relation to a critical infrastructure project except on application made or approved by the Minister for Planning. Additionally, Section 75R limits the application of State environmental planning policies (SEPPs) to critical infrastructure projects.

The process under Part 3A for the assessment and approval of the Project is shown in Figure 8.1 and is described as follows.

### **Stage 1: Project application and preliminary environmental assessment**

HWC submitted a project application (PA), including the preliminary environmental assessment (PEA) to the Department of Planning on 21 November 2007 requesting the Director-General's environmental assessment requirements (DGRs). The formal planning focus meeting (PFM) to inform the DGRs was held on 11 October 2007 and was attended by the following government agencies:

- Department of Planning
- DECC (Department of Environment and Climate Change)
- DPI (Department of Primary Industries (Fisheries))
- HCRCMA (Hunter-Central Rivers Catchment Management Authority)
- NSW Maritime
- RFS (NSW Rural Fire Service)
- HWC
- Dungog Shire Council.

Following the PFM, agencies were given the formal opportunity to consider the Project and provide comments to the Department of Planning to inform the development of the Director-General's formal DGRs.

The PA and PEA were made available to the public via the Department of Planning website and issued to relevant government agencies.

### **Stage 2: Environmental assessment requirements**

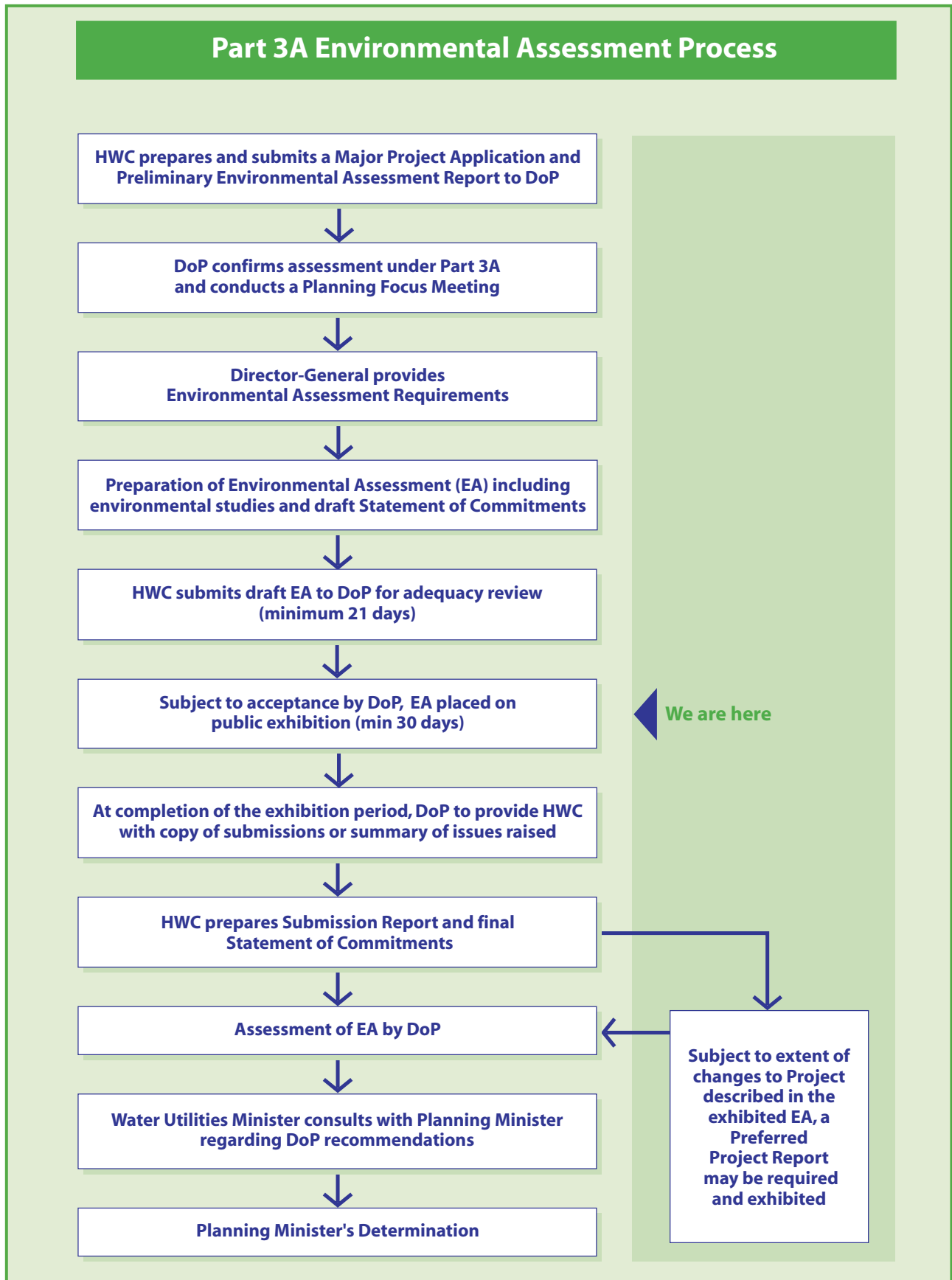
The Director-General of the Department of Planning, in consultation with relevant public authorities, prepares and issues the DGRs under Section 75F of the EP&A Act. The Director-General may require HWC to include in the environmental assessment a statement of commitments (SOC) that HWC is prepared to make for environmental management and mitigation measures.

The Director-General issued the DGRs to HWC for the Project on 8 January 2008 and these are provided as Appendix 3. A summary table is also provided indicating where each of the requirements is addressed in the EA Report.

Supplementary DGRs were issued by the Director-General of the Department of Planning on 1 May 2009 following consultation between the Department and the Commonwealth Department of the Environment, Water, Heritage and the Arts. These requirements directed HWC to address specific issues relating to potential impacts of the Project on the Hunter Estuary Wetlands Ramsar site.

### **Stage 3: Preparation of environmental assessment report**

HWC prepares an environmental assessment report (EA Report) for the Project which addresses the DGRs. HWC then submits the EA Report to the Director-General in accordance with Section 75H(1) of the EP&A Act. The report is then subjected to an adequacy test in accordance with Section 75H(2). Subject to acceptance by the Department of Planning, the EA Report is then publicly exhibited.



**FIGURE 8.1** PART 3A EA PROCESS

#### **Stage 4: Public notification and exhibition**

The EA Report is placed on public exhibition for a period of not less than 30 days. During this period, any person (including a public authority) may make a written submission to the Director-General.

This document is the EA Report for the Tillegra Dam Project and is proposed to be exhibited for no less than 60 days.

#### **Stage 5: Consideration of submissions**

The Director-General provides copies of submissions received on the EA Report to HWC or alternatively may prepare and issue a report to HWC on the issues raised.

The Director-General considers the submissions on the EA Report and may require HWC to undertake one or more of the following:

- submit to the Director-General a response to the issues raised in the submissions
- prepare a Preferred Project Report that outlines any proposed changes to the Project to minimise its environmental impact
- prepare a revised SOC.

If any significant changes are proposed following public exhibition, the Director-General may require HWC to make the Preferred Project Report available to the public.

#### **Stage 6: Preparation of Director-General's report**

The Director-General prepares a report under Section 75I of the EP&A Act. A copy of the report is provided to the Minister for Planning for the purposes of the Minister's consideration of the application for approval of the Project.

#### **Stage 7: Minister's decision**

Following consultation with the Minister for Water, the Minister for Planning decides whether to approve the Project under Section 75J of the EP&A Act.

If approved, HWC then determines whether to proceed with the Project. If the decision is made to proceed, HWC would then undertake the following tasks:

- notification to the local community of the Minister for Planning's decision
- preparation of detailed design and environmental management plans (EMPs) for construction of the Project
- construction of the Project
- preparation of EMPs for the filling and operation of the Project
- commissioning and operation of the Project.

It is noted that there would also be a substantial ongoing role for the NSW Dams Safety Committee including an oversight and review role of the dam safety emergency plan. Further details are provided in Chapter 19.

### **8.1.2 Other legislative approvals**

Should the Minister for Planning approve the Tillegra Dam project under Part 3A, then Section 75U of the EP&A Act provides that the following approvals would not be required:

- concurrence under Part 3 of the *Coastal Protection Act 1979*
- permits under Sections 201, 205 or 219 of the *Fisheries Management Act 1994*
- approval under Part 4 or an excavation permit under Section 139 of the *Heritage Act 1977*
- a permit under Section 87 or a consent under Section 90 of the *National Parks and Wildlife Act 1974*
- authorisation referred to in Section 12 of the *Native Vegetation Act 2003* to clear native vegetation
- a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948* (note that this Act was repealed by Schedule 7 to the *Water Management Act 2000* with effect from 4 February 2008)
- a bushfire safety authority under Section 100B of the *Rural Fires Act 1997*
- a water use approval under Section 89, water management work approval under Section 90, or an activity approval under Section 91 of the *Water Management Act 2000*.

Similarly, Division 8 of Part 6 of the *Heritage Act 1977* would not apply to prevent or interfere with the carrying out of an approved Project.

Further, Section 75V of the EP&A Act provides that the following relevant approvals under other legislation, if required, cannot be refused:

- an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*
- a consent under Section 138 of the *Roads Act 1993*
- a licence under the *Pipelines Act 1967*.

Notwithstanding, additional approvals that may be required under other NSW legislation are identified in Table 8.1.

**TABLE 8.1** POSSIBLE OTHER NSW APPROVALS

PROVISION	REQUIREMENT	ACTION	AGENCY
<i>Protection of the Environment Operations Act 1997</i>			
Section 48	Environment protection licence for various construction activities	Apply for an environment protection licence prior to construction	DECC
<i>Water Act 1912</i>			
Sections 10, 11 and 12 of Part 2	Approval for extraction of water from a river or lake	Apply for approval if water is required to be sourced through direct extraction from surface waters	DWE
<i>Roads Act 1993</i>			
Section 138	Consent for activities involving modifications to or construction over/under a public road	Concurrence must be sought from road owner (as required)	Dungog Shire Council

PROVISION	REQUIREMENT	ACTION	AGENCY
<i>Rural Lands Protection Act 1998</i>			
Section 95	Authority to occupy or make use of any travelling stock reserve for any purpose, or engage in any activity that damages, or is likely to damage, a travelling stock reserve	Consultation with the Dept of Lands and RLPB. HWC to directly acquire ownership of TSR	Dept of Lands
<i>Crown Lands Act 1989</i>			
Section 34A	Ministerial approval to grant a 'relevant interest' over a Crown Reserve if required	Consultation with the Dept of Lands. HWC to directly acquire ownership of Crown reserve or any unallocated Crown Land	Dept of Lands

### 8.1.3 NSW environmental planning instruments and related strategies

Section 75R of the EP&A Act relevantly provides that Part 3 and SEPPs apply to:

- the declaration of a project as a project to which Part 3A applies or as a critical infrastructure project
- the carrying out of a project, but (in the case of a critical infrastructure project) only to the extent that their provisions expressly provide that they apply to and in respect of the particular Project.

Additionally, apart from SEPPs, other environmental planning instruments (EPIs) do not apply to or in respect of an approved project.

As the Project has been declared a critical infrastructure project and there are no provisions in any SEPPs that expressly provide that they apply to and in respect of the Tillegra Dam project, then no EPI (including SEPPs) would apply to the Project. Nonetheless, matters in EPIs of potential relevance to the Project have been considered in the assessment as follows.

#### **State Environmental Planning Policy No. 14 – Coastal Wetlands**

SEPP14 aims to protect and preserve coastal wetlands in the environmental and economic interests of the State. SEPP14 applies development restrictions to coastal wetland areas taking into account the environmental effects of the development and consideration of the objectives and major goals of the *National Strategy for the Conservation of Australia's Biological Diversity 1996* that recognises the importance of conserving biological diversity.

While this SEPP would not apply to the Project (regardless of Section 75R of the EP&A Act) issues raised have been considered in the assessment. Details are provided in Chapter 10.

#### **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

This SEPP aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The policy requires a council to consider the presence of koala habitat in the development consent process, including the request for a plan of management that satisfies Part 3 of SEPP 44. This SEPP covers the Dungog LGA as per Schedule 1 to the SEPP.



While this SEPP would not apply to the Project (regardless of Section 75R of the EP&A Act), relevant matters have been considered in the environmental assessment. Based on existing vegetation in the Project area, there may be potential or core koala habitat affected by the proposal. HWC would act to manage, reduce or eliminate any associated impacts to the local koala population. Further details are provided in Chapter 11.

#### **State Environmental Planning Policy No. 55 – Remediation of Land**

SEPP55 aims to provide for a State-wide planning approach to the remediation of contaminated land. SEPP55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated.

While this SEPP would not apply to the Project (regardless of Section 75R of the EP&A Act), relevant matters have been considered in the EA Report. Clause 7 requires a consent authority to consider whether the land to which a development application relates is contaminated and if the land is contaminated, to be satisfied that the land is suitable in its contaminated state prior to granting consent. If the land is unsuitable, appropriate remediation must take place before the land is developed.

Further information on issues relating to contaminated land is provided in Chapter 16.

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

*State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) was gazetted on 21 December 2007. This SEPP provides for a consistent approach to the assessment and approvals process for major infrastructure. More specifically, it is proposed that all development relating to water supply systems (which would include dams), including all related components and works, be permissible without consent.

This SEPP does not apply to the Project as the savings provision (clause 11) would apply. That is, it does not apply to the determination of a PA made under Part 3A of the EP&A Act but not finally determined before the commencement of the SEPP. As indicated previously, the PA was made on 21 November 2007.

#### **Williams River Catchment Regional Environmental Plan**

The Project sits within the area covered by the *Williams River Catchment Regional Environmental Plan* (REP). The objectives of this REP are:

- to promote sustainable use of land, water, vegetation and other natural resources within the Williams River catchment
- to promote the protection and improvement of the environmental quality of the catchment
- to establish a coordinated and consistent approach to the planning and management of the natural and built environment on a catchment-wide basis by linking the environmental planning system and total catchment management policies, programs and activities within the Williams River catchment through an endorsed catchment-wide regional planning strategy
- to provide for changes to occur in the use of land in a manner, which protects the quality of the catchment's water resources.

Clause 6(1) provides guidelines for public authorities to assist achievement of the aims and objectives of the REP. These include the requirement that the *Williams River Catchment Regional Planning Strategy 1997* must be taken into account when a public authority proposes to carry out development which does not require development consent but has the potential to adversely affect

the environmental quality of land, water, vegetation or other natural resources within the Williams River catchment.

The Project would be consistent with the objectives of the *Williams River Catchment Regional Planning Strategy 1997*. With respect to the sustainable use of natural resources further details are provided in Chapter 16 and Working Paper F *Sustainable Resource Use*. The protection of the environmental quality of the catchment includes water resources, aquatic ecosystems, riparian zones, terrestrial ecosystems and contaminated lands. These issues are addressed in Chapters 10, 11, and 16 respectively. The Project also provides for a consistent and coordinated approach to the management of the Williams River catchment through the process of consolidating the interests and needs of the various stakeholders.

#### 8.1.4 Other regional planning studies and strategies

In addition to the statutory EPIs described, there are also a number of regional strategies, studies and plans of potential relevance to the Project. While there are no direct statutory requirements, the issues raised of potential relevance to the Project have been considered in the EA Report and are outlined as follows.

##### **Water Sharing Plan–Hunter Unregulated and Alluvial Water Sources**

The draft Plan includes rules for protecting the environment, water extraction, managing licence holders' water accounts and water trading in 40 water sources. This includes the Williams River water source. The draft Plan makes an allowance to include the management of Tillegra Dam within its water management framework, should the project proceed. At the time of finalisation of the EA Report, the draft plan had come off public exhibition and submissions were being considered by the DWE. It is understood that the Water Sharing Plan may become operational from 1 August 2009. The operation of Tillegra Dam is proposed to be undertaken in a manner consistent with the objectives of this plan.

The specific operating rules for the proposed dam will be incorporated into the Plan in 2013, as provided for under the existing draft. The exact rules adopted for the dam under the Plan are a matter for the DWE to decide in consultation with the community. However, it is likely that such rules would reflect that suggested as optimal for both water users and the environment (refer Chapter 10 and Working Paper D). It is noted that water sharing plans are dynamic documents that are reviewed every five years to meet the objectives of the Water Management Act 2000. Such reviews and refinements of the Plan therefore provide for adaptive management of the water source and optimisation of the best possible management regime for the river and the environment.

##### **Hunter-Central Rivers Catchment Action Plan**

The Hunter-Central Rivers Region stretches from Newcastle in the east to Merriwa Plateau in the west and from Gosford in the south to Taree in the north. The Hunter-Central Rivers Catchment Management Authority's (HCRCA) draft Catchment Action Plan (CAP) commenced in July 2006 and represents the overall guiding document driving activities and investment in the catchment. The document outlines how the HCRCA will work with a range of stakeholders including government, non-government organisations, industry and the community to sustainably manage the region's natural resources. The document provides guidance for the work and investment choices of natural resource managers.

Management targets of the CAP include:

- restoring fish passages throughout the region
- restoring instream habitat

- protecting wetlands
- enhancing wetlands
- protecting native riparian vegetation.

The Williams River, the site of the Project, feeds into the Hunter estuary via Seaham Weir, which is approximately 14 kilometres to the north of the estuary mouth. The Project area is situated upstream of Seaham and the Hunter estuary, and therefore could potentially impact the estuary. The Hunter estuary contains valuable biodiversity for the region including mangroves, seagrass and saltmarsh.

Construction and operation of the Project are expected to have minimal impacts on HCRCMA operations. Further discussion on issues relating to the potential impacts of the operation of the Project on potentially affected communities in the Williams River catchment is provided in Chapter 12.

### **Lower Hunter Regional Strategy**

*The Lower Hunter Regional Strategy* (Dept of Planning 2006) forms the strategic landuse planning framework guiding growth in the region over the next 25 years. The Strategy applies to the LGAs of Newcastle, Lake Macquarie, Port Stephens, Maitland and Cessnock. The Strategy aims to ensure that sufficient land is available in appropriate locations to sustainably accommodate projected population growth and associated housing, employment and environmental needs.

The Strategy references HWC's *Integrated Water Resource Plan* produced in 2003. Due to numerous factors including a revised definition of yield adopted by HWC, this plan is now outdated and has been replaced by the new *H<sub>2</sub>50 Plan*. Growth identified in the earlier strategy is no longer feasible without the Tillegra Dam project. Therefore, the Project would provide a valuable resource to support the planned population growth for the Lower Hunter region, as identified in the strategy.

The Project would provide a valuable resource to support the projected population growth in the Lower Hunter region. The Project would not directly impact on any identified important vegetation communities identified in the Strategy.

### **Central Coast Regional Strategy**

The Central Coast Regional Strategy sets goals and direction for the region including vision for the future and preparing the region for population growth over the next 25 years. It incorporates factors such as housing and employment, water, environment and natural resources, natural hazards, infrastructure and transport.

The Strategy notes that the Central Coast has currently experienced its worst drought on record. As such, the Strategy aims to develop safe and secure water supply options without compromising the region's water sources or adversely affecting the region's extensive national parks, State forests, and regional and local open space of which over half the area is comprised.

The aims of the Strategy of particular relevance to the Project are to:

- provide a long term sustainable water supply
- balance future development and important conservation values.

A secure water supply is a significant planning issue for the Central Coast. The Central Coast population is predicted to increase by 100,000 people over the next 25 years, to 405,000. The original draft plan predicted growth of an extra 64,250 people (Dept of Planning 2006b) however the finalised strategy has allowed for a further increase in population growth on the premise that additional water resources and infrastructure can be secured.

In this regard, the plan notes that water security for the Central Coast can be achieved by:

- the adoption by the local water authority (which includes both local councils) of WaterPlan 2050 – a long term strategy for water supply
- the State Government's commitment to build Tillegra Dam
- a commitment from the Commonwealth to provide funding towards a pipeline connecting Mardi Dam to the main water storage at Mangrove Creek Dam.

A pipeline between the Hunter and Central Coast regions currently exists. As a consequence, in addition to its key objective of drought-proofing the Hunter region, the Project represents an opportunity to provide the Central Coast with an additional source of water, should this be specifically requested by the Gosford Wyong Joint Water Supply Authority. Under the concept of user pays, any supply of water from the Hunter to the Central Coast would be undertaken on commercial terms.

#### **Draft Lower Hunter Regional Conservation Plan**

*The Draft Lower Hunter Regional Conservation Plan* (Dept of Environment and Conservation 2006a) aims to direct and drive conservation efforts in the Lower Hunter region. The Plan aims to complement the Government's planning strategy by:

- describing the conservation values of the lower Hunter region
- analysing the current status of biodiversity within the region and assessing the likely impacts of development identified in the Lower Hunter Regional Strategy
- assessing the biodiversity values of the region at a landscape scale and identifying strategic areas for biodiversity protection, enhancement or restoration
- contributing to a practical framework that can secure, maintain and improve biodiversity values as the Hunter region grows over the next 25 years
- guiding local level planning with respect to biodiversity including the development of local biodiversity conservation strategies and the development of new LEPs that can merit biodiversity certification.

The Plan applies to the Maitland, Cessnock, Lake Macquarie, Port Stephens and Newcastle City LGAs. The Project does not affect strategic areas identified in the plan for biodiversity protection, enhancement or restoration.

#### **Williams River Catchment Regional Planning Strategy**

The aims and objectives of the *Williams River Catchment Regional Planning Strategy* (Dept of Urban Affairs and Planning 1997) include:

- development of policies and actions to better manage the impacts of existing development and land management practices
- establishment of principles to guide future development
- halting and reversing the decline in water quality in the Williams River catchment
- development of procedures for sustainable long term management of the catchment.

The strategy sets out policy objectives for actions and tasks for the implementation of the strategy, the protection of the environment, development issues and water quality management.

The policy objectives for actions are summarised in Table 8.2.

**TABLE 8.2** WILLIAMS RIVER CATCHMENT REGIONAL PLANNING STRATEGY POLICY OBJECTIVES

ASPECT	OBJECTIVES
Environment	The protection and restoration of riverine vegetation The protection of landscape and scenic qualities of the catchment The protection and restoration of wetlands The protection of fish and fish habitats
Land use	To identify appropriate locations and control measures for recreational activities To minimise sedimentation and erosion
Water quality	Initiate improved water monitoring and survey Minimise consumption of water Initiate the protection and enhancement of the riverine corridor

The planning strategy supports and complements the Williams River Catchment REP. As noted, the Project is consistent with this REP and the planning strategy.

### 8.1.5 Dungog Local Environmental Plan 2006

The Dungog LEP 2006 is the principal planning instrument governing land use and development decisions within the Dungog LGA. The LEP defines zones and the permissibility of development within each zone.

Notwithstanding its consistency with the zoning objectives (refer discussion below), the Project (including all related components) would be permissible without consent under the Dungog LEP through the operation of clause 24 of the LEP. Clause 24 of the LEP states that development consent is not required for development for the purpose of a utility installation carried out by a public utility undertaking.

The majority of the area affected by the Project (which includes the dam and associated structures, inundation area, hydropower station, transfer pipeline, new Salisbury Road alignment etc) would comprise land that is zoned Rural 1(a).

The objectives of the Rural Zone 1(a) are to:

- reinforce the agricultural character and landscape attributes of the area of Dungog
- promote agriculture, protect high productivity land and prevent the fragmentation of farm holdings
- ensure development is compatible with agricultural operations and does not adversely affect the environment or amenity of the locality
- prevent development which could compromise the efficient extraction of valuable deposits of minerals or extractive materials
- maintain and enhance environmentally sensitive land, particularly wetlands, riparian ecosystems, forests, woodlands and linkages between them
- allow for the natural flooding of rivers and for the temporary storage of floodwaters
- maintain and enhance local biodiversity
- provide for recreational and tourist activities that are compatible with the agricultural, environmental and conservation value of the land.

Tillegra Dam would be operated in a manner sympathetic to the surrounding rural landscape. Water would be released from the storage on a regular basis to provide flows to protect the riverine environment as well as to maintain irrigation rights and agricultural activities as discussed in Chapter



10. Opportunities for the development of recreational and tourist resources would also arise through the Project and are discussed in Working Paper N *Draft Integrated Land Use Plan*. In this regard the Project would be consistent with the zoning that would predominantly apply.

Part of the dam wall and spillway would be located in the Environment Zone 7(a). The objectives of this zone are to identify and protect:

- environmentally sensitive lands having special aesthetic, scenic, ecological or conservational value
- key ecological habitats and wildlife corridors
- land within water catchment areas, by regulating development so as to avoid uses of land that would destroy or damage the quality and quantity of raw drinking water
- flood-prone areas.

Construction and operation of the dam are not likely to be consistent with these objectives given the effect of the dam structure. However, given the small area affected, the absence of significant biodiversity attributes, and the extent of proposed mitigation and management measures including biodiversity offsets, the Project is not expected to compromise the overall environmental objectives and strategies of the LEP.

There is also a small area zoned Recreation 6(a) located in the upper reaches of the storage, which may be affected when the storage is at FSL. The objectives of this zone are to:

- identify and provide land for open space and recreational purposes
- identify areas where recreation facilities for the general use of the community for active and passive recreation may be developed
- cater for the development of a range of facilities for the benefit of the community.

The Project is consistent with these objectives as it would provide a new recreational facility for the community.

### 8.1.6 Other NSW legislation

Other NSW legislation that may have relevance to the Project includes the following:

#### **Aboriginal Land Rights Act 1983**

The *Aboriginal Land Rights Act 1983* provides for Aboriginal land rights in NSW and for the acquisition of land by Aboriginal Land Councils in NSW. Part 2, Section 36 relates to claims to crown land. Within the project area, there is one parcel of Crown land that is also an historical travelling stock route. Currently there is a claim pending for the land made by the Karuah Local Aboriginal Land Council (LALC). HWC would work with the Department of Lands and the Karuah LALC in resolving the future use and ownership of this land should the Project be approved.

#### **Contaminated Land Management Act 1997**

The general object of this Act is to establish a process for investigating and (where appropriate) remediation of land where contamination presents a significant risk of harm to human health or some other aspect of the environment.

#### **Native Title (New South Wales) Act 1994**

The *Native Title (New South Wales) Act 1994* works in accordance with the Commonwealth Native Title Act 1993 to ensure that NSW law is consistent with standards set by the Commonwealth for future dealings affecting Native Title.

### Waste Avoidance and Resource Recovery Act 2001

An important objective of this Act is to encourage the most efficient use of resources and to reduce environmental harm in accordance with the principles of ecologically sustainable development. The Project would comply with this and other objectives of the Act for the construction and operation stages. This also forms part of the overall sustainability of the Project which is discussed in Chapter 20.

Further details on waste management during the construction and operation of Tillegra Dam are provided in Chapter 16.

### Dams Safety Act 1978

The dam would be prescribed under the *Dams Safety Act 1978*. As such, the NSW Dams Safety Committee would review the Project through all stages including concept and detailed design, construction, filling, operation and maintenance. Details relating to the Committee's role have been provided in Chapter 6.

## 8.2 Commonwealth legislation and strategies

### 8.2.1 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act establishes a requirement of Commonwealth environmental assessment and approval for:

- actions that are likely to have a significant impact on matters of national environmental significance (NES matters)
- actions that are likely to have a significant impact on the environment of Commonwealth land
- actions taken on Commonwealth land that are likely to have a significant impact on the environment anywhere
- actions by the Commonwealth that are likely to have a significant impact on the environment anywhere.

Current NES matters are:

- world heritage areas
- national heritage places
- wetlands of international importance (Ramsar sites)
- threatened species and ecological communities
- migratory species
- Commonwealth marine areas
- nuclear actions.

If the Minister for the Environment, Heritage and the Arts determines that an approval is required under the EPBC Act, the proposed action is deemed to be a 'controlled action'. It must then undergo assessment under the EPBC Act and obtain an approval under the Act prior to being undertaken.

The Commonwealth and NSW governments have signed a bilateral agreement that accredits the assessment regime under Part 3A of the EP&A Act for assessment purposes under the EPBC Act. The bilateral agreement applies to actions that the Minister for the Environment, Heritage and the Arts has determined are controlled actions under the EPBC Act in relation to an NES matter with the exception of nuclear actions. It does not have any effect in relation to an action taken in a Commonwealth area or an action by a Commonwealth agency.

The bilateral agreement only provides accreditation of the NSW assessment process. The Commonwealth would still need to issue a separate approval for the Project if it is a controlled action. An approval under the EPBC Act would only be given by the Commonwealth once approval had been obtained through the NSW process.

Any action that is likely to have a significant impact on NES matters (or on the other matters listed) requires referral to the Minister for the Environment, Heritage and the Arts. A search of the EPBC Act protected matters database can provide an initial indication in determining whether a referral may be required.

The Project was referred to the Minister for the Environment, Heritage and the Arts for further appropriate consideration. The Minister determined that the Project may have potential to affect the Hunter Estuary Wetlands which are (Ramsar) wetlands of international importance. As a consequence, the Project was declared to be a controlled action requiring assessment under the bilateral agreement.

Following consultation between the Department of Planning and DEWHA, supplementary requirements were issued by the Department of Planning on 1 May 2009 as previously noted. The specific matters requiring consideration are provided in Section 10.1.2. These are addressed variously throughout Chapter 10.

## 8.2.2 Other Commonwealth legislation and strategies

### **Native Title Act 1993**

The *Native Title Act 1993* was enacted by the Commonwealth Government in response to the High Court Mabo Decision in 1992. The Act was created to provide recognition and protection for Native Title, and to establish ways in which future dealings affecting Native Title may proceed and to set common standards for those dealings. The Act also establishes a mechanism for determining claims to Native Title. The Act is implemented through the National Native Title Tribunal which acts as an independent mediator for Native Title claims and Indigenous Land Use Agreements (under the direction of the Federal Court of Australia).

Native Title claimants must show that claims have a basis in traditional laws and customs, and that there has been an ongoing connection between a piece of land and those customs. Native Title has the potential to exist in vacant or unallocated Crown land, some types of pastoral leases, reserved areas that are not privately owned (beaches, rivers, swamps, etc). It can also exist for areas owned by Indigenous people.

The Act does not provide for Native Title to be claimed over certain areas including:

- residential freehold
- farms held in freehold
- pastoral or agricultural leases that grant exclusive possession
- residential, commercial or community purpose leases
- public works like roads, schools or hospitals.

There are no known Native Title claims on the area affected by the dam and associated infrastructure. This does not mean however, that Commonwealth Native Title does not exist on vacant or unallocated Crown land in the area. The land acquisition process for unallocated Crown land will involve referral or involvement of the Native Title Services Corporation (NTSCORP) which is the designated representative body for consultation in the absence of registered title holders.

### **Aboriginal and Torres Strait Islander Heritage Protection Act 1984**

Protection of places of significance to Aboriginal Australians is provided through the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Aboriginal people who believe that a place or object is threatened and believe that State government processes offer inadequate protection can apply to the Minister for the Environment, Heritage and the Arts to protect the place or object.

### **National Water Initiative**

The objectives of the *National Water Initiative* (NWI) are to promote the sustainable management of Australia's water resources by facilitating the development of a nationally compatible, market, regulatory and planning based system of managing surface and groundwater resources. The NWI works in a complementary way to the National Water Quality Management Strategy (NWQMS). The main policy objective of the NWQMS is to achieve sustainable use of the nation's water resources by protecting and enhancing their quality while maintaining economic and social development (Dept of the Environment, Water, Heritage and the Arts 2008).

The NWI provides for the development of water plans by all States and Territories which are statutory mechanisms to assist the government, community and other stakeholders with water resource management decisions. The objectives of the NWI are to:

- develop pathways and transparent processes to return overallocated water to the environment
- issue perpetual rather than fixed-term water entitlements
- compensate water users if government policies change
- develop an efficient water market structure with the widest possible geographical scope
- manage water at a basin, aquifer or catchment scale to deliver agreed environmental results
- target private and public sector investment in infrastructure
- develop a robust, transparent regulatory framework for water accounting that protects the integrity of entitlements.

The NWI stipulates that interception activities are to be subject to regulatory and management measures to achieve environmental outcomes. Detailed rules guiding the use of water including water interception are outlined in the draft *Water Sharing Plan–Hunter Unregulated and Alluvial Water Sources* as released for public exhibition. This document may change following input from the community and other stakeholders.

The rules of the Plan would apply to the proposed dam and would be refined further in 2013 should the Project proceed. The Plan would provide that water currently allocated to users downstream of the dam is not impinged upon and that water would be made available for environmental purposes. Further details are provided in Chapter 10.

It is noted that the NWI provides for adaptive management of water resources. This means that management of a water source may change as more information is gained or changes within the system are experienced. This may mean that the management of water in the Williams River may change to accommodate the inclusion of the proposed dam as a potential water user and provider within the system. Further details are provided in Chapter 10.

