

4.1 Introduction

This chapter reviews Commonwealth, State and local planning legislation and policies that apply to the proposed Biomass Power Plant. It includes a review of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, *NSW Environmental Planning and Assessment Act 1979* (EP&A Act) and other relevant environmental requirements including State Environmental Planning Policies (SEPPs), Regional Environmental Plans (REPs) and Local Environmental Plans (LEPs).

The proposed Power Plant is subject to the development and assessment processes and requirements of Part 3A of the EP&A Act. A Development Application and Preliminary Environmental Assessment were submitted by SEFE to the Department of Planning in January 2009. On 29th March 2009 the Director-General's (environmental assessment) Requirements were issued.

4.2 Commonwealth Legislation

4.2.1 Environment Protection and Biodiversity Conservation Act 1999

Under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), approval from the Commonwealth Minister for the Environment, Water, Heritage and the Arts is required for an action that is:

- likely to have a significant impact on a “matter of national environmental significance”;
- carried out on Commonwealth land and is likely to have a significant impact on the environment;
- carried out outside of the Commonwealth land and is likely to have a significant impact on the environment on Commonwealth land; or
- carried out by the Commonwealth government.

The EPBC Act provides for the establishment of Bilateral Agreements between the Commonwealth and a State or Territory to accredit existing development assessment and approval processes. Such a bilateral agreement was made with the NSW Government in January 2007 to cover the assessment components of development / activity related proposals under Parts 3A, 4 and 5 of the EP&A Act.

Matters of National Environmental Significance

The EPBC Act identifies seven matters of National Environmental Significance (NES):

- World Heritage properties.
- National heritage places.
- Wetlands of international importance (Ramsar wetlands).
- Threatened species and ecological communities.
- Migratory species.
- Commonwealth marine areas.
- Nuclear actions (including uranium mining).

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A search of the EPBC Act Protected Matters database has revealed that the Site is not located within a World Heritage or National Heritage area, and it is not located within close proximity to a listed Ramsar Site. The proposed development does not involve nuclear activities and will not impact on Commonwealth Marine Areas.

The Protected Matters Report identified that there is a Threatened Ecological Community, 40 listed Threatened Species, as well as 42 Migratory Species which may be relevant to the study area.

As discussed in **Chapter 8** and **Chapter 9**, the Marine and Terrestrial Biodiversity Assessments conclude that the Project is unlikely to have a significant impact on any ecological matters protected under the EPBC Act.

As a consequence of the above, approval for the project is not required under the EPBC Act.

4.2.2 Renewable Energy Act 2000

The objects of the *Renewable Energy Act 2000* are:

- (a) to encourage the additional generation of electricity from renewable sources; and
- (b) to reduce emissions of greenhouse gases in the electricity sector; and
- (c) to ensure that renewable energy sources are ecologically sustainable.

This is done through the issuing of certificates for the generation of electricity using eligible renewable energy sources and requiring certain purchasers (called liable entities) to surrender a specified number of certificates for the electricity that they acquire during a year.

Section 17 of Act defines renewable energy sources eligible under the MRET and RET. The list of eligible renewable energy sources includes wood waste.

Regulation 8(1) of the *Renewable Energy (Electricity) Regulations 2001* provides a definition of wood waste. Wood waste may comprise:

- (a) biomass:
 - (i) produced from non-native environmental weed species; and
 - (ii) harvested for the control or eradication of the species, from a harvesting operation that is approved under relevant Commonwealth, State or Territory planning and approval processes; and
- (b) a manufactured wood product or a by-product from a manufacturing process; and
- (c) waste products from the construction of buildings or furniture, including timber off-cuts and timber from demolished buildings; and
- (d) sawmill residue; and
- (e) biomass from a native forest that meets all of the requirements in subregulation (2).

The category of the wood waste being “a manufactured wood product or by-product from a manufacturing process” (Regulation 8(1)(b)) applies to the biomass material to be consumed by the Power Plant. This has been confirmed by the ORER.

4.2.3 Native Title Act 1993

The Native Title Act was introduced into law by the Commonwealth Parliament in 1993 with the purpose of recognising and protecting Native Title, which recognises that some Indigenous people have rights and interests to their land that come from their traditional laws and customs.

A search of Native Title listings which may be of relevance to the SEFE site was carried out as part of the Heritage investigation. As discussed in **Chapter 15**, no Native Title listings were registered for the study area.

4.3 NSW Legislation

4.3.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) and its supporting Regulation, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), provide the framework for the assessment and approval of proposed developments within NSW. Assessment provisions are provided in three parts of the EP&A Act: Part 3A, Part 4 and Part 5.

Part 3A of the EP&A Act provides a process for the assessment of developments which are considered to be “Major Projects” as declared by *State Environmental Planning Policy (Major Projects) 2005* (Major Projects SEPP) or by order of the Minister in the Government Gazette.

State Environmental Planning Policy (Major Projects) 2005

According to SEPP Major Projects, development referred to as a ‘Major Project’ requires assessment and approval of the Minister for Planning in accordance with Part 3A of the EP&A Act. SEPP Major Projects defines certain types of development as comprising major projects. These include infrastructure developments, whether or not carried out by a public authority, for the purposes of roads, railways, pipelines, electricity generation, electricity or gas transmission or distribution, sewerage treatment facilities, dams or water reticulation works, desalination plants, trading ports or other public utility undertakings.

Pursuant to section 75B of the EP&A Act, the Minister for Planning declared the proposed development to be a project to which Part 3A applies.

On the 29th March 2009 Environmental Assessment Requirements were issued for the Project pursuant to section 75F(2) of the EP&A Act (**Appendix A**).

While the EP&A Act provides the framework for the planning and development approvals system within NSW, there are several other relevant Acts and Regulations to be considered.

Certain authorisations are not required by an approved Part 3A project under Section 75U of the EP&A Act. Authorisations relevant to the proposed Power Plant are not required for:

- (a) the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of the Act,
- (b) a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*,
- (c) an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*,

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- (d) a permit under section 87 or a consent under section 90 of the *National Parks and Wildlife Act 1974*,
- (e) an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation or State protected land,
- (f) a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*,
- (g) a bush fire safety authority under section 100B of the *Rural Fires Act 1997*,
- (h) a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the *Water Management Act 2000*.
- Certain authorisations cannot be refused if it is necessary for carrying out an approved project, and authorisations required must be substantially consistent with the approval under Section S75V of the EP&A Act. These include:
 - *Protection of the Environment Operations Act 1997* (POEO Act) - an Environment Protection Licence under Chapter 3;
 - *Roads Act 1993* - consent under section 138; and
 - *Pipelines Act 1967* - a licence.

4.3.2 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) relates to the management of pollution and waste disposal in NSW and is administered by the NSW Department of Environment, Climate Change and Water (DECCW). The objects of this Act are as follows:

- (a) to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development,
- (b) to provide increased opportunities for public involvement and participation in environment protection,
- (c) to ensure that the community has access to relevant and meaningful information about pollution,
- (d) to reduce risks to human health and prevent the degradation of the environment by the use of mechanisms that promote the following:
 - (i) pollution prevention and cleaner production,
 - (ii) the reduction to harmless levels of the discharge of substances likely to cause harm to the environment,
 - (iia) the elimination of harmful wastes,
 - (iii) the reduction in the use of materials and the re-use, recovery or recycling of materials,
 - (iv) the making of progressive environmental improvements, including the reduction of pollution at source,
 - (v) the monitoring and reporting of environmental quality on a regular basis,
- (e) to rationalise, simplify and strengthen the regulatory framework for environment protection,

- (f) to improve the efficiency of administration of the environment protection legislation,
- (g) to assist in the achievement of the objectives of the *Waste Avoidance and Resource Recovery Act 2001*.

Under section 48 of the POEO Act, premises-based scheduled activities (as defined in Schedule 1 of the POEO Act) require an Environment Protection Licence (EPL). It is expected that the proposed Power Plant would require licensing under the provisions of Schedule 1 of the POEO Act as it is a scheduled activity involving “energy recovery” (No.18), “resource recovery” (No.34) and “waste disposal (application to land)” (No.39). A licence will also be required for the discharge of seawater used for cooling.

4.3.3 Protection of the Environment Operations (General) Regulation 2009

The objective of the Protection of the *Environment Operations (General) Regulation 2009* (General Reg) is to protect the environment and human health by reducing emissions of pollutants for activities under Schedule 1 of the POEO Act. The General Reg achieves this by:

- ensuring the provisions of the POEO Act can be implemented in an efficient and effective manner.
- The POEO Act leaves a number of matters to be prescribed by regulation, such as exemptions for licences, licence and notice fees, definitions and pollution standards. The General Reg supports the efficient and effective administration of the Act by specifying these matters.
- recovering the costs of administering the POEO Act and the Regulation by applying the ‘polluter pays’ principle.
- Administering the POEO Act and the Regulation involves issuing and enforcing environment protection notices and over 3000 licences. The Regulation recovers these costs from polluters and regulated activities.
- supporting and encouraging the use of cost effective and timely strategies to achieve pollutant discharge reductions.

The General Reg provides the framework of the load based licensing (LBL) scheme and ensures that the LBL scheme continues to provide appropriate incentives to industry to reduce emissions and adopt cleaner technologies.

Chapter 7 Part 3 (clause 97) identifies that the occupier of any premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is guilty of an offence. Under clause 96, native forest bio-material means the bio-material comprised in Australian native trees, other than:

- (a) bio-material obtained from:
 - (i) an authorised plantation within the meaning of the *Plantations and Reafforestation Act 1999*, or
 - (ii) an existing plantation within the meaning of section 9 of that Act, or
 - (iii) land on which exempt farm forestry (within the meaning of that Act) is being carried out, or

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- (iv) land on which ancillary plantation operations (within the meaning of section 9 of that Act) are being carried out, or
- (b) sawdust or other sawmill waste, or
- (c) waste arising from wood processing or the manufacture of wooden products, other than waste arising from activities (such as woodchipping or the manufacture of railway sleepers) carried out at the location from which the Australian native trees are harvested.

Under the General Reg, SEFE can burn the proposed waste material from its operations and waste proposed to be imported from other operations. No trees will be burnt and the burning of waste material will not change current forest harvesting practices.

4.3.4 Protection of the Environment Operations (Waste) Regulation 2005

The *Protection of the Environment Operations (Waste) Regulation (2005)* (Waste Reg) performs many functions. For example, the Waste Reg:

- makes requirements relating to non-licensed landfill sites, non-licensed waste activities and non-licensed waste transporting, for example the way in which waste must be stored or transported, reporting and record-keeping requirements;
- provides for certain reporting and record-keeping requirements in relation to scheduled waste facilities and scheduled landfill sites; and
- exempts certain waste streams from the full waste tracking and recordkeeping requirements.

The application of ash to land can be carried out under “The ash from burning uncontaminated wood, timber, forestry residues or paper exemption 2006” (“ash exemption”). This exemption makes it lawful to apply ash to land, provided that certain conditions are met. These conditions include:

- a requirement to test for several heavy metals and electrical conductivity three times per year. The levels of these parameters must be below prescribed concentrations as per Table 2 of the ash exemption; and
- a requirement to test for 24 parameters (as per Appendix I of “Guidelines on Resource Recovery Exemptions (Land Application) (April 2008)”) before commencement of land application and then once every three years. These results must be reported to DECCW.

There is no requirement to make a formal application for the ash exemption providing the above conditions are met. Where the conditions are not met, applying ash to land would be the subject of a formal application to DECCW.

4.3.5 Water Management Act 2000

The *Water Management Act 2000* (WM Act) provides for the protection of river and lakeside land in NSW, formerly held under the *Rivers and Foreshore Improvements Act 1948* for areas covered by a Water Sharing Plan.

Under the WM Act it is necessary to consider any development within 40 m of a watercourse, defined as the bed and banks of a river, lake or estuary. The nearest freshwater bodies to the site would be the constructed earthen dam 2 km to the south of the site on Tiniki Creek within the Ben Boyd National Park. This dam currently supplies the site with water in conjunction with Bull Creek Dam which was constructed in the 1970s. Bull Creek Dam is approximately 11 km south of the mill. In addition to the distance of the facility to watercourses, as noted above, approvals under the WM Act are not required for a project being considered under Part 3A of the EP&A Act.

4.3.6 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the conservation of threatened species, populations and ecological communities of animals and plants. It provides a framework for the assessment of any action that may impact on threatened species.

Section 5A of the EP&A Act lists seven factors that must be taken into account in the determination of the significance of potential impacts of a proposed development on threatened species, populations or ecological communities (or their habitats) listed under the TSC Act. The so-called 7-part test is used to determine whether a proposed development is likely to impose 'a significant effect' on threatened biota. For development applications under Part 4 and 5 of the EP&A Act, if the 7-part test concludes that there is 'likely' to be 'a significant effect' on a listed species, population or EEC, an SIS must be prepared.

Under Part 3A of the EP&A Act there is no requirement for Section 5A of the EP&A Act to be addressed; hence there is no requirement for an SIS. Instead, the flora and fauna assessment must be prepared according to the Environmental Assessment Requirements, which refer to the draft *Guidelines for Threatened Species Assessment* (DECC 2005).

Notwithstanding the statutory requirements for Part 3A of the EP&A Act, the approach adopted in the assessment, in accordance with the issued DGRs, has been to address Section 5A and complete the 7-part test as a guide to assessing impacts on threatened biota that could be affected by the Project. This assessment is discussed further in **Chapter 8** and **Chapter 9**. The assessment concluded that there is unlikely to be a significant impact on listed TSC Act species or communities.

4.3.7 Fisheries Management Act 1994

To assist in the protection of key fish habitats, the *Fisheries Management Act 1994* (FM Act) enables the Minister for Fisheries to make Habitat Protection Plans (HPPs) for the protection of any fish habitat, "whether the habitat is critical for the survival of the species or required to maintain harvestable populations of fish". The following apply to the Proposal:

- Habitat Protection Plan 1 – General. This plan includes management measures to protect various aquatic habitats such as seagrasses from damage. It outlines the process for individuals or agencies to follow when consent, notification or consultation is required.
- Habitat Protection Plan 2 – Seagrass. The primary objective of this Plan is to ensure there is no net loss of seagrasses within the coastal and estuarine waters of NSW by providing guidance for certain activities.

Furthermore, a licence is required for the following relevant activities:

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- cutting, removal, damage or destruction of mangroves, seagrasses or any other prescribed marine vegetation; and
- dredging and reclamation

Also, an assessment of the potential impacts of the Proposal on threatened species, populations, ecological communities and critical habitat listed on the FM Act must be undertaken in accordance with section 5A of the EP&A Act (7 part test).

4.3.8 Heritage Act 1977

The *Heritage Act 1977* provides for the protection of items of local, regional and State heritage significance. It contains a list of State Heritage Items and outlines the process of assessment of development which may impact items of heritage significance.

As outlined in **Chapter 15**, non-indigenous historical sites are not situated within the location of the proposed Power Plant. Given this, no further archaeological work will be required with regard to historic sites or places.

It should be noted that projects approved under Part 3A of the EP&A Act do not require additional approvals under Part 4 of the Heritage Act (interim heritage orders and listing on the State Heritage Register) or an excavation permit under section 139 of the Heritage Act.

4.3.9 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) is administered by DECCW and provides the basis for the legal protection of flora and fauna in NSW. Unless a licence is obtained under the NPW Act (or TSC Act) it is an offence to harm any animal that is protected or is a threatened species, population or ecological community. It is also an offence to pick any plant that is protected or is a threatened species, population or ecological community. In addition, a person must not, by act or omission, damage any critical habitat. However, under s.118A(b)(iv) of the NPW Act, these provisions do not apply for a project approved under Part 3A of the EP&A Act. Impacts to marine species are discussed in **Chapter 8** and endangered ecological communities are discussed in **Chapter 9**.

The NPW Act also provides for the conservation of objects, places or features (including biological diversity) of cultural value within the landscape. A person who, without first obtaining the consent of the Director-General, knowingly destroys, defaces or damages, or knowingly causes or permits the destruction or defacement of or damage to, an Aboriginal object or Aboriginal place is guilty of an offence. However, under s.75U(d) of the EP&A Act, a permit under section 87 or a consent under section 90 is not required. Impacts to Aboriginal heritage are detailed in **Chapter 15**.

4.3.10 Native Vegetation Act 2003

The *Native Vegetation Act 2003* (NV Act) was established to prevent broad scale clearing, protect native vegetation of high conservation significance, improve the condition of existing native vegetation and encourage the regeneration of native vegetation in NSW. In assessing applications, consent authorities apply the 'maintain or improve test', which means assessing how the proposal maintains or improves environmental values such as salinity, water, soils and biodiversity.

The NV Act requires approval from the relevant Council or Catchment Management Authorities (CMA) (in this case, the Lachlan CMA) for the clearing of native vegetation (with the exception of land listed in Schedule 1 of the Act). CMAs administer property vegetation plans under the NV Act

According to s.75U(e) of the EP&A Act, an authorisation under section 12 of the NV Act to clear native vegetation or State protected land is not required for a project approved under Part 3A. Hence, the NV Act does not apply to the current project.

4.3.11 Contaminated Land Management Act 1997

The *Contaminated Land Management Act 1997* (CLM Act) has been established to control the risk of harm to human health and the environment, and sets out criteria to determine whether these risks exist. It provides DECCW with the authority to declare sites for investigation and remediation or voluntary management agreements.

Under Section 60 of the CLM, SEFE is required to notify DECCW if contamination is discovered and the contamination presents a significant risk of harm. The potential for contamination to exist on site and the potential impact of the proposed Power Plant is considered in **Chapter 13**. SEFE would continue to carry out site operations in accordance with the relevant requirements established in the CLM Act.

4.3.12 Noxious Weeds Act 1993

The *Noxious Weeds Act 1993* (NW Act) defines the roles of government, departments and private landholders in the management of noxious weeds. The NW Act establishes categorisation and controls actions for the various listed noxious weeds according to their potential to cause harm to the local environment. Weeds are categorised in Control Classes 1 through 4 and managed accordingly.

The environmental assessment considers these management measures in **Chapter 9** and any mitigation measures would be included in the EMP for the construction and operation phases of the development.

4.3.13 Waste Avoidance and Resource Recovery Act 2001

The objective of the *Waste Avoidance and Resource Recovery Act 2001* (WA&RR Act) is to encourage the most efficient use of resources, to reduce environmental harm and to provide for the continual reduction in waste generation in line with the principles of ecological sustainable development. To meet the objectives of the WA&RR Act, a resource management hierarchy has been established, comprising:

- avoiding unnecessary resource consumption;
- recovering resources (including reuse, reprocessing, recycling and energy recovery); and
- disposal (as a last resort).

The objectives of the WA&RR Act have informed the design of the proposed Biomass Power Plant. These measures would also be incorporated into both the construction and operation of the Project and incorporated in the CEMP and OEMP.

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4.3.14 Other Acts

Occupational Health & Safety Regulation 2001

Chapter 6A of the *Occupational Health & Safety Regulation 2001* (OHS Regulation) provides the requirements covering the premises where substances classified as Dangerous Goods are kept. These requirements include placarding of Dangerous Goods depots, annual notification requirements to NSW WorkCover Authority and requirements for a manifest.

SEFE would be required to notify WorkCover NSW of Dangerous Goods stored and handled above “manifest quantities” as listed in Schedule 5 of the OHS Regulation.

Licences / approvals may also be required under *Occupational Health & Safety Act 2000*, *Electricity Supply Act 1995* and *Pipelines Act 1967*.

4.4 Environmental Planning Instruments

According to Section 75R(3) of the EP&A Act, environmental planning instruments, approval for a project may (but is not required to) take into account the provisions of any environmental planning instrument for projects subject to Part 3A of the Act.

This section considers the provisions of such environmental planning instruments in relation to the project.

4.4.1 State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) are planning instruments under the EP&A Act that address more specific planning matters, where it is not considered appropriate for the EP&A Act to provide the detail. This section discusses SEPPs other than the Major Projects SEPP. This SEPP was discussed in **Section 4.3.1** above.

State Environmental Planning Policy No. 33 - Hazardous and Offensive Development

This applies to development for the purpose of potentially hazardous industries, and potentially offensive industries. The proposed development would constitute a potentially hazardous and offensive industry as defined under clauses 3 and 4 of SEPP 33.

As SEPP 33 would apply the consent authority must consider the Project within the context of its compliance with current circulars and / or guidelines published by the DoP and Australian Standard relating to hazardous or offensive development.

An assessment has been conducted for the proposed Power Plant and is presented in **Chapter 13**. In general, management measures can be put in place during the design phase as well as safety management systems put in place during the operation of the facility to minimise the potential for such risks to have significant onsite or offsite impacts.

State Environmental Planning Policy No. 44 - Koala Habitat Protection

SEPP 44 aims to ‘encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas’. SEPP 44 applies to local government areas (LGAs) listed under Schedule 1 of the Policy. The study area lies within the Bega Valley LGA, which is listed under Schedule 1 of SEPP 44.

SEPP 44 requires that a Koala Plan of Management be prepared for developments or LGAs where 'potential koala habitat' and 'core koala habitat' are likely to be affected by development. Under the SEPP, where potential habitat is identified, the area must be investigated for core koala habitat, defined as *"an area of land with a resident breeding population of koalas, evidenced by attributes such as breeding females and recent sightings and historical records of a population"*.

Core Koala habitat was not identified onsite in the Terrestrial Biodiversity assessment (**Chapter 9**).

State Environmental Planning Policy (Infrastructure) 2007

The aim of *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure) is to facilitate the effective delivery of infrastructure across NSW by:

- (a) improving regulatory certainty and efficiency through a consistent planning regime for infrastructure and the provision of services, and
- (b) providing greater flexibility in the location of infrastructure and service facilities, and
- (c) allowing for the efficient development, redevelopment or disposal of surplus government owned land, and
- (d) identifying the environmental assessment category into which different types of infrastructure and services development fall (including identifying certain development of minimal environmental impact as exempt development), and
- (e) identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and
- (f) providing for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

SEPP Infrastructure is subordinate to SEPP Major Projects in the event of an inconsistency between the two policies.

Under Part 3 Division 4 (34) of the Infrastructure SEPP, development for the purpose of electricity generating works may be carried out by any person with consent on land in a prescribed zone. Division 4 (33) defines prescribed land as one of the specified eight land use zones or a land use zone that is equivalent to any of those zones. Under the Standard Instrument - Principal Local Environmental Plan, Zone RU1 Primary Production has the following objectives:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

These objectives are broadly consistent with the objectives identified under the *Bega Valley Local Environmental Plan 2002* for the SEFE land which is zoned 1(a) Rural General Zone (**Section 4.4.3**).

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Under Part 3 Division 4 (38), development on any land for the purpose of electricity generating works that burn native forest bio-material (within the meaning of clause 57L of the *Protection of the Environment Operations (General) Regulation 1998*) is prohibited.

The *Protection of the Environment Operations (General) Regulation 1998* has been repealed and *The Protection of the Environment Operations (General) Regulation 2009* is now in force. Clause 96 of the new regulation defines native forest bio-material (**Section 4.3.3**). The waste material that will be burnt in the Power Plant is not defined as native forest bio-material under the Regulation.

The construction and operation of the Power Plant would not involve 200 or more motor vehicles, and as such, the proposed development would not be considered as a 'Traffic generating development to be referred to the RTA' as listed on Schedule 3 of the SEPP.

State Environmental Planning Policy No 71 - Coastal Protection

SEPP 71 applies to the coastal zone and is relevant to the Proposal. The aims of this Policy are:

- (a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and
- (b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and
- (d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and
- (e) to ensure that the visual amenity of the coast is protected, and
- (f) to protect and preserve beach environments and beach amenity, and
- (g) to protect and preserve native coastal vegetation, and
- (h) to protect and preserve the marine environment of New South Wales, and
- (i) to protect and preserve rock platforms, and
- (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and
- (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and
- (l) to encourage a strategic approach to coastal management.

This Policy:

- (a) identifies State significant development in the coastal zone, and
- (b) requires certain development applications to carry out development in sensitive coastal locations to be referred to the Director-General for comment, and

(c) identifies master plan requirements for certain development in the coastal zone.

This Policy also aims to further the implementation of the Government's coastal policy.

State Environmental Planning Policy 62 – Sustainable Aquaculture

SEPP 62 applies to all developments that may have an adverse effect on oyster aquaculture developments or a priority oyster aquaculture area. Before determining a development application for any development, a consent authority must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area. If it suspects that the development may have that effect, then it must give notice of the application to the Director-General of the Department of Primary Industries and consider any comments received. The development is not located in vicinity of oyster aquaculture leases and therefore this policy does not apply.

4.4.2 Regional Environmental Plans

Lower South Coast Regional Environmental Plan (REP No. 2)

The objectives of REP No. 2 are:

- (a) to develop regional policies that protect the natural environment and promote the orderly and economic development and use of land and other resources in the region, consistent with conservation of natural and man-made features,
- (b) to consolidate and amend various existing policies applying to the region, to make them more appropriate to regional needs, and to place them in the context of regional policy,
- (c) to provide a basis for the coordination of activities related to growth in the region and to encourage optimum economic and social benefit to the local community and visitors to the region, and
- (d) to establish a regional planning framework for identifying priorities for further investigation to be carried out by the Department of Planning and other agencies.

As the Project is being assessed under Part 3A of the EP&A Act, REP No. 2 does not strictly apply to the development. However, the proposed development is not considered to be in conflict with the stated goals and objectives of REP No. 2 considering the existing landuse of the SEFE site.

4.4.3 Local Environmental Planning Instruments

Bega Valley Local Environment Plan 2000

The proposed development site is zoned 1(a) Rural General Zone under Part 2 of the *Bega Valley Local Environmental Plan 2002*. The objectives of Zone 1 (a) are:

- (a) to encourage continued growth in the area's rural economic base,
- (b) to encourage other forms of development, including tourism, that are compatible with agricultural activities and do not create undesirable environmental and cultural impacts,
- (c) to protect and conserve the productive potential of prime crop and pasture land,
- (d) to maintain the scenic amenity and landscape quality of the area,

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- (e) to promote the protection, and the preservation and enhancement, of natural ecological systems and processes,
- (f) to provide proper and coordinated use and protection of rivers, riparian corridors and water catchment areas,
- (g) to promote the economic provision of services compatible with the nature and intensity of development and the character of the area,
- (h) to ensure that development and management of the land has minimal impact on water quality and environmental flows of receiving waters,
- (i) to maintain significant features of natural and cultural heritage.

Within Zone 1 (a) the proposed Power Plant is permissible with consent.

The LEP is currently undergoing review. Discussions with Council indicate that the SEFE site could be rezoned to a general industrial zoning which would be more compatible with the industrial nature of the operations.