



Additional crossing of Clarence River Grafton

Summerland Way

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APPENDIX A

Legal and Zoning Issues

Grafton Bridge Project

Route Selection for additional crossing of the Clarence River at Grafton

LEGAL & ZONING ISSUES

December 2003



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1 EXECUTIVE SUMMARY

This report examines legislation relevant to the project of construction of a bridge over the Clarence River at Grafton, somewhere in the stretch of the river between Susan Island and Elizabeth Island.

The conclusion of the report is that the legislative process to be followed may be that set out in Part V of the Environmental Planning & Assessment Act 1979 or it may be a “mixture” of Part IV (development application). Additional data may also be required to determine whether some legislation, mainly of an environmental nature, will apply.

The report identifies legislation relevant to the project; a list of statutory authorities, many of which are responsible for implementation of one or more items of this legislation, is also given.

Much legislation relating to environmental issues is in a state of flux at the time of preparation of this report. It is therefore particularly important that all statutory authorities, even those who may have only a remote interest in the project, be involved early in the process and kept “in-the-loop” at all stages as the project proceeds.

2 INTRODUCTION

The NSW Roads and Traffic Authority (RTA) has commissioned an examination of localities for improving traffic flows across the Clarence River at Grafton.

Improvements can be brought about by a new bridge and there are several localities being examined.

This report reviews the legislation which applies to the project of building a new bridge. The report is not site-specific; it is based on the premise that any new bridge would cross the river in the stretch somewhere between Susan Island and Elizabeth Island.

Some issues are generic, ie they will relate to any of the localities. Other issues may be site-specific, for instance the application of flora/fauna protection legislation.

Whilst likely relevant legislation of this kind is described in this report, the extent of its application can only be determined after specialist study of a particular locality.

The report sets out in an appendix the process required to bring a particular option to the point where construction can begin. Another appendix lists the statutory authorities likely to have an interest in the project.

Our particular thanks to Simone Garwood of the RTA who provided valuable advice in the preparation of this report.

3 COMMONWEALTH LEGISLATION

3.1 Environment Protection & Biodiversity Conservation Act 1999

This Commonwealth Legislation aims to protect the environment by requiring approval for activities which will have a significant effect on/or will involve;

- World Heritage properties;
- “Ramsar” wetlands;
- listed threatened species or ecological communities;
- listed migratory species; and
- Commonwealth marine areas.
- Nuclear action

In the study area there are no;

- World Heritage properties;
- “Ramsar” wetlands;
- threatened ecological communities.
- Commonwealth marine areas;or

within the meaning of the Environment Protection & Biodiversity Conservation Act 1999.

There are several;

- threatened species.
- migratory species and
- listed marine species (all birds)

within the meaning of the Act, likely to occur in the study area.

Specialist advice is required to determine whether these species or their habitat do occur in the study area. If the project will have a significant effect on one or more of these species or their habitat approval of the Commonwealth Minister for the Environment under Part 9 of the Environment Protection & Biodiversity Conservation Act 1999 must be obtained.

It seems reasonable to assume that the construction works for a bridge and its approaches will not involve nuclear action.

3.2 Australian Heritage Commission Act 1975

This Commonwealth Act sets-up the Australian Heritage Commission and the Register of the National Estate.

The Commonwealth Australian Heritage Commission Act established the Australian Heritage Commission and provides protection for Aboriginal and historic cultural sites, and natural sites of significance to Australians.

The Australian Heritage Commission maintains the Register of the National Estate (RNE), which lists significant sites of the natural and cultural environments, including heritage places important to Aboriginal, European and Asian cultures in Australia.

Any place that has been nominated and assessed as having cultural heritage significance at a national level can be added to the RNE. Places are assessed against formal criteria included in the Act in 1990. The general purpose of the register is to 'alert and educate all Australians to the existence of places of National Estate significance, and to provide an essential reference and a working tool for balancing conservation and development decisions' (Pearson & Sullivan 1995: 48-9). Protection under the Australian Heritage Commission Act is only enforceable, however, when the place in question is on Commonwealth property or affected by actions of the Australian government. Listing on the RNE has no direct legal constraint on owners of private property, or on state or local governments.

The Register of the National Estate lists 18 sites in Grafton. Most of these are buildings or specific single areas; two are wider areas, the Grafton Conservation Area (covering essentially Grafton south of the railway and much of South Grafton) and the Grafton Civic Group (an area within the Grafton Conservation Area).

The Australian Heritage Commission has power over the activities of Commonwealth authorities but has no direct power over State activities such as the Grafton Bridge project.

The Commission usually leaves heritage issues to be addressed at a State or local level. The Commission should be informed of the project.

4 PLANNING LEGISLATION

4.1 Environmental Planning & Assessment Act 1979

So far as this project is concerned the relevant provisions of this Act are;

- Part IV which sets-out how development applications are made and determined.
- Part V which sets-out how determinations of projects which do not require development approval are made.

The fundamental distinction between these two kinds of development requires examination of environmental planning instruments made in accordance with Part III of the Act.

In the present case, two such instruments are relevant;

- Grafton Local Environmental Plan 1988 (LEP 1988)
- State Environmental Planning Policy No 4 (SEPP 4)

4.2 Grafton LEP 1988

Zoning Provisions

Grafton LEP 1988 places land in one of fourteen zones. Public roads are not zoned as such, but generally take-on the zoning of adjoining land. In some instances, such as the open space zoning of the unformed ends of roads at the riverbank, the zoning reflects a land use and value other than "road".

Clause 8 of the LEP sets-out the various zones used in the LEP and categorises developments as either;

- Permissible without consent,
- Permissible with consent or
- Prohibited.

The term “consent” here means development consent under Part IV of the EP&A Act.

LEP 1988 does not define “road”, although the term is used in the zoning tables referring to 1(d) Rural and 6(a) and 6(b) Open Space zones, where “roads” require consent. The term “road” does not appear in the zoning tables referring to other zones.

The LEP adopts, in part, the EP & A Model Provisions 1980, including the following ‘savings’ clause;

35 Nothing in the local environmental plan shall be construed as restricting or prohibiting or enabling the consent authority (i.e. the Council) to restrict or prohibit.

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

(b)

(c)

Schedule 1 includes;

8 The carrying out of any development required in connection with the construction, reconstruction, improvement, maintenance or repair of any road except the widening, realignment or relocation of such road.

In the absence of any definition of “road” in the LEP the word is taken as having its usual and customary meaning, that is, a road available for use by the public. Guidance is also given by the Local Government Act 1993, which defines “road” as;

(a) highway, street, lane, pathway, footpath, cycleway, thoroughfare, bridge, culvert, causeway, road-ferry, ford, crossing, by-pass and trackway, whether temporary or permanent, and

(b) any part of a road and any part of any thing referred to in paragraph (a), and

(c) any thing forming part of a road or any thing forming part of any thing referred to in paragraph (a).

Any new river crossing and its approaches is likely to pass through one or more of the 14 zones defined by the LEP. Three of those zones, 1(d) Rural and 6(a) and 6(b) Open Space, require development consent for “roads”.

In the other zones roads are not listed as “Without Development Consent” or “Prohibited”. In those zones developments which are permissible with development consent are described by exclusion, that is, developments for a purpose which is neither permissible without consent nor prohibited.

It is therefore concluded that, under clause 8 of LEP1988, development consent for “roads” is required by the zoning tables in all zones.

Clause 35 of the Model Provisions adopted by the LEP prevents the consent authority, in this case the Council, from “restrict(ing) or prohibit(ing)” development for the purposes of a road.

This clause does not remove the necessity for a development application; it only limits the powers of the Council in dealing with such an application.

Development consent, as required by the zoning tables, may only be obtained by the making and approval of a development application.

In summary, the effect of clause 8 of Grafton LEP 1988 on the proposal is:-

- Consent for the use, as a “road”, is required and
- the Council may not refuse an application for such consent, nor may it impose any conditions which have the effect of restricting the proposal.

The greater part of any bridge would be located on or over the Clarence River. The river is part of the Grafton local government area, and LEP 1988 applies to “... the whole of the land within the City of Grafton”.

The river is uncoloured on the map which accompanies LEP 1988. Clause 20 of the LEP provides that “a person shall not carry out development on land shown uncoloured on the map without the consent of the Council”.

The effect of clause 20 is the same as the effect of clause 8, i.e.

- That development consent is required for any bridge.
- The Council may not refuse an application for such consent, nor may it impose any conditions which have the effect of restricting the proposal.

These effects of the LEP are, however, modified by State Environmental Planning Policy No 4.

Heritage Provisions

The LEP, at clauses 28 and 29, requires consent for works which affect heritage items, places or conservation areas. There are numerous heritage items, including trees, and one conservation area, which could be affected by any bridge location.

The discussion set-out in the Zoning Provisions section above applies equally to the heritage provisions of the LEP and will not be repeated here. The conclusion is the same, ie that the effect of clauses 28 and 29 of the LEP is that development consent is required for any part of the project which affects heritage items or a conservation area. This effect of the LEP is not modified by SEPP 4. (see 4.3 below).

4.3 State Environmental Planning Policy No 4 (SEPP 4)

The EP&A Act allows the Minister for Planning to make a type of environmental planning instrument called a State Environmental Planning Policy (SEPP). SEPPs address matters which the Minister considers to be of environmental significance for the State.

SEPP 4 is one of a range of SEPPs which the Minister has made. This SEPP addresses matters which should not require development consent. SEPP 4, like most SEPPs, contains a provision that the SEPP takes precedence over another environmental planning instrument where that instrument conflicts with the SEPP.

SEPP 4 contains the following clause;

11C Classified roads and toll works

(1) *In this clause;*

“classified road” means a classified road within the meaning of the State Roads Act 1986.

“tollwork”

(2) *Where, in the absence of this clause, development for the purposes of a classified road....*

may be carried out only with development consent being obtained therefore, that development may be carried out without that consent.

A “classified road” is defined in the State Roads Act as;

(a) a main road

It is assumed that any land or existing roads used in connection with a new bridge will be gazetted as Main Road 83 (The Summerland Way).

State Environmental Planning Policy No 4 contains another clause;

2(6) Nothing in this Policy permits the alteration.....or demolition of

(a) a heritage item, an item of the environmental heritage

(b)

(c)

This clause is somewhat at odds with clause 11c but it is likely that the earlier numbered clause 2(6) takes precedence over clause 11C.

State Environmental Planning Policy 4 also provides that

4(2) this Policy does not apply to;

(a) land which is reserved under an environmental planning instrument for use exclusively for a purpose referred to in section 26(c) of the Act.

(b) (or) a purpose under section 342G (3) (e), (f), (g), (h) or (j) of the Local Govt Act 1919

The purposes referred to in the above are public purposes such as roads and parks.

Current environmental planning instruments do not “reserve” land for these purposes. For instance, public reserves, whether existing or proposed, are zoned Open Space, and an appropriate clause in the EPI (usually an LEP) provides for acquisition of any land so zoned but not already in public ownership.

Section 27 of the EP&A Act sets-out requirements of this kind.

It is likely, therefore, that SEPP 4 does not apply to land zoned Open Space in Grafton LEP 1988.

The effect of State Environmental Planning Policy No 4 on the proposal is that;

- (a) The proposal, as development for the purposes of a main road, does not require consent in any zone except zones 6(a), 6(b) and 8 of Grafton Local Environmental Plan 1988;*
- (b) Any part of the proposal within zones 6(a), 6(b) or 8 under LEP 1988 requires development consent.*
- (c) Should the proposal involve the alteration or demolition of a heritage item or an item of the environmental heritage (listed in schedule 1 of Local Environmental Plan 1988 and/or in schedule 2 of North Coast Regional Environmental Plan 1988) the provisions of;*
 - Clauses 28 and 29 of the Local Environmental Plan and/or
 - Clauses 36 and 36A-D of the Regional Environmental Plan will apply.

It seems at this early stage that Part V of the Environmental Planning & Assessment Act will apply to the greater part of the proposal, whichever option is chosen. Should the chosen option involve 6(a), 6(b) or 8 zones or the alteration or demolition of heritage items, Part IV of the Act will apply to that proposed alteration or addition only; Part V will continue to apply to the remainder.

A description of the Part V process relating to this project is contained in Appendix A to this report. The Part IV process is not described, as its application or not will depend upon the chosen option.

It is sufficient to say that the Part IV process will require submission of a development application to Grafton City Council; community and relevant statutory authority views would be invited and the matter determined by the Council.

5 OTHER LEGISLATION

5.1 Threatened Species Conservation Act 1995

This Act provides for the protection of identified threatened and endangered species and their habitat. Identification is by listing in schedules to the Act.

There is provision for obtaining approval, in the form of a licence, to harm these species and/or their habitat.

Fully-detailed flora/fauna studies of a particular proposal would be necessary to assess the impact (if any) of this legislation.

5.2 Native Vegetation Conservation Act 1997

This Act aims to protect native vegetation in NSW. It replaced State Environmental Planning Policy 46 (although some small part of the SEPP is carried-on by the Act).

The Act does not apply to certain land, including land zoned residential, industrial or business. Much of the land in the present study area is in one of these zones.

The Act allows a roads authority, acting under section 88 of the Roads Act 1993, to remove or lop trees so as to carry out road work or to remove a traffic hazard.

In this instance the RTA has the functions of the “roads authority” as defined in the Roads Act 1993.

Those exemptions are, in any case, intended to facilitate minor road works and maintenance. In the case of a major work such as the present proposal, issues relating to vegetation should be addressed in the REF/EIS, not by way of “exemption” provisions.

The existence or otherwise of native vegetation in the area of any particular locality(s) (but not in residential, industrial or business zones) is a matter for expert study and the effects (if any) of the NVC Act 1997 can only be addressed at a later stage.

5.3 Protection of the Environment Operations Act 1997

This Act will operate in the construction phase of the proposal. It provides for the licensing of facilities which have a high potential for pollution.

Facilities which require licensing are listed in schedule 1 of the Act; those which may be relevant to the project are;

- Extractive industries.
- Bitumen pre-mix or hot-mix industries (with an exclusion for construction works in certain circumstances).
- Concrete works with a production capacity of more than 30 000 tonnes/year.
- Crushing plants with a capacity of more than 150 tonnes/day or 30000 tonnes/year.

This legislation will require more detailed examination at a later stage of the project.

5.4 Rural Fires and Environmental Assessment Legislation Amendment Act 2002

This Act amended relevant planning legislation so as to give the NSW Rural Fire Service a stronger role in rezoning and development processes.

The Act has no application to a “Part V” activity; as it only applies to certain types of development it would have no application to any “Part IV” component of the proposal.

5.5 National Parks & Wildlife Act 1994

This Act only applies to the current project if it affects Aboriginal objects or places.

Section 90 of this Act (as amended by the National Parks & Wildlife Amendment Act 2001 – Schedule 3) creates an offence of damaging aboriginal objects or places unless the consent of the Director-General of the Department of Environment & Conservation is obtained.

Archaeological study will be required as part of any review of environmental factors for the project, and this study will determine the relevance or otherwise of the NP & W Act at that stage.

It may be prudent during the construction stage to retain an appropriate person to oversee excavation work. The Department of Environment and Conservation has a standard procedure for action should Aboriginal objects be discovered during construction works.

5.6 Crown Lands Act 1989

The land which forms the bed of the Clarence River is Crown land. A crossing would pass over this land and would almost certainly require supports on the land.

Susan Island and Elizabeth Island are also Crown land and the same situation would apply.

The Minister for Natural Resources is empowered by the Crown Lands Act 1989 to issue a license which permits “..... the use or occupation of Crown land for such purposes as the Minister thinks fit.”

Application to the Department of Infrastructure, Planning & Natural Resources for the issue of such a license should be made when a specific proposal has been identified.

5.7 Fisheries Management Act 1994

This Act is the basis for the operations of NSW Fisheries.

Section 199 of the Act relates to dredging or reclamation by public authorities. The relevant public authority must consult the Minister for Agriculture and Fisheries before carrying out any such work.

This formal consultation should be done when a specific proposal has been decided upon and a review of environmental factors has been prepared; preliminary consultation should commence now.

5.8 Roads Act 1993

The Roads Act, in sections 78-81 authorises a “roads authority” to “construct bridgesacross navigable waters”.

The RTA has, in this case, the functions of a roads authority and the procedure for public notification, consideration of submissions and decision-making set out in sections 78 *et seq* of the Roads Act should be followed.

Whilst this process is separate to the “Part V” decision-making process it could be run concurrently with that process.

5.9 Rivers & Foreshores Improvement Act 1948

This Act provides, in Part 4, section 23, that, “in respect of any work to which this Act extends which may affect navigation upon the inland waters of the Statesuch provision for navigation shall be made as may be determined by the Minister for Ports and no work which shall prevent navigation in such waters shall be constructed without the approval of the Minister for Ports.”

“Work to which this Act extends” would be carried-out as part of the construction of a new bridge and approaches.

The Minister for Transport has, at present, the functions of the Minister for Ports. The NSW Waterways Authority is the relevant department and should be consulted.

Excavation in or near the river normally requires a permit under Part 3A of the Rivers & Foreshore Improvement Act. The former DLaWC, now part of DIPNR, is responsible for administration of Part 3A.

The RTA is exempt from Part 3A by reason of section 22(1)(b) of that Part; it is not exempted from Part 4.

The Water Management Act 2000 will eventually replace Part 3. The WM Act had not come into force at the time of writing this report.

5.10 Heritage Act 1977

This Act requires approval of the Heritage Council (the approval body) for demolition of an item listed on the State Heritage Register or work which might affect such an item (clause 57).

There are seven items on the Register which might be affected by the proposal.

If one (or more) of these items is to be demolished or damaged by a particular option the approval of the Heritage Council must be sought.

5.11 North Coast Regional Environmental Plan 1988

NCREP 1988 provides requirements and guidelines for rezonings under Part III of the EP&A Act and for development applications/determinations under Part IV of that Act.

The REP will apply to the present project if the selected option requires the alteration or demolition of a heritage item. Procedures for dealing with the necessary (Part IV) development application are set-out in the REP.

The REP may also apply to a development application for parts of the proposal within certain zones (described earlier) under Grafton LEP 1988.

The relevance of the REP provisions should be checked in detail once a specific locality is chosen. At this early stage it appears that only clause 81 of the REP, which relates to development applications for developments near waterways, could be relevant.

5.12 State Environmental Planning Policies

There are 60 State Environmental Planning Policies current at the date of this report.

The effects of SEPP 4 have been discussed. There are no other SEPPs which might apply to this project.

In particular, there is no land subject to SEPP 14 (Coastal Wetlands) or SEPP 26 (Littoral Rainforests) which could be affected by the project.

5.13 Other Legislation

There is other legislation that may apply during the construction phase, eg the Water Act 1912 may apply to the drawing of water.

This report does not “drill-down” to that level. A Construction Environmental Management Plan or similar document will be necessary at the construction planning stage and relevant “low-level” legislation should be addressed at that stage.

6 SUMMARY

The construction of a new crossing over the Clarence River at Grafton, at a yet-to-be-determined location within the study area of this report is, at first glance, an “activity” as defined in Part V of the Environmental Planning & Assessment Act 1979.

There is, at present, no specific proposal; the project is not yet at that stage. Adoption of a specific proposal, after examining localities, will be the point where the process set-out in Part V can be initiated.

It may be that the selected specific option will require alteration or demolition of a heritage item and/or that part of the work will be on land zoned 6(a), 6(b) or 8. If so, that part only of the proposal will be subject to Part IV of the Act, i.e., a development application to, and approval of, Grafton City Council will be required.

A detailed study of environmental factors will be the vehicle for examination of the issues relating to the greater part (the Part V element) of a particular proposal. Because the majority, or perhaps all, of the proposal will be considered under Part V, most “environmental” legislation (which is largely directed at zoning (Part III) and DA (Part IV) processes) is not relevant.

Notwithstanding, the statutory authorities responsible for that legislation have a considerable interest in the project and should be consulted.

Legislation of the kind which creates an offence is directly relevant. This legislation is mainly concerned with flora, fauna and indigenous issues. The application or not of this kind of legislation will only be determined after specialist study to assess the likelihood of effects on flora, fauna and indigenous issues.

At this stage it is understood that relevant authorities have been informed of the project. Those authorities should be asked to define their interest in the project to ensure that all issues are addressed.

At a later stage, when the specific “activity” is decided upon, more detailed advice from each authority should be sought.

A listing of statutory authorities which research for this report has indicated are relevant to the proposal is contained in Appendix B.

APPENDIX A

Part V description

PART V OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

1 REQUIREMENTS OF PART V

Activities and Determining Authorities

Part V of the Environmental Planning and Assessment Act sets-out a framework for decision-making where development consent for a proposal is not required.

A proposal of this kind is defined by the Act as an “activity”. An “activity” must be a specific proposal and it should be noted, that, at the current stage of the present project, there is no specific proposal; there will be no “activity” until such time as a specific proposal is identified by the examination of localities.

Once a specific “activity” is identified it will require a decision of any “determining authority”.

“Determining authority” as defined in the Act includes:-

“.....the Minister or public authority by or on whose behalf the activity is or is to be carried out”

The Roads & Traffic Authority and its Minister are clearly a “determining authority” under the Act.

“Determining authority” also includes:-

“.....any Minister or public authority whose approval is required in order to enable the activity to be carried out”.

“Approval” is defined as

- (a) *A consent, licence or permission or any form of authorisation and*

There will clearly be “approval” required from public authorities other than the RTA; each of those authorities will be a “determining authority” for the purposes of Part V of the Act.

Environmental Impact of Activities

The Act (section 111) requires that:-

“.... A determining authority in its consideration of an activity shall examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity”.

In other words, all determining authorities must be fully informed by the necessary studies and reports before making a decision on a proposal.

Environmental Impact Statements

The Act requires (S.112) that, in considering certain kinds of activities, a determining authority shall obtain, examine and consider an Environmental Impact Statement (EIS) before making its decision.

An EIS is required where an activity is likely to;

“ significantly affect the environment (including critical habitat) or threatened species, populations or ecological communities, or their habitats”

The decision must be made by the determining authority itself. Some guidance in making the decision is given by Cl 228 of the Environmental Planning & Assessment Regulation which lists the following factors to be “taken into account concerning the impact of an activity on the environment”;

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

It will be necessary first to identify one particular proposal from amongst the localities and then obtain, for that proposal, sufficient information on each of the matters listed in cl. 228 of the EP & A Regulation before a decision is made.

2 PROCESSES UNDER PART V

The previous section of this appendix advised that a decision on whether an EIS is required cannot be made at present. It is still worthwhile at this stage to briefly review the possible future process localities.

No Environmental Impact Statement

If a decision is made to the effect that an REF is not required, a final decision on the project may not be made until the RTA or its Minister has examined and taken into account “to the fullest extent possible all matters affecting or likely to affect the environment”.

This requirement would be addressed by preparation and consideration of a Review of Environmental Factors (REF); the term is not used in the legislation but has become an accepted title for the kind of document required.

The content of an REF should not differ materially from the content of an EIS; in each case it is necessary to satisfy the same requirement for full and complete consideration.

After consideration of a REF the RTA or its Minister may decide;

- To proceed with the proposal as originally formulated.
- To modify the proposal so as to reduce or eliminate adverse environmental effects or.
- Abandon the proposal.

Environmental Impact Assessment

As described above, there should be little or no difference in content and substance between a REF and an EIS for the same activity; the difference is in procedure.

There is a general form for an EIS set-out in clauses 229+230 of the EP&A Regulation. The Director-General of Planning may (and usually does) provide more detailed specifications under clause 231.

The RTA will not be the only determining authority in this case; other statutory bodies will also be determining authorities. To avoid the necessity for each of those authorities to obtain and consider an EIS for the project S110A of the Act provides for a “nominated determining authority”.

The practical effect of this is that only one EIS is prepared and only the nominated determining authority is required to publicly advertise the proposal and receive submissions.

It is usual for the proponent, in this case the RTA, to be the nominated determining authority. When a specific “activity” has been decided upon, if it is determined that an EIS is to be prepared, the Minister for Infrastructure, Planning and Natural Resources should be immediately asked to make the necessary order under S.110A of the EP & A Act.

After the EIS is prepared (a process which includes community consultation) and exhibited and relevant authorities or bodies consulted the RTA or its Minister may decide:-

- To proceed.
- To modify the proposal.
- Not to proceed with the proposal.

In the case of either of the first two localities the approval of the Minister for Infrastructure, Planning and Natural Resources is then required (ss115A + 115B, EP & A Act).

The decision of the Minister is by way of review of the decision of the RTA. The Director-General of Planning reports to the Minister who then has the same localities as did the proponent; i.e.

- To approve the proposal.
- To approve the proposal with modifications/conditions
- To refuse the proposal.

Commissions of Inquiry

The Minister for Infrastructure, Planning and Natural Resources may direct that an inquiry be held into the environmental aspects of an activity for which an EIS has been prepared.

Although the Minister may order such an inquiry at any time, the most likely times (assuming that an inquiry is ordered at all) would be either;

- After public exhibition, but before the determining authority reaches a decision, or
- Before the Minister himself gives approval.

Such an inquiry would be carried out by a Commissioner (sometimes more than one, or one with technical assistance) under the auspices of the Office of the Commissioners of Inquiry, an independent body set-up for the purpose of holding inquiries into matters of environmental significance.

The outcome of such an inquiry is usually a report with recommendations which is used to guide the decision maker.

APPENDIX B

Statutory Authorities

STATUTORY AUTHORITIES TO BE CONSULTED ON THE PROPOSED “ACTIVITY”

As an REF is to be prepared, the statutory authorities to be consulted will be determined by the RTA.

At this stage, without a decision as to a specific locality, it appears that statutory authorities with an interest in the project would include;

- Department of Infrastructure, Planning & Natural Resources (Planning & Crown Land Issues).
- Department of Environment and Conservation (Aboriginal, flora and fauna, and pollution issues).
- NSW Fisheries (Marine environmental issues).
- Rural Fire Service (Bushfire issues)
- NSW Agriculture (Agricultural issues)
- Waterways Authority (Maritime issues)
- State Rail (Railway issues)
- Grafton City Council (General, including community, business and open space issues)
- NSW Heritage Council (Heritage issues)
- Heritage Commission (Heritage issues)
- Clarence Valley County Council (Flood mitigation issues)
- Copmanhurst and Pristine Waters Councils (General issues)
- NSW Police (Traffic and security issues)