

# 3 Legislative and planning framework

The Environmental Assessment (EA) must include:

- Consideration of any relevant statutory provisions including the consistency of the project with the objects of the *Environmental Planning and Assessment Act 1979*.

The Project's environmental planning and assessment framework involves three levels of government:

- Commonwealth.
- State (NSW).
- Local (Queanbeyan City Council).

This section outlines the approach taken to obtaining concept plan approval for the Project, and project approval for Stage 1 of the Project under the EP&A Act. Details of the broader statutory planning framework are also discussed, including Commonwealth legislative planning considerations.

## 3.1 Commonwealth legislation

The following Commonwealth legislation has been considered relevant to the Project:

- *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).
- *Canberra Water Supply (Googong Dam) Act 1974* (the Googong Dam Act).

### 3.1.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the key federal legislation for environmental protection. The Act establishes a requirement for, and a system of, environmental assessment and approval by the Commonwealth for actions that are:

- Likely to have a significant impact on a matter of 'national environmental significance' (NES).  
Matters of NES include:
  - World Heritage properties.
  - National heritage places.
  - Listed migratory species.
  - Wetlands of international importance.
  - Commonwealth marine areas.
  - Threatened ecological communities and threatened species.
  - Nuclear actions.

- Likely to significantly impact on the Commonwealth under subsections 26(1) and 26(2) of the *EPBC Act*. These parts of the *EPBC Act* are applicable where a person takes an action:
  - On Commonwealth land, where the action is likely to have a significant impact on the environment. Commonwealth land with respect to the Project is shown in 0.
  - Outside of Commonwealth land, where the action is likely to have a significant impact on the environment on Commonwealth land.

#### *Application of the EPBC Act to the Project*

With respect to the Project, there is an identified need for this EA to consider:

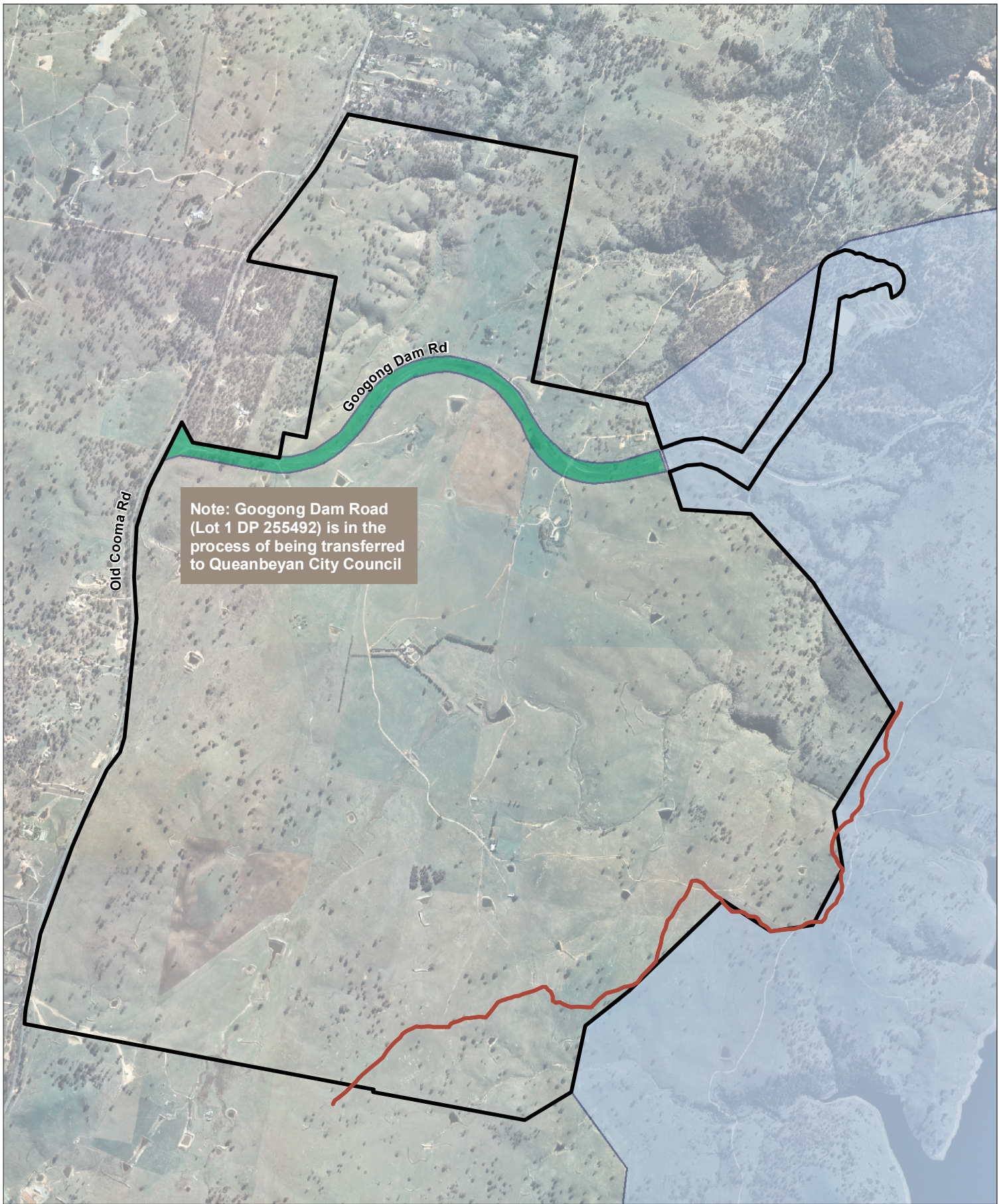
- Impacts on matters of national environmental significance. These are limited to listed migratory species and threatened ecological communities and threatened species. The assessment of these impacts is presented in Chapter 11 and is limited to Stage 1 of the Project. Further consideration of the EPBC Act, with respect to these matters, would be necessary as the Googong township development progresses due to the changing nature of ecological conditions, the research available and regulatory frameworks established for ecological protection. Ensuing consideration of the EPBC Act for water cycle infrastructure that is not part of Stage 1 of the Project would be in line with any further assessment requirements issued under the NSW concept approval.
- Potential direct and indirect impacts on the environment within Commonwealth land – namely, potable water infrastructure proposed adjacent to the existing Googong water treatment plant. This EA considers the likely impacts on these matters in relation to both the concept plan (ultimate development) and Stage 1 of the Project.
- The potential for the Project to indirectly impact upon Commonwealth land – namely, the Googong Dam and Foreshores – as a result of conducting development within the adjacent area.

#### *EPBC referral for the entire Googong township*

CIC is currently consulting with the Department of Environment, Water, Heritage and the Arts (DEWHA) and submitting a referral under the EPBC Act for the proposed Googong township. For the purposes of the referral, the proposed Googong township is defined by the following elements:

- The development of subdivisions for the Googong township, which are to be staged over the course of 25 years. The Googong township development includes urban development works on site (subdivision, civil and landscape works, building construction and occupation).
- The Googong township water cycle project (that is, the Project that is the subject of this EA).
- The transfer of ownership of a section of Googong Dam Road from the Commonwealth Government to Queanbeyan City Council.

The referral includes an assessment of potential impacts on EPBC listed species and communities within the Googong township area and an assessment of potential direct and facilitated impacts on the Googong Dam and Foreshores (which is Commonwealth land).







**Googong Environmental Assessment**

**Proponent** CIC Australia

**Date** 20 August 2010

**Drawing no.** 08003g\_ea\_fig03-1

**Source** CIC

-  Study area
-  Googong Dam Road (Lot 1 DP 255492)
-  Googong Foreshores (Lot 7 DP 592796)
-  Googong reservoir surface water catchment boundary

1:20,000

0 150 300 450 600m



**Figure 3.1** Commonwealth land

### 3.1.2 Canberra Water Supply (Googong Dam) Act 1974

The Googong Foreshores land that lies to the east of the Googong study area is defined in the Googong Dam Act as the Googong Dam Area (GDA). The purpose of the Googong Dam Act is to account for the management of this land and the water resource within it.

The relevance of the Googong Dam Act to the Project relates to the proximity of the Project to the Googong Foreshores, as well as the proposed use of the existing Googong water treatment plant site for potable water infrastructure. The existing Googong water treatment plant and the corridor from the plant to the Googong township development site lies within the Googong Foreshores, and is subject to Googong township development by CIC (including the installation of potable water cycle infrastructure). The proposed Project uses of the water treatment plant site and associated corridor are considered to be in line with the purpose and intent of the Googong Dam Act.

Also of note, a small section of the south-east corner of the Googong township study area lies within the Googong Dam surface catchment<sup>1</sup>. This area comprises 39.9 hectares (less than 0.05 per cent of the Googong dam catchment). This area would not be developed and is now zoned for environmental protection, to avoid direct impact on the Googong Foreshores, including the associated water resource.

## 3.2 New South Wales legislation

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### 3.2.1 Overview

The EP&A Act, the *Environmental Planning and Assessment Regulation 2000* and environmental planning instruments provide the framework for the assessment of environmental impacts and planning approval of development proposals in NSW.

Part 3A of the EP&A Act establishes an assessment and approval regime for major infrastructure projects. Part 3A applies to development that is declared to be a Part 3A project by either a State Environmental Planning Policy or Ministerial Order.

Broadly, the Googong township water cycle project is defined as a major project under Schedule 1 of the *State Environmental Planning Policy (Major Projects) 2005* and as such is being assessed under Part 3A of the EP&A Act. The Project caters for the treatment of wastewater and delivery of treated (recycled) water to about 16,000 equivalent population (EP), at a total cost of over \$50 million, which qualifies the Googong township development to be assessed on this basis.

Details associated with the assessment of this project under Part 3A of the EP&A Act and any implications of this planning approvals pathway are outlined below.

### 3.2.2 Part 3A of the EP&A Act

Section 75B of the EP&A Act specifies the types of projects to which Part 3A of the Act may apply. Section 75B(1) provides that Part 3A applies to:

*'The carrying out of development that is declared under this section to be a project to which this Part applies:*

*(a) by a State environmental planning policy, or*

*(b) by order of the Minister published in the Gazette (including by an order that amends such a policy).'*

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<sup>1</sup> Although this part of the study area does not fall within the Googong Foreshores. This is due to the lack of alignment of the Googong Dam surface catchment boundary and the Googong Foreshores boundary.

Clause 6 and schedule 1 of the *State Environmental Planning Policy (Major Projects) 2005* (Major Project SEPP) identifies development to which Part 3A of the EP&A Act applies. Clause 6 provides:

*'Development that, in the opinion of the Minister, is development of a kind:*

*(a) that is described in Schedule 1 or 2...*

*is declared to be a project to which Part 3A of the Act applies.'*

Schedule 1, item 26 prescribes such development to be:

*'(1) Development for the purpose of sewage and related waste water treatment plants for the treatment, storage or disposal of sewage effluent or other waste water, or for the reticulation of treated water, that:*

*(a) handles more than 10,000 EP (equivalent population), or*

*(b) has a capital investment value of more than \$30 million, or*

*(c) is located in an environmentally sensitive area of State significance.*

*(2) This clause does not apply to development if the proponent is a public authority.'*

Associated water and wastewater headworks at Googong are anticipated to service an equivalent population (EP) of more than 10,000 and cost more than \$30,000,000. The project is therefore considered a major project in accordance with clause 6 and schedule 1 of the Major Project SEPP and section 75(B)(1)(a) of the Act, and therefore follows the assessment and approval regime of a Part 3A project.

CIC, the proponent, submitted a Major Project application accompanied by a preliminary environmental assessment (PEA) on 13 November 2008 and a request to the Minister for Planning for authorisation to prepare a:

- Concept plan for a Project, the Project being the development of the water cycle infrastructure for Googong township (the Googong water cycle project).
- Project plan to carry out part of that Project – that is, the water cycle infrastructure required for the Stage 1 (neighbourhood 1A) of the Googong township development.

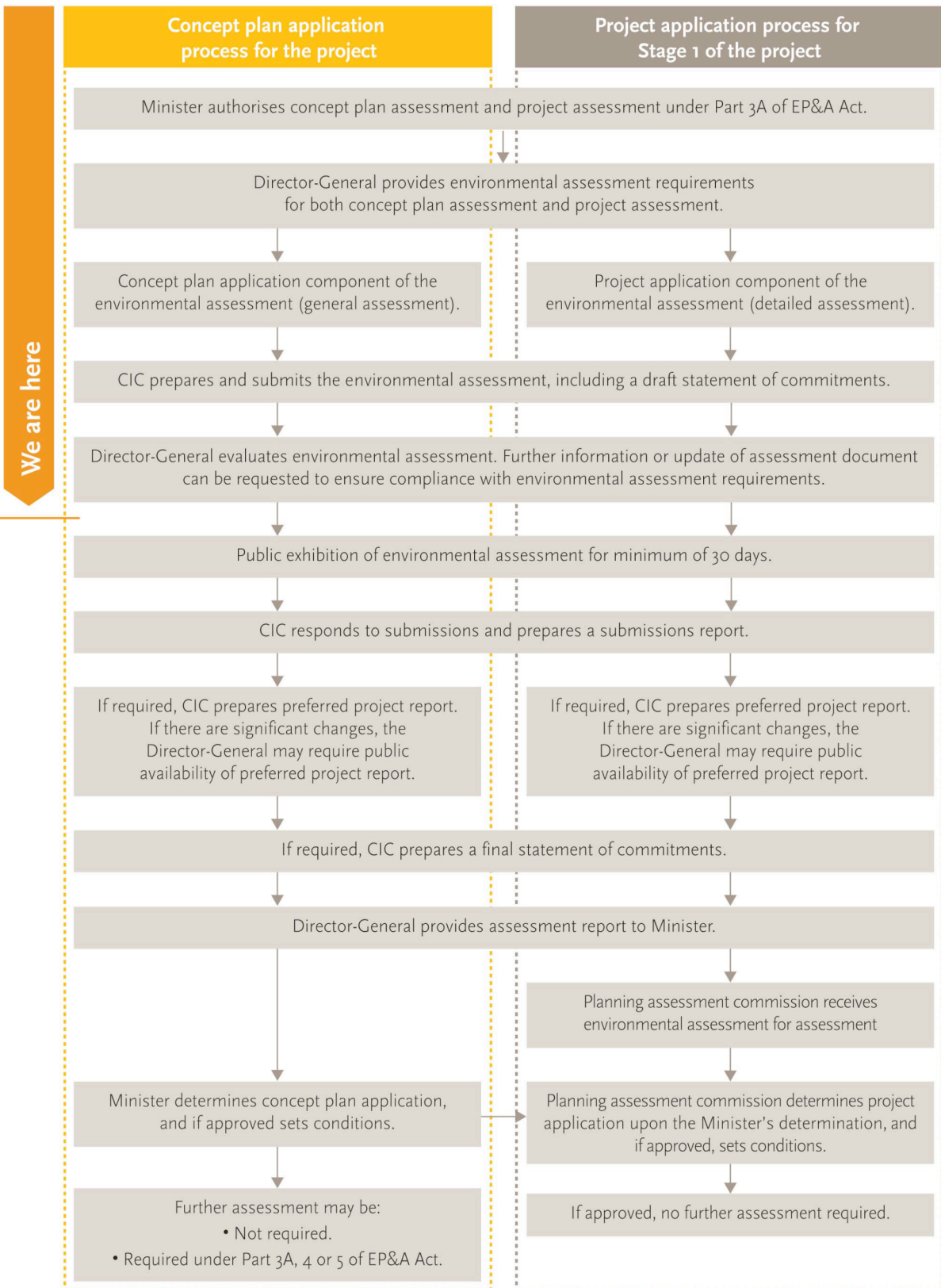
The process for concept plan and project approval running in conjunction is shown in Figure 3.2.

#### *Concept plan approval for the Project*

CIC decided to pursue concept plan approval was based on the following:

- Earlier certainty and statutory endorsement of the Project via concept plan approval.
- Flexibility in the urban and engineering design of the Googong township.
- The need for earlier certainty and statutory endorsement of the Project via concept plan approval.
- The need for flexibility in the urban and engineering design of the Googong township.
- The existence of substantial data regarding the site. The Googong study area (and surrounds) has been subject to intense and ongoing environmental assessment throughout the local environmental planning process associated with the development of the Queanbeyan Local Environmental Plan (Googong) 2007. The information obtained over the years is considered sufficient to justify the pursuance of a concept approval with no further assessment for some environmental aspects (see Chapter 17).

**Figure 3.2** Concept and project application process



### *Project application for Stage 1 of the Project*

CIC decided to pursue approval for Stage 1 of the Project as a project application so it could proceed to detail design for this first stage and prepare to construct infrastructure to support the initial residents of the Googong township, while allowing future flexibility in the remaining stages of Googong township development. The process under Part 3A for the project application is similar to that for the concept plan approval process. However, some stages may alter in relation to context and requirements.

#### **3.2.3 Land owners' consent**

Section 8F of the *Environmental Planning and Assessment Regulation 2000* (the regulation) outlines the requirements for the consent and/or notification of the owner of land on which a project is to be carried out. Consent of the owner is not required where the application relates to a linear infrastructure project (clause 1(d)) or where the application relates to 'a project on land with multiple owners designated by the Director-General for the purposes of this clause' (clause 1(e)).

For the purpose of section 8F of the regulation, 'linear infrastructure project' is defined as development for the purposes of linear transport or public utility infrastructure. The Project is related to the capture of wastewater and supply of water services to the residents of the Googong township and should therefore be considered to be a linear infrastructure project. The NSW Department of Planning confirmed that the Project is considered to be a 'linear infrastructure project' in correspondence dated 21 November 2008. The study area for the Project also involves multiple land owners. As such, there is an obligation under clause 3(a) (section 8F of the regulation) for the proponent to:

*Give notice of the application... to the public by advertisement published in a newspaper circulating in the area of the project before the start of the public consultation period for the project.*

Notwithstanding the above, CIC is currently in the process of seeking landowner's consent from the Commonwealth Government in regards to bulk water supply works on the Googong Foreshores and Googong Dam Road (which is Commonwealth land). The potential direct and indirect impacts of the Project and other aspects of the Googong township on Commonwealth land are being assessed in a referral under the EPBC Act.

As the ACT Government leases the relevant Commonwealth land from the Commonwealth Government, CIC is also engaging with relevant ACT agencies regarding the works required on the land that they lease and manage. As noted in Section 3.1.2 and discussed in Section 2.1.3, there are legislation and agreements between the Commonwealth, ACT and NSW governments regarding the ability to undertake works within the Commonwealth land for the purposes of providing water services.

#### **3.2.4 Progression of concept and project approval for the Project**

On 21 November 2008, the Director-General of the NSW Department of Planning, formed the opinion under clause 6 of the Major Project SEPP that the proposed Googong township water cycle project is development of a kind that is described in Schedule 1 of the same, and declared the Project (as generally described in a letter from CIC to the Department of Planning, 12 November 2008) a major project under Part 3A of the EP&A Act. Further, on 8 December 2008, the Minister's authorisation was given for the submission of a concept plan for the Project.

On 14 January 2009, the Director-General issued requirements to CIC that cover both the concept plan application and the project application. These requirements are attached as Appendix A, together with a table cross-referencing where they are addressed in the EA.

At the time of deeming the Project a major project, the Director-General designated the entire Project to be linear infrastructure within the meaning of clause 8(F) of the regulation. Hence, CIC is required to give notice of the application by advertisement published in a local newspaper before the commencement of exhibition.

Considering the broader context of this Project, CIC commenced stakeholder engagement and community consultation for the development of the Googong township in 2003. This included a round of initial meetings with stakeholders to identify key concerns and opportunities, and workshopping various water sustainability options for the Googong township. As the water cycle project has progressed into the detailed concept design stage, regular stakeholder involvement has continued to add significant value to the Project. Further details of community engagement and stakeholder consultation are contained in Chapter 16.

### 3.2.5 Environmental planning instruments

The relevance of environmental planning instruments to the Part 3A concept plan assessment and approval process is dictated by 75O(3) of the EP&A Act, which states:

*In deciding whether or not to give approval for the concept plan for a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for a concept plan for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.*

Similarly, section 75J(3) stipulates the relevance of environmental planning instruments to approval for carrying out a class of project.

In recognition of the Minister's discretion to consider the provisions of environmental planning instruments, a review has been undertaken to identify those that may be relevant. It was found that the following State Environmental Planning Policies are relevant:

- State Environmental Planning Policy (Major Projects) 2005.
- State Environmental Planning Policy No 55 – Remediation of Land.
- State Environmental Planning Policy (Infrastructure) 2007.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

It was also found that there are no known regional environmental plans that apply to the land.

### 3.2.6 Other approvals and legislative requirements

Table 3.1 provides a list of NSW legislation relevant to the Project and a reference to where the legislation has been considered in this EA.

**Table 3.1** Relevant NSW legislation to the Project and reference to the EA

NSW legislation	Reference to the EA
<i>Contaminated Land Management Act 1997</i>	Chapter 10
<i>Fisheries Management Act 1994*</i>	Section 11.2
<i>Heritage Act 1977*</i>	Chapter 12
<i>Local Government Act 1993</i>	Chapter 5
<i>National Parks and Wildlife Act 1974*</i>	Chapters 11 and 12



NSW legislation	Reference to the EA
<i>Native Title (New South Wales) Act 1994</i>	Chapter 12
<i>Native Vegetation Act 2003*</i>	Section 11.1
<i>Threatened Species Conservation Act 1995</i>	Section 11.1
<i>Waste Avoidance and Resource Recovery Act 2001</i>	Section 13.2
<i>Water Industry Competition Act 2006</i>	Chapter 3
<i>Water Act 1912</i>	Chapter 7
<i>Water Management Act 2000*</i>	Chapter 7

\*Note that certain sections of this legislation do not apply to approved Part 3A projects under 75U of the EP&A Act and have therefore not been considered in the EA. Sections that do not apply are discussed within this section.

### *Water Industry Competition Act 2006*

The *Water Industry Competition Act 2006* and its supporting regulations came into force in August 2008. The objectives of the Act are to encourage competition in the water industry and to foster innovative recycling projects and efficiency in the provision of water and wastewater services. To deliver this objective, the Act creates a legal framework for private sector counterparties to construct and operate water and wastewater schemes in NSW.

The Act allows a private sector counterparty to apply for separate licences to operate water and wastewater facilities and to retail these services to the public. The Independent Pricing and Regulatory Tribunal (IPART) assesses the capability of the counterparty, and the proposed system, to meet required human health, environmental and customer service requirements in consultation with relevant government agencies. IPART then makes a recommendation to the Minister for Water Utilities (or equivalent) as the ultimate consent authority for granting licences under the Act. Currently, approvals would also need to be sought under section 68 of the *Local Government Act 1993*, which also requires approval for provision of sewerage systems, although this requirement may be removed in future revisions of the Act.

CIC may choose to apply for operating and/or retailing licences under the *Water Industry Competition Act* or may partner with a counterparty to this end. If CIC chooses this path, then future operation of the water and wastewater system would be dependent on successfully securing licences through the Act.

Section 68 of the *Local Government Act 1993* states that the activity of operating a system of sewage management (within the meaning of section 68A) requires prior approval of the council.

In addition, the supply of water or provision of sewerage systems requires a licence under the Act. This duplication of the need for approval for the operation of sewerage systems under two NSW Acts has been noted by IPART. It is IPART's understanding that the NSW Government intends to remove this duplication by amending the *Local Government Act 1993*. However, this amendment has not yet been made. In the interim, IPART has committed to working closely with local government to reduce any unnecessary repetition of proponent requirements. In terms of the application of these Acts to this project, CIC has discussed this issue with Queanbeyan City Council, the DEWHA and IPART.

Application of the *Water Industry Competition Act 2006* is not mandatory. CIC may still choose to follow a more traditional path by delivering the infrastructure and then negotiating handover of ownership and operation to Queanbeyan City Council.

#### *Legislation that must be applied consistently to approved Part 3A projects*

Section 75V of the EP&A Act stipulates approvals and legislation that must be applied consistently to the approval of a project under Part 3A. The section specifically states:

*'An authorisation of the following kind cannot be refused if it is necessary for carrying out an approved project and is to be substantially consistent with the approval under this Part: ...*

- (e) an environment protection licence under Chapter 3 of the Protection of the Environment Operations Act 1997 (for any of the purposes referred to in section 43 of that Act),*
- (f) a consent under section 138 of the Roads Act 1993,*

A licence under the *Protection of the Environment Operations Act 1997* would be required for any proposed releases of recycled water into receiving waters. This is discussed further in Chapter 6 of the EA.

Consultation with the NSW Roads and Traffic Authority (RTA) has been undertaken and confirmation has been received that the relevant roads within the vicinity of the Project are classified as 'local roads' and therefore are not under the RTA's jurisdiction. Therefore consent under section 138 of the *Roads Act 1993* is not required.

#### *Legislation that does not apply to approved Part 3A projects*

Section 75U(1) of the EP&A Act outlines the approvals and authorisations under other NSW legislation that do not apply to an approved Part 3A project. Specifically, these include:

- The concurrence under Part 3 of the *Coastal Protection Act 1979* of the minister administering that part of the Act.
- A permit under section 201, section 205 or section 219 of the *Fisheries Management Act 1994*.
- An 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* (this section relates to the protection of Aboriginal objects).
- 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 clearing on State protected land.
- A permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*.
- A bush fire safety authority under section 100B of the *Rural Fires Act 1997*.
- 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* (section 75U(1)).

It should be noted that the *Rivers and Foreshores Act 1948* has been repealed.

Section 75U(2) of the Act also states that:

*'Division 8 of Part 6 of the Heritage Act 1977 does not apply to prevent or interfere with the carrying out of an approved project.'*