

## 4. Legislative requirements

### 4.1 Introduction

The *Transport Planning and Coordination Act 1994 (Qld)* in conjunction with the *Transport Infrastructure Act 1994 (Qld)* establishes a regime which allows the Queensland Government to investigate, plan, protect and construct transport infrastructure in Queensland.

Development of the CoastConnect – Caloundra to Maroochydore bus priority corridor could require a number of approvals under the *Integrated Planning Act 1997 (Queensland)*, other state legislation and possibly Commonwealth legislation. This chapter identifies the key legislation under which planning, preservation and protection of the corridor for the bus priority connection would occur and likely permits, licences or approvals that may be required for its future construction and operation.

### 4.2 Authority to plan

The Department of Transport and Main Roads is responsible for investigating, planning, establishing, maintaining, managing and operating transport infrastructure within the state of Queensland. The establishment, delivery and operation of busways, bus priority and bus-related infrastructure are regulated by the *Transport Infrastructure Act 1994*. Under this Act, the Department of Transport and Main Roads may undertake the activities necessary to establish the busway such as entering into contracts, compulsorily acquisition, disposal of property, appointment of agents and so on.

### 4.3 Framework for planning

The Concept Design and Impact Management Planning (CDIMP) process is a voluntarily undertaken planning and impact assessment study that seeks to emulate the technical rigour and community notification (engagement) intent of an Environmental Impact Statement as defined under the *Integrated Planning Act 1997*, the *State Development and Public Works Organisation Act 1971*, the *Environmental Protection Act 1994* and the *Environment Protection and Biodiversity Conservation Act 1999*. The CDIMP process has been specifically developed by the Department of Transport and Main Roads, with reference to the requirements of these legislatively outlined processes, to suit transport corridor planning. The CDIMP provides the basis for:

- relative prioritisation of the project within the Queensland Government infrastructure program including the South East Queensland Infrastructure Plan and Program
- approval of a concept design (alignment) and subsequent mapping under the Integrated Development Assessment System
- commitment to broad impact management strategies to be applied during delivery and operational phases of the project when/if it proceeds
- further planning for delivery, procurement, staging, and network integration.

As a voluntary process it allows the department to be flexible in meeting community expectation and the needs of decision makers.

The approved CDIMP itself does not constitute an approval under any legislative or legal framework, including:

- approval to proceed to delivery
- approval of budget allocation
- approval of staging and delivery timeframes
- designation of a transport corridor under *Transport Infrastructure Act 1994*
- development approval under IDAS or approval under any legislation integrated with IPA/IDAS
- community Infrastructure designation.

#### **4.4 Corridor protection**

Currently, the Department of Transport and Main Roads has the power to protect public transport infrastructure using section 8A of the *Transport Planning and Coordination Act 1994*. Once planning of the infrastructure is complete, protection of the corridor occurs under section 8E of the Transport Planning and Coordination Act. Mapping of the corridor as a guideline under section 8E triggers the department's concurrence agency powers for the Integrated Development Assessment System under the *Integrated Planning Act 1997*.

The provisions of the Transport Infrastructure Act and the Transport Planning and Coordination Act do not exempt the public transport infrastructure development from the provisions of the Integrated Planning Act and other relevant legislation. The Transport Infrastructure Act requires approvals to be sought if other state infrastructure is disturbed. Identified below are the various statutory approvals that may be required to establish the busway.

#### **4.5 Corridor preservation**

Chapter 9, part 3 of the *Transport Infrastructure Act 1994* deals with the establishment of busway corridors and in particular the declaration of land as busway land. The section deals with the process by which land is identified and gazetted by the Minister for busway transport infrastructure. This section would only apply if CoastConnect were to be declared as busway.

#### **4.6 Property acquisition**

*The Transport Planning and Coordination Act 1994* allows for planning of transport, including bus priority, infrastructure and outlines the authority and grounds under which the department may seek to acquire property. The *Transport Infrastructure Act 1994* also contains strategies for the acquisition of land for transport requirements.

General powers regarding property acquisition under section 25 of the Transport Planning and Coordination Act are as follows:

- the Chief Executive may, for the State, acquire, hold, dispose of or otherwise deal with property for the purposes of transport, for an incidental purpose, for the purpose of a transport associated development or for a combination of these purposes

*Note: See subsections (2) and (2A) if land is to be acquired by resumption.*

- the power conferred by subsection (1) includes power to acquire land by resumption in accordance with this part if the land is, in the Chief Executive's opinion, required for the purposes of transport, for an incidental purpose, for the purpose of a transport associated development or for a combination of these purposes:
  - if land is acquired by resumption for the purpose of a transport associated development as mentioned in subsection (1) or (2), at the time of acquisition the land must also be acquired for the purposes of transport or for an incidental purpose.
- without limiting subsection (1) or (2), the Chief Executive may, for the State, acquire property for any of the following purposes:
  - the facilitation of transport infrastructure
  - the supply or improvement of facilities for users of transport infrastructure
  - the amelioration of negative environmental effects associated with transport infrastructure
  - the construction or relocation of ancillary works and encroachments and public utility plant within the meaning of the Transport Infrastructure Act 1994, Chapter 6.

The Community Infrastructure Designation process has its own property acquisition process under the *Integrated Planning Act 1997*. Where Community Infrastructure designation, as discussed below, is considered an option property is acquired via the powers of the *Integrated Planning Act 1997*.

## 4.7 Development approval

### 4.7.1 Integrated Planning Act

In Queensland, the *Integrated Planning Act 1997* is the principal legislation regulating development and the impacts of development. Under this Act the concept of 'development' includes one or more of the following:

- carrying out building work
- carrying out plumbing and drainage work
- carrying out operational work
- reconfiguring a lot
- making a material change of use of premises.

Development of the CoastConnect – Caloundra to Maroochydore corridor is likely to involve all facets of ‘development’ as defined by the Integrated Planning Act.

Therefore, some development approvals would be required even if the local government (Sunshine Coast Regional Council) designates busways as exempt development within their planning scheme.

#### **4.7.2 Integrated Development Assessment System**

Chapter 3 of the *Integrated Planning Act 1997* describes the Integrated Development Assessment System. The Integrated Development Assessment System is the framework under which applications for approvals required under the Integrated Planning Act are made and assessed. Under the Integrated Development Assessment System a development is assessed for compliance with the local planning scheme, applicable state planning policies, and any other laws or standards that can reasonably be applied to it.

The Integrated Planning Act sets up the concept of exempt and assessable development. All development is assumed to be non-assessable (i.e. exempt) unless it is declared to be self-assessable or assessable through one or both of the following:

- a local government planning scheme
- schedule 8 of the Integrated Planning Act 1997.

Development can also be specified as exempt in one of the following:

- a local government planning scheme
- schedule 9 of the Integrated Planning Act 1997.

It should be noted that development that is exempt from assessment under a planning scheme may still be assessable against other non-planning scheme related provisions within schedule 8 of the *Integrated Planning Act 1997*. Generally, schedule 8 identifies development that requires assessment by state government agencies under other legislation that has been integrated with the *Integrated Planning Act 1997*.

Schedule 9 identifies development that is exempt from assessment and includes operational works undertaken by, or on behalf of, the state, within Urban Development Areas and subject to community infrastructure designation. Only aspects of development for community infrastructure designation prescribed under the Integrated Planning Regulation 1998 (schedule 11) are exempt from assessment.

More information regarding the Integrated Planning Act and the Integrated Development Assessment System process can be found at the Department of Infrastructure and Planning’s website <http://www.dip.qld.gov.au/planning-and-development/flowcharts.html>.

The CoastConnect corridor would likely trigger the requirement for several development approvals under schedule 8 of the *Integrated Planning Act 1997*, particularly in relation to Building work, Material Change of Use and Reconfiguration of a Lot.

### 4.7.3 Community infrastructure under the Integrated Planning Act

#### Designation of community infrastructure

Chapter 2, part 6 of the *Integrated Planning Act 1997* establishes the designation process as a specific mechanism for dealing with community infrastructure. The purpose of identifying land for community infrastructure is to ensure that suitable land is available for the development of community infrastructure when it is required.

Schedule 9 of the Integrated Planning Act identifies that ‘All aspects of development for community infrastructure prescribed under a regulation’ are exempt from assessment under the Integrated Development Assessment System. This form of designation applies to projects rather than land.

A community infrastructure designation lasts for a period of 6 years, unless a notice of extension of the designation has been issued by the Minister responsible for the Integrated Planning Act. Therefore it should be considered closer to delivery of the CoastConnect – Caloundra to Maroochydore corridor.

#### Qualifying for designation

A development may qualify as community infrastructure through either ministerial designation or as a prescribed development in Integrated Planning Regulation 1998, Schedule 11.

Prescribed development is outlined in the Integrated Planning Regulation 1998, Schedule 11 and clearly includes all forms of transport infrastructure undertaken by the Department of Transport and Main Roads, including works associated with provision of that infrastructure.

In terms of the ministerial designation process, there are two tests a development must satisfy before it can be considered for ministerial designation as community infrastructure.

The first test examines whether the development is defined as community infrastructure under the Integrated Planning Act. The CoastConnect – Caloundra to Maroochydore corridor satisfies the following definition of community infrastructure under schedule 5 of the Act:

Schedule 5(o) Transport Infrastructure, mentioned in schedule 10, definition development infrastructure. Schedule 10 defines ‘development infrastructure’ as:

“a) *land or works, or both land and works, for:*

- ii. *transport infrastructure (including roads, vehicle lay-bys, traffic control devices, dedicated public transport corridors, public parking facilities predominately servicing a local area, cycle ways, pathways, ferry terminals and the local function, but not any other function, of State-controlled roads).”*

Therefore, it can be reasonably considered that the corridor would be defined as community infrastructure.

The second test is whether the community infrastructure will perform one or more functions under section 2.6.2 of the *Integrated Planning Act 1997*.

This test is primarily a test of public benefit. Section 2.6.2 of the *Integrated Planning Act 1997* states that land may be designated for community infrastructure only if the designator is satisfied the community infrastructure will:

- a) *facilitate the implementation of legislation and policies about environmental protection or ecological sustainability*
- b) *facilitate the efficient allocation of resources*
- c) *satisfy statutory requirements or budgetary commitments of the state or local government for the supply of community infrastructure*
- d) *satisfy the community's expectations for the efficient and timely supply of the infrastructure.*"

It is likely that the CoastConnect – Caloundra to Maroochydore corridor would satisfy the test of public benefit, particularly in regard to item (d). In making a designation the Minister must be satisfied that for development the subject of the proposed designation, there has been adequate environmental assessment, including adequate public consultation, and also adequate account of issues raised in the public consultation. On this basis the Minister may request preparation of an environmental impact statement, or nominate an alternative process that will satisfy these requirements.

#### **4.7.4 State Development and Public Works Organisation Act**

##### **Significant project declaration**

Under part 4, section 26 of the *State Development and Public Works Organisation Act 1971*, the Coordinator-General may declare a proposal to be a significant project. The Coordinator-General may declare a project to be a 'significant project' based on one or more of the following criteria:

- the project will involve complex approval requirements, including local, state and Australian Government involvement
- the project will require a high level of investment in the state
- the project will have potential effects on infrastructure and/or the environment
- the project will include the provision of substantial employment opportunities
- the project will be of strategic significance to a locality, region or the state.

A significant project declaration provides the Coordinator-General with the option to require an environmental impact statement to be prepared under the provisions of sections 29 to 35 of the *State Development and Public Works Organisation Act*.

Upon completion of the environmental impact statement, the proponent can either make a development application under the Integrated Development Assessment System or seek designation of the land for community infrastructure with the Coordinator-General. Under the Integrated Development Assessment System process, if the environmental impact statement is undertaken before lodgement of the Integrated Development Assessment System application with the assessment manager, the referral and notification stages of the Integrated Development Assessment System do not apply to the application.

There are deemed to be no referral agencies for the application, therefore allowing the process to be streamlined.

If the environmental impact statement is to be undertaken after lodgement of the Integrated Development Assessment System application with the assessment manager, the Integrated Development Assessment System process is suspended until the environmental impact statement has been completed. The application then proceeds directly to the decision stage.

Under the Integrated Development Assessment System, the report prepared by the Coordinator-General has the same effect as if it were a concurrence agency. That is, the Coordinator-General may direct that certain conditions be attached to the approval including that the approval must be for only part of the development, that preliminary approval only may be given, or, that the application be refused.

If community infrastructure designation is sought the designation is fast tracked as environmental assessment and consultation has already been completed.

On the basis that the CDIMP methodology is considered as sufficiently rigorous, the Coordinator-General has historically declined to designate busway and bus priority projects as significant and it is considered unlikely that the CoastConnect – Caloundra to Maroochydore corridor would become an exception to this.

### **Certain works (Approved works)**

Sections 100 and 109 of the *State Development and Public Works Organisation Act 1971* make provision for the Coordinator-General, or a 'local body' to undertake 'certain works'. The Coordinator-General can recommend to the Minister that particular works be undertaken by the Coordinator-General or a local body (such as a government-owned corporation e.g. Queensland Rail). If the Minister currently administering the State Development and Public Works Organisation Act approves the recommendation then it is submitted to the Governor in Council for approval.

The State Development and Public Works Organisation Act defines a local body as:

- “a) a government owned corporation*
- b) a statutory body as defined under the Statutory Bodies Financial Arrangements Act 1982*
- c) another body established under an Act*
- d) a corporation whose shares are wholly owned by:*
  - i the State*
  - ii the State and 1 or more local governments*
  - iii 1 or more local governments.*
- e) a corporation whose shares are wholly owned by*
  - i a corporation of the type mentioned in paragraph (d)*
  - ii 1 or more local governments.”*



The State Development and Public Works Organisation Act don't prescribe a mandatory environmental assessment process to be undertaken in relation to the authorised works. However, it is recommended that a preliminary assessment of environmental effects be undertaken for the purposes of recommending to the Governor-in-Council that the regulation authorising the works be made.

The assessment of environmental effects is also required to fulfil the obligation of the Coordinator-General to ensure that proper account has been taken of the environmental effects of the project in accordance with the general environmental duties under the State Development and Public Works Organisation Act and the *Environmental Protection Act 1994*. The assessment of environmental effects may also include consultation with the public and other interest groups.

Once the Governor in Council's approval has been formalised in a regulation the Coordinator-General (or the person approved on behalf of the Coordinator-General under the regulation) must take all steps necessary to undertake the works to which the approval relates, as soon as practicable (section 110).

Schedule 9 of the *Integrated Planning Act 1997* identifies development that is exempt from assessment against a planning scheme (table 5, item 5). This includes all aspects of development for community infrastructure prescribed under a regulation. Integrated Planning Regulation 1998, Schedule 11 identifies the development for community infrastructure that is exempt under Schedule 9, Table 5, Item 5 of Integrated Planning Act.

Authorised works carried out by the Coordinator-General in accordance with a regulation are exempt under schedule 9 of Integrated Planning Act from assessment under the planning scheme. An approval under section 108 of the State Development and Public Works Organisation Act gives the Coordinator-General (or the delegate of the Coordinator-General) a number of broad powers, including compulsory acquisition rights.

#### **4.7.5 Summary**

There are five major approvals processes outlined in this section, a summary of which is provided in Table 4-1. While the Integrated Development Assessment System process is likely to be used for some ancillary approvals, it is unlikely to be suitable for gaining approval for the length of CoastConnect – Caloundra to Maroochydore owing to its fractured, activity-specific focus. There are potentially a high number of development applications likely to be required under this process unless exempted from the planning scheme.

Determination of a preferred approvals pathway has not been undertaken at this stage owing to the potential for changes to occur to the defined approval pathways between now and when approval for the project is sought. This may be as a result of changes to planning legislation or local government planning schemes. An assessment of the preferred approvals pathway will need to be undertaken prior to approvals for the project being sought. This will inform the eventual approval pathway(s) selected.



**Table 4-1: Summary of potential approvals processes**

Strategy	Legislation	Outcome	Actions	Responsible authority	Risks/Notes
<p><b>Integrated Development Assessment System</b></p>	<p><i>Integrated Planning Act 1997</i>, chapter 3</p>	<p>Approval of development actions (not project)</p>	<p>Lodgement of impact assessable development application with local council. Referrals, information requests, public notification involved.</p>	<p>Local government and state agencies</p>	<ul style="list-style-type: none"> <li>▪ no land acquisition procedures</li> <li>▪ statutory timeframes apply</li> <li>▪ local government coordinates approvals process</li> <li>▪ state government is referral/concurrence agency.</li> </ul>
<p><b>Designation of land for community infrastructure</b></p>	<p><i>Integrated Planning Act 1997</i>, chapter 2, part 6</p>	<p>Approval of project development and land implications (not project timing, staging or budget) Acquisition.</p>	<p>Adequate environmental assessment and consultation must be undertaken under section 2.6.7, which includes:</p> <ul style="list-style-type: none"> <li>▪ the guidelines, under section 5.9.9; or,</li> <li>▪ an environmental impact statement under chapter 5; or,</li> <li>▪ notification and decision stages under the Integrated Development Assessment System; or,</li> <li>▪ an environmental impact statement under the Environmental Protection Act; or,</li> <li>▪ assessment under section 35 of State Development and Public Works Organisation Act; or</li> <li>▪ environmental assessment and community engagement considered adequate by the Coordinator-General.</li> </ul>	<p>State Minister</p>	<ul style="list-style-type: none"> <li>▪ development is exempt against local government planning schemes</li> <li>▪ triggers hardship acquisition provisions of <i>Integrated Planning Act 1997</i> (Queensland).</li> </ul>

Strategy	Legislation	Outcome	Actions	Responsible authority	Risks/Notes
<b>Declaration of a significant project</b>	<i>State Development and Public Works Organisation Act 1971</i> , section 26	Provides entry point for Integrated Development Assessment System or community infrastructure designation	Preparation of environmental impact statement under State Development and Public Works Organisation Act.  Development application can be submitted under Integrated Development Assessment System, or community infrastructure designation can be sought.	Coordinator-General	<ul style="list-style-type: none"> <li>▪ is in bilateral agreement with <i>Environment Protection and Biodiversity Conservation Act 1999</i></li> <li>▪ follow up Integrated Development Assessment System or designation process can be fast tracked.</li> </ul>
<b>Authorised works</b>	<i>State Development and Public Works Organisation Act 1971</i> , section 108; <i>Integrated Planning Act 1997</i>	Approval of development and acquisition	No environmental impact statement required, but an assessment of environmental effects required under State Development and Public Works Organisation Act	Coordinator-General	<ul style="list-style-type: none"> <li>▪ development is exempt from local government planning schemes</li> <li>▪ works can be undertaken by the Coordinator-General or another person on behalf of the Coordinator-General.</li> </ul>
<b>Transport infrastructure</b>	<i>Transport Infrastructure Act 1994</i> (and the <i>Transport Planning and Coordination Act 1994</i> )	Acquisition	Chief executive able to acquire land for rail alignment	Chief Executive of Department of Transport and Main Roads	<ul style="list-style-type: none"> <li>▪ Chapter 9, section 3 deals with the process for declaration of land as busway land.</li> </ul>

## 4.8 Legislative requirements

CoastConnect will need to comply with a number of legislative requirements. This section provides a brief description of other legislation, standards and guidelines that are considered to be relevant to the design and construction of the corridor.

### 4.8.1 State legislation

#### **Environmental Protection Act 1994**

The purpose of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

The Act utilises a number of mechanisms to achieve its objectives, including creating a general environmental duty, licensing environmentally relevant activities and issuing environmental protection policies and regulations including the Environmental Protection Regulation 2008, Environmental Protection (Noise) Policy 2008, Environmental Protection (Air) Policy 2008, Environmental Protection (Water) Policy 1997 and Environmental Protection (Waste Management) Policy 2000.

The Act also deals with the assessment and management of contaminated land, including administration of the Environmental Management Register and the Contaminated Land Register. Chapter 11 (Ground conditions) of this report presents details of the soil topography and geotechnical aspects of the subject lands under investigation.

#### **Native Title (Queensland) Act 1993**

The *Native Title (Queensland) Act 1993* was enacted to ensure Queensland's laws are consistent with the *Commonwealth Native Title Act 1993* for dealings affecting native title. The Native Title Act seeks to formally recognise that native title rights did, and in some cases still do, exist for the descendants of Aboriginal and Torres Strait Islander people, and that descent groups can lodge native title claims. Native title in land can be extinguished by valid government acts that are inconsistent with the continued existence of native title rights and interests, such as the grant of freehold estates.

#### **Aboriginal Cultural Heritage Act 2003**

The *Aboriginal Cultural Heritage Act 2003* is intended to provide effective recognition, protection and conservation of Aboriginal cultural heritage within the state. Under this Act it is an offence to knowingly destroy or interfere with places, artefacts and landscapes of Aboriginal heritage or spiritual culture. Individuals or corporations undertaking development in Queensland are obliged to observe the Aboriginal Cultural Heritage Duty of Care Guidelines. For the CoastConnect – Caloundra to Maroochydore corridor it will be necessary to develop a cultural heritage management plan in accordance with part 7 of the Aboriginal Cultural Heritage Act.

### **Queensland Heritage Act 1992**

The *Queensland Heritage Act 1992* aims to provide for the conservation of Queensland's cultural heritage, including for example, the regulation of the excavation of sites that contain, or may contain, objects of significance to Queensland's heritage. The Heritage Register is the principal mechanism through which the Queensland Heritage Act operates.

### **Nature Conservation Act 1992**

The *Nature Conservation Act 1992* seeks to achieve the conservation of nature through an integrated and comprehensive strategy for the whole of Queensland. The Act provides for the conservation of nature by the declaration and management of protected areas, and also the protection of native wildlife not found in a protected area. Chapter 13 (Ecology) of this report outlines the environmental considerations for the proposed alignments of the busway.

### **Vegetation Management Act 1999**

The *Vegetation Management Act 1999* seeks to regulate the clearing of native vegetation to preserve remnant endangered and 'of concern' and 'endangered' regional ecosystems, vegetation in areas of high nature conservation values and areas vulnerable to land degradation. Chapter 13 (Ecology) of this report outlines the environmental considerations for the CoastConnect – Caloundra to Maroochydore corridor.

### **Dangerous Goods Safety Management Act 2001**

The *Dangerous Goods Safety Management Act 2001* covers the storage and handling of dangerous goods and combustible liquids as well as the operation of major hazard facilities. It is not likely that this Act will be required for assessment in the project during construction or in the operational phase of the development.

### **Land Act 1994**

The *Land Act 1994* provides a framework for the allocation of state land either as leasehold, freehold or other tenure. Permits may be acquired under this Act from the Department of Natural Resources and Water for the occupation of a reserve, road or unallocated state land.

### **Acquisition of Land Act 1967**

The *Acquisition of Land Act 1967* enables the state to acquire freehold land for public works or other public purposes. The state may acquire land:

- by agreement — if an agreement can be reached on compensation to be paid, land can be purchased as soon as the necessary transfer documents have been executed. Alternatively, the acquisition could proceed by way of an agreement pursuant to s15 of the Acquisition of Land Act. This leads to the issue of a gazette notice published in the Government Gazette, thereby passing ownership to the constructing authority.
- compulsorily — resumptions are made under various pieces of legislation, subject to the provisions of the Acquisition of Land Act. A 'Notice of intention to resume' showing the location and area of the land required is forwarded to the landholder (and mortgagee etc). This specifies a date (not less than 30 days later) by which the landholder may lodge an objection, in writing, to the resumption of the land.

Compulsory acquisition and notice of realignment matters are likely to be addressed over the life of this project. For more information see:

[www.nrw.qld.gov.au/property/resuming\\_land.html](http://www.nrw.qld.gov.au/property/resuming_land.html).

## 4.8.2 State planning policies

This section discusses the state planning policies that will need to be considered for the proposed CoastConnect – Caloundra to Maroochydore corridor. State planning policies are statutory planning instruments under *Integrated Planning Act 1997* that relate to matters of Queensland state interest. These policies must be considered as part of the assessment process for development of land.

### **State Planning Policy 1/92 — Development and conservation of agricultural land**

This state planning policy addresses the conservation of good quality agricultural land and provides guidance to local authorities and state government on how good quality agricultural land needs to be considered when carrying out their range of planning duties. There are a range of land classes, which are based on an assessment of the suitability of the land for specified agricultural uses, that involve rating the ability of the land to maintain a sustainable level of productivity using soil type and topographic and climatic factors that determine sustainable productivity.

State Planning Policy 1/92 also recognises that in some instances it may be necessary to build on good quality agricultural land if there is an overriding need for the development in terms of public benefit.

### **State Planning Policy 1/02 — Development in the vicinity of certain airports and aviation facilities**

This state planning policy sets out broad principles concerning development in the vicinity of airports and aviation facilities considered significant for the state's transport infrastructure or national defence system. The state planning policy applies to development that could adversely affect the safety and efficiency of operational airspace by obstructions resulting from the erection of permanent or temporary physical structures either natural or man-made. It also applies to development that has the potential to create adverse effects on the functioning of aviation facilities caused by the penetration of the facility's sensitive area.

The subject site is not within an airport/aviation facility to trigger this state planning policy.

### **State Planning Policy 2/02 — Planning and managing development involving Acid Sulfate Soils (ASS)**

The purpose of this state planning policy is to ensure that development involving ASS is planned and managed to avoid the release of potentially harmful contaminants into the environment. This state planning policy applies to certain areas of Queensland where the natural ground level is less than 20 m Australian Height Datum (AHD) and soil below 5 m AHD is disturbed by the proposed works.

According to the overlay mapping in the Maroochy Planning Scheme, the corridor study area includes areas at or below 5 m AHD, and land less than 20 ms AHD but above 5 m AHD. Therefore, the State Planning Policy 2/02 is relevant for earthworks related to the proposed corridor.

### **State Planning Policy 1/03 — Mitigating the adverse impacts of flood, bushfire and landslide**

The purpose of this state planning policy is to set out the state government's interests with regard to natural hazards of flood, bushfire and landslide and ensure these matters are adequately addressed when carrying out development assessment. Various parts of the preferred locations are likely to be subject to flood, bushfire and landslide, therefore this state planning policy will require consideration for any development application.

According to the overlay mapping in the Maroochy Planning Scheme, the corridor study area does not pass within areas of potential land use hazard A to H. However, the Caloundra to Maroochydore CoastConnect study area passes through areas that are depicted in Maroochy Plan as bushfire-prone areas. The corridor study area also falls within some areas that are depicted as flood-prone land in the Planning Scheme.

### **State Planning Policy 1/07 — Housing and residential development**

The overall outcome sought by State Planning Policy 1/07 is to identify the community's existing and future housing needs and ensure that planning schemes provide opportunities for a suitable range of housing options to respond to these needs. The state planning policy applies to a number of local government areas with urbanised populations, of which Maroochy Shire is included, and has effect when a local government prepares a new planning scheme or amends an existing planning scheme.

State Planning Policy 1/07 only applies when a local government prepares its planning scheme. The SPP 1/07 has no effect when development applications are assessed or when designating land for community infrastructure.

### **State Coastal Management Plan**

The State Coastal Plan commenced in February 2002 and describes how the coastal zone is to be managed as required by the *Coastal Protection and Management Act 1995*. This plan and associated regional coastal management plans identify the coastal management districts in particular regions. Regional coastal management plans implement the State Coastal Management Plan policy framework at the regional level, and identify key coastal sites that require special management within the region.

The Sunshine Coast is covered by the South-east Queensland Regional Coastal Management Plan, which describes how the coastal zone within the South-east Queensland region is to be managed and provides direction for implementing the State Coastal Management Plan.

### **South-east Queensland Koala State Planning Regulatory Provisions and Maps**

The draft South-East Queensland Koala State Planning Regulatory Provisions and Regulatory Maps came in to effect on 12 December 2008 and the final Regulatory Provisions (SEQ Koala SPRP) came into effect on 1 July 2009 following a consultation period. The SEQ Koala SPRP replaces the koala protection measures contained in the Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006–2016 (Koala Plan) for development located within South-east Queensland. The SEQ Koala SPRP will remain in force until a more comprehensive state planning policy for koala conservation is introduced.

The Department of Infrastructure and Planning is a Referral (Concurrence) Agency under the *Integrated Planning Act 1997* for development occurring within koala habitat areas within the urban footprint.



The department therefore can refuse a development if it does not meet the requirements of the regulatory provisions. Under the regulatory provisions, the department can require developers to offset the unavoidable clearing of mature koala habitat trees felled in the interim koala habitat protection area. The provisions also require the designs and layouts of developments to allow koalas to move safely within and through the development sites.

Comments regarding the koala habitat areas are found in Chapter 13 (Ecology) of this report.

### **State Planning Policy 2/07 — Protection of extractive resources**

The policy seeks to maintain the long-term availability of major extractive resources by protecting these resources and their main transport routes from incompatible land uses. This is achieved through local government planning schemes and assessment of development located near extractive resources.

The policy has effect in development assessment when the policy is not appropriately reflected in the applicable planning scheme, when planning schemes are made or amended, and when land is designated for community infrastructure.

## **4.8.3 Commonwealth legislation**

### **Environment Protection and Biodiversity Conservation Act 1999**

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a legislative framework aimed at protecting the environment; specifically, matters of National Environmental Significance. It is intended to streamline the national environmental assessment and approvals process, protect Australian biodiversity, and integrate management of important natural and cultural places.

To this end, the EPBC Act prescribes the Commonwealth's role in environmental assessment, biodiversity conservation, and the management of protected areas. The EPBC Act identifies seven matters of National Environmental Significance and requires assessment and approval for any action that has, or is likely to have, a significant impact on any of those matters. Such an action is deemed a 'controlled action' under the legislation. It is a statutory offence to undertake a 'controlled action' without the prior approval of the minister responsible for this legislation (i.e. the Minister for Environment, Heritage and the Arts).

Therefore, parties proposing to undertake an action that they consider may be a controlled action under the EPBC Act must refer their proposal to the Minister for a controlled action decision. Controlled actions can relate to:

- world heritage (sections 12 and 15A of the EPBC Act)
- listed threatened species and communities (sections 18 and 18A)
- listed migratory species (sections 20 and 20A)
- national heritage places (sections 15B and 15C)
- Ramsar Wetlands (sections 16 and 17B)
- nuclear actions (sections 21, 22 and 22A)
- Commonwealth marine areas (sections 23, 24 and 24A).

A self-assessment is required under the Act to determine whether the CoastConnect – Caloundra to Maroochydore project triggers referral to the Department of Environment and Heritage.



The self-assessment criteria, as set by the department's EPBC Act Policy Statement 1.1 — Significant Impact Guidelines are as follows:

- are there matters of national environmental significance located in the area of the proposed action
- considering the proposed action at its broadest scope, is there potential for impacts on matters of national environmental significance
- are there any proposed measures to avoid or deduce impacts on matters of national environmental significance
- are any impacts of the proposed action on matters of national environmental significance likely to be significant impacts? (Department of Environment and Heritage 2006)

### **Native Title Act 1993**

The functions of the *Native Title Act 1993* (NT Act) include setting up processes through which native title can be recognised, in addition to providing protection for native title rights. Proposed activities or developments that may affect native title are classed as 'future acts' under the NT Act. The NT Act provides for the determination of native title claims, for the treatment of future acts, and the requirement of consultation and/or notification to relevant native title claimants where future acts are involved. Under the Act, any past grants of freehold or leasehold interests that were thrown into doubt by the Mabo decision are validated.

The NT Act operates in conjunction with associated state legislation, such as the *Native Title (Queensland) Act 1993*, the *Aboriginal Land Act 1991* and the *Torres Strait Islander Act 1991*. In Queensland, all of the abovementioned acts are administered by the Department of Natural Resources and Water (NRW).

A search was undertaken on the National Native Title Tribunal spatial data records on 17 February 2009. This search indicates that there is no native title claimant activity existing in the CoastConnect corridor or in the general area between Caloundra and Maroochydore. In addition, no native title determinations have been made within, or in proximity to the corridor. This does not mean that native title has been extinguished on land within and adjacent to the proposed corridor. It is recommended that native title is adequately investigated with regard to a future act on land that is non-freehold land.

#### **4.8.4 Possible approvals matrix — approvals, permits and licences**

A number of approvals, permits and licences will be required to undertake work on the CoastConnect – Caloundra to Maroochydore corridor. Depending on the approvals process followed, these may come at various stages of the project, or there may be exemptions from some approvals. The following matrix (Table 4-2) is intended to offer a general indication of the approvals, permits and licences that may be triggered during the project. Further revision of the approvals matrix will be required as the project progresses towards the construction phase.

**Table 4-2: Approvals, permits and licences that may be associated with the preferred corridor**

Permit/approval/licence required	Description	Responsible authority
<b>Environmental Protection Act 1994</b>		
Licence required if conducting a chapter 4 activity — ‘environmentally relevant activity’.	Schedule 1 of Environmental Protection Regulation 2008 lists all environmentally relevant activities, their aggregate environmental score and thresholds. The construction of the preferred corridor may include the following environmentally relevant activities: <ul style="list-style-type: none"> <li>▪ environmentally relevant activity 8: Chemical storage. (Integrated Development Assessment System — Form 1 Part G)</li> </ul>	Department of Environment and Resource Management (DERM) (could devolve to Local Government)
Permit to work in areas listed on the Environmental Management Register or the Contaminated Land Register.	Works within land identified on the Environmental Management Register or the Contaminated Land Register will require approval from the Department of Environment and Resource Management. Includes disposing of contaminated soil. (Integrated Development Assessment System — Form 1 Part N)	Department of Environment and Resource Management (DERM)
<b>Aboriginal Cultural Heritage Act 2003</b>		
Exploring/surveying proposed project area for the purposes of drafting an Indigenous cultural heritage management plan.	Obligation to observe ‘duty of care guidelines’ Preparation of a Cultural Heritage Management Plan (if required) <i>Aboriginal Cultural Heritage Act 2003</i> <i>Integrated Planning Act 1997</i>	Department of Environment and Resource Management (DERM)
<b>Native Title (Queensland) Act 1993; Native Title Act 1993</b>		
Legislation provides Native Title claimants an opportunity to comment on construction over waterways and Trustee Reserves. Native Title — Aboriginal and Torres Strait Islander owned land and identified interests (including areas in which a claim under the Native Title Act has been registered by the National Native Title Tribunal). Generally, Native Title is extinguished over freehold land.	<i>Native Title (Queensland) Act 1993</i> , section 26 <i>Native Title Act (Commonwealth) 1993</i> <i>Aboriginal Land Act (Commonwealth) 1991</i>	National Native Title Tribunal Department of Environment and Resource Management (DERM)

Permit/approval/licence required	Description	Responsible authority
<b>Nature Conservation Act 1992</b>		
Permit required if relevant	<p>A permit is required to take, use, keep or interfere with:</p> <ul style="list-style-type: none"> <li>▪ native wildlife in an area identified under a conservation plan</li> <li>▪ cultural or natural resources of a protected area</li> <li>▪ threatened, rare or common animals</li> <li>▪ rare or threatened plants.</li> </ul> <p>The Nature Conservation (Protected Areas) Regulation 1994 schedules 1 to 6 lists protected areas. As a condition of approval DTMR may be required to provide an environmental offset.</p>	Department of Environment and Resource Management (DERM)
<b>Coastal Protection and Management Act 1995</b>		
Prescribed tidal works	<p>Tidal work is operational works undertaken in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land. Prescribed tidal work is tidal works that is completely or partly within a local government tidal area. (Integrated Development Assessment System — Form 1 Part P)</p>	Department of Environment and Resource Management (DERM)
Development of a heritage-listed place	Approval is necessary for works on a place identified under the Queensland Heritage Register. (Integrated Development Assessment System — Form 1 Part C)	Queensland Heritage Council Department of Environment and Resource Management (DERM)
Quarry Material Allocation	The consent of the state is required for taking quarry material that is the property of the state. This process involves making an application for an allocation notice from the Department of Environment and Resource Management. If required, a quarry material allocation notice is required prior to lodging an application for prescribed tidal work. (Integrated Development Assessment System — Form 1 Part M)	Department of Environment and Resource Management (DERM)
<b>Dangerous Goods Safety Management Act 2000</b>		
Approval for a major hazard facility	Development involving a material change of use of premises, if the premises are for a Major Hazard Facility or Possible Major Hazard Facility is assessable development. (Integrated Development Assessment System — Form 1 Part L)	Department of Emergency Services

Permit/approval/licence required	Description	Responsible authority
<b>Integrated Planning Act 1997 (if required for certain activities that are not directly related to the construction of the busway)</b>		
Approval for material change of use	Development which is not exempt development may require a development permit for material change of use. (Integrated Development Assessment System — Form Part D)	Local Government (Sunshine Coast Regional Council)
Approval for reconfiguring a lot	Lots may be required to be reconfigured, requiring a development permit. (Integrated Development Assessment System — Form 1 Part F)	Local Government (Sunshine Coast Regional Council)
Approval for operational works	A development permit may be required for operational works (Integrated Development Assessment System — Form 1, Part E)	Local Government (Sunshine Coast Regional Council)
Resource Entitlement for State Land	When submitting a development application on State land, Resource Entitlement is required from the State Government, or the relevant lease holder.	Department of Environment and Resource Management (DERM) or leaseholder
Owner's consent	Owners consent for privately owned land.	
<b>Water Act 2000 section 206</b>		
Licence to take or interfere with water	A licence to take or interfere with the flow of water in a watercourse.	Department of Environment and Resource Management (DERM)
<b>Building Act 1975</b>		
Demolition and removals. (Integrated Development Assessment System — Form Part B)		
<b>Queensland Heritage Act 1992</b>		
Development of a heritage-listed place	Approval is necessary for works on a place identified under the Queensland Heritage Register. (Integrated Development Assessment System — Form Part C)	Department of Environment and Resource Management (DERM)
<b>Vegetation Management Act 1999</b>		
Clearing of native vegetation	Any work involving the clearing of remnant and non-remnant native vegetation on trust land, leasehold land, State land and road reserves. (Integrated Development Assessment System — Form Part J) As a condition of approval DTMR may be required to provide an environmental offset.	Department of Environment and Resource Management (DERM)

Permit/approval/licence required	Description	Responsible authority
<b>Fisheries Act 1994</b>		
Removal, destruction or damage of marine plants	Trimming, pruning, burning, removing or damaging marine plants for any purpose and on any tenure. Marine plants include mangroves, seagrass, saltmarsh and marine algae. (Integrated Development Assessment System — Form 1 Part 02)	Queensland Primary Industries and Fisheries within the Department of Employment, Economic Development and Innovation (DEETI)
Construct or raise waterway barrier works	Under section 76G of the <i>Fisheries Act 1994</i> , a person may not construct or raise waterway barrier works (including culverts, road crossings etc) without addressing the need for fish movement across the barrier. (Integrated Development Assessment System — Form 1 Part 03)	Queensland Primary Industries and Fisheries within the Department of Employment, Economic Development and Innovation (DEETI)
<b>Land Act 1994</b>		
Approval for temporary road closure	Approval for temporary closure of a state controlled road.	Department of Environment and Resource Management (DERM)
Permit to occupy	Permission to occupy reserve, road or unallocated state land.	Department of Environment and Resource Management (DERM)
<b>Electricity Act 1994</b>		
Notice of work affecting electricity entity's property	A notice of work will be required if the development impacts on an electricity entity's property.	Department of Mines and Energy within the Department of Employment, Economic Development and Innovation (DEETI)
<b>Petroleum and Gas (Production and Safety) Act 2004</b>		
Pipeline licence holder consent required	Refer to sections 807 and 808 of the <i>Petroleum and Gas (Production and Safety) Act 2004</i> (restriction on building or changing the surface of pipeline land for a pipeline licence).	Department of Mines and Energy within the Department of Employment, Economic Development and Innovation (DEETI)
<b>Sunshine Coast Regional Council Local Laws (Maroochy Shire Local Laws)</b>		
Permits required	A range of Sunshine Coast Regional Council local laws may be applicable to the proposed development. No representation of the potential local laws affected are made at this time by this development due to the lengthy timeframe of any construction program and the likelihood of local law and planning scheme changes due to the local government amalgamations that occurred in March 2008.	Local Government (Sunshine Coast Regional Council)

## 4.9 Sustainable Planning Bill 2009

During June 2009 the Queensland Government tabled the Sustainable Planning Bill to the Queensland Parliament for debate. This Bill is intended to replace the *Integrated Planning Act 1997* in 2010. Preliminary interpretation of the Bill indicates that it retains the key concepts and processes of the Integrated Planning Act and as such does not represent a quantum shift in the rules and regulations governing the future construction and development associated with CoastConnect – Caloundra to Maroochydore. It is still expected that a range of approvals will be required for the construction and operation of the corridor and it will be likely that these will be assessed in future under the auspices of the Sustainable Planning Act.

## 4.10 Summary

Planning and preservation of the CoastConnect – Caloundra to Maroochydore bus corridor is governed principally by the *Transport Infrastructure Act 1994* (Queensland). A range of approvals will be required for preservation of the corridor, and future construction activities and operation under the *Integrated Planning Act 1997* (Queensland), other state legislation and possibly Commonwealth legislation.

A general indication of the approvals, permits and licences that may be triggered during the project have been provided in Table 4-2; however, an assessment of the necessary planning applications will need to be undertaken closer to the project delivery date as changes are likely to occur with the local government planning schemes and planning legislation between now and when approval for the project will be sought.

Five major approvals pathways were identified in this chapter in relation to the project:

- Integrated Development Assessment System
- designation of land for community infrastructure
- declaration of a significant project
- authorised works
- transport infrastructure.

Determination of a preferred approvals pathway has not been undertaken at this stage due to the potential for changes to occur. An assessment of the preferred approvals pathway will need to be undertaken prior to approvals for the project being sought. This will inform the eventual approval pathway(s) selected.

