Chapter 3
Legislative framework
3.0 Legislative and policy framework

The SFRC has the potential to trigger a variety of legislation, conventions and policy which operate at different levels of jurisdiction. These include:

- legislation, conventions and agreements which operate at a Commonwealth level and have particular relevance to the SFRC
- state legislation and policies which will be triggered (or have the potential to be triggered) by the SFRC
- local government policy documents and planning instruments

This chapter introduces and reviews the government policy and legislation relevant to the SFRC study. It should be noted that more detailed consideration is given to relevant legislation, policy and standards in each technical paper in Volume 2 of the revised assessment report. The discussion provided below is intended to be an overview of the applicable instruments.

3.1 Relationship to government policy

3.1.1 Commonwealth

Auslink

The National Land Transport (AusLink) Network is a single integrated network of land transport linkages of strategic national importance, which is funded by Federal, State and Territory Governments. The AusLink Network is based on national and inter-regional transport corridors including connections through urban areas, links to ports and airports, rail, road and intermodal connections that together are of critical importance to national and regional economic growth development and connectivity.

An important facet of the AusLink program is a long-term multimodal planning framework aimed at ensuring that Australian Government funding is targeted at projects on the AusLink Network that deliver high levels of national benefit. Key to this planning framework are the corridor strategies that have been prepared for each of the 24 corridors on the AusLink Network.

As discussed in Section 4.1.2, the then Commonwealth Department of Transport and Regional Services (DoTARS) released the North-South Rail Corridor Study in 2005 investigating the Melbourne-Sydney, Sydney-Brisbane and Melbourne-Brisbane AusLink rail corridors. The key finding of the report was a recommendation that the far western-sub corridor alignment be further investigated for a new inland rail connection between Melbourne and Brisbane.

On the 28th of March 2008 the Federal Government announced a further $15million in AusLink funding for the Australian Rail Track Corporation (ARTC) to undertake investigations focused on the far western sub-corridor. This study is building upon the earlier work to determine the optimum alignment of any future inland railway after taking into account the needs of potential users as well as possible engineering, planning and environmental considerations.

The Stage 1 findings of the Inland Rail Study were released by ARTC in May 2009, and are discussed in further detail in Section 4.1.2.

3.1.2 State

South East Queensland Regional Plan 2009-2031

The South East Queensland Regional Plan 2009-2031 (SEQRP) has been prepared in accordance with the SP Act. The SEQRP is a statutory document under the Statutory Instruments Act 1992, and also a planning instrument under the SP Act. The SEQRP has a direct effect upon development in its own right, as well as an indirect effect on development through the adjustment and configuration of Local Government planning schemes and State plans and policies.

Under the SP Act, the SEQRP prevails when there is any conflict or inconsistency with any other plan, policy or code. However, the SEQRP has been designed to complement other applicable planning instruments rather than override these.
The SEQRP classifies the land throughout the region into different “regional land use categories”. Depending upon the regional land use category, certain development may be subject to the Regulatory Provisions contained within the SEQRP document. These Regulatory Provisions outline assessment requirements for particular developments within certain regional land use categories.

All Community Infrastructure development under the SP Act is exempt from assessment against the Regulatory Provisions of the SEQRP. A discussion on how the planning provisions of the SEQRP relate to the SFRC is provided in Technical Paper 5 – Land Use and Planning (Volume 2). It should be noted that although Community Infrastructure is exempt from assessment against the Regulatory Provisions, there is a requirement for Community Infrastructure to meet the desired regional outcomes, principles and policies within the SEQRP. These relate to the following categories:

- sustainability and climate change
- natural environment
- regional landscape
- natural resources
- rural futures
- strong communities
- engaging Aboriginal and Torres Strait Islander peoples
- compact settlement
- employment location
- infrastructure
- water management
- integrated transport

The desired regional outcomes, principles and policies within the SEQRP are generally reflected in the CID Checklist (Appendix A). This checklist outlines requirements for environmental assessment of a CID project, and identifies where these requirements are met in the revised assessment report.

**South East Queensland Infrastructure Plan and Program 2009-2026**

The South East Queensland Infrastructure Plan and Program (SEQIPP) is a document updated annually which identifies the key infrastructure priorities for the south-east Queensland region. The SEQIPP 2009-2026 plans for over $107 billion of infrastructure investment in the region over the next 20 years. The SEQIPP complements the SEQRP, and is intended to assist the SEQRP in achieving its objectives through ensuring the adequate strategic long-term planning of infrastructure throughout south-east Queensland. A discussion of the SEQIPP and how it relates to the SFRC is provided in Technical Paper 5 – Land Use and Planning (Volume 2).

**3.1.3 Local**

In addition to their local planning schemes, the two Local Governments affected by the study (Ipswich City Council and Scenic Rim Regional Council) have in place a range of policies that influence the future development of the study area. These include:

- Ipswich 2020
- Ipswich City Council Nature Conservation Strategy 2000
- Boonah Rural Futures
- Beaudesert Community Plan
- Beaudesert Draft Planning Vision
Whilst these policies are not of direct relevance to the overall assessment of the SFRC, they do provide useful background information regarding the local community values and environmental characteristics of the study area. Accordingly, they have been given further consideration in Technical Paper 2 – Nature Conservation, Technical Paper 5 – Land Use and Planning and Technical Paper 11 – Social Impact Assessment (Volume 2).

3.2 Legislation

3.2.1 Commonwealth

*Environment Protection and Biodiversity Conservation Act 1999*

The *Environment Protection and Biodiversity and Conservation Act 1999* (EPBC Act) establishes a process for environmental assessment and approval of proposed actions that are likely to have a significant impact on Matters of National Environmental Significance (MNES) or on Commonwealth land.

MNES are outlined in the EPBC Act to include:

- the world heritage values of a declared World Heritage area
- places of National Heritage
- the ecological character of Ramsar wetlands of international importance
- listed migratory species
- listed threatened species and ecological communities (discussed in Technical Paper 2 – Nature Conservation (Volume 2))
- nuclear actions
- Commonwealth marine areas

According to the EPBC Act Policy Statement 1.1 – Significant Impact Guidelines (DEWHA 2006), a “significant impact” is an impact which is important, notable, or of consequence, having regard to its context or intensity. The likelihood of an action having a significant impact depends upon the sensitivity, value, and quality of the environment affected, and upon the intensity, duration, magnitude and geographic extent of the impacts. Further, a significant impact is considered “likely” if it is a real or not remote possibility; it is not necessary for a significant impact to have greater than a 50% chance of happening.

Consideration of the potential impact of the SFRC on a range of MNES is provided in Technical Paper 2 - Nature Conservation (Volume 2). This assessment relates primarily to listed threatened species and ecological communities and listed migratory species. The SFRC is unlikely to have any impact on World Heritage areas, places of National Heritage, Ramsar Wetlands and/or Commonwealth Marine areas and does not constitute a nuclear action.

The study team has held discussions with the Department of Environment, Water, Heritage and the Arts (DEWHA) regarding the potential for the SFRC to be classed as a “controlled action” under the EPBC Act. The study team has been advised that DEWHA does not require a referral for the project under the EPBC Act until such time as the detailed design of the project has been undertaken, and the construction of the SFRC is imminent. However, addressing DEWHA’s interests by ensuring avoidance and mitigation of impacts upon MNES has been a primary concern for the study team. This consideration has underpinned the planning and design stages of the SFRC study.

*Native Title Act 1993*

The *Native Title Act 1993* (NT Act) was introduced to address the implications of the Mabo High Court decision, which dismissed the notion of “terra nullius” and recognised the prior rights of indigenous Australians as being similar to those of indigenous groups in other parts of the world. The NT Act set up a process through which indigenous Australian groups can lay claim to pre-existing ownership (native title) rights over areas in Australia and the Torres Strait.
These native title claims are then assessed by the National Native Title Tribunal, which makes a decision on the merits of the claim, and (depending upon the decision) may place the claim on the National Native Title Register. Successful native title claims are required to exhibit:

- that the indigenous group has maintained a traditional connection with the land since 1788
- that the interests of the indigenous group have not been “extinguished” by inconsistent acts (for example, the granting of freehold title)

While there are no formally recognised native title rights over the study area, both Local Government areas (Ipswich City and Scenic Rim Regional Councils) are subject to active claims. In particular, the study area is subject to the Jagera People #2 Claim (Ref: QC03/15). This claim covers a large area extending from Toowoomba in the west, Redlands in the east and Esk in the north.

Consideration of the potential application of Native Title to the SFRC is provided in Technical Paper 5 - Land Use and Planning (Volume 2). The Jagera people have been actively involved in the SFRC Study, and have authored Technical Paper 9 - Aboriginal Cultural Heritage (Volume 2).

3.2.2 State

Transport Infrastructure Act 1994

The objective of the Transport Infrastructure Act 1994 (TI Act) is to provide a regime that allows for and encourages effective integrated planning and efficient management of a system of transport infrastructure. For rail transport, the objectives of the TI Act under section 2 (d) include establishing a regime that, among other things, contributes to overall transport effectiveness and efficiency, provides for adequate levels of safety, and provides a high level of accountability.

To this end, Chapter 7 of the Act deals with rail transport infrastructure:

- Part 2 outlines the process for investigating potential rail corridors (for studies such as the SFRC)
- Part 7 outlines the regulatory processes designed to deal with the administration of railway land

Sustainable Planning Act 2009

The Sustainable Planning Act 2009 (SP Act) was enacted on 18 December 2009, and together with the Sustainable Planning Regulation 2009 (SP Regulation), replaced the Integrated Planning Act 1997 as the primary planning legislation for Queensland. The SP Act oversees the Integrated Development Assessment System (IDAS), which integrates a range of approval requirements previously dealt with under a variety of State legislation. The SP Act also requires each local government to prepare a local planning scheme which deals with the assessment of development within the local government area.

As outlined in Section 2.0, TMR is seeking a CID for the SFRC in accordance with Chapter 5 of the SP Act. The CID process provides for the forward identification of future land requirements for infrastructure development, thus providing certainty to landowners, local governments and State Government agencies alike. The designation will effectively ensure that any future development in the area is consistent with the rail corridor. The CID will provide local governments with guidance for future land use decisions and will assist in facilitating ideal planning outcomes for the future.

In addition to protecting the corridor for the future, CID has the effect of exempting construction of the rail line from assessment under the applicable Local Government planning scheme/s. This is appropriate for large-scale linear projects such as the SFRC. Furthermore, under section 231 of the SP Act, Operational Work for the purposes of this project is “exempt development”, as it does not qualify as self-assessable development, development requiring compliance assessment, assessable development, or prohibited development under Schedule 3 of the Sustainable Planning Regulation 2009 (SP Regulation).

It is important to note that there may be approvals required for a range of other uses required during the construction phase of the project (such as work camps, quarries and borrow pits) the location of which cannot be determined at this early stage. These uses would not be covered by the CID currently proposed and as such would potentially require approval under the local planning schemes.
Regardless, a range of approvals required under other State legislation may still be triggered under the SP Regulation. These are listed in Table 4, in addition to other relevant licensing and permit requirements.

**Koala conservation**

The statutory framework concerning koala conservation in South East Queensland is relatively complex. The *Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006-2016* (Koala Plan) came into effect in 2006. The Koala Plan is accompanied by the *Draft South East Queensland Koala State Planning Regulatory Provisions* (Interim SPRPs), which came into effect in November 2009. However, recent studies have shown that koala populations within SEQ are continuing to decline, despite the implementation of the Koala Plan and Regulatory Provisions. Based on an extensive koala habitat assessment and mapping project within SEQ, the Department of Environment and Resource Management (DERM) released a *Draft South East Queensland Koala Conservation State Planning Policy* (Draft SPP) and accompanying *Draft South East Queensland Koala Conservation State Planning Regulatory Provisions* in December 2009 (Draft SPRPs). The Draft SPP and Draft SPRPs produced in 2009 do not currently have legislative effect, with the second period for public comment recently expiring on 28 February, 2010. The koala conservation statutory instruments identified above are described in Table 3.

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Present Status</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Nature Conservation (Koala)</em> Conservation Plan 2006 and Management Program 2006-2016 (Koala Plan)*</td>
<td>In effect – Interim Development Control.</td>
<td>The Koala Plan, subordinate to the <em>Nature Conservation Act 1992</em>, was prepared to address the key threats facing koalas and sets out strategies to stop the decline of koala numbers and set in train the species' recovery. Issues addressed in the Koala Plan include: habitat protection and vegetation clearing; development; State Government infrastructure; vehicle mortality; dog attacks; translocation; research; zoos; public education and the rehabilitation of sick, injured and orphaned koalas.</td>
</tr>
<tr>
<td><em>Draft South East Queensland Koala State Planning Regulatory Provisions</em> November 2009 (Interim SPRPs)</td>
<td>In effect – Interim Development Control.</td>
<td>The Interim SPRPs prescribe which development may occur within protected koala bushland habitat areas and in interim koala habitat protection areas. The Interim SPRPs were updated in November 2009 to bring forward the protection of high value bushland areas, identified through the Koala Habitat Assessment and Mapping Project.</td>
</tr>
</tbody>
</table>
| *Draft South East Queensland Koala Conservation State Planning Policy 2009* (Draft SPP) | Not in effect – in draft form, to be finalised following public comment. | The Draft SPP complements the Draft SPRPs by providing direction to local governments and State agencies on how land use planning must consider koala conservation and habitat protection outcomes. The Draft SPP will inform the preparation and amendment of local planning schemes, master planning/structure planning processes and the designation of land for community infrastructure purposes. A key goal of the Draft SPP is to maintain the viability of all major koala populations across the region by increasing the size of their habitat. It will reflect:  
  - The latest koala habitat mapping; and  
  - The koala conservation policies contained in the South East Queensland Regional Plan. |
| *Draft South East Queensland Koala Conservation State* | Not in effect – in draft form, to be | The Draft SPRPs propose to:  
  - Apply different regulatory controls to different |
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<tr>
<th>Instrument</th>
<th>Present Status</th>
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</table>
| Planning Regulatory Provisions 2009 (Draft SPRPs) | Finalised following public comment. | areas, depending on the level of protection needed for koalas and their habitat;  
|                                                 |                                 | • Specify requirements for assessable development that falls within specified trigger thresholds;  
|                                                 |                                 | • Require Koala Safety Fencing and Measures guidelines to be incorporated into all development in the SEQ Koala Protection Area. |

Although they do not presently have legislative effect, the Draft SPP and Draft SPRPs are important statutory instruments for consideration in the SFRC Study for three main reasons:

- they are based on the most comprehensive mapping project undertaken for koala habitat in the SEQ region
- they reflect the most recent policy approaches to koala management within SEQ
- they are likely to supersede the Koala Plan and SPRPs, and may have statutory effect in the future when there is a commitment to construct the SFRC
### Table 4  Approvals and permits required under the Sustainable Planning Act 2009 and other legislation

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Administering Authority</th>
<th>Trigger</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental Protection Act 1994</td>
<td>DERM</td>
<td>General Environmental Duty</td>
<td>Section 319 of the EP Act imposes a <strong>general environmental duty</strong> which specifies that a person must not undertake any activity that may harm the environment without taking reasonable and practical measures to prevent or minimise the harm.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Proposed undertaking of an Environmentally Relevant Activity (ERA).</td>
<td>ERAs which may potentially occur as part of the construction process include ERA 19 – Dredging, ERA 20 – extracting rock, sand, clay, gravel or other material, and ERA 22 – screening, washing, crushing material extracted from the earth using plant or machinery with a design capacity of &gt;50t.</td>
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<td></td>
<td></td>
<td></td>
<td>It is presumed that the concrete rail sleepers will be made at a licensed premises, however should concrete batching of &gt;100 tonnes be required, ERA 60 – Cement manufacturing will also be triggered.</td>
</tr>
<tr>
<td>Vegetation Management Act 1999</td>
<td>DERM</td>
<td>Clearing of Native Vegetation Subject to the VMA.</td>
<td>The SFRC is likely to involve the clearing of vegetation. Regional Ecosystems (REs) in the study area include Endangered, Of Concern, and Not Of Concern. If the SFRC requires clearing of Endangered and/or Of Concern REs, an approval for clearing for ongoing purposes is required from DERM. This application must be prepared in accordance with the relevant code (Regional Vegetation Management Code for Ongoing Clearing Purposes: South East Queensland), and with a legally binding offset strategy. A decision on an application typically takes about 6 months.</td>
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<tr>
<td></td>
<td></td>
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</tr>
<tr>
<td>Water Act 2000</td>
<td>DERM</td>
<td>Destroying vegetation, placing fill or excavating in a water course.</td>
<td>Riverine Protection Permit required for creek and river crossings.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Dredging within watercourse</td>
<td>Approval required for interfering with quarry material within a watercourse.</td>
</tr>
<tr>
<td>Nature Conservation Act 1992; Nature Conservation</td>
<td>DERM</td>
<td>Destroying a vulnerable flora species</td>
<td>Approval required from DERM for interfering with vulnerable flora species. The SFRC is likely to require the relocation of a variety of native animal species. The NCA requires permits to be granted in order to move protected animals from one location to another. The species for which this requirement applies are identified as Endangered, Vulnerable or Rare in the Nature</td>
</tr>
<tr>
<td>(Wildlife) Regulation 2006</td>
<td></td>
<td>Moving native and exotic wildlife.</td>
<td></td>
</tr>
<tr>
<td>Legislation</td>
<td>Administering Authority</td>
<td>Trigger</td>
<td>Application</td>
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<tr>
<td>Nature Conservation (Koala) Conservation Plan 2006 and Management Program 2006-2016 (Subordinate to the NCA).</td>
<td>DERM</td>
<td>Development in Koala Conservation Areas and Koala Sustainability Areas.</td>
<td>The SFRC passes through land classified as koala conservation area and koala living area under the Koala Plan. An assessment of the project against the Koala Plan has been provided in the Technical Paper 2 - Nature Conservation (Volume 2).</td>
</tr>
<tr>
<td>Aboriginal Cultural Heritage Act 2003</td>
<td>DERM</td>
<td>Development affecting any aspect of Aboriginal cultural heritage.</td>
<td>The ACHA binds all persons (including the State) to provide effective recognition, protection and conservation of Aboriginal cultural heritage.</td>
</tr>
<tr>
<td>Acquisition of Land Act 1967</td>
<td>DERM</td>
<td>Acquisition of freehold land for public works and other public purposes.</td>
<td>At some future point the land required for the SFRC will be acquired under the ALA by TMR in order to allow construction of the SFRC to occur. Section 5 (1) of the ALA states that the Crown may take land for any purpose listed in the Schedule, which includes bridges, drainage infrastructure, railway and associated purposes, roads, or for any public works or other work.</td>
</tr>
</tbody>
</table>
Other Legislation

In addition to those listed in Table 4, there are other legislation and policies with the potential to be triggered by the SFRC. Whilst not as pivotal as those dealt with above, consideration still needs to be given to their potential influence on the project. These include:

- the Animal Care and Protection Act 2001
- the Dangerous Goods Safety Management Act 2001
- the Dangerous Goods Safety Management Regulation 2001
- the Fisheries Act 1994
- the Land Protection (Pest and Stock Route Management) Act 2002
- the Lands Act 1994
- the Local Government Act 1993
- the Queensland Heritage Act 1992
- the Soil Conservation Act 1986
- the Transport Operations (Road Use Management – Dangerous Goods) Regulation 2008
- the Workplace Health and Safety Act 1995
- the Workplace Health and Safety Regulation 2008

There is also a range of subordinate legislation developed under the Environmental Protection Act 1994 of relevance to the SFRC, including:

- Environmental Protection Regulation 2008 which details with activities that require approval for being carried out, environmental nuisance, ozone depleting substances, national pollutant inventory, used packaging materials, quality standards for petrol and diesel, administration, provisions and prescribed periods
- Environmental Protection (Water) Policy 2009 which states legally binding standards for water quality
- Environmental Protection (Noise) Policy 2008 which states legally binding standards for noise nuisance
- Environmental Protection (Air) Policy 2008 which states legally binding standards for air quality
- Environmental Protection (Waste Management) Policy 2000 which sets out waste management requirements for local and state governments
- Environmental Protection (Waste Management) Regulation 2000 which sets out requirements for waste disposal and receival, waste tracking and management of special wastes