



11 LEGAL AND REGULATORY APPROVALS ASSESSMENT

CHAPTER SUMMARY, RECOMMENDATIONS AND CONCLUSIONS:

The existing legal and regulatory regime provides a framework that would allow the Department of Transport and Main Roads (TMR) to deliver Townsville Eastern Access Rail Corridor (TEARC).

- One of the key risks for TEARC will be issues in relation to land, particularly those specified in sections 11.1.6 (Land Acquisition), 11.1.7 (Native Title) and 11.1.8 (Aboriginal Cultural Heritage). Provided these issues are proactively managed, there are no particular concerns in relation to these land risks. The planned and unplanned risk provisions have made allowances for these risks.
- TMR has the power to negotiate to purchase land required for TEARC, or compulsorily acquire land under the *Transport Planning and Coordination Act 1994* (Qld) (TPC Act) and the *Acquisition of Land Act 1967* (Qld) (AL Act).
- An analysis of all of the properties impacted by TEARC will need to be carried out, with a view to ascertaining whether native title continues to exist.
- TMR will need to ensure there is compliance with the cultural heritage duty of care, including that there is no unlawful harm to Aboriginal cultural heritage. There are well understood strategies to address these issues.
- Subject to technical assessments, referral of TEARC under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) is recommended to provide certainty for TEARC, including providing protection from a future listing event.
- Regulatory approvals may be required for the construction, delivery and operation of TEARC (Table 11.1). In addition to the EPBC Act approval, approvals are likely to be required as construction proceeds, and will not be required before construction starts.
- Construction contracts will need to be carefully prepared to ensure the Principal Contractor has management and control over the workplace on which any physical works are carried out so that it has the primary work health and safety obligations, as outlined in Section 11.1.4.
- A key consideration for managing the costs and impacts of TEARC is the protection of the corridor from surrounding incompatible development. The fact the majority of TEARC is located within the TSDA provides some protection against proposed development on the corridor as any application for a material change in use will have to be approved by the Coordinator-General. There are a number of measures which may be taken to protect the corridor including community infrastructure designation, gazettal of land as “future railway land” under the TI Act and inclusion of that part of the corridor within the Port of Townsville in the master plan and port overlay.

This chapter outlines the key legal and regulatory issues and risks, identified by Clayton Utz, which will need to be considered and managed for TEARC including:

- legislative issues pertaining to planning approvals, environmental legislation, industrial relations, land acquisition, native title and cultural heritage
- approvals required to be considered and completed
- other legal matters relating to procurement and delivery.



11.1 Legislative issues

11.1.1 Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)

The Australian Minister for the Environment has previously determined the earlier Townsville Port Access Road and Rail Project, Eastern Access Corridor (reference number 2003/1011) was a "controlled action" and assessment and approval under the EPBC Act was required.

Although the rail alignment was referred, the assessment and approval is for the road component only. A new referral may be required to determine whether the TEARC is a "controlled action" requiring assessment and approval under the EPBC Act.

The requirement for a referral depends on whether TEARC is likely to have a significant impact on a 'matter of national environmental significance' (MNES).

The TEARC Detailed Business Case (DBC) Environmental Assessment Report dated August 2017, concludes that referral of TEARC is likely as the previous referred project did not include the rail alignment (only road) and the site may contain the following MNES:

- 1 threatened ecological community
- 41 Listed Threatened Species
- 63 Listed Migratory Species.

The Report also notes that TEARC is proximate to the Great Barrier Reef Marine Park (2.3 km) and Bowling Green Bay, a Ramsar Wetland, which are also MNES.

It will need to be assessed whether the potential impacts of TEARC on MNES require a referral.

To mitigate the risk of delay to TEARC including providing protection from a future listing event (as defined in the EPBC Act, which includes a new species being listed), referring TEARC under the EPBC Act to the Federal Minister for Environment and Energy is recommended.

If a referral is made and TEARC is determined to be a 'controlled action', then an environmental assessment process will need to be followed under the EPBC Act. If approved, the approval conditions will likely require the preparation of management plans for approval by the Federal Minister for the Environment and Energy and requirements for direct offsets. Active management of this process will be required to ensure it does not delay TEARC timetable.

As stated in chapter 13 (Environmental Assessments and Approvals), TEARC will trigger a referral and approval of a controlled action under the EPBC Act that is likely trigger assessment by an EIS process.

11.1.2 Planning issues in relation to the Port of Townsville

The reference design locates part of TEARC on land within the Port of Townsville (PoT), which is an identified priority port under the *Sustainable Ports Development Act 2015* (Qld) (SPD Act).

As a priority port, the Minister for State Development must develop a:

- master plan for the PoT, which amongst other things, identifies the master planned area for the port
- port overlay to implement the master plan, as soon as practicable after the master plan takes effect.

The master plan and the port overlay for the PoT have not yet been released.



The port overlay may state:

- matters an affected local government must consider in making or amending a local planning instrument (such as a planning scheme)
- the level of assessment for development in the master planned area for the Planning Act
- the matters an assessment manager must consider in assessing a development application for the Planning Act or
- the matters a port authority must consider in making or amending a land use plan.

Under the SPD Act:

- If there is an inconsistency between a port overlay and a planning instrument under the Planning Act, the port overlay prevails to the extent of the inconsistency.
- If the PoT's Land Use Plan made under the Transport Infrastructure Act 1994 (Qld) is inconsistent with the port overlay, the port overlay prevails to the extent of the inconsistency.
- While a port overlay cannot override a development scheme for a State development area, the Coordinator-General must consider whether the development scheme is inconsistent with the port overlay, and decide whether to amend the development scheme to remove the inconsistency.

11.1.3 Planning and environmental assessment

Table 11.1 contains a list of regulatory approvals that may be required for construction, delivery and operation of TEARC. The necessity for particular approvals will depend on the particular activity or land on which TEARC is carried out.

Apart from the EPBC Act approval, a number of State approvals may be triggered. The approvals are likely to be required as construction proceeds, and generally will not be required before construction starts.

A compliance management plan may be approved under the TI Act that could displace the need for a number of State approvals.

Table 11.1 Approvals Matrix

| APPROVAL | TYPE | DESCRIPTION | TIMING | RESPONSIBLE AUTHORITY |
|-------------------|----------|--|---|---|
| EPBC Act referral | Approval | Determination as to whether TEARC is a 'controlled action' requiring assessment and approval under the EPBC Act. | Controlled action determination is six weeks from lodgement of the referral. If TEARC is a controlled action, subsequent approvals processes will follow, with timing depending on the assessment process decided by the Minister. | Federal Minister administering the EPBC Act |



| APPROVAL | TYPE | DESCRIPTION | TIMING | RESPONSIBLE AUTHORITY |
|---------------------------------------|----------|--|---|--|
| State Development Area (SDA) approval | Approval | SDA approval under the <i>State Development and Public Works Organisation Act 1971</i> (Qld) may be required as triggered by the development scheme for the Townsville State Development Area (TSDA). The development scheme does not apply to a material change of use for certain community infrastructure (including rail transport infrastructure) under the now repealed Sustainable Planning Regulation, where the development is undertaken by a public sector entity, or to development under a designation under the Sustainable Planning Act. Despite the repeal of the Sustainable Planning Act, in our view these exemptions will continue. | Depends on the referral and notification process. Allow 3-6 months. | Coordinator-General |
| Development approvals | Approval | <p>Development approvals under the <i>Planning Act 2016</i> (Qld) (PA) may be required, including for clearing of native vegetation, tidal works, waterway barrier works, removal of marine plants and development on strategic port land.</p> <p>Planning Scheme approvals will not be required if TEARC is government supported transport infrastructure (noting that there is some doubt whether TEARC falls within this definition given it is a freight line and the new requirement in the PA is for the infrastructure to be for "public use"), to the extent the land is subject to a designation or if a specific exemption is included in the <i>Planning Regulation 2017</i> (Qld). There is a designation for the TEARC gazetted on 27/06/2003. To the extent this designation applies to the same corridor and remains applicable to the corridor, then it will not require assessment under the Townsville Planning Scheme.</p> <p><u>Clearing of native vegetation</u></p> <p>The development will be exempt if TEARC is transport infrastructure under a designation (see above), or government supported transport infrastructure.</p> <p><u>Strategic Port Land</u></p> <p>A development approval may be required for development on strategic port land if either:</p> <p>(a) it is assessable under the Land Use Plan for the PoT or</p> <p>(b) the development is a material change of use that is inconsistent with the Land</p> | Based on the assumption that any applications would be code assessable, allow three to six months from lodgement. | <p>Chief executive administering the <i>Planning Act 2016</i>.</p> <p>Port authority for approvals triggered by the land use plan on Strategic Port Land</p> |



| APPROVAL | TYPE | DESCRIPTION | TIMING | RESPONSIBLE AUTHORITY |
|--|---|--|--|---|
| | | Use Plan and the port overlay for the master planned area does not state a different category of development for the development. | | |
| Clearing permits | Permit | Permits for clearing of native plants that are protected under the <i>Nature Conservation Act 1992</i> (Qld) (NCA) may be required. | Allow three months from lodgement. | Chief executive administering the NCA |
| <i>Queensland Heritage Act 1992</i> (Qld) | Approval | Development on or adjoining a registered heritage place will require approval unless the development is carried out by the State or an exemption certificate has been issued. It is assumed this will follow the process of development by the State under the <i>Queensland Heritage Act 1992</i> (Qld). | Depends on process but allow three to six months from lodgement. | Queensland Heritage Council and Minister proposing the development. |
| Material change of use and environmental authority | Approval | Development approval under the PA will be required for making a material change of use for an environmentally relevant activity (ERA) for a concurrence ERA. An environmental authority will be required under the <i>Environment Protection Act 1994</i> (Qld) (EP Act). | Allow three to six months from lodgement. | Chief executive administering the PA |
| Building work | N/A – accepted development | Building work carried out by or for the State or a public sector entity, to the extent the building work complies with the relevant provisions in the <i>Building Act 1975</i> (Qld) is accepted development that does not require a development approval. Although development approval is not required, applicable codes (e.g. the Building Code of Australia and Queensland Development Code) must be complied with. | N/A | N/A |
| <i>Transport Infrastructure Act 1994</i> (Qld) | Approval | Compliance management plans may be required to be approved for works that would otherwise cause unlawful environmental harm (e.g. noise from construction works) or otherwise require an approval. | Allow three months from lodgement. | Chief executive administering the TI Act |
| <i>Local Government Act 2009</i> (Qld) | Approval, unless carried out by the State (where the LG Act is not expressed to bind the State) | Required in relation to local government roads and footpaths. | Allow three months. | Relevant local government |



Any environmental assessment and approval process requires proactive management of potential issues including:

- Achievement of Timeframes—Delays to TEARC may be caused by the adequacy of environmental assessment documentation, public submissions, agency responses, negotiation of approvals and legal challenges. Whilst difficult to quantify the delay associated with these risks, particularly given that the extent of possible delays is determined by resourcing and response times of third parties outside the control of TMR, the active management of environmental approvals is required throughout the development of TEARC. If in the event an environmental approval decision is subject to legal challenge, a 12-month delay in receiving a determination by the court should be expected.
- Approvals Risks and Conditions—The risk of an environmental approval not being granted or that conditions imposed on approvals will be restrictive resulting in adverse impacts to TEARC is a possibility. This risk can be managed by thoroughly preparing assessment documentation, preparing a detailed stakeholder management plan, investing in the EMP process, design solutions, preparing draft conditions and liaising with the regulator.
- Community Issues—Further community consultation may need to be undertaken during subsequent phases of the TEARC, such as the detailed design stage. Issues may include restrictions on future land use, construction impacts (noise, vibration and dust), material/spoil haulage and impacts on the road network, flooding and groundwater movement. These community issues will be addressed in the implementation stage of TEARC.

11.1.4 Industrial relations and work health and safety

During the construction phase of TEARC, TMR will contract a specialised construction company to build the required scope of works. This is likely to be a privately-operated company (or companies) falling under the Australian Government employment regime. Depending on the contractor, there may be Federal and State government work health and safety-related legislation with which to comply.

Being engaged as the Principal Contractor for the purposes of the work health and safety legislation, the Contractor will bear the primary obligations to ensure TEARC is constructed safely, in accordance with good practice and in compliance with work health and safety legislation. The Contractor would also ordinarily engage relevant personnel and bear the ongoing employment and industrial risks, including delay, during this phase.

TMR would continue to hold work health and safety obligations, as they cannot be delegated to another party. This includes an obligation to consult, cooperate and coordinate with other parties who owe health and safety duties in relation to these matters. TMR will need to take steps to satisfy these obligations through its framework for managing contractors, including:

- exercising due diligence in the appointment of a suitably experienced and competent Contractor/s
- ensuring any contractual documents impose clear work health and safety obligations on the Contractor/s
- undertaking audit and review of the Contractor's safety performance and compliance.

TMR will need to ensure the Principal Contractor is appropriately managing these safety risks, as well as the risks of protracted industrial disputes and potential delays, throughout the contract period. The risks can be reduced (to the extent possible) by:

- having a rigorous procurement process to select the Contractor, ensuring it is appropriately experienced and competent to perform the works



- ensuring the Contractor is effectively engaged as the Principal Contractor in a manner which complies with work health and safety legislation (for example, ensuring a deed of engagement is entered into and the Principal Contractor is authorised to have management or control of the workplace)
- assessing and auditing the Contractor's industrial relations strategy, including the industrial arrangements it has in place, to ensure TEARC is delivered without delay attributable to industrial disputes
- assessing the Contractor's track record for project delivery through, for example, referee checks
- including contractual clauses to ensure compliance with any applicable federal or state Building Codes depending on whether there is Australian Government and/or Queensland Government funding (e.g. the 2016 Building Code)
- subject to TEARC receiving Australian Government funding, ensuring any Contractor is accredited under the federal Work Health and Safety Accreditation Scheme
- including contractual clauses for assessing the Contractors compliance, such as reporting obligations for safety matters and industrial disputes or wages complaints, as well as enabling audits to be performed to check compliance
- undertaking audit and review of the Contractor's safety performance and taking steps to address non-compliance, for example, issuing warnings or terminating the contract in the event of serious breach.

11.1.5 Rail safety and accreditation

Under the *Rail Safety National Law* (RSNL) a person must not carry out any railway operations (which includes the construction of a railway) unless the person is:

- a 'rail transport operator' who is accredited under the RSNL or is exempt from the requirement to be accredited
- carrying out the railway operations for or on behalf of a 'rail transport operator' who is accredited under the RSNL or is exempt from the requirement to be accredited or
- exempt under the RSNL from the requirement to be accredited.

A person can be accredited as a 'rail transport operator' as either or both:

- a 'rail infrastructure manager' (RIM), which means the person who has effective control and management of the rail infrastructure, whether or not the person owns the rail infrastructure, or has a statutory or contractual right to use, control or provide access to it
- a 'rolling stock operator' (RSO), which means a person who has effective control and management of the operation or movement of rolling stock on rail infrastructure for a railway, but does not include a person only because that person drives the rolling stock or controls the network or network signals.

The party carrying out TEARC will need to be accredited in accordance with the process in the RSNL. The criteria for accreditation includes having the competence and capacity to manage risks to safety associated with the railway operations and also the financial capacity (or public risk insurance arrangements) to meet reasonable potential accident liabilities arising from the railway operations. The Office of the National Rail Safety Regulator is responsible for accrediting RIMs and RSOs under the RSNL.

The RSNL imposes obligations on rail transport operators to implement a safety management system and duties to ensure that rail safety is not affected by the carrying out of railway operations. These duties extend to contractors undertaking railway operations on behalf of a rail transport operator.



Rail transport operators are required to identify risks to the safety of persons arising, or potentially arising, from railway operations carried out by different rail transport operators and reasonably seek to enter into interface agreements to manage those risks.

11.1.6 Land acquisition

This section outlines TMRs power to acquire land for TEARC, requirements for compensation and alternative acquisition mechanisms.

- Power to Acquire Land—The land required for TEARC has been identified and is owned by TMR, the Coordinator-General, the PoT, the Townsville City Council, Ergon Energy Limited and one freehold property is privately owned.

The land owned by the Coordinator-General can be dealt with in accordance with the Queensland Government Land Transaction Policy (or as advised by the Queensland Treasurer).

TMR can negotiate to purchase the other land required for TEARC or can compulsorily acquire land using its power under the TPC Act and the process under the AL Act.

- Compensation for Acquisition of Land—If land is compulsorily acquired, every person with an interest in it can claim compensation. Compensation is assessed under the AL Act
- Alternative Acquisition Mechanisms—Given the nature of TEARC, it is unlikely alternative acquisition mechanisms will be required.

11.1.7 Native title

It is necessary to consider whether there are any 'future acts' to be done in association with TEARC and, if so, what is required for such acts to validly affect native title. Under the Native Title Act 1993 (Cth) (NT Act), a 'future act' includes any 'act' (for example, the grant of a statutory approval or of land tenure) that takes place after 1 January 1994 and 'affects native title rights and interests' in relation to land or waters. To the extent, a future act affects native title rights and interests (whether by extinguishing them or by conferring rights or creating interests that are otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise), the future act will be valid only if it is covered by, and done in accordance with Part 2, Division 3 of the NT Act.

In short, if there are any future acts to be done in connection with the undertaking of TEARC, they will be invalid to the extent they affect native title, unless either the:

- parties to a registered Indigenous Land Use Agreement (ILUA) have consented to the doing of the relevant future acts or
- future acts are done in accordance with an alternative (and applicable) provision of Part 2, Division 3 of the NT Act.

However, because an act can only be a 'future act' if it would affect native title, this would affect TEARC only if there remain land or waters within the project area where native title has not been extinguished.

In this regard, it appears that the properties impacted by TEARC include Crown leases, road reserves, estates in fee simple and unallocated State land.

The valid grant of a freehold estate will extinguish native title as it confers on the proprietor rights of exclusive possession that are wholly inconsistent with the continued existence of native title rights and interests.



During the land acquisition process, an analysis of all of the properties impacted by TEARC should be carried out, with a view to ascertaining how many have been the subject of "tenure" or "public works" (PEPAs).

11.1.8 Aboriginal cultural heritage

The *Aboriginal Cultural Heritage Act 2003* (Qld) (ACH Act) prescribes a cultural heritage duty of care that will require TMR (or its Contractor) to take all reasonable and practicable measures to ensure its activities do not harm Aboriginal cultural heritage.

Failure to comply with the cultural heritage duty of care is an offence. It is also an offence under the ACH Act to unlawfully harm, excavate, relocate, take away or possess Aboriginal cultural heritage. However, there are certain circumstances in which TMR will be taken to have complied with the cultural heritage duty of care (and not otherwise to have committed any of the above ACH Act offences). These would include where TMR carries out its activities under either:

- an approved Cultural Heritage Management Plan (CHMP) under Part 7 of the ACH Act that applies to the Aboriginal cultural heritage
- a native title agreement such as a registered ILUA, or another agreement with an Aboriginal party, unless the Aboriginal cultural heritage is expressly excluded from being subject to the agreement. These other agreements are commonly referred to as Cultural Heritage Management Agreements (CHMA).

11.1.9 Conclusion

One of the key risks for TEARC will be issues in relation to land, particularly those specified in sections 11.1.6 (Land Acquisition), 11.1.7 (Native Title) and 11.1.8 (Aboriginal Cultural Heritage). These potential issues will require proactive management, including early engagement with stakeholders, up-front consideration of preferred approaches, following relevant legislative processes and building sufficient time into TEARC timetable to ensure vacant possession of all necessary land by the date required.

Provided these risk issues are proactively managed, there are no particular concerns anticipated.

11.2 Regulatory issues

11.2.1 Third-Party access agreements and regulation

The below-rail services which are currently supplied by Queensland Rail for the Mount Isa Line are regulated under Part 5 of the *Queensland Competition Authority Act 1997* (Qld).

On the 11th October 2016, the Queensland Competition Authority (QCA) approved a new access undertaking for Queensland Rail (QR). The new access undertaking has a termination date of 30 June 2020.

There are likely to be a number of access agreements in existence that allow third party operators to use the Mount Isa Line.

QR, as the expected final operator, will need to carefully review the applicable access undertaking and access agreements (both current and future) to determine the extent to which the access afforded under those arrangements will be affected by TEARC. In particular, consideration will need to be given to:

- any consultation requirements which are triggered by the proposed changes to the Mount Isa Line
- whether current access holders will be entitled to any compensation in the event of changes to existing freight path times due to the impact of TEARC (unlikely given that existing arrangements will in all likelihood expire in advance of project delivery)
- changes to new contracts in the event of an operator taking up additional freight paths



- whether the cost of any new rail infrastructure can be included in Queensland Rail's regulatory asset base under its approved access undertaking
- the extent, if at all, that access holders can be required to bear some of the costs associated with changes to the Mount Isa Line.

11.2.2 Competition and consumer law

QR is subject to the *Competition and Consumer Act 2010* (Cth) (CCA) that includes the competition provisions in Part IV and the *Australian Consumer Law* (ACL). The ACL prohibits a number of practices when engaged in trade or commerce, including:

- engaging in misleading and deceptive conduct
- making false representations
- engaging in unconscionable conduct
- engaging in other unfair practices (as proscribed by the ACL).

Judicial decisions under the CCA have held that silence can constitute misleading or deceptive conduct where the circumstances are such that another party would have a reasonable expectation that if a particular fact or circumstance existed, it would be disclosed.

Accordingly, if a decision is made to proceed with TEARC, Queensland Rail should fully advise all existing users of its below-rail network and any access seekers with whom it is then negotiating terms and conditions of access, of the impacts of implementing TEARC. Further advice/updates would also need to be provided by Queensland Rail in the event that any material changes are made to the scope of TEARC.

11.3 Other legal matters

11.3.1 Project procurement and delivery

The Delivery Model Analysis Chapter (Chapter 9) identifies and assesses the potential project delivery options. The options under consideration are well known in the market and there are no particular legal or legislative impediments to delivery of the project on that basis.

11.3.2 Corridor protection

A key consideration for managing the costs and impacts of TEARC is the protection of the corridor from surrounding incompatible development. The fact that the majority of TEARC is located within the TSDA provides some protection against proposed development on the corridor as any application for a material change in use will have to be approved by the Coordinator-General.

Further, the following measures may be taken to protect the corridor:

- Community Infrastructure Designation

Amending the existing community infrastructure designation to ensure that it applies to the alignment corridor will mean that an approval under a planning scheme will not be required. Additionally, the current TSDA Development Scheme does not apply to a material change of use in accordance with a community infrastructure designation. Further the community infrastructure designation should prompt Council to refer any inconsistent development application inconsistent to TMR.

The designation also triggers the ability of affected landowners to request hardship acquisitions.

- Gazettal of land as "future railway land" under the TI Act



The corridor could be gazetted as "future railway land" under the TI Act. This requires the chief executive administering the TI Act to notify the local government in writing and in the gazette, indicate that the land is to be used for a railway.

Declaration of the corridor as "future railway land" under the TI Act will trigger concurrence agency powers for the chief executive administering the Planning Act for some approvals, and to some extent provides for corridor protection from incompatible development.

- Inclusion of that part of the corridor within the Port of Townsville in the master plan and port overlay
As explained in section 11.1.2 above, the part of the TEARC alignment within the PoT should be included in the master plan and port overlay for the PoT once made under the SPD Act.

11.3.3 Government contributions

Funding contributions from different levels of government raise different legal and legislative issues.

If the Australian Government were to provide a funding contribution, it is likely to require the Queensland Government to enter into an agreement setting out the terms upon which that funding would be provided. These would likely include matters such as compliance with the 2016 Building Code and the Australian Government Building and Construction WHS Accreditation Scheme.

11.3.4 Claims by third parties

There are several administrative remedies third parties may seek to pursue that could impact upon TEARC. These may include members of the public seeking judicial review of administrative decisions, investigations of complaints against Queensland Government, third party claims, common law nuisance and statutory nuisance.

11.4 Conclusion

The existing legal and regulatory regime provides a framework that would allow TMR to deliver TEARC, provided TMR adopts the various processes required by the regime.

One of the key risks will be issues in relation to land, particularly those specified in sections 11.1.6 (Land Acquisition), 11.1.7 (Native Title) and 11.1.8 (Aboriginal Cultural Heritage). Provided these issues are proactively managed, there are no particular concerns.

TMR has the authority to negotiate to purchase land required for TEARC, or compulsorily acquire land under the TPC Act and the AL Act.

An analysis of all of the land impacted by TEARC will need to be carried out, with a view to ascertaining whether native title continues to exist.

Referral of TEARC under the EPBC Act can provide certainty, including providing protection from a future listing event.

A number of regulatory approvals may be required for the construction, delivery and operation of TEARC (Table 11.1). Apart from the EPBC Act approval, they are likely to be required as construction proceeds, and will not be required before construction starts.



TMR will need to take steps to ensure there is compliance with the cultural heritage duty of care, including that there is no unlawful harm to Aboriginal cultural heritage. There are well-understood strategies to address these issues.

The construction contracts for TEARC will need to be carefully prepared to ensure the Principal Contractor has management and control over the workplace on which any physical works are carried out so that it has the primary work health and safety obligations, as outlined in Section 11.1.4.