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Attachment F - Code of Practice

NSW Code of Practice for Assessment of Division 5.1 Activities

ENV-PR-009

Applicability

NSW

Publication Requirement

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Primary Source

ARTC Code of Practice for Environmental Impact Assessment of Development Proposals in NSW (ENV-PR-009) (V1.0 - 5 January 2016)

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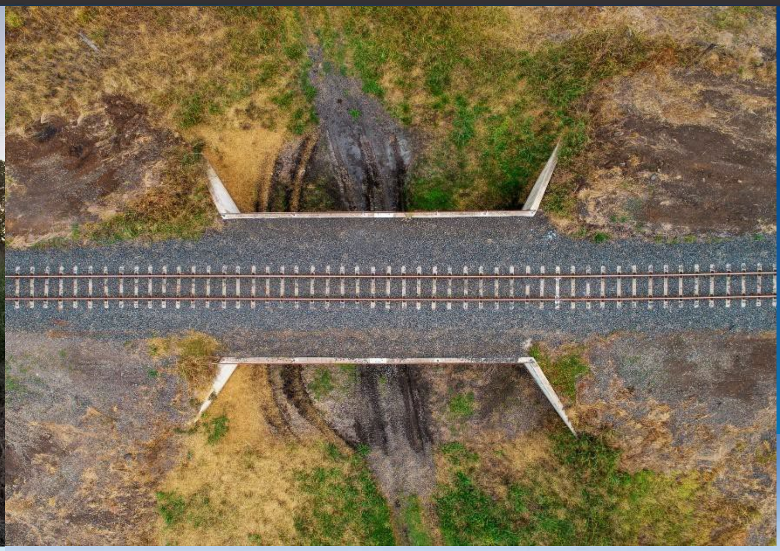
Amendment Record

Amendment Version #	Date Reviewed	Clause	Description of Amendment
1.0	5 Jan 16		Rebranded and assigned new document number as per COR-PR-001.
2.0	8 Dec 25		Updated to comply with statutory requirements and align to Planning Guidelines. Externally approved by the Minister for Planning and Public Spaces on 8 December 2025.

NSW Code of Practice for Assessment of Division 5.1 Activities

2025

ARTC

ACKNOWLEDGEMENT OF COUNTRY

ARTC acknowledges the Traditional Custodians of country throughout Australia and their deep connections to land, sea, and community. We respect their Elders past and present who have looked after the land and waters for millennia. In the spirit of reconciliation, we extend that respect to all Aboriginal and Torres Strait Islander peoples.

Contents

1. INTRODUCTION

1.1. BACKGROUND

The Australian Rail Track Corporation (ARTC) constructs and manages rail infrastructure in New South Wales (NSW).

Its principal business is the control and management of mainline rail networks used by freight and (non-electrified) passenger services, and the expansion of the network through investments like Inland Rail. ARTC's rail network extends for more than 8,500 kilometres through NSW, Queensland, South Australia, Victoria and Western Australia.

Under the NSW planning system, ARTC can undertake works for certain rail infrastructure facilities without needing to obtain development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Access to fast-track planning pathways allow for the efficient construction, operation and maintenance of ARTC's rail infrastructure required to meet NSW's growing freight and passenger needs.

ARTC is recognised as a 'public authority' and a 'determining authority' under Part 5, Division 5.1of the EP&A Act for the purposes of assessing and carrying out development for rail infrastructure facilities and development on land in, or adjacent to, a rail corridor without needing development consent under an environmental planning instrument (EPI). The main EPI for infrastructure is the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP).

Before commencing such works, ARTC must undertake an environmental assessment under Part 5, Division 5.1 of the EP&A Act to examine and take into account to the fullest extent possible, all matters affecting or likely to affect the environment by reason of the activity.

1.2. PURPOSE OF THE CODE

ARTC can undertake certain types of works relating to rail infrastructure facilities without development consent but are required (like other public authorities) to undertake an environmental assessment under Part 5, Division 5.1 of the EP&A Act before carrying out the activity.

The purpose of this Code is to ensure that the environmental assessment of rail infrastructure developments carried out by ARTC without consent are undertaken appropriately and lead to good on-ground outcomes.

This Code makes provision about the exercise by ARTC of its functions under the Act, section 5.5 in relation to activities, including activities for the following purposes:

(i) development for the purposes of the construction, maintenance or operation of ARTC rail infrastructure facilities,

(ii) geotechnical investigations relating to ARTC rail infrastructure facilities,

(iii) environmental management and pollution control relating to ARTC rail infrastructure facilities,

(iv) access for the purpose of the construction, maintenance or operation of ARTC rail infrastructure facilities,

(v) temporary construction sites and storage areas, including temporary batching plants, the storage of plant and equipment and the stockpiling of excavated material

By following this Code, ARTC will:

- classify its activities into the right assessment category
- assess its activities to an appropriate level of detail, including undertaking community consultation in appropriate instances
- document the assessment process accurately and transparently
- determine the assessment in a clear, practical and enforceable way
- implement its activities with the best possible measures in place to protect the environment and the community
- consider advice given by the Secretary of the Department
- review its compliance with this Code.

This Code does not apply if an Environmental Impact Statement (EIS) is required under the EP&A Act.

1.3. LEGAL STATUS OF THE CODE

This Code is an approved code under section 200 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). It will continue to be in force until it is varied or revoked in accordance with the EP&A Regulation.

This Code updates the 2016 Code in response to administrative changes, and changes to legislation and policy. The transitional arrangements for these codes are that the 2016 Code ceases to be in force 6 months after publication of this Code. This Code is therefore in force 6 months after the date of publication.

Compliance with the Code is required under the EP&A Act by ARTC in the exercise of its functions under the EP&A Act, including its duty under section 5.5 to examine and take into account how its activies will affect or are likely to affect the environment. Civil enforcement proceedings can be brought under section 9.45 of the EP&A Act for not complying with the requirements of this Code. The mandatory requirements of the Code are outlined in section 6 (compliance).

The requirement for ARTC to comply with this Code also extends to any works to be done on their behalf under an EPI (e.g. by a contractor or subcontractor).

Refer to **Appendix A** for definitions.

1.4. STATUS OF THE GUIDELINES FOR DIVISION 5.1 ASSESSMENTS

The Guidelines are made under section 170 of EP&A Regulation. Those Guidelines do not apply to ARTC when it undertakes its Division 5.1 assessments under this Code, unless otherwise stated in this Code.

This Code is to be read with the *Guidelines for Division 5.1 assessments* (Guidelines), which is found on the Department's website.

2. ARTC RAIL INFRASTRUCTURE FACILITIES

2.1. APPROVAL PATHWAYS

There are several planning assessment pathways for development associated with rail infrastructure, depending on the type of development proposed. This includes development permitted with consent that requires a development application, a State significant development/infrastructure application or complying development that will require a complying development certificate. Other minor developments are classified as exempt development and do not require any development consent but may still be required to comply with specific development standards.

The provisions of this Code apply to development for the purposes of ARTC rail infrastructure facilities that are permitted without consent as specified under an EPI, including Chapter 2 of the Transport and Infrastructure SEPP. The provisions of this Code do not apply to activities for the purposes of rail infrastructure facilities for which ARTC is required under Part 5 of the EP&A Act to furnish or obtain an EIS.

If a public authority proposes to undertake an activity that is classified as ‘development without consent’ in an EPI, they do not need to obtain development consent under Part 4 of the EP&A Act, but they will need to assess the environmental impacts of the activity under Part 5, Division 5.1of the EP&A Act (as a ‘determining authority’).

ARTC is prescribed as a ‘public authority’ under the EP&A Act framework for the purposes of assessing and carrying out development without consent under any EPI, in relation to:

- development for the purposes of rail infrastructure facilities,
- development on land in or adjacent to a rail corridor, or
- development for a railway or railway project specified in Schedule 2 of the Transport and Infrastructure SEPP.

As a prescribed public authority, ARTC is a ‘determining authority’ within the meaning of Division 5.1, Part 5 of the EP&A Act for the purposes of carrying out development that is permitted without consent and is therefore subject to the environmental assessment requirements of Part 5 of the EP&A Act.

ARTC must follow the assessment process outlined in section 3 of this Code before carrying out development for the purposes of a railway or rail infrastructure facilities on any land that is identified as ‘development without consent’ in an EPI, or development for a railway or railway project specified in Schedule 2 of the Transport and Infrastructure SEPP.

2.2. DIVISION 5.1 RAIL INFRASTRUCTURE FACILITIES

Sections 2.92 and 2.93 of Chapter 2, and Schedule 2 of the Transport and Infrastructure SEPP set out a range of rail infrastructure activities that can be undertaken by public authorities without needing development consent.

ARTC may also use provisions allowing rail infrastructure activities to be developed by a public authority without consent under other EPIs as per section 1 of Schedule 1 of the EP&A Regulation.

3. ASSESSMENT OF ARTC RAIL INFRASTRUCTURE FACILITIES

3.1. INTRODUCTION

ARTC is a prescribed determining authority for the purposes of section 5.6 of the EP&A Act. This designates ARTC to be a Part 5 determining authority for environmental impact assessment functions arising from certain rail infrastructure development that is permitted without consent under an EPI, including Chapter 2 of the Transport and Infrastructure SEPP.

When assessing and carrying out a Part 5, Division 5.1 activity, ARTC must:

- fulfil its duty under section 5.5 of the EP&A Act to examine and take into account to the fullest extent possible, all matters affecting or likely to affect the environment from that activity, and
- address the environmental factors listed in section 171(2) of the EP&A Regulation.

The Guidelines set out a five-stage assessment process for public authorities undertaking a Part 5, Division 5.1 environmental assessment (Figure 1).

The five-stage assessment process includes:

- Stage 1 – assessment requirements
- Stage 2 – assessment and consultation
- Stage 3 – documentation
- Stage 4 – determination
- Stage 5 – implementation

For this Code, ARTC has similarly adopted the five-stage assessment process set out in the Guidelines.

This Code should be read alongside these Guidelines (where the Code references those Guidelines). Where there is an inconsistency, the Code prevails.

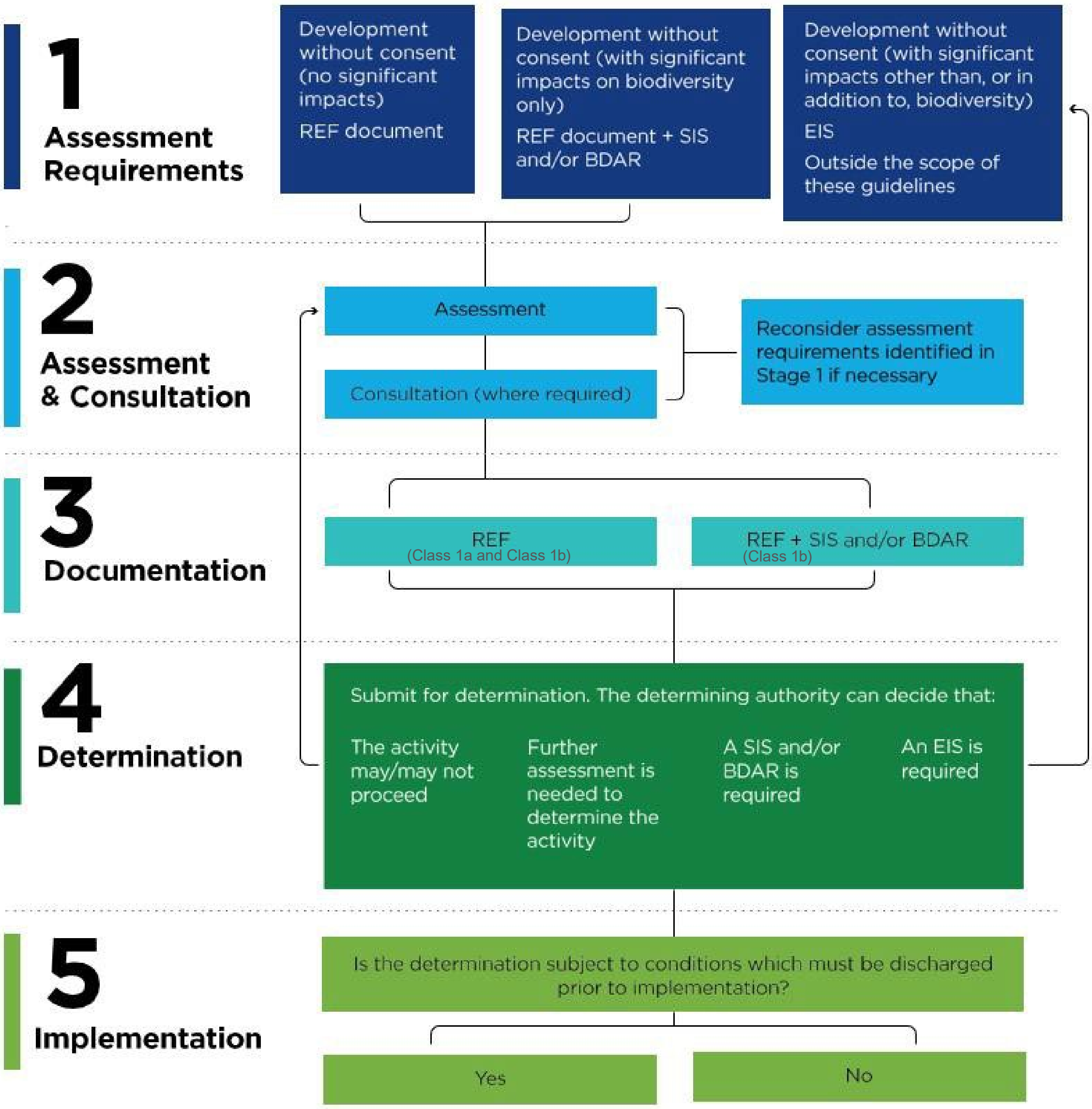


Figure 1: Division 5.1 assessment and determination process

3.2. STAGE 1: ASSESSMENT REQUIREMENTS

This Code covers activities that fall under Part 5, Division 5.1 of the EP&A Act. It does not cover works that:

- do not amount to 'development' or an 'activity' under the EP&A Act
- are exempted activities under section 5.4 of the EP&A Act, or
- are subject to another part of the EP&A Act, such as:
  - works under existing development consents,
  - exempt or complying development under sections 1.6 and Division 4.5 respectively, or
  - development that requires consent under Part 4.

If a work falls within one of these categories, ARTC should review the relevant EPI and (where applicable) consult with the relevant consent authority to determine the next steps.

Stage 1 requires classification of the proposed activity into one of the following categories, as described in sections 3.2.1 - 3.2.3 of this Code:

- Class 1 activity: requiring a Review of Environmental Factors (REF)
- Class 2 activity: requiring a Review of Environmental Factors (REF) in addition to a Species Impact Statement (SIS) and/or Biodiversity Development Assessment Report (BDAR)
- Class 3 activity: requiring an Environmental Impact Statement (EIS).

The classes generally represent increasing levels of potential environmental impact associated with the proposed activity. The degree of assessment and consultation required corresponds to the potential level of impact.

The proposal is to be considered in its entirety, including potential ancillary impacts. ARTC should be open to re-visiting the classification at a later stage in the process if warranted.

If it is not obvious which class applies, consult section 3.3 of this Code to see what further investigations may be required. Section 3.3 also provides guidance about triggers that may move a proposed activity from one class to another.

Figure 1 depicts the five stages of the assessment and determination process and how the Code does or does not regulate the three classes of activities.

ARTC should refer to the Guidelines, which includes helpful information on Stage 1 assessment requirements, including describing different types of Part 5, Division 5.1 activities.

3.2.1 Class 1: Review of Environmental Factors

Class 1 works are ARTC rail infrastructure facilities (outlined in an EPI as development permitted without consent) unlikely to have significant impacts on the environment. These Part 5, Division 5.1 activities can be broadly categorised into two key types:

- Class 1a - routine or low impact development
- Class 1b - substantive development

A REF is a document prepared by or on behalf of a proponent that addresses and documents the proponent's consideration of all the factors listed in section 171 of the EP&A Regulation. ARTC must prepare a REF for all Class 1 development. The level of assessment in the REF should reflect the level of environmental impact resulting from the proposed works and will vary depending on the extent or complexity of likely impacts, the nature of the site and the level of community interest in the activity.

For example, minor Part 5, Division 5.1 works such as routine maintenance works will not require the same amount of assessment as more substantive development, but will still require a REF.

Class 1a – routine or low impact development

Routine, minor or low impact development that is small in scale, duration or complexity and may include works that would otherwise be considered as exempt or complying development, apart from minor departures from a relevant development standard or requirement. This may include track maintenance activities such as track reconditioning, re-sleepering, rail grinding and re-surfacing.

Routine development still requires a REF; however, they require a less detailed assessment given the likely minimal environmental and community impact. In this instance the REF document may take the form of a checklist or summary environmental document.

Due to their routine and short duration nature, these works will not require the same level of consultation as other development works (refer to Stage 2).

Class 1b - substantive development

Substantive development may include the maintenance or construction of railway tracks, tunnels, bridges, railway stations, station platforms, rail freight terminals, refuelling depots, sidings and freight intermodal facilities. This may also include large-scale or multi-site maintenance programs.

It is likely that the REF for these developments will require a more detailed assessment than for routine development to determine the likely impacts of the activity and whether suitable conditions are necessary to mitigate any impacts on the environment or surrounding locality.

These works may require a greater degree of community consultation.

3.2.2 Class 2: Species Impact Statement (SIS) and/or Biodiversity Development Assessment Report (BDAR)

This Code only applies to Part 5, Division 5.1 activities under the EP&A Act. It is not applicable to any additional assessment requirements that may be required in relation to an SIS required under section 7.8 of the *Biodiversity Conservation Act 2016* (BC Act) or a BDAR. However, section 7.3 of the BC Act requires certain factors to be taken into account when deciding whether there is likely to be a significant effect on threatened species or ecological communities, or their habitats.

If it is determined that the activity is likely to significantly affect the environment (or threatened species), an SIS will be required which is a separate document to the REF, that specifically addresses the impacts of the activity on threatened species, populations and ecological communities. Before preparing an SIS, the proponent must first seek the requirements of the Secretary of the Department of Climate Change, Energy, the Environment and Water (DCCEEW).

The proponent may decide to prepare a BDAR in place of the SIS, where the activity impacts terrestrial flora or fauna.

A REF must still be prepared for a Class 2 activity to consider and address environmental impacts. This REF will include relevant information from the SIS and/or BDAR prepared for the activity. ARTC can only determine a Class 2 REF after concurrence from the Secretary of the DCCEEW has been obtained, where an SIS has been prepared.

Note: Section 7.8 of the BC Act provides that for the purposes of Part 5 of the EP&A Act, an activity is to be regarded as an activity likely to significantly affect the environment if it is likely to significantly affect threatened species. In that case, ARTC must prepare an SIS in respect of the activity, or it may elect to prepare a BDAR instead.

Significance is assessed via the test of significance in Section 7.3 of the BC Act, which may then lead to a SIS or BDAR.

Section 7.20 of the BC Act lists the form and content required for SISs (or Part 7A of the *Fisheries Management Act 1994* for SISs involving marine vegetation and fish). ARTC is the determining authority for a Class 2 activity and must not carry out the activity, or grant an approval to carry out the activity, if the activity is likely to significantly affect threatened species or ecological communities, or their habitats, unless it has obtained the concurrence of the Secretary of the DCCEEW. However, concurrence is not required if the proponent has obtained a BDAR in accordance with Part 7, Division 2 of the BC Act.

Amongst other things, ARTC must comply with the public consultation requirements under section 5.8, and Schedule 1, section 11 of the EP&A Act.

3.2.3 Class 3: Environmental Impact Statement

This Code does not apply to Part 5, Division 5.1 activities that require an EIS (referred to as Class 3 works in this Code), including where an SIS/BDAR is being relied upon in place of an EIS – see BC Act section 7.8(4).

Note: Section 5.7 of the EP&A Act requires a determining authority to prepare an EIS if the proposed activity "is likely to significantly affect the environment". If ARTC forms the opinion that the environmental impacts of the proposed activity are likely to be significant enough that an EIS is required, then the proposal will likely be classified as state significant infrastructure (SSI) under section 1 of Schedule 3 to *State Environmental Planning Policy (Planning Systems) 2021*.

The Minister for Planning (or delegate) is the approval authority for SSI. Division 5.2 of the EP&A Act sets out the assessment process for SSI.

ARTC is responsible for following and documenting the process outlined in this Code to form the opinion that an EIS or SIS/BDAR is not required.

ARTC can consult the Department for advice on assessment procedures for activities requiring an EIS or for SSI development. Further information regarding SSI lodgement and assessment processes can be found on the Department's website.

3.3. STAGE 2: ASSESSMENT AND CONSULTATION

Stage 2 requires ARTC to assess the nature, scale and extent of the proposed activity's impact on the environment and conduct adequate consultation, with all findings recorded in the REF.

The Guidelines set out a Stage 2 assessment and consultation process and where relevant, ARTC should follow the steps set out in this guideline. The guideline includes information on concurrence, approvals and referrals such as with the Australian Government if the activity is likely to have a significant impact on matters of national environmental significance or a significant impact on Commonwealth land under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Note: Class 1a

A significance assessment undertaken as per Section 7.3 of the BC Act or Part 7A of the *Fisheries Management Act 1994* may be undertaken and appended to a Class 1a REF to demonstate a non-significant impact finding. Where a significance finding cannot be adequately determined, the activity will be more comprehensively assessed as Class 1b, or re-classified as Class 2.

3.3.1 Consultation and notification

The level of consultation undertaken by ARTC should reflect the level of potential environmental impact, including impacts on surrounding properties and the community, and the anticipated level of community interest in a particular activity.

ARTC can notify stakeholders, including state agencies, councils and the community at different stages of the process and for different reasons, such as to:

- inform during early project planning
- inform that consultation has commenced
- respond to a submission made
- inform on the progress of a proposal
- inform on the decision made
- inform of the start of construction works or operation of the activity.

It will be at the discretion of ARTC on whether to consult with stakeholders above what is mandated under the Transport and Infrastructure SEPP and any other applicable legislation.

Early engagement

Engaging at an early stage of the project allows stakeholders to follow project progress, builds trust and confidence in decision making and increases chances of project success.

Early engagement with local, state and Commonwealth agencies will help obtain expert advice, capture historical information and allow potential issues to be identified, avoided or managed early. In some cases, ARTC may undertake engagement activities during early project planning.

For Part 5, Division 5.1 activities, the Transport and Infrastructure SEPP requires:

- consultation with councils and other public authorities in relation to certain development undertaken without consent per Part 2.2, Division 1. These consultation requirements are intended to address matters such as impacts on council infrastructure and services, impacts on heritage, development on flood liable land, development in or near certain government land or sensitive areas, etc
- consideration of all submissions received during the 21 day consultation period.

For Class 1b activities, including those in sensitive locations or activities known to be of concern or interest to the community, ARTC may undertake additional consultation, such as writing to:

- government agencies ARTC considers relevant, not already included in Part 2.2, Division 1 of the Transport and Infrastructure SEPP, and/or
- neighbours and broader community members ARTC considers relevant to seek their feedback on the proposal.

In its communication with stakeholders, ARTC will:

- describe the proposed activity, including its location
- invite submissions on the proposed activity typically no less than 21 days of the date of the correspondence, and
- provide the contact details of ARTC's nominated representative to receive submissions in writing.

ARTC may also provide a notice at the site informing interested stakeholders of the proposal.

Note: This Code is a code of practice for the purposes of section 2.17(1)(f) of the Transport and Infrastructure SEPP in relation to Class 1a activities. Notification and/or consultation requirements in sections 2.10 – 2.15 of the Transport and Infrastructure SEPP will be undertaken on a needs basis, though generally by exception, noting the typically routine, minor and low impact nature of Class 1a.

If required, ARTC will undertake a public exhibition for the proposed activity. The period of this broader consultation will be determined by ARTC (unless otherwise specified in legislation) and will be based on the nature, scale and likely impact of the activity. Consultation material, such as the REF and supporting documentation and technical studies will be uploaded onto either the Planning Portal or ARTC website to support the exhibition. ARTC may also advertise the proposal in the local newspaper.

Any person can make a written submission in relation to the proposal during the consultation phase.

An important component of the engagement process is responding to and demonstrating how feedback has informed decision making. ARTC will prepare a submission report for Class 1b activities, where applicable, which will cover issues raised in submissions and how they have been considered or addressed in the assessment of the proposed activity.

This Code regulates only those public consultation obligations of ARTC which relate to assessments undertaken by ARTC as a Division 5.1 determining authority for development in connection with ARTC rail infrastructure facilities, development on land in or adjacent to a rail corridor or development for a railway or railway project specified in Schedule 2 of the Transport and Infrastructure SEPP.

3.3.2 Advice by the Secretary of the Department

The Secretary of the Department of Planning, Housing and Infrastructure may provide advice to ARTC concerning the implementation of the EP&A Act with respect to activities for the purposes of ARTC rail infrastructure facilities.

ARTC will respond to any advice provided by the Secretary within 21 days of receiving the advice in writing.

If ARTC decides not to adopt any advice given by the Secretary, it will provide written reasons for its decision to the Secretary of the Department.

Any dispute or outstanding matters between the Secretary of the Department and ARTC which cannot be resolved, will be referred to the Minister for Planning and Public Spaces, who will make a decision on the matter(s) having regard to consultation with ARTC. Any such decision will be final.

3.4. STAGE 3: DOCUMENTATION

The object of Stage 3 is for ARTC to prepare a REF that enables the person determining the assessment (see Stage 4) to discharge ARTC's duty to comply with this Code and section 5.5 of the EP&A Act.

Environmental assessment under this Code follows a risk based approach, requiring a simple assessment for Class 1a activities that:

- are undertaken routinely
- are small in scale and duration
- have nil or low impact

And a more detailed assessment for Class 1b activities that:

- may have complex environmental issues
- may affect a large number of people
- have a number of likely environmental impacts or a single larger impact and/or
- have environmental impacts that are medium to high risk.

Depending on the nature and complexity of the proposed activity, and the sensitivity of the area affected, the REF could be set out in a range of forms, as long as it satisfies the requirements in this Code as to the form and content of the document. For example, a REF may include a checklist, a simple report, a comprehensive report or digital forms, as required.

For a Class 1a REF, the REF will include a certification statement. For Class 1b REFs, the REF will include a certification statement declaring preparation and review by a suitably qualified person, prior to proceeding to determination.

The Guidelines set out a Stage 3 documentation process and the elements that make up an REF. As a minimum, ARTC is to follow the steps set out in the Guidelines.

3.5. STAGE 4: DETERMINATION

Stage 4 requires a person authorised by ARTC to discharge ARTC's duty to comply with this Code and produce a decision statement. The Guidelines set out Stage 4 determination requirements. ARTC should follow the steps set out in the Guidelines.

An authorised person is an individual authorised by ARTC to make a determination in relation to the proposed activity and cannot be the same person who conducted the assessment. Their determination is to be based on the assessment and evaluation conducted by ARTC in Stage 2.

During Stage 3, ARTC should document the steps it took throughout the assessment process and must produce a final REF document. In Stage 4, these documents form the evidentiary basis of a determination.

It is a mandatory requirement under this Code that the determination of the activity (Stage 4 of the process) be documented in a written statement (the Decision Statement) signed by the authorised person on behalf of ARTC.

The Decision Statement for Class 1a activities must:

- state the decision
- expressly state if it is a conditional decision
- state the conditions (if any) and the reasons for these conditions

The Decision Statement for Class 1b activities must:

- state the decision
- expressly state if it is a conditional decision
- state the conditions (if any) and the reasons for these conditions
- be made available on the NSW Planning Portal (prior to the commencement of the activity where practicable), where the activity:
  - has an estimated development cost of more than $15 million (or higher value if specified in section 171(4) of the EP&A Regulation), or
  - requires an approval or permit under:
    - sections 144, 200, 205 or 219, *Fisheries Management Act 1994*
    - section 57, *Heritage Act 1977*
    - section 90, *National Parks and Wildlife Act 1974*
    - sections 47-49 or 122, *Protection of the Environment Operations Act 1997*, or

- is in the public interest as determined by ARTC.

For activities triggering the above publication requirements, the REF and Decision Statement are to be made publicly available on the NSW Planning Portal:

- prior to the commencement of the activity, or if this is not practicable,
- as soon as possible and no later that 1 month after the actvity commencing.

> Note: This Code is a code of practice for the purposes of section 171(6)(b) of the EP&A Regulation in relation to Class 1a activities. This means that the publication requirements will not apply to Class 1a activities.

Appendices, technical reports, records of consultation, the submission report and implementation documents should be uploaded onto the NSW Planning Portal alongside the REF.

ARTC may also publish REF and decision statements on their website, and publish this documentation for other activities beyond the above mandatory requirement.

3.5.1 Notification of determination

For activities that are of a public interest, ARTC may notify the council and adjoining neighbours of the site where the activity is to be carried out, of its intention to proceed with the proposed activity.

ARTC may also consider whether it is appropriate and feasible to write to each organisation/person who made a submission during the consultation phase (see section 3.3.1 of this Code) of its intention to proceed with the proposed activity.

3.6. STAGE 5: IMPLEMENTATION

Stage 5 requires ARTC to implement the activity only after a determination in accordance with Part 5, Division 5.1 of the EP&A Act and in accordance with any conditions of that determination.

The Guidelines also set out Stage 5 implementation requirements, including what to do in circumstances when commencement of the activity has been significantly delayed. ARTC should follow the steps set out in the Guidelines.

3.6.1 Other approvals required

This Code operates under the EP&A Act and applies to development that does not require a development consent. Approvals and permits may be required under other State legislation, such as the *Heritage Act 1977* or the *Roads Act 1993*, or under any relevant Commonwealth legislation in respect of the activity.

Nothing in this Code allows ARTC to undertake an activity without first obtaining all licences and approvals required under any other applicable legislation.

3.6.2 Standard Environmental Management Measures

Standard Environmental Management Measures (SEMMs) and environmental management procedures, prepared by ARTC, are intended to protect the environment by reducing or avoiding environmental impact from minor or low impact Part 5, Division 5.1 development. SEMMs identify various environmental aspects of minor works, common environmental impacts which may arise from those aspects and management measures to mitigate impacts.

While SEMMs do not form part of this Code and do not override the need to prepare an REF, they may assist in the management of environmental impacts.

3.6.3 Document and monitor implementation

ARTC should document how environmental impacts will be managed during and after implementation. Documentation allows ARTC to ensure that the following are observed during and after implementation:

- environmental management measures adopted during Stage 3 to mitigate environmental impacts
- conditions of the determination made during Stage 4
- applicable approvals and/or building requirements.

The degree of detail required for the implementation documentation will depend on the scope of the activity and the nature of its impacts. For example, ARTC may choose to prepare a construction environmental management plan and/or appoint an environmental management representative to monitor the implementation.

If conditions apply to an activity, subject to the scope of the activity and the nature of its impacts, ARTC may record how those conditions were met during implementation. If any conditions were not met, ARTC should document the reasons for not complying.

If any organisation/person requested in their submission during the consultation phase (see section 3.3.1 of this Code) to be notified of the completion of construction, it would be best practice for ARTC to notify them in writing within 21 days of the construction being completed.

4. CHANGES TO A PROPOSAL

Sometimes a proposed activity may need to be altered or modified to respond to new information, issues raised by stakeholders, or some other consideration.

4.1. PRIOR TO DETERMINATION

If a proposed activity is altered or modified before Stage 4 (determination) and ARTC reasonably believes that the changes to the proposal would increase the environmental impacts of the activity, it should repeat stages 1-3 of the assessment.

Only the aspects of the activity which are proposed to be changed in a material way are required to be the subject of further assessment and consultation.

ARTC should be prepared to reconsider the classification of the proposal from Stage 1 if necessary. If the classification remains the same, ARTC may proceed with preparing a REF.

4.2. AFTER DETERMINATION

A determination made under this Code can be altered by ARTC by preparing an addendum to the REF or preparing a new REF, and issuing a further Decision Statement.

If the proposed change to the activity would have increased environmental impacts compared to the activity the subject of the original Decision Statement, ARTC should repeat stages 2 and 3 of the assessment before issuing a further Decision Statement. Only the aspects of the activity which are proposed to be altered or modified in a material way are required to be the subject of further assessment and consultation, with consideration of cumulative impacts.

A Decision Statement altering a determination should state the reasons for the change and any conditions required as a result of those changes.

ARTC should be prepared to reconsider the classification of the proposal from Stage 1 if necessary, including whether the change to the activity and its impacts may mean the activity would require an SSI approval.

5. RECORD KEEPING

There is an ongoing public interest in accessible and transparent documentation for planning assessments carried out under Division 5.1 of the EP&A Act.

5.1. MANDATORY RECORD KEEPING REQUIREMENTS

Record keeping requirements for Class 1a REFs are in accordance with ARTCs record keeping processes and relevant legislative requirements.

It is a mandatory requirement under this Code for ARTC to keep the following documents related to Class 1b and Class 2 REFs:

- if a determination has been made, the REF and other documents that form part of the REF, excluding:
  - a draft version of the REF
  - a version of the REF never submitted to the authorised person
- all Decision Statements issued by an authorised person
- all records of consultation undertaken by ARTC for an assessment
- all implementation documents produced for an activity, including where available documents identifying how conditions of a determination were met
- reports of an audit or review outlined in section 6.3.2 of this Code.

It is a mandatory requirement under this Code for ARTC to:

- publish the reports of any review outlined in section 6.3.2 of this Code, on ARTC's website within 21 days of it being finalised
- keep written records of all consultation undertaken pursuant to this Code:
  - in a way that the records can be produced to a third party within 21 days, and
  - to a standard where a reasonable person could understand the essential nature of the consultation without extrinsic material.

5.2. MANDATORY PUBLIC ACCESS TO RECORDS

Any member of the public, the Minister, and the Planning Secretary may apply to ARTC for access to any documents required to be kept under section 5.1 of this Code, as per section 199(h) of the EP&A Regulation.

It is a mandatory requirement under this Code for ARTC to provide the applicant with a copy of any document/s sought by the application within 21 days, except in the following circumstances:

- the application is not a valid application because it does not meet the following requirements:
  - it must be provided in writing to ARTC
  - it must clearly indicate that it is an application under this Code
  - it must be accompanied by payment of $30 as an application fee or demonstrate that a payment has been made
  - it must state the current address for correspondence in connection with the application
  - it must include such information as is reasonably necessary to enable the document/s applied for to be identified
- the application seeks a document other than a document which ARTC, to which the application is addressed, is required to retain under this Code, or a document which, to the best of the ARTC's knowledge after making reasonable attempts to investigate the matter, does not exist
- ARTC has written to the applicant within 21 days of receiving the application to advise that ARTC expects that the application will take more than one hour to process, and that ARTC has decided to impose a processing fee on the applicant based on a reasonable estimate of how long it will take for ARTC to process the application. In such a case:
  - ARTC is only obliged to provide the applicant with the document/s if the applicant pays the imposed processing fee within 20 days of ARTC giving notice in writing of the imposition of the processing fee. If the applicant pays the imposed processing fee, ARTC must produce the applied for document/s within 20 days of payment, and
  - the correspondence advising the applicant of the imposition of a processing fee must contain an explanation as to how the processing fee has been calculated including an estimate of how an ARTC employee who processes the request will spend his or her time in processing the request, and
  - a processing fee imposed by ARTC is not to exceed $30 for each employee-hour or part thereof required to process the application beyond the first hour
- ARTC believes on reasonable grounds that the application is frivolous or vexatious
- it is a document whose disclosure is to give rise to a non-compliance with any law
- the document contains information concerning the personal or business affairs of a third party and that third party has informed ARTC that it does not consent to the release of that information
- ARTC is unable to contact the applicant.

It is a breach of this Code for ARTC to cease to retain a document which is sought by a member of the public in accordance with this Code after ARTC receives the application seeking that document.

It is a mandatory requirement under this Code for ARTC to respond to a request for access to a document within 21 days of the application being made by:

- providing a copy of the document/s to the applicant by any reasonable means
- writing to the applicant to impose a processing fee, or
- writing to the applicant to decline to provide the applied for document/s, briefly explaining why it has declined.

ARTC is deemed to have declined access to a document/s if it fails to respond to a request for access in a manner required by this Code within 21 days of an application for access being made.

A person who is dissatisfied with ARTC's decision to decline access can request the Department of Planning, Housing and Infrastructure to direct ARTC provide access.

The request to the Department must:

- be in writing addressed to the Department
- attach:
  - the original application to ARTC
  - any response from ARTC
  - further information as is necessary for the Department to understand the reasons why the person applying for the direction considers that the Department should make the direction.

If the Department considers the request is reasonable, it may direct ARTC provide any person with a copy of a document. Such a direction must be in writing and must also be sent to the person who applied for access to the document/s. It is a breach of this Code for ARTC to fail to comply with the direction.

6. COMPLIANCE WITH THIS CODE

6.1. COMPLIANCE WITH THE CODE

The Department will be responsible for monitoring and enforcing compliance with this Code.

Civil enforcement proceedings can be brought under section 9.45 of the EP&A Act for not complying with the requirements of this Code.

> Note: Any person can commence civil enforcement proceedings against ARTC under section 9.45 of the EP&A Act for a failure to exercise their duty under section 5.5 of the EP&A Act to consider environmental impacts before undertaking an activity or for non-compliance with the Code and the Guidelines, where applicable.

6.2. PROCEDURES FOR REPORTING BREACHES

ARTC must report a breach of the Code to the Department (via email to tisepp@dpie.nsw.gov.au and compliance@planning.nsw.gov.au) in accordance with following procedures:

- ARTC must report a breach in writing as soon as reasonably practicable after ARTC becomes aware of the breach
- written reports must record:
  - the nature of the breach
  - ARTC's explanation for the breach
  - a description of measures implemented to avoid a recurrence of the breach.
- serious breaches must first be reported by telephone (via the Departments general enquiries line 1300 305 695), followed by a more detailed written report unless otherwise agreed by the Department. A serious breach includes a breach which has, or is likely to have, a material adverse impact on the environment.

A breach means a contravention of or failure of ARTC to:

- classify its activities into the right assessment category
- assess its activities to an appropriate level of detail, including undertaking community consultation in appropriate instances
- document the assessment process accurately and transparently
- determine the assessment in a clear, practical and enforceable way
- implement its activities with reasonable measures in place to protect the environment and the community
- consider advice given by the Secretary of the Department

- review its compliance with this Code.

6.3. AUDITING AND REVIEW OBLIGATIONS

6.3.1 Auditing obligations

The Secretary of the Department may audit an ARTC's compliance with this Code, after consulting with ARTC on the basis of the audit, by either:

- conducting an audit itself, or
- requiring ARTC to nominate an independent person or firm specialising in environmental impact assessment (EIA) processes who will conduct the audit.

An audit would not generally occur within a twelve month period of a review being undertaken as per section 6.3.2 of this Code.

ARTC must cover the costs of any audit, including the expenses of the auditor.

The audit will cover:

- the performance of the Code
- ARTC's compliance with the Code and as relevant the Guidelines , and
- areas for improvement, including any recommended amendments and any associated implementation plans.

ARTC must cooperate fully with the auditor, whether the auditor has been nominated by the ARTC or the Department. This mandatory requirement to cooperate includes a duty to facilitate access to premises, to provide access to documents requested by an auditor, and to make personnel available for interview by an auditor. This includes access to all documents listed under section 5 (Record keeping) of this Code.

ARTC will provide a copy of the final audit report to the Secretary of the Department within 14 days of receiving it.

ARTC will consider all recommendations made in the audit report. If ARTC considers it impracticable or unreasonable to implement a particular recommendation, ARTC will advise the Department in writing accordingly. Such advice will include reasons for ARTC's position.

Any dispute or outstanding matters between the Secretary of the Department and ARTC which cannot be resolved regarding the outcomes of the audit, will be referred to the Minister for Planning and Public Spaces, who will make a decision on the matter(s) having regard to consultation with ARTC. Any such decision will be final. The Minister would not direct ARTC to undertake any action if there was no statutory power to do so.

6.3.2 Review obligations of ARTC

ARTC will commission a review of the Code every five years, with the first review to be commissioned within 18 months of the date on which this Code is approved by the Minister for Planning and Public Spaces.

ARTC is to nominate an independent person or firm specialising in EIA processes who will conduct the review which will cover:

- ARTC's compliance with the Code and as relevant the Guidelines , and
- areas for improvement, including any recommended amendments and any associated implementation plans.

It is recognised that a review is generally less detailed than an audit.

ARTC will provide a copy of the final review report to the Secretary of the Department within 14 days of receiving it.

ARTC will consider all recommendations made in the review report. If ARTC considers it impracticable or unreasonable to implement a particular recommendation, ARTC will advise the Department in writing accordingly. Such advice will include reasons for ARTC's position.

Any dispute or outstanding matters between the Secretary of the Department and ARTC which cannot be resolved regarding the outcomes of the review, will be referred to the Minister for Planning and Public Spaces, who will make a decision on the matter(s) having regard to consultation with ARTC. Any such decision will be final. The Minister will not direct ARTC to undertake any action if there was no statutory power to do so.

7. APPENDICES

APPENDIX A: DEFINITIONS AND GLOSSARY

In this Code, except in so far as the context or subject-matter otherwise indicates or requires:

Activity has the same meaning as that prescribed by section 5.1(1) of the EP&A Act.

ARTC means Australian Rail Track Corporation Ltd (ACN 081 455 754).

ARTC Rail Infrastructure Facilities has the same meaning as that prescribed in the EP&A Regulation.

BDAR means biodiversity development assessment report. A report prepared under the *Biodiversity Conservation Act 2016* by a person accredited to apply the biodiversity assessment method.

Construction environmental management plan means a document that outlines how activities undertaken during the construction phase of development will be managed to avoid or mitigate negative environmental impacts on site and how those environmental management requirements will be implemented.

Code means the NSW Code of Practice for Division 5.1 Activities for Australian Rail Track Corporation, approved under section 200 of the EP&A Regulation.

Decision Statement means a document which formally records a determination made by an authorised person on behalf of ARTC during Stage 4 of the environmental impact assessment process required under this Code. A decision statement can be included in, or separate to the final REF document.

Determining authority has the same meaning as in section 5.1(1) of the EP&A Act.

Development has the same meaning as under the EP&A Act.

The Department means the Department of Planning, Housing and Infrastructure.

Transport and Infrastructure SEPP means the *State Environmental Planning Policy (Transport and Infrastructure) 2021*.

EIA means environmental impact assessment.

EIS means environmental impact statement.

EPI means environmental planning instrument and has the same meaning as under the EP&A Act.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Government agencies means:

- a public authority constituted by or under an Act
- a government department
- a statutory body representing the Crown
- a statutory State owned corporation (and its subsidiaries) within the meaning of the *State Owned Corporations Act 1989* or
- a person, not being ARTC, prescribed by the EP&A Regulation for the purposes of the definition of "public authority" under the EP&A Act.

Guidelines means Guidelines for Division 5.1 Assessments as published by the Department on their website.

NSW means New South Wales.

Rail Infrastructure Facilities has the same meaning as that prescribed in the Transport and Infrastructure SEPP.

REF means a review of environmental factors and, depending on context, can refer to a type of documentation of an environmental impact assessment process, or the process itself.

SEMMs means Standard Environmental Management Measures as described in section 3.6.3 of this Code.

SIS means species impact statement and has the same meaning as under the *Biodiversity Conservation Act 2016*.

Addendum REF means a review of environmental factors that documents a post approval modification and the environmental impact assessment of that modification. An addendum REF required determination as per the REF process.

SSI means state ignificant infrastructure and has the same meaning as under the EP&A Act.

Threatened species, populations and ecological communities and habitats and related terms have the same meaning as under the *Biodiversity Conservation Act 2016*.