



# Gateway Upgrade Project



## 8. Regulatory Framework and Planning

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### 8.1 Introduction

#### **TOR Requirements:**

This section should discuss the permits, licenses and environmental authorities relevant to the project. The section should identify the legislative act under which the permit, license and/or environmental authority is required, together with the administering authority, the trigger mechanism and the party expected to be responsible for obtaining the permit, license and/or environmental authority. All relevant international conventions, Commonwealth and State legislation should be considered and the Main Roads Environmental Legislation Register may be used for reference, though additional sources should also be investigated.

A review has been undertaken to identify the regulatory framework for the project and the legislation, regulations and guidelines that may apply to the construction of the project.

### 8.2 Commonwealth Regulatory Framework

Commonwealth legislation, regulations and guidelines that apply to the GUP include:

- The *Airports Act 1996* and associated Brisbane Airport 2003 Master Plan; and
- The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The general legislative requirements for these Acts are summarised in Figure 1.2.

#### **8.2.1 Airports Act 1996 (Cth)**

##### **Background**

Under the *Airports Act 1996*, the Commonwealth Government exercises controls over land use planning and building at leased Federal airports. The Brisbane Airport 2003 Master Plan (approved May 2004) is the statutory planning document which controls land use on Brisbane Airport land. The Master Plan is discussed in Section 4.6.4.

Under the *Airports Act 1996* a Major Development Plan (MDP) is required for each major development at an airport. The MDP must be prepared by BAC as airport lessee, taking into account any public comment.

Section 89 of the *Airports Act 1996* defines a "major airport development" as including:

- constructing a new road or new vehicular access facility or extending a road or vehicular access facility, where the construction or extension significantly increases the capacity of the airport to handle movements of passengers, freight or aircraft, and the cost of construction exceeds \$10 million or such higher amount as is prescribed;
- development of a kind that is likely to have significant environmental or ecological impact; and
- a development of a kind specified in the regulations.

The *Airports Act 1996* defines the MDP process and requirements.

The EPBC Act provides that Commonwealth agencies or employees are required to obtain and consider advice from the Commonwealth Environment Minister before authorising certain actions that will have or are likely to have a significant impact on the environment. This requirement applies in relation to the adoption or implementation of a MDP under the *Airports Act 1996* (s160(2)(c) EPBC Act). It is important to consider the legislative relationship between

the *Airports Act 1996* and the EPBC Act. DoTaRS must refer the proposal to the Commonwealth Environment Minister. Once a referral is made, the proposed action will be assessed under Part 8 of the EPBC Act, Section 87 of which provides for the following approaches:

- a) assessment on preliminary documentation;
- b) assessment by public environment report;
- c) assessment by an environmental impact statement;
- d) assessment by public inquiry; and
- e) assessment by accredited assessment process.

Within 30 business days of receiving an assessment report, the Commonwealth Environment Minister must provide DoTaRS (the referring agency) with advice on:

- a) whether it should authorise the adoption or implementation of the MDP;
- b) what conditions (if any) should be required to protect the environment; and
- c) any other matters to protect the environment from the action.

It is understood that if the project is assessed by DoTaRS (through the environmental assessment needed for the MDP) as having no environmental significance, the Minister for Environment is likely to accredit the DoTaRS assessment process under Section 87 of the EPBC Act. Accreditation would be sought from the Department of Environment and Heritage prior to the release of the draft MDP for public comment.

*Airports (Environment Protection) Regulations 1997* provides a Commonwealth system of regulation and accountability for activities at airports that generate, or have potential to generate pollution (including air, water or soil) or excessive noise. A further purpose of the regulations is to promote improved environmental management practices for activities carried out at airport sites.

State law in relation to excessive noise is not applicable on airport land. Schedule 4 of the Regulations contains Excessive Noise Guidelines.

State laws also apply on airport land for:

- pollution from a motor vehicle;
- occupational health and safety matters;
- emissions of substances that deplete stratospheric ozone; and
- the use of a pesticide.

The Schedules of the Regulations contain accepted limits for air, water and soil pollution.

### **Relevance to GUP**

The northern section of the GUP corridor traverses Commonwealth land leased by BAC for the Brisbane Airport. As the cost of constructing the GUP on Brisbane Airport land exceeds \$10 million, this component of the project is defined as a major airport development under the *Airports Act 1996*.

An MDP will be required for the GUP in accordance with the *Airports Act 1996*. The environmental assessment contained in this EIS for Brisbane Airport land will be included in the MDP.

A Building/Works Permit from the Airport Building Controller is required for the GUP.

The existing Gateway Bridge protrudes into Brisbane Airport's Protected Airspace. The proposed downstream Bridge duplication will also protrude into the airport's Protected Airspace and will constitute a Controlled Activity. Therefore the new bridge will require a formal assessment by the DoTaRS under the *Airports Act 1996* and the Airports (Protection of Airspace) Regulations.

Relevant aspects of the *Airports (Environment Protection) Regulations 1997* will be addressed in the MDP.

### **8.2.2 Environment Protection and Biodiversity Conservation Act 1999 (Cth)**

#### **Background**

The EPBC Act provides that any action (ie. a project, development, undertaking, activity or series of activities) which has, will have or is likely to have a significant impact on a matter of National Environmental Significance, or other matter protected under the Act such as the environment of Commonwealth land, requires approval from the Commonwealth Environment Minister (the Minister). If the Minister decides that approval is required, the proposed action is termed a "controlled action". The proposal will then have to go through a formal assessment and approval process before it can proceed.

The matters of national environmental significance identified in the EPBC Act as triggers for the Commonwealth assessment and approval regime are:

- National Heritage places;
- World Heritage properties;
- Ramsar wetlands of international importance;
- Listed migratory species;
- Listed threatened species and ecological communities;
- Commonwealth marine areas (and Commonwealth land); and
- Nuclear actions.

#### **Relevance to GUP**

MR submitted an EPBC Act Referral Form to the Commonwealth Department of Environment and Heritage in November 2003. The Referral Form stated that the GUP is not a controlled action and provided supporting information.

The Commonwealth Environment Minister confirmed in February 2004 that the GUP is not a controlled action (refer Appendix B).

As stated above, under the *Airports Act 1996*, the DoTaRS must obtain and consider advice from the Commonwealth Environment Minister in accordance with Division 4, Subdivision A of Part 11 of the EPBC Act.

### **8.3 State EIS Regulatory Framework**

#### **Background**

Under Section 26 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act) the Coordinator General may declare a project to be a “significant project” for which an EIS is required.

The EIS process for significant projects is described in Division 3, Part 4 of the Act. The DSDI is the authority responsible for coordinating the EIS process for significant projects.

The SDPWO Act contains provisions which outline the relationship with the IPA if an application is required for a development approval under IPA and Integrated Development Approval System (IDAS) linked legislation.

The decision stage of IDAS for a development application does not start until the Coordinator-General gives the assessment manager a copy of the Coordinator-General’s report.

A summary of the EIS process is shown in Figure 1.2.

#### **Relevant to GUP**

The GUP has been declared a significant project by the Coordinator General pursuant to Section 26 of the SDPWO Act and the Coordinator-General has required MR to prepare an EIS under that Act.

The final Terms of Reference for the GUP were issued in April 2004 (refer Appendix A1). The EIS for the Project must address all the matters contained in the Terms of Reference. The EIS must also address the matters prescribed in Schedule 1 of the *State Development and Public Works Organisation Regulation 1999* (refer Appendix A2).

The GUP requires development approval under IPA for the following:

- Operational Work that is tidal works in, or above land under tidal water as required under the *Coastal Protection and Management Act 1995*; and
- Material Change of Use for Environmentally Relevant Activities (ERA) as required under the *Environmental Protection Act 1994*.

Prior to construction commencing on the GUP other development approvals may be required under IPA as other State legislation is incorporated into IDAS.

### **8.4 State Permits, Licenses and Environmental Authorities**

An assessment of the relevant Queensland State legislation and associated approvals has been undertaken to provide an understanding of the likely permits, licenses and Environmental Authorities required for the GUP. Table 8.1 provides a summary of the likely approvals required for the GUP.

Table 8.1 Summary of Likely State Approvals

Legislation	Administering Authority	Trigger	Project Response	Responsibility (Project Phase)
<i>Coastal Protection and Management Act 1995 and Integrated Planning Act 1997</i>	EPA	Operational work that is tidal works in, on or above land under tidal water. "Land" is defined to include any estate under land and also the subsoil	Development Permit for Operational Works to be obtained	Detail Designer (Detail Design)
<i>Dangerous Goods Safety Management Act 2001</i>	DES	Large dangerous goods location established	Notify the Chief Executive (DES). Emergency Plans and Procedures to be prepared	Construction Contractor (Construction)
<i>Environmental Protection Act 1994 and Integrated Planning Act 1997</i>	EPA	ERA 19: Dredging ERA 20: Extracting rock or other material ERA 22: Screening, washing, crushing, grinding, milling, sizing or separating material extracted from the earth ERA 62: Concrete batching Other ERAs as required during construction	Environmental Authority to be obtained	Construction Contractor to obtain Development Permit and Environmental Authority (Prior to Construction)
		Removal of contaminated soil from sites listed on CLR or EMR	Disposal Permit to be obtained	Construction Contractor (Prior to Construction)
<i>Fisheries Act 1994</i>	DPIF	Work in areas causing removal, destruction or damage to marine plants	Permit to be obtained.	MR (Prior to Detailed Design)
<i>Nature Conservation Act 1992</i>	EPA	Taking, using, keeping or interfering with a protected animal or plant	Fauna to be relocated in accordance with Fauna Relocation Plan.	Construction Contractor (Construction)
			Permit to be obtained if protected plants are affected by Project.	Construction Contractor (Prior to clearing)

**Table Notes:**

DES = Department of Emergency Services  
DPIF = Department of Primary Industries and Fisheries  
EPA = Environmental Protection Agency  
ERA = Environmentally Relevant Activity

CLR = Contaminated Land Register  
EMR = Environmental Management Register  
MR = Department of Main Roads

Other key legislative requirements for the GUP are summarised in the table below. Other legislation which needs to be addressed in relation to environmental management during construction and operation are summarised in the EMP (refer Section 23).

**Table 8.2 Other Key Legislative Requirements**

<b>Legislation</b>	<b>Administering Authority</b>	<b>Trigger</b>	<b>Project Response</b>	<b>Responsibility (Project Phase)</b>
<i>Animal Care and Protection Act 2001</i>	DPIF	Encounter animals in the course of works/activities	Must not be cruel to an animal (eg cause pain, abuse, confine or transport inappropriately)	Construction Contractor (Construction)
			Fauna Relocation Plan to be implemented	Construction Contractor (Construction)
<i>Environmental Protection (Waste Management) Regulation 2000</i>	EPA	Various triggers relating to waste tracking	Waste management to comply with relevant provisions (refer Section 3.9.3 for further details)	Construction Contractor (Construction)
<i>Land Protection (Pest and Stock Route Management) Act 2002</i>	DNRME	Pests (ie animals or plants) must be controlled	EMP to be implemented during construction and maintenance	Construction Contractor (Construction) Operator (Operation)

**Table Notes:**

DNRME = Department of Natural Resources, Mines and Energy  
DPIF = Department of Primary Industries and Fisheries  
EPA = Environmental Protection Agency

**8.5 Relevant International Conventions**

The relevant International conventions and agreements to the GUP include:

- **CAMBA** – Agreement between the Government of Australia and the Government of the Peoples Republic of China for the Protection of Migratory Birds and their environment.
- **JAMBA** – Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their environment.
- **Ramsar Convention on Wetlands** – The Convention on Wetlands, signed in Ramsar, Iran, 1971, is an inter-governmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.

### **8.6 Internation Conventions that Drive Australian Government Policies**

In addition to the conventions and agreements above, further two conventions are identified as indirectly relevant to the GUP. These are:

- **CMS or Bonn Convention** – The Convention on the Conservation of Migratory Species of Wild Animals aim is to conserve terrestrial, marine and avian migratory species throughout their range.

The convention is aimed at restricting harvesting, conserving habitats and control other adverse factors. The species covered include marine mammals, sea turtles and sea birds.

- **Convention on Biological Diversity** – is a comprehensive, binding agreement covering the use and conservation of biodiversity.

### **8.7 Relevant State Legislation and Policies**

There are a range of, policies, strategies and plans applicable to the GUP. These documents have the potential to influence future land uses adjacent to the project corridor and within SEQ.

Table 8.3 summarises the relevant State, regional and local policies and the GUP's compliance.



Table 8.3 Summary of GUP Compliance with Relevant State, Regional and Local Policies

State, Regional and Local Policies/Strategies	Relevant Provisions	GUP Compliance	Compliance Comment
Development in the Vicinity of Certain Airports and Aviation Facilities (State Planning Policy 3/02)	Beneath, or in the vicinity of, the airports' operational airspace	Yes	<ul style="list-style-type: none"> <li>Second Gateway Bridge to penetrate OLS. Appropriate lighting to be installed on Second Gateway Bridge in accordance with CASA requirements.</li> <li>MDP to address aeronautical issues.</li> <li>Construction EMP to be implemented to minimise dust (refer Section 23).</li> </ul>
	Construction and operational lighting to penetrate operational airspace.	Yes	<ul style="list-style-type: none"> <li>Construction EMP and lighting design to minimise uplighting in accordance with CASA guidelines: Lighting in the vicinity of Aerodromes.</li> </ul>
Planning and Managing Development Involving Acid Sulfate Soils — State Planning Policy 2/02	Part of the project corridor at or below 5 metres AHD, including the majority of the project corridor north of Brisbane River. The project also involves excavating in excess of 100m <sup>3</sup> of soil or sediment, and filling of land involving 500m <sup>3</sup> or more of material at an average depth of 0.5m.	Yes	<ul style="list-style-type: none"> <li>Construction EMP to contain mitigation measures and monitoring program for management of acid sulphate soil issues.</li> <li>Testing to be conducted prior to construction to confirm location of potential acid sulphate soils, in areas at or below 5 metres AHD, where the project will cause disturbance.</li> </ul>
Mitigating the Adverse Impacts of Flood, Bushfire and Landslide – State Planning Policy 1/03	Mitigating possible adverse impacts of Landslide from adjacent land to the project corridor. The threshold for determining a landslide natural hazard management area is land with a slope of greater than 15%.	Yes	<ul style="list-style-type: none"> <li>The mapping for Landslip shows no land within or adjacent to the project corridor that has a slope greater than 10%.</li> </ul>

State, Regional and Local Policies/Strategies	Relevant Provisions	GUP Compliance	Compliance Comment
	Mitigating possible adverse impacts of bushfire from adjacent land to the project corridor. There is a significant amount of land between Mt Gravatt-Capalaba Road and Old Cleveland Road where there is land on both sides of the project corridor that has a medium bushfire hazard.	Yes	<ul style="list-style-type: none"> <li>There is good access to the road batters on both sides of the Motorway for fire fighting vehicles and good access to the contiguous bushland on the eastern side of the Motorway from Mt Petrie Road. This road also provides a firebreak between the Motorway and the bulk of the Koala Coast bushland.</li> <li>Mitigation measures to be included in EMP (refer Section 23).</li> </ul>
	Mitigating possible adverse impacts of flooding from adjacent land to the project corridor.	Yes	<ul style="list-style-type: none"> <li>Flooding issues associated with the GUP are addressed in Section 11.</li> </ul>
Conservation of Koalas in the Koala Coast — State Planning Policy 1/97	The area directly adjacent to the eastern side of the existing Gateway Motorway from the start of the southern section of the project corridor at Mt Gravatt-Capalaba Road to Belmont Road, is within the “ <i>Koala Conservation Area</i> ” of the Koala Coast Area.	Yes	<ul style="list-style-type: none"> <li>Majority of clearing to occur within existing road reserve.</li> <li>Small loss in Koala Coast bushland (??ha).</li> <li>Fauna proof fencing, and underpasses to be provided as part of GUP.</li> </ul>
Development and the Conservation of Good Quality Agricultural Land — State Planning Policy 1/92	Good Quality Agricultural Land (GQAL) is a valuable resource and must where possible be protected from incompatible development.	Yes	<ul style="list-style-type: none"> <li>Rural holdings adjacent to the project corridor are not GQAL.</li> <li>Overriding need for the GUP (refer Section 2.4).</li> </ul>

State, Regional and Local Policies/Strategies	Relevant Provisions	GUP Compliance	Compliance Comment
The Regional Framework for Growth Management 2000	<p>Criteria for assessing new transport projects should be the potential to achieve:</p> <ol style="list-style-type: none"> <li>1. <i>The desired pattern of development for the year 2011;</i></li> <li>2. <i>Improved quality of life for all residents;</i></li> <li>3. <i>Improved levels of accessibility;</i></li> <li>4. <i>Environmental protection; and</i></li> <li>5. <i>Economic development.” (RFGM, p84)</i></li> </ol>	Yes	<ul style="list-style-type: none"> <li>• GUP will increase the efficiency of the Gateway Motorway to better service the desired pattern of development including economic development.</li> <li>• Improved level of accessibility and road user benefits.</li> <li>• EMP to be implemented to minimise potential impacts on the environment (refer Section 23).</li> </ul>
<i>The Integrated Transport Planning Framework 2003</i>	<p>GUP is as at a stage equivalent to Step 4 (Develop Strategy) of the nine step transport planning process recommended by the framework, where the aim is to recommend an appropriate plan of action to implement the preferred option or package of measures. The desired outcomes in achieving the preferred option, include ‘Environmental Responsibility’, and ‘Liveability, Connectivity and Amenity’.</p>	Yes	<ul style="list-style-type: none"> <li>• This EIS recommends a plan of action for implementing a package of measures that will ensure that the GUP achieves these two Desired Outcomes.</li> </ul>
The Integrated Regional Transport Plan for South East Queensland 1997	<p>The Gateway Motorway as a central spine for the movement of regional traffic, and there is a need to maintain the Motorway as a high standard urban bypass of Brisbane. An upgrade to the Gateway Motorway is a strategic transport opportunity that would play a key role to enhancing regional movement and economic development.</p>	Yes	<ul style="list-style-type: none"> <li>• GUP is consistent with agreed actions and strategic transport opportunities identified in the IRTP.</li> </ul>

State, Regional and Local Policies/Strategies	Relevant Provisions	GUP Compliance	Compliance Comment
The Transport 2007 An Action Plan for South East Queensland 2001	Transport 2007 identifies that Gateway Motorway as a major road based freight corridor experiencing congestion. To alleviate this and future congestion, it states the need to widen sections of the existing Gateway Motorway to six lanes, to ensure that freight movements within the Brisbane region and between Brisbane and other regions is improved. In addition to the widening, it recommends that <i>"planning is needed for a possible second river crossing near the Gateway Bridge to support regional travel and freight movement along the corridor"</i> .	Yes	<ul style="list-style-type: none"> <li>GUP is consistent with agreed actions and strategic transport opportunities identified in Transport 2007.</li> </ul>
Cycle South East 1999	Progressively upgrade existing main roads, where practicable, to increase separation safety for all users, an in particular cyclists. A number of opportunities such as roads as roads accessing the Brisbane CBD and key regional centres... should be considered.	Yes	<ul style="list-style-type: none"> <li>If the bikeway is approved as part of the GUP the facility will provide for longer distance cycle trips by incorporating a dedicated shared pedestrian/ bikeway separated from the traffic lanes. This shared route will commence at Lytton Road, cross the proposed new bridge, then will grade separate from the proposed duplication, but continue to follow the duplication route from Lavarack Avenue up to Kingsford Smith Drive.</li> </ul>
Integrated Regional Cycle Network Plan (IRCNP) for South-East Queensland 2003	One of the key aims of the IRCNP is to support 'cycle trips, including longer distance trips, in South East Queensland by identifying desired routes between key centres and other major cyclist attractions'.	Yes	<ul style="list-style-type: none"> <li>GUP pedestrian/bikeway provision integrates with BCC's planned bikeway network.</li> </ul>
Land Use Strategy - Port of Brisbane Corporation, November 2001 and Development Guidelines – Port of Brisbane Corporation, January 2002	Part of the Bridge Section of the GUP (south of the Brisbane River) falls within the Queensport Precinct of the Land Use Strategy.	Yes	<ul style="list-style-type: none"> <li>The project corridor does not cross strategic port land only 'frame' land considered as "backup" land for port related activities that require a location close to port facilities.</li> </ul>

<b>State, Regional and Local Policies/Strategies</b>	<b>Relevant Provisions</b>	<b>GUP Compliance</b>	<b>Compliance Comment</b>
Brisbane Gateway Ports Area Strategy, March 1998	The capacity of the Gateway Arterial is insufficient.	Yes	<ul style="list-style-type: none"> <li>GUP addresses capacity issues associated with the existing Gateway Motorway, and will increase the efficiency of transport to and from the Gateway Ports Area.</li> </ul>
The SEQ Regional Water Quality Management Strategy 2001	There is a need to protect the water quality of the Brisbane River, Kedron Brook Floodway, Bulimba Creek and other waterways within the Brisbane Catchment.	Yes	<ul style="list-style-type: none"> <li>This EIS addresses potential water quality impacts (refer Section 12).</li> <li>The EMP will contain appropriate mitigation measures to address, construction and operational water quality issues (refer Section 23).</li> </ul>
The Waterways Management Plan 1998	The Brisbane River and waterways of the Moreton Bay catchment; need to be protected from pressure from a rapidly growing population.	Yes	
The Water Quality Management Strategy 1998	There is a need to manage human impacts (such as impacts from GUP) on waterways.	Yes	
Moreton Bay Strategic Plan 1993	Water quality for key waterways and water bodies in the Moreton Bay region must be maintained and/or improved.	Yes	
Transport Plan for Brisbane 2002-2016	<p>Major economic growth areas, particularly the ATC and Western Gateway, are provided with appropriate road access and are buffered from sensitive land uses.</p> <p>Upgrading the Gateway Motorway to six lanes south of the river and constructing a new four lane deviation between Kingsford Smith Drive and Toombul Road.</p> <p>Duplicating the Gateway Bridge.</p>	Yes	<ul style="list-style-type: none"> <li>GUP addresses capacity issues associated with the existing Gateway Motorway and will improve the efficiency of road access to the ATC and Brisbane Airport area.</li> <li>GUP upgrades Motorway south of Brisbane River, new four lane deviation provided between Kingsford Smith Drive and Nudgee Road, and duplicates the Gateway Bridge.</li> </ul>

State, Regional and Local Policies/Strategies	Relevant Provisions	GUP Compliance	Compliance Comment
Bicycle Brisbane Plan	Ensuring that pedestrian and cyclist planning is integrated with all transport initiatives early in project and policy development will maximise intermodal options.	Yes	<ul style="list-style-type: none"> <li>If the approved as part of the GUP the pedestrian/bikeway provision integrates with BCC's planned bikeway network.</li> </ul>
BAC Airport Environmental Strategy	<p>Minimise the impact of Brisbane Airport operations on surface water and groundwater quality.</p> <p>Minimise the potential for soil contamination to occur on Brisbane Airport.</p> <p>BAC aims to maintain an ongoing process for the identification and appropriate management of objects and matter that have natural value.</p>	Yes	<ul style="list-style-type: none"> <li>The EIS addresses potential water quality impacts in Section 12 soil impacts in Section 10, and terrestrial flora and fauna in Section 16.</li> <li>The EMP will contain appropriate mitigation measures to address, construction and operational water quality, noise and soil issues.</li> </ul>

Further details of relevant State, regional and local policies are included in Appendix D2.