

## 4 Statutory and planning framework

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### 4.1 State Environmental Planning Policies

#### 4.1.1 State Environmental Planning Policy (Infrastructure) 2007

*State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) aims to facilitate the effective delivery of infrastructure across the State.

Clause 94 of ISEPP permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent.

As the proposal is for a road and road infrastructure facilities and is to be carried out by Roads and Maritime, it can be assessed under Part 5 of the EP&A Act. Development consent from council is not required.

The proposal is not located on land reserved under the *National Parks and Wildlife Act 1974* and does not affect land or development regulated by *State Environmental Planning Policy No. 14 – Coastal Wetlands*, *State Environmental Planning Policy No. 26 – Littoral Rainforests*, *State Environmental Planning Policy (State and Regional Development) 2011* or *State Environmental Planning Policy (Transitional Major Projects) 2005*.

Part 2 of the ISEPP contains provisions for public authorities to consult with local councils and other public authorities prior to the commencement of certain types of development. Consultation, including consultation as required by ISEPP, is discussed in chapter 5 of this review of environmental factors.

#### 4.1.2 State Environmental Planning Policy (Rural Lands) 2008

*State Environmental Planning Policy (Rural Lands) 2008* (SEPP (Rural Lands)) aims to facilitate the orderly and economic use of rural lands, including the subdivision, development and protection of rural lands. It applies to all land within the Shoalhaven LGA.

Clause 8 of the SEPP (Rural Lands) sets out the rural subdivision principles as follows:

- a) The minimisation of rural land fragmentation.
- b) The minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses.
- c) The consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands.
- d) The consideration of the natural and physical constraints and opportunities of land.
- e) Ensuring that planning for dwelling opportunities takes account of those constraints.

These principles have been considered in the design and assessment of the proposal. Upgrading the existing highway option minimises the need for acquisition and fragmentation of rural lands. Remaining property and fragmentation impacts would be minimised and managed through the mitigation measures presented in **Section 6.9** and **Section 6.10**.

#### 4.1.3 State Environmental Planning Policy No. 44 – Koala Habitat Protection

*State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP 44) aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas, to ensure that permanent free-living populations are protected in their present range and to reverse the current trend of population decline. The policy applies to the Shoalhaven LGA.

SEPP 44 does not apply to the proposal as the proposal does not require development consent. However, the terrestrial ecology assessment carried out as part of the review of environmental factors considered SEPP 44 as detailed in **Section 6.3**. Potential koala habitat is considered to occur in areas of native vegetation where feed trees species (listed under Schedule 2 of SEPP 44) comprise at least 15 per cent of the total tree canopy.

There are five records of koala within 10 kilometres of the proposal. Of these, the only recent recording is located within the Seven Mile Beach Reserve, about 8.5 kilometres east of the proposal. The field study undertaken as part of the terrestrial flora and fauna assessment recorded three feed tree species listed under Schedule 2 of SEPP 44 within the study area, being Tallowwood (*Eucalyptus microcorys*), Scribbly Gum (*Eucalyptus robusta*) and Forest Red Gum (*Eucalyptus tereticornis*). A roadside patch of Scribbly Gum on the eastern side of the Princes Highway between Abernethys Lane and Cambewarra Road is classified as potential koala habitat under SEPP 44. Tallowwood and Forest Red Gum do not comprise 15 per cent or more of the native vegetation at locations where they are present, and are therefore not classified as potential koala habitat.

#### 4.1.4 State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) promotes the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Clause 7(1) states that a consent authority must not consent to the carrying out of any development on land unless it has considered whether that land is contaminated and whether remediation is required.

The Phase 1 Environmental Site Assessment (AECOM, 2013) undertaken for the proposal concluded that there would be a low likelihood of land being affected by contamination from current or historic land use in the construction footprint of the proposal. However, a number of areas of potential concern were identified as having potential localised contamination. These areas are identified in **Table 6-57** and relate to unknown fill material, sheep/cattle dip sites, fibro buildings, fuel spills, waste materials and current and former commercial or light industrial land uses. The areas of potential concern may require further assessment and/or remediation prior to or during construction of the proposal. Potential contamination impacts and safeguards are discussed further in **Section 6.11**.

#### 4.1.5 Illawarra Regional Environmental Plan No. 1 (now a deemed SEPP)

The *Illawarra Regional Environmental Plan No. 1* (Illawarra REP No. 1), a deemed SEPP, applies to land within the Shellharbour, Shoalhaven, Wollongong and Kiama LGAs. The Illawarra REP No. 1 aims to maximise the opportunities for the region's population to meet individual, community and social needs. There is a particular focus on the allocation, availability, accessibility and management of the region's land resources.

Clause 11 of the Illawarra REP No. 1 sets out a number of objectives relating to rural lands. These objectives have been considered in **Chapter 6** of this report. Impacts on, and the management of, rural properties and productive agricultural lands are discussed in **Section 6.9** and **Section 6.10**. The protection of valuable natural environments and provision for wildlife movements are considered in **Section 6.3**. The retention of scenic attributes of rural areas is addressed in **Section 6.6** and development on flood prone lands is discussed in **Section 6.5**.

Part 15 of the Illawarra REP No. 1 provides for the conservation of the environmental heritage of the region. Clause 128 of the REP restricts development in the vicinity of an item of environmental heritage unless there is an adequate assessment of the effect of a development on the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its setting. Assessments of Aboriginal and non-Aboriginal (historic) heritage are provided in **Section 6.7** and **Section 6.8** respectively.

The proposal would be consistent with the aims of the Illawarra REP No. 1 as it would improve accessibility and movement of people and goods across the region. The minimisation of impacts and inclusion of a range of mitigation measures to manage potential impacts on agricultural properties and natural areas would also be in accordance with the objectives relating to rural lands.

## 4.2 Local Environmental Plans

### 4.2.1 Shoalhaven Local Environmental Plan

The proposal is located within the Shoalhaven LGA. There are two local environmental planning instruments that apply in the Shoalhaven LGA. These are the *Shoalhaven Local Environmental Plan 1985* (Shoalhaven LEP 1985) and the *draft Shoalhaven Local Environmental Plan 2009* (draft Shoalhaven LEP 2009).

Under the Shoalhaven LEP 1985, the majority of the proposal is located within the existing road corridor and Zone No. 1(b) Rural (Arterial and Main Road Protection) (refer to **Figure 4-1** and **Figure 4-2**). The proposal would also pass through Zone No. 1(g) Rural (Flood Liable), Zone No. 5(d) Special Uses (Proposed Arterial Roads Reservation and Widening of Existing Arterial Roads Reservation) and Zone No. 7(d2) Environmental Protection (Special Scenic).

**Table 4-1** details the objectives of these land use zones and discusses the proposal's consistency with these objectives.

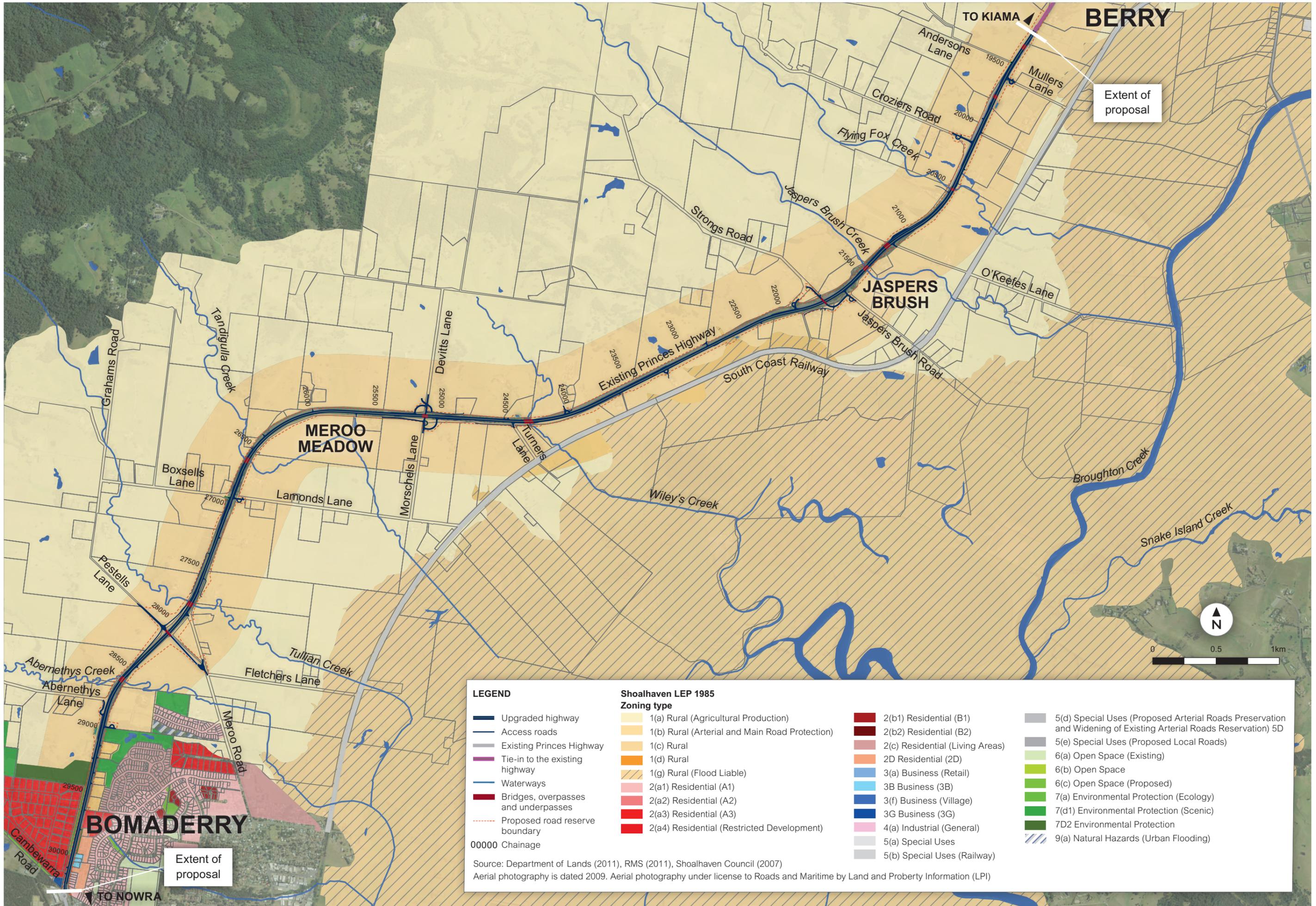


Figure 4-1 Overview of land use zones as shown in the Shoalhaven LEP 1985

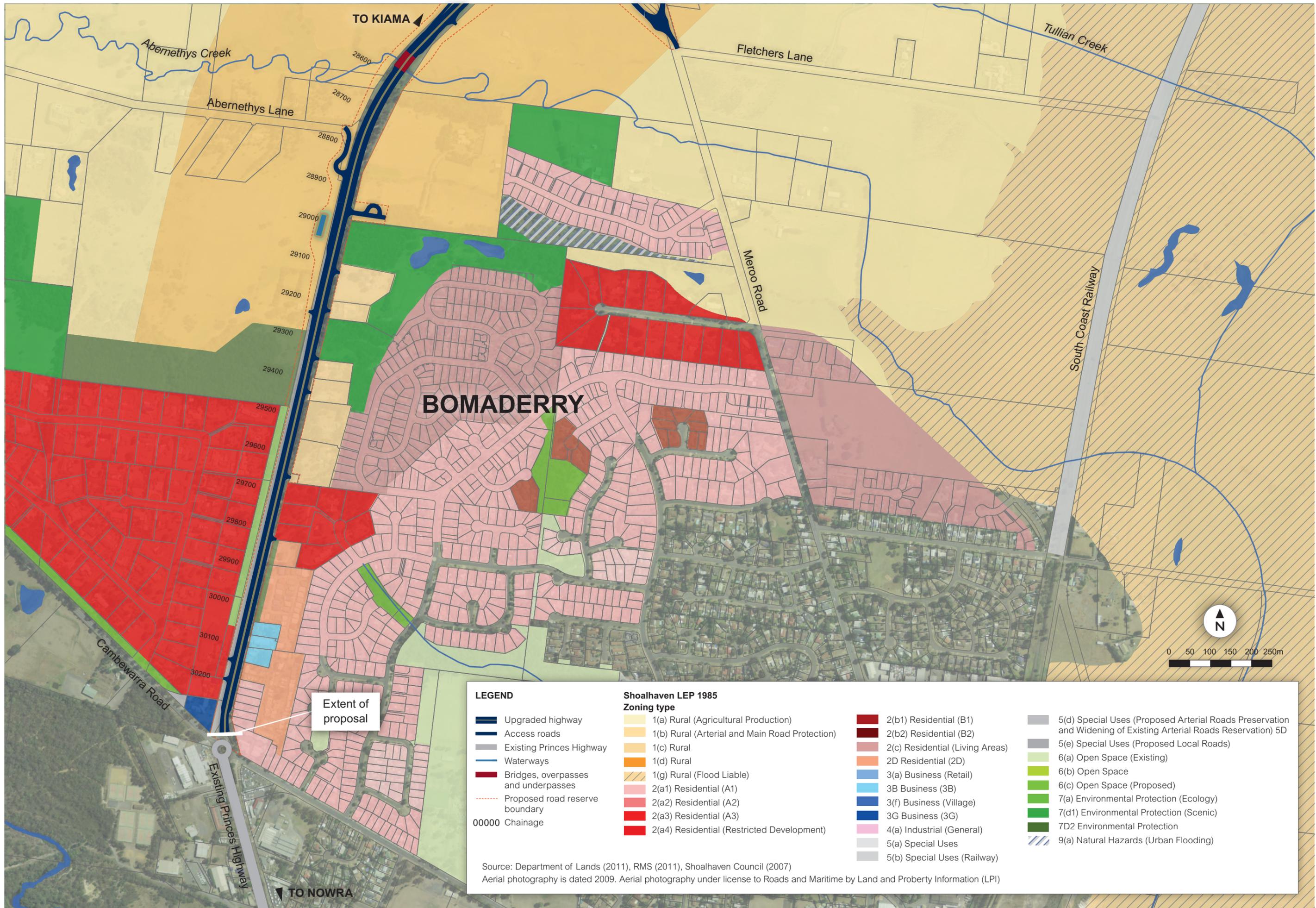


Figure 4-2 Overview of land use zones as shown in the Shoalhaven LEP 1985 (Bomaderry detail)

**Table 4-1 Objectives of the applicable Shoalhaven LEP 1985 land use zonings**

Zone	Objectives	Consistency of the proposal with the objectives
Zone No. 1(b) Rural (Arterial and Main Road Protection)	<ul style="list-style-type: none"> <li>• To minimise the direct and accumulative impact of development on the efficiency and safety of existing or proposed main and arterial roads.</li> <li>• To promote a high level of scenic quality adjacent to existing or proposed main or arterial roads.</li> <li>• To encourage, where possible, the use of existing or proposed side roads as an alternative to direct vehicular access to an existing or proposed main or arterial road.</li> </ul>	<p>The proposal is consistent with the objectives of this zone as it would improve the safety and efficiency of an existing arterial road. The proposal would enable safe access to the highway via the two new grade-separated facilities and the new grade separated half-interchange.</p> <p>The proposal would include planting of new vegetation in areas along the highway where existing vegetation would be directly impacted. Additionally, vegetation would be reinforced at creek crossings. This would be undertaken in accordance with the urban design and landscape concept plan, which is detailed in the <i>Technical Paper: Urban Design, Landscape Character and Visual Impact Assessment</i> at <b>Appendix H</b>.</p> <p>During construction of the proposal, there may be impacts to the efficiency of the existing highway. The staging of construction would be designed to minimise this impact where possible (refer to <b>Section 3.4.2</b> and <b>Section 6.1.4</b>).</p>
Zone No. 1(g) Rural (Flood Liable)	<ul style="list-style-type: none"> <li>• To limit the erection of structures on land subject to periodic inundation.</li> <li>• To ensure that dwelling-houses are erected on land subject to periodic inundation only in conjunction with agricultural use.</li> <li>• To ensure that the effect of inundation is not increased through development.</li> <li>• To restrict development and how it is carried out so that its potential to have an adverse impact on site and off site on acid sulfate soils is reduced or eliminated.</li> <li>• To conserve and maintain the productive potential of prime crop and pasture land.</li> </ul>	<p>The proposal would be flood immune during a 100 year ARI flood event.</p> <p>There is potential that the proposal would require the erection of bridge piers on land subject to periodic inundation.</p> <p>No dwellings would be erected as part of the proposal, and no existing flood affected structures would be considerably impacted during construction or operation. Flood structures would allow more floodwaters to be contained within the banks of local waterways, improving flood conditions in the proposal area during a 100 year ARI flood event.</p>

Zone	Objectives	Consistency of the proposal with the objectives
		<p>Flood impacts to agricultural land have been minimised as much as practically possible, and the proposal is not considered to impact on the agricultural productivity of the Shoalhaven region.</p> <p>Several sections of the proposal have been identified as having low risk PASS present, mostly along existing and historical creek lines. The risk of exposure of PASS or actual ASS during construction of the proposal is considered to be low.</p> <p>Consistency with these objectives would be achieved through the implementation of Roads and Maritime design guidelines and the mitigation measures presented in <b>Section 6.5</b>. These would minimise the impact of the proposal on flood prone land and reduce any impacts on flood levels.</p>
Zone No. 5(d) Special Uses (Proposed Arterial Roads Reservation and Widening of Existing Arterial Roads Reservation)	<ul style="list-style-type: none"> <li>To identify lands required for proposed arterial roads or the widening of existing arterial roads.</li> </ul>	The proposal is consistent with the objectives of this zone as the land would be utilised for widening of an existing arterial road.
Zone No. 7(d2) Environmental Protection (Special Scenic)	<ul style="list-style-type: none"> <li>To preserve and enhance scenic quality.</li> </ul>	<p>The proposal would be designed to minimise the visual impacts as well as the impacts on terrestrial ecology.</p> <p>Landscape planting would be incorporated along the proposal in accordance with the urban design and landscape concept plan (refer to <b>Appendix H</b>). An arrival and departure strategy for Bomaderry would be developed in consultation with Shoalhaven City Council.</p>

A road is permitted in all of these zones with development consent. However, as discussed in **Section 4.1.1**, Clause 94 of the ISEPP permits Roads and Maritime, as a public authority, to carry out development for the purpose of a road and/or road infrastructure facilities on any land without consent. As a result, consent from Shoalhaven City Council is not required for the proposal.

Under the draft Shoalhaven LEP 2013 the proposal would be located within Zone SP2 Infrastructure, Zone RU1 Primary Production and Zone E2 Environmental Conservation. A road is permitted with development consent in all of these zones. As with the Shoalhaven LEP 1985, Roads and Maritime, as a public authority, would not require consent for the proposal from Shoalhaven City Council.

The proposal would cross watercourses identified under the draft Shoalhaven LEP 2013 as Sensitive area (watercourse category 2) and Sensitive area (watercourse category 3). The draft LEP states that a consent authority must consider any potential adverse impact of a proposal on such watercourses. Whilst not strictly applicable to the proposal, impacts to watercourses have been considered and surface water, groundwater and flooding impacts are assessed in **Section 6.4** and **Section 6.5**.

Shoalhaven City Council has been consulted throughout the development and assessment of the proposal, as detailed in **Chapter 5**.

Further discussion on the potential impacts to the land use objectives of these zones is provided in **Section 6.9**.

## 4.3 Other relevant legislation

### 4.3.1 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) provides for the conservation and management of nature and objects, places or features of cultural value. It is the primary legislation for the protection of Aboriginal cultural heritage in NSW.

Part 6 of the NPW Act provides protection for all Aboriginal objects and Aboriginal places in NSW. Under Section 90 of the Act, an Aboriginal Heritage Impact Permit (AHIP) is required prior to the disturbance of Aboriginal objects or places.

The proposal would fully impact 10, and partially impact 14 sites, items or objects of Aboriginal heritage significance. Therefore an AHIP would be required and would cover the entire construction footprint of the proposal (refer to **Section 6.7** for further details).

### 4.3.2 Heritage Act 1977

The *Heritage Act 1977* (Heritage Act) provides a mechanism for the protection of items of both local and state non-Aboriginal (historic) heritage significance in NSW and establishes the State Heritage Council. Approval from the Heritage Council is required prior to the potential disturbance or excavation of items, relics and artefacts with historic heritage significance.

The proposal would likely fully impact two items of historic heritage significance, and partially impact eight. As detailed in **Section 6.8**, test excavations would be undertaken at six sites to determine the presence and nature of archaeological deposits. A permit under section 140 of the Heritage Act would be required prior to undertaking these subsurface investigations.

### 4.3.3 Threatened Species Conservation Act 1995

The TSC Act provides for the conservation and protection of threatened species, populations, ecological communities and their habitat. All threatened species, populations or communities listed on Schedules 1, 1A and 2 of the TSC Act likely to occur in the study area, and known to use that type of habitat, should be subject to an assessment of significance. The assessment of significance must address the requirements of section 5A of the EP&A Act and be prepared in accordance with the 'Threatened Species Assessment Guidelines' (DECC, 2007). A species impact statement (SIS) is required if impacts are assessed as being significant.

Assessments of significance were undertaken for four flora species and 27 fauna species listed under the TSC Act. All assessment concluded that the proposal would have minimal impact on the threatened species or their habitat. The assessments of significance for fauna species would be updated following targeted surveys that would be undertaken prior to the commencement of construction (refer to **Section 6.3** for further details).

### 4.3.4 Fisheries Management Act 1994

The FM Act aims to conserve, develop and share the fishery resources of NSW for the benefit of present and future generations. In particular, the FM Act provides a mechanism to conserve fish stock, key fish habitats and threatened species, populations and communities of fish and marine vegetation.

Any species, populations or ecological communities listed on Schedules 4, 4A or 5 of the FM Act that are likely to occur in the study area, and known to use that type of habitat, should be subject to an assessment of significance. If applicable, the assessment of significance must address the requirements of section 5A of the EP&A Act and be prepared in accordance with the 'Threatened Species Assessment Guidelines' (DECC, 2007). Assessments of significance were undertaken for four species listed under the FM Act. The assessments concluded that the proposal would be unlikely to significantly impact these species (refer to **Section 6.3**).

The proposal would include eight waterway crossings. As detailed in **Section 6.3** and **Section 6.4**, waterway crossings would be designed in accordance with NSW Fisheries guidelines. Where possible, bridge piers would not be placed in waterways and fish passage would be maintained.

Roads and Maritime would consult with NSW Fisheries with regards to the design and construction of waterway crossings. Further details of consultation carried out are in **Chapter 5**.

### 4.3.5 Noxious Weeds Act 1993

The *Noxious Weeds Act 1993* (Noxious Weeds Act) establishes control mechanisms to reduce the negative impacts of weeds on the economy, community and environment. Under Section 13 of the Noxious Weeds Act, Roads and Maritime, as a public authority, is obliged to control noxious weeds on land that it owns and prevent noxious weeds from spreading to adjoining properties.

Eight noxious weed species have been found to occur within the study area, listed as class 4 weeds under the Noxious Weeds Act. Class 4 weeds are locally controlled weeds that pose a threat to primary production, the environment or human health.

### 4.3.6 Water Management Act 2000

The *Water Management Act 2000* (Water Management Act) provides for the sustainable and integrated management of water resources for the benefit of both present and future generations. It provides for the implementation of water sharing plans that establish rules for sharing a water resource while taking into account the environmental need of the resource. The construction footprint for the proposal is covered by the Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources and the Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources.

Section 56 of the Water Management Act establishes access licences for the take of water within a particular water management area. Under section 18(1) of the *Water Management (General) Regulation 2011* (Water Management Regulation) Roads and Maritime, as a roads authority, is exempt from the need to obtain an access licence in relation to water required for road construction and road maintenance.

Sections 89 to 91 of the Water Management Act establish three types of approvals that a proponent may be required to be obtained. These are water use approvals, water management work approvals (including water supply work approvals, drainage work approvals and flood work approvals) and activity approvals (including controlled activity approvals and aquifer interference approvals).

A water use approval under Section 91A(1) of the Water Management Act would be required for the use of water covered by the water sharing plans. However, under clause 31(1) of the Water Management Regulation, Roads and Maritime, as a roads authority, is exempt from requiring a water use approval for road construction and road maintenance. A water use hierarchy has been established for the construction of the proposal. Recycled effluent from a tertiary treatment plant and water sourced from on-site detention basins would be utilised in the first instance. If required, other potential water sources would include potable water supplied by Shoalhaven City Council and groundwater sourced from dewatering that may be required at larger cuttings. Groundwater would only be used if dewatering of cuttings is required. Further details are provided in **Section 3.4.4**.

Water supply work and drainage work would not be undertaken as part of the proposal. Flood work is expected to be undertaken as part of the proposal given that work would be undertaken on a floodplain that is likely to affect the distribution of floodwater. Roads and Maritime would continue to consult with OEH and the NSW Office of Water (NOW) to ensure that impacts to hydrology and flooding have been adequately assessed and appropriate approvals are sought.

Clause 38 of the *Water Management (General) Regulation 2011* exempts Roads and Maritime, as a public authority, from obtaining approval under Section 91E(1) of the Water Management Act. This allows Roads and Maritime to carry out controlled activities on waterfront land. Despite not requiring controlled activity approvals, NOW guidelines for controlled activities (available at <http://www.water.nsw.gov.au/Water-Licensing/Approvals/Controlled-activities/default.aspx>) have been considered in this assessment and would be considered during the detailed design and construction phases of the proposal.

Under the NSW Aquifer Interference Policy, the proposal is exempt from requiring an aquifer interference approval. Section 3.3 of the policy states that caverns, tunnels, trenches and pipelines (intersecting the water table) would be considered as having a minimal impact on water-dependent assets, if a water access licence is not required. Therefore, the proposal would be defined as a minimal impact aquifer interference activity given that a water access licence is not required.

#### 4.3.7 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) establishes a regulatory framework for the protection and restoration of the environment. It provides a mechanism for licensing for certain activities, listed in Schedule 1 of the POEO Act.

The proposal is classified as a scheduled activity under Schedule 1 of the POEO Act and therefore an EPL for road construction would be required.

#### 4.3.8 Land acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* applies to the acquisition of land (by agreement or compulsory process) by a public authority authorised to acquire the land by compulsory process. It provides a guarantee that, when a public authority requires the acquisition of land, the amount of compensation will not be less than the market value of the land. The *Land Acquisition (Just Terms Compensation) Act 1991* would apply to the acquisition of any land required for the proposal. Property acquisition is further discussed in **Section 6.9**.

## 4.4 Commonwealth legislation

### 4.4.1 Environment Protection and Biodiversity Conservation Act 1999

Under the EPBC Act a referral is required to the Australian Government for proposed 'actions' that have the potential to significantly impact on matters of national environmental significance or the environment of Commonwealth land. These are considered in **Chapter 6** and **Appendix A**.

The assessment of the impact of the proposal on matters of national environmental significance and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant matters of national environmental significance and the proposal is not located on Commonwealth land. Accordingly, the proposal has not been referred to the Australian Government Department of the Environment.

## 4.5 Confirmation of statutory position

Pursuant to clause 94 of the ISEPP, development for the purpose of a road and/or road infrastructure facilities on behalf of a public authority may be carried out without consent. As the proposal is for a road and road infrastructure facilities and is to be carried out by Roads and Maritime, it is subject to assessment under Part 5 of the EP&A Act.