Gerringong to Bomaderry
Princes Highway upgrade

ROUTE OPTIONS DEVELOPMENT
APPENDIX L - PRELIMINARY PLANNING AND ZONING ISSUES REPORT
NOVEMBER 2007
Gerringong to Bomaderry
Princes Highway Upgrade

Preliminary Planning and Zoning Issues Report

The Roads and Traffic Authority NSW
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1.0 Background

Maunsell was engaged by the RTA in December 2006 to carry out an Options and Route Selection Study, Concept Development and Environmental Assessment for upgrading the Princes Highway between 42.6 km to 74.6 km south of Wollongong. Maunsell has engaged a number of prominent sub-consultants to contribute to the delivery of this project.

The work includes development of route options and concept development based on the identified preferred route, environmental assessment, public displays and handover period to allow for finalisation of all activities and reports following the announcement and display of the Preferred Route, the Environmental Assessment and the Conditions of Approval.

The project will provide a bypass of Berry. The northern extremity of the project is in the vicinity of the Mount Pleasant Lookout (north of Gerringong at the termination of the four lane configuration) and the southern extremity of the project is the intersection (roundabout) of the Princes Highway with Cambewarra and Moss Vale Roads at Bomaderry.

Community involvement is a key aspect of this project and will afford the broader community the opportunity to make a demonstrable input to the process and to ensure that the requirements and aspirations of the community will be adequately and appropriately addressed. This is particularly relevant to:

a) Any potential impacts on rural and residential areas within the study area;
b) Social and economic impacts;
c) Accessibility of the road network for local and through traffic;
d) Potential impacts on water quality;
e) Potential impacts on wetlands;
f) Potential impacts on flooding;
g) Potential impacts on land uses;
h) Threatened flora and fauna species;
i) Indigenous and non-indigenous heritage;
j) Visual impact;
k) Noise; and
l) Air quality.

Several studies have been undertaken since the early 1990s to identify a preferred route to upgrade sections of the Princes Highway between Kiama and Nowra including a bypass around the town of Berry.

These studies include:

m) The 1991 Gerringong to Berry Route Study;

n) 1998 North Street Berry Bypass Corridor; and

o) 2004/05 Quantm Study from Kiama to Nowra.

Sections of the highway between Gerringong and Bomaderry have a poor accident record and limited safe overtaking opportunities.

Due to the significant changes in traffic, land use and population since 1991, the NSW state government, in March 2006 committed to investigating an area where it is likely a preferred route would be located to upgrade the Princes Highway between Mount Pleasant at Gerringong and Moss Vale/Cambewarra Road at Bomaderry to meet current road standards.
2.0 Objectives of report

This Preliminary Planning and Zoning Issues Report describes the key environmental planning instruments and land use zoning provisions that are relevant to this project. A preliminary assessment of the implications associated with these environmental planning instruments on determining the permissibility of the project is provided. The environmental assessment and approvals process necessary to implement the project and the identification of other relevant planning policies and statutes is also documented.

Specifically, this report aims to:

a) Review the land use zones affected or potentially affected by the upgrade and summarise the statutory position of the project in relation to those zoning provisions;
b) Advise on the planning approvals process relevant to the upgrade;
c) Identify the relevant approving authorities for the upgrade;
d) Identify and report on legal requirements for preliminary environmental assessment of the upgrade;
e) Identify all environmental planning instruments which are relevant to the upgrade and examine how the project may interact with local, regional and state planning strategies and objectives;
f) Identify and examine all State Environmental Planning Policy requirements relevant to the upgrade; and
g) Document any consultation undertaken to date with regard to planning and advise on any strategies being developed by the Department of Planning and local councils which may affect the upgrade.

This report is based on information collated via site inspections and publicly available background documents from relevant internet sites. Kiama and Shoalhaven councils have provided digital zoning information directly to the RTA for this project.
3.0 Planning approval framework

3.1 Local environmental plans and permissibility

The study area spans parts of the following two Local Government Areas:

- Kiama Municipal Council – land subject to Kiama Local Environmental Plan 1996; and
- Shoalhaven City Council – land subject to Shoalhaven Local Environmental Plan 1985.

It is understood that both Kiama and Shoalhaven councils are preparing new Principal Local Environmental Plans in accordance with the Standard Local Environmental Plan, both of which are targeted for completion by 2009. This represents an opportunity for potential rezoning of land near a preferred route or implementation of special provisions as part of the new Local Environmental Plan, where such changes would alleviate or minimise potential impacts of the proposed upgrade on surrounding land uses.

Impacts on cultural heritage is described in Appendix I of the Route Options Development Report.

3.1.1 Kiama Local Environmental Plan 1996

3.1.1.1 Land use zones and permissibility

Under the Kiama Local Environment Plan 1996, as amended, the study area is subject to a combination of land use zonings, including:

Zone No. 1(a) – Rural “A”;
Zone No. 2(a) – Residential “A”;
Zone No. 4(c) – Light Industrial;
Zone No. 5(a) – Special Uses (Schools etc);
Zone No. 5(b) – Special Uses (Railways);
Zone No. 6(a) – Existing Recreation;
Zone No. 7(b) – Rural Environmental Protection (Estuarine Wetlands);
Zone No. 7(b1) – Rural Environmental Protection (Wetlands Buffer);
Zone No. 7(d) – Rural Environmental Protection (Scenic);
Zone No. 7(e) – Rural Environmental Protection (Hinterland);
Zone No. 7(f) – Rural Environmental Protection (Foreshore Protection); and
Zone No. 9(a) – Proposed Arterial Road.

For the purpose of the Local Environmental Plan the proposed works come under the definition of Roads. Under each of the above zones, excluding Zone 7(b), roads are permissible either with or without development consent. In Zone 7(b), roads are prohibited.

Should land with a zoning that differs from the zones considered above be affected, the preferred route selection process would need to reflect the other zones.
3.1.1.2 Land use zone objectives and controls

The objectives of the Rural A (agricultural production) zone are:

“(a) to provide suitable land for agricultural use,
(b) to protect the agricultural potential of rural land,
(c) to prevent the fragmentation of rural land of prime crop and pasture potential,
(d) to enable uses that are compatible with the rural use of the land,
(e) to protect the landscape quality of the rural area, …
(g) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

Subdivision under Rural “A” zone is subject to the following:

Under Clause 10(4) of Kiama Local Environmental Plan 1996, concessional allotments can be created at no greater than 4,000 m$^2$ only where the land is for the purpose of a dwelling and the land is being excised from a “parcel of land, consolidated into a single lot after the commencement of the Kiama Local Environmental Plan 1996 (Amendment No. 60), comprised of two or more former lots in the same ownership having a combined area of 60.4 hectares or more”. The allotment can not be prime crop or pasture land.

Consent must not be granted for subdivision in the Rural “A” zone unless the consent authority has considered a range of matters, including the impact on productivity of the land (refer to the Kiama Local Environmental Plan for detailed description of considerations).

Where land is proposed to be subdivided, the minimum lot size for dwellings is 40 ha. Under Clause 10(8), subdivision can occur in the Rural “A” zone to widen a public road.

The objectives of the Rural Environmental Protection (Scenic) zone are to:

“(a) to protect vegetation and land of significant scenic or aesthetic value’ and in particular ‘significant vegetation stands and promote re-vegetation programs…
(c) to preserve dominant land forms which contribute to significant landscapes,
(d) to provide suitable land for agricultural use,
(e) to protect the agricultural potential of rural land,
(f) to prevent the fragmentation of rural land of prime crop and pasture potential, …
(i) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

Subdivision under Rural Environmental Protection (Scenic) zone is subject to the following:

Under Clause 30(4) of the Kiama Local Environmental Plan, concessional allotments can be created at no greater than 4,000 m$^2$ only where the land is for the purpose of a dwelling and the land is being excised from a “parcel of land, consolidated into a single lot after the commencement of the Kiama Local Environmental Plan 1996 (Amendment No. 60), comprised of two or more former lots in the same ownership having a combined area of 60.4 hectares or more”. The allotment can not be prime crop or pasture land.

Consent must not be granted for subdivision in the Rural Environmental Protection zone unless the consent authority has considered a range of matters, including the impact on productivity of the land (Refer to the Kiama Local Environmental Plan for detailed description of considerations).
Where land is proposed to be subdivided, the minimum lot size for dwellings is 40 ha. Under Clause 10(8), subdivision can occur in the Rural Environmental Protection zone to widen a public road.

The objectives of the **Rural Environmental Protection (Hinterland) zone** are:

“(a) to maintain the environmental attributes of the hinterland environment,
(b) to preserve intact rainforests and to promote the regeneration of rainforest areas,
(c) to preserve areas of significant vegetation stands and to promote the regeneration of forests and eradication of introduced vegetation which competes with native flora,
(d) to protect varieties of wildlife and their associated habitats and corridors,
(e) to retain and enhance the visual and scenic qualities of the escarpment ridges, foot slopes, walls and associated tablelands,
(f) to allow on lawfully cleared prime crop and pasture lands the continuation of animal grazing and cropping practices associated with the use of land for agriculture,
(g) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions, important ecosystems (such as streams, estuaries and wetlands) and other land below the hinterland environment,
(h) to ensure that existing and future land uses and land management practices do not lead to a diminution of the environmental values of the hinterland environment, and
(i) to cater for small domestically-based enterprises that do not adversely affect the environment or the amenity of the neighbourhood and its residents”.

The objectives of the **Proposed Arterial Road zone** are to:

“(a) Provide for the opening of new, and widening of existing arterial roads as identified on the map, and
(b) Ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the **Residential “A” zone** are:

“(a) to enable the orderly and economic development of land for residential purposes,
(b) to provide for a variety of allotment sizes and housing choice,
(c) to reduce the consumption of land for residential purposes,
(d) to reduce housing costs by reducing, in certain cases, the minimum area of land on which residential development may be carried out,
(e) to encourage innovation, diversification and energy efficiency in subdivision patterns, site plans and building designs,
(f) to prevent development occurring on land subject to flooding, slip or coastal erosion,
(g) to protect urban bushland and significant vegetation,
(h) to protect significant landscapes,
(i) to conserve and enhance the architectural and aesthetic character of items of environmental heritage significance,
(j) to cater for small domestically based enterprises that do not adversely affect the environment or the amenity of the neighbourhood and its residents, and
(k) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.
The objectives of the **Light Industrial zone** are:

“(a) to provide for a range of light industrial uses which will not have a detrimental effect on the amenity of nearby residential neighbourhoods,
(b) to provide for the orderly and economic development of land for industrial purposes,
(c) to provide for the retailing of bulky goods within industrial areas,
(d) to provide local employment opportunities,
(e) to provide guidelines for the development of industrial land, and
(f) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality and land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the **Special Uses (Schools etc) zone** are:

“(a) to identify land which can be utilised for the designated purpose, (i.e. school, church, cemetery etc), and
(b) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the **Special Uses (Railways) zone** are:

“(a) to identify land to be used for railway purposes, and
(b) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the **Existing Recreation zone** are:

“(a) to provide sufficient recreation areas for the benefit and use of the residents of and visitors to Kiama,
(b) to provide a range of compatible land uses which will ensure the most economical and beneficial use of the land so zoned, and
(c) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the **Rural Environmental Protection (Estuarine Wetlands) zone** are:

“(a) to identify and preserve estuaries and wetlands and allow them to continue to function as a diverse and natural ecosystem,
(b) to prohibit development within the zone that is likely to have a detrimental effect on the biological and physical function of the wetlands,
(c) to restrict public works to those which provide essential services where no other alternative is available and which would not have a detrimental effect on the habitat or landscape qualities of the wetland or other significant coastal habitat areas,
(d) to prohibit the clearing of land except for the careful control of noxious plants by means not likely to be significantly detrimental to the native ecosystem,
(e) to encourage the enhancement of wetland values by reinstatement of the natural water regime and vegetation,
(f) to provide for changes in sea and related water levels,
(g) to lessen the development pressure on wetland systems, other than development for rehabilitation or educational purposes, by progressively bringing wetlands into public ownership, and

(h) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the Rural Environmental Protection (Wetlands Buffer) zone are:

“(a) to assist in the protection of adjoining wetland systems and riparian and foreshore vegetation,

(b) to ensure that development of the land has minimal impact on the biological and physical function of the wetlands,

(c) to ensure that management of the land is appropriate having regard to the potential impact on the local wetland systems, and

(d) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and important ecosystems such as streams, estuaries and wetlands”.

The objectives of the Rural Environmental Protection (Foreshore Protection) zone are:

“(a) to maintain the environmental attributes of the foreshore environment,

(b) to protect the foreshore areas from the effect of erosion and promote practices which will ensure sand dune stability,

(c) to enhance the visual and scenic qualities of the foreshore areas,

(d) to allow on lawfully cleared prime crop and pasture land the continuation of animal grazing and cropping practices associated with the use of land for agriculture,

(e) to ensure that existing and future land uses and land management practices do not lead to the degeneration of the environmental values of the foreshore environment,

(f) to cater for small domestically-based enterprises that do not adversely affect the environment or the amenity of the neighbourhood and its residents, and

(g) to ensure that development and land management practices do not have an adverse effect on water catchments, water quality, land surface conditions and other important ecosystems such as streams, estuaries and wetlands”.
3.1.1.3 Special provisions under the Kiama Local Environmental Plan 1996

Key issues arising from the review of Local Environmental Plans is the need to consider, particularly in rural and environmental protection zones the impacts of:

- The proposed road development on productivity of the land,
- Any resultant subdivision on the productivity of the land, and
- Impacts on any ecologically sensitive habitats or species, including cumulative impacts, impacts on ecological corridors and impacts on areas of scenic value.

In accordance with Clause 53 of the Kiama Local Environmental Plan 1996, any filling of land must be assessed as to the following considerations:

- (a) visual impact on the surrounding land,
- (b) the likely effect on the stability of the land,
- (c) the potential for the fill to alter drainage patterns or flood levels to the detriment of adjoining property owners,
- (d) the implications of changing land surface levels and subsequent development and its potential impact on adjoining or nearby property owners, including their privacy and views,
- (e) measures to be taken to stabilise and landscape the filling to prevent erosion,
- (f) measures to be taken to prevent sedimentation of waterways,
- (g) the impact on existing vegetation, particularly mature trees on the land,
- (h) the nature of the fill material and the potential for that material to contain contaminated substances,
- (i) the potential for the fill to adversely affect water quality, and
- (j) the duration of the filling works, the likely traffic movements generated and the impact on the local road networks as a result of those works.

In accordance with Clause 58 of the Kiama Local Environmental Plan, in considering development on flood liable land, the consent authority is required to consider:

- (a) the likely levels, velocity, sedimentation and debris carrying effects of flooding,
- (b) the structural sufficiency of any building the subject of the application and its ability to withstand flooding,
- (c) the effect which the development, if carried out, will or is likely to have on the flow characteristics of floodwaters, and
- (d) whether or not access to the site will be possible during a flood, and
- (e) the likely increased demand for assistance from emergency services during a flood.
3.1.2 Shoalhaven Local Environmental Plan 1985

3.1.2.1 Land use zoning and permissibility

Under the Shoalhaven Local Environmental Plan, as amended to 13 April 2007, the study area is subject to a combination of land use zonings, including:

- Zone No. 1(a) – Rural “A” (Agricultural Production);
- Zone No. 1(b) – Rural “B” (Arterial and Main Road Protection);
- Zone No. 1(c) – Rural “C” (Rural Lifestyle);
- Zone No. 1(d) – Rural “D” (General Rural);
- Zone No. 1(g) – Rural “G” (Flood Liable);
- Zone No. 2(a1) – Residential “A1”;
- Zone No. 2(a2) – Residential “A2”;
- Zone No. 2(a3) – Residential “A3”;
- Zone No. 2(a4) – Residential “A4” (Restricted Development);
- Zone No. 2(b1) – Residential “B1”;
- Zone No. 2(b2) – Residential “B2”;
- Zone No. 2(c) – Residential “C” (Living Area);
- Zone No. 3(a) – Business “A” (Retail);
- Zone No. 3(b) – Business “B” (Transitional);
- Zone No. 3(f) – Business “F” (Village);
- Zone No. 3(g) – Business “G” (Development Area);
- Zone No. 4(a) – Industrial “A” (General);
- Zone No. 5(a) – Special Uses “A” Zone;
- Zone No. 5(b) – Special Uses “B” (Railways);
- Zone No. 5(d) – Special Uses “D” (Proposed Arterial Roads Reservation and Widening of Existing Arterial Roads Reservation);
- Zone No. 5(e) – Special Uses “E” (Proposed Local Roads Reservation and Widening of Local Roads Reservation);
- Zone No. 6(a) – Open Space – Recreation “A” (Existing);
- Zone No. 6(b) – Open Space – Recreation “B” (Private);
- Zone No. 6(c) – Open Space – Recreation “C” (Proposed);
- Zone No. 7(d1) – Environment Protection “D1” (Scenic);
- Zone No. 7(d2) – Environment Protection “D2” (Special Scenic); and
- Zone No. 9(a) – Natural Hazards “A” (Urban Flooding).

For the purpose of the Local Environmental Plan the proposed works come under the definition of Roads. Under each of the above zones, roads are permissible with development consent.

Under the Shoalhaven Local Environmental Plan 1985 parts of the study area are also subject to provisions relating to:

- Land that is subject to urban flooding;
- Land that is subject to a Scenic Protection Area; and
- Land that is identified as being Land of Ecological Sensitivity.

Depending on the location of the works, these land characteristics would need to be considered as part of the preliminary environmental assessment and concept design.
Should land with a zoning that differs from the zones considered above be affected, the preferred route selection process would need to reflect the other zones.

3.1.2.2 Land use zone objectives and controls

Land that is zoned Rural “A” is for protection of productive crop and pasture land for agricultural production. In accordance with Clause 13B of Shoalhaven Local Environmental Plan, subdivision may occur in the Rural A zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objectives of the Rural “B” zone are:

- Minimising impacts of development on existing and future main roads;
- Promoting high level of scenic quality near existing or proposed arterial roads; and
- Encourage use of side roads rather than direct access to arterial roads.

In accordance with Clause 13B of Shoalhaven Local Environmental Plan, subdivision may occur in the Rural B zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objectives of the Rural “C” zone are to:

“(a) to provide for a range of rural lifestyles suited to each area as an alternative to urban and village lifestyles development forms, and servicing levels,
(b) to meet the reasonable lifestyle needs of residents and provide adequate public safety in relation to bushfire, flooding, landslip and traffic while promoting and sustaining a high level of environmental quality in the zone,
(c) to integrate new and existing development and lifestyles so that conflicts between land uses and lifestyles are minimised and a high level of landscape quality is sustained, and
d) to foster agricultural use of prime crop and pasture land and provide for other small scale uses compatible with sustaining a rural lifestyle and an adequate level of amenity in the zone”.

The objectives of the Rural “D” zone are to:

“(a) to provide opportunities for a range of rural land uses and other development, including those which by virtue of their character require siting away from urban areas,
(b) to recognise the potential for high intensity bush fire over wide areas of the zone and to ensure that development does not lead to significant risks to life or property from bush fire or to the implementation of bush fire mitigation measures which will have a significant environmental impact, and
(c) to ensure that wherever possible the location, design and management of development is consistent with:
(ii) the protection of important natural and cultural environments,
(iii) the conservation of renewable natural resources such as forests and prime crop and pasture land,
(iv) the maintenance of opportunities for economic development of important extractive resources,
(v) minimising conflict between land uses, and
(vi) any plans for public infrastructure provision or management”.

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The objectives of the Rural “G” zone are:

“(a) to limit structures on land subject to periodic inundation,…
(c) to ensure that the effect of inundation is not increased through development,
(d) to reduce or eliminate for adverse impacts on site and off site on acid sulphate soils, and
(e) to conserve and maintain the productive potential of prime crop and pasture land”.

In accordance with Clause 13B of Shoalhaven Local Environmental Plan, subdivision may occur in the Rural G zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objectives of the Residential “A1” zone are “to provide an environment primarily for detached housing and to ensure that the range of other development permitted in a residential area is compatible with the residential environment.”

The objectives of the Residential “A2” zone are “to provide for a low density residential environment with a minimum allotment size of 2000 square metres primarily for detached housing”.

The objectives of the Residential “A3” zone are “to provide for a low density residential environment with a minimum allotment size of 4,000 square metres primarily for detached housing”.

In accordance with Clause 13B of Shoalhaven Local Environmental Plan 1985, subdivision may occur in the Residential “A3” zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objectives of the Residential “A4” zone are “to identify locations in existing urban areas with development problems where special consideration will be required before development can be approved”.

The objectives of the Residential “B1” zone are “to provide for a variety of life styles by the provision of areas for residential flat buildings and to minimise the conflict with detached housing”.

The objectives of the Residential “B2” zone are “to provide for a variety of life styles by the provisions of areas for residential flat buildings to minimise the conflict with detached housing and to identify opportunities for motel development”.

The objectives of the Residential “C” zone are “to provide for new residential areas with a range of housing types with provision for urban facilities to serve the local community”.

The objectives of the Residential “D” zone are “to identify land for tourist infrastructure and to encourage tourist accommodation facilities and other compatible residential uses and recreation”.

The objectives of the Business “A” (Retail) zone are “to allow for retail, commercial and business activities”.

The objectives of the Business “B” (Transitional) zone are “to provide for forms of business activities normally located on the fringe of the central business district which require large sites, including bulky goods retailing”.

The objectives of the Business “F” (Village) zone are “to provide for village retail and business development to serve the needs of the village community and which is compatible with the village environment”.

The objectives of the Business “G” (Development Area) are “to provide a strategic development area providing both for a variety of uses and for varying combinations of such uses including higher density residential, commercial and tourist combinations but not including ordinary retail uses that would compete with the local retail centre. The development is subject to a development control plan which will give guidelines for the type and scale of development”.

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The objectives of **Industrial “A” (General) zone** are:

“(a) To provide for a wide range of general industrial development, including warehousing, processing and general service industries,

(b) To allow non-industrial uses which are ancillary to industry,

(c) To allow for bulky goods retailing, and

(d) To allow for non-industrial uses that do not significantly compromise the existing or potential industrial development of the area”.

The objectives of the **Special Uses “A” zone** are “to identify land for certain community facilities (in this case a school) and services including areas for off-street parking in private ownership”.

The objectives of the **Special Uses “B” (Railways) zone** are “to identify land for railway purposes and to allow development authorised under the Government Railways Act 1912, and for certain other compatible land uses to be carried out with the consent of the council”.

The objective of the **Special Uses “D” (Proposed Arterial Roads Reservation and Widening of Existing Arterial Roads Reservation) zone** are “to identify lands required for proposed arterial roads or the widening of existing arterial roads.”

The objective of the **Special Uses “E” (Proposed Local Roads Reservation and Widening of Local Roads Reservation) zone** are “to identify land required for proposed local roads or the widening of existing local roads”.

The objective of the **Open Space – Recreation “A” (Existing) zone** are “to identify land where existing recreation facilities for the general use of the community are provided”.

The objective of the **Open Space – Recreation “B” (Private) zone** are “to identify land where private recreation facilities are and may be developed.”

The objectives of the **Open Space – Recreation “C” (Proposed) zone** are “to identify land which will be required to be dedicated as public open space when the land is subdivided to provide for recreation for the general use of the community. The exact boundaries will be fixed at the time of subdivision”.

The objectives of the **Environment Protection “D1” (Scenic) zone** are:

“(a) To conserve and enhance scenic quality,

(b) To protect natural and cultural features of the landscape which contribute to scenic value, and

(c) To ensure that development is integrated with the landscape values of the area.”

In accordance with Clause 13B of Shoalhaven Local Environmental Plan, subdivision may occur in the Environmental Protection “D1” zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objective of the **Environment Protection “D2” (Special Scenic) zone** is “to preserve and enhance scenic quality”.

In accordance with Clause 13B of Shoalhaven Local Environmental Plan, subdivision may occur in the Environmental Protection “D2” zone for the widening of a public road of which the residual allotment is less than 40 ha.

The objectives of the **Natural Hazards “A” (Urban Flooding) zone** are “to identify land within a floodway in urban areas and because of the potential hazard to restrict the use thereof”.
3.1.2.3 Special provisions under the Shoalhaven Local Environmental Plan 1985

Under Clause 21 of the Shoalhaven Local Environmental Plan land identified prior to granting consent for development land identified on the zoning maps as being of ecological sensitivity, council must consider:

“(2) the objective of this clause is to minimise adverse impacts of development on natural features, including flora, fauna, landforms and other physical features, and ecological processes

(4)(b) the adequacy of the measures proposed by the applicant to avoid, mitigate or remedy any adverse effects of the proposed development on the ecological values of the land and other land in its vicinity”.

Land in the proximity of Princes Highway at Bomaderry is identified as the gateway to Nowra urban area, which will need to be considered in the formulation of appropriate road designs. Any landscape and structural treatments of the road would need to be developed in conjunction with council.

Under Clause 52 of the Shoalhaven Local Environmental Plan 1985, nothing in the Local Environmental Plan restricts or prohibits a public authority from carrying out development required in connection with the construction, reconstruction, improvement, maintenance or repair of a road within an existing road reserve. However, this does not apply to any widening, realignment or relocation of an existing physically constructed road which involves works which may have a significant environmental impact.
3.2 Planning approval process

This chapter provides a review of the current NSW planning provisions and the environmental determination and assessment process as applicable to the development of this project. The project is generally anticipated to be permissible with development consent under the relevant environmental planning instruments that apply in the study area.

3.2.1 Major Projects State Environmental Planning Policy

The aim of the State Environmental Planning Policy (Major Project) 2005 is to identify development to which the assessment and approval regime under Part 3A of the act applies. Schedule 1, Group 5 of the State Environmental Planning Policy (Major Project) 2005 identifies:

“Development for the purpose of residential, commercial, retail or other construction projects with a capital investment value of more than $50 million that the Minister determines are important in achieving State or regional planning objectives”.

as projects to which Part 3A applies.

3.2.2 State Environmental Planning Policy No. 4 – Development Without Consent

Clause 11C(2) of State Environmental Planning Policy No. 4 – Development Without Consent and Miscellaneous Exempt and Complying Development states:

“If, in the absence of this clause, development for the purposes of a classified road or proposed classified road may be carried out only with development consent, that development may be carried out without that consent”.

The proposed works are for the purpose of upgrading the Princes Highway, which is a classified road under the Roads Act 1993. Accordingly, based on information received to date, the works for the purpose of the highway upgrade fall under the definition of “development for the purposes of a classified road” in accordance with State Environmental Planning Policy No. 4 – Development Without Consent and Miscellaneous Exempt and Complying Development.

3.2.3 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000 provide the statutory planning context for environmental assessment of the project and ultimately its project approval. The project is to be assessed under the relevant provisions of the Environmental Planning and Assessment Act 1979.

3.2.3.1 Assessment under Part 3A of the Environmental Planning and Assessment Act

The Minister for Planning can declare projects that are of regional or State significance to be a ‘Major Project‘ and therefore subject to approval under Part 3A of the Environmental Planning and Assessment Act 1979.

Of relevance to this project, State Environmental Planning Policy (Major Project) 2005 declares certain projects to be either Major Projects or ‘Critical Infrastructure’. Major Projects are those projects the Minister considers to be of state or regional significance, whereas Critical Infrastructure are those infrastructure projects that the Minister deems to be essential for the State for economic, environmental or social reasons. For example, sections of the Pacific Highway that are proposed for upgrade between Tweed Heads and Newcastle have been declared Critical Infrastructure.
Projects requiring Environmental Impact Statement under Part 5

By an order gazetted on 29 July 2005, the Minister for Planning declared that Part 3A applies to all projects for which the proponent is also the determining authority and which otherwise would have required an Environmental Impact Statement to be produced under Part 5 of the Environmental Planning and Assessment Act 1979.

Within the meaning of Part 5 of the Environmental Planning and Assessment Act 1979, the RTA is both the proponent and the determining authority for the project. Part 3A of the Environmental Planning and Assessment Act 1979 is triggered by the State Environmental Planning Policy (Major Project) 2005 (see (a) and (b) below) or by Ministerial declaration (Section 75B(1) Environmental Planning and Assessment Act 1979). Under Section 75B(2), the following kind of development may be declared to be a project to which Part 3A applies:

“(a) major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance,

(b) major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent, would (but for this Part) require an environmental impact statement to be obtained under that Part”.

The Minister has gazetted an order stating that all projects that are assessed under Part 5 of the Environmental Planning and Assessment Act 1979, and that require an Environmental Impact Statement, are to be assessed under Part 3A. The RTA has not yet determined whether an Environmental Impact Statement is required for this project, and will not make that decision until a preferred route is selected.

Critical infrastructure projects

Section 75C(1) of the Environmental Planning and Assessment Act 1979 identifies Critical Infrastructure projects. A development must first be declared to be a Major Project and if “in the opinion of the Minister, is essential for the State for economic, environmental or social reasons” it can be declared as a Critical Infrastructure project.

In the case of Critical Infrastructure, the following additional provisions apply:

“(a) Sections 75K, 75L and 75Q [of the Environmental Planning and Assessment Act 1979] exclude proponent or objector appeals in respect of the determination of an application for approval of the project;

(b) Section 75R excludes with respect to the project all environmental planning instruments (other than [State Environmental Planning Policies] SEPPs that specifically relate to the project) and council orders under Division 2A of Part 6,

(c) Section 75T excludes third-party appeals against the project under this Act or other environmental protection legislation”.

Guidelines with respect to environmental assessment of the project under Section 75F can be tailored to the circumstances of the case.

Prohibited development

Part 3A of the Environmental Planning and Assessment Act 1979 and related clauses of the Environmental Planning and Assessment Regulation 2000 were recently amended to modify the effect of Part 3A in relation to development that is otherwise prohibited under an environmental planning instrument. These amendments limit the ability for approval to be granted by the Minister for a project that is otherwise prohibited under an environmental planning instrument.
The modified provisions are:

- *Environmental Planning and Assessment Act 1979* – Sections 75J(3), 75O(3), 75R.
- *Environmental Planning and Assessment Regulation 2000* – 8N and 8O.

Amendment to Section 75R of the *Environmental Planning and Assessment Act 1979* permits the Minister to amend an environmental planning instrument where a concept plan is approved. The Minister can only modify the zoning in this manner if the project is not located in an "environmentally sensitive area of state significance" or in a "sensitive coastal location" (Note: these areas are defined by the *Environmental Planning and Assessment Regulation 2000*).

Further analysis is required to determine whether these amendments will affect this project and advice will be provided in respect to this issue as part of ongoing route options assessment.

**Approval process and implications**

If Part 3A does apply, the level of environmental assessment would be determined by the Director-General of Planning, who issues environmental assessment requirements following consultation with the relevant public authorities and local councils.

Implications of Part 3A may include:

- *State Environmental Planning Policy (Major Project) 2005* has removed the consent role from place based State Environmental Planning Policies such as *State Environmental Planning Policy No. 71 Coastal Protection*;
- Other State Environmental Planning Policies apply to major projects but State Environmental Planning Policies and other Environmental Planning Instruments would not apply to those projects declared Critical Infrastructure;
- Approval under Part 3A can only be granted by the Minister for Planning if the project (or part of a project) is not prohibited by an environmental planning instrument (i.e. Local Environmental Plan).
- Specific environmental assessment requirements, including requirements in relation to the form of environmental assessment (i.e. environmental impact statement or environmental assessment), would be set either by the Minister for Planning or the Director-General of Planning.

Section 75U of the *Environmental Planning and Assessment Act 1979* states that a number of approvals and provisions of certain pieces of legislation do not apply to projects being assessed under Part 3A of the Act.

Legislation that does not apply includes an approval under Part 4, or an excavation permit under Section 139, of the *Heritage Act 1977*, and a permit under Section 87 or consent under Section 90 of the *National Parks and Wildlife Act 1974*.

Legislation that must still be applied consistently includes an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997*.

**3.2.3.2 Assessment under Part 5 of the Environmental Planning and Assessment Act**

If, Part 3A does not apply, the project would likely be assessed under Division 4, Part 5 of the *Environmental Planning and Assessment Act 1979*. Under Part 5 of the *Environmental Planning and Assessment Act 1979*, the RTA as the proponent and determining authority, is required to assess the likely environmental impacts associated with the development of the project in accordance with Section 111 of the *Environmental Planning and Assessment Act 1979*, i.e. "to take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity".
Section 115A of the *Environmental Planning and Assessment Act 1979* requires that in circumstances where the determining authority is also the proponent, they may not carry out that activity "unless the Minister has approved of the activity being carried out … and the determining authority is to comply with any conditions to which such an approval is subject”.

### 3.2.4 Environmental Planning and Assessment Regulation 2000

To support the *Environmental Planning and Assessment Act*, the *Environmental Planning and Assessment Regulation 2000* provides the statutory context for assessment of the project. Schedule 2 of the *Environmental Planning and Assessment Regulation 2000* contains provisions for the consideration of matters of Ecologically Sustainable Development when preparing an Environmental Impact Statement. Clause 6 requires an Environmental Impact Statement to demonstrate justification of development with regard to the following principles of Ecologically Sustainable Development:

- Precautionary principle;
- Intergenerational equity;
- Conservation of biological diversity and ecological integrity; and
- Improved valuation, pricing and incentive mechanisms.

The principles of Ecologically Sustainable Development are being considered in the development of the optimum engineering design outcome and will continue to be an ongoing consideration of environmental, social and economic issues in the preliminary environmental assessment.

This preliminary assessment identifies the statutory planning requirements that are relevant to the upgrade. Once a preferred route has been selected and, in conjunction with an implementation strategy, a planning and approvals strategy will be developed for the upgrade that will examine the applicability of each part of the *Environmental Planning and Assessment Act 1979* as outlined above and will identify which approvals process will be applied to the upgrade.
4.0 Relevant environmental planning instruments

4.1 Legislation

4.1.1 Commonwealth

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* prescribes the Commonwealth’s role in environmental assessment, biodiversity conservation and the management of protected areas and species, populations and communities and heritage items.

The approval of the Commonwealth Minister of Environment and Heritage is required for actions that may have a significant impact on the environment of Commonwealth land or on matters of national environmental significance. Matters of National Environmental Significance are defined as Ramsar\(^1\) wetlands, listed threatened species and communities, World Heritage properties, listed migratory species, nationally significant heritage items, the Commonwealth marine environment and nuclear actions.

4.1.2 New South Wales

*Table 4.1* identifies the state legislation considered and the authorities responsible for their implementation.

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\(^1\) The Convention on Wetlands, signed in Ramsar, Iran, in 1971, is an intergovernmental treaty which provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. There are presently 155 Contracting Parties to the Convention, with 1675 wetland sites, totalling 150 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance.

Under the *Environment Protection and Biodiversity Conservation Act 1999*, a Ramsar wetland is either an Australian wetland on the List of Wetlands of International Importance kept under the Ramsar Convention; or a wetland declared to be a Ramsar wetland by the Commonwealth Environment Minister.
Table 4.1: Approving authorities and licence considerations for proposed activity

<table>
<thead>
<tr>
<th>Authority</th>
<th>Approval requirements</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Planning</td>
<td>Environmental Planning and Assessment Act 1979</td>
<td>Assessment of potential environmental impacts of a proposed activity:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Part 4 of the Act for activities requiring development consent.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Part 5 of the Act for activities that do not require development consent.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Part 3A of the Act for declared Major Projects or activities where the proponent is also the determining authority (within the meaning of Part 5) and that would require an environmental impact statement to be obtained.</td>
</tr>
<tr>
<td>Department of Water and Energy</td>
<td>Rivers and Foreshores Improvement Act 1948</td>
<td>Permit under Part 3A for work affecting streams and water bodies (within 40 m).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Note: It is intended that the Water Management Act 2000 will in the future repeal the Rivers and Foreshores Improvement Act 1948. When this occurs, activities that require a permit under Part 3A Approvals under the Rivers and Foreshores Improvement Act 1948 will require Controlled Activity Approvals under the Water Management Act 2000. However, we have received advice from Department of Natural Resources that the applicable legislation remains under review and that there is no currently available timetable for this to take affect. As such the abovementioned permit under Part 3A Approvals under the Rivers and Foreshores Improvement Act 1948 remain applicable.</td>
</tr>
<tr>
<td>Water Management Act 2000</td>
<td></td>
<td>Consideration of potential impact of boreholes on aquifers. Licence required for extraction of groundwater.</td>
</tr>
<tr>
<td>Department of Environment and Climate Change</td>
<td>Native Vegetation Act 2003</td>
<td>This act will provide a framework for:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>a) Management of native vegetation;</td>
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<tr>
<td></td>
<td></td>
<td>b) Protection of native vegetation of high conservation value;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) Revegetation and rehabilitation; and</td>
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<tr>
<td></td>
<td></td>
<td>d) Prevention of broad-scale land clearing.</td>
</tr>
<tr>
<td>Soil Conservation Act 1938</td>
<td></td>
<td>The removal of vegetation within 20 m of the high bank requires Department of Environment and Climate Change approval.</td>
</tr>
<tr>
<td>National Parks and Wildlife Act 1974</td>
<td></td>
<td>Consent to destroy permit under Section 90 of the act is required for work that will disturb, destroy, damage or otherwise harm an Aboriginal relic. A preliminary research permit is required under Section 87 for the disturbance or removal or taking possession of archaeological objects.</td>
</tr>
</tbody>
</table>
Table 4.1  Approving authorities and licence considerations for proposed activity cont’d.

<table>
<thead>
<tr>
<th>Authority</th>
<th>Approval requirements</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Environment and Climate Change cont’d.</td>
<td>Threatened Species Conservation Act 1995</td>
<td>Protection of threatened flora and fauna species, ecological communities and local populations. A licence under Section 91 is required if it is determined that a threatened species, populations or ecological communities are likely to be harmed.</td>
</tr>
<tr>
<td>Department of Primary Industries (Fisheries)</td>
<td>Fisheries Management Act 1994 and Fisheries Management Amendment Act 1997</td>
<td>This act provides for the conservation, protection and management of fisheries, aquatic systems and habitats in NSW. Section 199 permit required for any dredging or reclamation works. Section 205 permit required for any harm to marine vegetation. Section 219 permit required for any obstruction to fish passage.</td>
</tr>
<tr>
<td>Heritage Office</td>
<td>Heritage Act 1977</td>
<td>An excavation permit under Section 139 is required for the disturbance or excavation of land likely to result in any non-indigenous historic artefacts and/or sites (older than 50 years) being discovered, exposed, damaged or destroyed.</td>
</tr>
<tr>
<td>Roads and Traffic Authority / Local Council</td>
<td>Roads Act 1993</td>
<td>Consideration of works within public road reserves. Any works carried out on classified roads require a road occupancy licence from the RTA. Works on local road require approval from the relevant local council (Kiama or Shoalhaven).</td>
</tr>
</tbody>
</table>
4.2 State environmental planning policies

The following State Environmental Planning Policies have been considered to determine if they are applicable:

State Environmental Planning Policy No. 14 – Coastal Wetlands: provides protection for wetlands identified as significant coastal wetlands and gazetted for protection. Werri Lagoon is a coastal wetland in the north-east of the study area north of Gerringong. Near to the study area there is a large area of coastal wetlands at Coomonderry Swamp to the west of Seven Mile Beach. This area is unlikely to be directly impacted by the selected preferred route, although indirect impacts such as the potential for sedimentation runoff during construction will be considered as part of the development of a preferred route and subsequent preliminary environmental assessment.

State Environmental Planning Policy No. 26 – Littoral Rainforests: provides protection for areas of littoral rainforest. No littoral rainforest has been recorded in the study area. One area of littoral rainforest is located at the northern end of Seven Mile Beach National Park south of Crooked River near to the study area. There are also three areas of littoral rainforest located to the north east of Gerroa. These areas are unlikely to be directly impacted by the selected preferred route, although indirect impacts such as the clearance of surrounding vegetation and adjacent wildlife movement corridors will be considered as part of the development of a preferred route and subsequent preliminary environmental assessment.

State Environmental Planning Policy No. 44 – Koala Habitat Protection: provides protection for areas identified as koala habitat and requires the implementation of management measures in the event of disturbance of such habitat. The study area is affected by State Environmental Planning Policy No. 44 – Koala Habitat Protection and the assessment processes would need to be followed as part of assessing the preferred route. State Environmental Planning Policy No. 44 – Koala Habitat Protection is discussed in the Preliminary Biological Report - Terrestrial Flora and Fauna, which is included in Appendix G of the Route Options Development Report.

State Environmental Planning Policy No. 71 – Coastal Protection: applies to land defined as the coastal zone by maps held by the local council and identifies a number of issues to be considered by a consent authority before issuing development consent. There is State Environmental Planning Policy 71 land by the coast which extends into the study area in two locations in the north-east of the study area:

- In the area surrounding Crooked River through to the existing Princes Highway; and
- In the area surrounding Werri Lagoon through to the other side of the study area.

These areas are unlikely to be directly impacted by the selected preferred route, although indirect impacts such as the potential for sedimentation runoff during construction will be considered as part of the development of a preferred route and subsequent preliminary environmental assessment.
4.3 Regional environmental plans

4.3.1 Illawarra Regional Environmental Plan No. 1

Clause 80 of the Illawarra Regional Environmental Plan No.1 states that the objectives for transport and service corridors are:

“(a) to facilitate the development of a public transport system which enhances the mobility of those without access to private vehicles and provides a reasonable alternative to the private car on key routes,
(b) to encourage the development of a satisfactory system of urban, inter-urban and inter-regional links to meet existing and future communication and utility installation needs,
(c) to improve road safety and protect public investment in main and arterial roads by the control of adjacent land uses,
(d) to facilitate the development of air transport opportunities in the region,
(e) to accommodate private vehicles which are expected to remain an important mode of passenger transport in the region, in planning provisions, and
(f) to reduce the adverse environmental impact of road haulage of extractive materials and other bulk freight”.

Further objectives are defined within the Illawarra Regional Environmental Plan No.1 in relation to minimising waste, and ensuring effective waste disposal, to protecting natural areas (escarpment area, coastal lands, wetlands) and their aesthetic amenity, and to protecting items of environmental heritage within the region.

The upgrade demonstrates consistency with the Illawarra Regional Environmental Plan No.1 objectives in that it will provide for effective road transport and due consideration will be given to the potential social, economic, environmental and safety matters.

4.4 Development control plans

The following development control plans will be considered in the preparation of the environmental assessment:

- Development Control Plan 37 – Contaminated Land (Kiama Local Government Area);
- Development Control Plan 49 Berry Town Centre – Amendment No. 5 (Shoalhaven Local Government Area); and
- Development Control Plan 106 – Floodplain Management (Shoalhaven Local Government Area).
5.0 Summary

It is understood that both Kiama and Shoalhaven councils are preparing new Principal Local Environmental Plans in accordance with the Standard Local Environmental Plan, both of which are targeted to be completed by 2009. This represents an opportunity for potential rezoning of land near a preferred route or implementation of special provisions as part of the new Local Environmental Plan, where such changes would alleviate or minimise potential impacts of the proposed upgrade on surrounding land uses.

A key issue arising from the review of Local Environmental Plans is the need to consider, particularly in rural and environmental protection zones, the impacts of:

- The proposed road development on productivity of the land;
- Any resultant subdivision on the productivity of the land; and
- Impacts on any ecologically sensitive habitats or species, including cumulative impacts, impacts on ecological corridors and impacts on areas of scenic value.

An important consideration for the selection of a preferred route is the impact on the residual land holdings in the situation where the route passes through a private land holding. In particular any subdivision of land in rural zones would need to consider the impacts associated with concessional allotments (the ability of the existing landowner to subdivide one smaller allotment for the purposes of a dwelling). Any proposal that reduced the ability of the landowner to create a concessional allotment (such as by splitting a landholding in to two allotments, both of which are too small to meet the minimum lot size for concessional allotments) would require a specific mitigation measure to be established, which could be either compensation or amendment to the Local Environmental Plan to allow a smaller lot to be created from the residual lands.

Under the Shoalhaven Local Environmental Plan 1985 land within 400 m either side of Princes Highway between Berry and Bomaderry is exclusively zoned Rural “B”. The Rural “B” zone allows subdivision for the purposes of road widening where the residual allotment is less than 40 ha. The objectives of this zone are:

- To minimise impacts of development on existing and future main roads;
- Promote high level of scenic quality near existing or proposed arterial roads; and
- Encourage use of side roads rather than direct access to arterial roads.

The Rural “B” zone provides for widening of the Princes Highway along the existing road reserve subject to due consideration of the relevant impacts. Because the relevant Local Environmental Plans envisage widening of the Princes Highway will take place along the existing alignment, any alternatives to that are subject to a more onerous justification and assessment process, which has been integrated with the route options selection process and will be an ongoing consideration for the selection of a preferred route.
Appendix A  Zoning map