Chapter 4 - Statutory and strategic planning
4.0 Statutory and strategic planning

This chapter provides a review of the current NSW planning provisions applicable to the development of this project. The Preliminary Planning and Zoning Issues Report (Appendix L) outlines the statutory and strategic planning requirements applicable to the project.

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 proposed upgrade that will examine the applicability of each part of the Environmental Planning and Assessment Act 1979 and will identify which approvals process will be applied to the upgrade.

4.1 Planning and zoning issues

At the route options development stage, local land use zoning provisions in the study area are considered to be one of the key planning influences over the feasibility of a proposed route. The key environmental planning instruments have been considered in order to describe planning and zoning issues and land use zoning provisions that are relevant to this project. A preliminary assessment of the implications associated with these environmental planning instruments for determining the permissibility of the project is also provided.

The study area spans parts of two Local Government Areas being:

- Kiama Municipal Council – land subject to Kiama Local Environmental Plan 1996.

Local planning and zoning provisions as they currently relate to the study area and the development of route options are detailed in Figure 4.1 and the Preliminary Planning and Zoning Issues Report (Appendix L).

4.1.1 Kiama Local Environmental Plan 1996

4.1.1.1 Land use zoning and permissibility

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

- Zone No. 1(a) - Rural A (agricultural production).
- Zone No. 2(a) - Residential A.
- Zone No. 3(c) - Light Industrial.
- Zone No. 4(c) - 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).
- Zone No. 9(a) - Proposed Arterial Road.

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.

4.1.2 Shoalhaven Local Environmental Plan 1985

4.1.2.1 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 zones, 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(g) - Rural G (flood liable).
- Zone No. 2(a) - Residential A1.
- Zone No. 2(d) - Residential A3.
- Zone No. 2(b) - Residential B1.
- Zone No. 2(b2) - Residential B2.
- Zone No. 2(c) - Residential C (living area).
- Zone No. 2(d) - Residential D Zone.
- 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 (school).
- 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. 5(f) - Special Uses F (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(d) - Environment Protection D1 (scenic).
- Zone No. 7(d2) - Environment Protection D2 (special scenic).
- Zone No. 9(a) - Natural Hazards A (urban flooding).
Figure 4.1 Planning and zoning constraints
Under each of the above zones, apart from Zone 1(c), Zone 2(a2), Zone 2(a3) and 9(a), roads are permissible with development consent.

Under Zone 2(a2) and Zone 2(a3) “roads” are permissible with development consent.

Under Zone 1(c) and Zone 9(a), “roads” are specifically listed as being permissible with consent.

Under 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.
- 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 environmental assessment and concept design.

Should land with a zoning that differs from the zones considered above be crossed, the preliminary environmental assessment would require updating to reflect the other zones.

Under Clause 52 of Shoalhaven Local Environmental Plan 1985, nothing in the Local Environmental Plan restricts the ability for approval to be granted by the Minister for a project 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.

4.1.4 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 and the Environmental Planning & Assessment Regulation 2000 were recently amended to modify the effect of Part 3A in relation to 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. Under Section 75B(2), approval under Part 3A is required for an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that would require an environmental impact statement to be obtained. To determine whether an environmental impact statement is required, an assessment of the likely impacts on the environment would be carried out. This would need to be undertaken as early as possible in the project to enable a clear and defensible approval process to be established.

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. It is therefore too early in the assessment process to determine whether Part 3A or Part 5 would apply to this project. If Part 3A applies, the level of environmental assessment would be determined by the Director-General of Planning, who issues the requirements after consultation with relevant public authorities. If Part 3A does not apply, the project would be assessed under either Parts 4 or 5 of the Environmental Planning and Assessment Act 1979.

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.

4.1.5 Key matters for consideration

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.
- Impacts on any ecologically sensitive habitats or species, including cumulative impacts, impacts on ecological corridors and impacts on areas of scenic value.

4.1.5.1 Prime Agricultural Land

Large portions of the study area have been identified as Prime Agricultural Land by the Department of Primary Industries. An important consideration for the selection of route options 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).
Under the Shoalhaven Local Environmental Plan 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.
- Encourage use of side roads rather than direct access to arterial roads.

The Rural B zone provides for the widening of the Princes Highway along the existing alignment, subject to due consideration of the relevant impacts.

4.1.6 Other approvals

The key statutory considerations relevant to the development of the project are presented in Table 4.1 below.

### Table 4.1 Approval and licence consideration for the proposed activity

<table>
<thead>
<tr>
<th>Authority</th>
<th>Approval requirements</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Planning Environmental Planning and Assessment Act 1979</td>
<td>Assessment of potential environmental impacts of a proposed activity: Part 4 of the Act for activities requiring development consent. Part 5 of the Act for activities that do not require development consent. 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>
<td>The act will provide a framework for: Management of native vegetation. Protection of native vegetation of high conservation value. Revegetation and rehabilitation. Prevention of broad-scale land clearing.</td>
</tr>
<tr>
<td>Department of Water and Energy Rivers and Foreshores Improvement Act 1948</td>
<td>Permit under Part 3A for work affecting streams and water bodies (within 40 m). 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, advice received from Department of Natural Resources indicates 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>
<td>The removal of vegetation within 20 m of the high bank requires Department of Environment and Climate Change approval. 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>
<tr>
<td>Department of Environment and Climate Change Native Vegetation Act 2003</td>
<td></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 Water and Energy Soil Conservation Act 1938</td>
<td></td>
<td>An environmental protection licence required for scheduled activities.</td>
</tr>
<tr>
<td>National Parks and Wildlife Act 1974</td>
<td></td>
<td>An environmental protection licence required for scheduled activities.</td>
</tr>
<tr>
<td>Fisheries Management Act 1994 and Fisheries Management Amendment Act 1997</td>
<td></td>
<td>The 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 Act 1977</td>
<td></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 Act 1993</td>
<td></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 roads require approval from the relevant local council (Kiama or Shoalhaven).</td>
</tr>
</tbody>
</table>
4.1.7 Regional Environmental Plans – 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 minimizing 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.

4.2 Strategic planning considerations
This section describes the key areas that are identified in planning documents as being locations of urban release, rezoning or planned development that would impact on the ability of such areas to be developed for the Gerringong to Bomaderry Princes Highway Upgrade.

4.2.1 State Infrastructure Strategy
The State Infrastructure Strategy 2006-2007 to 2015-2016 identifies infrastructure projects in the short-to-medium term that, among other things, support population growth and demographic change on the South Coast (Department of Planning, 2007). The Gerringong to Bomaderry Princes Highway Upgrade is one of the projects identified. This demonstrates its regional significance and that it is a high priority for the State government to implement.

4.2.2 Regional strategies
The Illawarra and South Coast regional strategies were released in January 2007. They outline the region’s objectives for the next 25 years. They are relevant for an understanding of the future plans for the regions.

4.2.2.1 Illawarra Regional Strategy
The Illawarra Regional Strategy recognises the importance of the region’s transport networks in supporting economic growth and maximising the efficiency of freight transport.

4.2.2.2 South Coast Regional Strategy
The South Coast is dependent on the Princes Highway for connecting communities, supporting economic development and linking to neighbouring regions. “The Princes Highway is a critical north-south link between Sydney, Wollongong and communities along the South Coast down to the Victorian border. The Princes Highway is the primary land transport route servicing the South Coast as the railway does not extend south of Bomaderry in the Shoalhaven Local Government Area” (Department of Planning, 2007b).

The South Coast Regional Strategy recognises Nowra / Bomaderry as a major regional centre. "Shoalhaven is projected to grow by an additional 34,000 people, the majority of which will be concentrated in N o w r a / Bomaderry, strengthening its role as the major residential, employment and administrative centre for the northern part of the region. Parts of Nowra will be revitalised and consolidated providing residents access to employment, transport and services" (Department of Planning, 2007b).

Berry is not recognised in the South Coast Regional Strategy as a major regional centre or major town. This reinforces that there are no major plans for residential growth in Berry.

4.2.3 Local settlement and development strategies
4.2.3.1 Draft Nowra / Bomaderry Structure Plan (Shoalhaven City Council, 2006)
Shoalhaven City Council adopted the N ow r a Bomaderry Structure Plan on 24 October 2006. This plan identifies a future western bypass that would connect to the Princes Highway. The bypass does not include the last section of the Princes Highway to the extent of the study area. This should be taken into consideration in selection of the route options.

4.2.3.2 Shoalhaven – An Enterprising Alternative (An Economic Development Strategy) 2005
The report entitled Shoalhaven – An Enterprising Alternative, an Economic Development Strategy (2005) was developed by Shoalhaven City Council, NSW Department of State and Regional Development, the Commonwealth Department of Transport and Regional Services and the Shoalhaven Area Consultative Committee. The proposed highway upgrade is generally consistent with the Shoalhaven Economic Development Strategy as outlined below.

A key transport focus area identified in Shoalhaven Economic Development Strategy is to “significantly improve access between Shoalhaven, Sydney, Canberra and Wollongong with respect to movement of goods and people” (Shoalhaven Economic Development Strategy, 2005). The proposal will improve access between Gerringong and Bomaderry which will improve access between Sydney and Shoalhaven, and Wollongong and Shoalhaven.

A key tourism focus area identified in the Shoalhaven Economic Development Strategy is to “faster higher levels of visitation and increased visitor yield” (Shoalhaven Economic Development Strategy 2005). The proposal will improve access and reduce travel times which will have the effect of increasing visitation to the region.
4.2.3 Blueprint Shoalhaven

Blueprint Shoalhaven is funded by three levels of government and acts to guide economic development in the Shoalhaven region whilst supporting local businesses through advice and mentoring. It has the support of the Shoalhaven City Council, the NSW Department of State and Regional Development, the Commonwealth Department of Transport and Regional Services, and the Shoalhaven Area Consultative Committee.

Blueprint Shoalhaven is providing guidance and advice to the Berry Rural Co-operative Society Limited and its 11 dairy farmer shareholders who are driving a project to expand the South Coast Dairy’s milk processing factory in Berry’s Old Creamery Lane. It will have a secondary role as a tourist attraction where visitors will be able to see and sample several styles of milk as well as flavoured milks, creams, yoghurts and the range of boutique cheeses produced in the plant (source: http://www.blueprintshoalhaven.com.au April 2006).

4.2.4 Planned and future land uses

4.2.4.1 Planning focus meeting

At the planning focus meeting (29 September 2006) a number of stakeholders provided comment relating to planned future land uses. These are discussed below.

As part of the planning focus meeting summary the facilitator stated that there are “no known specific development proposals within the project area which impact the planning process of the highway upgrade”. The Department of Planning stated in this meeting that the focus for future development in the area will be on existing villages and not the expansion of settlements into rural lands. This reinforces the current initiatives to protect productive farming land in this area.

Kiama Council stated that there is no urban growth planned along the Princes Highway corridor (the only urban expansion area being to the south of Gerringong, outside the study area). The Department of Planning Major Development Assessment Branch can provide ongoing updates on the status of any planned developments in the study area.

Shoalhaven City Council has stated that minor development is envisaged around Berry. In this regard, it is assumed that pockets of land on the periphery of Berry will be developed and such areas would need to be considered as part of any route selection. Council also suggests that retirement villages south of Berry will be expanded.

The planning focus meeting identified a number of future land use proposals that are expected, which may impact on the capability of some areas for Princes Highway upgrades. These future proposals include:

- Future residential development is limited to minor expansion around Berry.
- The Main Road 92 development and the Nowra / Bomaderry Structure Plan will increase traffic volumes to the highway and will continue to increase the role of Nowra / Bomaderry as the major regional centre.
- Ongoing upgrade / maintenance to cabling, power, gas pipeline within existing alignments. This will impact on the services required to be located within the corridor and would be considered at the design stage rather than route selection.
- Possible installation of a new electricity transmission line into Gerringong.
- Long term plan for electrification and duplication of the rail line from Kiama to Bomaderry. This may limit the potential for development of a road alignment alongside the railway line. Further discussion with Australian Rail Track Corporation would be required should an alignment alongside the existing rail line be considered.

The Department of Planning has made it clear, as part of the planning focus meeting and within the recently released regional strategies, that there are no new towns proposed within the study area. Further, no new residential development will be supported by the Department of Planning unless part of a structure plan. To date, there are no publicly available structure plans for lands within the study area apart from the Nowra / Bomaderry Structure Plan.

4.2.4.2 Other future land use considerations

Grand Pacific Drive is a tourist drive that extends from Sydney to Wollongong and beyond. Beyond Wollongong tourists have the opportunity to extend their trip to the Shoalhaven via Fern Street, Gerroa Road and Bolong Road (the Sandtrack). The impact of Grand Pacific Drive will be further assessed through later stages in the project.

There are a number of current and proposed developments within the study area. Some current proposals include:

- Crooked River Golf Club at Foys Swamp.
- A caravan park in the Toolijooa area.

The impact of these proposals will be further assessed through later stages in the project.