

4 Statutory and planning framework

4.1 State Environmental Planning Policies (SEPPs)

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 is to be carried out on behalf of the RTA, 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 (NPW Act)* 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 or State Environmental Planning Policy (Major Development) 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 (where applicable), is discussed in Section 5.1.5 of this REF.

4.1.2 Illawarra Regional Environmental Plan No. 1

The Illawarra Regional Environmental Plan No. 1 (REP No.1) is applicable to the proposed works as it covers land in the Municipality of Kiama.

Clause 105 of the Illawarra REP No. 1 states that the objectives relating to coastal lands, wetlands and other water bodies are:

- (a) to protect beach systems and conserve their scenic, recreation and natural values,*
- (b) to maintain and improve public access to waterways, lakes and the sea front, and*
- (c) to protect the productive ecosystems and natural habitats of the region's estuaries, wetlands, lakes and lagoons and their scenic attributes."*

The upgrade demonstrates consistency with the Illawarra REP No.1 objectives in that it would improve public access along the south coast, which would improve access to coastal foreshores. Due consideration would be given to the potential social, economic, environmental and safety matters.

4.2 Local Environmental Plans (LEPs)

4.2.1 Kiama Local Environmental Plan 1996

The current operative local planning instrument in the Kiama Local Government Area is the Kiama Local Environmental Plan 1996 (LEP 1996). Kiama Municipal Council is in the process of preparing a new principal LEP. The draft LEP which is currently being prepared is not available to the public. Accordingly, LEP 1996 is the latest available at the time of preparing this report and is used to inform this advice.

The applicable zones and corresponding objectives are as follows under LEP 1996:

- Zone No. 1(a) – Rural A (agricultural production)
- Zone No. 5(b) – Special Uses (railways)
- Zone No. 7(b) – Rural Environmental Protection (estuarine wetlands)
- Zone No. 7(d) – Rural Environmental Protection (scenic)
- Zone No. 9(a) – Proposed Arterial Road

Refer to Section 6.12 for a discussion of the potential impacts to land use objectives of these zones.

4.3 Other relevant legislation

4.3.1 *Environment Protection and Biodiversity Conservation Act 1999*

The *EPBC Act* 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 Protection, Heritage and the Arts is required for actions that may have a significant impact on the environment of Commonwealth land or on matters of national environmental significance (NES). Matters of NES are defined as Ramsar wetlands, listed threatened species and communities, World Heritage properties, listed migratory species, nationally significant heritage items, the Commonwealth marine environment and nuclear actions.

Potential impacts associated with the development of the proposal are assessed against these matters of NES in Appendix A. The impacts have been assessed as not significant and a referral under section 68 of the *EPBC Act* is not required.

4.3.2 *National Parks and Wildlife Act 1974*

Heritage considerations

The purpose of the *NPW Act* is to provide the primary basis for protection and unwarranted destruction of Aboriginal relics of high cultural significance. In addition, the Act also provides a framework to conserve native terrestrial flora and fauna species and manage areas of conservation value such as nature reserves and national parks.

Specialist studies carried out during the preparation of this REF have concluded that there are known sites of archaeological interest and potential archaeologically sensitive areas (PASAs) along the proposed route.

In accordance with section 87 (1) of the Act, approval from the Director General of DECCW – Parks Services Division has been obtained to excavate archaeological sites prior to conducting a subsurface testing program. A section 87 permit (AHIP) has been obtained from DECCW as a prerequisite to the conduct of this program (see Appendix D).

Approval under section 90 (2) of the Act would be obtained for a 'consent to destroy' permit for any identified archaeological sites found during the subsurface testing and during construction. The subsurface testing program is discussed in more detail in Section 6.3.

4.3.3 *Threatened Species Conservation Act 1995*

The *TSC Act* is administered by DECCW and serves to protect threatened species, communities and critical habitat listed as endangered, vulnerable or extinct in NSW. A species impact statement (SIS) must be prepared if it is determined under section 5A of the *EP&A Act* (the seven part test) that there is likely to be a significant impact on any threatened species, populations or ecological communities.

Seven part tests to address the requirements of section 5A of the *EP&A Act* have been prepared for all listed threatened species or endangered ecological communities (EEC) that would be potentially impacted (refer Section 6.3). These tests have confirmed that there are no significant impacts anticipated on any threatened species, populations or ecological communities as a result of this proposal. Therefore no SIS is required to be prepared with respect to the works.

4.3.4 *Heritage Act 1977*

The *Heritage Act 1977 (Heritage Act)* is administered by the DoP Heritage Branch and provides for the protection and conservation of non-Aboriginal heritage in NSW. A key component of the Act is the requirement for approval prior to the excavation or disturbance of non-Aboriginal relics or artefacts.

There are expected to be some impacts to items of non-Aboriginal heritage as a result of the proposal and an excavation permit would be applied for under section 140 of the Act. The potential impacts to heritage items and the management of these impacts is discussed in detail in Section 6.5.

4.3.5 *Protection of the Environment Operations Act 1997*

DECCW is the responsible agency for the administration of the *Protection of the Environment Operations Act 1997 (POEO Act)* in relation to air, noise, water, pollution and waste management. Under clause 48(1) a licensing requirement applies to scheduled activities where schedule 1 indicates that a licence is required for premises at which the activity is carried on.

The proposed upgrade would result in four lanes for a distance greater than five kilometres. Accordingly, the proposal fits the description of a 'scheduled activity' under the Act and as such an environment protection license (EPL) would be required. DECCW have prepared a "model EPL" and this would be utilised to guide design and construction through the preparation of tender documentation prior to obtaining an EPL for the proposal. The model EPL is included in Appendix D.

4.3.6 *Water Act 1912*

Water used during construction of the proposal would not be sourced from waterways within the study area and consideration would be given to other sources, such as local town water, construction sedimentation basins and the Gerroa treated effluent irrigation scheme. However, in the event that water needs to be drawn from any waterways and used, a licence under section 10 of the *Water Act 1912 (Water Act)*, or a permit under section 18F of the Act may be required from NSW DECCW, Office of Water.

In addition, the RTA's senior environmental officer, southern region, would be advised of the location and methodology in which water would be drawn.

4.3.7 *Fisheries Management Act 1994*

The *Fisheries Management Act 1994 (FM Act)* and *Fisheries Management Amendment Act 2006* provide for the conservation, protection and management of fisheries, aquatic systems and habitats in NSW.

Permits are required for any dredging or reclamation works, any harm to marine vegetation or any obstruction to fish passage. The potential impact on fish passage as a result of the proposal is discussed in detail in Section 6.4.

The proposal includes two proposed creek realignments within the road reserve and these would require excavation works from and potentially deposition of material in the streambed. This would fit under the definition of dredging and potentially reclamation depending on the extent of the works to be finalised during detailed design, as defined under the Act and would require a permit.

However, clause 199 of the Act allows public authorities to undertake such works without the need for a permit, but they are required to give written notice to the Minister before carrying out the work and to consider any matters raised by the Minister in relation to the work. Potential issues associated with the two proposed creek realignments are discussed in Section 6.4.

4.4 Confirmation of statutory position

As discussed in Section 4.1.2, pursuant to clause 94 of ISEPP development for the purpose of a road or road infrastructure facilities on behalf of a public authority may be carried out without consent. As the proposal is for a road and is to be carried out on behalf of the RTA, it can be assessed under Part 5 of the *EP&A Act*.