

# Approval

# Pacific Highway Upgrade, Warrell Creek to Nambucca Heads, NSW (EPBC 2013/7101)

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act* 1999.

# Proposed action

person to whom the approval is granted	Roads and Maritime Services
proponent's ABN	76 236 371 088
proposed action	To upgrade approximately 19.5 kilometres (km) of the Pacific Highway, from the northern end of Allgomera deviation, south of Warrell Creek to Old Coast Road, west of Nambucca Heads, on the mid north coast of New South Wales (NSW) [See EPBC Act referral 2013/7101].

# Approval decision

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved with conditions

# conditions of approval

This approval is subject to the conditions specified below.

# expiry date of approval

This approval has effect until 31 December 2064.

## **Decision-maker**

name and position

James Tregurtha

**Assistant Secretary** 

South-Eastern Australia Environment Assessments

signature

1. Zett

date of decision

11 DECEMBER 2014

## Conditions attached to the approval

## **Impacts**

- 1. The approval holder must not clear more than:
  - a) 17.80 hectares (ha) of Slender Marsdenia/Clear Milkvine and Wooll's Tylophora/Cryptic Forest Twiner habitat;
  - b) 106.60 ha of Koala habitat, including 86.50 ha critical to the survival;
  - c) 106.60 ha of Grey-headed Flying-fox habitat, comprised of 103.50 ha of foraging habitat critical to survival and 3.10 ha of roosting habitat critical to survival;
  - d) 113.30 ha of Spotted-tail Quoll habitat;
  - e) 0.70 ha of Giant Barred Frog habitat;
  - f) 0.40 ha of Australian Painted Snipe (Rostratula australis) wetland habitat;
  - g) 5.30 ha of Regent Honeyeater (Anthochaera phrygia) and Swift Parrot (Lathamus discolour) wintering habitat, comprising dry sclerophyll forests containing Swamp Mahogany; and
  - h) 24.30 ha of Parsonsia dorrigoensis (*Milky Silkpod*) habitat, comprising Mixed Floodplain Forest, Flooded Gum Open Forest and White Mahogany/Grey Gum/Ironbark Open Forest.
- 2. Within 30 days of the completion of construction, the approval holder must:
  - a) notify the Minister in writing of the completion of construction; and
  - b) provide a report (supported by maps) that clearly shows the location of all threatened species, including the number of individuals of threatened flora and their habitat cleared as a result of action, which demonstrates compliance with Condition 1.

## **Management Plans**

- The approval holder must undertake the action and implement all mitigation measures in accordance with the Koala Management Plan, Grey-headed Flying-Fox Management Plan, Spotted-tail Quoll Management Plan and Giant Barred Frog Management Plan. These Plans must be implemented.
- 4. To mitigate impacts to threatened species, the approval holder must submit the Flora and Fauna Management Sub Plan and Construction Environment Management Plan to the Department for approval prior to commencement. The Plans must include the additional mitigation measures not included in the management plans and as described in the Biodiversity Offset Strategy. The approved plans must be implemented.
- In the event of any inconsistency, ambiguity or discrepancy between the management plans and the Flora and Fauna Management Plan or the Construction Environmental Management Plan, the management plans have precedence.

#### Threatened Flora Management Plan

- Prior to commencement, the approval holder must amend the monitoring program proposed in the Threatened Flora Management Plan to:
  - a) include detailed monitoring methodology designed to monitor the success of the management and mitigation measures proposed for pre-construction, construction and operations; and
  - ensure all performance thresholds, corrective actions and monitoring/timing frequency are specific, measurable, auditable, enforceable and time-bound to monitor the success of the management and mitigation measures proposed.
- The approval holder must not commence the action until the Threatened Flora
   Management Plan has been approved by the Minister. The approved Threatened
   Flora Management Plan must be implemented.

#### All Management Plans

- 8. The **approval holder** must monitor all mitigation measures until they are demonstrated to be successful, and with written agreement from the **Department**.
- 9. If MNES not previously identified and reported to the Department, are found in the action area, the approval holder must notify the Department in writing within five business days of finding the MNES, and within a further 30 business days, the approval holder must outline in writing how impacts to these MNES will be avoided, mitigated and/or offset.
- Prior to commencement, all management plans must be made publicly available on the approval holder's website, for 10 years following commencement. The monitoring results must also be made available on request for the duration of the approval.
- 11. The **approval** holder must make all monitoring results required by the **management** plans publicly available on the **approval holder's website** within two months of the monitoring event, for 10 years following **commencement**. The monitoring results must also be made available on request for the duration of the **approval**.

## Offsets

# Biodiversity Offset Package

- 12. To compensate for the loss of threatened species habitat, within 12 months of the approval of the action, the approval holder must submit to the Minister for approval a Biodiversity Offset Package. The Package must:
  - a) provide known habitat and compensate for the residual significant impacts on the threatened species and their habitat in Condition 1a) to e);
  - demonstrate consistency with and meets the requirements of the EPBC Act Environmental Offsets Policy;
  - c) detail the **offset attributes** (including maps in electronic Geographic Information System (GIS) format with accompanying **shapefiles**), site descriptions,

- environmental values relevant to **threatened species** being **offset**, connectivity with other **habitat** and biodiversity corridors;
- d) include detailed surveys and quantitative and qualitative descriptions of any proposed offset areas which clearly identify baseline conditions. This must include:
  - a baseline description (prior to any management activities) of the current quality of the habitat for each relevant threatened species in each offset area, including the location of survey points (GPS reference);
  - the quantity (in hectares) of suitable habitat present within the offsets areas for the threatened species the quality of the habitat for the relevant threatened species found within the offset areas;
  - iii. vegetation condition mapping; and
  - iv. photo reference points.
- e) be prepared by a suitably qualified ecologist;
- f) include conservation and management measures for long-term protection and adaptive management of the offsets to improve habitat for threatened species within the offset areas from baseline conditions, including but not limited to:
  - i. a map showing offset areas to be managed;
  - ii. conservation management actions for each offset area and the details of methods to be used;
  - offset management must be consistent with threat abatement plans for threatened species;
  - iv. the timing of management activity for each offset area and anticipated timeframes for achieving performance objectives;
  - v. clear performance measures and performance indicators for each offset area including contingency actions, criteria for triggering contingency actions and a commitment to the implementation of these actions in the event that performance objectives are not met that will enable maintenance and enhancement of habitat within the offset area, as well as contribute to the better protection of individuals and/or populations of threatened species and their habitat;
  - vi. a monitoring program to assess the effectiveness of the management actions measured against the **baseline** condition. This must include, but not be limited to, control sites and periodic ecological surveys to be undertaken by a **suitably qualified ecologist**;
  - vii. a risk assessment and a description of the contingency measures that would be implemented to mitigate these risks;
  - viii. details of the various parties responsible for the management, monitoring and implementing the management activities, including their experience and qualifications and employment or engagement status; and
    - ix. details of qualifications and experience of persons responsible for undertaking monitoring, review, and implementation of the Biodiversity

- Offset Package, including the role of the **independent expert** in preparing, reviewing, and implementing the Biodiversity Offset Package; and
- x. a description of protection and funding arrangements or agreements including work programs and responsible entities.
- 13. The **approval holder** must implement the approved Biodiversity Offset Package within 24 months of the date of this **approval**.
- 14. If an offset site proposed as a part of the Offset Package is already required to be protected as a result of a separate EPBC Act approval, only the management actions which can be demonstrated to be additional to those required for the separate approval, can be considered as an offset for this project. The legal protection of the site and management action required for separate approvals cannot be considered a part of the offsets, in accordance with the Environmental Offsets Policy.
- 15. The approval holder must, within 12 months of the approval of the Biodiversity Offset Package, register a legally binding conservation mechanism to provide long-term protection to the offsets approved by the Minister in the Biodiversity Offset Package, which prohibits any activities that are not conservation activities from being undertaken in the offsets.
- 16. If within 6 years, after impacts to Grey-headed Flying-fox habitat, the results of the monitoring required in the Grey-headed Flying-fox Management Plan, show that the Macksville Grey-headed Flying-fox Camp is abandoned by the Grey-headed Flying-fox, between September and May for two consecutive years, the approval holder must then offset the entire 23.50 ha roosting habitat critical to survival within 24 months, rather than 3.10 ha required by Condition 1.

Note: The provision of the additional offset, if required, would be additional to the requirements of Condition 13-16.

#### General

- 17. Within 14 days after the **commencement** of the **action**, the person taking the **action** must advise the **Department** in writing of the actual date of **commencement**.
- 18. The approval holder must notify the Department in writing of potential non-compliance with any condition of this approval as soon as practical and within no later than two business days of becoming aware of the non-compliance. The notice provided to the Department under this condition must specify:
  - a) the condition which the approval holder has potentially breached;
  - b) the nature of the non-compliance; and
  - c) when and how the approval holder became aware of the non-compliance.

Further to providing any such notice, the **approval holder** must provide the following information within 10 business days of becoming aware of a potential non-compliance:

- a) how the non-compliance will affect the anticipated impacts of the approved action, in particular how the non-compliance will affect the impacts on the MNES;
- b) the measures the **approval holder** will take to address the impacts of the non-compliance on the **MNES** and rectify the non-compliance; and

- c) the time by when the approval holder will rectify the non-compliance.
- 19. Within three months of every 12 month anniversary of the commencement of the action, the approval holder must publish a report on its website addressing compliance with each of the conditions of this approval, including implementation of any management plan, package as specified in the conditions. Documentary evidence providing proof of the date of publication must be included in the published compliance report. The compliance report must remain on the website, for 10 years following commencement. The monitoring results must also be made available on request for the duration of the approval. Reports of any non-compliance must also be included in the annual compliance report.
- 20. The approval holder must maintain accurate compliance records substantiating all activities associated with or relevant to the conditions of approval, including measures taken to implement the management plans, package required by this approval, and make them available upon request to the Department. Such compliance records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on the Department's website. The results of audits may also be publicised through the general media.
- 21. Upon the direction of the Minister, the approval holder must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to the Minister. The audit must not commence unless and until the Minister has approved the independent auditor and audit criteria. The audit report must address the criteria to the satisfaction of the Minister.
- 22. If the approval holder wishes to carry out any activity otherwise than in accordance with a management plans, strategy, package as specified in the conditions, the approval holder must submit to the Department for the Minister's written approval a revised version of that management plan, package. The varied activity must not commence until the Minister has approved the varied management plan, package in writing. The Minister will not approve a varied management plan, package unless the revised management plan, package would result in an equivalent or improved environmental outcome over time. If the Minister approves the revised management plan, package that management plan, package must be implemented in place of the management plan, package originally approved.
- 23. If the Minister believes that it is necessary or convenient for the better protection of MNES to do so, the Minister may request that the approval holder make specified revisions to a management plan, package required by the conditions and submit the revised management plan, package for the Minister's written approval. The approval holder must comply with any such request. The revised management plan, package must be implemented. Until the Minister has approved a revised management plan, package, the approval holder must continue to implement the previously approved management plan, package, as specified in the conditions.
- 24. If, at any time after five years from the date of this approval, the approval holder has not commenced the action, then the approval holder must not commence the action without the written agreement of the Minister.

- 25. Unless otherwise agreed to in writing by the Minister, the approval holder must publish the management plans, package, monitoring data in these conditions of approval on its website. Each management plans, package, monitoring data must be published on the website within one month of being approved (unless otherwise specified in these conditions) or within one month of data collection.
- 26. The approval holder must notify the Department within 5 business days of publishing the management plan, package, monitoring data on their website and the management plan, package, monitoring data must remain on the website for the life of this approval.

#### **Definitions**

In these conditions, unless contrary intention is expressed:

- a) the singular includes the plural and vice versa, and a gender includes other genders;
- another grammatical form of a defined word or expression has a corresponding meaning;
- the meaning of general words is not limited by specific examples introduced by 'for example' or similar expressions;
- a reference to a condition or annexure is a reference to a condition of or annexure to, the approval;
- e) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency; and
- f) a reference to time is to the time in the place where the obligation is to be performed.

**Action** is the upgrade of ~19.5 kilometres of the Pacific Highway, from the northern end of Allgomera deviation south of Warrell Creek to Old Coast Road, west of Nambucca Heads, on the mid north coast of New South Wales, as shown in the map at <u>Appendix 1</u>.

**Approval** means the approval to take the **action** under section 133 of the Commonwealth **EPBC Act**.

**Approval holder** means the person to whom the **approval** is granted, or any person acting on their behalf, or to whom the **approval** is transferred under section 145B of the Commonwealth **EPBC Act**.

Baseline data means survey data in the offset area/s and reference site/s prior to conservation management actions occurring.

**Biodiversity Offset Package** means Package to be submitted the **Department**, which must have a benefit to **threatened species** and **habitat**.

**Biodiversity Offset Strategy** means Revision D of the Strategy submitted to the **Department** on 20 November 2014.

Clear includes the cutting down, felling, thinning, logging, removing, poisoning, grubbing, dewatering, ringbarking or burning of **native vegetation**.

Commence/Commencement/Commenced – means the commencement of any works required to be undertaken for the purposes of carrying out the action, including preparatory works, excluding the activities below that must not directly or indirectly impact on threatened species and communities or suitable habitat for threatened species and communities.

	Activities which must not cause direct or indirect impact on MNES	
1	Ancillary facilities in the locations identified as Proposed Early Works, Works Compound in Figure 1, Maps 4 and 9	
1a	Establishment of site compound and temporary stockpile sites, including access road construction and provision of associated utility services.	
1b	Establishment of materials management / stockpile sites, including access road construction and provision of utility services.	
1c	Installation of environmental controls, including erosion and sedimentation controls associated with the activities identified in 1a and 1b above.	
2	Ecological and heritage works in the locations identified as Proposed Early Works, Nest box location or Exclusion fencing in Figure 1, Maps 1 to 14	
2a	Nest Box Installation as required by MCoA B6 in accordance with approved Nest Box Plan (LES, 2013c).	
2b	Installation of temporary exclusion fencing around sensitive ecological and heritage areas (including habitat for MNES matters) in the locations identified in Figure 2.	
2c	Investigations of heritage sites.	
3	Property adjustment works in the locations identified as Proposed Early Works, Demolition activity, Boundary fencing or Façade treatments to noise receivers in Figure 1, Maps 1 to 14	
3a	Installation of property fencing.	
3b	House demolition and removal.	
3c	Relocation of utilities (including water supply and electrical) to properties.	
3d	Provision of acoustic treatments to properties.	
3e	Construction of property ingress and egress.	
4	Survey works	
4a	Survey control, including installation of global positioning system (GPS) repeater stations.	
4b	General project alignment survey.	
4c	Survey of existing and future utility services, including potholing investigations.	
	Building / road pre-condition surveys.	

	Activities which must not cause direct or indirect impact on MNES
5	Existing road network adjustments in the locations identified as Proposed Early Works, Traffic work activity in Figure 1, Maps 1 to 14
5a	Minor upgrades to existing local roads and existing Pacific Highway network.
5b	Installation of temporary project signage.
5c	Installation of environmental controls, including erosion and sedimentation controls associated with the activities identified in 5a and 5b above.
6	General project activities in the locations identified as Proposed Early Works, Geotechnical investigations or Proposed utility works (up to April 2015) in Figure 1, Maps 1 to 14
6a	Geotechnical investigations, including boreholes, test pits, seismic investigations.
6b	Investigation and treatment of contaminated sites.
6c	Relocation of utilities.
6d	Installation of environmental controls, including erosion and sedimentation controls associated with activities identified in 6a, 6b and 6c above.

Compliance records/reports means all records prepared in relation to these Conditions and in the approval holder's possession or that is within the approval holder's power to obtain lawfully, including the documents.

**Completion of construction** means the **completion** of any final works required to be undertaken for the purposes of carrying out the **action**.

**Department** means the Australian Government Department administering the Commonwealth **EPBC Act**.

**Documents/documentation** means documents required to be prepared or provided to the **Department** and implemented by the **approval holder** in accordance with these Conditions.

**EPBC Act** means the Commonwealth *Environment Protection and Biodiversity Conservation Act* 1999.

EPBC Act Environmental Offsets Policy means the Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy (October 2012) or subsequent revisions.

Giant Barred Frog habitat means 0.7 hectares of riparian habitat at Upper Warrell Creek.

**Giant Barred Frog Management Plan** means Version L of the Plan submitted to the **Department** on 3 December 2014, or a subsequent plan only if approved by the **Department**, which must have a benefit to the species.

**Grey-headed Flying-fox habitat** means foraging habitat consisting of: Blackbutt Open Forest – 77.0 ha, Mixed Floodplain Forest – 4.0 ha, White Mahogany/Grey Gum/Ironbark Moist Open Forest – 5.5 ha, Flooded Gum Moist Open Forest – 14.8 ha and Swamp Mahogany/Paperbark Swamp Forest – 5.3 ha (inclusive of 3.1 ha of roosting habitat).

**Grey-headed Flying-fox Management Plan** means Version 10 of the Plan submitted to the **Department** on 7 November 2014, or a subsequent plan only if approved by the **Department**, which must have a benefit to the species.

Habitat means Giant Barred Frog habitat, Grey-headed Flying-fox habitat, Koala habitat, Slender Marsdenia/Clear Milkvine habitat and Spotted-tail Quoll habitat.

**Independent expert** means a real person who must be approved by the **Department**, and who is independent, is not an employee of, nor has ever been employed by, the **approval holder**, and who has relevant tertiary qualifications and a minimum of five years demonstrated experience relevant to undertake a review of the Biodiversity Offset Package.

Impact has the definition assigned to it in section 527E of the Commonwealth EPBC Act.

**Koala habitat** means Blackbutt Open Forest – 77.0 ha, Mixed Floodplain Forest – 4.0 ha, White Mahogany/Grey Gum/Ironbark Moist Open Forest – 5.5 ha, Flooded Gum Moist Open Forest – 14.8 ha, and Swamp Mahogany/Paperbark Swamp Forest – 5.3 ha.

**Koala Management Plan** means Version 8 of the Plan submitted to the **Department** on 7 November 2014, or a subsequent plan only if approved by the **Department**, which must have a benefit to the species.

Management plans means the Threatened Flora Management Plan, Koala Management Plan, Grey-headed Flying-fox Management Plan, Spotted-tail Quoll Management Plan and Giant Barred Frog Management Plan.

Matters of National Environmental Significance (MNES) means matters of National Environmental Significance, being the relevant matters protected under Part 3 of the Commonwealth EPBC Act.

Minister means the Minister responsible for administering the EPBC Act including any delegate of the Minister.

**Native vegetation** means indigenous vegetation, including trees (including any sapling, shrub and scrub), understorey plants, groundcover (being any type of herbaceous vegetation), epiphytes, and plants occurring in a wetland or swamp.

Offset attributes means an '.xls' file capturing relevant attributes of the offset area, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.

Offset area/Offset means an area of land or water on which an offset activity will occur, to compensate for the residual adverse impacts of an approved action on MNES.

Package means the Biodiversity Offset Package.

Quality - 'site condition', 'site context', and 'species stocking rate', as described in the Department's How to use the Offsets Assessment Guide.

**Records** means all **documents** or other material in whatever form, including, without limitation, any correspondence, reports, assessments, methodologies, operations manuals, specifications, training materials and instructions or data relating to the **approved action**.

Reference site means a site other than the action area which is similar to the action area and is largely undisturbed. Unless otherwise approved by the Minister, reference sites must:

- a) have the same vegetation types and similar ecological characteristics to the test sites in the action area;
- b) be from the same bio-geographic and climatic regions as the action area;
- c) have similar geology, soil type and topography to the action area; and
- d) not be so close to the test sites in the **action** area that any disturbance at the test site also results in a change at the **reference site**.

**Shapefile** means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes of the **offset area**, including the shape, EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

Slender Marsdenia/Clear Milkvine and Wooll's Tylophora/Cryptic Forest Twiner habitat means moist open forests, margins of subtropical and warm temperate rainforest, as well as, areas of rocky outcrops as identified habitat maps in the final preliminary documentation.

**Spotted-tail Quoll habitat** means Blackbutt Open Forest – 77.0 ha, Mixed Floodplain Forest – 4.0 ha, White Mahogany/Grey Gum/Ironbark Moist Open Forest – 5.5 ha, Flooded Gum Moist Open Forest – 14.8 ha, Swamp Mahogany /Paperbark Swamp Forest – 5.3 ha, Swamp Forest – Swamp Oak – 0.4 ha, Freshwater Wetlands – 0.64 ha, Mangrove Forest – 0.1 ha and Hardwood plantation – 3.6 ha.

**Spotted-tail Quoli Management Plan** means Version 8 of the Plan submitted to the **Department** on 7 November 2014, or a subsequent plan only if approved by the **Department**, which must have a benefit to the species.

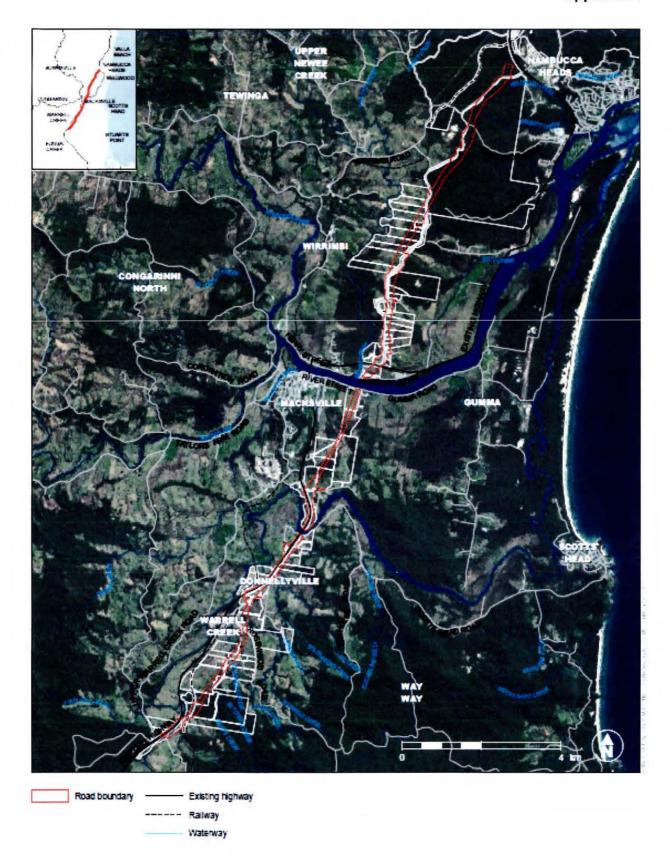
Suitably qualified ecologist/expert means a real person with tertiary qualifications and/or a minimum of five years demonstrated experience relevant to the task in question.

Threat abatement plans means the <u>Threat Abatement Plan for infection of amphibians with chytrid fungus resulting in *chytridiomycosis*, the <u>Threat Abatement Plan for predation by the European red fox and the Threat Abatement Plan for predation by feral cats.</u></u>

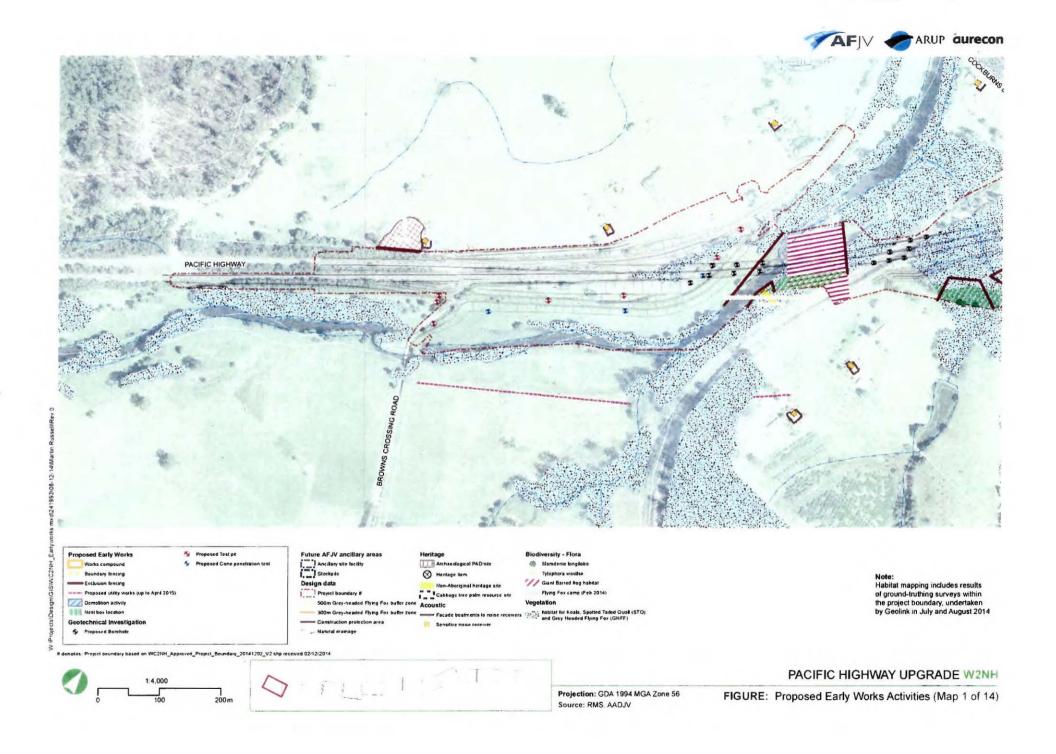
**Threatened Flora Management Plan** means Version 3 of the Plan submitted to the **Department** on 28 November 2014, or a subsequent plan only if approved by the **Department**, which must have a benefit to both species.

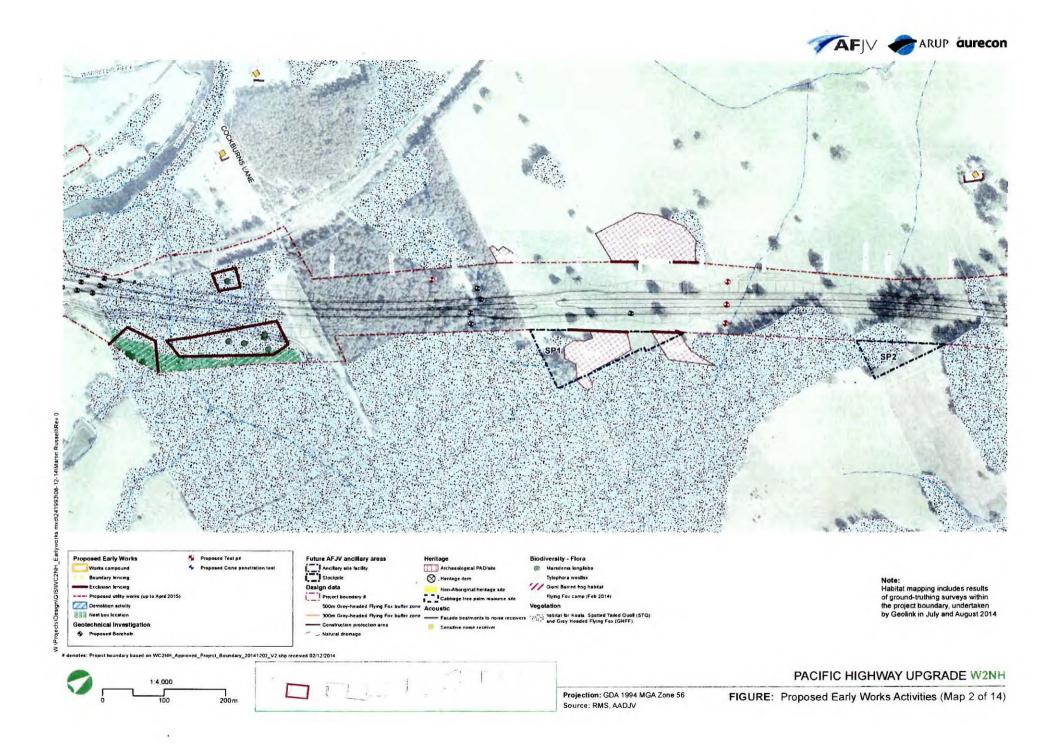
**Threatened species** means Slender Marsdenia/Clear Milkvine (*Marsdenia longiloba*), Koala (*Phascolarctos cinereus*), Grey-headed Flying-fox (*Pteropus poliocephalus*), Spotted-tail Quoll (*Dasyurus maculatus maculatus* SE mainland population), Giant Barred Frog (*Mixophyes iteratus*) and Cryptic Forest Twiner (*Tylophora woollsii*).

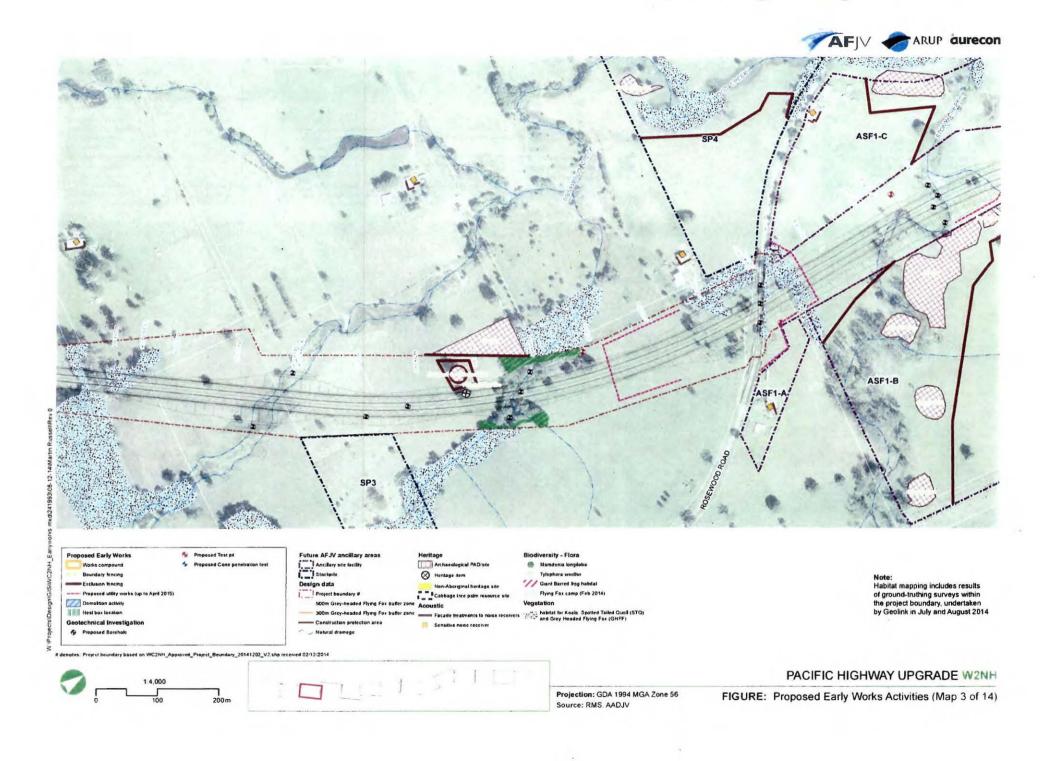
Website means the NSW Roads and Maritime Services website http://www.rms.nsw.gov.au.

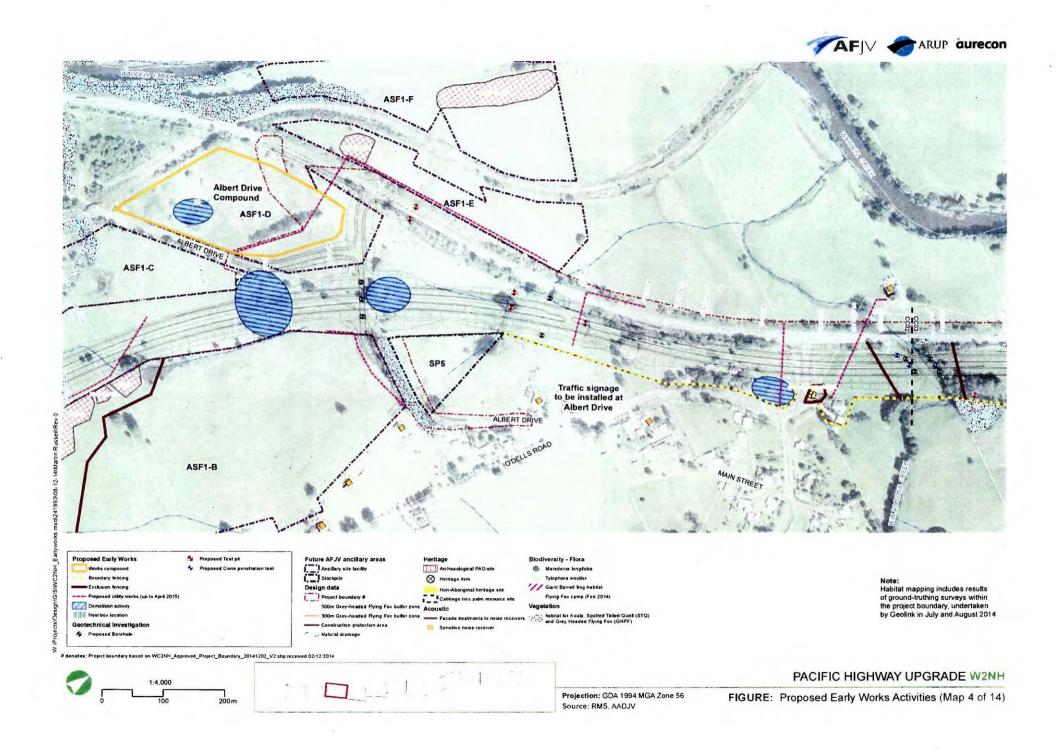


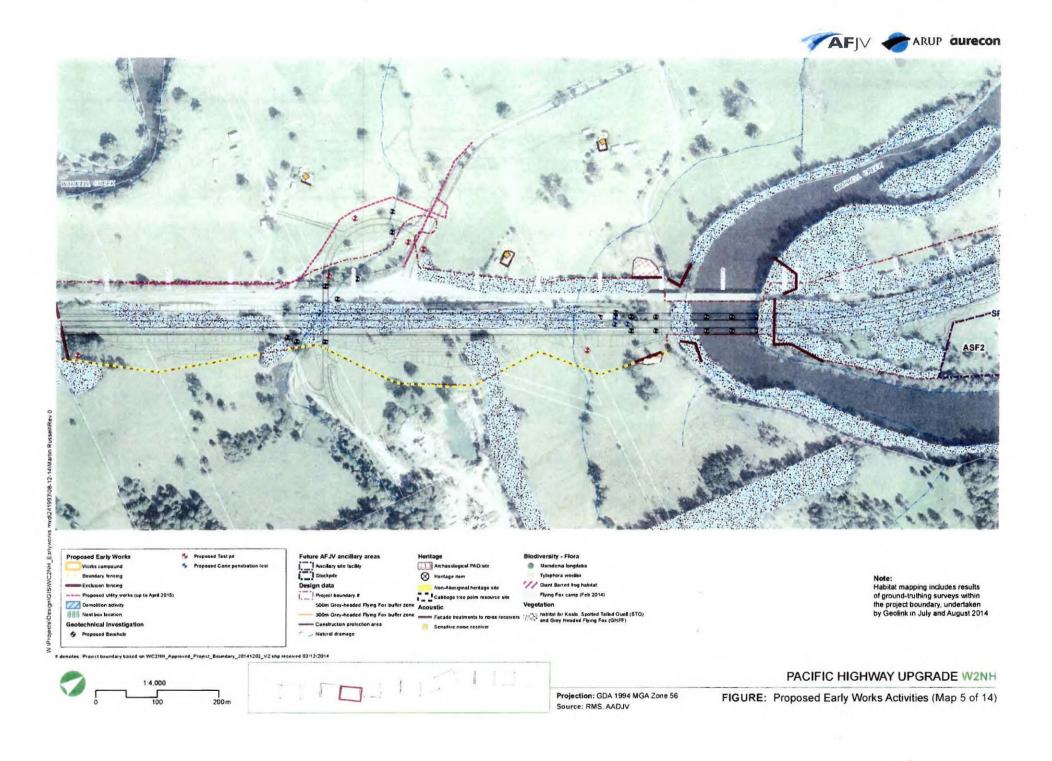
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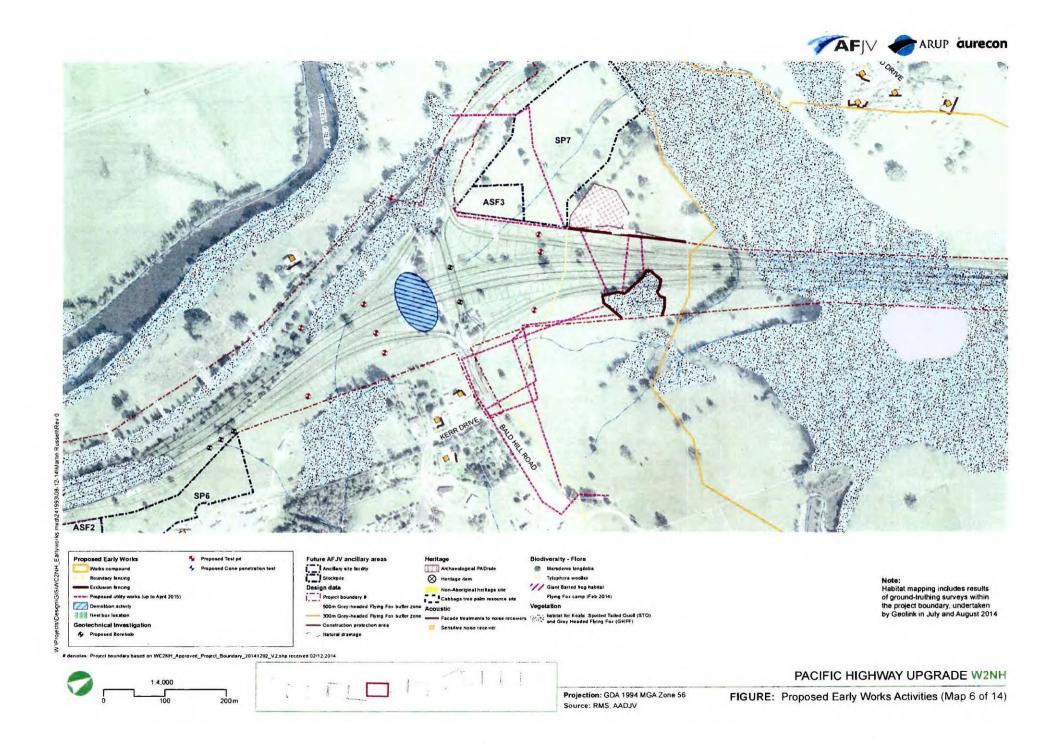


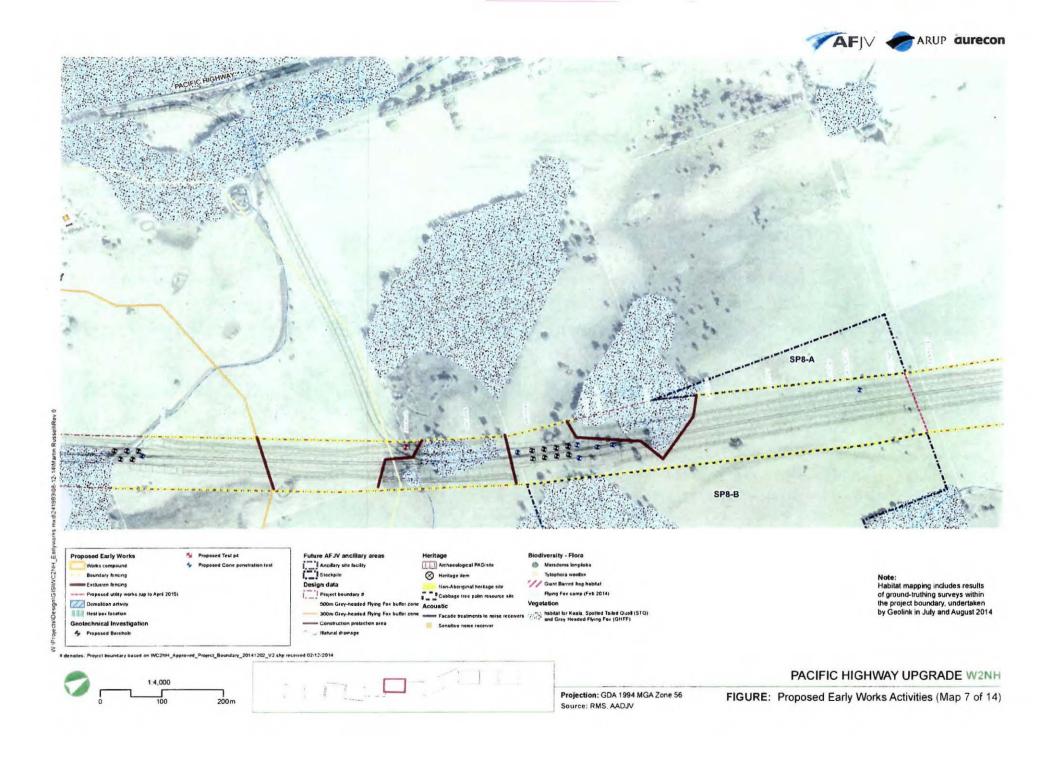


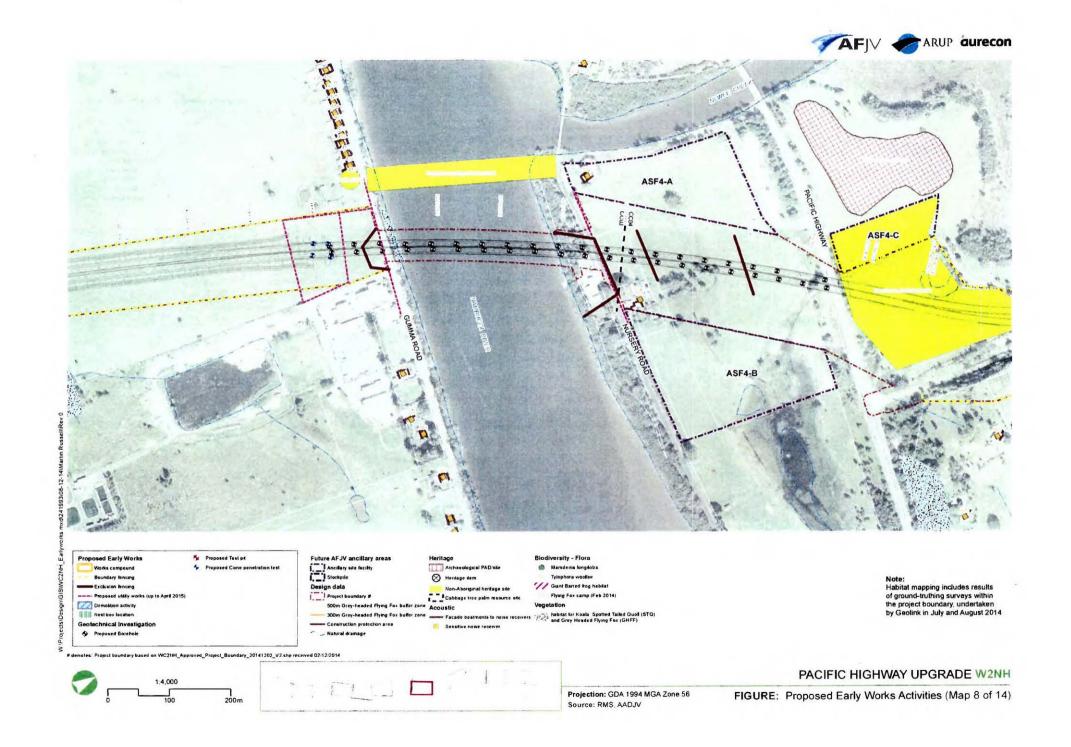


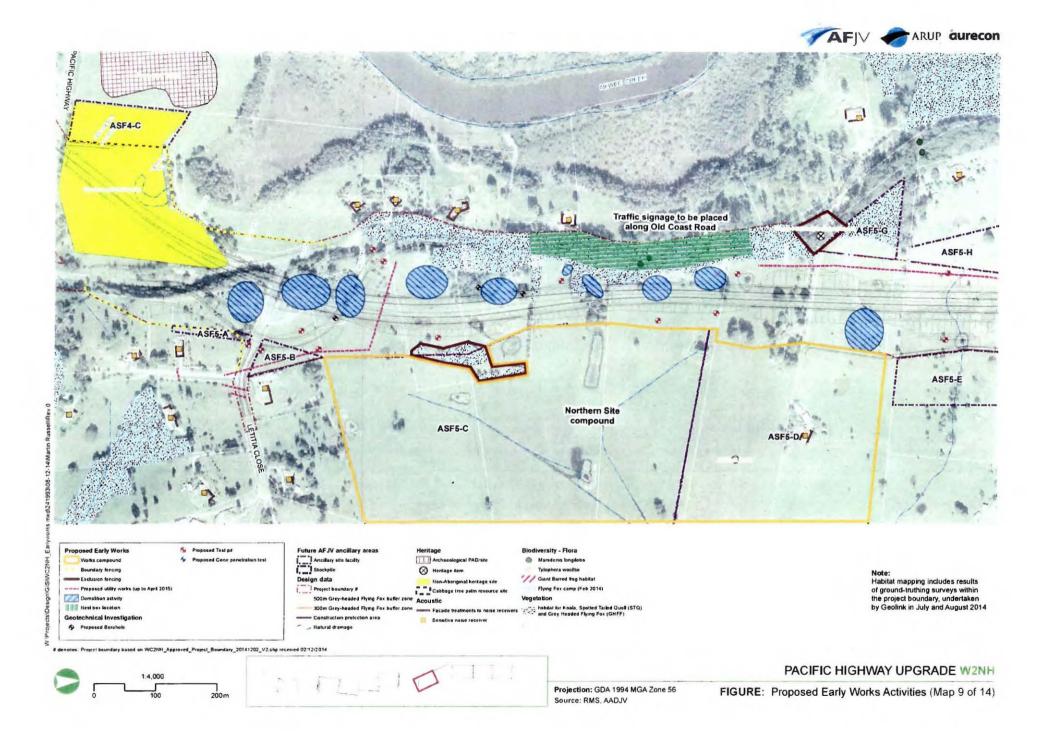


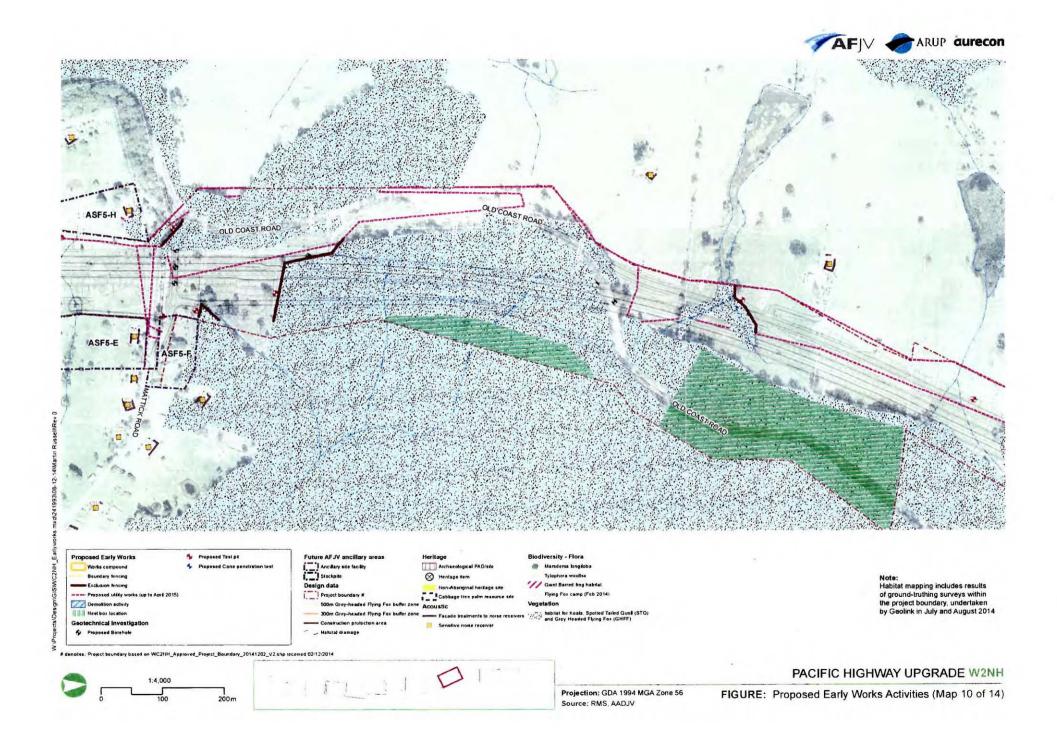


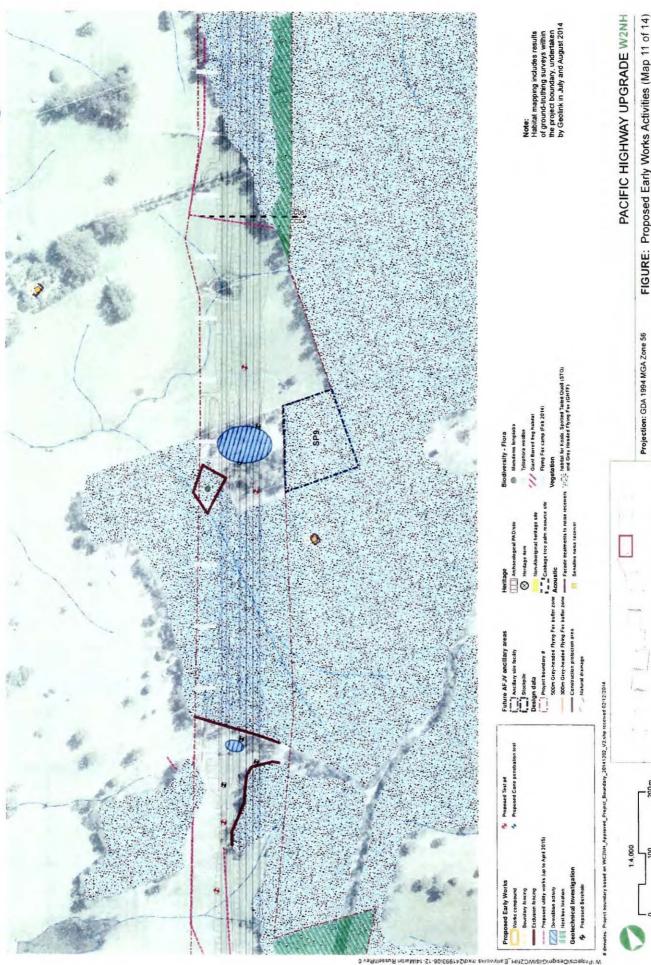












AFJV ARUP aurecon

Projection: GDA 1994 MGA Zone 56 Source: RMS, AADJV

PACIFIC HIGHWAY UPGRADE W2NH

FIGURE: Proposed Early Works Activities (Map 13 of 14)

Projection: GDA 1994 MGA Zone 56 Source: RMS, AADJV