

# NSW Roads and Maritime Services

## WOOLGOOLGA TO BALLINA | PACIFIC HIGHWAY UPGRADE ENVIRONMENTAL IMPACT STATEMENT

### MAIN VOLUME 1A

#### Chapter 2 – Assessment process

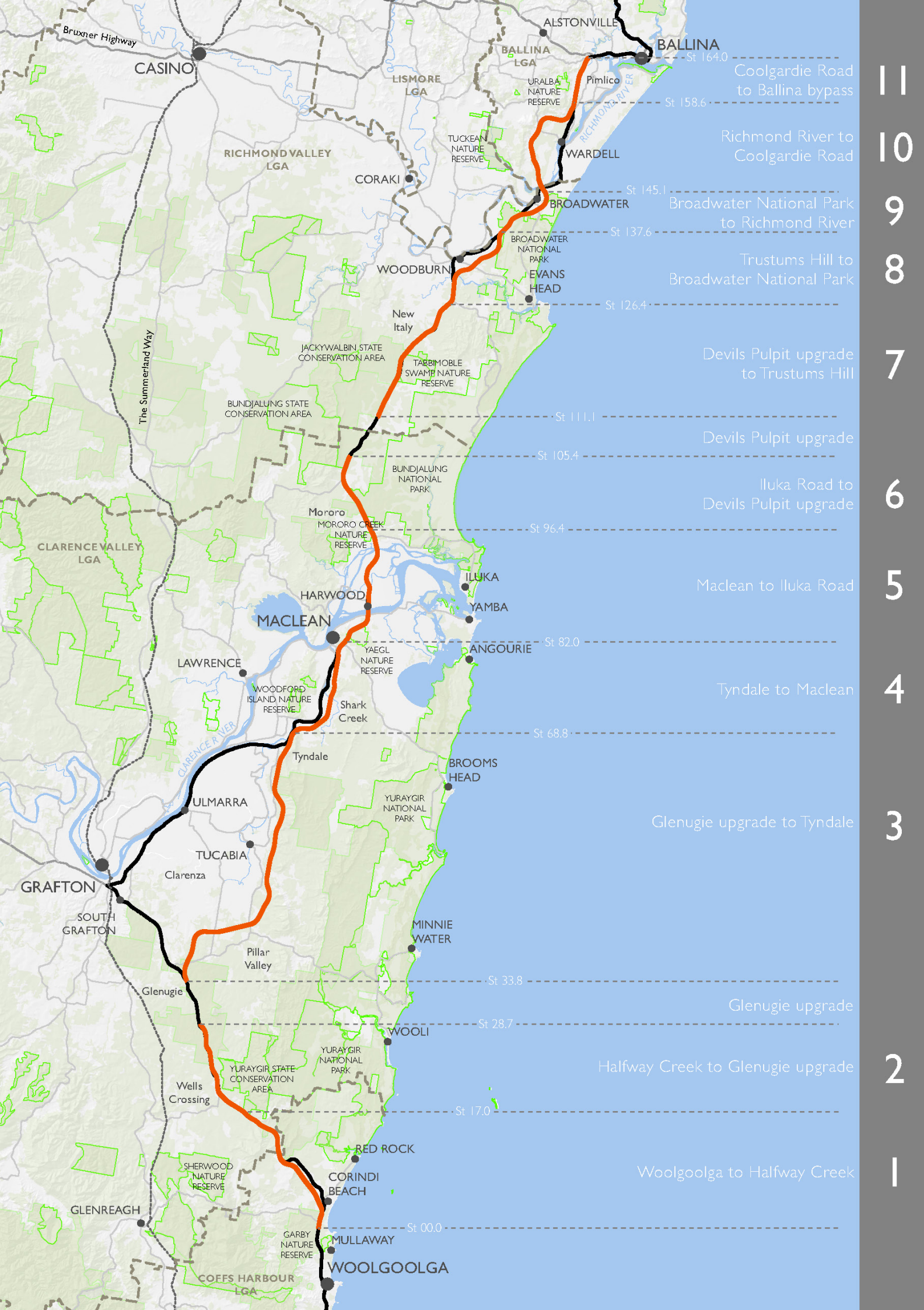
##### Chapter summary

This chapter outlines the project approval process, addressing the environmental assessment requirements and the relevant legislation applicable to the project.

NSW Roads and Maritime Services (RMS) is seeking approval for the Woolgoolga to Ballina Pacific Highway upgrade project under Part 5.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The project is subject to approval by the Commonwealth Department for Sustainability, Environment, Water, Population and Communities, and other approvals under Acts would be required.

RMS 12.604A

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## 2. Assessment process

This chapter outlines the relevant statutory requirements for the project under NSW and Commonwealth legislation, and explains the steps in the assessment and approval process.

Supplementary Director General's requirements	Where addressed
Any other requirements for approval or conditions that apply, or that the proponent reasonably believes are likely to apply, to the proposed action. Information must include:	
<ul style="list-style-type: none"> <li>Details of any local or State government planning scheme, or plan or policy under any local or State government planning system that deals with the proposed action, including:               <ul style="list-style-type: none"> <li>What environmental assessment of the proposed action has been, or is being, carried out under the scheme, plan or policy;</li> <li>How the scheme provides for the prevention, minimisation and management of any relevant impacts.</li> </ul> </li> </ul>	Section 2.1
<ul style="list-style-type: none"> <li>A description of any approval that has been obtained from a State, Territory or Commonwealth agency or authority (other than an approval under the EPBC Act), including any conditions that apply to the action.</li> </ul>	Section 2.1 and 2.3
<ul style="list-style-type: none"> <li>A statement identifying any additional approval that is required.</li> </ul>	Section 2.1 and 2.3
<ul style="list-style-type: none"> <li>A list of any approvals that must be obtained under any other Act or law before the development, activity or infrastructure may lawfully be carried out.</li> </ul>	Section 2.1 and 2.3

### 2.1 Approval framework

#### 2.1.1 Environmental Planning and Assessment Act 1979

NSW Roads and Maritime Services (RMS) has applied for approval from the Minister for Planning and Infrastructure for the project under Part 5.1 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The project is declared to be critical State significant infrastructure under section 115V of the EP&A Act, by virtue of clause 16 and Schedule 5, clause 1(c) of State Environmental Planning Policy (State and Regional Development) 2011, as it is considered to be essential for the State for economic, environmental or social reasons.

In accordance with clause 16 of State Environmental Planning Policy (State and Regional Development) 2011, the project is also State significant infrastructure under section 115U of the EP&A Act and is permissible without consent under Part 4 of the EP&A Act. The project is therefore being assessed under Part 5.1 of the EP&A Act.

An application under section 115X of the EP&A Act to carry out the project was submitted to the Director-General of the Department of Planning and Infrastructure. A report accompanying the application aimed to assist the formulation of environmental assessment requirements by the Director General of the Department of Planning and Infrastructure under section 115Y of the EP&A Act. In preparing the environmental assessment requirements, the Director-General is required to consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities. On 23 November 2011, the Director General notified RMS of the environmental assessment requirements for preparation of an environmental impact statement (EIS) by (or on behalf of RMS). These requirements are included in Appendix A.



The Director General of the Department of Planning and Infrastructure issued supplementary environmental assessment requirements from the Commonwealth Department for Sustainability, Environment, Water, Population and Communities on 11 July 2012 following consultation between the Department of Planning and Infrastructure and the Commonwealth Department for Sustainability, Environment, Water, Population and Communities. These requirements are detailed further in Section 2.1.2.

This EIS must be publicly exhibited for a minimum of 30 days, during which time any person (including a public authority) may make a written submission to the Director-General. At the conclusion of the public exhibition period, the Director-General is to provide copies of submissions received or a report of the issues raised in submissions to RMS and any other public authority the Director-General considers appropriate. The Director-General may then require RMS to submit a response to the issues raised in the submission and a preferred infrastructure report outlining any proposed changes to the project to minimise its environmental impact or to deal with any other issues raised during the assessment of the project.

The aspects of the State government's planning scheme outlined in this section of the EIS, namely, the process of applying for approval, formulating environmental assessment requirements through consultation with relevant public authorities and publicly exhibiting the EIS provide for the prevention, minimisation and management of relevant impacts.

The approval process under Part 5.1 of the EP&A Act is shown in Figure 2-1. Further information on the assessment process is available on the Department of Planning and Infrastructure website ([www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)).

## 2.1.2 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) proposed 'actions' that have the potential to impact on matters of national environmental significance or the environment of Commonwealth land, or are being carried out by a Commonwealth agency, must be referred to the Australian Government. If the Minister for Sustainability, Environment, Water, Population and Communities determines a referred project is a "controlled action", the approval of the minister is required for the project in addition to the approval from the NSW Minister for Planning and Infrastructure.

Matters of national environmental significance of relevance to the project are:

- Listed threatened species and communities (section 18 and 18A of the EPBC Act)
- Listed migratory species (section 20 and 20A of the EPBC Act).

The project has been considered against these potential EPBC Act triggers and was referred to the Department of Sustainability, Environment, Water, Population and Communities on 15 May 2012. The referral concluded that the project has the potential to have a significant impact on matters of national environmental significance, and approval from the Commonwealth Minister is necessary.

On 20 June 2012, the Commonwealth Government Minister for Sustainability, Environment, Water, Population and Communities confirmed the project would be a controlled action. Consequently, the project requires assessment and approval by the Commonwealth Government Minister for Sustainability, Environment, Water, Population and Communities.

The Commonwealth Minister for Sustainability, Environment, Water, Population and Communities has determined that the preparation and submission of this EIS is an accredited assessment process for the purpose of the approval by the Commonwealth Minister. The effect of this is that RMS is not required to undertake a separate environmental assessment for the purpose of obtaining approval from the Commonwealth Minister under the EPBC Act. However, the Commonwealth Minister would need to issue a separate approval for the project to the State Minister's approval as it is a controlled action.

Following consultation between the Department of Planning and Infrastructure and the Commonwealth Department for Sustainability, Environment, Water, Population and Communities environmental assessment requirements were issued by the Commonwealth Department for the project on 11 July 2012 as previously noted. The specific matters required to be assessed are addressed in each relevant chapter of this EIS.

## PART 5.1 SUMMARY ENVIRONMENTAL ASSESSMENT AND APPROVAL PROCESS FOR THE PROJECT

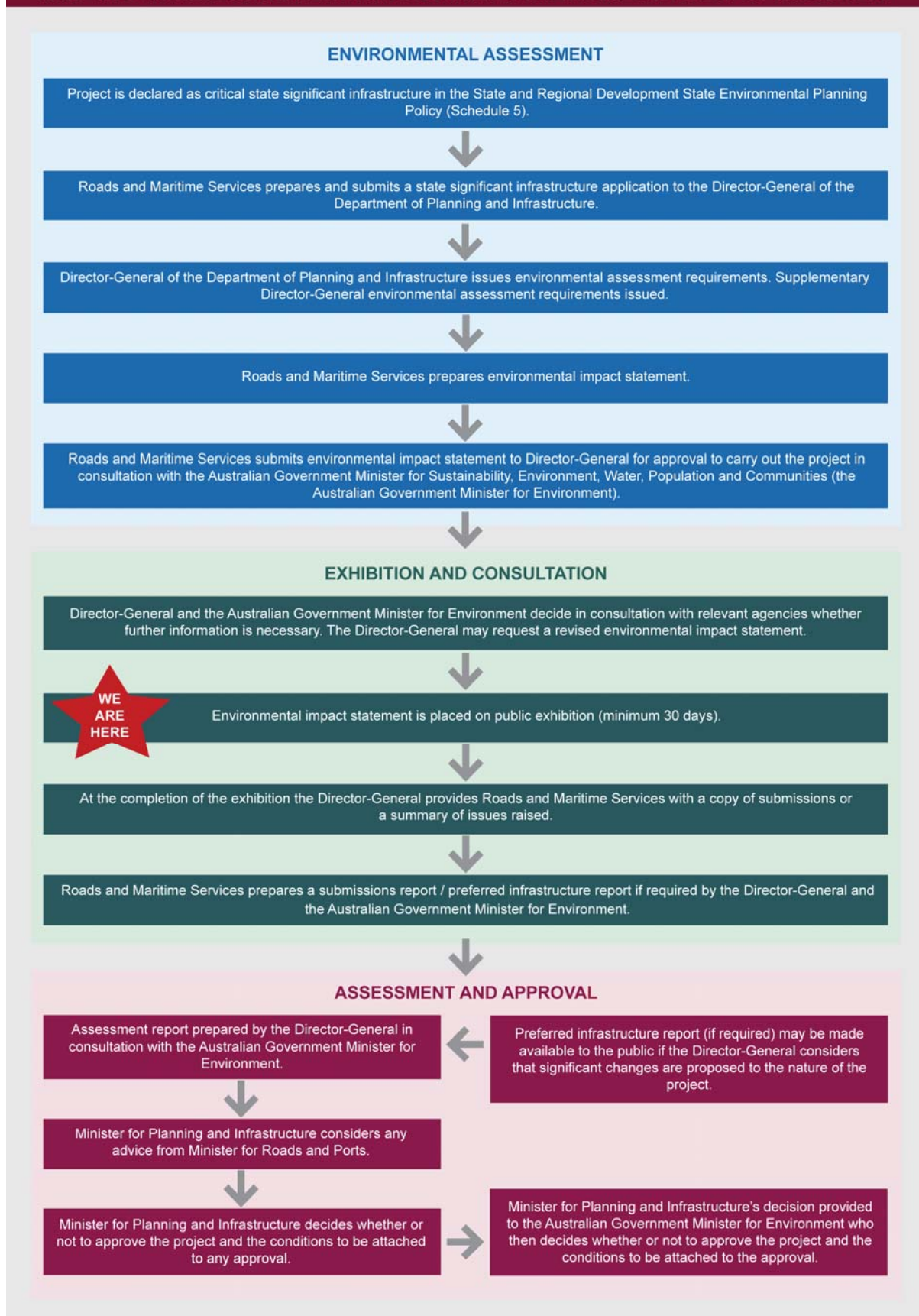


Figure 2-1: Project approval process

Further details of the impacts on matters of national environmental significance of relevance to the project including listed threatened species and communities and migratory species are provided in Chapter 10 (Biodiversity).

## 2.2 Environmental planning instruments

Under section 115ZF(2), Part 5.1 of the EP&A Act, environmental planning instruments do not apply to State significant infrastructure except for the declaration of infrastructure as State significant infrastructure or as critical State significant infrastructure. Therefore, the following State environmental planning policies (SEPPs) and local environmental plans (LEPs), which may have otherwise applied, do not apply to the project:

- SEPP No. 14 – Coastal Wetlands
- SEPP No. 26 – Littoral Rainforests
- SEPP No. 44 – Koala Habitat Protection
- SEPP No. 55 – Remediation of Land
- SEPP No. 71 – Coastal Protection
- North Coast Regional Environmental Plan (a deemed SEPP)
- Coffs Harbour City LEP 2000
- Clarence Valley LEP 2011
- Richmond Valley LEP 2012
- Ballina LEP 1987.

Each of these instruments and their purpose is provided below.

### SEPP No. 14 – Coastal Wetlands

State Environmental Planning Policy No. 14 — Coastal Wetlands aims to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the state.

There are 13 SEPP No. 14 — Coastal Wetlands in the vicinity of the project and three nationally important wetlands including the Clarence River Estuary, Bundjalung National Park and Coldstream Wetlands.

### SEPP No. 26 – Littoral Rainforests

SEPP Environmental Planning Policy No. 26 — Littoral Rainforests provides a mechanism for the consideration of applications for development that are likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state. The SEPP also applies to land within 100 metres of the boundary of a SEPP 14 wetland.

### SEPP No. 44 – Koala Habitat Protection

State Environmental Planning Policy No 44 aims to encourage the proper conservation and management of natural Koala habitat to ensure that there is a permanent free-living population of Koalas throughout their present range and to reverse the current trend of population decline. SEPP 44 does not apply to the project, however RMS has adopted a similar approach to assessing koala habitat as described under SEPP 44.

### SEPP No. 55 – Remediation of Land

The aims and objectives of State Environmental Planning Policy No. 55 are to provide a statewide planning approach to contaminated land remediation. It also promotes the remediation of contaminated land to reduce the risk of harm. SEPP 55 applies where consent is being sought for works on potentially contaminated land and/or where remediation works are proposed.

Under SEPP 55, a person must not carry out a 'category 1 remediation work' except with the consent of the consent authority (clause 8(2)). Category 1 remediation works are works that fall within any of a number of specified categories under clause 9. A category 2 remediation work may be carried out without consent (clause 8(2)). Category 2 remediation works are defined in clause 10. If remediation



works are carried out under SEPP 55, then certain notification requirements set out in clauses 16, 17 and 18 must be complied with.

The aims and objectives of the SEPP would be considered if contaminated land remediation is necessary.

### **SEPP No. 71 – Coastal Protection**

The broad aims of State Environmental Planning Policy No. 71 (SEPP No. 77) — Coastal Protection are to:

- Ensure that the coastal zone is protected in accordance with ecologically sustainable development principles
- Ensure that development is appropriate and suitably located
- Establish a clear and consistent development assessment framework for the coastal zone.

SEPP No. 71 — Coastal Protection does not apply to the project because it is not classed as a state-significant development and is not located in a sensitive coastal location (as defined in Schedule 1).

### **North Coast Regional Environmental Plan (a deemed SEPP)**

The North Coast Regional Environmental Plan (NCREP) establishes a regional framework for the development of the NSW North Coast Region. Part 5 of the NCREP identifies the strategic importance of improving regional infrastructure along the NSW North Coast. It recognises the need to safeguard the role and efficiency of the major arterial road system and the need to facilitate maintenance and improvement of transport across the region.

The project accords with the NCREP in meeting the need to facilitate transport across the region. It is an essential component of the strategic planning for the North Coast region envisaged under the plan.

### **Coffs Harbour City LEP 2000**

The Coffs Harbour Local Environmental Plan 2000 identifies objectives relevant to land use and property that include identifying where compatible development opportunities can occur throughout the Coffs Harbour local government area.

### **Clarence Valley LEP 2011**

The Clarence Valley Council Local Environmental Plan was gazetted on 23 December 2011 and consolidates the five previous local environmental plans that applied to the valley as well as part of the Richmond River Local Environmental Plan. All of the previous local environmental plans are repealed (Copmanhurst LEP, Grafton LEP, Maclean LEP, Nymboida LEP and Ulmarra LEP).

The project supports the planned and projected growth in the Clarence Valley by promoting access to a major transport corridor.

### **Richmond Valley LEP 2012**

The Richmond River Local Environmental Plan 2012 was gazetted in March 2012. The provisions of the new Local Environmental Plan commenced on 21 April 2012. The Richmond River plan aims to ensure adequate land is available in suitable locations for the needs of a range of beneficial and appropriate land uses.

### **Ballina LEP 1987**

The Ballina Local Environmental Plan 1987 establishes the framework for the range of land use activities that may occur within the Shire. The Local Environmental Plan sets standards and objectives that must be met to obtain development approval.

The Draft Ballina Local Environmental Plan 2011 is proposed to guide land use and development in the Ballina Shire local government area. This will replace the Ballina Local Environmental Plan 1987, which is currently the principle planning instrument in the local government area.

## 2.3 Other legislation

A number of approvals that generally apply under other NSW legislation are not required for State significant infrastructure approved under Part 5.1 of the EP&A Act (EP&A Act s.115ZG). Exemptions potentially relevant to the project include:

- The concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that part of the Act
- A permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*
- An approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*
- Part 6 (division 8) of the *Heritage Act 1977*; does not apply to, prevent, or interfere with the carrying out of approved State significant infrastructure
- An Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
- An authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act repealed by that Act) to clear native vegetation or State protected land
- A bushfire safety authority under section 100B of the *Rural Fires Act 1997*
- A water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.

Approvals under other NSW legislation may apply to the project, including:

- An environmental protection licence for road construction under Chapter 3 of the *Protection of the Environment Operations Act 1997*. In accordance with section 115ZH of the EP&A Act, such a licence cannot be refused for an approved project and is to be substantially consistent with the Part 5.1 approval. This is further discussed in Chapter 6 (Construction of the project)
- An approval under the *Water Act 1912* if access to ground or surface water is required during construction. This is further discussed in Chapter 18 (Other issues)
- An approval under the *Crown Lands Act 1989* to grant a relevant interest (ie licence, permit, easement or right of way) over a Crown Reserve. This is further discussed in Chapter 16 (Land use and property)
- A licence under the *Pipelines Act 1967* should a licensed pipeline need to be relocated during construction. In accordance with section 115ZH of the EP&A Act, such an authorisation cannot be refused if it is necessary to carry out an approved project and is to be substantially consistent with the approval. This is further discussed in Chapter 16 (Land use and property).

Other legislation may apply to the project including:

- *Land Acquisition (Just Terms Compensation) Act 1991*: This applies to the acquisition of any land required for the project
- *National Parks and Wildlife Act 1974*: This applies to the acquisition of land required for the project in Broadwater National Park (17.09 hectares to be acquired) and Yaegl Nature Reserve (1.69 hectares to be acquired). Section 52(1) of the Act requires any acquisition to be provided by an amendment bill to be passed through the NSW Parliament. That bill has now passed through parliament with the new act - *National Parks and Wildlife Amendment (Adjustment of Areas) Act No.62 2012* (NSW) amending the *National Parks and Wildlife Act 1974* No. 80 (NSW) on 10 September 2012. The objectives of the Act (as listed in schedule 2 of the Act) relevant to the project were to revoke the reservation of parts of Broadwater National Park and Yaegl Nature Reserve, and vest that land in the relevant Minister for the purposes of Part 11 (Acquisition and disposal of property) of the *National Parks and Wildlife Act 1974*.

- *Forestry Act 1916*: This applies to the acquisition of about 204 hectares of land required for the project in seven State forests and Wells Crossing Flora Reserve. Before land dedicated under the *Forestry Act 1916* is acquired, revocation of the land must be undertaken in accordance with the Act. Land would be acquired from the following State forests:
  - Wedding Bells State Forest (6 hectares to be acquired)
  - Newfoundland State Forest (44 hectares to be acquired)
  - Glenugie State Forest (98 hectares to be acquired)
  - Pine Brush State Forest (16.4 hectares to be acquired)
  - Mororo State Forest (1.9 hectares to be acquired)
  - Tabbimoble State Forest (6.3 hectares to be acquired)
  - Doubleduke State Forest (31 hectares to be acquired)
- *Aboriginal Land Rights Act 1983*: This applies to the acquisition of any land owned by a Local Aboriginal Land Council that is required for the project. The project would require the acquisition of land owned by three Land Councils. In accordance with the Act, land vested in a Land Council cannot be appropriated or resumed except by an Act of Parliament. If agreement cannot be reached with the affected Land Councils about land directly impacted by the project, an Act of Parliament would be required to compulsorily acquire the affected properties
- *Crown Lands Act 1989*: This applies to the acquisition of land required for the project reserved under the Act. A land status search undertaken in May 2012 confirmed there are 22 parcels of affected crown land across the project
- *Native Title (New South Wales) Act 1994*: This applies to the project on land affected by native title claim in NSW. The Act requires notification to native title claimants affected by the project alignment. Notification was sent to the relevant affected parties in June 2012
- *Native Title Act 1993 (Cth)*: The main objective of the Act is to recognise and protect native title. Section 8 states the Act is not intended to affect the operation of any law of a State or a Territory that is capable of operating concurrently with the Act. Searches of the register maintained by the National Native Title Tribunal indicate there are four native title claims registered with respect to land within the area of the project. This is further discussed in Chapter 12 (Aboriginal heritage)
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*: The main objective of this Act is to protect and preserve places, areas and objects of Aboriginal cultural significance. In situations where traditional Aboriginal cultural heritage may be at risk, the Aboriginal community has the right to request the Minister to intervene. The Minister may make declarations which can override approvals and stop activities.

The above acts relate to the project due to the effects on land use, as discussed further in Chapter 16 (Land use and property).

Due to the project being declared critical State significant infrastructure, the following directions, orders or notices cannot be made so as to prevent or interfere with the carrying out of approved critical State significant infrastructure (EP&A Act s. 115ZG(3)):

- An interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*)
- An order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*
- A remediation direction under Division 3 of Part 6A of the *National Parks and Wildlife Act 1974*
- An environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*
- An order under section 124 of the *Local Government Act 1993*.

In addition, certain third party appeal provisions do not apply (EP&A Act s.115ZK).