

4. Statutory and planning framework

This chapter provides the statutory and planning framework for the proposals and considers the provisions of relevant state environmental planning policies, local environmental plans and other legislation.

4.1 Environmental Planning and Assessment Act 1979

4.1.1 State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

In March 2022, the State Environmental Planning Policies (SEPPs) were updated. The former State Environmental Planning Policy (Infrastructure) was incorporated into the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Chapter two of the SEPP (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP) aims to facilitate the effective delivery of infrastructure across the State.

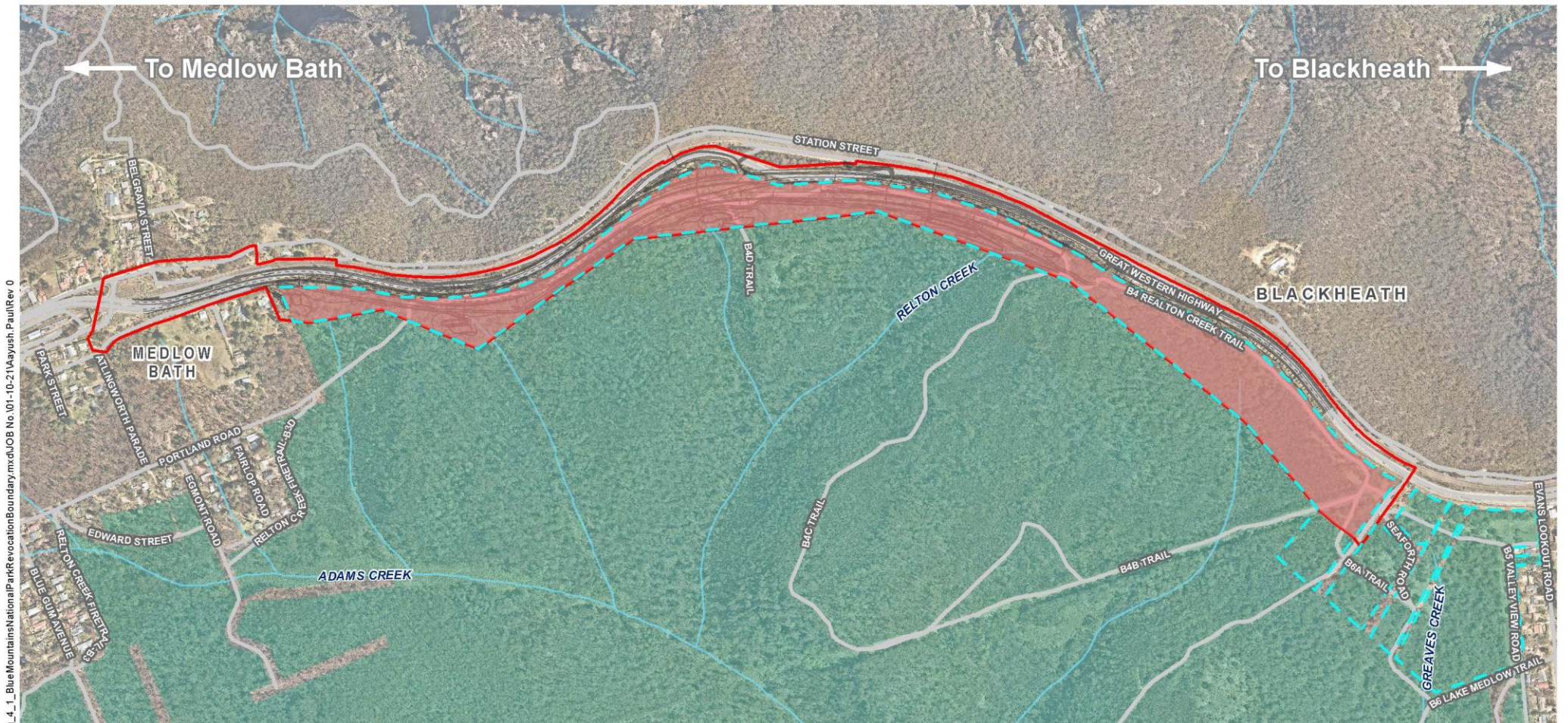
Section 2.108 of the Transport and Infrastructure SEPP permits development on any land for the purpose of a road or road infrastructure facilities to be carried out by or on behalf of a public authority without consent.

As the proposal is for a road and road infrastructure facilities and is to be carried out on behalf of Transport, it can be assessed under Division 5.1 of the *Environmental Planning and Assessment Act 1979*. Development consent from council is not required.

Part of the proposal area is currently located on land reserved under the *National Parks and Wildlife Act 1974* (NPW Act) (refer to Figure 4-1). Development within national park estate cannot proceed by virtue of Section 2.108 of the Transport and Infrastructure SEPP until the land is revoked from the national park estate via an Act of Parliament. This revocation process is currently ongoing (refer to Section 4.2.3).

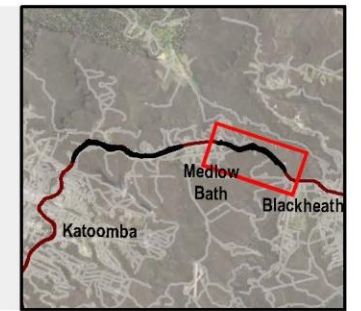
The proposal does not require development consent or approval under State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Planning Systems) 2021 or State Environmental Planning Policy (Precincts – Regional) 2021.

Part 2.2 of the Transport and Infrastructure SEPP 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 the Transport and Infrastructure SEPP (where applicable), is discussed in chapter 5 of this REF.

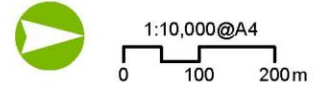


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- The design
- Proposal area
- Proposed Blue Mountains National Park revocation - Great Western Highway Upgrade Program
- Proposed Blue Mountains National Park revocation boundary - Medlow Bath to Blackheath section
- Blue Mountains National Park



Source: Aurecon, Mott MacDonald, LPI, Nearmap



Projection: GDA2020 MGA Zone 56

Great Western Highway East **Review of Environmental Factors**
FIGURE 4-1: Proposed Blue Mountains National Park revocation boundary

State Environmental Planning Policy (Biodiversity and Conservation) 2021

In March 2022, the SEPPs were updated. The former State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 and State Environmental Planning Policy (Koala Habitat Protection) 2021 were incorporated into the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

The SEPP (Biodiversity and Conservation) 2021 relates to biodiversity and conservation planning matters.

Koala habitat protection 2021

Chapter four of the SEPP aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline. Part 4.2 of the SEPP regulates impact on koala habitats during development assessment by council.

Section 4.4 of the SEPP identifies that the proposal lies on land on which Chapter four of the SEPP is applicable (as it is within the Blue Mountains local government area (LGA)). However, the proposal does not require development consent from council as it would be assessed under Division 5.1 of the EP&A Act.

Regardless the Biodiversity Assessment Report (BAR) has been undertaken for the proposal (refer to Appendix E) and is summarised in Section 6.2. The BAR notes that koalas were surveyed and not identified within the proposal area.

Sydney drinking water catchment

Chapter eight of the SEPP relates to the use of land within the Sydney drinking water catchment. Section 8.8 of the SEPP requires consideration of whether or not an activity to which Division 5.1 of the EP&A Act applies will have a neutral or beneficial effect on water quality before carrying out the activity. A neutral or beneficial effect assessment is included in Appendix C. The assessment concludes that the proposal would have a beneficial effect on water quality.

State Environmental Planning Policy (Resilience and Hazards) 2021

In March 2022, the SEPPs were updated. The former State Environmental Planning Policy No 55—Remediation of Land was incorporated into the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter four of the State Environmental Planning Policy (Resilience and Hazards) 2021 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment –

- by specifying when consent is required, and when it is not required, for a remediation work, and
- by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and
- by requiring that a remediation work meet certain standards and notification requirements.

An assessment of soils and contaminated land has been carried out for the proposal as part of the REF (refer to Section 6.2). The investigation identified that the potential for contaminants of potential concern to be present at concentrations above applicable Tier I screening values in the proposal area is low to moderate. A Construction Environmental Management Plan will be prepared to identify safeguards and mitigation measures to be followed during construction of the proposal (refer to Section 7). A specific remediation action plan is not required for any site in the proposal area.

4.1.2 Local Environmental Plans

Blue Mountains Local Environment Plan 2015

The proposal is within the Blue Mountains LGA, which is subject to the *Blue Mountains Local Environment Plan 2015* (LEP). Local development control and land use zoning and planning in the LGA is governed under the LEP and supporting document controls plans (DCPs). As the proposal is permitted without consent under the Transport and Infrastructure SEPP (refer to Section 4.1.1), the consent requirements of the LEP do not apply to the REF. The proposal would not impact any specific provisions of the LEP which could be considered relevant to the proposal.

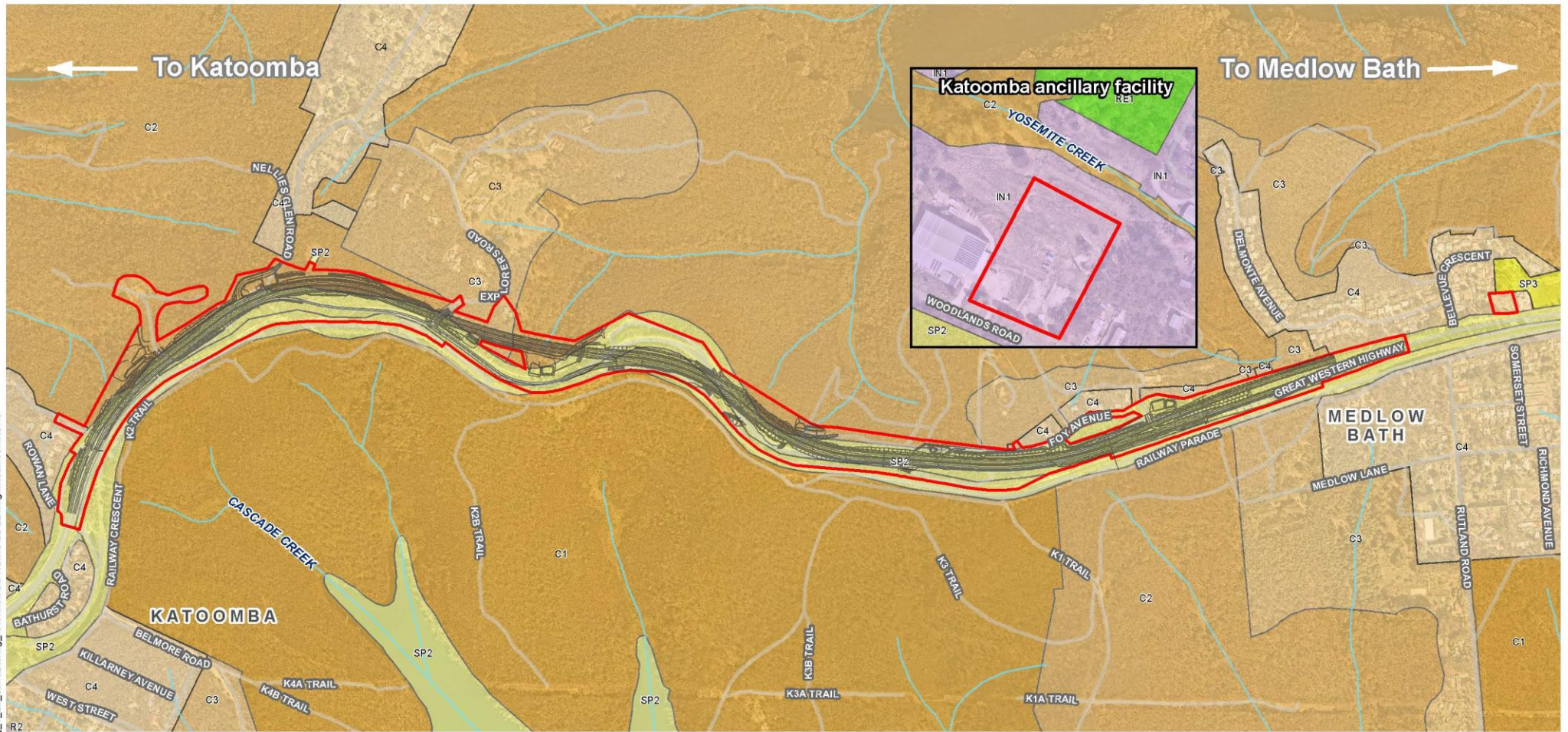
Consultation carried out for the proposal as required by the Transport and Infrastructure SEPP is discussed further in Section 5.4.

The proposal would impact on four local heritage items listed on the Blue Mountains LEP. These are Pulpit Hill and environs, Stone Arrangements, Explorer's Tree and environs and Bonnie Doon Reserve. The impacts on these local heritage items are discussed and assessed in Section 6.4.3 of this REF. Table 4-1 outlines the land use zones within the study area and the consistency of the proposal with the objectives of each zone. The land zones are mapped in Figure 4-2a-b.

Table 4-1 Consistency of proposal with LEP zones

Zone	Objectives of zone	Consistency of proposal with objectives
SP2 – Infrastructure	<ul style="list-style-type: none"> To provide for infrastructure and related uses. To prevent development that is not compatible with or that may detract from the provision of infrastructure. 	The proposal would be consistent with the zone objectives as it is major road infrastructure. Roads are permitted with consent in this land use zone.
C1 – National Parks and Nature Reserves	<ul style="list-style-type: none"> To enable the management and appropriate use of land that is reserved under the NPW Act or that is acquired under Part 11 of that Act. To enable uses authorised under the NPW Act. To identify land that is to be reserved under the NPW Act and to protect the environmental significance of that land. 	The proposal would not be consistent with the zone objectives to protect the environmental significance of land reserved under the NPW Act. Transport is separately in the process of negotiating the revocation of part of the Blue Mountains National Park which lies within the study area. The area which is proposed to be revoked would be rezoned to SP2 – Infrastructure, meaning that the proposal would be consistent with the new land zone (refer to the previous row).
C2 – Environmental Conservation	<ul style="list-style-type: none"> To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. To prevent development that could destroy, damage or otherwise have an adverse effect on those values. To encourage land restoration works on disturbed bushland areas. To restrict the development of private land that would be inappropriate because of physical characteristics or high bush fire hazards, but only where less restricted development is permitted elsewhere on the land due to split zoning. To maintain biodiversity in the Blue Mountains. 	While the proposal conflicts with many of the objectives of this land use zone, the selection of a preferred option considered outcomes that would minimise environmental impacts. However, roads are permitted with consent in this land use zone. The reestablishment of the Pulpit Hill heritage interpretation area on Nellies Glen Road would protect the high cultural value of this location. The installation of concrete twin bridges over the valley from Pulpit Hill near Explorers Road would minimise the amount of affected vegetation in this land zone. This REF assesses the potential impacts on environmentally sensitive areas and scenic quality and provides safeguards to minimise potential impacts.

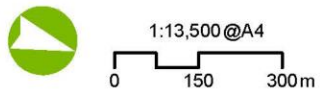
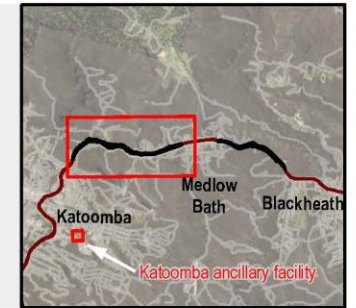
Zone	Objectives of zone	Consistency of proposal with objectives
C3 – Environmental Management	<ul style="list-style-type: none"> • To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values. • To provide for a limited range of development that does not have an adverse effect on those values. • To protect the natural bushland buffer between towns, to avoid ribbon development and to conserve vistas of bushland obtained from public places and the Blue Mountains National Park. • To ensure that the form and siting of buildings, colours, landscaping and building materials are appropriate for, and harmonise with, the bushland character of the area. • To encourage landscaping and regeneration of natural bushland in areas with sparse tree or canopy cover. 	<p>While the proposal conflicts with many of the objectives of this land use zone, the selection of a preferred option considered outcomes that would minimise environmental impacts. However, roads are permitted with consent in this land use zone.</p> <p>The installation of concrete twin bridges over the valley from Pulpit Hill near Explorers Road would minimise the amount of affected vegetation in this land zone.</p> <p>This REF assesses the potential impacts on environmentally sensitive areas and scenic quality and provides safeguards to minimise potential impacts.</p>
C4 – Environmental Living	<ul style="list-style-type: none"> • To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values. • To ensure that residential development does not have an adverse effect on those values. • To preserve and re-establish native bushland in those areas that exhibit a predominantly bushland character, where consistent with the protection of assets from bush fire. • To ensure that the form and siting of buildings are appropriate for, and harmonise with, the bushland character of the locality. 	<p>While the proposal conflicts with many of the objectives of this land use zone, the selection of a preferred option considered outcomes that would minimise environmental impacts. However, roads are permitted with consent in this land use zone.</p> <p>This land use zone occupies a small part of the study area.</p> <p>This REF assesses the potential impacts on environmentally sensitive areas and scenic quality and provides safeguards to minimise potential impacts.</p>



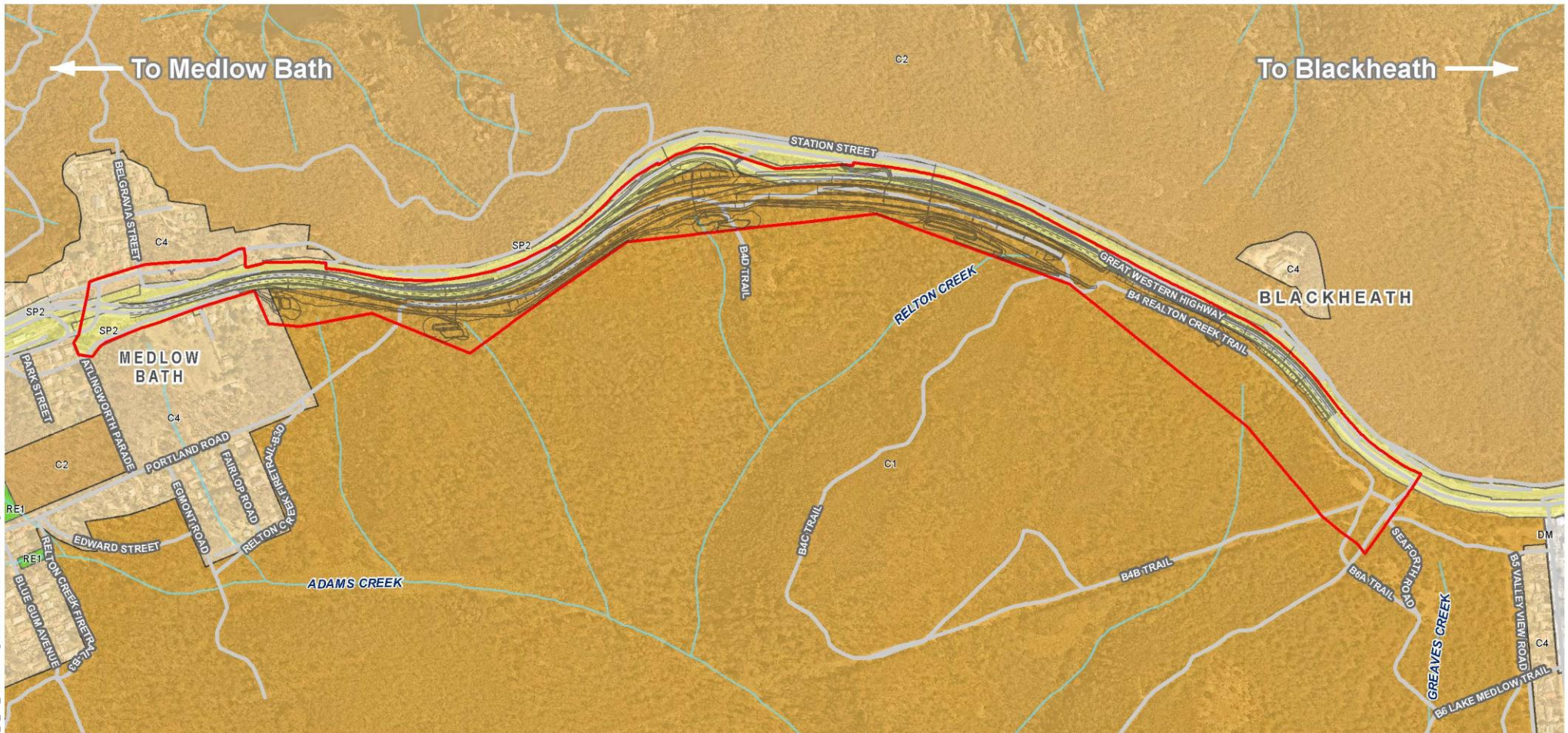
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|--------------------|---------------------------------------|--|----------------------------|
| | The design | | R2 Low Density Residential |
| | Proposal area | | SP2 Infrastructure |
| Land zoning | | | SP3 Tourist |
| | C1 National Parks and Nature Reserves | | IN1 General Industrial |
| | C2 Environmental Conservation | | RE1 Public Recreation |
| | C3 Environmental Management | | |
| | C4 Environmental Living | | |

Source: Aurecon, Mott MacDonald, LPI, Nearmap



Projection: GDA2020 MGA Zone 56



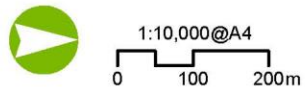
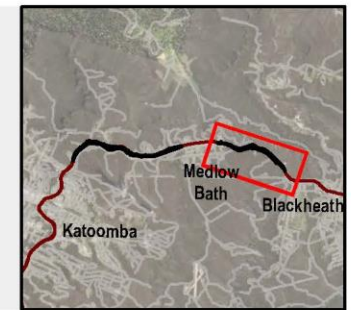
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- The design
- Proposal area
- SP2 Infrastructure
- DM Deferred Matter

Land zoning

- C1 National Parks and Nature Reserves
- C2 Environmental Conservation
- C4 Environmental Living
- RE1 Public Recreation

Source: Aurecon, Mott MacDonald, LPI, Nearmap



Projection: GDA2020 MGA Zone 56

4.2 Other relevant NSW legislation

4.2.1 Roads Act 1993

The objects of the *Roads Act 1993* (Roads Act) are to govern the use and access to public roads, manage opening and closing of public roads as well as provide classification of roads and identify the functions of road authorities.

The Roads Act states that a road authority may carry out road work on any public road for which it is the relevant road authority and on any other land under its control (Division 1, Clause 71). If the road is not under the control of the authority undertaking the works, then consent is required. Section 138 of the Roads Act requires consent to be obtained from the appropriate road authority for the following works to:

- erect a structure or carry out a work in, on or over a public road
- dig up or disturb the surface of a public road
- remove or interfere with a structure, work or tree on a public road
- pump water into a public road from any land adjoining the road
- connect a road (whether public or private) to a classified road.

The proposal is located on both a classified road that is managed by Transport and local roads that are managed by Blue Mountains City Council. A Road Occupancy Licence would be required from the relevant roads authority by the contractor prior to work on public roads and any temporary road closures during construction of the proposal.

4.2.2 Crown Lands Management Act 2016

The Crown Land Management Act 2016 provides the legislative framework for the administration of land that is vested in the Crown in NSW. Ministerial approval is required to grant a lease, licence, permit, easement or right of way over a Crown Reserve. Part of the proposal is located on Crown Land located along the Great Western Highway.

Acquisition and leasing of Crown land would be required for the proposal. Land acquisition details are provided in Section 3.6.

Transport would require approval from the Department of Planning and Environment (DPE) for the acquisition and leasing of Crown land.

4.2.3 National Parks and Wildlife Act 1979

The NPW Act provides the basis for legal protection and management of National Parks estates and Aboriginal sites and objects in NSW. The NPW Act reserves land as historic sites to protect and conserve areas associated with a person, event or historical theme, or containing a building, place, feature or landscape of cultural significance. The purpose of the NPW Act is the conservation of:

- nature, including habitat, ecosystems, biological diversity, landforms and landscapes
- objects, places or features of cultural value within the landscape including:
 - places, objects and features of significance to Aboriginal people
 - places of social value to the people of NSW
 - places of historic, architectural or scientific significance.

As indicated in Section 4.1.1, part of the Medlow Bath to Blackheath section is on land reserved under the NPW Act being the Blue Mountains National Park. Where a new non-permissible activity or development is proposed by another party and requires the use of National Parks and Wildlife Service land, the park boundary can be re-defined to exclude the proposed development. If not, the development cannot proceed as it would encroach upon the park. For the land to be transferred to Transport under Part 11 of the NPW Act, it would need to be revoked from the gazetted park by an Act of Parliament.

Transport submitted a proposal to revoke a section of National Park estate in mid-2021. The submission addresses the requirements of NSW National Parks and Wildlife Service (NPWS) *Revocation, recategorisation and road adjustment policy*, including an outline of the potential impacts of the revocation. A compensation package will also be negotiated with NPWS.

The NPW Act sets out permits and consent requirements should Aboriginal heritage items and/or places be affected. There are no known Aboriginal heritage items located near the proposal area. An Aboriginal cultural heritage assessment was completed to inform the REF and is summarised in Section 6.8. The assessment concluded that the proposal would be unlikely to impact Aboriginal cultural heritage values and that an AHIP will not be required.

4.2.4 Heritage Act 1977

The *Heritage Act 1977* (Heritage Act) is designed to protect both known heritage items (such as standing structures) and items that may not be immediately obvious (such as potential archaeological remains or 'relics'). Different parts of the Heritage Act deal with different situations and types of heritage and the Act provides a number of mechanisms by which items and places of heritage significance may be protected.

Approval under Section 57(1) is required for works to a place, building, work, relic, moveable object, precinct, or land listed on the State Heritage Register. An excavation permit is required under Section 139 to disturb or excavate any land containing or likely to contain a relic. The Statement of Heritage Impact for the proposal has identified the need for an excavation permit if direct impact to the local heritage listed 'Pulpit Hill and environs' item would occur (refer to Section 6.4). The need to apply for a permit under Section 140 of the Heritage Act due to archaeological test excavations as well as general construction work on the site will be confirmed during detailed design. However, it is anticipated that the test excavations would be able to proceed without a Section 140 permit under Section 139(4)(d) of the Heritage Act.

Section 170 of the Heritage Act requires that culturally significant items or places managed or owned by Government agencies are listed on the departmental Heritage and Conservation Register (Section 170 Register). Information on these registers has been prepared in accordance with Heritage Division guidelines.

The proposal would impact on the Greater Blue Mountains Area – Additional Values, which has been nominated for listing on the State Heritage List, but is not in itself a listed item.

Further information is provided in Section 6.4 and Appendix F.

4.2.5 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) became operational in August 2017 to replace the *Threatened Species Conservation Act 1995*. The BC Act promotes the maintenance of a healthy, productive and resilient environment. The BC Act focuses on biodiversity conservation through ecologically sustainable development.

The BC Act applies to the proposal through the requirement to avoid, minimise and offset the impacts of proposed development and land use changes on biodiversity. The proposal would consider potential impacts to biodiversity values and biodiversity and the need for any biodiversity offsets.

The biodiversity assessment report (Appendix E) carried out for this assessment is summarised in Section 6.3 and has considered ecologically endangered communities and threatened species that have a likelihood of or were found to be present in the proposal area. The assessment concluded that the proposal is not likely to significantly impact threatened species or ecological communities or their habitats. It also outlines the biodiversity offset credit liability for the proposal that has been calculated to offset the unavoidable impacts of the proposal.

4.2.6 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) aims to protect, restore and enhance the quality of the environment in NSW, reduce the risks to human health and prevent degradation to the environment. The POEO Act outlines offences relating to land, water, air and noise pollution and includes a duty to report pollution incidents.

Under the provisions of Part 5.7 of the POEO Act, Transport is required to notify the EPA if a 'pollution incident' occurs that causes or threatens 'material harm' to the environment.

Under Part 3.2 of the POEO Act, an environmental protection licence (EPL) is required for scheduled activities or scheduled development work as defined in Schedule 1.

Schedule 1, Clause 35 (road construction) is relevant to the proposal. Road construction is defined by Clause 35(1) as the construction, widening or re-routing of roads and related construction works, but does not apply to the maintenance or operation of any such road.

Road construction is considered a scheduled activity under Clause 35(3)(a)(ii) where extraction of more than 150,000 tonnes of materials is proposed over the life of the proposal. The Katoomba to Medlow Bath section is expected to require extraction of about 406,000 tonnes of material and the Medlow Bath to Blackheath section is expected to require extraction of about 91,000 tonnes of material. This would require the Katoomba to Medlow Bath section to be carried out under an EPL under Clause 35(3)(b)(iii), which would be held by the construction contractor.

4.2.7 Biosecurity Act 2015

The *Biosecurity Act 2015* (Biosecurity Act) covers all biosecurity risks, including pest animals, plant diseases and noxious weeds and introduces the legally enforceable concept of a General Biosecurity Duty.

As outlined in Section 6.2 of this REF, a number of invasive species are present in the proposal area.

Management measures have been recommended to manage these invasive species in accordance with the requirements of the Biosecurity Act (refer to Section 6.3.4). Appropriate biosecurity controls would be put in place for the proposed works to minimise the risk of weed transfer.

4.2.8 Land Acquisition (Just Terms Compensation) Act 1991

The *Land Acquisition (Just Terms Compensation) Act 1991* (Land Acquisition Act) applies to the acquisition of land (by agreement or compulsory process) by a public authority authorised to acquire the land by compulsory process. It provides a guarantee that, when a public authority requires the acquisition of land, the amount of compensation would not be less than the market value of the land.

The Land Acquisition Act applies to the acquisition of any land required for the proposal. Property acquisition is further discussed in Section 3.6.

4.2.9 Rural Fires Act 1997

The *Rural Fires Act 1997* (Rural Fires Act) aims to prevent, mitigate and suppress bushfires and protect persons, property, infrastructure and the environment from fire-related damage.

Part of the proposal area, especially on land currently reserved under the NPW Act as the Blue Mountains National Park, is located on Vegetation Category 1 high risk bushfire prone land. Other parts of the proposal area are located on Vegetation Category 2 low risk bushfire prone land and bushfire buffer zones. The proposal is consistent with bush fire management plans and would not constrain the objectives of protection of life, property and the environment as per the Rural Fires Act (refer to Section 6.10).

4.2.10 Aboriginal Land Rights Act 1983

Through the *Aboriginal Land Rights Act 1983* (Aboriginal Land Rights Act), vacant Crown land not lawfully used or occupied or required for an essential purpose or for residential land, is returned to Aboriginal people (and vested in Aboriginal Land Councils). In accordance with Section 42B of the Aboriginal Land Rights Act, land vested in an Aboriginal Land Council can only be acquired by Transport through an Act of Parliament.

The Katoomba to Medlow Bath section would acquire a lot owned by the Crown that is subject to an undetermined Aboriginal land claim. Part of the Medlow Bath to Blackheath section is adjacent to Aboriginal LALC owned land, but the proposal would not encroach or otherwise disturb the site.

4.2.11 Water Management Act 2000

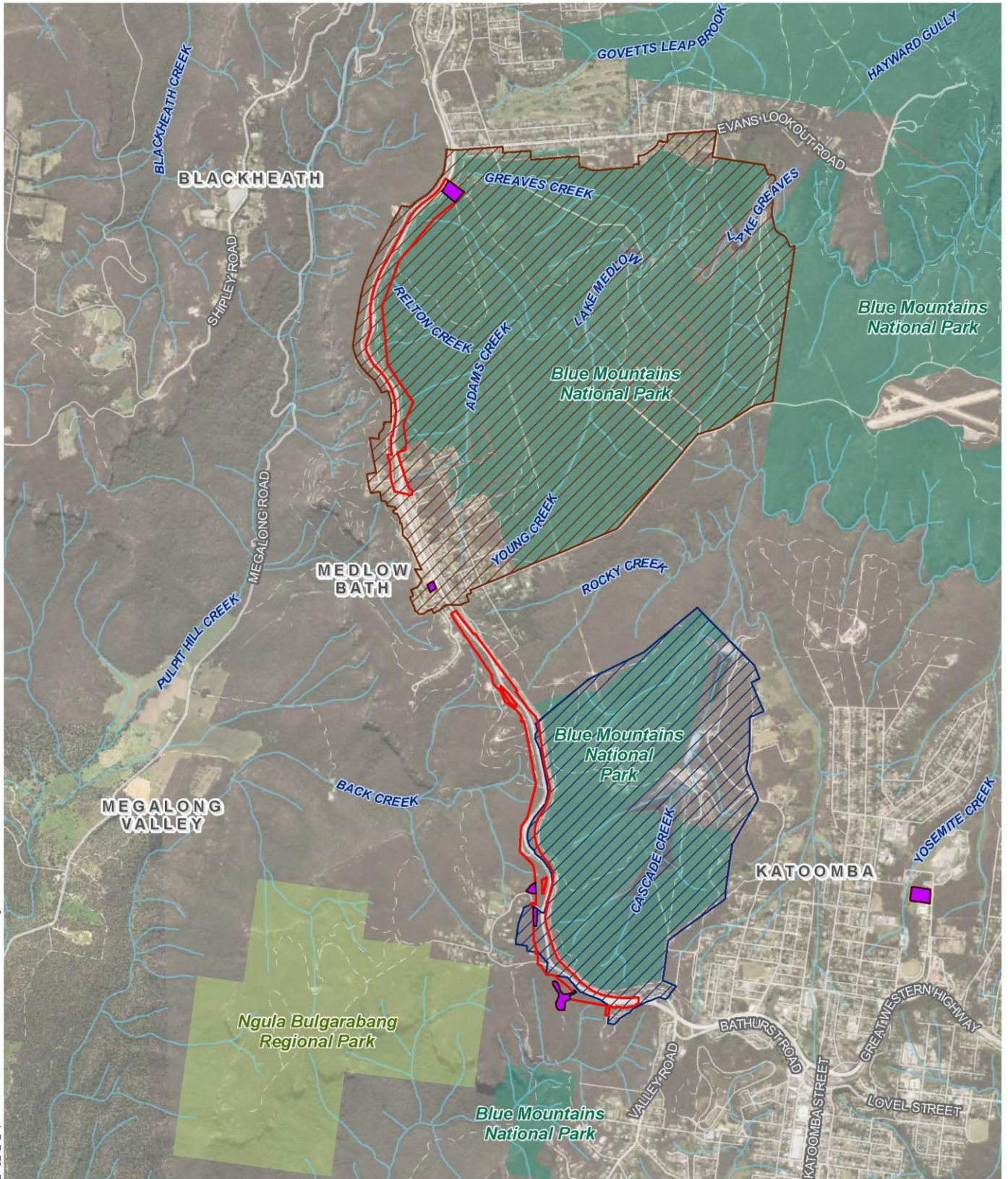
The proposal area is covered by the Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011 and the Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources. It is subject to the provisions of the *Water Management Act 2000* (Water Management Act). The Water Management Act aims to provide for the sustainable and integrated management of the water sources of NSW.

The proposal would require management in line with the Water Management Act, with safeguards and mitigation measures identified in Section 7.2 of this REF.

4.2.12 Water NSW Act 2014

Part of the proposal area is within a declared catchment area under the *Water NSW Act 2014* (Water NSW Act) and within a declared Schedule 1 special area under the *Water NSW Regulation 2020*. The proposal passes through two Special Catchment Areas (refer to Figure 4-3), being the Katoomba special area (in the Katoomba to Medlow Bath section) and the Blackheath special area (in the Medlow Bath to Blackheath section).

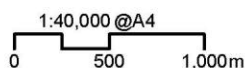
Under Section 50 of the Water NSW Act, notice would need to be given to Water NSW in relation to any road upgrade proposal within the special area. Transport is in consultation with Water NSW about the proposal.



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- Proposal area
- Blackheath Special Catchment Area
- Katoomba Special Catchment Area
- Proposed ancillary facilities
- Blue Mountains National Park
- Ngula Bulgarabang Regional Park
- Watercourses

Source: Aurecon, LPI, DPIE



Projection: GDA2020 MGA Zone 56

Great Western Highway East **Review of Environmental Factors**

FIGURE 4-3: Special Catchment Areas

4.3 Commonwealth legislation

4.3.1 Environment Protection and Biodiversity Conservation Act 1999

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) a referral is required to the Australian Government for proposed actions that have the potential to significantly impact on matters of national environmental significance or the environment of Commonwealth land. These are considered in Appendix A and chapter 6 of the REF.

A referral is not required for proposed road activities that may affect nationally listed threatened species, endangered ecological communities and migratory species. This is because requirements for considering impacts to these biodiversity matters are the subject of a strategic assessment approval granted under the EPBC Act by the Australian Government in September 2015.

Potential impacts to these biodiversity matters are also considered as part of chapter 6 of the REF and Appendix A.

Findings – matters of national environmental significance

The assessment of the proposal's impact on matters of national environmental significance and the environment of Commonwealth land found that there is unlikely to be a significant impact on relevant matters of national environmental significance or on Commonwealth land. Accordingly, the proposal has not been referred to the Australian Government Department of Agriculture, Water and the Environment under the EPBC Act.

Findings – nationally listed biodiversity matters (where the strategic assessment applies)

The assessment of the proposal's impact on nationally listed threatened species, endangered ecological communities and migratory species found that there is unlikely to be a significant impact on relevant matters of national environmental significance. Chapter 6 of the REF describes the safeguards and management measures to be applied.

4.3.2 Other relevant Commonwealth legislation

4.3.3 Native Title Act 1993

The *Native Title Act 1993* (Native Title Act) recognises and protects native title. The Native Title Act covers actions affecting native title and the processes for determining whether native title exists and compensation for actions affecting native title. It establishes the Native Title Registrar, the National Native Title Tribunal, the Register of Native Title Claims and the Register of Indigenous Land Use Agreements, and the National Native Title Register. Under the Native Title Act a future act includes proposed public infrastructure on land or waters that affects native title rights or interest.

A search of the Native Title Tribunal Native Title Vision website was undertaken, with no Native Title claimants identified in the proposal area.

4.4 Confirmation of statutory position

The proposal is categorised as development for the purpose of a road and is being carried out by or on behalf of a public authority.

Transport has commenced a process to revoke a portion of the Blue Mountains National Park. Subject to the revocation being passed by Parliament, the proposal can proceed by virtue of Section 2.108 of Transport and Infrastructure SEPP. The proposal would be permissible without consent. The proposal is not State significant infrastructure or State significant development. The proposal can be assessed under Division 5.1 of the EP&A Act.

Transport for NSW is the determining authority for the proposal. This REF fulfils Transport for NSW's obligation under section 5.5 of the EP&A Act including to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of the activity.