

4 Statutory and strategic planning

This chapter sets out and addresses the current strategic and statutory planning framework applicable to the development of the Bolivia Hill upgrade project.

Planning investigations have sought to outline the State Government's strategic planning direction for NSW and the New England North West Region, and determine the statutory planning framework applicable to land within the study area, including land use zoning, planning permissibility and development approval process.

4.1 Strategic planning framework

The following strategic planning documents provide broad planning principles that aim to guide future development within NSW and more specifically within the New England North West Region.

4.1.1 New South Wales State Plan

NSW 2021-A Plan to Make NSW Number One (NSW 2021), released in September 2011, is the NSW Government's 10-year strategic plan to:

- Rebuild the economy
- Return quality services
- Renovate infrastructure
- Strengthen our local environment and communities
- Restore accountability to government.

The associated *NSW 2021 Baseline Report* sets out available performance data on goals and targets. It provides the foundation for future performance monitoring and public reporting, and provides the technical context for each NSW 2021 target.

Although not specified by the report, the project is consistent with the overall objectives of the State Plan by improving road infrastructure and vehicle safety within the region.

4.1.2 New England North West Strategic Regional Land Use Plan 2012

The *New England North West Strategic Regional Land Use Plan (2012)* has been developed in accordance with the *NSW Strategic Regional Land Use Policy (2012)*, which comprises of multiple initiatives being staged over time to address land use conflict in regional areas.

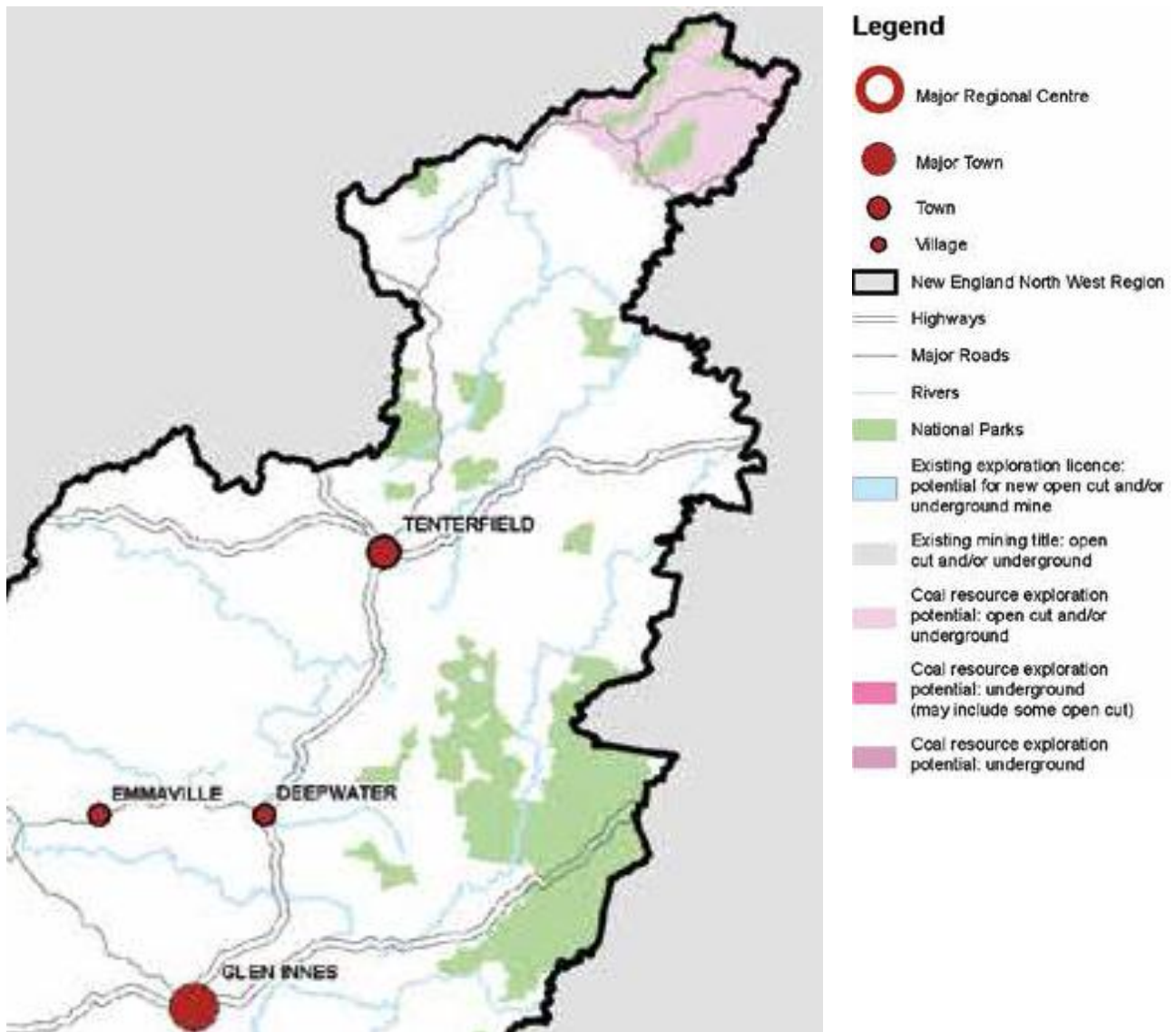
The plan provides a strategic framework for the New England North West region, delivering the necessary context for Government investment priorities, servicing strategies and local planning over the next 20 years.

The plan identifies the following challenges facing growth within the region:

- Balancing agriculture and resource development
- Existing road and rail capacity
- Increase demand for infrastructure
- Increase demand for housing and services
- Natural hazards and climate change
- Protecting the environment and cultural heritage.

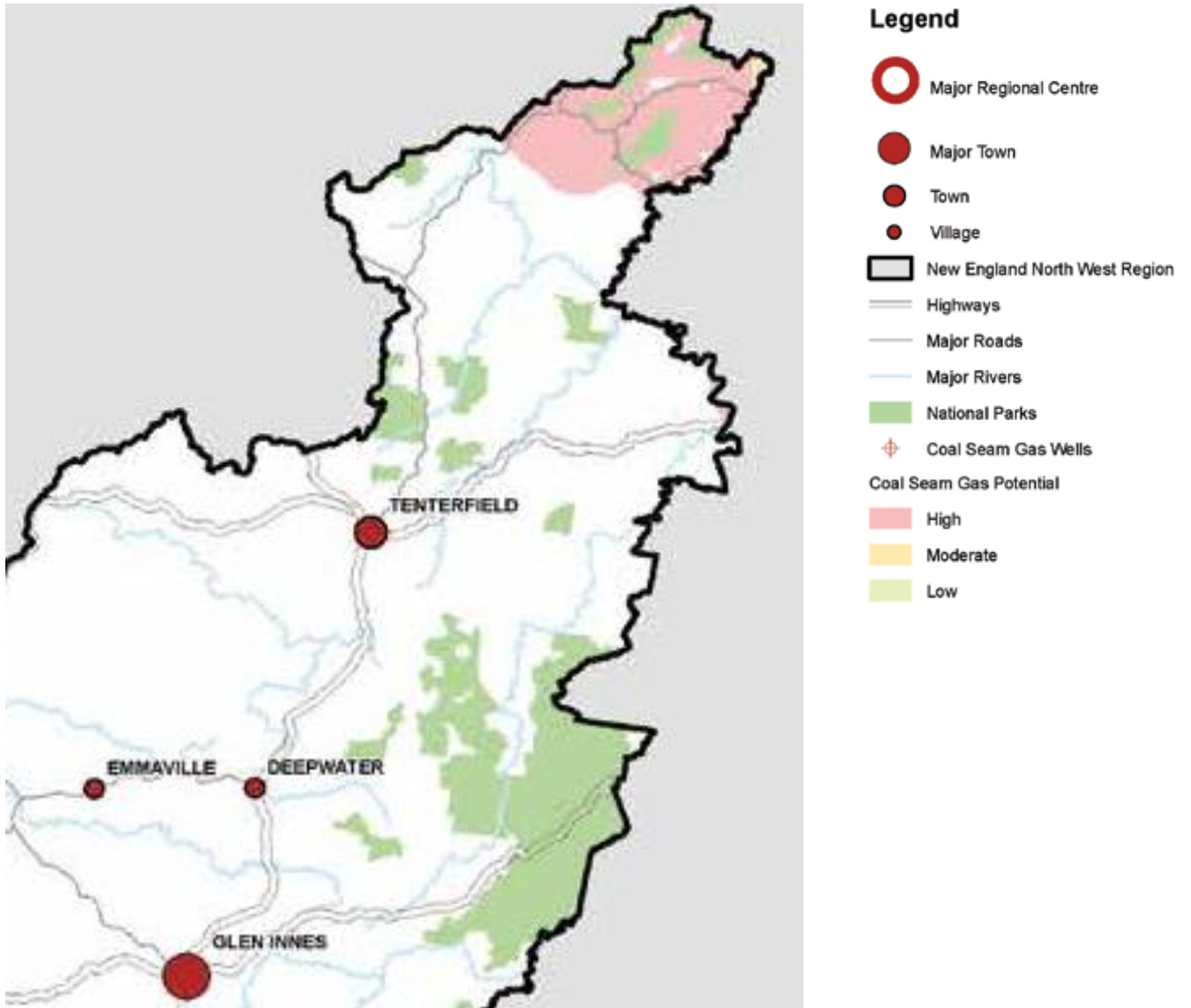
The plan aims to support continued growth within the region and address challenges relating to land use conflict arising as a result of mining activities, having particular regard to the rapid emergence of the coal seam gas mining industry.

To assist in planning for growth and balancing future land uses within the region, land identified as having coal resources, coal gas seam resources, other mining resources and Strategic Agricultural Lands (SAL) uses have been mapped as shown in Figures 4-1, 4-2, 4-3 and 4-4.



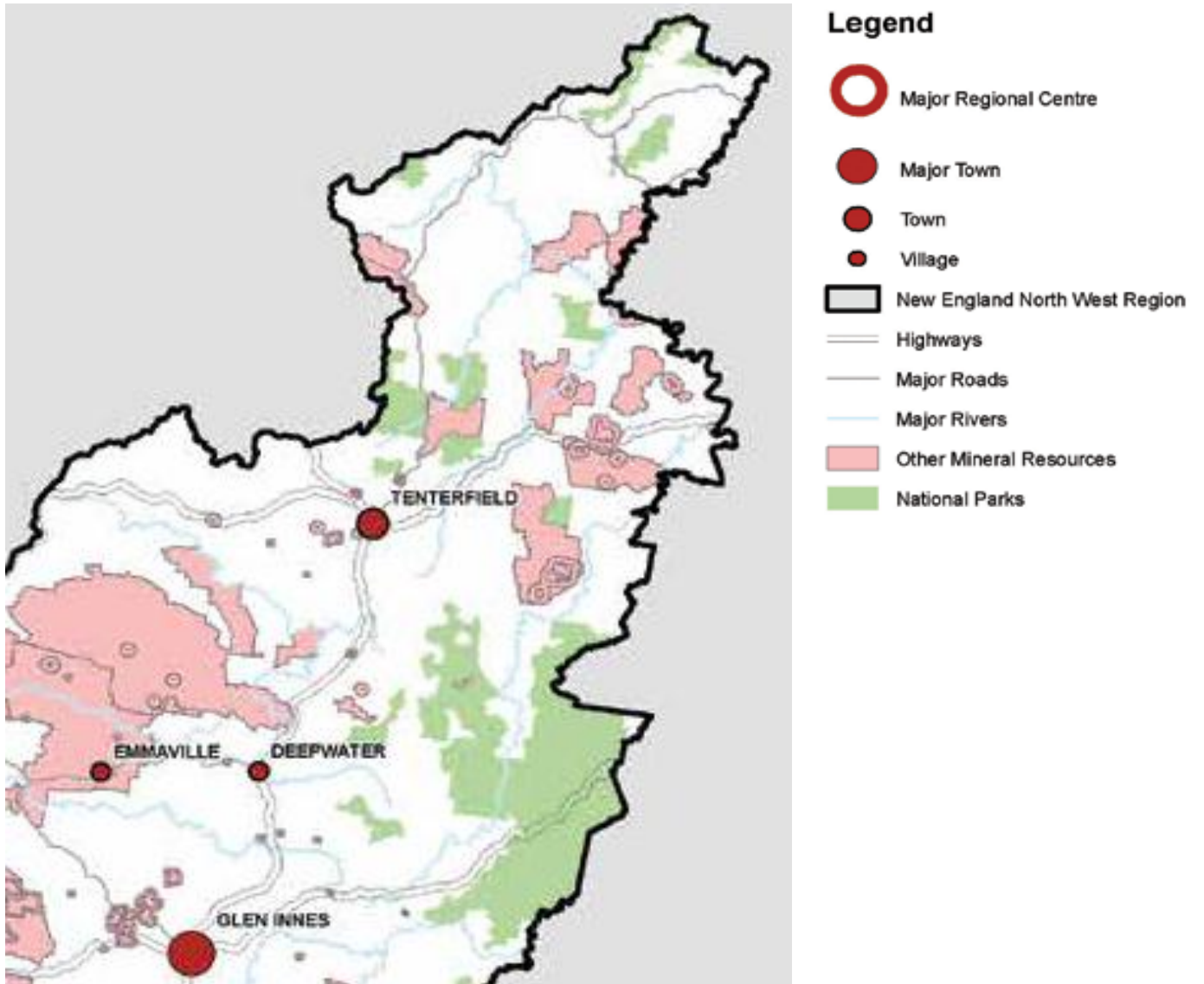
Source: New England North West Strategic Regional Land Use Plan (2012)

Figure 4-1 New England North West Strategic Land Use Plan – Coal Resources



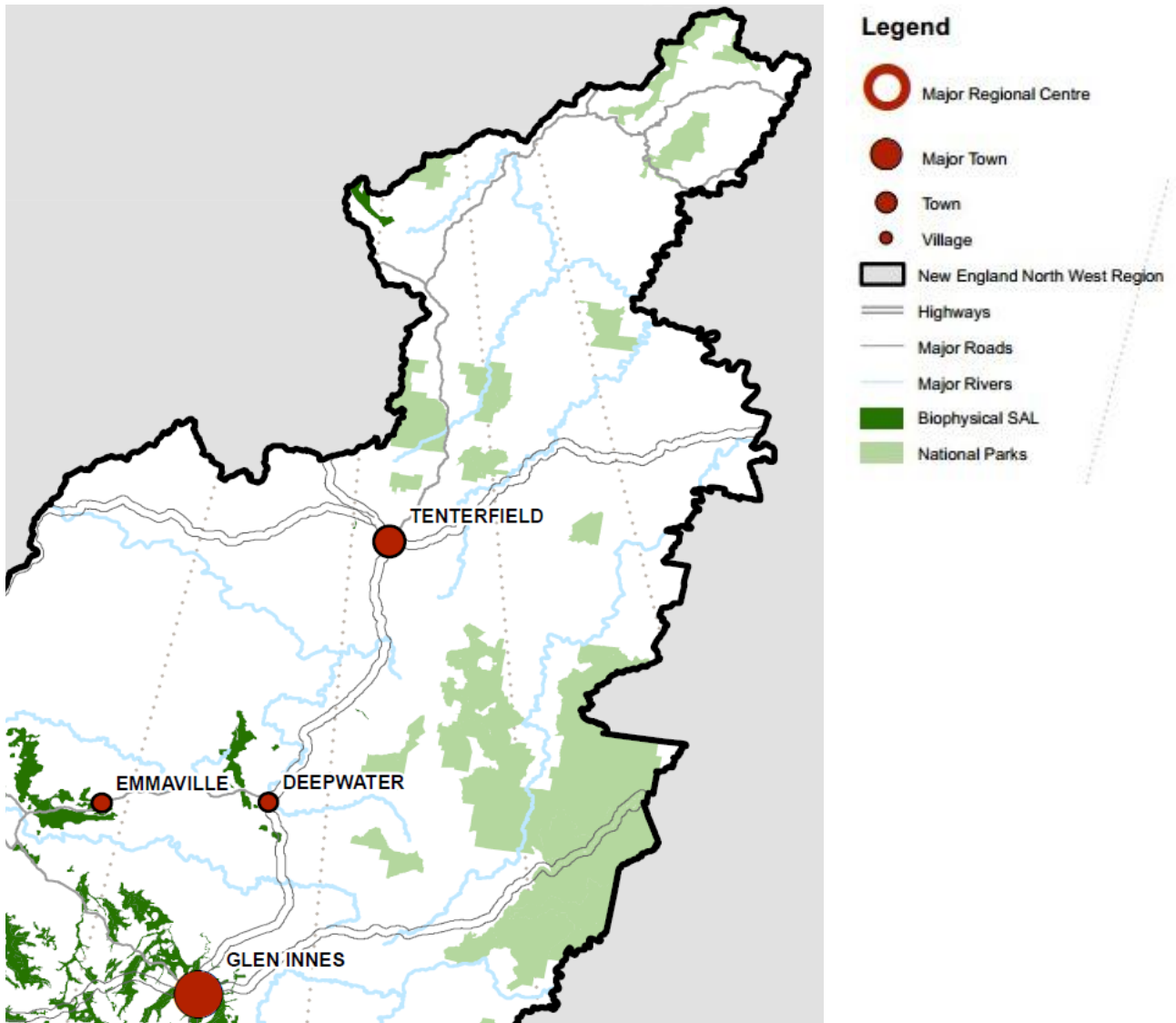
Source: New England North West Strategic Regional Land Use Plan (2012)

Figure 4-2 Strategic Land Use Plan – Coal Seam Gas Resource



Source: New England North West Strategic Regional Land Use Plan (2012)

Figure 4-3 Strategic Land Use Plan – Other Mineral Resources



Source: New England North West Strategic Regional Land Use Plan (2012)

Figure 4-4 Strategic Land Use Plan – Strategic Agricultural Lands

Land within the study area is not identified as having any coal or coal seam gas. It is understood that gold, tin, silver, high quality silica and arsenic were previously mined in the region, however mining locations and details of the previous mining activities are not known. No obvious signs of previous mining activities were observed during inspection of the project study area in October 2012. However, the RMS Report '*HW9 Bolivia Hill Realignment, Preliminary Desktop Study of Geology, Slope Stability, Geotechnical Design and Pavement Design*', dated March 2012, indicates:

'Many small unmapped workings were observed on the ridgeline to the east of the current alignment, and a vertical shaft accessing a 40cm quartz vein hosting minor quantities of sphalerite and traces of chalcopyrite in the adjacent valley to the west of the current alignment'.

The '*New England North West Strategic Regional Land Use*' plan (2012) identifies the New England Highway as performing a vital role in servicing current and future populations within the region. The New England Highway is an important north-south road corridor that connects with other state roads and key centres such as Armidale and Tamworth. The highway also provides a means for regional freight distribution.

Overall, the Bolivia Hill upgrade project is consistent with the NSW Government's strategic direction for the region. Proposed improvements to the New England Highway will assist in servicing future industry and population growth within the region by improving road safety. The project is unlikely to result in conflict between land uses, or inhibit opportunities for agricultural or mining growth.

4.2 Statutory planning framework

The project must address the relevant provisions contained under the following state and local environmental planning instruments.

4.2.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) provides the legal framework and planning and assessment process for consideration of all development within NSW. The Act aims to encourage the proper management, development and conservation of natural and artificial resources to ultimately promote the sharing of responsibility between state and local government and facilitate public involvement in the planning assessment process.

In NSW, there are a number of different systems for the assessment of development proposals. These assessment systems are specifically tailored to cater for varying size, nature and complexity of different project types. These factors will determine which assessment system applies to a particular development.

The assessment systems set out under the Act include:

- State significant assessment system (Part 4 and SEPP)
- Part 3A (now repealed and not accepting new applications)
- Local and regional development (generally Part 4)
- Part 5.

Most development is assessed under Part 4 of the Act. To be approved under the Part 4 system, development must be permitted with consent under the relevant environmental planning instrument. Assessments under Part 4 are undertaken in accordance with state and local planning provisions.

SEPP (State and Regional Development) 2011 classifies development over a certain size or located in a sensitive environmental area as State Significant Development (SSD) or State Significant Infrastructure (SSI). SSD is assessed by the Minister under Part 4 (Division 4.1) of the Act (previously Part 3A now repealed). Both SSD and SSI are assessed by the Department of Planning and Infrastructure and determined by the Planning Assessment Commission (PAC).

Part 5 of the EP&A Act applies to development undertaken by a public authority that does not require consent under Part 4. The Part 5 system is commonly used to assess activities such as roads, railways, dredging and forestry works that do not require consent. If these activities are judged by the relevant public authority to significantly effect the environment, then an Environmental Impact Statement (EIS) will need to

be prepared and considered by this authority. Development classified as SSI under SEPP (State and Regional Development) 2011 is assessed under Part 5.1 of the Act.

The proposed development is likely to be determined under Part 5 of the Act, unless the road is developed on land reserved under the *National Parks and Wildlife Act 1974*, in which case development consent would be required under Part 4 as per the provisions under *State Environmental Planning Policy (Infrastructure) 2007*.

It is noted under Section 118 of the National Parks and Wildlife Act that a boundary adjustment for the purpose of a road may be permissible within a nature reserve. An adjustment of the boundary of land is to be made by the Director-General by a notice published in the Gazette.

4.2.2 State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) aims to facilitate the delivery of infrastructure across NSW. This policy overrides other environmental planning instruments, including Local Environmental Plans, and provides specific planning provisions and development controls relating to various types of infrastructure.

Division 17 of SEPP Infrastructure provides provisions relating to roads and traffic. Under Clause 94, development for the purpose of a road (or road infrastructure facility) may be carried out on behalf of a public authority without consent on any land regardless of local zoning provisions.

Notwithstanding this, the development of a road may not be carried out without consent on land reserved under the *National Parks and Wildlife Act 1974* unless the development:

- “(a) is authorised by or under the *National Parks and Wildlife Act 1974*, or
- (b) is, or is the subject of, an existing interest within the meaning of section 39 of that Act, or
- (c) is on land to which that Act applies over which an easement has been granted and is not contrary to the terms or nature of the easement.”

In accordance with this provision, roads may be developed under SEPP Infrastructure without consent on any land except land that is reserved under the *National Parks and Wildlife Act 1974*.

Given part of the study area is occupied by the Bolivia Hill Nature Reserve (reserved under the *National Parks and Wildlife Act 1974*) further investigations will be required to determine whether an easement (or other agreement/provision) exists that would allow RMS to develop a road through Bolivia Nature Reserve without consent. In lieu of any authorised agreement between RMS and the National Parks and Wildlife Authority, a new road on land occupied by the Nature Reserve cannot be undertaken without consent under SEPP Infrastructure and would therefore require consent under Part 4 of the Act.

Development permitted without consent under SEPP Infrastructure requires assessment under Part 5 of the Act. It cannot be determined at this stage whether an EIS is required.

4.2.3 State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 SEPP (State and Regional Development) identifies development classified as State Significant Development (SSD) and State Significant Infrastructure (SSI).

Development assessed under Part 5 of the Act is considered SSI under Schedule 3 of SEPP (State and Regional Development) 2007 only if the preparation of an EIS is required, as outlined below:

“1 General public authority activities

- (1) *Infrastructure or other development that (but for Part 5.1 of the Act and within the meaning of Part 5 of the Act) would be an activity for which the proponent is also the determining authority and would, in the opinion of the proponent, require an environmental impact statement to be obtained under Part 5 of the Act.*
- (2) *This clause does not apply to development if the proponent is a council or county council.*
- (3) *This clause does not apply to development specified in any other clause of this Schedule.”*

Accordingly, the project will not be classified as SSI unless an EIS is required.

4.2.4 Tenterfield Local Environmental Plan 1996

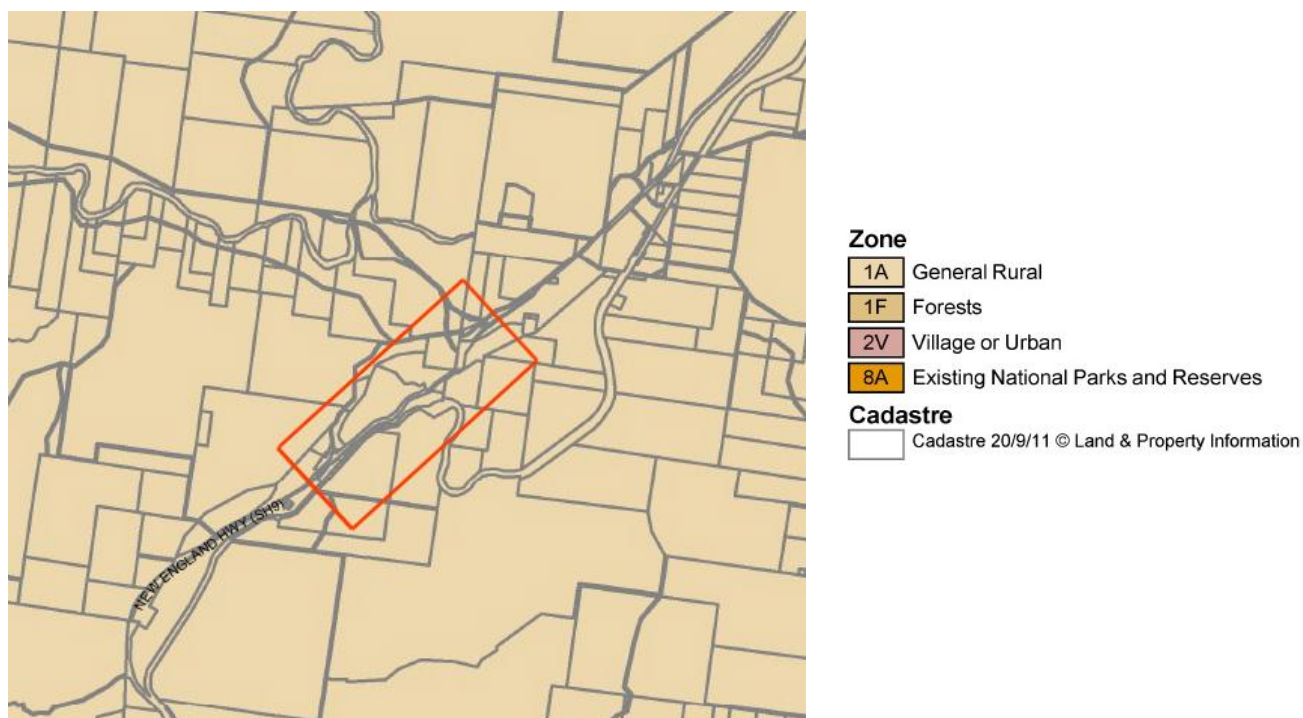
4.2.4.1 Zoning

Land within the study area is zoned 1(a) General Rural under *Tenterfield Local Environmental Plan (LEP) 1996* as shown in **Figure 4-5**.

The objectives of this zone are:

- “(a) to promote efficient sustainable agricultural utilisation of agricultural land, particularly prime crop or pasture land;
- (b) to protect or conserve:
 - (i) soil stability by controlling development in accordance with soil capability;
 - (ii) forests of commercial value for timber production;
 - (iii) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development to enable the efficient extraction of those deposits;
 - (iv) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is likely to reduce land degradation; and
 - (v) water resources;
- (c) to enable the development of land within this zone for purposes that are compatible with the rural character of the land;
- (d) to enable the development of land for other purposes where it can be demonstrated by the applicant that no other land or buildings in the locality could reasonably be used for the proposed purpose and that such a use will not detrimentally affect the amenity of any existing or proposed nearby development.”

Roads are considered ancillary to rural land uses permitted within the 1(a) General Rural zone and therefore meet the zone objectives.



Source: Tenterfield LEP 1996

Figure 4-5 Tenterfield LEP 1996 Zoning Map with study area overlain (in red)

4.2.4.2 Planning permissibility

Development within the 1(a) zone is unrestricted, however, the Council must take into consideration the potential impact of the proposed development having regard to the following provisions under Clause 10 of the LEP 1996:

- (a) *the present use of the land, the potential use of the land for the purpose of agriculture and the potential for sustained agricultural production of any land concerned which is prime crop or pasture land;*
- (b) *vegetation, timber production, land capability (including soil resources and soil stability) and water resources (including the quality and stability of water courses and ground water storage and riparian rights);*
- (c) *the future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials;*
- (d) *the protection of areas of significance for nature conservation or of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including Aboriginal relics and places;*
- (e) *the cost of providing, extending and maintaining public amenities and services to the site of the development; and*
- (f) *future expansion of settlements in the locality.”*

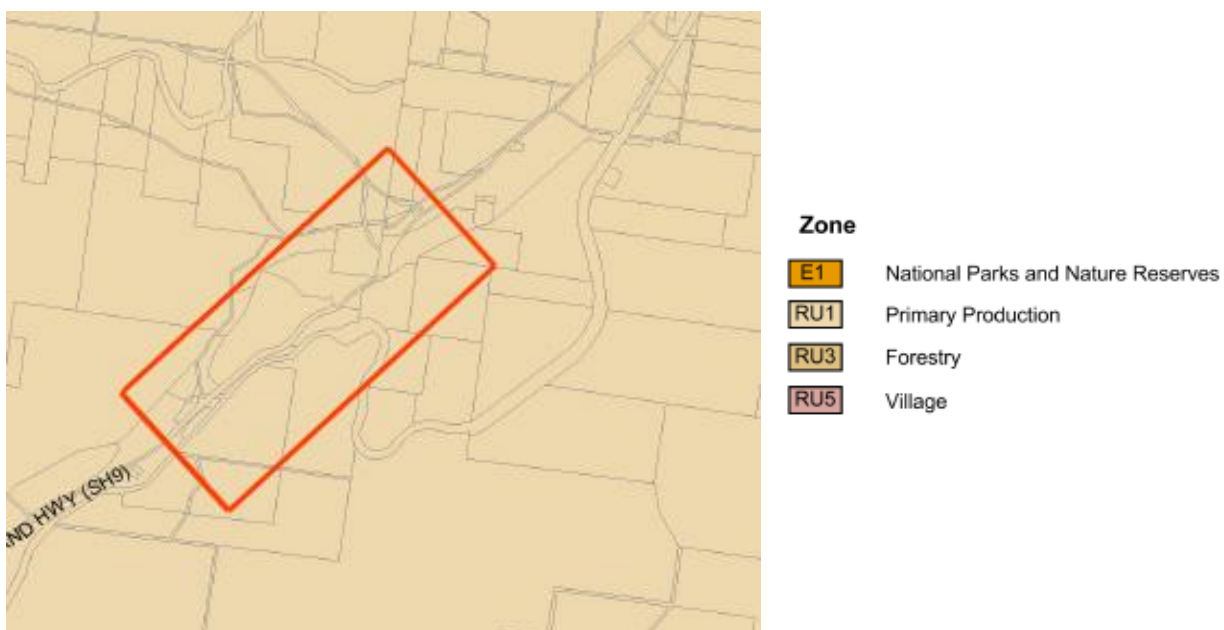
Any new road must consider these provisions. It is envisaged that the proposed road upgrade will meet the Council requirements.

4.2.5 Tenterfield Local Environmental Plan 2013

The *Tenterfield Local Environmental Plan 2013* has been prepared in accordance with the NSW Standard Template for Local Environmental Plans. Public exhibition of the draft LEP ended on 2 November 2012, and the LEP was gazetted on 19 April 2013.

Land within the study area is zoned RU1 – Primary Production as shown in **Figure 4-6**. The development of roads is permitted without development consent on land zoned RU1 under the LEP 2013.

It is important to note that the draft zoning does not recognise the Bolivia Hill Nature Reserve as being zoned separately under E1 National Parks and Nature Reserves.



Source: Tenterfield LEP 2013

Figure 4-6 Tenterfield LEP 2013 Zoning Map with study area overlain (in red)

4.3 Approval process

State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) is the key environmental planning instrument applicable to the development of roads within NSW. The provisions under SEPP Infrastructure prevail over the provisions under Tenterfield LEP 1996.

SEPP Infrastructure permits the development of a road without consent on any land, unless land is occupied by a National Park or Nature Reserve under the *National Parks and Wildlife Act 1974* (unless agreement from the National Parks and Wildlife Authority has been obtained). Accordingly, any options that propose to develop road on land within the bounds of the Bolivia Hill Nature Reserve cannot be undertaken without consent under SEPP Infrastructure and will require consent under Part 4 of the *Environmental Planning and Assessment Act 1979* as noted in **Section 4.2.1**.

Development permitted without consent under SEPP Infrastructure will require assessment under Part 5 of the Act. Assessments under Part 5 are administered by the relevant public authority (in the case of this project, RMS) and require the preparation of a *Review of Environmental Factors*. If the proposal is found to have significant environmental impact then an Environmental Impact Statement (EIS) may be required.

If an EIS is required, then the development is classified as State Significant Infrastructure and will be assessed in accordance with SEPP State and Regional Development under Part 5.1 of the Act. SSI is determined on behalf the Minister by the Planning Assessment Commission (PAC).