



## 4. Land use, planning and approvals





## 4. Land use, planning and approvals

This chapter contains a comprehensive land use and planning assessment to:

- Mitigate potential adverse impacts of the Project on land use in the vicinity of the proposed Jilalan Rail Yard Upgrade Project (JRYUP)
- Ensure that the Project has all the required environmental and planning approvals for JRYUP prior to commencement of construction
- Ensure the compliance of the Project with the relevant Commonwealth and State legislative framework that applies to the Project
- Ensure the compliance of the Project with the relevant state, regional and local planning controls

This chapter addresses the following:

- The existing land tenure and land use environment within, adjacent to and in the vicinity of the project area
- Likely and planned future land use environment within, adjacent to and in the vicinity of the project area during both the construction and operational phases of the Project
- Potential impacts of the Project on land uses within, adjacent to and in the vicinity of the project area
- Preventative strategies and mitigation measures relevant to land use issues

Given the regional and state significance of the JRYUP and the nature of environmental elements traversed, there are a number of approvals which need to be addressed prior to construction commencing. The project approvals are summarised in Section 4.11.11.

The following planning documents were assessed to determine whether the Project will substantively comply with local, regional and state planning objectives:

- *Sarina Shire Planning Scheme (May 2005)* (Sarina Plan)
- *Development and the Conservation of Agricultural Land (State Planning Policy 1/92)*
- *Development in the Vicinity of Certain Airports and Aviation Facilities (State Planning Policy 1/02)*
- *Planning and Managing Development Involving Acid Sulfate Soils (State Planning Policy 2/02)*
- *Mitigating the Adverse Impacts of Flood, Bushfire and Landslide Soils (State Planning Policy 1/03)*
- Draft Mackay-Whitsunday Regional Coastal Management Plan (March 2006)
- Great Barrier Reef Marine Park Zoning Plan

### 4.1 Methodology

#### 4.1.1 Existing tenure

Land tenure within the project area was identified by conducting title searches for all properties. Title searches were conducted for properties directly adjacent to or in the vicinity of the project area and can be found in Appendix G5. Tenure on these properties was also determined through use of the DNRW Digital Cadastre Database (DCDB) mapping.

#### 4.1.2 Existing land use

A land use survey was undertaken in the project area by Connell Hatch in May 2007. This survey also identified sensitive land uses in the vicinity of the project area and the approximate distance of these land uses from the project area.

Surrounding land use has been mapped using aerial photographs, topographic data and planning scheme maps. Several land uses, especially sensitive land uses, were mapped using GPS.

#### 4.1.3 Future land use

In order to determine possible future land use in the vicinity of the project area, it was necessary to:

- Identify potential future land use by reviewing the strategic planning sections of relevant planning documents (Whitsunday Hinterland and Mackay (WHAM) Regional Plan, Sarina Shire Planning Scheme).
- Determine immediate development plans for the area, by obtaining details of existing development applications undergoing the Integrated Development Assessment System (IDAS) process and valid development permits (where the development has not yet occurred) from Sarina Shire Council (SSC).
- Identify future land use by liaising with State Government agencies and SSC staff to discuss general development opportunities within the greater Mackay region, and obtaining information on the potential future use of government owned land.

#### 4.1.4 Potential impacts

The assessment of the potential impacts of the Project included identifying sensitive land uses adjacent to, or in the vicinity of the project area. Potential threatening processes, environmental nuisances or environmental harm due to the construction and/or operation of the Project, if the proper preventative measures or mitigation measures are not carried out, were then identified.

#### 4.1.5 Mitigation measures

The necessary mitigation measures required to prevent the potential impacts of the Project on the surrounding land uses were identified.

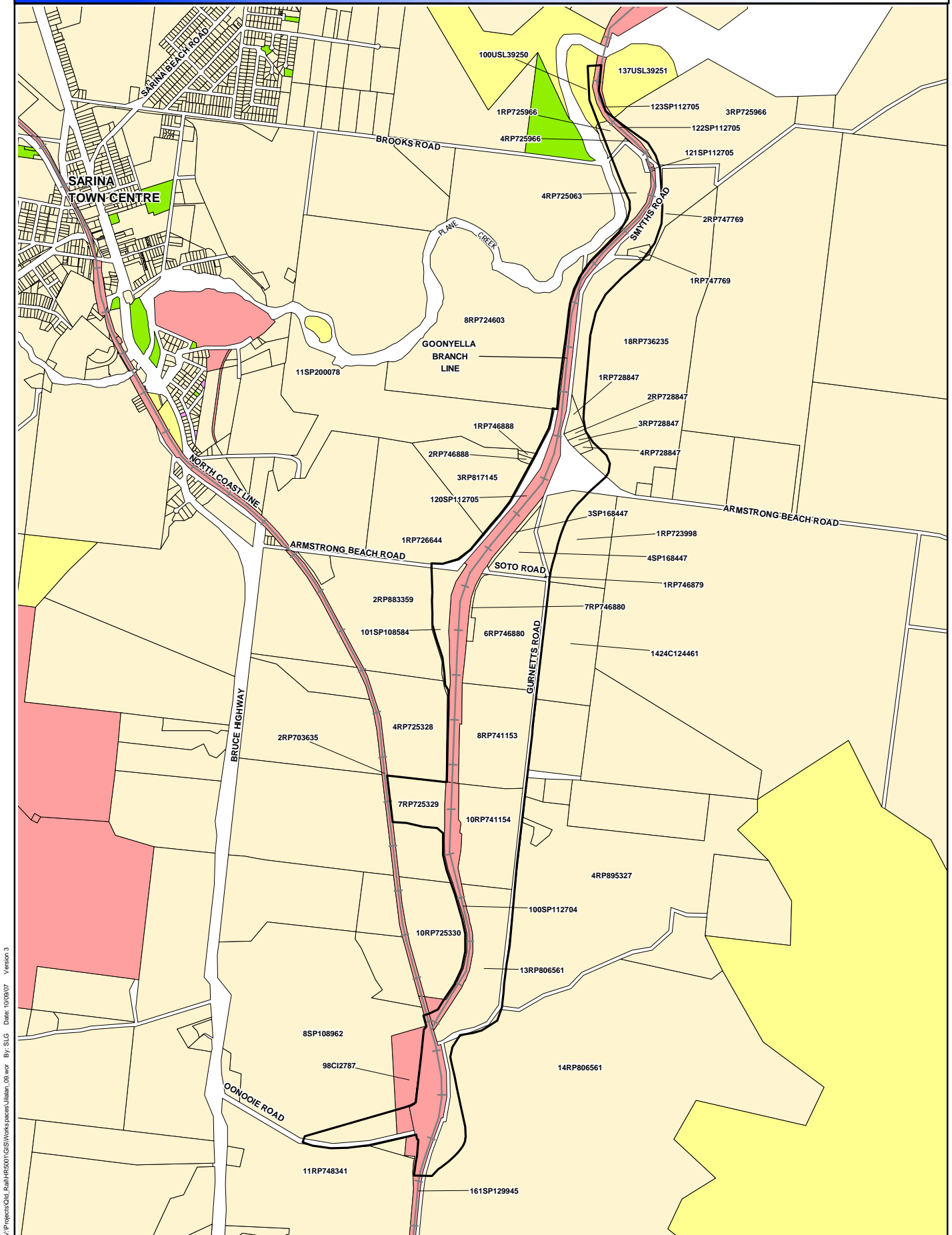
#### 4.1.6 Legislation and project approvals

A review was conducted of the following statutory land use controls that apply to land both within and directly adjacent to the project area:

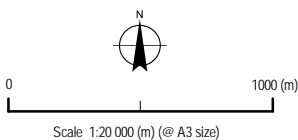
- *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*
- *Native Title Act 1993 (Commonwealth)*
- *State Development and Public Works Organisation Act 1971*
- *Integrated Planning Act 1997*
- *Transport Infrastructure Act 1994*
- *Environmental Protection Act 1994*
- *Coastal Protection and Management Act 1995*
- *Fisheries Act 1994*
- *Vegetation Management Act 1999*
- *Nature Conservation Act 1992*
- *Water Act 2000*

### 4.2 Land tenure

The general land tenure in the greater study area is shown in Figure 4.1. The existing Jilalan Rail Yard is located on land comprising of QR corporate freehold land parcels and existing 'rail corridor land' that is administered by Queensland Transport on behalf of the State and subleased to QR. Table 4.1 summarises the tenure of all properties within the existing rail area.

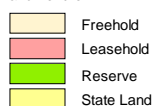


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## LEGEND

### Land Tenure



EXISTING  
LAND TENURE

FIGURE 4.1

**Table 4.1 Summary of land tenure within the existing rail area**

	Lot	Plan number	Tenure	Tenure type	Land ownership/lessee
Jilalan Rail Yard	101	SP108584	Freehold	Fee Simple	Queensland Rail
Jilalan Station and Goonyella Branch Line	120	SP112705	Crown Land	Rail Corridor	Queensland Transport
Goonyella Branch Line (Smyths Road Area)	121				
	122				
	123				
Jilalan Station carpark	7	RP746880	Freehold	Fee Simple	Queensland Rail
North Coast Line (Gurnetts Road Area)	120	SP112704	Crown Land	Rail Corridor	Queensland Transport
North Coast Line (Oonooie Road Area)	161	SP129945	Crown Land	Rail Corridor	
North Coast Line (Oonooie Road Area)	10	RP745035	Freehold	Fee Simple	Queensland Rail

Table 4.2 summarises the tenure of all properties within the proposed rail area.

**Table 4.2 Summary of land tenure within the indicative extent of proposed works**

	Lot	Plan number	Tenure	Tenure type	Land ownership/lessee
Smyths Road Area (West of Goonyella Branch Line)	100	USL39250	Crown Land	USL	State of Queensland
	1	RP725966	Freehold	Fee Simple	Private land owners
	4	RP725063			
Smyths Road Area (East of Goonyella Branch Line)	2	RP7769			
	3	RP7769			
	18	RP736235			
Smyths Road Area (QR owned residential properties)	1	RP728847	Freehold	Fee Simple	Queensland Rail
	2	RP728847			
	3	RP728847			
	4	RP728847			
Road reserve at junction of Gurnetts Road and Armstrong Beach Road		AAP3638	Crown Land	Road Reserve	DNRW
Gurnetts Road Area	1	RP723998	Freehold	Fee Simple	Private land owner
	3	SP168447	Freehold	Fee Simple	Queensland Rail
	4	SP168447			
	1	RP746879			
	6	RP746880	Freehold	Fee Simple	Private land owner
	8	RP741153			
	10	RP741154	Freehold	Fee Simple	Queensland Rail (private lessee)
	13	RP806561			

	Lot	Plan number	Tenure	Tenure type	Land ownership/lessee
West of Goonyella Branch Line/East of North Coast Line	7	RP725329	Freehold	Fee Simple	Queensland Rail (private lessee)
	10	RP725330	Freehold		
Oonooie Road Area (east of Goonyella Branch Line)	14	RP806561	Freehold	Fee Simple	Private land owner
Oonooie Road Area (West of Goonyella Branch Line/South of Oonooie Road)	10	RP745035	Freehold	Fee Simple	Queensland Rail Queensland Transport
	161	SP129945	Sublease	State Leasehold	

### 4.3 Existing land use

The existing Jilalan Rail Yard is primarily centred within an area of cane production and dry land grazing. The dominant land uses within the broader study area are agriculture (sugar and dry land grazing), forestry and fishing. The CSR Ethanol Distillery, Oonooie Facility is located within close proximity to the Project, which ferments molasses and grain to produce ethanol. It also produces fertiliser from waste generated by the Plane Creek Sugar Mill at Sarina. Figure 4.2 illustrates the existing land uses within and adjacent to the project area.

#### 4.3.1 Surrounding land uses

##### Armstrong Beach Road West Area (Bruce Highway – Gurnetts Road)

The section of Armstrong Beach Road between the Bruce Highway and Gurnetts Road provides vehicular access to the existing Jilalan Rail Yard. There are two existing rail crossings along the road, an at grade intersection with the North Coast Line and a grade separated overhead crossing of the Goonyella Branch Line. To the east of the overhead crossing, the road intersects with Smyths Road and Gurnetts Road before continuing on to Armstrong Beach. The land uses south of Armstrong Beach Road are rural sugar cane plantations and rural homesteads which lie adjacent to the North Coast Line and Elizabeth Creek. North of the Armstrong Beach Road is the Sarina Golf Course and an undeveloped woodland area. There is also a small pocket of half a dozen houses west of the intersection of Armstrong Beach Road and the North Coast Line.

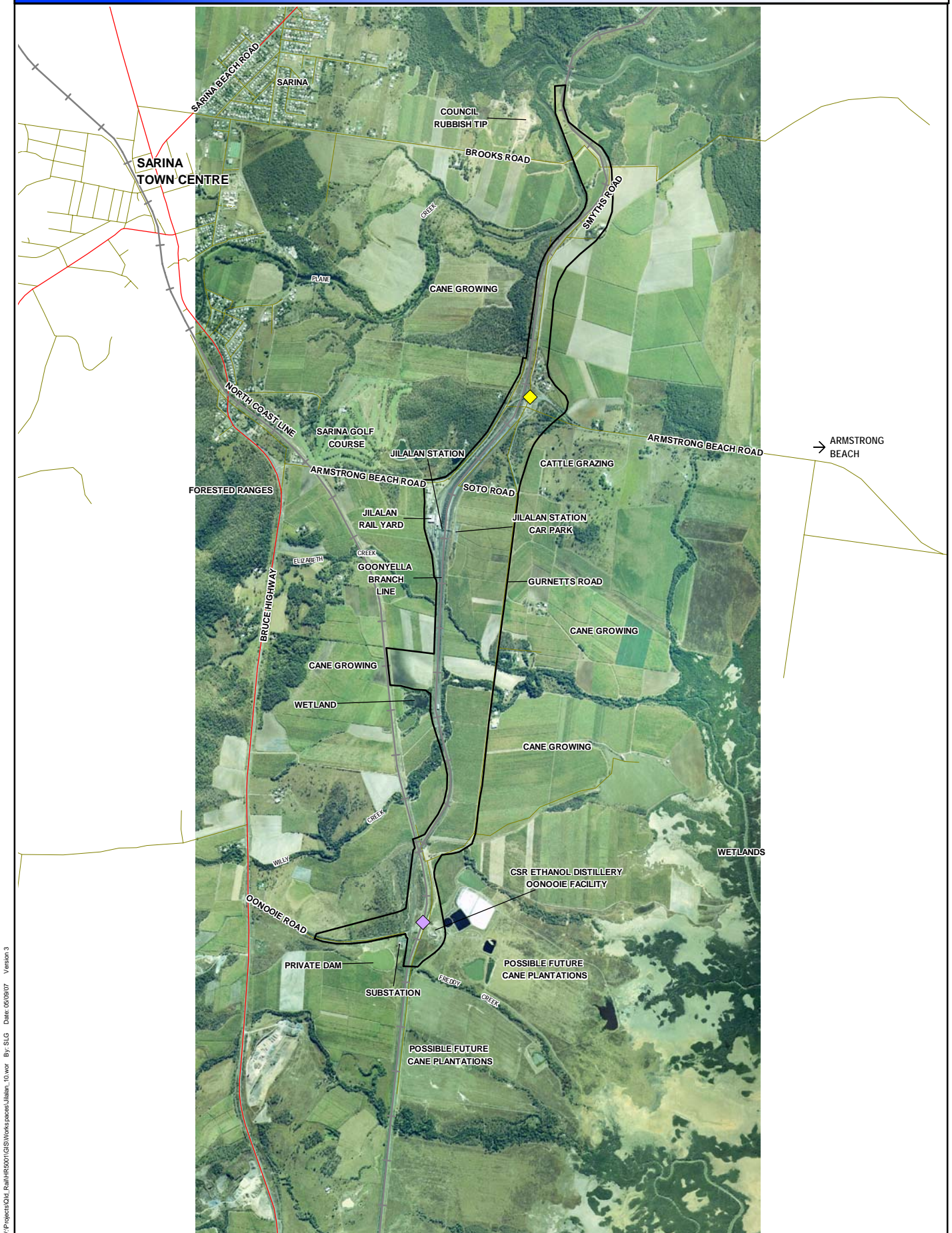
##### Smyths Road Area (including Plane Creek Deviation Area)

Smyths Road runs parallel to the Goonyella Branch Line north of the Jilalan Rail Yard. Near the intersection with Armstrong Beach Road are four QR owned residences, one of which is in a derelict state. East of Smyths Road are a series of sugar cane fields and the main residence of the landowner of most of the land in the area, while west of Smyths Road and the Goonyella Branch Line is a mixture of areas containing undeveloped woodland and cane fields located around Plane Creek. There is an at-grade intersection between the Goonyella Branch Line and Smyths Road. Smyths Road then connects with Brooks Road, which provides access to the SSC rubbish tip and Sarina.

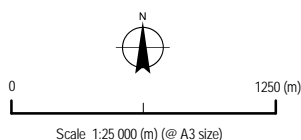
##### Armstrong Beach Road East Area (east of Gurnetts Road)

The section of Armstrong Beach Road between the Bruce Highway and Gurnetts Road provides access to the small coastal community of Armstrong Beach. On both sides of Armstrong Beach Road the land is predominantly used for grazing with several rural homesteads.





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## LEGEND

- |  |              |  |                       |
|--|--------------|--|-----------------------|
|  | Rail         |  | Rail Structure        |
|  | Project Area |  | At Grade Intersection |
|  |              |  | Rail Overpass         |

EXISTING  
LAND USE

FIGURE 4.2

### Gurnetts Road Area

Gurnetts Road provides access to sugar cane plantations on the eastern side of the Goonyella Branch Line. It also provides access to Jilalan Station and the Jilalan QR employee carpark via Soto Road. East of Gurnetts Road is sugar cane plantations alongside Elizabeth and Willy Creeks. East of the sugar cane plantations are wetland areas adjacent to Llewellyn Bay. The land required for the proposed JRYUP is located to the west of Gurnetts Road and is already predominantly in QR ownership, aside from parcels of sugar cane plantations owned by the Gurnett and Keating families.

### Central Area

The land in this area is predominantly sugar cane plantations located around a small wetland. All the land required for the proposed JRYUP in this area is already in QR ownership, and leased to cane farmers.

### Oonooie Road Area

Oonooie Road provides access from the Bruce Highway to the CSR Ethanol Distillery, Oonooie Facility, an Ergon Energy substation, sugar cane plantations and Gurnetts Road. The CSR Ethanol Distillery ferments molasses and grain to produce ethanol. It also produces fertiliser from waste generated by the Plane Creek Sugar Mill at Sarina.

The intersection of Oonooie Road with the North Coast Line/Goonyella Branch Line is an at-grade intersection with vehicle gates and lights which restrict vehicular access across the line when a train is passing.

The area south of Oonooie Road is sugar cane plantation with a large dam, while the north of Oonooie Road is grazing land.

The area also contains the CSR tramway.

## 4.4 Future land use

A review of key strategic documents has been undertaken, including the WHAM Regional Plan. In addition, the SSC Strategic Plan was assessed to identify the preferred future land uses for the areas. In order to determine the likely immediate future land uses for properties surrounding the project area, SSC were contacted to determine existing development approvals yet to be implemented, as well as current development applications.

### 4.4.1 WHAM Regional Plan 2006

The WHAM Regional Plan was produced under the guidance of the WHAM Regional Planning Advisory Committee (RPAC) in 2006, and involved input by Government, industry and community stakeholders. The WHAM Regional Plan was developed around seven integrated regional goals and strategies in the areas of:

- Regional identity, leadership and management
- Environment and natural resources
- Economic development
- Social infrastructure
- Settlement pattern
- Infrastructure
- Transport



The WHAM Regional Plan has been prepared under Part 5, Chapter 2 of the IP Act. It gives direction for the role and function of regional planning within Queensland's planning framework. Unlike the SEQ Regional Plan, the WHAM Regional Plan does not yet have a role in the planning scheme or IDAS processes.

### Regional pattern of development

The WHAM Regional Plan highlights that the Whitsunday Hinterland and the Mackay region is a significant growth area outside of the South East Queensland region. Further, the region is a significant contributor to the State's economy through its mining, agriculture and tourism industries. Therefore, the economy of the area is reliant upon the quality and availability of the region's natural resources and environment.

The WHAM region has many natural assets of regional, State and National significance including marine and terrestrial flora and fauna, coastal ecosystems, scenic landscapes, wildlife corridors and habitats, wetlands and waterways. Features including the Great Barrier Reef and its lagoon system, islands and the region's flora and fauna biodiversity, create the need for proper management and sustainable use of natural assets in the region to maintain biodiversity levels.

Of the total 90,340 km<sup>2</sup> of land area within the region, the dominant land use is agriculture and grazing which accounts for approximately two-thirds of the total land area. The beef cattle industry is the largest individual user of land. The western areas of the region including Belyando, Broadsound, Bowen and Nebo Shires, are the prime livestock producing areas. The region holds approximately 5% of the State's total area and accounts for 12% of the State's beef cattle herd. However, seasonal conditions and export prices contribute to deviations in the amount of cattle within the region.

Whilst mining and urban land uses make a significant contribution the region's economy, these activities use relatively small portions of the region's total land area. The main mining towns of the region include Moranbah, Dysart, Middlemount, Clermont, Glenden and Nebo. The mining industry has provided the region with income, investment, employment, and infrastructure such as roads, railways and ports.

### Regional perspective – infrastructure

There is interdependency between land use activities, economic activities and infrastructure services. The WHAM Regional Plan emphasises that the provision of adequate infrastructure services can significantly impact on community lifestyle and the region's economic viability.

The WHAM Regional Plan includes three infrastructure areas. These include:

- Public utility infrastructure
- Social infrastructure
- Transport infrastructure

The WHAM region is well serviced with the following infrastructure networks:

- Water infrastructure in the region is adequate for the current demand.
- 16 urban sewerage schemes are in place and by 2008 all schemes must meet their licence conditions which specify the requirement of tertiary treatment standards or 100% effluent re-use. At present, 10 sewerage schemes are meeting this standard.
- The region has an adequate electricity supply in most areas provided by the Collinsville Power Station and the State grid.
- There is an adequate television and radio network that services the region.
- Primary and secondary education facilities are adequate within the region.

- There is extensive road transport infrastructure within the region, including the Bruce Highway and Peak Downs Highway which are in relatively good condition. The standard of major State roads are improving with continued development.
- The Goonyella Rail System is an extensive world-class electric rail network established to service the coal-mining industry and links the majority of the region's coal mines with the Port of Hay Point.
- The coast is serviced by QR's North Coast Line (Brisbane to Cairns) which has undergone upgrades to reduce travelling times.
- Mackay, Proserpine and Hamilton Island commercial airports service the region along with numerous smaller local airports.
- Local pedestrian and bicycle transport is incorporated into most urban areas.

### Regional perspective – critical infrastructure challenges for the region

The WHAM Regional Plan identifies several critical considerations for economic growth development of the region, including that:

- Future growth within the region will depend on the ability of existing infrastructure to meet the changing demands and pressures from new industry, mining, agriculture, tourism, population growth and an increase in community expectations.

Economic development as well as social and environmental growth remains as key goals for the region. The region has a strong economic base developed around mining, agriculture and tourism. The WHAM identified a need to further promote economic growth and social cohesion to further benefit the region.

A proactive economic approach is beneficial to build on strengths of existing industries and to attract new industries into the region. Further, the region should seek to apply best practice methods in mining, agriculture and tourism areas. This shall therefore promote sustainable high quality employment and the required income necessary to enhance the quality of life of the region's population.

### Regional perspective – sub-regional characteristics

Sarina Shire has an area of 1,441 km<sup>2</sup> and incorporates the towns of Sarina and Koumala. The population of Sarina Shire as per the WHAM Regional Plan is 10,157 people. The economy within Sarina is principally based on coal mining, agriculture and tourism. Agriculture is an important industry within the Shire and includes sugar cane farming, dairying, grazing and tropical fruit production. Sarina is recognised as an important area in the region for its agriculture and coal mining industries which shall promote further development within the region.

### Consistency with WHAM

The JRYUP is consistent with the WHAM Regional Plan. The Project will result in infrastructure being provided that will meet future economic growth in the region and in particular will meet the changing demands and pressures from the strengthening industrial and mining sectors.

#### 4.4.2 Sarina Shire Council Strategic Plan

Division 2-Strategic Framework of the Sarina Shire Planning Scheme provides strategic direction for development being undertaken within Sarina Shire. While the Strategic Plan does not provide a basis for development assessment under the planning scheme, it does provide a guide on the potential land uses for infrastructure providers and the community generally, however, it does not contain any provisions relating to the rail corridor except the aim to ensure "*railway corridors are protected from inappropriate development*".

The Strategic Plan clearly identifies the importance of the Goonyella Branch Line as a rail corridor to the Port of Hay Point. The Strategic Plan does state that for Rural Areas *"Good quality agricultural land and significant mineral and extractive resources are protected for their long term contribution to the Shire's economy"*.

This issue is addressed in Section 4.8. The Strategic Plan does not contain any identified changes in land use to the Jilalan/Armstrong Beach Area other than to protect the existing rail network and Good Quality Agricultural Land (GQAL).

#### 4.4.3 Future development

There are a number of proposed rail network and industrial expansion projects within the Sarina region which are under either under investigation/construction by various parties. These include:

- Dalrymple Bay Coal Terminal (DBCT) 7X Expansion
- DBCT Rail Loop Triplication Project
- Hay Point Services Coal Terminal Expansion

Table 4.3 identifies proposed future industries as well as planned expansions of existing industries within the Sarina region.

**Table 4.3 Summary of proposed industries and future expansions**

Project name	Description
Dalrymple Bay Coal Terminal (DBCT) 7X Expansion	To respond to the increased demand for coal, modifications and enhancements are proposed for all major terminal elements of inloading, stockyard and outloading at DBCT. These upgrades will allow the coal terminal to operate up to an 85 million tonnes per annum capacity.
Dalrymple Bay Coal Terminal (DBCT) Rail Loop Triplication Project	The DBCT Rail Loop Triplication (undertaken by QR) is being developed to support the operation of the new third inloading system project as part of the DBCT 7X expansion.
Hay Point Services Coal Terminal Expansion Project	Similarly to the DBCT 7X Expansion project, modifications and expansion of onshore facilities, at the Hay Point Services Coal Terminal (Phases 1 and 2), will raise the capacity of the terminal to 43 Mtpa and will allow greater flexibility for simultaneous train unloading and ship loading. Further expansion may occur in the future.

## 4.5 Potential impacts

There will be some direct property impacts associated with the land required for the JRYUP. Figure 4.3 also shows the location of surrounding residences and other sensitive receptors that could be affected by other potential impacts of the JRYUP.

During construction and operation of the Project, there is potential for the amenity of adjoining areas to be adversely affected. Potential impacts include:

- An increase in noise and vibration
- An increase in dust
- Additional lighting impacts
- Traffic impacts (temporary road closures, permanent road closures, construction traffic)
- A decrease in visual amenity

These potential impacts from the Project are discussed in the relevant chapters of the EIS.



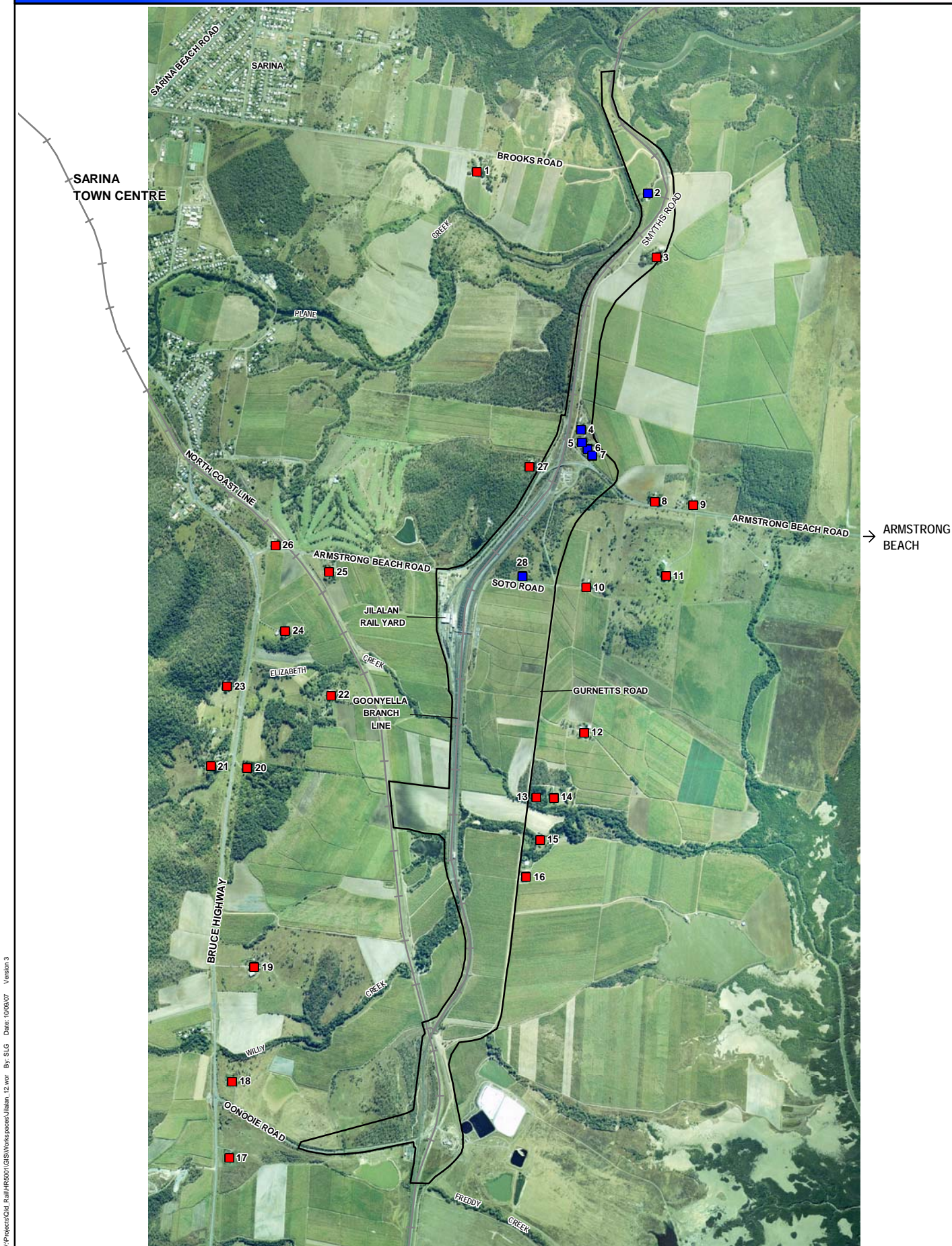


FIGURE 4.3

It is QR's standard practice to engage all private landowners in consultation and attempt to negotiate a deal for acquisition of land required for the Project. QR has commenced discussion with all of the concerned private landowners.

#### 4.5.1 Direct property impacts

As discussed previously, there are several properties that will be directly affected by the JRYUP.

Many of the properties required for the JRYUP are either existing QR properties or existing rail corridor, including:

- 15 existing QR owned freehold properties
- Six existing rail corridor lots owned by the State of Queensland (represented by QT)

There are also some private properties, Unallocated State land and various parts of roads, rivers and creeks potentially required. Land requirements for the proposed rail yard expansion include the following land parcels:

- 13 land parcels owned by five private landowners
- Road reserves (Smyths Road, Oonooie Road)
- One area of Unallocated State Land

#### 4.5.2 Compensation for acquired properties

QR's preference is to negotiate the purchase price for the land required for the Project based on independent market valuation. If a negotiated purchase is not achieved, QR will seek to engage the resumption powers of State Government where compensation can be paid to land owners if a pecuniary interest in land is taken (ie if it is resumed). Assessment of compensation is based on the market value of the property at the date of Gazettal of the acquisition. Under the *Acquisition of Land Act 1967* there is currently no provision to compensate property owners that are not directly affected by the proposal. In assessing the compensation to be paid, regard is given to the value of the land taken, severance, injurious affection and disturbance. In a resumption situation only that land required for the Project and immediately impacted will be acquired.

If a land owner's principal place of residence is impacted by the Project and subsequently resumed, the following allowances are made in addition to the market value of the property:

- Stamp duty on the purchase of a replacement dwelling to equal value.
- Conveyancing fees associated with the purchase of another dwelling of equal value.
- A reasonable allowance to cover the cost of relocation of personal effects and furniture.
- Charges associated with re-establishing a mortgage of equal value to that existing at the resumption date.
- Post and telephone reconnection costs.
- Other costs reasonably incurred in relocating to a comparable residence.
- Professional fees associated with the negotiation and conveyance of the acquisitions.

Land tenure and land use issues were taken into account during the project master planning and concept design engineering. This allowed the rail alignment to minimise potential land use impacts without adversely affecting the safety and efficiency of the proposed infrastructure.



### 4.5.3 Other potential impacts

Due to the nature and scale of the JRYUP, there is the potential to impact existing and future land uses within the area. This section of the EIS assesses the following land use suitability objectives:

- To ensure that potential negative construction and operational impacts of the Jilalan Project on existing land uses (and likely future land uses) can be ameliorated by the appropriate preventative strategies and mitigation measures.
- To ensure that the potential land use benefits of the Project outweigh the direct property impacts of the Project.
- To ensure the compliance of the Project with relevant planning policies and provisions.

#### Impacts on rural lands and sugar industry

By far the majority of the land required for the Project is rural lands, particularly sugar cane plantations. In the Smyths Road area, there will be a reduction in the amount of cane land due to the JRYUP requiring increased land for the rail corridor and the relocation of a section Smyths Road further east. These lots are all currently held by the Sammut family and represent only a minority of their holdings in the area.

In the Gurnetts Road area, all the sugar cane plantation areas between the Goonyella Branch Line and Gurnetts Road will be required, removing a significant amount of sugar cane plantation that is required by the local CSR Mill. While the majority of this land is already owned by QR, the removal of this land from sugar cane production will reduce the cane supplied to the mill.

In the Oonooie Road area, most of the land required for the Project is not sugar cane plantation.

This issue is also addressed in Section 4.8 which addresses the State Planning Policy on Development and the Conservation of Agricultural Land.

#### Impacts on natural areas

The Project will require the removal of vegetation, in various sections of the project area, specifically Willy and Elizabeth Creeks. It could also require the removal of vegetation within the vicinity of Armstrong Beach Road and Oonooie Road which may have potential environmental impacts.

This issue is further addressed in Chapter 6.

#### Impacts on homesteads in the rural area

There are several residential dwellings located within the project area; however these are owned by QR or will be removed due to their proximity to the Project (ie residential dwellings 2, 4 to 7 and 28 shown in Figure 4.3). However, there are several existing rural residential dwellings that will be located in close proximity to the completed JRYUP.

## 4.6 Mitigation measures

The property owners will be compensated for the acquisition of their land by either monetary settlement or potentially a negotiated land exchange to an equal value where applicable through negotiated acquisition or the resumption process. The potential beneficial impact of the JRYUP on providing safe and efficient access to the future land uses of these areas will result in a situation where further mitigation measures (apart from potential environmental impacts) are not required.



The upgrading of the two existing at-grade intersections of the Goonyella Branch Line and Smyths Road and the North Coast Line and Oonooie Road will improve the safety and efficiency of the local road and rail networks. Access to the CSR Ethanol Distillery, Oonooie Facility and sugar cane plantations east of the Goonyella Branch Line will be dramatically improved by providing an overpass which will remove delays for vehicles accessing this area.

While there will be a net loss of cane land in close proximity to the Plane Creek Mill in Sarina, improved access to land east of the Goonyella Branch Line improves the viability of the land around the distillery to be once again used for sugar cane plantations.

Following construction, surplus land not required for the Project or potential future rail development will be leased to allow suitable land to return to sugar cane production.

#### 4.7 Sarina Shire Council Planning Scheme (May 2005)

The JRYUP traverses land under the jurisdiction of SSC. The *Sarina Shire Planning Scheme* is an IP Act-compliant planning scheme (hereafter referred to as the Sarina Plan) that commenced on 6 May 2005. The Sarina Plan contains two main statutory controls that aim to produce ecological sustainable development outcomes, firstly through a zoning based assessment process, secondly through overlays, the majority of which apply the relevant State Planning Policies.

##### Definition of proposed community infrastructure

The Sarina Shire Planning Scheme (2005) defines the Project as:

*Utilities – Public:*

*means the use of premises for any of the following undertakings, namely:*

- (a) *a coal terminal, railway, tramway, road or air transport, wharf, sea port, marina, harbour, sea or river undertaking; ...*

##### Level of assessment

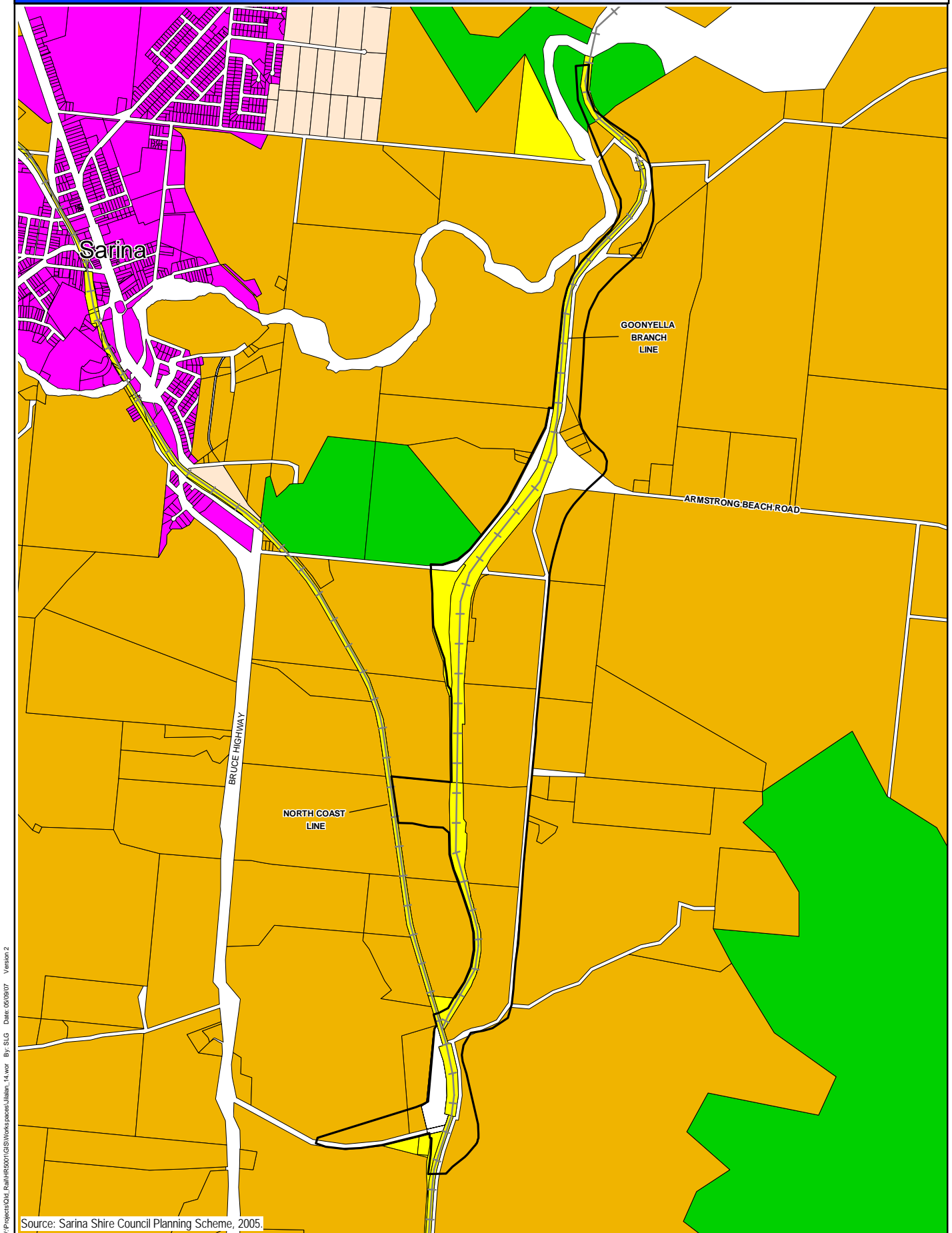
The proposed JRYUP is on land zoned either “Community Purpose” (the existing Jilalan facility and rail line), “Rural” or “Open Space”.

*Table 11 Assessment Categories and Relevant Assessment Criteria for the Community Purposes Zone – Making a Material Change of Use* lists Utilities-Public as Exempt Development. The Community Purpose Zone Code also identifies Utilities-Public as a use consistent with the objectives of the zone.

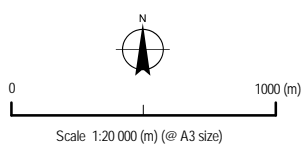
*Table 3 Assessment Categories and Relevant Assessment Criteria for the Rural Zone – Making a Material Change of Use* lists Utilities-Public as Impact Assessable Development, and also a use consistent with the objectives of the zone.

*Table 1 Assessment Categories and Relevant Assessment Criteria for the Open Space Zone – Making a Material Change of Use* lists Utilities-Public as Impact Assessable Development, and also a use that is generally inconsistent with the objectives of the zone.

Figure 4.4 shows the planning scheme zoning for the JRYUP and adjacent areas. Table 4.4 to Table 4.6 demonstrate the Jilalan Project’s compliance with the zoning objectives of the Sarina Plan.



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## LEGEND

### Planning Scheme Zoning

- Community Purposes
- Open Space
- Rural
- Rural Residential
- Town

- Project Area
- Rail

## PLANNING SCHEME ZONING

FIGURE 4.4

**Table 4.4 Compliance with overall outcomes – Rural Zone**

Relevant Section	Project Compliance
(a) Good quality agricultural land is protected from fragmentation; unless otherwise demonstrated by overwhelming community need; and	Refer to Section 4.8 which shows compliance with <i>Development and the Conservation of Agricultural Land (State Planning Policy 1/92)</i>
(b) Existing rural activities are protected from intrusion of incompatible uses, except for urban residential expansion adjoining the northern part of Sarina Township between the Bruce Highway and Sarina Beach Road; and	Refer to Section 4.8 which shows compliance with <i>Development and the Conservation of Agricultural Land (State Planning Policy 1/92)</i>
(c) A wide range of agricultural and animal husbandry uses, and other compatible primary production uses occur in the Rural Zone; and	Not applicable. The Project is not an agricultural and animal husbandry use or other compatible primary production uses
(d) The rural character of the Shire is retained; and	Refer to Section 4.8 which shows compliance with <i>Development and the Conservation of Agricultural Land (State Planning Policy 1/92)</i>
(e) The productive capacity of land is maintained; and	
(f) Residential uses are primarily ancillary to other uses in the Rural Zone; and	Not applicable. The Project is not a residential use.
(g) Non-agricultural uses, such as recreation, roadside stall, home based business, host home accommodation, educational or tourism related uses are of a low intensity and scale; and	Not applicable. The Project is not a recreation, roadside stall, home based business, host home accommodation, educational or tourism related use
(h) Other uses are located in the Rural Zone if they cannot practically be located in urban areas due to their: (i) nature; or (ii) scale; or (iii) effects; or (iv) necessary relationship to a particular cultural heritage feature, natural resource or feature, infrastructure or activity; and	Complies. The proposed JRYUP could not occur in an urban area due to the nature, scale and effects of the Project. It is also necessary for reasons of safety and efficiency to expand the existing rail yard, rather than locate an entire new rail yard in the urban areas of Sarina.
(i) Uses and works are located, designed and managed where they: <ul style="list-style-type: none"> <li>• Are compatible with other uses and works; and</li> <li>• Maintain the safety of people and works; and</li> <li>• Maintain the health and safety of residents and visitors in the rural area and the amenity they enjoy; and</li> <li>• Maintain the scenic values of the natural environment enjoyed by residents and visitors in the rural area; and</li> <li>• Avoid significant adverse effects on the natural and cultural heritage values of the environment; and</li> <li>• Maximise the efficient use and extension and safe operation of infrastructure; and</li> <li>• Cause no adverse impact (due to site specific or cumulative effects) on water quality (surface and ground);</li> <li>• Do not compromise the operation or expansion of the major port and related facilities at Hay Point;</li> <li>• Do not compromise the efficiency and safety of any road and are connected to the Shire road network and urban centres by roads capable of accommodating the type and volume of traffic likely to be generated;</li> </ul>	Complies. As follows: <ul style="list-style-type: none"> <li>• JRYUP is an expansion and upgrade of an existing rail facility. To meet the current and future industrial growth in the coal market and to cater for the increased number of trains expected to be operating in the system.</li> <li>• The upgrade will occur outside of urban areas to minimise risk and safety of residents.</li> <li>• The design, construction and operational phases of the Project have the potential to negatively impact on the existing water quality of the receiving waterways and locally significant wetlands within the project footprint. Potential sources of water contamination will be managed appropriately during the construction and operational phases of the Project. The Environmental Management Plans (EMPs) for the construction and operational phases (refer Chapter 17) include mitigation measures to ensure compliance with the relevant guidelines and to ensure that the environmental values of the waterways and downstream environs are protected.</li> </ul>



Relevant Section	Project Compliance
<ul style="list-style-type: none"> <li>Are provided with a water supply, liquid and solid waste disposal system and electricity supply adequate for all on-site purposes; and</li> <li>Do not intrude into buffer areas around activities requiring separation from incompatible uses (such as Extractive Industry, Intensive Animal Industry, Stables, Kennels and Catteries).</li> </ul>	<ul style="list-style-type: none"> <li>An analysis has been carried out of construction and operational traffic flows for the upgrade of the Jilalan Rail Yard. Traffic impacts at both construction and operation are expected to be minimal and existing conflict points between road and rail are expected to be removed by grade separation, improving safety and traffic flow around the site and its access points.</li> <li>The development will be supplied with water supply, liquid and solid waste disposal system where required.</li> <li>EMPs for the construction and operational phases of the Project will be drafted to ensure that all impacts as a result of the JRYUP are appropriately managed.</li> </ul>

**Table 4.5 Compliance with overall outcomes – Community Purposes Zone**

Relevant Section	Project Compliance
(a) Land in the Community Purposes Zone is utilised for community purposes including: <ul style="list-style-type: none"> <li>Community Facilities;</li> <li>Open Space;</li> <li>Telecommunications facility;</li> <li>Utilities – Local; and</li> <li>Utilities – Public;</li> </ul>	Complies. The project is for a Public Utility
(b) The efficient function and the expansion potential of Community Facilities are protected; and	Not applicable. There are no Community Facilities near the project area.
(c) The amenity of adjoining residential uses is protected.	<p>There are several residential dwellings located in close proximity to the project area (refer Figure 4.3). It is noted that these properties are located within 500 m of existing rail infrastructure. Whilst the proposed JRYUP is an intensification of an existing railway use, it should be noted that the broader amenity of the Shire will be protected as a result of the co-location of rail infrastructure at Jilalan.</p> <p>Furthermore, properties directly affected by JRYUP will be acquired in accordance with the <i>Acquisition of Land Act 1967</i>.</p>

**Table 4.6 Compliance with overall outcomes – Open Space Zone**

Relevant Section	Project Compliance
(a) The multiple values of the Open Space Zone are protected. These values include: <ul style="list-style-type: none"> <li>Significant habitat areas and wildlife-corridors linking these habitat areas;</li> <li>Wetlands;</li> <li>Natural coastal landforms and processes;</li> <li>Scenic landscapes;</li> <li>Forestry resources;</li> <li>Buffer areas between incompatible land uses;</li> </ul>	The two properties zoned Open Space that are partially required by the Project are not scenic landscapes, forestry resources or buffer areas between incompatible land uses. The piece of Unallocated State Land at the north of the project area contains wetlands, but these are predominantly outside of the project area.

Relevant Section	Project Compliance
(b) Wildlife corridor functions of riparian zones, State forests and unallocated State land are protected. Corridors are established between large areas of remnant habitat such as the Connors Ranges, Cape Palmerston National Park and other coastal wetland/remnant vegetation areas;	The JRYUP will not have an impact on connections between coastal wetlands around Llewellyn Bay and the Cape Palmerston National Park. The Project will have an impact on riparian zones located within the project area, including Elizabeth and Willy Creeks and a piece on Unallocated State Land. However, the appropriate mitigation measures will be undertaken to ameliorate these impacts.
(c) The cultural heritage values of areas such as Freshwater Point and Rocky Dam Creek (in coastal areas) are protected;	Not applicable. The Project is located away from cultural heritage areas such as Freshwater Point and Rocky Dam Creek.
(d) Informal outdoor recreation areas including pedestrian and cycle pathways, public parkland, and other open space recreation activities are provided for where they are consistent with the ecological values of the land involved;  Infrastructure and access provided in the Open Space zone respects the ecological and recreation values of the land involved.	Not applicable. The Project will not contain informal outdoor recreation areas, as they are not appropriate to the predominantly rural area.

## 4.8 Development and the Conservation of Good Quality Agricultural Land — SPP1/92

### 4.8.1 Overview

The State Planning Policy for the Development and the Conservation of Agricultural Land (SPP1/92) “addresses the conservation of good quality agricultural land and provides guidance to local authorities on how this issue should be addressed when carrying out their range of planning duties.”

GOAL is a valuable resource and must, where possible, be protected from incompatible development. This is reflected in State Planning Policy. When considering development on GOAL, the Assessment Manager should consider whether it can be demonstrated that there is an overriding need for the development in terms of benefit to the community.

### 4.8.2 Relevance to Project

Four classes of agricultural land have been defined for Queensland. Class A land (Crop Land) in all areas is considered to be good quality agricultural land, while Class D (non-agricultural land) is never classified as GOAL. In some areas, Class B land (Limited Crop Land) and better quality Class C land (Pasture Land), can also be considered to be good quality agricultural land. Class B and Class C areas can also be designated GOAL or otherwise by Council, according to the availability of GOAL land in the Shire. Council has produced mapping (EROM1: Good Quality Agricultural Land Overlay Map) of the entire council area which identifies all of the GOAL.

### 4.8.3 Project compliance

The proposed JRYUP will be compatible with SPP1/92 as the Project will not be incompatible with future rural uses. The impact of the loss of agricultural land within the project area is minimised due to the proposed expansion being located adjacent to an existing rail yard. In order to mitigate the loss of GOAL within close proximity to the Plane Creek Sugar Mill, QR will upgrade the existing at-grade intersection of Oonooie Road with the North Coast Line to an above grade intersection, with an Oonooie Road overpass of the North Coast Line. This will provide 24 hour unrestricted access to the CSR Ethanol Distillery, Oonooie Facility and the sugar cane lands along Gurnetts Road.

Furthermore, Section 4.12 of the SPP guideline states that the application may be accepted provided "there is an overriding need in community terms of public benefit for the proposal, and the proposal cannot be located on alternative sites of poor agricultural quality".

In determining whether or not "an overriding need in terms of public benefit" exists, depends upon the circumstances of the particular proposal (Section 4.13 of the SPP Guideline). Some obvious cases of "overriding need" which are likely to justify the loss of the agricultural land are illustrated in Section 4.14 of the SPP Guideline and include:

*"major infrastructure (for example, roads, railways, aerodromes and dams) usually have specific siting/location requirements that might require the loss of some good quality agricultural land."*

The proposed rail upgrade is a major infrastructure project designed to cater for imminent growth in coal exports through the Dalrymple Bay and Hay Point Services Coal Terminals. A corresponding increase in the capacity of QR's rail infrastructure is required to accommodate this growth. The upgrade will significantly improve the efficiency at Jilalan as well as directly contribute to an increase in overall capacity. As such, there is certainly an overriding need for the Project in terms of community and economic benefits (refer Chapter 1, Section 1.3).

## 4.9 Draft Mackay-Whitsunday Regional Coastal Management Plan

### 4.9.1 Overview

In accordance with the State Coastal Plan, the Draft *Mackay-Whitsunday Regional Coastal Management Plan 2003* (Coastal Plan) was developed to operate in conjunction with the State Coastal Plan and include region-specific policies as well as applying State Coastal Plan policies to specific geographic areas. The Coastal Plan and the State Coastal Plan also have effect as State Planning Policies under the IP Act. The Sarina Shire Planning Scheme will therefore be required to be consistent with these documents, and incorporate these issues into the scheme. At present, pending completion of the Draft Coastal Plan they have incorporated coastal issues within the Conservation Overlay Code.

### 4.9.2 Relevance to Project

The majority of the project area (including Elizabeth Creek and Willy Creek) lies outside of the Draft Mackay-Whitsunday Coastal Management District, however, a small portion of the upgrade area does extend into the management district which runs along Plane Creek.

The project area is also in close proximity to the wetland areas adjacent to Llewellyn Bay, which are also part of the Coastal Management District.

Factors relating to water quality, acid sulfate soils, sedimentation and other environmental factors are addressed in other chapters of the EIS.

Section 2 of the Coastal Plan contains coastal policies that identify how "Use and development of the coastal zone occurs in an ecologically sustainable manner." The application of Section 2 to the Project is detailed in the tables below.



**Table 4.7 Compliance with Section 2.1 Coastal use and development**

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
<b>2.1.1 Areas of state significance (social and economic)</b>	(a) strategic port land; (b) existing regional and international airports; (c) State boat harbours; (d) State development area as declared under the <i>State Development and Public Works Organisation Act 1971</i> ; (e) recreational facilities and marine transport facilities (public and commercial) that: (i) are of state significance (as defined in regional coastal plans); and (ii) are coastal-dependent land use; and (f) areas identified for the purposes of (a) to (d) above by State and regional planning processes.	Not applicable	Not applicable The Project is not located in an area of state significance as determined by the Draft Coastal Plan
<b>2.1.2 Settlement pattern and design</b>	New urban land uses located in a non-urban coastal area		Not applicable The Project is not an urban use located in a non-urban area
<b>2.1.3 Coastal-dependent land uses</b>	Development adjoining the foreshore		Not applicable The JRYUP does not adjoin the foreshore
<b>2.1.4 Canals and dry land marinas</b>	Not applicable	Canals/Dry Land Marinas	Not applicable The Project is not for Canals/Dry Land Marinas
<b>2.1.5 Maritime infrastructure</b>	Not applicable	Maritime Infrastructure	Not applicable The project is not for Maritime Infrastructure
<b>2.1.6 Extractive industry</b>	Not applicable	Extractive Industry	Not applicable The JRYUP is not for Extractive Industry
<b>2.1.7 Mining and petroleum activities</b>	Not applicable	Mining and Petroleum Activities	Not applicable The Project is not for Mining and Petroleum Activities
<b>2.1.8 Dredging</b>	Not applicable	Dredging	Not applicable The Project is not for Dredging
<b>2.1.9 Reclamation</b>	Tidal Waters	Reclamation involves the loss of one environment (tidal waters) and the creation of another (land above tidal waters)	Not applicable The Project will not involve the reclamation of tidal areas
<b>2.1.10 Tourism and recreational activities</b>	Not applicable	Tourism and recreational activities	Not applicable The Project is not for tourism or recreational activities

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.1.11 Rural land uses	Not applicable	Rural land uses	Not applicable The Project is not for rural land uses
2.1.12 Managing water resources	Coastal Zone	The extraction of water from watercourses and groundwater	Not applicable There will be no extraction of water from watercourses and groundwater
2.1.13 Fishing	Not applicable	Not applicable	Not applicable The Project is not for fishing
2.1.14 Aquaculture	Not applicable	Not applicable	Not applicable The Project is not for aquaculture

**Table 4.8 Compliance with Section 2.2.4 Physical coastal processes**

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.2.2 Erosion prone areas	Development located within Erosion Prone Areas. Erosion prone areas in the Sarina area are described on Erosion Prone Area Plan - Sarina (SC3384).	All permanent structures	Not applicable The Project is not located in an Erosion Prone Area
2.2.3 Shoreline erosion management	Erosion prone areas	The construction of seawalls and groynes and artificial beach nourishment	The Project is not for shoreline erosion management. The nearest priority area for shoreline erosion management is Armstrong Beach (shown on Map 3.3 of the Draft Coastal Plan).

**Table 4.9 Compliance Section 2.2.4 Coastal hazards**

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.2.4 Coastal hazards	Storm tide hazard area	Urban land uses	Not applicable The JRYUP is not located within a storm tide hazard area/storm surge area as outlined on Overlay Map NHOM3: Storm Surge Overlay Map from the Sarina Plan
2.2.5 Beach protection structures	Coastal Waters	Beach protection structures including seawalls, groynes and artificial reefs	Not applicable The Project is not for beach protection structures

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.3.1 Future need for access	Development adjacent to beach areas	Development that could restrict access to beach areas	There is no net loss of public access to the foreshore or of public useability of coastal waters and will not impede public access to, or along foreshores and waterways
2.3.2 Design of access	Development adjacent to beach areas	Development that could restrict access to beach areas	Not applicable No direct beach access from development
2.3.3 Coastal road network	Roads constructed along and adjacent to the coast	New Road	Applicable There will be some road upgrades as a result of the JRYUP to ensure that existing accesses are maintained. Refer to Chapter 12
2.3.4 Vehicle use on beaches	Development adjacent to beach areas	Development that could encourage vehicular access to beach areas	Not applicable JRYUP will not encourage vehicular access to beach areas

Table 4.10 Compliance with Section 2.4 Water quality

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.4.1 Water quality management	Development within the vicinity of coastal waters and freshwater, estuarine and marine water habitats		Not applicable The JRYUP is located outside of the coastal zone
2.4.2 Wastewater discharges to coastal waters	Not applicable	Discharging wastewater	Applicable All wastewater discharged during the construction and operation on JRYUP will be undertaken in accordance with the relevant EMPs
2.4.3 Waste-disposal facilities	Not applicable	Waste disposal facility	Applicable Refer to Chapter 11
2.4.4 Stormwater management	Not applicable	An increase in the area of impervious surfaces	Applicable Refer to Chapter 7
2.4.5 Groundwater quality	Not applicable	<ul style="list-style-type: none"> <li>Activities which involve extraction of groundwater</li> <li>Uses that may expose acid sulphate soils</li> <li>Vegetation clearing and irrigation</li> </ul>	Applicable Refer to Chapter 8



Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.4.6 Acid sulfate soils	Not applicable	Rural activities involving the disturbance of acid sulfate soil	Not applicable The JRYUP is not a rural activity. The disturbance of acid sulfate soils has been addressed in Chapter 5

Table 4.11 Application of Section 2.5 Indigenous Traditional Owner cultural resources

Regional Coastal Policy	Trigger by Location	Trigger by Development Type	Application to Project
2.5.1 Areas of state significance (Indigenous Traditional Owner cultural resources)	Development in an areas of state significance (Indigenous Traditional Owner cultural resources)		Applicable Refer to Chapter 13
2.5.2 Involvement of Indigenous Traditional Owners in managing their cultural resources	Not applicable	Management of Indigenous Traditional Owner cultural resources	Applicable Refer to Chapter 13

Table 4.12 Application of Section 2.6 Cultural heritage

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.6.1 Areas of state significance (cultural heritage)	Places, landscapes and buildings of cultural heritage significance in the Mackay-Whitsunday region are those places, landscapes and buildings which are: (a) identified or registered on the Australian Heritage Database; (b) listed on the Queensland Heritage Register; or (c) identified by local or State government through a formal identification process.	Not applicable	Applicable Refer to Chapter 13
2.6.2 Cultural heritage			Applicable Refer to Chapter 13

Table 4.13 Application of Section 2.7 Coastal landscapes

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.7.1 Areas of state significance (scenic coastal landscapes)	Areas of state significance (scenic coastal landscapes) as per Map No.4 of the DRAFT Coastal Plan	Not applicable	Not applicable
2.7.2 Other coastal landscape values	Areas of state significance (scenic coastal landscapes) that have a sensitivity to development and change	Not applicable	Not applicable

Table 4.14 Application of Section 2.8 Conserving nature

Regional Coastal Policy	Trigger by location	Trigger by development type	Application to Project
2.8.1 Areas of state significance (natural resources)	(a) significant coastal wetlands; (b) significant coastal dune systems; (c) endangered regional ecosystems; (d) protected areas (State land), land declared critical habitat, and areas of major interest as defined under the Nature Conservation Act 1992.	Not applicable	Applicable Refer to Chapter 6
2.8.2 Coastal wetlands	Land within 100m of a coastal wetland	Not applicable	Not applicable The project area is not within 100 m of a wetland
2.8.3 Biodiversity	Development that results in habitat loss, decline in habitat quality, changes in ecological processes and direct removal (including harvesting) of species.		Applicable Refer to Chapter 6
2.8.4 Rehabilitation of coastal resources	Coastal Dunes	Rehabilitation of Coastal Dunes	Not applicable
2.8.5 Pest species management	Coastal and marine environments	Not applicable	Applicable Refer to Chapter 6 and the construction and operational EMPs

#### 4.9.3 Project compatibility

The JRYUP will be carried out in a way that minimises the impact on the nearby Llewellyn Bay wetland areas. Potential impacts on these wetlands from the construction of the proposed Project can be mitigated if an EMP is adopted which has taken the relevant codes contained in the DRAFT Coastal Plan into consideration. This issue should be further addressed in the Construction Environmental Management Plan. Further details of the compatibility of the proposed Project with the coastal issues are described in the EIS (refer Chapter 7).

### 4.10 Commonwealth Legislation and Approvals

#### 4.10.1 Environment Protection and Biodiversity Conservation Act 1999

##### Background

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides that any action (ie a project, development, undertaking, activity or series of activities) which has, will have or is likely to have a significant impact on a matter of National Environmental Significance (NES), or other matter protected under the Act such as the environment of Commonwealth land, requires approval from the Commonwealth Environment Minister (the Minister). If the Minister decides that approval is required, the proposed action is termed a "controlled action". The proposal is then required to go through a formal assessment and approval process before it can proceed.

The matters of NES identified in the EPBC Act as triggers for potential Commonwealth assessment and approval are:

- National Heritage places
- World Heritage properties
- Ramsar wetlands of international importance

- Listed migratory species
- Listed threatened species and ecological communities
- Commonwealth marine areas (and Commonwealth land)
- Nuclear actions

The EPBC Act also provides that actions that are likely to have a significant impact on the environment of Commonwealth land (even if undertaken outside Commonwealth land) may also require approval under the EPBC Act.

### EPBC referral process

The referral stage of the EPBC Act approval process is to determine whether a proposal requires approval under the EPBC Act. A person proposing to undertake an action that the person thinks may be, or is, a controlled action must refer the proposal to the Minister in accordance with the requirements of the EPBC Act (s 68). The Minister may also request a person to refer a proposal if the Minister believes a person proposes to take an action that may be, or is, a controlled action (s 70).

A referral of a proposal to take an action must be made in a way prescribed by the regulations (s 72). Schedule 2 of the *Environment Protection and Biodiversity Conservation Regulation 2000* details the information to be included in a referral. The Minister must make a determination on the referral within 20 business days.

The Minister must decide whether the action that is the subject of a proposal referred to the Minister is a controlled action and which of the provisions of Part 3 (Requirement for environmental approvals) are the controlling provisions for the action (s 75). In making a decision on a referral, the Minister must consider public comment (if any) and if relevant, the adverse and beneficial impacts the action will have or is likely to have (s 75).

In the case that the Minister determines that the action is a controlled action and approval is required, the Minister must identify each of the controlling provisions relevant to the action (s 77). The Minister will also decide on an assessment approach under Part 8 (Assessing impacts of a controlled action) of the EPBC Act and will only make a determination on the approval after an environmental assessment process for that action is complete.

### Relevance to Project

An EPBC Referral for the JRYUP was referred to the Minister on 8 March 2007. This was in order to confirm that the Project did not adversely impact upon the following NES matters:

- Section 12 and 15A (World Heritage)
- Sections 18 and 18A (Listed threatened species and communities)
- Section 20 and 20A (Listed migratory species)

The Minister deemed that the project was not a controlled action under Section 75 of the EPBC Act on 10 April 2007 (refer Appendix C).



#### 4.10.2 Native Title Act 1993

##### Overview

The *Native Title Act 1993 (Cth)* is the Australian Government's legislative response to the High Court decision in *Mabo & others v Queensland (No 2) (1992) 175 CLR 1*. The Act provides the legal principles for the recognition of native title and the integration of this form of property right into the existing land title system. The Act provides for the validation of past Commonwealth acts (s.14) and makes the same provision for the States and Territories (s.19). The Act establishes the processes involved in having native title recognised and the role and responsibilities of the different bodies involved in this process.

The *Native Title Act 1993* adopts the common law definition of "native title". The Act establishes the National Native Title Tribunal and governs how native title is dealt with across Australia. The Commonwealth *Native Title Amendment Act 1998* made extensive amendments to the *Native Title Act 1993*. The amendments confirmed that native title rights and interests may exist over land which is or has been subject to a pastoral lease and other forms of lease and other forms of leasehold tenure.

##### Relevance to the Project

Two Aboriginal Parties have claims over the Jilalan project area. The claimant groups are:

- Yuibera People
- Wirri People # 2

Yuibera People have particular parcels of land relating to their Native Title claim. Lot 100 on USL39250 is the only land parcel within the proposed project area that traverses the Yuibera People's claim.

Wirri # 2 People's Native Title claim covers all of Sarina Shire's jurisdiction, which includes the project area.

##### Project compliance

In accordance with the *Aboriginal Cultural Heritage Act 2003* (ACH Act), Wirri People # 2 and Yuibera People were notified of the Project and invited to be involved in preparing a Cultural Heritage Management Plan by Connell Hatch on behalf of QR. Both groups expressed interest in being involved as endorsed Indigenous parties under the ACH Act.

There are no registered Cultural Heritage Body's for the Jilalan project area.

#### 4.11 State Legislation and approvals

##### 4.11.1 State Development and Public Works Organisation Act 1971

##### Background

The SDPWO Act establishes the framework for environmental assessment of major projects in Queensland and with the *Integrated Planning Act 1997* is the controlling legislation for the Project at the State level. The SDPWO Act provides the Coordinator-General (CG) with the power to coordinate the environmental assessment of major projects through the declaration of significant projects which require the preparation of an EIS (s 26).

On review of the EIS, consideration of submissions and any other material the CG deems relevant to the Project, the CG must prepare a report evaluating the EIS (s 35). In evaluating the EIS the CG may state conditions or make recommendations to impose on the proposed project or refuse the project. The CG's report (Evaluation Report) links the approval processes in other legislation such as the EPBC Act, the IP Act and other State legislation.

### Relevance to Project

The CG declared the proposed JRYUP a significant project requiring an EIS in May 2007 pursuant to Section 26 of the SDPWO Act. The CG has required QR to prepare an EIS under Part 4 of the SDPWO Act. The CG issued the final Terms of Reference for the EIS in July 2007.

## 4.11.2 Integrated Planning Act 1997

### General background

The IP Act is Queensland's principal planning legislation, and seeks to achieve ecologically sustainable development.

### Level of assessment

Under IP Act, development is either Assessable, Self-Assessable or Exempt. Schedule 8 of IP Act prescribes certain developments to be Assessable or Self-Assessable. Schedule 9 of IP Act prescribes certain developments to be Exempt Development. Section 2.1.3 (2) states that planning schemes prepared by a Local Government for their area may identify what development is Assessable or Self-Assessable. Development that is prescribed by the State in Schedule 8 or by local government through their planning scheme as Assessable Development requires application for development approval under IP Act.

### Assessment process

IP Act establishes two frameworks for assessing new development applications: the Integrated Development Assessment System (IDAS) and the Community Infrastructure Designation (CID) process. Planning approval through the EIS process however, is the preferred planning mechanism for large community infrastructure undertakings that require consideration of planning issues at the regional or State level. The JRYUP will utilise both the IDAS and EIS assessment processes to obtain a decision on the Project.

IDAS allows multiple assessments to be integrated in the one overall assessment. It is a four stage assessment process including:

1. Application Stage
2. Information and Referral Stage
3. Notification Stage
4. Decision Stage

However, not all stages or parts of stages are required to all applications, particularly where a project has been declared a "significant project" pursuant to Section 26 of the SDPWO Act. In this instance, the EIS process for a significant project may be undertaken before an IDAS application is made. Upon completion of the EIS process, the IDAS application is then made, but the IDAS process skips the Information and Referral Stage and Decision Stage and the application proceeds directly from the Application Stage to the Decision Stage.

In effect, the SDWPO Act EIS process replaces the Information and Referral Stage, and the Notification Stage of the IDAS process under Section 37 of IP Act for applications which are defined as MCU. At the completion of the EIS process, the CG Evaluation Report will be taken as being a Concurrence Agency response under IP Act and will be provided to the Assessment Manager to consider when issuing a Decision Notice.

### Assessment Manager

Schedule 8A (Table 1) of IP Act states that the Assessment Manager for a development application is the Local Government when:

*If the application is for—  
(a) development completely in a single local government area and—  
(i) any aspect of the development is assessable against the planning scheme;*

### Relevance to Project

#### *Material change of use under Sarina Shire Council Planning Scheme*

A number of approvals are required for the JRYUP under IP Act. The Sarina Shire Planning Scheme (2005) defines the Project as:

*Utilities – Public:*  
*means the use of premises for any of the following undertakings, namely:*  
*(b) a coal terminal, railway, tramway, road or air transport, wharf, sea port, marina, harbour, sea or river undertaking; ...*

The proposed JRYUP is on land zoned either "Community Purpose" (the existing Jilalan facility and rail line). *Table 11 Assessment Categories and Relevant Assessment Criteria for the Community Purposes Zone – Making a Material Change of Use* lists Utilities-Public as Exempt Development. The Community Purpose Zone Code also identifies Utilities-Public as a use consistent with the objectives of the zone. *Table 3 Assessment Categories and Relevant Assessment Criteria for the Rural Zone – Making a Material Change of Use* lists Utilities-Public as Impact Assessable Development, and also a use consistent with the objectives of the zone.

Under Schedule 9 - Development that is exempt from assessment against a planning scheme, Table 5 Community infrastructure activities "All aspects of development for community infrastructure prescribed under a regulation" is Exempt Development.

*Schedule 11 Development for community infrastructure exempt under schedule 9, table 5, item 5 of the Act of the Integrated Planning Regulation 1998 states that the following is Exempt Development:*

*All aspects of development for the maintenance, repair, upgrading, augmentation or duplication of—  
(a) rail transport infrastructure under the Transport Infrastructure Act 1994;*

In many instances rail network upgrades are Exempt Development, where they involve rail transport infrastructure with the *Transport Infrastructure Act 1994*. Rail transport infrastructure is defined as follows:

*rail transport infrastructure means facilities necessary for operating a railway, including—  
(a) railway track and works built for the railway, including,  
for example—  
• cuttings  
• drainage works*

- excavations
  - land fill
  - track support earthworks; and
  - ...
- but does not include other rail infrastructure.*

The *Transport Infrastructure Act 1994* defines other rail infrastructure as:

**other rail infrastructure means—**

- (a) freight centres or depots; or*
- (b) maintenance depots; or*
- (c) office buildings or housing; or*
- (d) rolling stock or other vehicles that operate on a railway; or*
- (e) workshops; or*
- (f) any railway track, works or other thing that is part of anything mentioned in paragraphs (a) to (e).*

As the JRYUP predominantly involves the construction of a new maintenance depot, the proposed Project is not Exempt Development under Schedule 9 of IP Act.

Therefore the Project will require a Material Change of Use Development Application under the Sarina Shire Council Planning Scheme.

*Operational works*

Schedule 8 Section 17 of IP Act stipulates that “operational works carried out, by or on behalf of a public sector entity, authorised under State law to carry out the work”, that are made Assessable Development under a planning scheme are Exempt Development. QR conforms to this requirement as it is a government owned corporation. In this instance, most operational works undertaken by or on behalf of QR does not trigger a requirement for a development application. This does not apply to operational works made Assessable Development under Schedule 8 of IP Act.

As stated previously, development that is prescribed as Assessable Development by Schedule 8 of IP Act requires an application for development approval under IP Act, with the Assessment Manager identified in Schedule 8A of IP Act. Therefore, any Material Change of Use (eg Environmentally Relevant Activities etc) or Operational Works (Raising a Waterway Barrier, Marine Plant Removal) development that is associated with the Project will be required to be assessed under IP Act if matters covered under Schedule 8 are triggered. These triggers are generally contained in other related environmental legislation. While other matters may be triggered, a preliminary assessment of the proposed Project has identified that the following legislation trigger IP Act referrals/assessment:

- *Transport Infrastructure Act 1994 (TIA)*
- *Environmental Protection Act 1994 (EP Act)*
- *Coastal Protection and Management Act 1995*
- *Fisheries Act 1994*
- *Vegetation Management Act 1999*
- *Water Act 2000*

Development applications for works made Assessable Development by Schedule 8 of IP Act will be lodged with the relevant agencies during the detailed design phase of the Project.

#### **4.11.3 Environmental Protection Act 1994**

##### **Background**

The object of the EP Act is to protect Queensland’s environment while allowing for development that improves the total quality of life both now and in the future, in a way that maintains the ecological processes on which life depends (“ecologically sustainable development”) (also refer Section 2.3).



### Environmentally Relevant Activities

The EP Act, together with IP Act, provides a licensing and approval regime for a range of Environmentally Relevant Activities (ERAs). These are activities that the Governor in Council is satisfied a contaminant will be released into the environment when the activity is carried out and the release of the contaminant will or may cause environmental harm (s 18, s 19). ERAs are defined in Schedule 1 of the *Environmental Protection Regulation 1998*.

The EP Act requires that any person carrying out an ERA must hold, or be acting under, a registration certificate for the activity. It is an offence to carry out an ERA unless the person is a registered operator for the activity, or is acting under a registration certificate for the activity. All operators are also required to have a development permit approval for the activity, unless a code of environmental compliance applies to the activity. Development permit approvals are granted under the IP Act.

QR currently holds a development approval (Certificate of Registration No. ENRE00307205) with the EPA for the following ERAs for the existing Jilalan Rail Yard:

- 11a - Crude oil or petroleum product storing (10,000 litres – 500,000 litres)
- 15b - Sewage treatment (100 – 1,500 equivalent persons)
- 72 - Railway facility
- 85 - Regulated waste treatment

ERAs which will be carried out during the construction and operational phases of the Project are outlined in Table 4.15 and Table 4.16, respectively. Development approval will be obtained for these ERAs.

**Table 4.15 Construction ERAs required for the Project**

ERA Category	ERA No.	ERA Details
Fuel storage	11 (b)	Crude oil or petroleum product storing having a combined total storage capacity of 500,000 L or more
Sewage treatment	15 (b)	Sewage treatment operating, having a peak design capacity to treat sewage of 100 or more equivalent persons but less than 1500 equivalent persons
Electricity, fuel burning and water supply activities	17	Fuel burning—any process involving the use of fuel burning equipment (including, for example, a standby power generator) that is capable of burning (whether alone or in total) 500kg or more of fuel an hour.
Dredging activities	19 (a)	Dredging material—dredging material from the bed of any waters (other than dredging by a port authority of material for which a royalty or similar charge is not payable) using plant or equipment having a design capacity of not more than 5000 t a year
Extractive activities	20 (c)	Extracting rock or other material from a pit or quarry using plant or equipment having a design capacity of 100,000 t or more a year
Extractive activities	22 (c)	Screening, washing, crushing, grinding, milling, sizing or separating material extracted from the earth (other than under a mining tenement or petroleum authority) or by dredging using plant or equipment having a design capacity of 100,000 t or more a year
Non-metallic mineral product manufacture	62	Producing concrete or a concrete product by mixing cement, sand, rock, aggregate or other similar materials in works (including mobile works) having a design production capacity of more than 100 t a year

**Table 4.16 Operational ERAs required for the Project**

ERA Category	ERA No.	ERA Details
Crude oil or petroleum product storing	11 (b)	ERA 11: Crude oil or petroleum product storing in tanks or containers having a combined total storage capacity of 500,000 L or more
Community infrastructure and services	15 (b)	Operating a sewage treatment plant having a peak design capacity to treat sewage of 100 or more equivalent persons but less than 1,500 equivalent persons
Transport and maritime services	72	Railway facility—operating any railway facility for refuelling and maintaining or repairing rolling stock

Approval for these ERAs will take the form of development permits granted under IP Act and Registration Certificates granted under the EP Act. Construction contractors will be responsible for the application for Registration Certificates from the EPA under the EP Act for their planned activities.

QR will also need to seek Registration Certificates from the EPA under the EP Act for operational ERAs.

In accordance with Section 424 of the EP Act a person removing and disposing of contaminated soil from land which is recorded on the EMR or CLR to an offsite location must obtain a disposal permit from the EPA. Disposal permits enable appropriate and legal disposal and tracking of contaminated soil or materials.

#### 4.11.4 Coastal Protection and Management Act 1995

##### Background

The *Coastal Protection and Management Act 1995* (Coastal Act) provides for the protection, conservation, rehabilitation and management of the coast, including its resources and biological diversity. The Coastal Act triggers several items of Assessable Development under Schedule 8 of IP Act.

##### Tidal Works and Works within a Coastal Management District made Assessable under Schedule 8 of IP Act

Under Schedule 8 of IP Act Table 4 (Item 5) Tidal works are assessable. Tidal works are defined under the Coastal Act as:

*Operational work, other than excluded work, that is—*

- 1 Tidal works means work in, on or above land under tidal water, or land that will or may be under tidal water because of development on or near the land.
  - 2 *Tidal works includes the construction of a basin, boat ramp, breakwater, bridge, dam, dock, dockyard, embankment, groyne, jetty, pipeline, pontoon, power line, seawall, slip, small craft facility, training wall or wharf and works in tidal water necessarily associated with the construction.*

Excluded work refers to:

- 4 *Tidal works does not include—*
  - (a) erecting a sign or other structure, including, for example, a navigational aid or sign for maritime navigation, under a direction made under another Act; or

- (b) *building an open drain that—*
  - (i) *is less than 1m deep; and*
  - (ii) *has a cross sectional area less than 2.5m<sup>2</sup>; or*
- (c) *assessable development under the Integrated Planning Act 1997, schedule 8, part 1, table 4, item 5(b); or*
- (d) *removing quarry material that has accumulated within the boundaries of, or in an area adjoining, a previously approved tidal work to allow the work to be used for the function for which it was approved; or*
- (e) *removing quarry material from land under tidal water, if the removal is for no other purpose than the sale of the material or use of the material to reclaim land.*

The reference in the definition of Excluded work to Schedule 8, Part 1, Table 4, Item 5(b) refers to Operational Works in a Coastal Management District.

Under Schedule 8 of IP Act Table 4 (Item 5b) work within a Coastal Management District is assessable if:

Operational work, that is—

(b) any of the following carried out completely or partly within a coastal management district—

- (i) *interfering with quarry material on State coastal land above high-water mark;*
- (ii) *disposing of dredge spoil or other solid waste material in tidal water;*
- (iii) *draining or allowing drainage or flow of water or other matter across State coastal land above high-water mark;*
- (iv) *constructing or installing works in a watercourse and not assessable under item 3 or 4;*
- (v) *reclaiming land under tidal water;*
- (vi) *constructing an artificial waterway associated with the reconfiguration of a lot;*
- (vii) *constructing an artificial waterway not associated with the reconfiguring of a lot on land, other than State coastal land, above high-water mark if the maximum surface area of water on the waterway is at least 5000m<sup>2</sup>*
- (viii) *constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high-water mark;*
- (ix) *removing or interfering with coastal dunes on land, other than State coastal land, that is in a erosion prone area and above high-water mark.*

### Relevance to Project

The JRYUP lies within the Mackay-Whitsunday Coastal Management District and is therefore subject to the DRAFT Mackay-Whitsunday Coastal Plan. The Coastal Plan and the State Coastal Plan also have effect as State Planning Policies (SPPs) under the IP Act.

Schedule 8, Table 4, Part 5 specifies that operational work for tidal work or work within a Coastal Management District is assessable development under IP Act. Operational work associated with this project includes, but is not limited to:

- Tidal works in, on or above land under tidal waters
- Reclaiming land under tidal water

A Development permit for Operational Works (Tidal Works and Works in a Coastal Management District) will be required under the IP Act prior to commencement of construction. In addition to a Construction Environmental Management Plan, QR should ensure that drawings are submitted with the application in compliance with EPA's operational policy, "*Building and engineering standards for tidal works*". These drawings should show the precise location of the proposed rail transport infrastructure and existing rail transport infrastructure, and also the construction works including excavation and filling works, foundation details and rock protection works. The drawings should also identify the works in relation to Mean High Water Spring tide and Mean Low Water Spring tide, as well as the safe navigational clearance for vessels traversing Plane Creek.

#### 4.11.5 Fisheries Act 1994

##### Background

The *Fisheries Act 1994* provides for the management, use, development and protection of fisheries resources and fish habitats, and the management of aquaculture activities. The Act holds provisions for the following:

- Taking, causing damage to or disturbance to marine plants, including mangroves
- Works in a declared fish habitat
- Waterway barrier works
- Tidal water, fresh and marine aquaculture operations

Schedule 8, Part 1, Table 4 of IP Act specifies that operational work for the purposes of the above activities under the *Fisheries Act 1994* is assessable development. Fisheries development approvals for the above activities are required under the IP Act.

##### Waterway Barrier Works

Schedule 8, Part 1, Table 4, Item 6 of IP Act specifies that operational work for the purpose of constructing or raising waterway barrier works under the *Fisheries Act 1994* is assessable development. This states that development is assessable where involving:

*Operational work that is the constructing or raising of a waterway barrier works if it is not self-assessable development.*

##### Marine Plant Permits

Schedule 8, Part 1, Table 4, Item 8 of IP Act specifies that operational work for the purpose of removal, destruction or damage of marine plants under the *Fisheries Act 1994* is assessable development. This states that development is assessable where involving:

*Operational work that is the removal, destruction or damage of a marine plant if it is not self-assessable development.*

##### Relevance to Project

The JRYUP development will result in waterway barrier works in Elizabeth Creek and Willy Creek and disturbance to marine plants in Plane Creek. QR will need to obtain a permit under Section 51 of the *Fisheries Act 1994* to remove marine plants for any works that remove or damage marine plants in Plane Creek, and obtain approval for any waterway barrier works from SSC and DPIF.



#### 4.11.6 Nature Conservation Act 1992

##### Background

The NCA legislation provides for the conservation of nature through two mechanisms:

- 1) Declaration and management of protected areas; and
- 2) The protection of native wildlife that is not found within a protected area.

Protected areas are declared under the Act as:

- National parks including scientific and Aboriginal and Torres Strait Islander land
- Conservation parks
- Resource reserves
- Nature refuges
- Coordinated conservation areas
- Wilderness areas
- World Heritage management areas
- International agreement areas

Wildlife (animals and plants) can be declared under the Act within the following classes:

- Presumed extinct wildlife
- Endangered wildlife
- Vulnerable wildlife
- Rare wildlife
- Common wildlife
- International wildlife
- Prohibited wildlife

The Act provides for interim conservation orders to conserve, protect or manage wildlife, habitat or areas subject to a threatening process likely to have significant detrimental effect.

##### Relevance to Project

If listed plants (ie endangered, vulnerable or rare) need to be cleared, a permit under the NCA will be required (refer Chapter 6).

#### 4.11.7 Vegetation Management Act 1999

##### Background

The *Vegetation Management Act 1999* (VM Act) and associated *Vegetation Management Regulation 2000* regulate the conservation and management of vegetation communities. Under the VM Act, a Regional Ecosystem (RE) is defined as a vegetation community in a bioregion that is consistently associated with a particular combination of geology, land form and soil.

The Act aims to conserve remnant Endangered and Of Concern REs, prevent land degradation and the loss of biodiversity, manage the environmental effects of land clearing and reduce greenhouse emissions. The Act is administered through the IP Act and Department of Natural Resources and Water (DNRW).

Section 10 prescribes the Minister to prepare a policy for vegetation management of the State. The 'State Policy for Vegetation Management' was endorsed in May 2004 and is to be applied, in conjunction with the associated regional vegetation management codes, when assessing applications under the VM Act.

The VM Act does not apply to clearing of vegetation on:

- A forest reserve under the NCA
- A protected area under the NCA Section 28
- An area declared as a state forest or timber reserve under the *Forestry Act 1959*
- A forest entitlement area under the *Land Act 1994*

Broadscale clearing of remnant vegetation was phased out in December 2006. However, applications for ongoing clearing purposes can be made, if the chief executive is satisfied that the clearing is for a project declared to be a significant project under Section 26 of the SDPWO Act.

### Relevance to Project

The JRUP will require removal of REs as defined by the EPA under the VM Act. Also, clearing vegetation on State land (including leases, roads and reserves) will require a permit to clear, irrespective of whether the vegetation is shown as remnant on the RE maps, except where the activity is listed under the Schedule 8, Part 1 of the IP Act. The clearing of vegetation for construction of rail infrastructure by QR is not exempt under the VM Act, unless the land is owned by Queensland Transport and subsequently leased to QR, and is required for maintenance reasons (not construction).

There are two properties within the project area that currently are mapped as Remnant Ecosystem: Lot 8 on SP108962 (Remnant Not of Concern) and Lot 8 on RP724603 (Remnant Of Concern -Dominant). There is also Remnant Not of Concern Regional Ecosystem mapped on Lot 3 on RP817145 and Lot 1 on RP726644, which are located west of Armstrong Beach Road and in the road reserve itself. This is not presently affected by the works, but this may change at the detailed design phase.

A permit to clear vegetation on freehold land that is identified as an RE by the EPA will be required. None of the proposed works will be defined as an exemption outlined in Schedule 9 of the IP Act. A property vegetation management plan will be required to accompany the clearing application in accordance with Section 3 of the *Vegetation Management Regulation 2000*.

This issue is further discussed in Chapter 6 of the EIS.

### 4.11.8 Water Act 2000

The *Water Act 2000* fulfils Queensland's responsibilities under the 1994 Water Resources Policy of the Council of Australian Governments. The Act provides a legislative base for the sustainable planning of Queensland's non tidal waters.

### Water Related Development

#### *Background*

Schedule 8, Part 1, Table 4, Item 3 of IP Act specifies that operational work for the purpose of taking or interfering with water under the *Water Act 2000* is assessable development. This includes:

Operational work of any kind and for all things constructed or installed that allow the taking, or interfering with, water (other than using a water truck to pump water) under the Water Act 2000, if the operations allow, under that Act—

- (a) taking or interfering with, water from a watercourse, lake or spring (other than under the Water Act 2000, section 20(2), (3) or (5)) or from a dam constructed on a watercourse; or  
(b) taking, or interfering with, artesian water under the Water Act 2000; or

- (c) taking, or interfering with—
- (i) overland flow water, if the operations are mentioned as assessable development in a water resource plan under the Water Act 2000, a wild river declaration or prescribed under a regulation under this or another Act; or
  - (ii) sub artesian water, if the operations are mentioned as assessable development in a water resource plan under the Water Act 2000, a wild river declaration or prescribed under a regulation under this or another Act; or
- (d) interfering with overland flow water in an area declared under the Water Act 2000 to be a drainage and embankment area if the operations are declared under that Act or a wild river declaration to be assessable development.

This means that certain water-related development is assessable development and requires assessment and approval under the IP Act for most works in a watercourse (pumps, gravity diversion, stream diversion, weirs, barrages and dams). Development permits are required for the above activities through the IDAS of the IP Act.

#### *Relevance to Project*

Watercourses are contained within the project area. Stream diversion may be required on one or more of the channels pending detailed design. If one or more stream diversions are required, a development permit will be required under IP Act.

### **Riverine Protection Permits**

#### *Background*

The *Water Act 2000* requires that a proponent obtain a Riverine Protection Permit for the removal of vegetation, excavating or placing of fill in a watercourse, lake or spring (s 266).

Under a Riverine Protection Permit, extraction of riverine quarry material requires a quarry material allocation notice to obtain a 'share' of the resource (s 280) and a permit to physically remove the resource from the watercourse or lake.

In Part 5 of the *Water Act 2000*, the excavation, placing of fill, or destruction of vegetation in a watercourse, lake or spring is permitted if it is carried out in accordance with the *Guideline for Activities in a watercourse, lake or spring* (the Guideline). Therefore, in order to avoid a Riverine Protection Permit under the *Water Act 2000*, QR as an approved entity, must comply with the Guideline, which applies only to activities that are necessary for the construction, installation, removal, maintenance or protection of infrastructure under control of the entity. It does not remove QR's obligation to fully comply with all other relevant legislation and does not apply to excavation or placing fill.

If undertaking destruction of vegetation in a watercourse, lake or spring, advice should also be sought from the Vegetation Management Group of the DNRW before commencing activities under the Guideline. An additional approval under the IP Act may be required if it is assessable development.

#### *Relevance to Project*

Numerous watercourses are contained within the project area. Activities in Plane Creek, Willy Creek or Elizabeth Creek may be required pending detailed design. If required, a comprehensive assessment will be undertaken by QR to ensure that such works comply with the Guideline.

## Water licence

### *Background*

Division 2, Subdivision 1, Section 206, Subsection 1 under the *Water Act 2000* states that an application for a water licence will need to be submitted to the DNRW for any land parcel/s where the land owner intends to:

- a) *[take] water and [use] the water on any of the land; or*
- b) *to interfere with the flow of water on, under or adjoining any of the land.*

The water referred to under subsection 1(a) is any one of the following:

- c) *a watercourse, lake or spring on or adjoining any of the land*
- d) *an aquifer under any of the land*
- e) *water flowing across any of the land*

and also refers to water from a watercourse, lake, spring or aquifer that:

- i) *does not adjoin any of the applicant's land or the proposed point of taking the water is not on the applicant's land; or*
- ii) *water from an aquifer—the aquifer is not under the applicant's land (s206, subsection 3a)*

Under a Water Licence application, the applicant must show that they have permission from land owners of any intervening land to take water by way of a registrable lease or easement over the intervening land (s206, subsection 3b). Further information may need to be supplied to the DNRW in support of the application (s207) and the application must be made in the approved form, accompanied by the fee prescribed under the *Water Regulation 2000* (s206, subsection 6).

### *Relevance to Project*

As QR intends to interfere with the flow of water to the extent that a water licence would be required under the *Water Act 2000*.

## 4.11.9 Aboriginal Cultural Heritage Act 2003

### **Background**

The *Aboriginal Cultural Heritage Act 2003* (ACH Act) binds all persons, including the state, to provide effective recognition, protection and conservation of Aboriginal cultural heritage. Aboriginal cultural heritage is defined under Section 8 of the Act as anything that is:

- '(a) a significant Aboriginal area in Queensland; or*
- (b) a significant Aboriginal object; or*
- (c) evidence, of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.'*

Section 14 of the Act denotes that as far as practicable, Aboriginal cultural heritage should be owned and protected by Aboriginal people with traditional or familial links to the cultural heritage if it is comprised of any of the following:

- Aboriginal human remains
- Secret or sacred objects
- Aboriginal cultural heritage lawfully taken away from an area



The ACH Act requires the development of a Cultural Heritage Management Plan (CHMP) if:

- An EIS is required
- An environment authority is required under a different Act
- Under IP Act, a development application is made for the project or the chief executive is a concurrence agency

The requirements of a CHMP and the assessment process are outlined in Part 7 of the Act.

A 'Duty of Care' guideline has been prepared to assist in ensuring that the Indigenous heritage is protected. Compliance with the guideline is not enforced however the guideline affords strict compliance with the Duty of Care of the Act.

### Relevance to Project

As the JRYUP requires an EIS, a CHMP will be developed in accordance with Section 87 of the Act.

Under the provisions of the ACH Act, the relevant Aboriginal Parties were identified through the DNRW database for the project area. For the proposed JRYUP project area, two Aboriginal Parties have claims over this area. The claimant groups are:

- Yuibera People
- Wirri People # 2

Yuibera People have particular parcels of land relating to their Native Title claim. Lot 100 on USL39250 is the only land parcel within the proposed project area that forms part of the Yuibera People's claim.

Wirri People # 2 have a previous Native Title claim that covered Sarina Shire's entire jurisdiction, which includes all of the project area.

Although the Wiri People # 2 claim was not accepted by the National Native Title Tribunal, they are currently recognised as an 'Aboriginal Party' party under the ACH Act for all of the project area excluding Lot 100 on USL39250. Under the ACH Act, Yuibera are the Aboriginal Party however, under Section 35 of the ACH Act if a 'person is a an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area' which is applicable to Wiri People # 2.

Figure 13.1 illustrates the Aboriginal Claim Boundaries for both Aboriginal Parties.

In accordance with the ACH Act, Wiri People # 2 and Yuibera People were notified of the Project and invited to be involved in preparing a CHMP by Connell Hatch on behalf of QR. Both groups expressed interest in being involved as endorsed Indigenous parties under the ACH Act.

A draft CHMP has been developed (refer Appendix M), ensuring Aboriginal cultural heritage is managed in accordance with the ACH Act for the duration of the Project.

#### 4.11.10 Other legislation

In addition, other legislation relevant to the JRYUP development includes:

- *Dangerous Goods Safety Management Act 2001*
- *Explosives Act 1999*

#### 4.11.11 Summary of approvals

The following tables summarises the likely approvals required for the construction and operational phases of the JRYUP.

**Table 4.17 Summary of key project approvals**

Legislation	Administering Authority	Development action	Approval/Permit
<i>State Development and Public Works Organisation Act 1971</i>	Coordinator-General	Initial Advice Statement	Declaration as a significant project requiring an EIS
<i>Integrated Planning Act 1997</i>	Sarina Shire Council	Material Change of Use made Assessable Development under the Sarina Shire Planning Scheme (May 2005)	The EIS process for a significant project may be undertaken before an IDAS application is made. The IDAS application for the Project will be made during the EIS display period

**Table 4.18 Summary of likely approvals – Construction**

Legislation	Administering Authority	Development action	Approval/Permit
<i>Aboriginal Cultural Heritage Act 2003</i>	DNRW	Construction works	Aboriginal cultural heritage investigation and Cultural Heritage Management Plan
<i>Environmental Protection Act 1994 and Integrated Planning Act 1997</i>	EPA	ERA 11(b): Crude oil or petroleum product storing having a combined total storage capacity of 500,000 L or more	Development Permits and Registration Certificates
		ERA 15 (b): Sewage treatment operating, having a peak design capacity to treat sewage of 100 or more equivalent persons but less than 1500 equivalent persons	
		ERA 19(a): Dredging not more than 5,000 t a year	
		ERA 20(c): Extracting rock or other material having a design capacity of 100,000 t or more a year	
		ERA 22(c): Screening, washing, crushing, grinding, milling, sizing or separating material extracted from the earth, having a design capacity of 100,000 t or more a year	
		ERA 62: Concrete batching	
		Removal of contaminated soil from sites listed on CLR or EMR	Development Permit (if required)
<i>Fisheries Act 1994 and Integrated Planning Act 1997</i>	DPIF	Work in areas causing removal, destruction or damage to marine plants	Development Permit (if required)

Legislation	Administering Authority	Development action	Approval/Permit
		The construction or raising of a waterway barrier	Development Permit
<i>Nature Conservation Act 1992</i>	EPA	Taking, using, keeping or interfering with a protected animal or plant	Permit if protected plants are affected by Project
<i>Vegetation Management Act 1999 and Integrated Planning Act 1997</i>	DNRW	Removal of Regional Ecosystems as defined by the EPA under the Act	Development Permit
<i>Water Act 2000</i>	DNRW	Destroying of vegetation, excavating or placing fill in a watercourse, lake or spring	Riverine Protection Permit or compliance with DNRW guidelines shown
		Stream diversion for Elizabeth and Willy Creeks	Water Licence

**Table Notes:**

DES = Department of Emergency Services

DPIF = Department of Primary Industries and Fisheries

EPA = Environmental Protection Agency

DNRW = Department of Natural Resources and Water

ERA = Environmentally Relevant Activity

CLR = Contaminated Land Register

EMR = Environmental Management Register

**Table 4.19 Summary of likely approvals – Operation**

Legislation	Administering Authority	Development action	Approval/Permit
<i>Dangerous Goods Safety Management Act 2001</i>	DES	Large dangerous goods location established	Notify the Chief Executive (DES) Emergency Plans and Procedures
<i>Environmental Protection Act 1994 and Integrated Planning Act 1997</i>	EPA	ERA 11(b): Crude oil or petroleum product storing in tanks or containers having a combined total storage capacity of 500,000 L or more	QR holds an existing Development Permit and Registration Certificates (Certificate of Registration No: ENRE00307205) for Lot 101 on SP108584. This Permit should be upgraded where necessary to include the proposed new areas of Jilalan Rail Yard.
		ERA 15 (b): Operating a sewage treatment plant having a peak design capacity to treat sewage of 100 or more equivalent persons but less than 1,500 equivalent persons	
		ERA 72: Operating any railway facility for refuelling and maintaining or repairing rolling stock	
		Removal of contaminated soil from sites listed on CLR or EMR	Disposal Permit (if required)

**Table Notes:**

DES = Department of Emergency Services

DPIF = Department of Primary Industries and Fisheries

EPA = Environmental Protection Agency

DNRW = Department of Natural Resources and Water

ERA = Environmentally Relevant Activity

CLR = Contaminated Land Register

EMR = Environmental Management Register

## 4.12 Conclusion

QR's preference is to negotiate the purchase price for the land required for the Project based on independent market valuation. If a negotiated purchase is not achieved, QR will seek to engage the resumption powers of State Government where compensation can be paid to land owners if a pecuniary interest in land is taken (ie if it is resumed). Assessment of compensation is based on the market value of the property at the date of Gazettal of the acquisition. Under the *Acquisition of Land Act 1967* there is currently no provision to compensate property owners that are not directly affected by the proposal. In assessing the compensation to be paid, regard is given to the value of the land taken, severance, injurious affection and disturbance. In a resumption situation only that land required for the Project and immediately impacted will be acquired.

The majority of land required by the Project is in sugar cane plantation. The removal of this land from sugar cane production will reduce the cane supplied to the CSR Mill. During the detailed design stage, particular detail will be given to minimising direct and indirect land use impacts.

While there will be a net loss of cane land in close proximity to the Plane Creek Mill in Sarina, improved access to land east of the Goonyella Branch Line improves the viability of the land around the distillery to be once again used for sugar cane plantations.

Following construction, surplus land not required for the project or potential future rail development will be leased to allow suitable land to return to sugar cane production.

The potential land use benefits of the Project will outweigh the direct property impacts and other potential land use impacts. Construction and operation of the JRYUP will ensure that the economic advantage of the area is retained. It will allow the Port of Hay Point to remain a world class coal port that is able to satisfy the transport demands of the rapidly increasing coal exports market.

The JRYUP complies with the planning intentions of the Sarina Shire Council Planning Scheme and will comply with the applicable Commonwealth and State Legislation.

Management of land use changes adjacent to the project area must be guided by appropriate planning controls to ensure no inappropriate land uses and amenity issues occur. QR will continue liaising with SSC to ensure appropriate and consistent future development patterns occur near the project area.

In conclusion, from a land use perspective, the JRYUP is a project of National, State and Regional significance. If it proceeds, it will have minimal impact on existing land uses if appropriate mitigation measures are implemented.