

Constellation Project

Environmental Impact Statement

Chapter 5 – Statutory Context

5 Statutory context

5.1 Introduction

In accordance with the NSW Planning Secretary's Environmental Assessment Requirements (SEARS) for the Project and the NSW State significant development guidelines – preparing an environmental impact statement (DPIE 2022a), this chapter provides an overview of the statutory context relevant to the Project.

The statutory context requirements of the Project SEARs, as well as where each requirement is addressed within this EIS, is provided in Table 5-1.

Table 5-1: SEARs requirements

Assessment matter	Report locations
Details of the approvals that must be obtained before the development may commence.	Sections 5.1.1 and 5.4
Consideration of the development against all relevant environmental planning instruments.	Sections 5.5 and 5.6
Details of water access licences (WAL) held to account for any take of water when required or demonstration that WAL can be obtained prior to take of water occurring. This should include an assessment of the current market depth when water entitlement is required to be purchased. Any exemptions, or exclusions, to requiring approvals or licenses under the <i>Water Management Act 2000</i> should be detailed by the applicant.	Section 5.4.3.5

5.1.1 Overview of approvals required

In accordance with the NSW State significant development guidelines – preparing an environmental impact statement (DPIE 2022a), several different categories of statutory requirements are recommended for consideration for the Project, as set out in Table 5-2.

Table 5-2: Relevant statutory requirements

Category	Statutory requirements
Authority to grant approval	EP&A Act EP&A Regulations <i>Refer to Section 5.2.</i>
Permissibility of the proposed Project	State Environmental Planning Policy (Resources and Energy) 2021 <i>Refer to Section 5.3.2.</i> Bogan Local Environmental Plan 2011 <i>Refer to Section 5.3.4.</i>

Category	Statutory requirements
Other relevant approvals	<p>Consistent approvals:</p> <ul style="list-style-type: none"> • <i>Mining Act 1992</i> • <i>Protection of the Environment Operations Act 1997</i> • <i>Roads Act 1993</i> • <i>Pipelines Act 1967.</i> <p><i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i></p> <p>Other approvals considered:</p> <ul style="list-style-type: none"> • <i>Native Title Act 1993 (Cth)</i> • <i>Climate Change Act 2022 (Cth)</i> • <i>Climate Change (Net Zero Future) Act 2023</i> • <i>Biodiversity Conservation Act 2016</i> • <i>Water Management Act 2000.</i> <p>Approvals that do not apply—refer to Section 5.4</p>
Pre-condition to exercising the power to grant approval	Matters that must be satisfied before the consent authority may exercise its power—refer to Section 5.5.
Mandatory matters for consideration	Matters that the consent authority must consider when making its decision—refer to Section 5.6.

These categories and their identified statutory requirements are discussed further in the following sections.

Any future expansion for mining of the deeper ore body underlying the Project would be considered as a modification undertaken in accordance with relevant statutory requirements, and does not form part of the proposed Project.

5.2 Authority to grant approval

Authority to grant approval of the proposed Project within the existing NSW statutory environment is provided through the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

5.2.1 NSW Environmental Planning and Assessment Act 1979

The NSW EP&A Act defines its objectives in Section 1.3. The Act seeks to promote the proper management of the state's natural resources and environment while also facilitating sustainable development.

The EP&A Act, in conjunction with the EP&A Regulation, provides the statutory framework for planning approvals and environmental impact assessment in NSW. This legislation is administered by the Department of Planning, Housing and Infrastructure (DPHI)—formerly the Department of Planning and Environment (DPE) and various state and local government authorities.

Under Section 4.15 of the EP&A Act, several matters are listed as mandatory for a consent authority to consider when evaluating and determining a development application. Relevant matters for consideration and where they have been addressed in this EIS are provided in Table 5-6.

5.2.1.1 State significant development (SSD)

Under Part 4, Division 4.7 of the EP&A Act, provisions are made regarding developments that are considered of state significance. Specifically, Section 4.36(2) provides that a development is considered an SSD if it is declared to be so under a State Environmental Planning Policy (SEPP).

SEPP (Planning Systems) 2021, Schedule 1, Section 5 (3)(b) declares that in the context of mining, an SSD is declared if the proposed development has a capital investment value more than \$30 million. Capital expenditure for the Project will exceed \$30 million; therefore, the Project is considered an SSD. This is consistent with the SEARs granted for the Project.

5.2.1.2 Consent authority for SSD

The consent authority for an SSD is established under Division 4.2, Section 4.5(a) of the EP&A Act. In accordance with this section, the consent authority for an SSD Project will be the Minister for Planning and Public Spaces (as represented by the DPHI)—unless an environmental planning instrument (EPI) declares the type of development to be of a nature that must be assessed by the Independent Planning Commission (IPC).

Note: Under Chapter 2, Section 2.7(1) of the SEPP (Planning Systems) 2021, the IPC is declared as the consent authority for any of the following SSD projects:

- 1) development in respect of which the council of the area in which the development is to be carried out has duly made a submission by way of objection under the mandatory requirements for community participation in Schedule 1 to the Act; or
- 2) development in respect of which at least 50 submissions (other than from a council) have duly been made by way of objection under the mandatory requirements for community participation in Schedule 1 to the Act; or
- 3) development the subject of a development application made by a person who has disclosed a reportable political donation, under Section 10.4 of the Act, in connection with the development application.

At this stage, it is not anticipated that the IPC will be the consent authority for the Project, however it is acknowledge that this cannot be determined until completion of the EIS public exhibition process.

5.2.1.3 Development application (DA)

A DA for an SSD must be accompanied by an EIS in accordance with Section 4.12(8) of the EP&A Act. Further, the EIS must be prepared in accordance with any relevant guidelines prepared under the EP&A Regulation. Notably, this includes the State significant development guidelines – preparing an environmental impact statement (DPIE 2022a).

The DA for the Project will be submitted to the NSW DPHI (as the relevant delegate for the Minister of Planning and Public Spaces). The DPHI will then distribute the DA to relevant referral authorities. Of these referral authorities, it is noted that the DoR is a central player in the approval process for the proposed Project. At the local government level, Bogan Shire Council is also a critical stakeholder in the DA process.

5.2.1.4 EIS preparation

Before preparing an EIS, an applicant must request SEARs from the Secretary of DPHI, which specifies the matters that must be addressed in the EIS. The SEARs for the Project were issued by DPHI in May 2022. The SEARs and where they have been addressed in this EIS are provided in Attachment 2, SEARs reconciliation table.

Following amendments to the EP&A Act during 2021, changes to the EIS process have been progressively occurring in recent years. A key component of these changes has been the introduction of the rapid assessment framework, which is designed to make assessing major projects quicker and more efficient while improving the quality of assessments, engagement and customer service (DPE 2024).

Key components of the rapid assessment framework relevant to the Project include:

- new environmental impact assessment guidelines to improve the quality of assessments and documentation (e.g. DPIE 2022a);

- enhanced quality assurance for environmental assessment via a new accreditation system for registered practitioners; and
- a two-year expiry for SEARs to ensure environmental impact statements are always based on current considerations.

This EIS has been prepared in accordance with Part 8 of the EP&A Regulation and the Department's State significant development guidelines to ensure it meets the minimum content requirements.

As part of the registered practitioner's system, all EISs for SSD projects must now be reviewed by a Registered Environmental Assessment Practitioner (REAP) prior to submission. The role of the REAP review is to ensure that a project's EIS is prepared to a high standard and that it includes all the necessary information to assess the project. This is intended to assist projects in moving more efficiently through the planning process (DPE 2024). The Project has prepared this EIS in accordance with DPIE 2022a while also utilising a REAP to support the EIS preparation and delivery. The declaration from the registered practitioner is provided in Summary, Section S.7.

To support the submission of this EIS, Aeris has also undertaken a number of statutory-based engagement processes in conjunction with DPHI and DoR NSW, including:

- a Mine Development Panel session; and
- a Resources and Economic Assessment.

These processes are discussed in Chapter 4, Engagement, Section 4.3.

5.3 Permissibility of the proposed Project

While the proposed Project is ultimately assessed and determined under the EP&A Act, the Project must also be considered permissible under relevant state, regional or local plans, including:

- SEPP (Planning Systems) 2021;
- SEPP (Resources and Energy) 2021; and
- Bogan Local Environmental Plan 2011 (LEP).

5.3.1 SEPP (Planning Systems) 2021

The SEPP Planning systems establish processes to identify state or regionally significant developments. As identified in Section 5.2.1, the proposed Project is considered an SSD. Determination of a project as an SSD establishes specific approval processes to assess and potentially permit the proposed Project. SSD approval processes are discussed in Section 5.2.

5.3.2 SEPP (Resources and Energy) 2021

Under Section 2.9(1) of the SEPP (Resources and Energy) 2021, mining development may be carried out if it is approved by a development consent. Relevant to the proposed Project, the following mining purposes are considered permissible:

- underground mining (carried out on any land);
- mining carried out on land where agriculture or industry is carried out (with or without development consent); or
- mining carried out on land with facilities for the processing or transporting of minerals or mineral-bearing ores (with or without development consent)—but only if they were mined from that land or adjoining land.

As such, the proposed Project is considered permissible under the SEPP (Resources and Energy) 2021.

Note: Section 2.10(1) of SEPP (Resources and Energy) 2021 provides that:

If a local environmental plan provides that development for the purposes of mining may be carried out on land (with development consent) if provisions of that plan are satisfied, [...] development for that purpose may be carried out on that land (with development consent) without those provisions having to be satisfied.

As such, the SEPP (Resources and Energy) 2021 may become relevant to permissibility when considering the operation of an LEP.

5.3.3 SEPP (Transport and Infrastructure) 2021

The Transport and Infrastructure SEPP governs the development and management of transport and infrastructure in NSW. Section 2.119 of the SEPP (Transport and Infrastructure) sets out requirements and guidelines for the consent authority to assess and determine a DA in the transport and infrastructure sector (refer to Table 5-5).

5.3.4 Bogan LEP

Local environmental planning provisions for the Bogan Shire Council area are made under the Bogan LEP. The Bogan LEP is introduced and discussed in Chapter 2, Strategic context, Section 2.3.3.

Under the Bogan LEP, the Project site is within lands classified as Zone RU1 (Primary Production). Open cut mining and extractive industries are identified as permitted land uses within Zone RU1, subject to consent. Consent for mining and/or extractive industries that are considered an SSD is via a DA, as discussed in Section 5.2.

5.4 Other relevant approvals

A number of other relevant approvals have also been considered in respect of authorising the activities proposed by the Project. The approvals have been grouped into the following categories:

- 1) Consistent approvals—approvals under NSW legislation that cannot be refused if the Project is approved, providing they are substantially consistent with the approval granted.
- 2) EPBC Act approval—approval required under Commonwealth legislation.
- 3) Other approvals—approvals that are not expressly integrated into an SSD assessment under the EP&A Act (e.g. WAL under the *Water Management Act 2000*).
- 4) Approvals not required—approvals under NSW legislation that are not required as the Project is undergoing assessment as an SSD.

5.4.1 Consistent approvals

Under Section 4.42 of the EP&A Act, the following relevant approvals must be applied consistently with the development consent granted by the consent authority.

5.4.1.1 Mining Act 1992

Granting of a mining lease will be required as part of the approvals for the proposed Project. ML applications are administered through the NSW Resources Regulator. An ML may only be granted once development consent for the Project has been obtained. Aeris will lodge an application for one or more MLs following any future approval of the Project.

As per Section 4.42(1) of the EP&A Act, an ML (under the Mining Act) cannot be refused if it is necessary to carry out an SSD development consent, and the activity is substantially consistent with that consent. Section 25 of the Mining Regulation 2016 sets out the requirements of an ML application.

5.4.1.2 Protection of the Environment Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* (POEO Act) seeks to protect, restore and enhance the quality of the environment in NSW while maintaining ecologically sustainable development. Relevantly, the POEO Act provides a regulatory framework for environmental protection, including the requirement for mining operations to obtain an EPL, which provides conditions that regulate activities likely to impact the environment or cause pollution.

Tritton Copper Operations is currently approved to operate (mining for minerals) under the POEO Act through EPL 4501 and EPL 11254. The proposed Project will include activities of mining, processing and handling of minerals, which are defined as scheduled activities under Clause 29 of Schedule 1 in the POEO Act. The existing EPLs for Tritton Copper Operations will require amendments to include MLs/Lots related to the Project site.

Under Section 4.42(1)(e) of the EP&A Act, a consent under the POEO Act cannot be refused if it is necessary for the carrying out of an SSD development consent, and the activity is substantially consistent with that consent.

5.4.1.3 Roads Act 1993

The NSW *Roads Act 1993* (Roads Act) regulates the carrying out of various activities in, on and over public roads. Further, Section 138 of the Roads Act requires the consent of the appropriate road authority in respect to works proposed on a public road.

For the Project, the haulage route would utilise existing council-controlled road infrastructure (Bogan Shire Council) as well as the state-controlled Mitchell Highway. Under Section 4.42(1) of the EP&A Act, a consent under Section 138 of the Roads Act cannot be refused if it is necessary to carry out an SSD development consent, and the activity is substantially consistent with that consent.

In respect of potential impacts to council-controlled road infrastructure, it is noted that consultation with Bogan Shire Council was ongoing at the time of finalising this EIS. In respect of potential impacts to the state-controlled Mitchell Highway, consultation has been undertaken with Transport for NSW during EIS development. This consultation has resulted in the intersection designs proposed for the Project. Potential impacts to road infrastructure are discussed in detail in Appendix 7, Transport impact assessment and Chapter 6, Environmental assessment, Section 6.15.

5.4.1.4 Pipelines Act 1967

The NSW *Pipelines Act 1967* (Pipelines Act) administers the construction, operation and maintenance of pipelines. A bi-directional water supply pipeline is proposed for the Project to enable the transfer of water between the Project and the existing Murrawombie Copper Mine. This pipeline is intended to improve water management capabilities for the Project site.

The pipeline proposed for the Project will be buried within the haulage/infrastructure corridor, which is owned by Bogan Shire Council. However, where the infrastructure corridor interfaces with the Mitchell Highway, the pipeline is proposed to be installed within existing culverts under the highway to avoid the need for disturbance of the Mitchell Highway road surface. **Note:** Designing the pipeline installation in this way will mitigate additional impacts on ecological and cultural heritage values (concentrating infrastructure disturbance as much as possible).

Under Section 4.42(1)(g) of the EP&A Act, a consent under the Pipelines Act cannot be refused if it is necessary to carry out an SSD development consent, and the activity is substantially consistent with that consent.

5.4.2 Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) affects Australia's commitments to protect and manage matters of national environmental significance (MNES), specifically:

- World Heritage properties;
- places listed on the National Heritage Register;
- wetlands of international significance listed under the Ramsar Convention;
- listed threatened species and ecological communities;
- listed migratory species;
- Commonwealth marine areas;
- the Great Barrier Reef Marine Park;
- nuclear actions (such as uranium mining); and
- water resources in relation to coal seam gas or large coal mining developments (known as the 'water trigger').

Under the EPBC Act, actions which will, or are likely to, have a significant impact on MNES must be referred to the Commonwealth Minister for the Environment and Water for approval. The EPBC Act is administered by DCCEEW.

An assessment of potential impacts on MNES is detailed in Appendix 2, Biodiversity development assessment report. This is also summarised in Chapter 6, Environmental assessment, Section 6.7. A pre-referral meeting has been planned with the Commonwealth DCCEEW to discuss potential impacts on MNES.

5.4.3 Other approvals considered

This section considers other potential approvals that may be required, which are not expressly integrated into the SSD assessment process under the EP&A Act.

5.4.3.1 Native Title Act 1993

The *Native Title Act 1993* (NT Act) is the primary Commonwealth legislation that recognises and protects native title. Individuals or organisations are able to submit native title claims to the Federal Court under Section 13 of the NT Act.

There is an active (i.e. non-finalised) native title claim that encompasses approximately 95,000 km² of the Project region, including the Project site. This claim is identified as the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan native title determination application (NC2012/001). Importantly, however, Lot 4 of DP 751341 and Lots 9 and 10 of DP 751321 (on which the Project site is located) are identified as freehold land. As such, the native title has been extinguished. Notwithstanding this, representatives of the Ngemba, Ngiyampaa, Wangaaypuwan and Wayilwan people have been consulted as part of the proposed Project, as detailed in Appendix 3, Aboriginal and cultural heritage assessment.

5.4.3.2 Climate Change Act 2022

The Commonwealth's *Climate Change Act 2022* (Climate Change Act) has recently come into force to give effect to Australia's international Greenhouse gas (GHG) emissions reduction targets. The objective of the Climate Change Act is to advance an effective and progressive response to climate change, drawing on the best available scientific knowledge.

While approval under the Climate Change Act is not required for the Project, emissions resultant of the Project must be considered against national targets. GHG emissions associated with the Project are detailed in Appendix 14, Greenhouse gas assessment and summarised in Chapter 6, Environmental assessment, Section 6.8.

5.4.3.3 Climate Change (Net Zero Future) Act 2023

The NSW *Climate Change (Net Zero Future) Act 2023* (CCNZF Act) was recently passed by the NSW Parliament to give effect to the commitments under the 2015 Paris Agreement and increase NSW's ability to adapt to the impacts of climate change.

Section 9 of the CCNZF Act legislates NSW's primary targets to reduce GHG emissions by:

- 50 percent by 2023;
- 70 percent by 2035; and to
- achieve net zero GHG emissions by 2050.

It also allows for interim targets to be prescribed in regulations.

The CCNZF Act also establishes the 'Net Zero Commission', being an independent agency responsible for monitoring the state's progress towards targets and making recommendations to support the achievement of reduction targets. As part of its function, the Net Zero Commission is empowered to provide advice to NSW government departments on SSD projects. While approval for the Project is not required under the CCNZF Act, emissions resultant of the Project must be considered against legislated NSW targets. GHG emissions associated with the Project are detailed in Appendix 14, Greenhouse gas assessment and summarised in Chapter 6, Environmental assessment, Section 6.8.

5.4.3.4 Biodiversity Conservation Act 2016

The NSW *Biodiversity Conservation Act 2016* (BC Act) was established to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development.

Under the BC Act, Section 7.9 provides that a biodiversity development assessment report (BDAR) is required to support an application for an SSD. Accordingly, a BDAR has been prepared for the proposed Project and is attached as Appendix 2, with further discussions on biodiversity impacts provided in Chapter 6, Environmental assessment, Section 6.7.

5.4.3.5 Water Management Act 2000

The objectives of the *Water Management Act 2000* (NSW) (WM Act) are to provide for the sustainable and integrated management of NSW's water sources for the benefit of current and future generations.

To take surface water for a mining purpose, a WAL will be required. Water licence availability (for the Project area) is subject to the 'Macquarie–Bogan Unregulated Rivers Water Sources' Water Sharing Plan.

Currently, Tritton Copper Operations holds a number of WALs that authorise the take of water. These licences relate to the North East, Murrawombie (Girilambone) and Tritton Copper Mine sites, as detailed in Table 5-3.

Table 5-3: Existing WALs for Tritton Copper Operations

Site	Instrument	Instrument number	Date of approval	Date of expiry	Site	Purpose
MCM	Water Access Licence	WAL9374	24/02/2005	Ongoing	Tritton and Girilambone	High Security Water Licence (705 ML)

Site	Instrument	Instrument number	Date of approval	Date of expiry	Site	Purpose
MCM	Water Access Licence	WAL9375	24/02/2005	Ongoing	Tritton and Girilambone	General Security Water Licence (210 ML)
MCM	Water Access Licence	WAL9940	1/07/2004	Ongoing	Tritton and Girilambone	Supplementary Water Licence (16 ML)
MCM	Water Access Licence	WAL31041	16/01/2012	Ongoing	Tritton and Girilambone	LFB Groundwater (304 ML)
TCM	Water Access Licence	WAL31090	16/01/2012	Ongoing	Tritton	LFB Groundwater (30 ML)
MCM	Water Access Licence	WAL31049	16/01/2012	Ongoing	Girilambone	LFB Groundwater (10 ML)

Note: TCM = Tritton Copper Mine; MCM = Murrawombie Copper Mine

To support the Project, water is proposed to be supplied from Murrawombie Copper Mine site (Girilambone), through a bi-directional pipeline. Authorisation for this water will be primarily through existing WALs. However, if water security cannot be achieved during the Project operation years, additional share components may be required for surface water resources. A water balance for the Project is provided in Appendix 5, Water impact assessment.

An Aquifer Interference Approval under Section 91(3) of the WM Act is forecast to be required for the Project to account for groundwater inflows to the open cut pit and underground mine workings (resultant of the mining process). Groundwater modelling for the Project (including an estimation of groundwater inflows) is provided in Appendix 5, Water impact assessment.

5.4.3.5.1. NSW Aquifer Interference Policy

The NSW AIP sets out the requirements for obtaining water licences for aquifer interference activities in NSW. The AIP establishes (and objectively defines) considerations for assessing and providing advice on whether 'more than minimal impacts' might occur to a key water-dependent asset. The AIP applies to all aquifer interference activities, including open cut mining and underground mine development.

The AIP requires that all water taken by aquifer interference activities is accounted for within the extraction limits set out in the relevant water sharing plan. Water take is then licensed through a WAL issued under the WM Act. In accordance with the AIP, the volume of water taken from a water source(s) needs to be predicted prior to project approval and then measured and reported in annual returns or environmental management reports. Predictions of groundwater taken for the Project are provided in Appendix 5, Water impact assessment. A WAL to authorise the proposed aquifer interference for the Project will be sought independently of this EIS process, prior to commencement.

5.4.4 Approvals that do not apply

In addition to approvals already identified and discussed, it is important to acknowledge that the EP&A Act also identifies certain NSW authorisations that are not required for SSD projects. These are briefly outlined in Table 5-4.

Table 5-4: Legislative approvals which do not apply to the Project

Act	Approval not required
<i>Fisheries Management Act 1994</i>	A permit under Sections 201, 205 or 219.
<i>Heritage Act 1977</i>	An approval under Part 4 An 'excavation permit' under Section 139.
<i>National Parks and Wildlife Act 1974</i>	An 'Aboriginal heritage impact permit' under Section 90.
<i>Water Management Act 2000</i>	A 'water use approval' under Section 89 A 'water management work approval' under Section 90 An 'activity approval' (other than an 'aquifer interference approval') under Section 91.
<i>Rural Fires Act 1997</i>	A 'bush fire safety authority' under Section 100B.

5.5 Pre-conditions to exercising the power to grant approval

As part of the assessment of the proposed Project, the approval authority is required to take into consideration a number of pre-conditions, which must be met to allow the proposed development to proceed to assessment. These pre-conditions are set out in Table 5-5, with references to where each consideration is addressed within this EIS.

Table 5-5: Pre-conditions table

Statutory reference	Pre-condition	Considerations	Section in EIS
State Environmental Planning Policy (Resources and Energy) 2021	Part 2.2, Section 2.9, Development permissible with consent	Mining development (including underground mining or mining carried out on land where development for the purposes of agriculture or industry may be carried out) is permissible, subject to development consent. Development consent for the proposed Project is being sought under the EP&A Act.	Section 5.2.1, EP&A Act; Section 5.3, Permissibility
	Part 2.3, Section 2.16, Non-discretionary development standards for mining	Non-discretionary development standards have been established for mining projects in the areas of: <ul style="list-style-type: none"> • cumulative noise levels; • cumulative air quality levels; • airblast overpressure; • ground vibration; and • aquifer interference. Non-discretionary development standards must be met by the proposed Project.	Section 6.9, Noise blasting and vibration; Section 6.9.4.1, Operational noise Section 6.8, Air quality; Section 6.8.7, Air quality impact assessment; Section 6.4, Groundwater
	Part 2.3, Section 2.17, Compatibility of proposed mine, petroleum production or extractive industry with other land uses	Before determining a consent for a mining project, potential impacts on other land uses must be considered.	Section 6.1, Soil and land suitability; Section 6.1.6, Potential impacts Section 8.4.2, Mining and final land use domains
	Part 2.3, Section 2.18, Consideration of voluntary land acquisition and mitigation policy	Before determining a consent for an SSD mining project, consideration must be given to the <i>Voluntary land acquisition and mitigation policy (VLAMP)</i> .	Section 6.8, Air quality; Section 6.8.4.2, VLAMP Section 6.9, Noise blasting and vibration; Section 6.8.4.1, VLAMP

Statutory reference	Pre-condition	Considerations	Section in EIS
	Part 2.3, Section 2.19, Compatibility of proposed development with mining, petroleum production or extractive industry	Before determining a development consent, consideration must be given to the compatibility of the proposed Project with other mining, petroleum production or extractive industries (either current or of future potential).	Section 2.5, Key features of the surrounding area Section 1.5.2, Site suitability and design constraints
	Part 2.3, Section 2.20, Natural resource management and environmental management	Before determining a consent for a mining project, consideration must be given to potential impacts on: <ul style="list-style-type: none"> significant water resources (surface water and/or groundwater); threatened species and biodiversity; and greenhouse gas emissions. Potential impacts associated with these matters have been considered in various sections of this EIS.	Section 6.4, Groundwater; Section 6.5, Surface water; Appendix 5, Water impact assessment Section 6.7, Biodiversity; Appendix 2, Biodiversity development assessment report Section 6.8, Air quality; Appendix 14, Greenhouse gas assessment
	Part 2.3, Section 2.21, Resource recovery	Before determining a consent for a mining project, consideration must be given to the efficiency of the proposed resource recovery, the reuse or recycling of material and the minimisation of waste.	Section 3.3.2.3, Resource recovery
	Part 2.3, Section 2.22, Transport	Before granting consent to a mining project, consideration must be given to whether transportation activities require restriction or regulation. Transportation of mine materials on public roads will require referral of the DA to relevant infrastructure owners: <ul style="list-style-type: none"> Bogan Shire Council for locally-controlled roads; and Transport for NSW for the state-controlled Mitchell Highway. 	Section 3.10.5, Workforce transport; Section 3.11, Transporting ore, tailing and product; Appendix 7, Traffic impact assessment Section 6.15, Transport; Section 6.15.6, Management and mitigation strategies
	Part 2.3, Section 2.23, Rehabilitation	Before granting consent to a mining project, consideration must be given to whether conditions are necessary to regulate: <ul style="list-style-type: none"> rehabilitation outcomes; waste management practices; contaminated land management; or public safety risks. These considerations are assessed in various sections of this EIS.	Section 8.4, Rehabilitation strategy Section 6.10, Non-mining waste; Section 6.3, Geochemistry; Section 6.11, Hazards and safety

Statutory reference	Pre-condition	Considerations	Section in EIS
State Environmental Planning Policy (Transport and Infrastructure) 2021	Section 2.119, Development with frontage to classified road	<p>Development consent must not be granted on land that has frontage to a classified road, unless the safety, efficiency and ongoing operation of that road is not adversely affected.</p> <p>Traffic noise and vehicle emissions should also be considered in respect of development adjacent to classified roads.</p> <p>Potential impacts associated with these matters have been considered in various sections of this EIS.</p>	<p>Section 6.15, Transport; Section 6.15.4, Project traffic</p> <p>Section 6.8, Air quality</p> <p>Section 6.9, Noise, blasting and vibration</p> <p>Section 1.5.4, Key strategies to avoid, minimise or offset impacts</p>
Bogan LEP 2011 Part 5—Miscellaneous provisions	Section 5.21, Flood planning	<p>Development consent must not be granted on land identified as being within the 'flood planning area' for the Bogan Shire.</p> <p>No areas of the Project site have been identified as being within a defined flood planning area.</p>	N/A

5.6 Mandatory matters for consideration

During the assessment and determination of a DA, a consent authority is required to undertake consideration of a series of mandatory matters. These mandatory considerations are provided in Table 5-6.

Table 5-6: Mandatory considerations

Statutory reference	Mandatory consideration	Section in EIS
Considerations under the EP&A Act and Regulations		
EP&A Act: Objectives Section 1.3	To promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the state's natural and other resources.	Chapter 2, Strategic context
	To facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.	Chapter 6, Environmental assessment
	To promote the orderly and economic use and development of land.	Section 6.14, Economic
	To protect the environment, including the conservation of threatened and other species of native animals and plants and ecological communities and their habitats.	Section 6.7, Biodiversity
	To promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).	Section 6.12, Cultural heritage
	To promote the sharing of the responsibility for environmental planning and assessment between the different levels of government.	Section 5.2, Authority to grant approval
	To provide increased opportunity for community participation in environmental planning and assessment.	Chapter 4, Engagement
EP&A Act: Evaluation Section 4.15	A consent authority must consider the provisions of any relevant environmental planning instruments. For the proposed Project these include: <ul style="list-style-type: none"> State Environmental Planning Policy (Resources and Energy) 2021; State Environmental Planning Policy (Planning Systems) 2021; State Environmental Planning Policy (Resilience and Hazards) 2021; State Environmental Planning Policy (Transport and Infrastructure) 2021; and Bogan Local Environmental Plan 2011. 	Section 5.5, Pre-conditions to exercising the power to grant approval Section 5.6, Mandatory matters for consideration Section 2.4.3, Bogan LEP
	Any relevant development control plan must be considered (e.g. the Bogan Shire Council Development Control Plan 2012).	Section 2.10 in the State Environmental Planning Policy (Planning Systems) 2021 provides that development control plans do not apply to an SSD.
	Any planning agreement that has been entered into under Section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4.	Section 2.7, Planning agreements

Statutory reference	Mandatory consideration	Section in EIS
	The EP&A Regulations (to the extent that they prescribe matters for the purposes of this paragraph).	Section 5.2, Authority to grant approval
	The likely impacts of the development, including environmental impacts on the natural and built environments and social and economic impacts on the locality.	Chapter 6, Environmental Assessment
	The suitability of the site for the development.	Section 2.4, Land use planning considerations
	Any submissions made in accordance with the EP&A Act or Regulations. Note: This EIS will be exhibited for public comment as part of the statutory approval process under the EP&A Act.	Section 5.2, Authority to grant approval
	The public interest.	Chapter 2, Strategic Context
Considerations under EPIs		
State Environmental Planning Policy (Resilience and Hazards) 2021	Part 3, Section 3.12, Matters for consideration by consent authorities The proposed Project is considered a 'potentially hazardous industry' for the purposes of the SEPP (Resilience and Hazards) 2021. Before granting consent to a potentially hazardous industry project, a range of factors, including a Preliminary Hazard Analysis prepared for the Project, must be considered.	Section 6.11, Hazards and safety; Appendix 13, Preliminary hazard analysis, Section 1.4 Chapter 8, Rehabilitation and closure
	Chapter 4, Section 4.6, Contamination and remediation to be considered in determining development application Before granting consent to a mining project, potential existence of contaminated land must be considered. The proposed Project is not within an area identified to be contaminated land (based on searches of the NSW EPA Contaminated Land Record).	Section 6.1, Soil and land suitability; Section 6.1.4.3, Land use and vegetation
Bogan LEP Part 7, Additional local provisions	Section 7.4, Terrestrial biodiversity Development consent must not be granted on land identified as having <u>biodiversity sensitivity</u> , unless the consent authority is satisfied that potential impacts to terrestrial biodiversity values will be avoided, minimised and/or mitigated. Small areas of the Project site have been identified as having 'Moderate Biodiversity Sensitivity' (Bogan LEP 2011).	Section 6.7, Biodiversity; Appendix 2, Biodiversity development assessment report

Statutory reference	Mandatory consideration	Section in EIS
	Section 7.5, Groundwater vulnerability Development consent must not be granted on land identified as having groundwater vulnerability, unless the consent authority is satisfied that potential impacts to groundwater values will be avoided, minimised and/or mitigated. The proposed Project is not within an area identified as having groundwater vulnerability.	N/A
	Section 7.6, Riparian land and watercourses Development consent must not be granted on land identified as being riparian land and watercourses, unless the consent authority is satisfied that potential impacts to groundwater values will be avoided, minimised and/or mitigated. The proposed Project is not within an area identified as riparian land or a watercourse.	N/A
	Section 7.7, Wetlands Before determining a development consent, the consent authority must consider potential impacts to sensitive wetlands (Bogan LEP 2011). The proposed Project is not within an area identified as sensitive wetlands.	N/A
	Section 7.8, Airspace operations Development consent must not be granted unless the consent authority is satisfied that the proposed development will not penetrate the Limitation or Operations Surface of Nyngan Airport. The proposed Project is not within the areas identified as the Limitation or Operations Surface of the Nyngan Airport.	N/A
	Section 7.9, Essential services Development consent must not be granted unless the consent authority is satisfied that any of the following essential services are available, or that adequate arrangements have been made to make them available when required: <ul style="list-style-type: none"> a) the supply of water; b) the supply of electricity; c) the disposal and management of sewage; d) stormwater drainage or on-site conservation; and e) suitable road access. Potential impacts associated with these matters have been considered in various Sections of this EIS.	Chapter 3, Project description Section 5.4.3.5, Water management act Section 6.10, Non-mining waste; Section 6.10.6, Waste management strategies Section 6.5, Surface water Section 6.15, Transport.
Considerations under other legislation		
<i>Native Title Act 1993 (Cth)</i>		Section 5.4.3.1
<i>Climate Change Act 2022 (Cth)</i>		Section 5.4.3.2
<i>Climate Change (Net Zero Future) Act 2023</i>		Section 5.4.3.3

Statutory reference	Mandatory consideration	Section in EIS
<i>Biodiversity Conservation Act 2016</i>		Section 5.4.3.4
<i>Water Management Act 2000</i>		Section 5.4.3.5