

MACHEnergy

Mount Pleasant Operation

A JOINT VENTURE WITH
JODA
Japan Coal Development Australia



Section 5

Statutory Context

TABLE OF CONTENTS

5	STATUTORY CONTEXT	5-1
5.1	EXISTING APPROVALS AND REGULATORY CONTROLS	5-1
5.2	STATUTORY REQUIREMENTS FOR THE PROJECT	5-1
5.2.1	Power to Grant Approval	5-1
5.2.2	Permissibility	5-2
5.2.3	Approvals that Cannot be Refused if Consent is Granted	5-3
5.2.4	Approvals not Required for State Significant Development	5-3
5.2.5	Pre-conditions to Exercising the Power to Grant Approval	5-4
5.2.6	Mandatory Matters for Consideration	5-4
5.2.7	EPBC Act Approval	5-4
5.2.8	Other Approvals	5-4

LIST OF TABLES

Table 5-1	Pre-conditions to Granting Approval
Table 5-2	Mandatory Matters for Consideration under the EP&A Act and EP&A Regulation
Table 5-3	Mandatory Matters for Consideration under Environmental Planning Instruments
Table 5-4	Mandatory Matters for Consideration under Other Acts

5 STATUTORY CONTEXT

This section outlines the existing primary approvals held by the Mount Pleasant Operation and the application of key State and Commonwealth legislation to the Project, including pre-conditions to the grant of approval and mandatory considerations.

Additional analysis of the consistency of the Project with relevant legislation, state environmental planning policies (SEPPs) and the Muswellbrook LEP is provided in Attachment 7. Additional justification of the Project is provided in Section 8.

5.1 EXISTING APPROVALS AND REGULATORY CONTROLS

An overview of the approval history of the Mount Pleasant Operation is provided in Section 2.1. Key approvals pertaining to the Mount Pleasant Operation include:

- Development Consent DA 92/97 granted by the then NSW Minister for Urban Affairs and Planning on 22 December 1999, as amended by subsequent modifications.
- Approval Decision EPBC 2011/5795 under the EPBC Act granted on 29 February 2012, as amended by subsequent modifications.
- MLs 1645, 1708, 1709, 1713, 1750 and 1808 issued and administered under the *NSW Mining Act, 1992*.
- EPL 20850 issued by the EPA under the *NSW Protection of the Environment Operations Act, 1997* (PoEO Act).
- MOP approved by the Resources Regulator for the period 1 July 2020 to 30 June 2021 under the conditions of MLs 1645, 1708, 1709, 1713 and 1750.
- Various water access licences issued under the *Water Management Act, 2000* (WM Act) for the extraction of water from the Sydney Basin – North Coast Groundwater Source.
- Various water access licences (high security and general security) issued under the WM Act for the extraction of water from the Hunter Regulated River Water Source.
- Various water access licences issued under the WM Act for the extraction of water from the Hunter Unregulated and Alluvial Water Sources.

A register of current licences, permits and approvals is maintained on-site by MACH, and a summary of current approvals for the Mount Pleasant Operation is presented in the Annual Review, which is available at the MACH website:

<https://machenergyaustralia.com.au/mount-pleasant/documentation/>

Existing environmental management, monitoring, mitigation and reporting measures that are implemented in accordance with the existing Mount Pleasant Operation approvals are described in Sections 7 and 8 where relevant.

5.2 STATUTORY REQUIREMENTS FOR THE PROJECT

This section outlines the relevant statutory requirements for the Project under applicable State and Commonwealth legislation and planning instruments. Supporting analysis is provided in Attachment 7, including a statutory compliance summary table.

5.2.1 Power to Grant Approval

Division 4.1 of the EP&A Act creates a threefold classification of development under the Act:

- development that may be carried out without development consent;
- development that may be carried out with development consent; and
- development that is prohibited.

The Project falls into the classification of development that may be carried out with development consent.

Development Consent for the Project is sought under the State Significant Development provisions (i.e. Division 4.7) under Part 4 of the EP&A Act. The EP&A Act and EP&A Regulation generally set the framework for planning and environmental assessment in NSW.

Under section 4.36 of the EP&A Act, a class of development, such as mining, may be declared as State Significant Development by a SEPP. Clause 8 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) provides that the development is declared to be State Significant Development for the purposes of the EP&A Act if:

- the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without Development Consent under Part 4 of the EP&A Act (first criterion); and
- the development is specified in Schedule 1 or 2 (second criterion).

With respect to the first criterion identified above, the Project may be carried out only with Development Consent under Part 4 of the EP&A Act, pursuant to clause 7 of the Mining SEPP (described further below).

In regard to the second criterion identified above, development for the purpose of mining that is coal or mineral sands mining, or has a capital investment value of more than \$30 million, is specified in clause 5 of Schedule 1 to the State and Regional Development SEPP as being State Significant Development.

The Project is development for the purpose of coal mining and also has a capital investment value of more than \$30 million. Therefore, the Project is State Significant Development.

In accordance with section 4.5(a) of the EP&A Act and clause 8A of the State and Regional Development SEPP, the NSW Minister for Planning or the Independent Planning Commission (IPC) is the consent authority for the Project.

5.2.2 Permissibility

Section 4.38 of the EP&A Act provides that development consent may not be granted under Division 4.7 of Part 4 if the development is *wholly* prohibited by an environmental planning instrument, but may be granted despite the development being *partly* prohibited by an environmental planning instrument.

The Project's provisional Development Application Area is covered by the Muswellbrook LEP and includes land zoned under the Muswellbrook LEP as:

- Zone RU1 (Primary Production);

- Zone SP2 (Infrastructure) associated with the Muswellbrook–Ulan Railway Line;
- Zone E3 (Environmental Management); and
- Zone W1 (Natural Waterways).

Open cut mining is permitted with consent in the Zone RU1 (Primary Production) land under the Muswellbrook LEP.

The SP2 zoned land within the Provisional Development Application Area is associated with the Muswellbrook–Ulan Railway Line corridor. Part of the approved rail infrastructure of the Mount Pleasant Operation is within, and will remain as part of the Project, within Zone SP2. Rail infrastructure is development that is permitted with consent under Zone SP2 in the Muswellbrook LEP.

Subject to the application of the Mining SEPP (as discussed below), open cut mining would be prohibited under the Muswellbrook LEP in Zone E3.

The Mining SEPP applies to the State. Clause 5(3) of the Mining SEPP gives it primacy where there is any inconsistency between the provisions in the Mining SEPP and the provisions in any other environmental planning instrument (subject to limited exceptions, which are not enlivened by the Project).

The practical effect of clause 5(3) for the Project is that the provisions of the Mining SEPP will prevail over those contained in the Muswellbrook LEP, to the extent of any inconsistency.

Clauses 6 and 7 of the Mining SEPP provide what types of mining development are permissible without development consent and what types are permissible only with development consent.

Clause 7(1) states:

7 Development permissible with consent

(1) Mining

Development for any of the following purposes may be carried out only with development consent:

...

(b) mining carried out:

- (i)** *on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or*

- (ii) *on land that is, immediately before the commencement of this clause, the subject of a mining lease under the Mining Act 1992 or a mining licence under the Offshore Minerals Act 1999,*

...

- (d) *facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land,*

...

'Extensive agriculture' is permissible under the Muswellbrook LEP without consent in Zone E3 (Environmental Management). Clause 7(1)(b)(i) of the Mining SEPP provides that development for the purposes of 'mining' may be carried out with development consent on land where development for the purposes of agriculture is permissible.

Therefore, while open cut mining in Zone E3 is prohibited under the Muswellbrook LEP, the Mining SEPP prevails and provides that mining can be carried out with consent on these lands.

Zone W1 in the Provisional Development Application area is associated with the Hunter River. Only parts of the approved Mount Pleasant Operation Hunter River Pump Stations and related water supply infrastructure would be on land zoned W1.

To the extent that open cut mining is prohibited within Zone W1, given that the Project is State Significant Development, the consent authority for the Project is authorised by section 4.38(3) of the EP&A Act to grant development consent to the whole of the Project, including the water supply infrastructure.

Section 4.38(3) is in Division 4.7 of the EP&A Act, which contains the provisions of the Act that are concerned with State Significant Development. Section 4.38(3) states:

- (3) *Development consent may be granted despite the development being partly prohibited by an environmental planning instrument.*

It follows that the consent authority is conferred with authority to grant development consent to the Project.

5.2.3 Approvals that Cannot be Refused if Consent is Granted

Under section 4.42 of the EP&A Act the following authorisations cannot be refused if they are necessary for carrying out an approved State Significant Development, and are to be substantially consistent with the Development Consent:

- An aquaculture permit under section 144 of the *NSW Fisheries Management Act, 1994 (FM Act)*.
- An approval under section 15 of the *Mine Subsidence Compensation Act, 1961*¹.
- A ML under the *Mining Act, 1992*.
- A production lease under the *Petroleum (Onshore) Act, 1991*.
- An EPL under Chapter 3 of the *PoEO Act* (for any of the purposes referred to in section 43 of that Act).
- A consent under section 138 of the *Roads Act, 1993*.
- A licence under the *Pipelines Act, 1967*.

The Project is anticipated to require MLs (which have already been obtained), an EPL, and consent under section 138 of the *Roads Act, 1993*.

5.2.4 Approvals not Required for State Significant Development

Under section 4.41 of the EP&A Act the following authorisations are not required for State Significant Development for which consent has been granted under Division 4.7 of Part 4 of the EP&A Act:

- A permit under section 201, 205 or 219 of the *FM Act*.
- Approval under Part 4, or an excavation permit under section 139, of the *Heritage Act, 1977*.
- An Aboriginal Heritage Impact Permit (AHIP) under section 90 of the *National Parks and Wildlife Act, 1974*.
- A bush fire safety authority under section 100B of the *Rural Fires Act, 1997*.
- A water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *WM Act*.

¹ The *Mine Subsidence Compensation Act, 1961* was repealed on the commencement of section 60 of the *Coal Mine Subsidence Compensation Act, 2017*, on 1 January 2018.

Of the authorisations listed above:

- a bush fire safety authority may not be required under section 100B of the *Rural Fires Act, 1997*; and
- a permit under sections 201 or 205 of the FM Act, would not be required even if section 4.41 of the EP&A Act did not apply to the Project.

5.2.5 Pre-conditions to Exercising the Power to Grant Approval

Relevant pre-conditions to the consent authority exercising its power to grant approval are presented in Table 5-1. Further discussion is presented in Attachment 7.

5.2.6 Mandatory Matters for Consideration

Matters that the consent authority is required to consider in deciding whether to grant approval for the Project are presented in Tables 5-2 to 5-4. Further discussion is presented in Attachment 7.

5.2.7 EPBC Act Approval

The proposed action to increase open cut coal extraction to allow mining of additional coal reserves and increase processing operations at the Mount Pleasant Operation not already authorised by the Approval Decision EPBC 2011/5795 was referred to the Commonwealth Minister in July 2020 (EPBC 2020/8735) (the proposed action). A delegate of the Commonwealth Minister determined on 26 August 2020 that the proposed action is a “controlled action” and therefore the action requires approval under the EPBC Act due to potential impacts on the following matters of national environmental significance (MNES) under Part 3 of Chapter 2 of the EPBC Act:

- threatened species and communities listed under the EPBC Act; and
- a water resource in relation to large coal mining development.

The delegate of the Commonwealth Minister also determined that the proposed action is to be assessed under the bilateral agreement with NSW.

Therefore, this EIS provides an assessment of potential impacts of the proposed action on the above MNES.

Supplementary SEARs issued on 2 October 2020 set out the requirements for this EIS under the NSW assessment process in relation to the relevant matters under the EPBC Act. Those requirements have been addressed in this EIS and a summary cross-reference table is provided in Attachment 2.

5.2.8 Other Approvals

This section describes the key ancillary approvals required for the Project. Additional discussion on each of these approvals is provided in Attachment 7.

Mining Act, 1992

Mining activities for the Project would be wholly located within the MLs held for the approved Mount Pleasant Operation (e.g. ML 1645) (Figures 3-4 to 3-10). Under the NSW *Mining Act, 1992*, environmental protection and rehabilitation are regulated by conditions included in all MLs, including requirements for the submission of a MOP and Annual Reviews (Attachment 7).

Protection of the Environment Operations Act, 1997

The PoEO Act and the NSW *Protection of the Environment Operations (General) Regulation, 2009* set out the general obligations for environmental regulation in NSW.

The approved Mount Pleasant Operation currently operates under EPL 20850, granted under the PoEO Act. EPL 20850 contains conditions that relate to emission and discharge limits, operational shutdown requirements under specific combinations of environmental conditions, environmental monitoring, and reporting. If approved, the Project would require some variations to EPL 20850.

Roads Act, 1993

If the Project is approved, MACH would apply for the necessary consents under section 138 of the *Roads Act, 1993* associated with works such as construction of the Northern Link Road and closure of the eastern portion of Castlerock Road.

**Table 5-1
Pre-conditions to Granting Approval**

Statutory Reference	Pre-condition	Relevance	Relevant Section of EIS
<i>EP&A Regulation</i>			
clause 49(2)	The consent of the owner of the land is not required for a development application for public notification development, if the applicant instead gives notice of the application by publishing a notice in a newspaper circulating in the area in which the development is to be carried out, no later than 14 days after the application is made.	The Project is public notification development as it falls within Item 5 of Schedule 1 of the State and Regional Development SEPP and no part of the Project will be carried out on land that is a State Conservation Area reserved under the <i>National Parks and Wildlife Act, 1974</i> . The Development Application will be notified in accordance with clause 49(2)(b) of the EP&A Regulation.	To be satisfied after EIS submitted
<i>State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55).</i>			
clause 7(1)	A consent authority must consider whether the land is contaminated and be satisfied that, if the land is contaminated, the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of the Project.	A Land Contamination Assessment has been conducted and concluded that no contamination has been identified that would make the land unsuitable for the Project (Appendix L).	Section 7.14, Appendix L
<i>Mining Act, 1992</i>			
section 380AA	An application for development consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority that is in force in respect of coal for the relevant land, or the applicant has the written consent of the holder of such an authority to make the application.	The Project involves a Development Application for mining of coal. MLs 1645, 1708, 1709, 1713, 1750 and 1808 are held by MACH Energy Australia Pty Ltd and J.C.D. Australia Pty Ltd. Consent of J.C.D. Australia Pty Ltd to the Development Application is provided in Attachment 11.	Attachments 7 and 11
<i>Dams Safety Act, 2015</i>			
section 48(4)	A consent authority must, before granting Development Consent for mining operations within a notification area of a declared dam, refer the application to Dams Safety NSW and take into consideration any matters raised by Dams Safety NSW.	The Project would involve mining operations within the notification areas of a number of declared dams, including Mount Pleasant MWD and ED3, and Bengalla CW1 notification areas.	Attachment 7

**Table 5-1 (Continued)
Pre-conditions to Granting Approval**

Statutory Reference	Pre-condition	Relevance	Relevant Section of EIS
<i>Muswellbrook LEP, 2009</i>			
clause 5.10(7)	If applicable, a consent authority must, before granting consent to the carrying out of development on an archaeological site, notify the Heritage Council of its intention to grant consent, and take into consideration any response received from the Heritage Council within 28 days after the notice is sent.	A Historical Heritage Assessment has been conducted and the Project would disturb some archaeological sites of local heritage significance, which are primarily sites assessed to have a low level of archaeological potential and one site assessed to have a high level of archaeological potential (Appendix H).	Section 7.13, Appendix H
clause 7.1(3)	Development consent must not be granted for development on land identified as “Biodiversity” on the Terrestrial Biodiversity Map unless the consent authority is satisfied that the development satisfies the objective of the clause and: (a) the development is designed and will be located and managed to avoid any potential adverse environmental impacts; or (b) if a potential adverse environmental impact cannot be avoided, the development is designed and located so as to have minimum adverse impact, and incorporates effective measures to remedy or mitigate any adverse impact caused.	The Project would disturb some biodiversity land mapped on the Muswellbrook LEP Terrestrial Biodiversity Map (MSC, 2009). A BDAR has been completed for the Project (Appendix E).	Section 7.10, Appendix E
<i>Environment Protection and Biodiversity Conservation Act, 1999</i>			
section 131AB	Before deciding whether or not to approve the taking of an action that involves a large coal mining development that the Federal Minister for the Environment believes is likely to have a significant impact on water resources and may have an adverse impact on a matter protected by a provision of Part 3 of the EPBC Act, the Federal Minister for the Environment must obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Mining Development (IESC).	On 26 August 2020, the proposed action was determined to be a controlled action. The relevant controlling provisions are: <ul style="list-style-type: none">• Listed threatened species and communities (sections 18 and 18A).• A water resource, in relation to large coal mining development (sections 24D and 24E).	Sections 7.8, 7.9, 7.10, 7.11, Attachment 2 and Appendices C, D, E and F

**Table 5-2
Mandatory Matters for Consideration under the EP&A Act and EP&A Regulation**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
Considerations under the EP&A Act		
section 1.3	Relevant objects of the EP&A Act: <ul style="list-style-type: none"> • 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. • Facilitate ESD by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment. • Promote the orderly and economic use and development of land. • Protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. • Promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage). • Promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State. • Provide increased opportunity for community participation in environmental planning and assessment. 	Section 8
section 4.15	Relevant environmental planning instruments: <ul style="list-style-type: none"> • <i>State Environmental Planning Policy (SEPP) No 33: Hazardous and Offensive Development</i> (SEPP 33). • SEPP 55. • Mining SEPP. • <i>State Environmental Planning Policy (Infrastructure) 2007</i> (Infrastructure SEPP). • Muswellbrook LEP. 	Refer Table 5-3 below
	Any planning agreement or draft planning agreement that a developer has entered into under section 7.4 of the EP&A Act.	Sections 6 and 8
	The EP&A Regulation (to the extent that it prescribes matters for the purposes of section 4.15(1)(a)(iv) of the EP&A Act).	Table 5-3
	The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.	Sections 7 and 8, Attachment 7
	The suitability of the site for the development.	Sections 3, 4, 7 and 8
	Any submissions made in accordance with the EP&A Act or the EP&A Regulation.	Section 6
	The public interest.	Sections 6, 7.17 and 8, Appendices A to S

Table 5-2 (Continued)
Mandatory Matters for Consideration under the EP&A Act and EP&A Regulation

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
Considerations under the EP&A Regulation		
clause 92(b)	For the demolition of a building, the consent authority must consider the provisions of AS 2601-1991: <i>The Demolition of Structures</i> .	Section 7.13
clause 92(d)(ii)	For State Significant Development on land less than 200 km from the Siding Springs Observatory, the consent authority must consider the requirements of the <i>Dark Sky Planning Guideline</i> (NSW Department of Planning and Environment [DP&E], 2016a).	Section 7.16, Appendix M

Table 5-3
Mandatory Matters for Consideration under Environmental Planning Instruments

Instrument Reference	Mandatory Consideration	Relevant Section in EIS
<i>SEPP 33</i>		
clause 13	A consent authority must consider current circulars or guidelines published by the DPIE relating to hazardous or offensive development, whether to consult with relevant public authorities regarding any environmental or land use safety requirements, a preliminary hazard analysis prepared by the applicant, feasible alternatives to the development and likely future use of surrounding land.	Section 7.19, Attachment 7, Appendix Q
<i>SEPP 55</i>		
clause 7(1)	A consent authority must consider whether the land is contaminated and be satisfied that, if the land is contaminated, the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of the Project.	Section 7, Attachment 7, Appendix L
<i>Mining SEPP</i>		
clause 12	Before determining an application for consent for the purposes of mining the consent authority must: <ul style="list-style-type: none"> (a) consider – <ul style="list-style-type: none"> (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii). 	Section 8, Attachment 7

Table 5-3 (Continued)
Mandatory Matters for Consideration under Environmental Planning Instruments

Instrument Reference	Mandatory Consideration	Relevant Section in EIS
<i>Mining SEPP (Continued)</i>		
clause 12A	Before determining an application for consent for the purposes of mining the consent authority must consider relevant provisions of the <i>Voluntary Land Acquisition and Mitigation Policy (VLAMP)</i> (NSW Government, 2018b).	Sections 7.3, 7.5 and 7.7, Appendices A and B
clause 13	Before determining an application for development in the vicinity of mining, petroleum or extractive industry, the consent authority must (among other things) consider whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery.	Section 8, Attachment 7
clause 14	Before determining an application for consent for the purposes of mining the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner (including conditions to ensure that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, and that greenhouse gas emissions are minimised to the greatest extent practicable). This includes considering an assessment of greenhouse gas emissions (including downstream emissions) having regard to any applicable State or national policies, programs of guidelines concerning greenhouse gas emissions.	Sections 7 and 8, Attachment 7, Appendices C, D, E, F and S
clause 15	Before determining an application for consent for the purposes of mining the consent authority must consider the efficiency of the development in terms of resource recovery and whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resources recovery and the reuse or recycling of material.	Sections 3.2 and 3.6, Attachment 7
clause 16	Before determining an application for consent for the purposes of mining the consent authority must consider whether or not the consent should be issued subject to conditions regarding transport of materials.	Section 7.19, Attachment 7, Appendix Q
clause 17	Before determining an application for consent for the purposes of mining the consent authority must consider whether or not the consent should be issued subject to conditions regarding rehabilitation, including the particular considerations set out in clause 17(2).	Section 3.17, Attachment 8, Appendix M
<i>Infrastructure SEPP</i>		
clauses 85(2)(b)(ii), 86(2)(b)(ii)	If applicable, before determining development application for development that is in or adjacent to a rail corridor (and to which section 85(1) applies) or that involves penetration of ground to a depth of at least 2 m below ground level within 25 m of a rail corridor, the consent authority must take into consideration any guidelines issued by the Secretary for the purposes of those clauses and published in the NSW Government Gazette (i.e. the <i>Development Near Rail Corridors and Busy Roads – Interim Guideline</i> [NSW Government 2008]).	Attachments 7 and 13
clause 104(3)(b)	If applicable, before determining a development application for development to which clause 104 applies, the consent authority must take into consideration: (ii) the accessibility of the site concerned, including the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and (iii) any potential traffic safety, road congestion or parking implications of the development.	Section 7.15, Attachment 7, Appendix J

Table 5-3 (Continued)
Mandatory Matters for Consideration under Environmental Planning Instruments

Instrument Reference	Mandatory Consideration	Relevant Section in EIS
<i>Muswellbrook LEP, 2009</i>		
clause 2.3	A consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone.	Attachment 7
clause 5.10(4)	If applicable, a consent authority must, before granting consent under clause 5.10 in respect of a heritage item of heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	Section 7.13, Attachment 7, Appendix H
clause 5.10(8)	If applicable, a consent authority must, before granting consent under clause 5.10 to the carrying out of development in an Aboriginal place of heritage significance, consider the effect of a proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment.	Section 7.12, Attachment 7, Appendix G
clause 7.6	If applicable, a consent authority must, before granting development consent for earthworks, consider the effect of proposed earthworks on drainage patterns, soil stability, quality of fill, likely amenity impacts, likelihood of disturbing relics and proximity to and potential impacts on water courses.	Section 7, Attachment 7, Appendices C, D, H, I, K, L and M

Table 5-4
Mandatory Matters for Consideration under Other Acts

Act Reference	Mandatory Consideration	Relevant Section in EIS
<i>Biodiversity Conservation Act, 2016</i>		
section 7.14(2)	The consent authority is to take into consideration the likely impact of the proposed development on biodiversity values as assessed in the Project BDAR.	Sections 7.10 and 7.11, Appendix E
section 7.16(3)	If the consent authority is of the opinion that the Project is likely to have serious and irreversible impacts on biodiversity values, the consent authority is required to: <ul style="list-style-type: none"> • take those impacts into consideration; and • determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted. 	Sections 7.10 and 7.11, Appendix E
<i>Dams Safety Act, 2015</i>		
section 48(4)	Before granting development consent for the carrying out of any mining operations in a notification area of a declared dam, the consent authority must refer the application to Dams Safety NSW and take into consideration any matters that are raised by Dams Safety NSW.	Section 7.19, Appendices D and Q

Table 5-4 (Continued)
Mandatory Matters for Consideration under Other Acts

Act Reference	Mandatory Consideration	Relevant Section in EIS
<i>Environment Protection and Biodiversity Conservation Act, 1999</i>		
section 136(1)	<p>In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Federal Minister for the Environment must consider the following:</p> <ul style="list-style-type: none"> • matters relevant to any matter that the Minister has decided is a controlling provision for the action; and • economic and social matters. 	Sections 7.10, 7.11, 7.17 and 7.18, Appendices E, N and O
section 136(2)	<p>In considering the matters referred to in section 136(1), the Federal Minister for the Environment must take into account:</p> <ul style="list-style-type: none"> • the principles of ESD; and • the assessment report (if any) relating to the action. <p>In addition, section 136(2) (ca) to (g) specify the Federal Minister for the Environment must take into account, if applicable:</p> <ul style="list-style-type: none"> • the finalised EIS; • the recommendation report relating to the action; • if a relevant inquiry was conducted, the report of the commissioners; • any other information the Minister has on the relevant impacts of the action; • any relevant comments given to the Minister; • relevant advice obtained by the Minister from the IESC; and • notices or relevant comments provided in accordance with the EPBC Act. 	Sections 7 and 8, Appendices E, N, O, and R
section 139(1)	<p>In deciding whether or not to approve the taking of an action with respect to threatened species and endangered communities, and what conditions to attach to such approval, the Federal Minister for the Environment must not act inconsistently with:</p> <ul style="list-style-type: none"> • Australia's obligations under: <ul style="list-style-type: none"> – the Convention on Biological Diversity; or – the Convention on Conservation of Nature in the South Pacific; or – the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or • a recovery plan or threat abatement plan. 	Sections 7 and 8
section 139(2)	<p>If the Federal Minister for the Environment is considering whether to approve the taking of an action and the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.</p>	Sections 7.10, 7.11 and 8 and Appendices E and F

As described in Section 5.2.3, the grant of a consent under section 138 of the *Roads Act, 1993* cannot be refused if that consent is necessary for the carrying out of the approved Project and is to be substantially consistent with the Project's development consent (Attachment 7).

Water Management Act, 2000

Water use approvals under section 89, water management work approvals under section 90, or activity approvals (excluding aquifer interference approvals) under section 91 of the WM Act would not be required for the Project (Section 5.2.3).

Appendices C and D and Section 7.9 include consideration of the Project requirements under the WM Act and describe the water access licences required for each relevant water source.