

Appendix A

Statutory compliance

Table A.1 Statutory compliance

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
<i>Environmental Planning and Assessment Act 1979</i>		
Section 1.3	<p>Objects of Act</p> <p>The objects of this Act are as follows—</p> <ul style="list-style-type: none"> (a) 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, (b) to promote the supply, delivery and maintenance of housing, including affordable housing (c) to promote productivity through the development and management of the State and its resources, (d) to protect the environment, including the conservation of threatened species of native animals and plants and ecological communities and their habitats, (e) to promote resilience to climate change and natural disasters through adaptation, mitigation, preparedness and prevention, (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage), (g) to promote good design and amenity and the proper construction and maintenance of built environments, including the protection of the health and safety of the occupants of buildings, (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, (i) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment, (j) to promote a proportionate and risk-based approach to environmental planning and assessment, (k) to promote the orderly and economic use and development of land. 	<p>Chapter 5</p> <p>Chapter 7</p> <p>Chapter 8</p>

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 4.15	<p>Evaluation</p> <p>(1) Matters for consideration—general</p> <p>In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—</p> <p>(a) the provisions of—</p> <p>(i) any environmental planning instrument, and</p> <p>(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and</p> <p>(iii) any development control plan, and</p> <p>(iiia) 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, and</p> <p>(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</p> <p>(v) (Repealed)</p> <p>that apply to the land to which the development application relates,</p> <p>(b) the significant likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</p> <p>(c) the suitability of the site for the development,</p> <p>(d) any submissions made in accordance with this Act or the regulations,</p> <p>(e) the public interest.</p>	<p>Chapter 4</p> <p>Chapter 5</p> <p>Chapter 7</p> <p>Chapter 8</p>
Environmental Planning and Assessment Regulation 2021		
Section 98	<p>Modification applications for development</p> <p>(1) A modification application may be made by—</p> <p>(a) the owner of the land to which the modification application relates, or</p> <p>(b) another person, with the consent of the owner of the land.</p> <p>(2) The consent of the owner is not required if the original development application was made, or could have been made, without the consent of the owner.</p> <p>(3) The consent of the owner of the land is not required for a modification application made by a public authority, or a modification application for public notification development, if the applicant complies with subsections (4) and (5).</p> <p>(4) The applicant must give notice of the modification application—</p> <p>(a) to the owner of the land before the modification application is made, or</p> <p>(b) by publishing, no later than 14 days after the modification application is made, a notice in a newspaper circulating in the area in which the development would be carried out.</p>	<p>The modification would be public notification development</p>

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 99	<p>Making a modification application</p> <p>(1) A modification application must—</p> <ul style="list-style-type: none"> (a) be in the approved form, and (b) contain all the information and documents required by— <ul style="list-style-type: none"> (i) the approved form, and (ii) the Act or this Regulation, and (c) be submitted on the NSW planning portal. <p>(2) If the modification application is for State significant development—</p> <ul style="list-style-type: none"> (a) the application must also include particulars of the nature of the modification, and (b) the applicant must have regard to <i>the State Significant Development Guidelines in preparing the application</i>. 	This report
Section 100	<p>Content of modification application</p> <p>(1) A modification application must contain the following information—</p> <ul style="list-style-type: none"> (a) the name and address of the applicant, (b) a description of the development that would be carried out under the development consent, (c) the address and folio identifier of the land on which the development would be carried out, (d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved, (e) whether the modification is intended to— <ul style="list-style-type: none"> (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application, (f) a description of the expected impacts of the modification, (g) an undertaking that the modified development would remain substantially the same as the development originally approved, (h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information, (i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application, (j) whether the modification application is being made to— <ul style="list-style-type: none"> (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56. 	This report

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 103	<p>Modification applications for mining and petroleum development consents</p> <p>(1) This section applies to an application under the Act, section 4.55(2), to modify a development consent that relates to mining or petroleum development on land—</p> <p>(a) shown on the Strategic Agricultural Land Map, or</p> <p>(b) subject to a site verification certificate.</p> <p>(2) The application must be accompanied by—</p> <p>(a) for development on land shown on the Strategic Agricultural Land Map as critical industry cluster land—a current gateway certificate that applies to the development to be carried out under the modified consent, or</p> <p>(b) for development on other land—</p> <p>(i) a current gateway certificate that applies to the development to be carried out under the modified consent, or</p> <p>(ii) a site verification certificate certifying that the land on which the development would be carried out is not biophysical strategic agricultural land.</p> <p>(3) To avoid doubt, <i>State Environmental Planning Policy (Resources and Energy) 2021</i>, Part 2.4, other than Divisions 2 and 5, applies, with necessary modifications, to an application to modify a development consent as if it were a development application.</p>	<p>A Strategic Agricultural Land Map is not required as the proposed modification is within an already approved mining lease area</p>
Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017		
Schedule 2, Section 3BA	<p>Winding-up of transitional Part 3A modification provisions on cut-off date of 1 March 2018 and other provisions relating to modifications</p> <p>(6) In the application of section 4.55(1A) or (2) or 4.56(1) of the Act to the following development, the consent authority need only be satisfied that the development to which the consent as modified relates is substantially the same development as the development authorised by the consent (as last modified under section 75W)—</p> <p>(a) development that was previously a transitional Part 3A project and whose approval was modified under section 75W.</p>	Chapter 3
Mining Act 1992		

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 380AA	<p>Restrictions on planning applications for coal mining</p> <p>(1) An application for development consent, or for the modification of a development consent, to mine for coal cannot be made or determined unless (at the time it is made or determined) the applicant is the holder of an authority that is in force in respect of coal and the land where mining for coal is proposed to be carried out, or the applicant has the written consent of the holder of such an authority to make the application.</p> <p>Note—</p> <p>In this Act, development consent means a development consent under <i>the Environmental Planning and Assessment Act 1979</i>, Part 4 or an approval under that Act, Part 3A or Division 5.2.</p> <p>(2) For that purpose, an authority in respect of coal need not be in force in respect of the whole of the land to which the application for development consent relates but must be in force for the land where mining for coal is proposed.</p> <p>(3) For the purposes of this section, an authority that is a mining lease is considered to be in force in respect of the land on which it authorises prospecting or mining for coal, and not in respect of land on which it only authorises the carrying out of ancillary mining activities (and not prospecting or mining for coal). A mining lease is not an authority for the purposes of this section if it is for ancillary mining activities only.</p>	Chapter 5
<i>Protection of the Environment Operations Act 1997</i>		
Section 43	<p>Types of licences</p> <p>Environment protection licences may be issued for the following purposes—</p> <p>(a) to authorise the carrying out of scheduled development work at any premises, as required under section 47,</p> <p>(b) to authorise the carrying out of scheduled activities at any premises, as required under section 48,</p> <p>(c) to authorise the carrying out of scheduled activities not related to premises, as required under section 49,</p> <p>(d) to control the carrying out of non-scheduled activities for the purpose of regulating water pollution resulting from any such activity, as referred to in section 122.</p>	Chapter 5
<i>Water Management Act 2000</i>		
Section 89	<p>Water use approvals</p> <p>(1) A water use approval confers a right on its holder to use water for a particular purpose at a particular location.</p> <p>(2) A water use approval may authorise the use within New South Wales of water taken from a water source outside New South Wales.</p>	Chapter 5
Section 90	<p>Water management work approvals</p> <p>(1) There are three kinds of water management work approvals, namely, water supply work approvals, drainage work approvals and flood work approvals.</p> <p>(2) A water supply work approval authorises its holder to construct and use a specified water supply work at a specified location.</p> <p>(3) A drainage work approval confers a right on its holder to construct and use a specified drainage work at a specified location.</p> <p>(4) A flood work approval confers a right on its holder to construct and use a specified flood work at a specified location.</p>	Chapter 5

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 91	<p>Activity approvals</p> <p>(1) There are two kinds of activity approvals, namely, controlled activity approvals and aquifer interference approvals.</p> <p>(2) A controlled activity approval confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land.</p> <p>(3) An aquifer interference approval confers a right on its holder to carry out one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.</p>	Chapter 5
State Environmental Planning Policy (Planning Systems) 2021		
Section 2.1	<p>Aims of Chapter</p> <p>The aims of this Chapter are as follows—</p> <p>(a) to identify development that is State significant development,</p> <p>(b) to identify development that is State significant infrastructure and critical State significant infrastructure,</p> <p>(c) to identify development that is regionally significant development.</p>	Chapter 5
State Environmental Planning Policy (Resources and Energy) 2021		
Section 2.1	<p>Aims of Chapter</p> <p>The aims of this Chapter are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries—</p> <p>(a) to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and</p> <p>(b) to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and</p> <p>(c) to promote the development of significant mineral resources, and</p> <p>(d) to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and</p> <p>(e) to establish a gateway assessment process for certain mining and petroleum (oil and gas) development—</p> <p>(i) to recognise the importance of agricultural resources, and</p> <p>(ii) to ensure protection of strategic agricultural land and water resources, and</p> <p>(iii) to ensure a balanced use of land by potentially competing industries, and</p> <p>(iv) to provide for the sustainable growth of mining, petroleum and agricultural industries.</p>	Chapter 4 Chapter 5 Chapter 7 Chapter 8

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 2.9	<p>Development permissible with consent</p> <p>(1) Mining</p> <p>Development for any of the following purposes may be carried out only with development consent—</p> <p>(a) underground mining carried out on any land,</p> <p>(b) mining carried out—</p> <p>(i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or</p> <p>(ii) on land that is, immediately before the commencement of this section, the subject of a mining lease under the <i>Mining Act 1992</i> or a mining licence under the <i>Offshore Minerals Act 1999</i>,</p> <p>(c) mining in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,</p> <p>(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,</p> <p>(e) mining on land that is reserved as a state conservation area under the <i>National Parks and Wildlife Act 1974</i>,</p> <p>(f) extracting a bulk sample as part of resource appraisal of more than 20,000 tonnes of coal or of any mineral ore.</p>	Chapter 5
Section 2.16	<p>Non-discretionary development standards for mining</p> <p>(1) The object of this section is to identify development standards on particular matters relating to mining that, if complied with, prevents the consent authority from requiring more onerous standards for those matters (but that does not prevent the consent authority granting consent even though any such standard is not complied with).</p> <p>(2) The matters set out in this section are identified as non-discretionary development standards for the purposes of section 4.15(2) and (3) of the Act in relation to the carrying out of development for the purposes of mining.</p> <p>Note—</p> <p>The development standards do not prevent a consent authority from imposing conditions to regulate project-related noise, air quality, blasting or ground vibration impacts that are not the subject of the development standards.</p>	Chapter 5

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 2.17	<p>Compatibility of proposed mine, petroleum production or extractive industry with other land uses</p> <p>Before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must—</p> <p>(a) consider—</p> <p>(i) the existing uses and approved uses of land in the vicinity of the development, and</p> <p>(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</p> <p>(iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and</p> <p>(b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).</p>	<p>Chapter 2</p> <p>Chapter 4</p> <p>Chapter 7</p> <p>Chapter 8</p>
Section 2.19	<p>Compatibility of proposed development with mining, petroleum production or extractive industry</p> <p>(1) This section applies to an application for consent for development on land that is, immediately before the application is determined—</p> <p>(a) in the vicinity of an existing mine, petroleum production facility or extractive industry, or</p> <p>(c) identified by an environmental planning instrument as being the location of significant resources of minerals, petroleum or extractive materials.</p> <p>(2) Before determining an application to which this section applies, the consent authority must—</p> <p>(a) consider—</p> <p>(i) the existing uses and approved uses of land in the vicinity of the development, and</p> <p>(ii) 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</p> <p>(iii) 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, and</p> <p>(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a)(i) and (ii), and</p> <p>(c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).</p>	<p>Chapter 2</p> <p>Chapter 4</p> <p>Chapter 5</p>

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 2.20	<p>Natural resource management and environmental management</p> <p>(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, 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 the following—</p> <ul style="list-style-type: none"> (a) that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, (b) that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, (c) that greenhouse gas emissions are minimised to the greatest extent practicable. <p>(2) Without limiting subsection (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.</p>	Chapter 7
Section 2.21	<p>Resource recovery</p> <p>(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.</p> <p>(2) Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.</p> <p>(3) The consent authority may refuse to grant consent to development if it is not satisfied that the development would be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.</p>	Chapter 7 Chapter 8

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Section 2.22	<p>Transport</p> <p>(1) Before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following—</p> <ul style="list-style-type: none"> (a) require that some or all of the transport of materials in connection with the development is not to be by public road, (b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools, (c) require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads. <p>(2) If the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within 7 days after receiving the development application, provide a copy of the application to—</p> <ul style="list-style-type: none"> (a) each roads authority for the road, and (b) the Roads and Traffic Authority (if it is not a roads authority for the road). <p>Note—</p> <p>Section 7 of the <i>Roads Act 1993</i> specifies who the roads authority is for different types of roads. Some roads have more than one roads authority.</p> <p>(3) The consent authority—</p> <ul style="list-style-type: none"> (a) must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and (b) must provide them with a copy of the determination. <p>(4) In circumstances where the consent authority is a roads authority for a public road to which subsection (2) applies, the references in subsections (2) and (3) to a roads authority for that road do not include the consent authority.</p>	Chapter 7
Section 2.23	<p>Rehabilitation</p> <p>(1) Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that would be affected by the development.</p> <p>(2) In particular, the consent authority must consider whether conditions of the consent should—</p> <ul style="list-style-type: none"> (a) require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or (b) require waste generated by the development or the rehabilitation to be dealt with appropriately, or (c) require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 3 of Schedule 6 to the Act and the <i>Contaminated Land Management Act 1997</i>), or (d) require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety. 	Chapter 7

Relevant legislation or instrument	Mandatory consideration	Relevant section in report
Lithgow LEP		
Section 2.3	<p>Zone objectives and Land Use Table</p> <p>(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.</p>	Chapter 5
Section 7.10	<p>Essential services</p> <p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <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, (e) suitable vehicular access. 	<p>The modification is requesting an extension of time only and no other changes to critical infrastructure. Supply of water and electricity is considered to be secure for the duration of the proposed extension</p>

