

5.0 Statutory Planning

This chapter provides an overview of the statutory planning framework of this project. It includes a review of:

- Local matters
- State matters; and
- Commonwealth matters.

5.1 Local Matters

5.1.1 Liverpool Local Environmental Plan 2008

The site is subject to the provisions of LLEP 2008 (gazetted 29 August 2009), which is the primary local environmental planning instrument applicable to the site. In accordance with Section 75R(3) of the EP&A Act, Local Environmental Plans do not apply to approved projects under Part 3A of that Act.

However, under section 75J (3) and 75O (3) the Minister may take into account the provisions of any EPI. As such, this section provides a discussion of the permissibility and general principles of development control imposed under LLEP 2008.

Permissibility

Under LLEP 2008 the subject land is zoned RU1 Primary Production. This zone permits a range of development including agriculture, dwellings, hazardous storage establishments, rural industries and extractive industries. Development not identified as permitted with or without consent is deemed to be prohibited within the zone.

The existing development on the site was approved prior to the gazettal of LLEP 2008 as a 'clay extraction and brick and clay products industry'.

The most fitting definition for the quarrying component of the Project under LLEP 2008 is 'extractive industry', defined as:

'the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming'.

The definition does not, however describe the brick making component of the Project, nor would the aspects noted as being involved in the 'processing of extractive materials' include the activities required for brick making. There is no specific definition for a brick making facility under LLEP 2008 and this part of this Project is therefore undefined.

Extractive industries are permissible with consent in the RU1 zone, therefore the quarrying component of the Project is permissible with consent. As there is no fitting definition for the brick making component of the Project listed as permissible development, the brick making facility becomes a prohibited use within the zone by default.

As discussed previously in **Chapter 1** of this EA, the quarry and brick making facility have been operating at the subject site for over thirty years under consent issued by the Local Government Appeals Tribunal in 1976. This consent and the associated Deed of Agreement specifically refer to the brick making facility component of the project as an integral part of the approved development, and the use was allowed to continue through the development of a number of EPIs applying over time to the land. It is therefore considered likely that the brick making facility would benefit from existing use rights as defined under Section 106 of the EP&A Act.

However, in order to clarify the permissibility issue and to provide Boral with certainty regarding future operations at the site, Concept Plan Approval is sought for the Project, which would allow the Minister to consider granting approval for the proposed Project irrespective of the provisions of LLEP 2008.

Concept Plan and concurrent Project Approval is therefore sought for the continuation of site operations. This is discussed further in **Section 5.2.1**.

Compliance with Zone Objectives

The objectives of the RU1 Primary Production zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To ensure that development does not unreasonably increase the demand for public services or public facilities.*
- *To ensure that development does not hinder the development or operation of an airport on Commonwealth land in Badgerys Creek.*
- *To preserve bushland, wildlife corridors and natural habitat.*

The proposed Project is consistent with the objectives of the RU1 Primary Production zone through the encouragement of sustainable primary production and maintenance of quarrying and brick making operations to ensure the diversity of primary production in an area that does not contain other quarries.

Furthermore the proposal would retain the land holding, avoiding fragmentation and minimise conflicts between land uses surrounding the site through the use of appropriate mitigation measures as proposed in this EA.

The proposal is generally consistent with existing operations and would not place an unreasonable demand on public services and facilities. The continued operation does not propose the establishment of tall structures or the creation of noise sensitive receivers that could conflict with potential future airport operations. Furthermore, the proposal does not release emissions that are likely to impact on aviation.

The Proponent has sought to maintain and protect existing natural features according to the provisions of the original Deed of Consent. Future quarry operations would include the continued extraction from Pit 3, followed by expansion into the northern portion of the site. An assessment of the potential ecological impacts of the Project has been undertaken as part of the environmental assessment process (refer to **Chapter 17**). Future quarry operations would be carried out subject to the environmental considerations identified in the ecological assessment and included in this EA, continuing to preserve bushland, wildlife corridors and natural habitat at the site where possible.

5.2 State Matters

State legislation and policies relevant to the Project are detailed in the following sections.

It is noted that, as of 1 July 2009, Regional Environmental Plans (REPs) are no longer part of the hierarchy of EPIs in NSW. Therefore REPs are not included in the following discussion with the exception of *SREP9 – Extractive Industries* which is considered to be of historical relevance to the Project.

5.2.1 NSW Environmental Planning and Assessment Act 1979

The EP&A Act and the EP&A Regulation provide the framework for environmental planning in NSW and include provisions to ensure that proposals which have the potential to impact the environment are subject to detailed assessment, and provide opportunity for public involvement.

The objects set out under Section 5 of the EP&A Act, and a consideration of the Project against these objects is provided in **Table 9**.

Table 9: Objects of the EP&A Act

Objects of the EP&A Act	Comment
<p>(a) to encourage:</p> <p>(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and</p> <p>(ii) the promotion and co-ordination of the orderly and economic use and development of land, and</p> <p>(iii) the protection, provision and co-ordination of communication and utility services, and</p> <p>(iv) the provision of land for public purposes,</p> <p>(v) the provision and co-ordination of community services and facilities, and</p> <p>(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and</p>	<p>The proposal involves continued extraction of shale and sandstone at the Badgerys Creek quarry and continuation of brick manufacturing on site. Shale and sandstone are an important natural resource and their extraction is required for continued supply of construction industry materials. This is particularly important as the site is located within the SWGC where significant urban development has been projected.</p> <p>The Proponent has, in the past, sought to ensure that activities on site have minimal impact on the natural environment, including both Badgerys and South Creeks and would continue to do so as part of proposed future operations at the site. The investigations undertaken as part of this EA conclude that, subject to the implementation of appropriate mitigation measures, operations on the site could continue into the future without significant environmental impact.</p> <p>The Project proposes the continued extraction of a valuable natural resource in an environmentally responsible manner and the production of clay bricks to supply the construction industry. The Project Site is zoned to allow for extractive industry and operations at the site have existed successfully on the site for the past 30 years. The proposed continuation of operations is considered to represent orderly and economic use of the land in line with the objects of the EP&A Act.</p> <p>The Project would not impact on communication and utility services.</p> <p>The proposal would not impact upon the provision of land for public purposes.</p> <p>The proposal would not impact upon the provision and coordination of community services and facilities.</p> <p>The planning and design of the Project has been undertaken in consideration of the surrounding natural environment and feasible measures were taken during this phase to minimise impacts upon the environment. Chapter 17 provides a consideration of the potential impacts of the Project on native animals and plants, including threatened species, populations and ecological communities and their habitats and concludes that, subject to the implementation of appropriate mitigation measures, the Project is not expected to have significant impacts in this regard.</p>

Objects of the EP&A Act	Comment
(vii) ecologically sustainable development, and	Chapter 24 of the EA provides a detailed consideration of the Project against the principles of ecologically sustainable development (ESD) and finds that the proposed continuation of operations at the site is generally consistent with the relevant principles.
(viii) the provision and maintenance of affordable housing, and	Not relevant to the Project.
(ix) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and	Not relevant to the Project.
(x) to provide increased opportunity for public involvement and participation in environmental planning and assessment.	The Project is subject to assessment under Part 3A of the EP&A Act and the public consultation and participation requirements set out therein. In addition to statutory requirements, the Proponent has undertaken community consultation as detailed in Chapter 6 of this EA.

State and local EPIs are encompassed in the EP&A Act framework. A range of EPIs are created under the EP&A Act to provide further detailed guidance and regulation for development at a State, regional and local level.

Section 75R of the EP&A Act provides that:

(3) Environmental planning instruments (other than State environmental planning policies) do not apply to or in respect of an approved project.

Section 75J (3) provides that the Minister may (but is not required to) take into account the provisions of any EPI, however, also states that the regulations may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

Clause 80 of the EP&A Regulation states:

(1) For the purposes of section 75J (3) of the Act, approval for the carrying out of a project may not be given under Part 3A of the Act for any project, or part of a project, that:

(a) is not the subject of an authorisation or requirement under section 75M of the Act to apply for approval of a concept plan, and

(b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.

In order to clarify the permissibility of the brick making facility component of the Project, the Proponent is seeking Concept Plan approval for the proposal. Subject to Section 75M of the EP&A Act the proponent may apply for Concept Plan approval, which allows the Minister for Planning to issue Concept Approval for certain major projects. Concept Plan approval requires the scope of the Project to be outlined alongside any development options, without providing a detailed description of the Project.

As part of this approval process the Minister has the discretion to consider the compliance of the Project with EPI's, including proposals that would otherwise be prohibited by an EPI. However, the Minister may not approve a Concept if the EP&A Regulation precludes approval of Concepts that are otherwise prohibited by an EPI.

AECOM is not aware of any provision in the EP&A Regulation that precludes approval of a Concept that would otherwise be prohibited by an EPI. Section 75O, sub clause (3) enables the Minister to provide Concept Approval for a proposal that would otherwise be prohibited by an EPI. Sub clause 3 states that:

"In deciding whether or not to give approval for the concept plan for a project, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of section 75R) apply to the project if approved. However, the regulations may preclude approval for a concept plan for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit".

Consequently, the proposed quarry and brick making facility will be assessed under Part 3A of the EP&A Act. The Proponent is seeking Concept Plan and concurrent Project approval for the proposed continuation of quarrying and brick making operations at the site. The Minister for Planning is the approval authority for the Project.

5.2.2 State Environmental Planning Policies

The following SEPPs are of relevance to the project:

- *SEPP (Major Development) 2005;*
- *SEPP (Mining, Petroleum Production and Extractive Industries) 2007;*
- *SEPP (Sydney Region Growth Centres) 2006;*
- *SEPP 33 Hazardous and Offensive Industries;*
- *SEPP 44 Koala Habitat Protection;*
- *SEPP 55 Remediation of Land.*

The Project is considered against the provisions of relevant SEPPs in the following sections of this EA.

State Environmental Planning Policy (Major Development) 2005

The primary aim of SEPP 2005 is:

'to identify development of economic, social or environmental significance to the State or regions of the State so as to provide a consistent and comprehensive assessment and decision making process for that development'.

SEPP Major Projects 2005 identifies classes of development which are defined as 'major development' under Part 3A of the EP&A Act. The Director General of the DoP, as delegate of the Minister for Planning, has declared the proposal to be a major development, pursuant to the provisions of Clause 6 of SEPP 2005. The definition of the proposed works falls within Group 2, Schedule 1 of SEPP 2005:

Clause 7 (Extractive Industries) states:

(1) Development for the purpose of extractive industry that:

(a) Extracts more than 200,000 tonnes of extractive materials per year, or

(b) Extracts from a total resource (the subject of the development application (or other relevant application under the Act)) of more than 5 million tonnes

The proposed works constitute development for the purpose of extractive industry, extracting up to 420,000 tpa. The Project is therefore eligible for declaration and has been declared as a 'major development' to which Part 3A of the EP&A Act applies.

State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007 (Mining SEPP)

The Mining SEPP was gazetted on 16 February 2007.

The aims of this Policy are:

- To provide for the proper management and development of mineral, petroleum and extractive material sources for the purpose of promoting the social and economic welfare of the State, and
- To facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and
- 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.

Clause 7(3) of this SEPP identifies development which can be carried out only with consent and includes the following of relevance to the Project:

‘Extractive industry development for any of the following purposes:

- a. Extractive industry on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent),*
- b. Extractive industry 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.*

The quarry component of the Project is therefore deemed to be permissible with consent pursuant to Clause 7(3) of the Mining SEPP.

Clause 7(4) of this SEPP addresses the co-location of industry in relation to extractive industry and provides that:

If extractive industry is being carried out with development consent on any land, development for any of the following purposes may also be carried out with development consent on that land:

- (a) the processing of extractive material,*
- (b) the processing of construction and demolition waste or of other material that is to be used as a substitute for extractive material,*
- (c) facilities for the processing or transport of extractive material,*
- (d) concrete works that produce only pre-mixed concrete or bitumen pre-mix or hot-mix.*

The brick making facility component of the project could potentially fit within the definition of ‘processing of extractive material’. ‘Processing’ is not defined explicitly under the Mining SEPP, however, processing as defined under LLEP 2008 involves *recycling, washing, crushing, sawing or separating* none of which accurately describe the brick making process. It is therefore considered unlikely that the brick making facility could accurately be described as processing.

Clause 12 of the Mining SEPP sets out matters for consideration in relation to proposals for extractive industry proposals. **Table 10** examines each of these matters in relation to the proposed Project.

Table 10: Matters for Consideration - Clause 12 of Mining SEPP

Matter for Consideration	Comment
<p>(a) consider: i) the existing uses and approved uses of land in the vicinity of the development, and</p>	<p>The subject site is surrounded by a mix of rural industrial and agricultural land uses. The land to the north east of the site is occupied by ANL, which produces and stockpiles bulk landscape supplies. To the south is Inghams Chickens, which consists of a number of large sheds containing battery farmed chickens.</p> <p>Directly to the west of the site is Badgerys Creek and its tributaries, which form the western boundary of the site. The land further to the west and to the east is comprised of agricultural fields. To the north of the site are a number of market gardens, hobby farms and rural residential properties. The Project, subject to mitigation measures to control environmental impacts within acceptable levels would not impact significantly upon surrounding land uses in the vicinity of the Project Site.</p>

Matter for Consideration	Comment
<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>Subject to LLEP 2008 the land is zoned RU1 Primary Production. The objectives of the zone are to encourage primary production, minimise conflict between land uses, ensure that the development does not hinder the use of an airport in the vicinity and preserve bushland and wildlife corridors (refer to Section 5.1.1 for more details). The proposal entails the continuance of the existing quarry and brick making facility use on-the site and would not hinder primary production in the vicinity.</p> <p>The proposal would not generate emissions that are likely to impact on a potential airport in the area and in turn is not sensitive to noise generated by the airport. Furthermore, the proposal includes the rehabilitation of certain land in the vicinity of Badgerys Creek, which would improve the riparian corridor along Badgerys Creek and adjacent bushland.</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>The proposal is generally compatible with existing rural and rural industrial land uses surrounding the site and based on the desired future character as articulated by the zone objective, the proposal is considered to be compatible with planned future land use.</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>The proposal would continue to supply an essential resource to the Sydney Metropolitan Region. The proximity of the Project Site to the SWGC ensures that the building materials produced on-site are in proximity to the market, thereby reducing transport times, emissions and associated congestion. The project would not create a significant impact on surrounding or desired future land uses in the vicinity of the site, while providing an essential raw material for the Sydney market.</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>The site is compatible with surrounding land uses.</p>

Clause 13 of the Mining SEPP relates to the compatibility of the proposal with mining, petroleum production or extractive industries. Clause 13 requires consideration of whether 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 whether the proposal is “compatible with existing or approved uses or that current or future extraction or recovery”.

The project would extend the operation of the quarry and brick works for a further 20 years, thus, permitting the continued use of the site for the purposes of extractive industry and associated brick production. The use of the site for quarrying and brick making is not a sensitive use and should not therefore interfere with the potential extraction of minerals, petroleum or extractive materials in proximity to the site. Furthermore, it is proposed to maintain a number of voids on the Project Site to preserve the potential for the future extraction of deeper mineral deposits should this become a viable option in the future.

Clause 14 of the Mining SEPP relates to natural resource and environmental management and aims to ensure that development *“is undertaken in an environmentally responsible manner, including conditions to ensure the following:*

- (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”.*

Specialist studies have been undertaken as part the EA to examine the impacts of the project on ground and surface water and ecology. The investigations have found that, subject to the implementation of recommended mitigation measures, the proposal would not result in significant impacts.

The on-site processing of the quarried raw material into bricks limits transport movements and subsequent greenhouse gas emissions. Furthermore, the proximity of the Project Site to the SWGC means that a major market is in close proximity to the site and haul distances for brick products are subsequently reduced in comparison with more remote sites.

Clause 15 of the Mining SEPP requires the consent authority to consider the efficiency of the resource recovery operation and provides for conditions to be placed on operations to improve efficiency. The quarrying activity and brick works have been successfully operating on the site for 30 years. Operations have been refined over this time to develop an economically viable and efficient process. To ensure that the site operations remain viable the plant management has varied the extraction rates of different materials dependent upon market conditions.

Clause 16 of the Mining SEPP relates to the transport of the extracted material. The consent authority must consider whether conditions should require partial movement of the material by alternate methods to public roads and *“limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools”*. Additionally, it requires that a referral to the roads authority for the road and the Roads and Traffic Authority (RTA), if they are not the relevant roads authority be made.

The co-location of the quarry and brick works in itself reduces transport requirements, as does the proximity of the site to a major area of growth and therefore market demand in the SWGC. The bricks would be moved solely by truck, however due to recent upgrades to the brick plant, along with proposed extensions to the hours within which deliveries and dispatch can take place, truck movements would not increase as a result of the project and movements within peak times would, in fact, be reduced in frequency. The site has been operating for the past 30 years without giving rise to vehicle conflict on surrounding roads and it is not anticipated that continued operations on the site would result in significant impacts in relation to truck movements and transport generally. A more detailed discussion of the potential traffic and transport impacts of the Project is provided in **Chapter 13** and **Appendix G**.

Clause 17 of the Mining SEPP requires the consent authority to consider whether or not rehabilitation of the land should be undertaken. Rehabilitation may include:

- The preparation of a plan to guide the site’s future topography
- Site remediation of contaminated land in accordance with relevant guidelines (including guidelines under section 145C of the Act and the *Contaminated Land Management Act 1997*)
- Remediation of the land to ensure that public safety is not jeopardized.

Boral has undertaken rehabilitation of certain land on-site that is no longer used including the Western Stockpile located in the site’s south west corner. This area has been comprehensively revegetated. A RP has been developed for the site (refer to **Section 4.3** for details) and rehabilitation works over the life of the project would be carried out in accordance with this plan. During the 30 years of ongoing operation, the site has not created any public nuisance that has led to the jeopardizing of public safety.

State Environmental Planning Policy (Sydney Region Growth Centres) 2006

SEPP (Sydney Region Growth Centres) 2006 (SEPP (Growth Centres) 2006) was gazetted on 28 July 2006 and provides the initial planning instrument component of the Metropolitan Strategy. SEPP (Growth Centres) 2006 provides for the coordinated release of land for residential, employment and other urban development in the North West and South West Growth Centres of the Sydney Region.

As the Project Site is located in the SWGC, the provisions of SEPP (Growth Centres) 2006 apply.

The aims of SEPP (Growth Centres) 2006 are (in conjunction with amendments to the regulations under the EP&A Act relating to precinct planning) as follows:

- *“to co-ordinate the release of land for residential, employment and other urban development in the North West and South West growth centres of the Sydney Region;*
- *to enable the Minister from time to time to designate land in those growth centres as ready for release for development;*
- *to provide for comprehensive planning for those growth centres;*
- *to enable the establishment of vibrant, sustainable and liveable neighbourhoods that provide for community well-being and high quality local amenity;*
- *to provide controls for the sustainability of land in those growth centres that has conservation value;*
- *to provide for the orderly and economic provision of infrastructure in and to those growth centres;*
- *to provide development controls in order to protect the health of the waterways in those growth centres;*
- *to protect and enhance land with natural and cultural heritage value; and*
- *to provide land use and development controls that will contribute to the conservation of biodiversity.”*

Clause 16, Part 4 of SEPP (Growth Centres) 2006 details the development controls that apply to land that is not subject to a precinct plan and is not on land referred to in Clause 7A of SEPP (Growth Centres) 2006. **Table 11** addresses the development controls in Clause 16.

Table 11: Matters for Consideration – Clause 16 of SEPP (Growth Centres) 2006

Matter for Consideration	Comment
(a) whether the proposed development will preclude the future urban and employment development land uses identified in the relevant growth centre structure plan,	The site is within a future industrial development area. The proposed industrial use is in accordance with the designated future use of the land under the <i>South West Subregional Strategy</i> .
(b) whether the extent of the investment in, and the operational and economic life of, the proposed development will result in the effective alienation of the land from those future land uses,	The proposed use of the site is in accordance with the designated future use. The project includes a RP, which would allow the site to be used for a range of industrial and primary production facilities upon completion of the proposed continued quarry and brick making facility use.
(c) whether the proposed development will result in further fragmentation of land holdings,	The project would not result in the fragmentation of land holdings.
(d) whether the proposed development is incompatible with desired land uses in any draft environmental planning instrument that proposes to specify provisions in a Precinct Plan or in clause 7A,	The LLEP 2008 zones the land RU1 Primary Production, which is in accordance with the proposed use and provides a current indication of the Council's desired land uses for the area.
(e) whether the proposed development is consistent with the precinct planning strategies and principles set out in any publicly exhibited document that is relevant to the development,	A precinct plan does not apply to the site.

Matter for Consideration	Comment
(f) whether the proposed development will hinder the orderly and co-ordinated provision of infrastructure that is planned for the growth centre,	Boral has been operating on the site for 30 years, using the existing infrastructure. The existing road infrastructure would continue to be used for transport purposes. A traffic study has been undertaken as part of the EA, which concludes that the proposed operation would not result in significant traffic impacts, but that upgrades would be required to certain intersections in the local area as a result of the development of the SWGC. The proposal would not therefore impact upon the provision of infrastructure in the growth centre.

State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

SEPP 33 – Hazardous and Offensive Development (SEPP 33) aims to ensure that due consideration is given to the potential off-site risks of proposals for potentially hazardous or offensive industries in terms of the surrounding environment, amenity and health.

Applying SEPP 33-Hazardous and Offensive Development Application Guidelines, developed by the NSW Department of Infrastructure, Planning and Natural Resources (DIPNR, 1994) (now NSW DoP) provides advice to consent authorities, industry, consultants and other government agencies on whether SEPP 33 applies to a proposal. The Guidelines recommend a 'risk screening' method for determining whether a proposal is hazardous and provides guidance on assessing potentially offensive development proposals. The screening process considers the class and volume of waste materials to be stored on the site and the distance of the storage area to the nearest site boundary.

The guidelines state that the first consideration is whether the proposed use falls within the definition of 'industry' adopted by the planning instrument which applies to the application.

Under the LLEP, the definition of 'industry' specifically excludes extractive industries. As noted above, the brick making component is ambiguous in terms of its definition. Notwithstanding, it is not believed that the Project represents a hazardous industry nor an offensive industry as defined under SEPP 33.

Section 20.1 of this EA concludes that major hazards identified as having the potential to pose a risk to the human, built and natural environments associated with quarrying and brick making operations at the site are generally associated with fuel storage, refuelling of vehicles and plant and chemicals associated with quarrying and brick production, stockpile areas and contaminated surface runoff.

The hazards identified are not considered to pose a significant constraint on the proposal provided appropriate mitigation measures are implemented.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP 44 – Koala Habitat Protection (SEPP 44) applies to the LGAs listed in Schedule 1 of the SEPP. The Liverpool LGA is listed on this schedule.

The policy applies to land which is the subject of a development application and has an area greater than one hectare. Whilst the proposed Project would be assessed under Part 3A of the EP&A Act and is not therefore the subject of a development assessment under Part 4 of the EP&A Act, it is assumed that the policy is intended to apply to Part 3A Projects and the provisions of SEPP 44 have therefore been considered in relation to the proposal at **Chapter 17** of the EA.

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and to assist in reversing the current trend of koala population decline: The aims and objectives of the SEPP are met by:

- *“Requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat,*
- *Encouraging the identification of areas of core koala habitat, and*
- *Encouraging the inclusion of areas of core koala habitat in environment protection zones.”*

An ecological assessment has been undertaken on the Project Site. The assessment identified a number of Forest Red Gums in proximity to Badgerys Creek and South Creek as well as small patches in proximity to the eastern boundary. The assessment did not record any evidence of recent koala activity and the site is not therefore classed as core koala habitat (refer to **Chapter 17** for further discussion). As the site is not considered core koala habitat the consent authority is not prevented from granting consent for the proposal.

State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 – Remediation of Land (SEPP 55) aims to provide a state wide approach to the remediation of contaminated land.

In particular, SEPP 55 contains a number of objectives that aim to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health and the environment:

- (a) By specifying when consent is required, and when it is not required, for a remediation work, and*
- (b) By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
- (c) By requiring that a remediation work meet certain standards and notification requirements.*

Subject to Clause 7 of SEPP 55 a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated. The Project does not involve a change of use of the land but a continuation of the existing operations at the site. An investigation of the DECCW Contaminated Land records was undertaken for the site and showed no record of contamination or remediation undertaken on the site. The subject land is considered to be suitable for continuation of quarrying and brick making operations and it is not anticipated that remediation of the land would be required in order for operations to continue at the site.

5.2.3 Other Relevant Acts

Mining Act 1992 (NSW)

The *Mining Act 1992* (NSW) (Mining Act) is the principle piece of legislation for the regulation of mining activities in the State. The underlying object of the Act is to encourage and facilitate the discovery and development of mineral resources in NSW having regard to the need to encourage ESD. The Act applies to commodities listed under the *Mining Regulation 2003* including structural clay such as that extracted at the Project Site.

Clauses 5 and 6 of the Mining Act require that an authority or mineral claim is required for the mining of any privately or publicly owned mineral.

Part 5 of the Act deals with mining leases and provides that any person may make an application for a mining lease over land of any title or tenure.

Should approval be granted for the Project, an application would be made for a mining lease in accordance with the relevant provisions of the Mining Act. Clause 75V of the EP&A Act provides that subject to the issue of Project Approval, a mining lease for the Project cannot be refused and must be substantially consistent with the terms of Project Approval.

Contaminated Land Management Act 1997 (NSW)

The primary purpose of the *Contaminated Land Management Act 1997* (NSW) (CLM Act) is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment. The Act sets out criteria for determining whether such a risk exists and gives the DECCW the power to:

- *“declare an investigation site and order an investigation*
- *declare a remediation site and order remediation to take place*
- *agree to a voluntary proposal to investigate or remediate a site.”*

The site consists of, and is in the vicinity of, areas of agricultural and industrial lands that may have involved activities with the potential to result in contaminated materials. Contamination investigations have been undertaken, the results of which are detailed in **Chapter 14** of this report. The investigation included a search of the DECCW Contaminated Land records for the Liverpool LGA. The search concluded that the site does not traverse any of the identified contaminated lands. Therefore, the remaining provisions of the CLM Act do not apply.

Fisheries Management Act (NSW)

The NSW *Fisheries Management Act 1994* (as amended) (FM Act) aims to conserve, develop and share the fishery resources of the State for the benefit of present and future generations and applies in relation to all waters that are within the limits of the State. The FM Act provides for the protection of certain aquatic habitats and species, the preparation of recovery plans and threat abatement plans and the regulation of certain activities that have the potential to impact aquatic habitats. Under the FM Act, approval is required for certain activities involving dredging and reclamation, blockage of fish passages and development of certain waterfront land. However, Section 75U of the EP&A Act provides that a permit under section 201, 205 or 219 is not required for Part 3A projects.

Chapter 17 of this report addresses the potential impacts of the project on aquatic habitats and species as listed under the FM Act. The habitat value of the sedimentation ponds on the Project Site is limited, as significant vegetation does not occur within the water or in its immediate vicinity. The sediment ponds do not provide habitat for threatened species, populations or ecological communities listed under the FM Act, nor do the works involve a key threatening process, as listed under Schedule 6 of the FM Act.

Native Vegetation Act 2003 (NSW)

The *Native Vegetation Act 2003 (NSW)* (NV Act) provides for the protection from clearing of native vegetation, primarily within regional areas of NSW. Terrestrial native vegetation would not be affected by the proposed development which is discussed in detail in **Chapter 17** of this report. The proposed works would affect areas that have been primarily cleared. However, the works would involve the clearing of some isolated mature native trees and the stand of regrowth Forest Red Gum that occurs within the proposed location of Pit 4.

The proposed development has been sited to minimise the amount of native vegetation to be cleared. Consequently, impacts on the ecological values of the site would be minimal. Additionally, the ecological investigation recommends mitigation measures including the planting of five native seedling trees adjacent to the riparian vegetation alongside Badgerys and South Creek's, for each mature native tree removed.

Section 75U of the EP&A Act provides that authorisation under Section 12 of the NV Act is not required for Part 3A projects.

Threatened Species Conservation Act 1995 (NSW)

The objectives of the *Threatened Species Conservation Act 1995* (TSC Act) are to prevent the extinction and promote the recovery of threatened species, populations, ecological communities and critical habitat in NSW. It also aims to eliminate or manage key threatening processes. Schedule 1, 1A and 2 of the TSC Act provide lists of species, populations and ecological communities that are endangered, vulnerable or extinct.

Chapter 17 of this report addresses the potential impacts of the Project on threatened species, populations and ecological communities as listed under the TSC Act. The investigations found a total of 14 flora species and 22 fauna species known or potentially occurring within 10 km of the site (10 endangered and 4 vulnerable flora species and 7 endangered and 15 vulnerable fauna species). None of the threatened species were recorded at the site and none are considered to have potential habitat within the proposed development area.

National Parks and Wildlife Act (NSW)

The *National Parks and Wildlife Act 1974* (NPW Act), in part, provides for the conservation of objects, places or features of cultural value within the landscape, including places, objects and features of significance to Aboriginal people as well as places of historic significance.

Searches of the appropriate registers, including DECCW's Aboriginal Heritage Information Management System (AHIMS) as well as Aboriginal consultation conducted under the *Interim Community Consultation Requirements* (DECCW, 2004) have been undertaken and are discussed in detail in **Chapter 6** of this EA. The heritage investigation found that the Aboriginal heritage values of the study area pertain to low density artefact scatters or 'background scatter' occurring throughout the study area, with areas of highest Aboriginal archaeological sensitivity occurring adjacent to Badgerys Creek and South Creek. The proposed quarry plans do not encroach on these higher sensitivity areas and the remainder of the site is considered to be of low archaeological significance. Consequently, the proposal is not considered to impact the heritage values of the study area and ongoing monitoring or mitigation is not required.

Section 75U of the EP&A Act provides that a section 87 permit and a Section 90 consent under the NPW Act are not required for Part 3A projects.

Noxious Weeds Act 1993 (NSW)

The *Noxious Weeds Act 1993* (NW Act) establishes a system for the identification and control of noxious weeds in NSW. Under the NW Act, the Minister for Primary Industries (which incorporates agriculture) may declare a plant to be a noxious weed.

Responsibility for the control of noxious weeds lies with the owner and/or occupier of private land and Crown land, as well as local councils and other public authorities on land they occupy. The obligation can be enforced by the issue of weed control notices by the Minister and local control authorities.

The Ecology Investigation located at **Chapter 17** of this report found two species of noxious weed located in the riparian vegetation along South Creek and Badgerys Creek. Ongoing control of noxious weeds would be required during the operation of the proposed quarry and brick works. The ongoing management of noxious weeds would be detailed in the Environmental Management Plan (EMP) for the project.

Protection of the Environment Operations Act 1997 (NSW)

Under the POEO Act 1997 it is an offence, for which there are penalties, to cause water, air or noise pollution without authorisation for such under an EPL. Additionally, schedule 1 of the POEO Act identifies "scheduled activities" which are required to be licensed by the DECCW.

The Project Site is subject to an existing EPL which would need to be reviewed and updated based upon the proposed continued operations. An application would be made for a variation to the existing EPL to reflect the proposed future operations at the site. Clause 75V of the EP&A Act provides that, subsequent to the granting of Project Approval, an EPL cannot be refused and must be substantially consistent with the terms of Project Approval.

Water Management Act 2000 (NSW)

The *Water Management Act 2000* (WM Act) provides for the protection, conservation and ecologically sustainable development of the water resources of the State, and for other purposes. Chapter 3, Part 1 identifies basic landholder rights including harvestable water rights and when access licences are required. The harvestable water right has been defined in terms of an equivalent dam capacity called the Maximum Harvestable Right Dam Capacity (MHRDC). Any capacity of the total of all dams on the property greater than the MHRDC may require a licence.

Schedule 1 of the *Water Management (General) Regulation 2004 (WM Regulation)* identifies classes of dam which are exempt:

(3) Dams solely for the capture, containment and recirculation of drainage and/or effluent, consistent with best management practice or required by a public authority to prevent the contamination of a water source, provided such dams are located on a minor stream referred to in section 53 (3)(b) of the Act.

Subject to the NSW Department of Water & Energy, *Farm Dams – Do you need a licence* (2008):

"Minor streams are defined by the Strahler stream ordering method as 1st and 2nd order streams that do not have permanent river flow".

Consequently, as the on-site pits (dams) receive water from intermittent overland and through flow as opposed to a permanent river flow, the water source for the pits can be classed as a minor stream. Furthermore, the purpose of the pits is solely for the capture, containment and reticulation of drainage and/or effluent, consistent with best management practice to prevent the contamination of Badgerys Creek. Therefore, the provisions of Schedule 1 (3) of the WM Regulation are satisfied and the pits (dams) are exempt from the need to obtain a licence under the WM Act.

5.3 Sydney Metropolitan Strategy

The *Sydney Metropolitan Strategy* was developed by the DoP and was released in 2005. The Metropolitan Strategy is a strategic vision for Sydney's future, enabling it to accommodate an expected population growth of 1.1 million people by 2031. The Metropolitan Strategy aims to streamline the process of rezoning within the metropolitan region to allow continued and timely development of both urban and industrial land matched with appropriate infrastructure.

The Metropolitan Strategy includes directions and strategies on how growth and change would be managed in Sydney into the future and identifies two 'growth centres' in the South West and the North West where new

Greenfield development would be directed. Land use planning for the strategy is still in the early stages and Draft Structure Plans are being prepared for these areas.

The subject site is part of the SWGC, which includes the Campbelltown, Camden, Liverpool and Wollondilly LGAs. The Growth Centres are expected to accommodate 30 to 40 per cent of Sydney's new housing by 2031.

The objective of the Metropolitan Strategy is to support continuing economic growth while balancing social and environmental impacts. It is based on anticipated population, economic and demographic trends, and has been developed with five aims: enhance liveability, strengthen economic competitiveness, ensure fairness, protect the environment, and improve governance.

The South West is a large, diverse subregion with an area of 3,378 km². Urban land uses are concentrated in the north and east of the subregion, focusing on the centres of Liverpool and Campbelltown. Resource based land uses are spread across the western and southern parts of the subregion. They include agriculture, coal seam methane gas production, coal mining, and clay, sand, loam and gravel extraction. The protection of these resource lands is considered to be important to Australia's export markets, the NSW economy and energy supply and Sydney's fresh produce markets. Locally, the construction industry and secondary industries such as steelworks and brick, tile and cement manufacturing rely on these resources.

The SWGC is within the South West Subregion, which covers approximately 17,000 ha consisting of 18 precincts. The eastern portion of the SWGC consists of residential development and smaller rural lots (approximately 2 ha) and the western portion is primarily rural. The SWGC is largely within the South Creek Catchment and contains the villages of Rossmore, Austral, Catherine Fields, part of Kemps Creek, Leppington, Bringelly and Badgerys Creek.

5.3.1 South West Growth Centres Subregional Strategy

The *SWGC Subregional Strategy* includes plans for the development of centres, infrastructure and services, the retaining and protecting of strategic employment lands to help provide jobs close to home, the strengthening of Liverpool as one of Sydney's main city centres and promoting Campbelltown as a Major Centre, the improving of transport access via the South West Rail Link, rail clearways and bus networks, and the protection of resource based industries within this subregion. The Project Site is within a precinct earmarked for "future industrial" development (DoP, 2007).

The Environment, Heritage and Resources Actions for the South West Subregion aims to maintain resource lands through a consistent approach to future land use development, which is to be achieved through consultation between Councils and the NSW Department of Primary Industries (DPI) now Industry and Investment NSW (I&I NSW) to identify and protect significant rural and resource lands from inappropriate and incompatible uses through the provisions of LEPs.

The project would provide economic inputs in the local Badgerys Creek area through job retention and creation, in addition to supplying the raw materials for construction to allow continued economic growth in the SWGC. The project includes mitigation measures to ensure that significant environmental impacts are not created as a result of the proposal including water quality monitoring and management, noise attenuation and site rehabilitation (refer to **Chapter 22**). The project is therefore in accordance with the objectives of the Metropolitan Strategy.

The aims of the Metropolitan Strategy include enhanced liveability, economic competitiveness and environmental protection. The proposal is producing raw materials that are essential to improving liveability within the SWGC, through the provision of additional dwellings to cater for the predicated population growth. Furthermore, the proposal is contributing to the NSW economy in a resource efficient manner, without significant environmental impact.

The ongoing use of the site for resource extraction and processing meets the objectives of the *Subregional Strategy* through the maintenance of employment lands centrally in a precinct that is designated for future industrial development. The ongoing operation of the site would not impact on the potential for industrial development in the area in the future.

5.4 Commonwealth Matters

5.4.1 Environmental Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) came into effect in July 2000 and requires the approval of the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities for actions that may have a significant impact on matters of National Environmental Significance (NES). Approval from the Commonwealth is in addition to any approvals under NSW legislation.

Approval under the EPBC Act is triggered by a proposal which has the potential to have a significant impact on a matter of NES or by a proposal which has the potential to have a significant impact on the environment of Commonwealth land. The EPBC Act lists eight matters of NES which must be addressed when assessing the impact of a proposal.

A search of the Department of Environment, Water, Heritage and the Arts (DEWHA, now Department of Sustainability, Environment, Water, Population and Communities) protected matters database was undertaken in August 2009, based on a 10km buffer around the Project Site. The following provides a preliminary assessment of the proposal and its potential impacts on matters of NES.

- **World Heritage properties:** There are no world heritage properties proximate to the proposed project, or that would potentially be affected by the proposal.
- **National Heritage Places:** There are no Commonwealth or National Heritage Places identified within the search area, however a total of seven places listed on the Register of the National Estate (RNE) were identified within the search area. Sites on the RNE do not constitute a matter of NES but are protected under s.391A of the Act. This section means that the Minister must enact the precautionary principle and consider RNE listed sites as part of a referred project.
- **Wetlands of National Importance:** The search identified the proposed Project would be located within the same catchment as a Ramsar site, Towra Point Nature Reserve, which is located approximately 16 km south of the Sydney CBD. However, given the nature of the Project and the distance of the site from the Towra Point Nature Reserve, it is not anticipated that there would be a significant impact on the Ramsar Wetland.
- **Commonwealth-listed Threatened species:** 25 Commonwealth listed threatened species (15 fauna and 10 flora) were identified within the search area. An examination of the potential for the project to impact upon these species is provided in **Chapter 17** of the EA. The assessment concludes that, given that the project does not involve the clearing of significant vegetation, the project would not have a significant adverse impact upon threatened species. **Chapter 17** summarises the mitigation measures proposed as part of the project to ensure that impacts upon threatened species are minimised.
- **Commonwealth-listed Migratory Species:** 14 migratory species were identified within the search area. **Chapter 17** considers the potential impacts of the project on migratory species and concludes that, significant impacts are not anticipated.
- **Nuclear Action:** The proposed project would not involve a nuclear action as defined under the EPBC Act 1999.
- **Commonwealth Marine Area:** There are no Commonwealth Marine Areas proximate to the proposed project, or that would potentially be affected by the proposal.
- **Commonwealth Land:** Three Commonwealth Land sites were identified within the search area. Defence land (the Orchard Hills Defence Site) is located on the opposite side of Badgerys Creek. The project involves the continuation of existing operations at the Project Site which have existed adjacent to the Defence land for the past 30 years with no significant conflict. Management of the Project Site would remain as under existing operations, including the management of stormwater to achieve nil discharge off-site. The proposed project is not anticipated to have a significant impact upon the adjacent Commonwealth Land. Due to the distance of the Project Site from the other two Commonwealth land sites, no adverse impacts are anticipated as a result of the project.

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