



# Section 4

## Statutory Context

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### PREAMBLE

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*This section identifies the relevant legislation and planning instruments that have guided the approach to the design of the Project and the environmental assessments and identifies the relevant statutory requirements that must be considered by the consent authority before the development application may be determined.*

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## ENVIRONMENTAL IMPACT STATEMENT

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**Tomingley Gold Operations Pty Ltd**  
*Tomingley Gold Extension Project*

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## 4.1 Introduction

This section identifies the relevant statutory requirements that must be considered by the consent authority before the development application may be determined. The relevant statutory requirements are described in terms of power to grant approval, permissibility, and other required approvals. The section concludes with the statutory compliance matters that must be considered by the consent authority.

## 4.2 Existing Approvals and Regulatory Controls

A summary of the approvals, leases and licences held for the existing TGO Mine is provided in Section 1.4.3.

## 4.3 Statutory Requirements for the Project

### 4.3.1 Power to Grant Approval

As a mining project with a Capital Investment Value of more than \$30 million, the Project is classified as a “State Significant Development” under Clause 5(1)(a) of Schedule 1 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP). The Development Application will therefore require assessment under Division 4.7 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The consent authority for the Project will be the Minister for Planning and Homes. In practice, it is understood that the Minister has delegated his/her authority to determine such applications to a senior officer of the Department of Planning and Environment.

Alternatively, under Clause 8A of the State and Regional Development SEPP, the Independent Planning Commission would be the consent authority in the event that the following criteria are met.

- Narromine Shire Council provides a submission objecting to the Project.
- There are more than 50 submissions objecting to the Project.
- The Applicant has made a reportable political donation.

### 4.3.2 Permissibility

The Project Site includes land zoned under the *Narromine Local Environmental Plan 2011* (Narromine LEP) as:

- RU1 - Primary Production; and
- SP2 – Infrastructure (See **Figure 3.2.1**).

Open cut and underground mining are permissible as follows in each of these zones.

- Zone RU1 – Under the land use table in the Narromine LEP, open cut mining is permissible with consent in Zone RU1.



- Zone SP2 – Mining is prohibited on land zoned SP2 under the Narromine LEP. However, aquaculture, a type of agriculture, is permissible with consent on land within that Zone. Clause 7(1)(b)(i) of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP) permits mining with consent on any land where agriculture is permissible.
- Underground mining is permissible with consent on any land under Clause 7(1)(a) of the Mining SEPP.

### 4.3.3 Other Approvals

#### 4.3.3.1 Approvals that Cannot be Refused if Consent is Granted

**Table 4.1** presents the approvals that would otherwise be required for the Project but cannot be refused under Section 4.42 of the EP&A Act.

**Table 4.1**  
**Approvals that Cannot be Refused**

<b>A Mining Lease under the <i>Mining Act 1992</i>.</b> The Company currently holds ML1684 and ML1812 for the TGO Mine (Section 1.4.3 and <b>Figure 1.2</b> ). A new Mining Lease would be required over a section of the SAR Mine Site (shown by a red dashed line on orange background on <b>Figure 1.2</b> ). The proposed Mining Lease Application (MLA) area occupies sections of Exploration Licence (EL) 5830 and EL5675, both held by Alkane Resources Limited, the Company's parent company.
<b>An Environment Protection Licence under Chapter 3 of the <i>Protection of the Environment Operations Act 1997</i>.</b> The Company intends to seek a variation to EPL20169 currently held for the TGO Mine to incorporate additional land and activities associated with the SAR Mine Site.
<b>A Permit under Section 138 of the <i>Roads Act 1993</i>.</b> Permits (and an associated Works Authority Deed) will be required for the relocation of the Newell Highway and Kyalite Road, as well as modifications to the associated intersections from Transport for NSW and/or Narromine Shire Council respectively.

#### 4.3.3.2 Approvals that are Not Required if Consent is Granted

**Table 4.2** presents the approvals would otherwise be required but are not required for the Project under Section 4.41(1) of the EP&A Act.

**Table 4.2**  
**Approvals that are Not Required**

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<b>An approval under Part 4, or an excavation permit under section 139 of the <i>Heritage Act 1977</i>.</b> The Applicant proposes to undertake test excavation within the footprint for the realigned Newell Highway in the vicinity of the former McPhail village. An approval under Part 4 or a permit under Section 139 Permit would be required but for the operation of Section 4.41(1) of the EP&A Act.
<b>An Aboriginal heritage impact permit under section 90 of the <i>National Parks and Wildlife Act 1974</i>.</b> The Project would disturb a number of Aboriginal objects. An Aboriginal heritage impact permit would be required but for the operation of Section 4.41(1) of the EP&A Act.



**Table 4.2 (Cont'd)**  
**Approvals that are Not Required**

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**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 *Water management Act 2000*.**

**A controlled activity approval would be required for works within waterfront land associated with Drainage Lines E and F and Bulldog Creek would be required but for the operation of Section 4.41(1) of the EP&A Act.**

#### 4.3.3.3 Other Approvals

**Table 4.3** presents other approvals that are required to carry out the Project that have not been addressed above.

**Table 4.3**  
**Other Approvals**

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

*Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) detail the general obligations regarding the management of biodiversity and conservation under Commonwealth legislation.

No significant adverse impacts to any Matter of National Environmental Significance have been identified during biodiversity assessments for the Project. As a result, the Applicant does not propose to submit a referral under the EPBC Act and no approval under that Act is required.

##### **Water Management Act 2000**

*Water Management Act 2000* approvals required for the Project that are not otherwise exempted under Section 4.41 of the EP&A Act, include two classes of Water Access Licences that will be required as follows.

- A Water Access Licence under the Lower Macquarie Zone 6 Groundwater Sources – Water Sharing Plan for the Lower Macquarie Groundwater Sources 2003.  
The Applicant currently holds WAL20270 for Works Approval 80WA705442 for the “Woodlands” bore, located approximately 7km east of Narromine. WAL20270 has a share component of 1 000 shares or 1 000MLpa.  
The Applicant has entered into a commercial arrangement to subdivide and purchase 400 shares (400MLpa) from WAL11692 and to operate the “Dappo” bore (Works Approval 80CA703364), located approximately 4.2km southeast of Narromine. The additional water supply would be used to ensure secure water supply for the Project.
- A Water Access Licence under the Lachlan Fold Belt MDB Groundwater Source – Water Sharing Plan for the NSW Murray Darling Basin Fractured Rock Groundwater Sources 2011.  
The Applicant currently holds WAL2863 (220 shares or 220MLpa) and WAL29266 (70 shares of 70MLpa) for water that seeps into the existing TGO mine workings. The Applicant would initially obtain entitlement for an additional 477MLpa for a total of 767MLpa for groundwater that could potentially seep into the combined TGO and SAR workings.  
The Applicant would review and revise the groundwater model following receipt of further monitoring data and would obtain additional allocation if required.

##### **SafeWork NSW Approvals and Licences**

Appropriate approvals and licences from SafeWork NSW for the on-site use of explosives and notification of dangerous goods stored and used on site.

##### **Construction Certificates, Occupation Certificates, etc**

All necessary approvals from Narromine Shire Council for construction, erection and/or placement of buildings, structures and appropriate sewage treatment systems for the Project.



## **4.4 Preconditions to Exercising the Power to Grant Approval**

**Appendix 15** presents an overview of the relevant pre-conditions to the consent authority exercising its power to grant approval.

## **4.5 Mandatory Matters for Consideration**

**Appendix 15** presents an overview of the relevant mandatory matters for consideration by the consent authority in determining the application for development consent.