



# Section 3

## Legislative and Planning Context

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### PREAMBLE

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*This section considers the planning and legislative context within which the Quarry would operate and describes any environmental issues that are raised from these instruments that need to be addressed within the EIS. Relevant NSW State environmental planning legislation and local government planning instruments are included in the review, as well as any additional policies and guidelines that are relevant to the Proposal.*

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## 3.1 Introduction

A range of legislation and planning instruments apply to the Proposal. These pieces of legislation and statutory instruments were reviewed to identify which environmental aspects require consideration in the EIS. In addition, the SEARs identified a number of guideline documents that could potentially be of assistance during the preparation of the EIS (see **Appendix 2**). A brief summary of the relevant legislation or planning instrument is provided in the following subsections. The relevance of planning instruments to specific environmental issues has been addressed in the relevant specialist consultant assessments (see Appendices) and considered in Section 5 of this document.

## 3.2 Commonwealth Legislation

### Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) covers 'matters of national environmental significance' (MNES) that include:

- world heritage properties;
- wetlands listed under the Ramsar Convention;
- listed threatened species and ecological communities;
- listed migratory species protected under international agreements;
- nuclear actions;
- the Commonwealth marine environment; and
- National heritage places.

Under the EPBC Act, if a project has the potential to have a significant impact on a matter of national environmental significance, it is required to be referred to the Commonwealth Department of Agriculture, Water and the Environment (DoAWE) for assessment as to whether it represents a 'controlled action' and therefore requires approval from the Minister for the Environment.

The ecological assessment undertaken by OzArk Environment and Heritage Management Pty Ltd (OzArk, 2021) has concluded that significant impacts to MNES would not occur and referral of the Proposal to the DoAWE is not required. An assessment of potential biodiversity impacts is presented in Section 5.5 and in OzArk (2021), which is included as **Appendix 8**.

### Native Title Act 1993

The *Native Title Act 1993* (NT Act) provides for the recognition and protection of native title rights and interests of Aboriginal and Torres Strait Islander peoples to land and waters according to their traditional laws and customs. It also establishes a mechanism to determine claims to native title. Native title rights and interests can only exist if they have not been extinguished by a prior valid grant of a right (such as the grant of freehold title) as such a right is inconsistent with the continuation of native title rights and interests.



A native title determination application (or native title claim) may be made pursuant to the NT Act. Upon lodgement of a native title claim, the National Native Title Tribunal (NNTT) is required to apply a registration test and either accept the native title claim for registration or reject it. The NNTT maintains a register of native title claims.

Proposed activities that may affect native title are called 'future acts'. A future act will only be valid to the extent that it affects native title if the procedural requirements set out in the NT Act are followed. If a native title claim is accepted for registration, the native title claimant is entitled to negotiate about future acts over the land that is subject to the native title claim.

### 3.3 NSW Legislation

The key NSW legislation relating to the approvals and licences required for the Proposal are identified and discussed as follows.

- *Environmental Planning and Assessment Act 1979* (EP&A Act)
- *Protection of the Environment Operations Act 1997* (POEO Act)
- *Roads Act 1993* (Roads Act)
- *Biodiversity Conservation Act 2016* (BC Act)
- *National Parks and Wildlife Act 1974* (NP&W Act)

#### **Environmental Planning and Assessment Act 1979**

The EP&A Act provides the framework for the assessment and determination of development in NSW and is administered by the Department of Planning, Industry and Environment (DPIE).

Extractive industry is permitted with consent on land zoned RU1 – Primary Production under the *Narrandera Local Environmental Plan 2013*. Development consent for the Proposal is being sought in accordance with Part 4, Division 4.3 of the EP&A Act and will need to be evaluated in accordance with Section 4.15 of the EP&A Act.

As an extractive industry with an annual production rate greater than 30 000m<sup>3</sup> per annum, the Proposal is classified as "designated development" under Clause 19 of Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*. It is noted that the Proposal would also classify as designated development due to the proposed area of disturbance which exceeds the nominated 2ha threshold for land disturbance. As designated development for the purpose of an extractive industry, the application is also classified as Regionally Significant Development under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011* and the consent authority for the application will be the Western Regional Planning Panel in accordance with Section 4.5(b) of the EP&A Act.

The Proposal is also classified as 'integrated development' under Division 4.8 of the EP&A Act as an Environment Protection Licence (EPL) would be required in addition to development consent. Therefore, the application will be referred to the Environment Protection Authority (EPA), and in accordance with Section 4.47 (3) of the EP&A Act, Council must obtain general terms of approval from the EPA prior to approving the application. Any development consent issued must be consistent with those general terms of approval.



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### **Protection of the Environment Operations Act 1997**

The POEO Act provides the legislative and administrative framework to protect, restore and enhance the quality of the environment in NSW by reducing risks to human health and the preventing the degradation of the environment from development and other relevant activities. The most significant element of the legislation with regard to the Proposal is the requirement for an Environment Protection Licences (EPL). An EPL is required to authorise the carrying out of any 'Scheduled Activities'. As extractive industry, the ongoing operation of the Quarry in the manner outlined in this document, is classified as a 'Scheduled Activity' under Schedule 1(19) of the POEO Act and is therefore required to operate in accordance an EPL.

As noted above, Council will refer the development application to the EPA and seek general terms of approval. Should development consent be granted for the Proposal, the Applicant would apply for an EPL in accordance with the general terms of approval provided by the EPA.

### **Roads Act 1993**

The Roads Act applies to public roads in NSW and, depending upon the type of road, is administered by Transport for NSW (TfNSW) or local council. Approval is required under Section 138 of the Roads Act for works or structures that disturb the surface of a public road or connect a road to a classified road.

A permit under Section 138 of the Roads Act would be required to undertake the proposed upgrades to Strontian Road. Narrandera Shire Council would be the issuing authority for the required permit as Strontian Road is not a classified road.

A description of the proposed roadworks is provided in Section 2.4.8.

### **Biodiversity Conservation Act 2016**

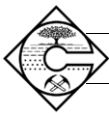
The purpose of the BC Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

The Applicant has considered opportunities to minimise impacts to native vegetation for the Proposal. Residual impacts to biodiversity would include removal of approximately 3.93ha of native vegetation. This impact triggers the Biodiversity Offset Scheme and therefore the residual impacts have been assessed in accordance with the Biodiversity Assessment Method and documented in a Biodiversity Development Assessment Report (BDAR) prepared by OzArk (2021). Residual impacts to biodiversity values would be offset in accordance with the BC Act.

### **National Parks and Wildlife Act 1974**

The *National Parks and Wildlife Act 1974* (NP&W Act) aims to manage and conserve nature, objects, places and features that have ecological and cultural value. The NP&W Act is administered and enforced by Heritage NSW within the Department of Premier and Cabinet.

Aboriginal places and objects are protected under the NP&W Act. An Aboriginal Heritage Impact Permit (AHIP) is required for consent to destroy, deface or damage an identified Aboriginal object or Aboriginal place. No Aboriginal places or objects of significance have been identified within the Quarry Site. Aboriginal cultural heritage is further addressed in Section 5.6.



### 3.4 State Environmental Planning Policies

#### State Environmental Planning Policy (State and Regional Development) 2011

One of the purposes of this State Environmental Planning Policy (SEPP) is to provide the basis for development to be declared 'regionally significant development' and to further confer the function of a regional planning panel to determine development applications. As designated development for the purpose of extractive industry, the Quarry is classified as regional development under this SEPP and therefore determination of the application will be by the Western Regional Planning Panel.

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

This SEPP ("the Mining SEPP") was gazetted in recognition of the importance to New South Wales of mining, petroleum production and extractive industries and to provide proper management and 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 environmental assessment, and sustainable management.

The SEPP specifies matters requiring consideration in the assessment of any mining, petroleum production and extractive industry development, as defined in NSW legislation. A summary of the matters that the consent authority needs to consider when assessing a new or modified proposal and where these have been addressed in this document is provided in **Table 3.1**.

**Table 3.1**  
**Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007**

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Relevant SEPP Clause	Description	EIS Section
12: Compatibility with other land uses	Consideration is given to: <ul style="list-style-type: none"><li>the existing uses and approved uses of land in the vicinity of the development;</li></ul>	4.3.2
	<ul style="list-style-type: none"><li>the potential impact on the preferred land uses (as considered by the consent authority) in the vicinity of the development; and</li></ul>	4.3.2
	<ul style="list-style-type: none"><li>any ways in which the development may be incompatible with any of those existing, approved or preferred land uses.</li></ul>	5.7
	The respective public benefits of the development and the existing, approved or preferred land uses are evaluated and compared.	5.10
	Measures proposed to avoid or minimise any incompatibility are considered.	N/A
12AB: Non-discretionary development standards for mining	Consideration is given to development standards that, if complied with, prevents the consent authority from requiring more onerous standards for those matters	5.2, 5.3



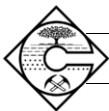
**Table 3.1 (Cont'd)**  
**Application of SEPP (Mining, Petroleum Production and Extractive Industries) 2007**

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Relevant SEPP Clause	Description	EIS Section
13: Compatibility with existing mining, petroleum production or extractive industry	Consideration is given to whether the development is likely to have a significant impact on current or future mining, petroleum production or extractive industry and ways in which the development may be incompatible.	N/A
	Measures taken by the Applicant to avoid or minimise any incompatibility are considered.	N/A
	The public benefits of the development and any existing or approved mining, petroleum production or extractive industry must be evaluated and compared.	N/A
14: Natural resource and environmental management	Consideration is given to ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure: <ul style="list-style-type: none"> <li>impacts on significant water resources, including surface and groundwater resources, are avoided or minimised;</li> </ul>	5.4
	<ul style="list-style-type: none"> <li>impacts on threatened species and biodiversity are avoided or minimised; and</li> </ul>	5.5
	<ul style="list-style-type: none"> <li>greenhouse gas emissions are minimised to the greatest extent feasible.</li> </ul>	5.2
15: Resource recovery	The efficiency of resource recovery, including the reuse or recycling of material and minimisation of the creation of waste, is considered.	2.8
16: Transportation	The following transport-related issues are considered. <ul style="list-style-type: none"> <li>The transport of some or all of the materials from the Quarry Site by means other than public road.</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Limitation of the number of truck movements that occur on roads within residential areas or roads near to schools.</li> </ul>	5.1
	<ul style="list-style-type: none"> <li>The preparation of a code of conduct for the transportation of materials on public roads.</li> </ul>	5.1.4.2
17: Rehabilitation	The rehabilitation of the land affected by the development is considered including: <ul style="list-style-type: none"> <li>the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated;</li> </ul>	2.12
	<ul style="list-style-type: none"> <li>the appropriate management of development generated waste;</li> </ul>	2.12
	<ul style="list-style-type: none"> <li>remediation of any soil contaminated by the development; and</li> </ul>	2.12
	<ul style="list-style-type: none"> <li>the steps to be taken to ensure that the state of the land does not jeopardise public safety, while being rehabilitated or at the completion of rehabilitation.</li> </ul>	2.12

### State Environmental Planning Policy No. 33 – Hazardous and Offensive Development (SEPP 33)

Hazardous and offensive industries, and potentially hazardous and offensive industries, relate to industries that, without the implementation of appropriate impact minimisation measures, would, or potentially would, pose a significant risk in relation to the locality, to human health, life or property, or to the biophysical environment.



The hazardous substances and dangerous goods to be held or used within the Quarry Site are required to be identified and classified in accordance with the risk screening method contained within the document entitled *Hazardous and Offensive Development Application Guidelines – Applying SEPP 33* (DoP, 2011). Hazardous materials are defined within DoP (2011) as substances falling within the classification of the *Australian Code for Transportation of Dangerous Goods by Road and Rail* (Dangerous Goods Code), (National Transport Commission, 2011). The substances relevant to this policy are primarily diesel and ammonium nitrate.

The Proposal would involve the use of diesel fuel, a Class 3 C1 combustible liquid, and small amounts of other hydrocarbons including lubricating oils and combustible liquids. However, as diesel would not be stored on site, SEPP 33 does not require that diesel be considered further.

Ammonium nitrate would not be stored on site, rather it would be transported to the Quarry Site for blasting on the day of each blast. As the quantity required for each blast does not exceed the relevant thresholds for Class 5.1 materials, SEPP 33 does not require that ammonium nitrate be considered further.

### **State Environmental Planning Policy (Primary Production and Rural Development) 2019**

The aims of this SEPP (the “Primary Production and Rural Development SEPP”) are to facilitate development on rural land that is orderly and economic, promotes the social, economic and environmental welfare of the State and avoids land use conflicts with existing agriculture. It also allows government authorities to identify State significant agricultural land and ensure the ongoing viability of agriculture in the State.

Specifically, and as described in Clause 10 the objectives of the Primary Production and Rural Lands SEPP are to provide for the protection of agricultural land;

- *that is of State or regional agricultural significance, and*
- *that may be subject to demand for uses that are not compatible with agriculture, and*
- *if the protection will result in a public benefit.*

The Proposal is considered with respect to these aims.

- The land that would be affected by the Proposal has not been identified as State or regionally significant agricultural land by *Schedule 1* of the Primary Production and Rural Lands SEPP.
- The Proposal would not remove any land currently managed for agriculture. As demonstrated at numerous other quarry sites where agricultural activities are undertaken concurrently within extractive industry, the Proposal would not be incompatible with continued agricultural land use surrounding the Quarry Site.
- The protection of the land that is the subject of the Proposal would not provide any public benefit. In fact, the employment and local economic stimulus that would be generated by the Proposal is considered to be of wider public benefit.

As a result, the Primary Production and Rural Lands SEPP is not considered further in this document.





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### **State Environmental Planning Policy No 44 – Koala Habitat Protection**

At the time that the SEARs for the Proposal were received and the assessments undertaken for the Proposal, SEPP 44 was the relevant State policy regarding Koala habitat protection. This policy was repealed on 1 March 2020 and replaced with the *SEPP (Koala Habitat Protection) 2019* (Koala SEPP). Both SEPPs aim 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 reverse the current trend of Koala population decline.

Consultation with BCD determined that the assessment did not need to consider the Koala SEPP and that the Proposal would be assessed in accordance with SEPP 44 as the SEARs were issued prior to the commencement of the new SEPP. As the Quarry Site does not contain any of the feed tree species listed under Schedule 2 of SEPP 44 no further consideration of this SEPP is required in this document.

### **State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. In particular, this policy requires consideration of whether a development requires a consent for remediation works or not and, where warranted, requires that remediation works meet certain standards and notification requirements.

As the areas proposed for disturbance within the Quarry Site have previously been used only for extractive industry, agriculture or passive biodiversity conservation, the Applicant is satisfied that no contaminated land occurs on the Quarry Site. This SEPP is therefore not considered further in this document.

## **3.5 Local Planning Issues**

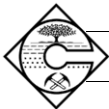
### **3.5.1 Narrandera Local Environmental Plan 2013**

#### **3.5.1.1 Local Zoning Objectives**

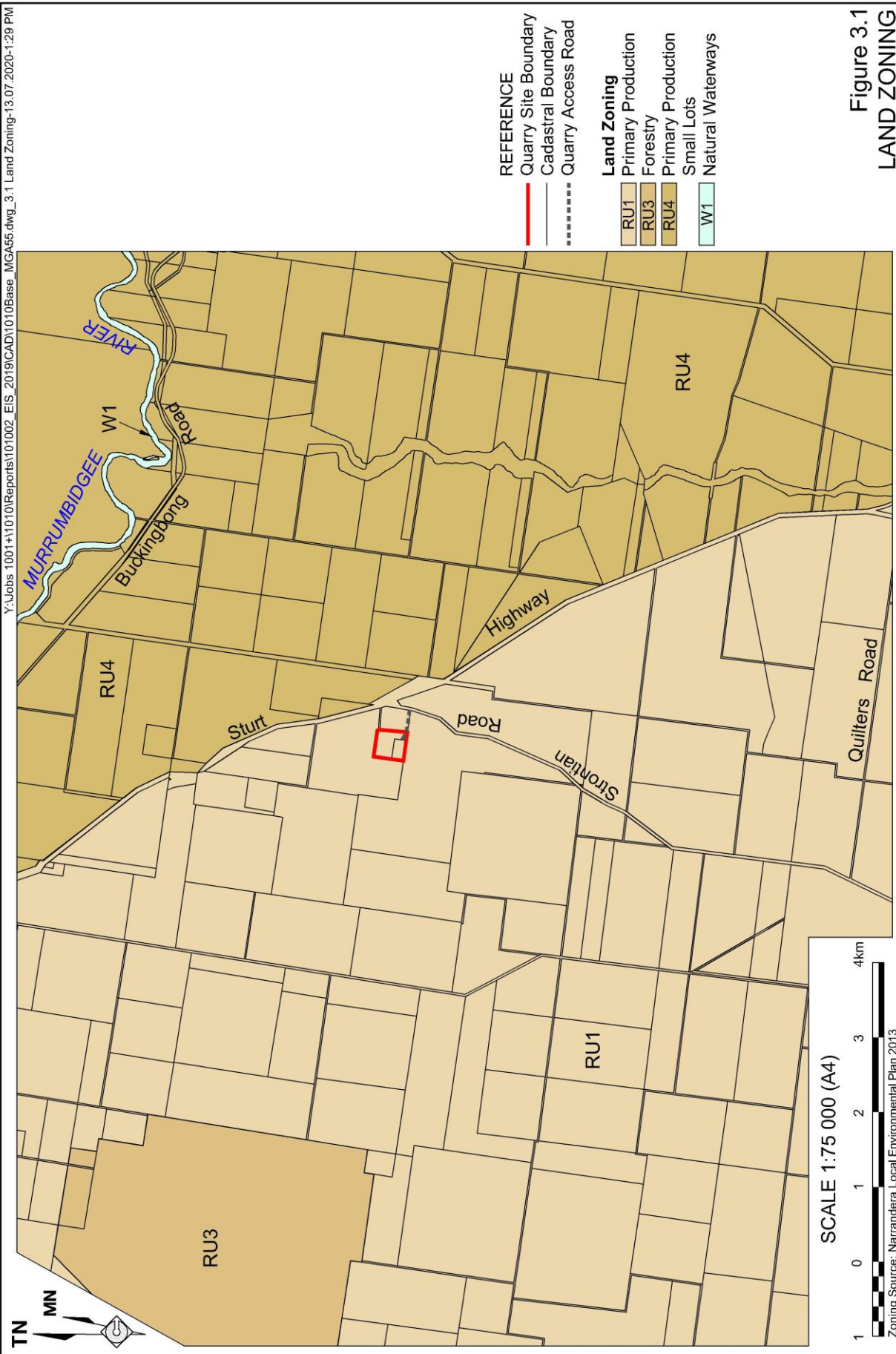
The Narrandera Local Environmental Plan (LEP) was gazetted in 2013 and guides development in the Narrandera LGA by encouraging the proper management, development and conservation of natural resources and the built environment. The Quarry Site is located on land zoned RU1 – Primary Production under the LEP with extractive industries permissible with consent within this zone (**Figure 3.1**). The objectives of this zone and how the Proposal has been designed to satisfy these objectives are described in the following subsections.

#### ***To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.***

The proposed continued use of the land for extractive industry provides productive use of the natural resource within the Quarry Site. As land within the Quarry Site is not currently managed for agriculture, it is not expected that the Proposal would adversely impact upon agricultural resources. Following the completion of the Proposal, the land would be rehabilitated to provide for passive biodiversity conservation and grazing.



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***To encourage diversity in primary industry enterprises and systems appropriate for the area.***

The Proposal would provide for the continued supply of Quarry products for use in construction and infrastructure projects throughout the Narrandera LGA and the broader Riverina Region. The Quarry would continue to operate alongside a variety of primary industry enterprises in the Narrandera LGA and assist to maintain the economic diversity of the area.

***To minimise the fragmentation and alienation of resource lands.***

The Proposal would allow for the expansion and continued operation of the Strontian Quarry and would not result in the fragmentation or alienation of resource lands.

***To minimise conflict between land uses within this zone and land uses within adjoining zones.***

The land within and immediately surrounding the Quarry Site is zoned RU1 – Primary Production with surrounding land principally used for dryland cropping. It is acknowledged that the Quarry Site is located within an area used for irrigation, however, the nearest land used for irrigated cropping is located approximately 2.8km to the northeast of the Quarry Site and the nearest land used for irrigated horticulture is located approximately 8.5km to the east. Land to the east of the Sturt Highway is zoned RU4 – Primary Production Small Lots with extractive industries permissible with consent. As the Proposal would not result in any adverse impacts on surrounding land uses, it is considered unlikely that land use conflicts would arise as a result of the Proposal.

### **3.5.1.2 Additional Local Provisions**

The Quarry Site comprises land mapped as “Biodiversity” (Clause 6.4) within the Narrandera LEP 2013. The objectives of Clause 6.4 within the Narrandera LEP are to maintain terrestrial biodiversity by:

- a) *protecting native fauna and flora;*
- b) *protecting the ecological processes necessary for their continued existence; and*
- c) *encouraging the conservation and recovery of native fauna and flora and their habitats.*

It is acknowledged that the Proposal has the potential impact upon fauna and flora through the direct clearing of approximately 3.93ha of native vegetation and through potentially indirect impacts such as the introduction of pests and weeds, increased edge effects and habitat fragmentation. It is noted that potential impacts to biodiversity have been avoided to the greatest extent practicable through the design of the Proposal and the proposed rehabilitation of two discrete areas to the east of the extraction area with residual impacts to be offset as part of the Proposal’s biodiversity offset strategy. The Applicant’s biodiversity offset strategy is presented in Section 2.13. Section 5.5 addresses the potential for the Proposal to impact upon biodiversity as well as the ongoing management and mitigation measures that would be implemented throughout the life of the Proposal.



### **3.5.2 Narrandera Development Control Plan**

The Narrandera Development Control Plan (DCP) applies to all land to which the Narrandera LEP applies and provides development controls for specific types of development. There are no specific controls in the Narrandera DCP relating to development for extractive industry except for community notification requirements. Chapter 15 of the Narrandera DCP requires that extractive industry within land zoned RU1 – Primary Production must be advertised. Advertisement of the Proposal will occur during the public exhibition of the EIS for the Proposal.

### **3.6 Other Environmental Policies, Guidelines and Plans**

The SEARs require that in assessing the identified key assessment requirements, reference be made to any relevant guideline documents. In addition, a number of the government agencies consulted in relation to the Proposal also required reference to other environment guideline documents. Where appropriate, the relevant guidelines are addressed in the relevant section(s) of this report, including the Appendices.