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# 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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## 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 approval history of the Quarry, including an overview of the approvals which currently apply to the Quarry, is provided in Section 1.3.3.

## 4.3 Statutory Requirements for the Project

### 4.3.1 Power to Grant Approval

The Project is classified as development that may be carried out with development consent under Division 4.1 of the *Environment Planning and Assessment Act 1979* (EP&A Act).

Under Section 4.36 of the EP&A Act, a class of development may be declared as State Significant Development (SSD). Clause 2.6 of the *State Environmental Planning Policy (Planning Systems) 2021* (Planning SEPP) provides that development is declared to be SSD for the purposes of the EP&A Act if:

- (a) *“the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act, and*
- (b) *the development is specified in Schedule 1 or 2.”*

The Project is permissible only with development consent under Part 4 of the EP&A Act (see Section 4.2.2).

As the Project would have a total recoverable resource of 33 million tonnes and would involve the extraction of up to 900 000t of material per year, the Project qualifies as SSD under Clause 7 of Schedule 1 of the Planning SEPP.

Development consent for the Project is sought under the SSD provisions under Division 4.7 of the EP&A Act.

In accordance with Section 4.5(a) of the EP&A Act and Clause 2.7 of the Planning SEPP respectively, the NSW Minister for Planning and Public Spaces or the Independent Planning Commission is the consent authority for the Project.

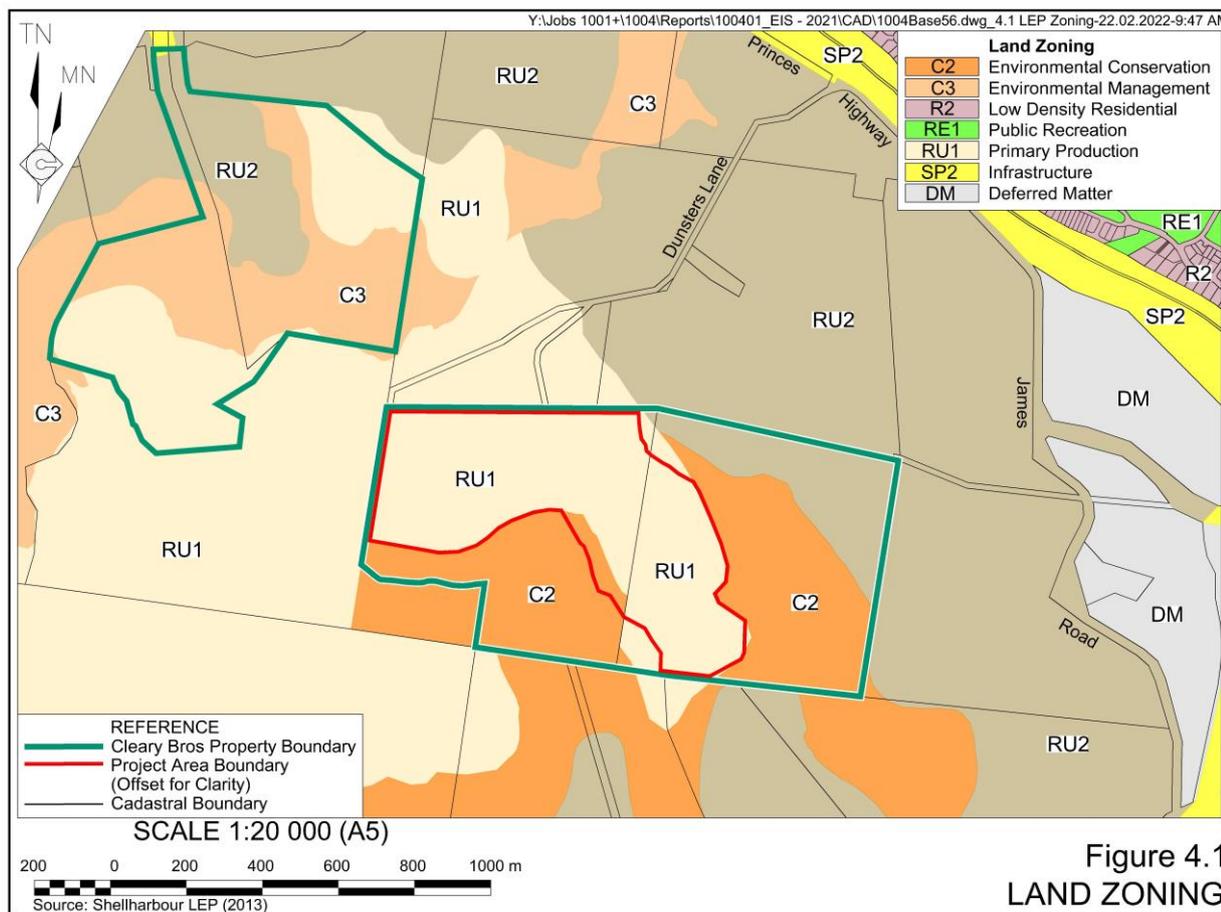


### 4.3.2 Permissibility

The Project Area, including Stages 1 to 6 of the current approved extraction area and Stage 7 of the proposed extraction area, includes land zoned under the Shellharbour LEP 2013 as:

- RU1 (Primary Production); and
- C2 (Environmental Conservation)<sup>1</sup>.

Figure 4.1 displays the zoning within and surrounding the Project Area.



Extractive industries are permissible as follows in each of these zones.

- Zone RU1 – Under the land use table in the Shellharbour LEP, Extractive Industries are permissible with consent within this Zone.
- Zone C2 – Extractive Industries are prohibited on land zoned as C2 under the Shellharbour LEP. However, under Clause 2.9(3) of the *State Environmental Planning Policy (Resources and Energy) 2021* (Resources and Energy SEPP), extractive industries are permissible on land on which development for the purposes of agriculture or industry may be carried out (with or without development consent). Oyster aquaculture is permissible within Zone C2 under

<sup>1</sup> The nomenclature for the “C2 zone” was recently amended from the former reference “E2 zone”. The reference to the “E2 zone” included in the Specialist Consultant reports accompanying the EIS should now be read as “C2 zone”.

**Cleary Bros (Bombo) Pty Ltd***Albion Park Quarry Extraction Area Stage 7 Extension*

the Shellharbour LEP. Oyster aquaculture is a form of aquaculture, which is in turn a form of agriculture under the definitions of the Shellharbour LEP. As a result, Extractive Industries are permissible with consent within this Zone.

The objectives of zone RU1 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; and*
- *to minimise conflict between land uses within adjoining zones.”*

The objectives of zone C2 are:

- *“to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values; and*
- *to prevent development that could destroy, damage or otherwise have an adverse effect on those values.”*

These objectives have been considered during the design and planning process of the Project and are addressed throughout the EIS.

### **4.3.3 Other Approvals**

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

In accordance with Section 4.42 of the EP&A Act, the following authorisation cannot be refused if it is necessary for carrying out an approved SSD and is to be substantially consistent with the development consent.

- An EPL under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act).

Cleary Bros intends to seek a variation of EPL 299 to cover the extended footprint of the proposed Stage 7 extraction area.

#### **4.3.3.2 Approvals Not Required for State Significant Development**

In accordance with Section 4.41 of the EP&A Act, the following authorisations are not required for SSD for which consent has been granted under Division 4.7 of the EP&A Act.

- An approval under Part 4, or an excavation permit under section 139 of the *Heritage Act 1977*.
- An Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*.
- 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*.



#### 4.3.3.3 Other Approvals

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

The Project was referred to the Commonwealth Department of Agriculture, Water and the Environment due to potential impacts on Matters of National Environmental Significance (MNES). A delegate of the Commonwealth Minister for the Environment determined on 5 February 2021 that the Project would be a “controlled action” under Section 75 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) due to potential significant impacts on listed threatened species and communities including:

- Illawarra-Shoalhaven Subtropical Rainforest of the Sydney Basin Bioregion (Critically Endangered);
- Illawarra Zieria (*Zieria granulata*) (Endangered); and
- Grey-headed Flying-fox (*Pteropus poliocephalus*) (Vulnerable).

The delegate of the Commonwealth Minister for the Environment also determined that the Project is to be assessed under Schedule 1 of the Bilateral Agreement between the Commonwealth and the NSW government made under Section 45 of the EPBC Act.

The EIS provides an assessment of potential impacts of the Project on the above MNES. Additional requirements to be covered in the EIS with regard to the relevant matters under the EPBC Act were provided by the Commonwealth Department of Agriculture Water and the Environment. Those requirements have been addressed in the EIS and are listed in **Appendix A** together with a record of where each requirement is addressed in the EIS.

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

The *Protection of the Environment Operations Act 1997* (PoEO Act) and the *Protection of the Environment Operations (General) Regulation 2009* detail the general obligations for environmental regulation in NSW.

The Quarry currently operates under EPL 299, granted under the PoEO Act. Cleary Bros intends to seek a variation of EPL 299 to cover the extended footprint of the proposed Stage 7 extraction area.

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

As outlined in Section 4.3.3.2, water use approvals under Section 89, water management work approvals under Section 90 and activity approvals (excluding aquifer interference approvals) under Section 91 of the *Water Management Act 2000* (WM Act) would not be required for the Project.

Sections 6.9.2 and 6.9.3 include consideration of the Project requirements under the WM Act and outline the water access licences required for each relevant water source.

#### 4.3.4 Statutory Compliance

Statutory compliance matters relating to pre-conditions to exercise the power to grant approval, and the mandatory matters that must be considered by the consent authority, are listed in **Tables B.1** and **B.2** in **Appendix B**. These tables include a cross reference to where each matter is addressed in the EIS.