**Avonbank Mineral Sands Project**

**Environment Effects Statement**

**Chapter 4 – Regulatory Framework**

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# Regulatory Framework

## Introduction

This Chapter outlines the State and Commonwealth approvals framework for the Avonbank Mineral Sands Project (the Project). It has been prepared to address the EES Scoping Requirements (DELWP, 2020) to provide ‘a description of the approvals required for the project to proceed, and their relationship to laws, policies, strategies, guidelines and standards’.

Where a proposed development has the potential to have a significant impact on environmental, socioeconomic and cultural values, an Environment Effects Statement (EES) is required under the provisions of the Victorian *Environment Effects Act 1978* (EE Act*)*. On 17 August 2019, the Minister for Planning (Victoria) decided that an EES was required for the Project.

Where a proposed development is likely to have a significant impact on matters of national environmental significance (MNES) protected under the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), an assessment and approval is required. On 3 July 2020, the Minister for the Environment (Commonwealth) decided the Project was a controlled action, therefore, requiring assessment and approval under the EPBC Act.

The assessment processes under the EE Act and EPBC Act are described in Section 4.2 of this Chapter. The relevant key statutory approvals required prior to Project commencement are explained in Section 4.4 and Section 4.5 of this Chapter.

## Assessment Requirements

This Section details the assessment requirements under the Commonwealth and State environment and planning legislation.

### *Environment Effects Act 1978*

The EE Act provides for the integrated assessment of a project’s potential significant environmental effects. The ‘Ministerial Guidelines for the Assessment of Environment Effects under the *Environment Effects Act 1978’* (DSE, 2006) sets out the triggers for an EES under the EE Act.

The Project was referred to the Victorian Minister for Planning in July 2019, seeking a determination on the application of the EE Act to the Project. In making this determination, the Minister considered matters including:

* the potential for significant adverse effects on individual environmental assets, taking into account the magnitude, geographic extent and duration of change in the values of each asset;
* the likelihood that available environmental standards provide a sufficient basis for managing key issues;
* the range and complexity of potential adverse effects;
* other available assessment processes that may be suitable to address potential environmental effects; and
* the likely level of public interest in a proposed Project.

On 17 August 2019, the Victorian Minister for Planning determined the Project required the preparation of an EES. The Minister gave the following reasons for the decision:

* The Project has the potential for a range of significant environmental effects, in particular on:
* Existing land uses and amenity (i.e., air quality, noise and visual) within the Project Area and the broader area.
* Surface water and groundwater (i.e., hydrology, quality, availability) and protected beneficial uses.
* Remnant native vegetation and associated biodiversity values.
* Aboriginal cultural heritage values.
* There is uncertainty regarding the extent, magnitude and acceptability of potentially significant effects. An integrated and rigorous assessment is necessary to ensure the range of adverse effects and related uncertainties are sufficiently investigated in terms of both their extent and significance and how significant effects can be avoided and minimised to acceptable levels.
* An EES will enable a transparent and thorough process for consideration of potentially significant adverse effects of the Project prior to any relevant statutory decision-making, including under the *Mineral Resources (Sustainable Development)* (MRSD Act), *Aboriginal Heritage Act 2006* and *Water Act 1989*.

The Scoping Requirements for the Project detail the specific matters to be investigated and evaluation objectives against which the Project is to be assessed. The evaluation objectives and specific Scoping Requirements are presented in Appendix A of this EES.

The EES will be exhibited for a period of 30 business days for public comment. Following the public exhibition/submission period, it is expected that the Minister for Planning will appoint an inquiry under the EE Act to consider and report on the environmental effects of the Project. The Minister for Planning may also appoint an advisory committee under the *Planning and Environment Act 1987* to consider the draft Planning Scheme Amendment. No decisions can be made on the Project until the Minister for Planning has provided their assessment of the EES.

### *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

This Section summarises the key processes for assessing MNES and obtaining approval under the EPBC Act. The EPBC Act protects certain matters of national environmental significance and requires the assessment and approval of proposed actions that are likely to have a significant impact on MNES.

If the Commonwealth Minister for the Environment and Water determines that a project will or is likely to have a significant impact on MNES, it needs to be assessed and approved by the Minister under the EPBC Act.

A referral prepared by the proponent is required to determine whether the ‘proposed action’ is a controlled action (that is, there are significant potential impacts to MNES) under the EPBC Act and, if so, the required level of assessment. The referral and assessment process determines the application of the EPBC Act, which involves the following steps:

* A proponent submits an EPBC Act referral with preliminary project information and an assessment of the project’s potential implications for MNES.
* The referral is posted on the Department of Climate Change, Energy, the Environment and Water (DCCEEW) website, and public comment is invited over a 10-day period.
* The Commonwealth Minister makes a determination on whether or not the project is to be a controlled action.

An EPBC Act referral for the Project was submitted to the Department of Agriculture, Water and the Environment (DAWE, now DCCEEW) on 6 December 2019. The Minister for the Environment’s delegate decided on 3 July 2020, the Project was a controlled action (EPBC no. 20198586) on the basis the Project has the potential to impact:

* listed threatened species and communities (s18 and s18A); and
* nuclear actions (s21 and s22A).

The controlled action was varied on the 20 January 2022 to include the minor utilities corridor (power and water) which extends from the respective terminal stations to the WIM Base Area.

The Project must therefore be assessed and approved under the EPBC Act. The Commonwealth has accredited the Victorian EES assessment process for this purpose under a bilateral agreement between the Commonwealth and the State of Victoria (signed October 2014). This means that issues of interest to the Commonwealth are included in the EES Scoping Requirements and are addressed in the EES.

MNES are addressed throughout the EES in line with the assessment requirements listed in Section 6 of the Bilateral Agreement. Chapter 25 (Matters of National Environmental Significance) of this EES summarises the residual impacts relevant to the EPBC Act controlling provisions.

In line with the bilateral agreement, Chapter 25 describes:

* the controlled action;
* the places affected by the action;
* any MNES that are likely to be affected by the action; and
* all relevant impacts on MNES and the extent of the likely impacts.

It is expected that the EES will provide all relevant information for the Commonwealth Minister to make an informed decision on the Project under the EPBC Act. A copy of the Victorian Minister for Planning’s assessment report will be provided to the Commonwealth Government to inform the Minister for the Environment and Water’s assessment report under the EPBC Act.

If it is concluded that the Project would have an acceptable level of environmental effects, all required statutory approvals must be sought prior to Project commencement.

## Operational Context

Mining and primary processing activities will be conducted on a mining licence (MIN) to be secured within the granted retention licence 2014 (RL2014). Secondary ore processing and product loading activities will take place within the Wimmera Intermodal Freight Terminal (WIFT) Precinct, which lies in the centre of the site. This location, outside of the proposed mining licence, is referred to as the WIM Base Area (WBA) (refer Chapter 2). Product will be transported to the Port of Portland (PoP) via Henty Highway to be temporarily stored, loaded and shipped overseas. The product storage location will be situated within a leased bunker owned by the Port of Portland Pty Ltd.

The development extent of the Project is shown in Figure 4‑1.

### Mining Work

The scope of work to be authorised under the proposed mining licence and associated work plan (refer Attachment 4) will include all exploration, mining, primary processing and works incidental to mining within an area covered by the mining licence to be granted under the MRSD Act. Key works and infrastructure considered to be within the scope of the proposed mining licence and mining work plan include:

* Mining of the mineral sands ore body.
* Primary processing of the ore prior to the separation of mineral and concentration of heavy mineral sands.
* All works incidental to mining and primary processing.

Further detail regarding the work anticipated in the proposed mining licence is provided in Chapter 2 (Project Description). Relevant approval requirements under the MRSD Act are described in Section 4.4.1.

### Secondary Processing Work

Works associated with secondary processing within the WBA are situated outside the proposed mining licence, primarily within the Special Use Zone established over the WIFT Precinct for industrial purposes, including the processing, storage and handling of mineral sands.

As such, the planning scheme may apply to these works. It is proposed that works that will otherwise require planning approval are to be dealt with under a planning scheme control known as the Specific Controls Overlay (SCO), which will be applied by way of an amendment to the Horsham Planning Scheme. These works include:

* Secondary processing, ancillary activities and Heavy Mineral Concentrate (HMC), concentration within the WBA
* All incidental works associated with secondary processing and management of the HMC product within the WBA area.

Further detail regarding the work associated with secondary processing is described in Chapter 2 (Project Description). Relevant approval and SCO amendment requirements under the *Planning and Environment Act 1987* (P&E Act) are described in Section 4.4.2.

### Transport and Shipping of HMC Product

The transport of HMC from the WBA will involve direct loading into B-double articulated vehicles (trucks) at a loading area adjacent to the Wet Concentrator Plant (WCP). The HMC will be transported to the PoP on an existing arterial transport route. Transport and shipping of HMC will include:

* Transport of minerals to the PoP.
* Loading and storage of minerals at the PoP.
* Shipping to offshore markets.

The road transportation to the PoP will be undertaken by a Contractor under the Project environmental management system (EMS) (refer Chapter 24). As described in Section 4.5.6, the PoP operates under a facility-wide Safety and Environment Management System (SEMS), with which the temporary storage, handling and loading of HMC will be aligned.

Further detail regarding the transport and shipping of HMC product is described in Chapter 2. Relevant approvals are described in Section 4.5.15.

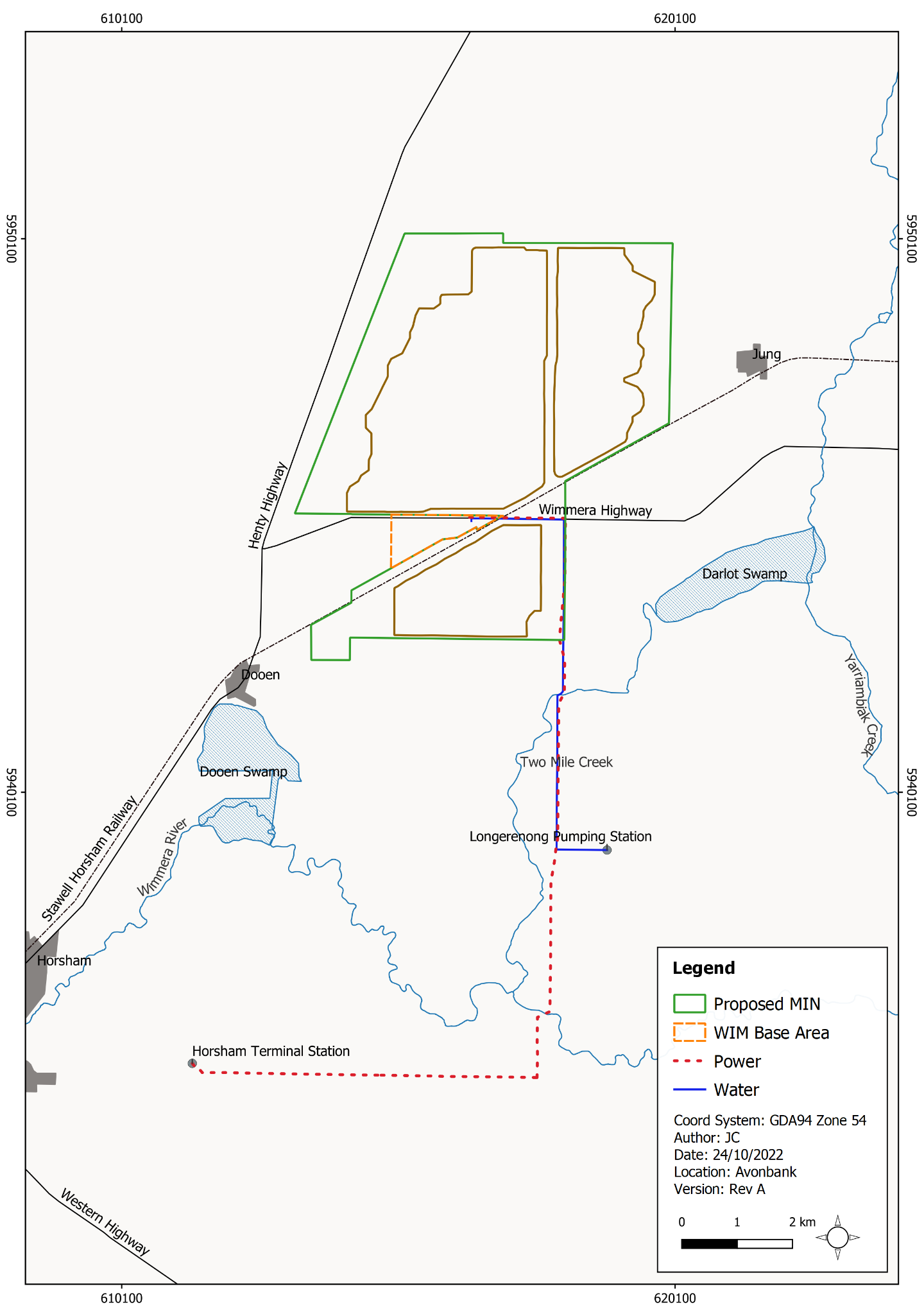


Figure 4‑1: Development extent

## Key Approvals

### *Mineral Resources (Sustainable Development) Act 1990*

The MRSD Act provides the legal framework for mining operations in Victoria and for the issuing and administration of exploration and mining licences. The purpose of the MRSD Act is to encourage economically viable mining and extractive industries in a manner that is compatible with the economic, social, and environmental objectives of Victoria. Under the MRSD Act, mining refers to the extraction of minerals for the purposes of producing them commercially and includes the processing and treatment of ore.

Prior to the commencement of mining, a licence must be granted and a work plan approved in line with the MRSD Act. Other pre-mining requirements necessitate the licence holder to:

* lodge a rehabilitation bond;
* have relevant planning approvals granted or have an assessment under the EE Act lodged for assessment by the Minister for Planning;
* obtain all the necessary consents from other authorities required under the MRSD Act or any other Act;
* have the consent of and compensation agreements with owners and occupiers of the land affected by the Project; and
* meet all other relevant requirements in Section 42 of the MRSD Act.

The scope of the proposed mining licence will include all exploration, mining and works incidental to mining within an area covered by the licence. For the Project, ‘mining’ refers to works relating to the excavation of ore, and the ‘processing and treatment of ore’ refers to the primary processing and feed preparation at the dozer trap and trommel.

Works associated with secondary processing (HMC concentration) within the WBA will be situated outside the proposed mining licence, primarily within the Special Use Zone established over the WIFT Precinct for industrial purposes, including the secondary processing, storage and handling of mineral sands.

Other work excluded from the scope of the proposed mining licence includes the establishment of minor utilities (power and water) to the WBA, transport of HMC to the PoP, and loading of HMC for shipment.

Under the MRSD Act, an exploration or mining licence can be granted over private and Crown land, including reserved Crown land. The MRSD Act also includes provisions for the compensation of landholders affected by activities exercised under these licences and requires the landholders to consent or be compensated for exploration and mining works.

Section 40(3)(e) of the MRSD Act requires (among other things) that the mining related hazards and risks be identified and that the licence holder eliminate or minimise those risks as far as reasonably practicable. The work plan must also include a rehabilitation plan for any work on land covered by the mining or prospecting licence and a community engagement plan.

The key requirements of the *Mineral Resources (Sustainable Development) (Mineral Industries) Regulations 2019* (MRSDMI Regs) for a work plan under a mining licence are summarised below in Sections 4.1.1 to 4.1.5.

#### Description of mining operations

The MRSD Act and Regulation 42 of the MRSDMI Regs require that a work plan includes a description of the mine operations within the mining licence, a site map showing the mine layout for the life of the Project, a description of the geology, stratigraphy and the estimated mineral resource and ore reserve.

#### Identification of hazards and risks

The MRSD Act and Regulation 44 of the MRSDMI Regs require the work plan identifies risks that the work may pose to the environment, to any member of the public, or to land, property or infrastructure in the vicinity of the work. In this context, work relates to all mining and rehabilitation activities. Related hazards that could pose a risk to identified sensitive receptors include:

* The nature of the hazard.
* The likelihood of the hazard causing or contributing to any harm or damage.
* The severity or consequence of the harm or damage that may be caused.

Attachment 5 (Aspects and Risks) includes a preliminary assessment of Project related environmental aspects and associated risks.

#### Risk management plan

The MRSD Act and Regulation 45 of the MRSDMI Regs require a risk management plan be developed as part of the work plan to detail measures that will be taken to eliminate or minimise the mining related risks, as far as reasonably practicable.

Key elements of the risk management plan include:

* Measures to eliminate or minimise the identified risks as far as reasonably practicable.
* The environmental objectives and performance standards to be achieved through the application of the proposed measures.
* A description of the relevant EMS, practices and procedures that are to be applied to monitor and manage risks.
* An outline of the roles and responsibilities of personnel accountable for the implementation of the risk management plan or relevant components of the EMS.

Attachment 4 (Work Plan Framework) provides further detail regarding the preparation of the required risk management plan.

#### Rehabilitation plan

The MRSD Act and Regulation 43 of the MRSDMI Regs require a rehabilitation plan be prepared for land disturbed by mining within the mining licence.

A rehabilitation plan must be developed for areas within the mining licence to describe the work to be undertaken to ensure the rehabilitated landform will be safe, stable and sustainable and be capable of supporting the proposed end land use. The rehabilitation plan will define the end land use with consideration to the views of the landholders and the broader community where appropriate.

The rehabilitation plan will establish objectives and performance standards/criteria to measure and quantify when the objectives have been met and when rehabilitation is considered to be complete. A schedule for progressive rehabilitation will be included along with the rehabilitation milestones for the life of mine. A preliminary rehabilitation plan is provided as Attachment 3 (Rehabilitation Plan).

#### Community engagement plan

Regulation 46 of the MRSDMI Regs require that a community engagement plan be included in the work plan to describe how the licence holder will consult the community over the period of the mining licence.

A community engagement plan will be developed and incorporated into the overarching EMS, which will:

* Identify the community likely to be affected by the work under the licence.
* Describe how information will be shared with the community.
* Identify community attitudes and expectations.
* Describe how feedback from the community will be sought.
* Detail how complaints and other communications from members of the community will be managed.
* Describe how community feedback will be analysed, taking into account community concerns or expectations.

Community engagement and consultation plans for the Project are described in Chapter 5 (Community Engagement).

### *Planning and Environment Act 1987*

The P&E Act sets out the statutory administrative framework for land use planning by government agencies. The principal mechanism for land use planning is through approved planning schemes. The procedures for the preparation and amendment of planning schemes are set out in the P&E Act. Generally, planning schemes are prepared by local government for their municipal area.

Planning schemes are based on a standardised template referred to as the Victoria Planning Provisions. The Victoria Planning Provisions and all planning schemes contain a Planning Policy Framework (PPF), which sets out planning policies common to Victoria, specific regions and individual municipalities. Particular provisions set out planning controls in relation to specific types of use and development, such as earth and energy resources, native vegetation removal and access to arterial roads.

These planning controls are standardised across the State and regions, although there is limited scope for some local variation. General provisions set out legal, procedural, administrative and ‘housekeeping’ arrangements for applying and interpreting the planning schemes. The Municipal Planning Strategy (MPS) sets out the planning vision, strategic directions, and strategic framework plans to achieve the planning objectives for the particular (municipal) area.

A fundamental principle underpinning all Victorian planning schemes is that the planning permit is the primary planning control mechanism. The discretion provided by the planning permit mechanism is exercised with reference to the planning vision, objectives, strategies and policies expressed in the PPF. The zones and overlays are the implementation mechanisms that give effect to the policy outcomes sought by the policy framework.

The Avonbank mining and processing activities are located in the Horsham Rural City municipality, within which the Horsham Planning Scheme applies. Works and land use associated with the secondary processing activities within the WBA are anticipated to require planning approvals.

It is intended that Clause 45.12: Specific Controls Overlay be applied by way of a planning scheme amendment to cover all activities and infrastructure within the WBA area (refer Figure 4‑2).

An SCO involves the identification of:

* the land where works are proposed on the SCO Map and the title of the incorporated document in the schedule to Clause 45.12; and
* the title of the incorporated document in the schedule to Clause 72.04 (which lists all incorporated documents particular to the Horsham Planning Scheme).

The SCO will exempt all land identified from any and all permit triggers for the Project but still maintain the current permit triggers as they apply to any other situation not associated with the Project.

Works and land use associated with the minor utilities installation, including water mains and powerlines less than 220 kV, are exempt from requiring planning approvals across most planning zones. A permit to remove vegetation and provide offsets may be required within the minor utilities corridor. There are however exemptions for utility providers under certain circumstances, as further described in Chapter 8 (Land Use and Planning).

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Figure 4‑2: Specific controls overlay

To assist in the assessment of the EES, the Victorian Minister for Planning may appoint an advisory committee under the P&E Act (in addition to an inquiry under the EE Act) to consider and report on the draft Planning Scheme Amendment.

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

The EPBC Act protects MNES and requires the assessment and approval of proposed actions that are likely to have a significant impact on MNES. The Project was determined to be a controlled action and must therefore be assessed and approved under the EPBC Act.

After public exhibition of the EES, the EPBC Act assessment and approvals process is undertaken with consideration to the updated Project documentation (following receipt of submissions and the Victorian Minister for Planning’s assessment report). The Commonwealth Minister for the Environment and Water will then consider this final EES document and the Victorian Minister for Planning’s assessment report to make an informed decision on the Project under the EPBC Act.

A decision under the EPBC Act is anticipated within 40 business days after the Victorian Minister for Planning has completed the EES assessment. There may however be some delay if additional information is requested regarding specific aspects of the Project. Based on the assessment report, the Commonwealth Minister for the Environment and Water formalises the decision, determining whether the Project will be approved, approved with conditions, or not approved.

### *Aboriginal Heritage Act 2006*

The *Aboriginal Heritage Act 2006* (AH Act) aims to protect Aboriginal cultural heritage and broaden Aboriginal community involvement in decision-making. It is an offence to do something that will harm or is likely to harm Aboriginal cultural heritage unless the action is done in accordance with a Cultural Heritage Management Plan (CHMP) or a cultural heritage permit issued under the AH Act.

Under s49 of the AHAct, a CHMP must be prepared for any project for which an EES has been required. Preparation of a CHMP is mandatory to meet the requirements of the AH Act. This has been prepared for the Project, and a summary of the CHMP is included in Appendix E (Cultural Heritage Management Plan Summary).

All Aboriginal cultural heritage is protected equally under the AH Act, irrespective of significance. Heritage advisors and development proponents are required to seek the views of Aboriginal heritage stakeholders regarding whether Aboriginal cultural heritage items, places and/or values may be disturbed.

A detailed Aboriginal cultural heritage assessment has been completed in accordance with s53(2) of the Act. This has included a ground survey of the activity area to detect the presence of Aboriginal cultural heritage within, or associated with, the activity area. In accordance with s61a of the Act, this assessment concluded that the construction and operation of the Project would not harm any known or identified Aboriginal cultural heritage. Matters relating to cultural heritage are discussed in Chapter 23 (Aboriginal Cultural Heritage).

## Other Approvals and Consents

Other licences, permits or registrations will be required for the Project, depending on the planned activities during construction and operation. The Minister for Planning’s assessment report will provide recommendations to the relevant statutory authorities that administer the permits, consents and licences described in this Chapter.

### *Environment Protection Act 2017*

The *Environment Protection Act 2017* (EP Act) establishes powers, duties, and functions of the Environment Protection Authority Victoria (EPA) to, among other things, control discharges of waste to the environment, manage emissions to the atmosphere, advise on environmental policy, and promote resource efficiency.

The EP Act includes a General Environmental Duty (GED) that applies to all entities engaging in activities that may give rise to risks of harm to human health or the environment from pollution or waste. The GED requires that a person who is engaging in an activity that may give rise to risks of harm minimise those risks so far as reasonably practicable. The GED will apply to all phases of the Project from construction through to closure and is a legislative requirement that applies concurrently with all other legal obligations (including the work plan).

The key objective of the EP Act is to protect both the environment and human health, focusing on pollution prevention and reducing the potential risk of harm so far as reasonably practicable through the GED for all businesses. Chapter 3 of the EP Act outlines duties relating to environmental protection in which failure to comply with the duties is not only enforceable by the EPA but constitutes a criminal offence.

Part 4.2 of the EP Act outlines the types of permissions required for certain activities. The permissions work alongside the GED, ensuring performance standards and conditions are met across a range of activities. There are three tiers of permissions based on the level of risk to human health and the environment:

* Licences for high-risk prescribed activities.
* Permits for medium-risk prescribed activities.
* Registrations for low-risk prescribed activities.

The prescribed activities and related permission are defined in the *Environment Protection Regulations 2021* (EP Regs). The permissions expected to be relevant to the Project area are defined in Section 4.5.2.

### *Environment Protection Regulations 2021*

The EP Regs are subordinate legislation to the EP Act. The regulations support the objectives of the EP Act in managing discharges ‘to prevent or minimise risks of harm to human health or the environment from pollution or waste’. The regulations stipulate which tier of permission is required for each activity specified in the regulations and the application and assessment processes for those permissions.

These regulations prescribe that a mine operating, in accordance with the MRSD Act, is exempt from licensing by the EPA, provided that discharges are solely to land and consist only of mining wastes. Discharge to an aquifer typically requires the relevant permissions from the EPA.

The EPA maintains a range of subordinate instruments and regulations established under the EP Act, which provide guidance on the assessment of impacts of air and noise emissions, impacts on water quality, and waste management.

The EPA’s Environment Reference Standard 2021 (ERS, 2021) identifies environmental values (ambient air, ambient sound, surface water and groundwater). Although the ERS provides a benchmark for assessing impacts, it is noted that it is a reference tool and does not stipulate specific obligations, compliance limits nor imply acceptable pollution levels. The GED provides the requirement for the minimisation of risk to human health and the environment.

It is likely that the Project will trigger EPA permission requirements under the provisions described in the EP Regs, as described in Table 4‑1.

Table 4‑1: EPA permissions

|  |  |  |  |
| --- | --- | --- | --- |
| Activity type | Permission Activity Trigger | Type of EPA Permission | Comments |
| A18 Discharge or deposit of waste to an aquifer | Sites that discharge or deposit waste to an aquifer must hold an A18 permit. An exception to this is if the discharge or deposit of waste is in accordance with an EPA licence. | EPA Permit A18 | It is expected that seepage from tailings deposited wet to the mine void will require an A18 Permit to discharge waste to the aquifer.  An A18 permit details the discharge rate to the aquifer and quality objectives. It also requires the development of a risk management and monitoring program. |

It is noted that under the EP Regs, an A20 on-site wastewater management system permit is likely to be required to construct, install or alter an on-site wastewater management system with a design or actual flow rate of sewage not more than 5,000 L on any day. This permit would be issued by the Horsham Rural City Council.

Consideration has been given to other permission requirements, however, based on the Project information and design, these are assessed as being unlikely to be required. These permissions are summarised in Table 4‑2.

Table 4‑2: EPA permissions assessed as unlikely to be required

| Activity Type | Permission Activity Trigger | Type of EPA Permission | Comments |
| --- | --- | --- | --- |
| C01 Extractive industry and mining | Extractive industry and mining, but excluding any of the following activities:  (a) Eductor dredging,  (b) activities discharging or depositing mining or extractive industry wastes solely to land and that are in accordance with the MRSD Act,  (c) activities that involve discharges or emissions solely to the atmosphere in accordance with the MRSD Act. | EPA Development Licence  EPA Operating Licence | **Unlikely to be required.**  It is expected that mining activities within the proposed mining licence area will be approved under the MRSD Act, and therefore these activities (except for discharge to aquifer via an A18 permit) will be exempt from requiring EPA permissions under r16 of the EP Regs.  Secondary processing and associated activities within the WBA will be situated outside of the proposed mining licence. It is intended that an SCO be applied by way of a planning scheme amendment to cover all activities and infrastructure within the WBA area. |
| L01 General discharges or emissions to the atmosphere | Activities that discharge or emit to the atmosphere from one or more sources and the discharge or emission from the activity is:  (a) at least 100 kilograms per day of:  volatile organic compounds; or  particles; or  oxides of sulphur; or  oxides of nitrogen; or  other acid gases (excluding carbon dioxide); or  (b) at least 500 kilograms per day of carbon monoxide. | EPA Development Licence  EPA Operating Licence | **Unlikely to be required**  Clause 39(b)(vii) of the EP Regs prescribes an exemption in relation to an activity set out in L01. The exemption relates to an activity that involves discharges or emissions solely to the atmosphere from an extractive industry or mining operation operating in accordance with the MRSD Act. As such, emissions generated within the proposed mining licence are likely to be exempt. Emissions from within the WBA are not expected to trigger the volume criteria. |
| A14 Reclaimed wastewater supply or use | Where groundwater or stormwater is collected and reused after modification from its original state by mining, it may meet the criteria of requiring a permission. | EPA Permit A14 | **Unlikely to be required**  Sites that supply or use reclaimed water must hold an A14 permit. An exception to this is if the supply or use is in accordance with an EPA licence. |
| A17 Containment of Category D waste soil | Category D soils require an EPA permit in specific instances where Category D soils are contained on-site. | EPA Permit A17 | **Unlikely to be required**  Mined materials are not expected to trigger this permission requirement, as the material is being reused on-site. |
| A09b Waste tyre storage - small | Sites storing between 5 m3 and 40 tonnes of waste tyres on-site must hold an A09b registration. | EPA Registration A09b | **Unlikely to be required**  Storage of less than 5 m3 of waste tyres will ensure there is no requirement for this EPA registration.  An A09b limits waste tyre storage up to 40 tonnes or 5,000 equivalent passenger units (EPU) of waste tyres on any site at any time for any purpose. Above this quantity, an A09a Development Licence/Operating Licence is triggered.  The Project is unlikely to exceed the volume trigger associated with waste tyres. |

### *Crown Land (Reserves) Act 1978*

The *Crown Land (Reserves) Act 1978* provides for the temporary or permanent reservation of Crown land for public purposes. The Act includes provisions for the management of reserved Crown land by committees of management or trustees.

Except for exploration and mining licences, reserved Crown land cannot be leased or licensed unless provided for in the Act. Consent is required from the Victorian Minister for Energy, Environment and Climate Change to mine on Crown land classified as restricted under the MRSD Act.

A small section of the development extent is located on Crown land, as described in Chapter 8, which identifies Crown land tenure and managed public lands. Therefore, consent from the Minister is required prior to construction or operation on these land parcels.

### *Land Act 1958*

The *Land Act 1958* (Land Act) *c*onsolidates the law relating to the sale and occupation of Crown land. The Act provides for the acquisition, exchange, leasing, licensing, and sale of Crown land.

Section 12A of the Land Act permits the Victorian Minister for Energy, Environment and Climate Change to enter into an agreement to exchange Crown land for land that is either required for public purposes, could enhance the use of reserved Crown land, or would rationalise the boundaries between private land and reserved Crown land. Land permanently reserved under the *Crown Land (Reserves) Act 1978* cannot be exchanged.

Leases and licences can be issued for periods of up to 99 years, subject to the provisions of the Act. Section 137AE of the Act includes provisions for the grant of leases, and Section 140AA serves to ensure that Crown land reserves are protected and preserved for future generations and that the public's investment in these lands are safeguarded.

### *Port Management Act 1995*

The requirements for temporary storage and handling of HMC at the PoP for shipment overseas are considered under the *Port Management Act 1995* (PM Act)*.*

Section 91C of the PM Act, the responsibility for the preparation of an Environmental Management Plan (EMP) is with the Port manager, and it is incumbent on them to ensure the measures and strategies specified in the management plan provide a platform whereby the hazards and risks associated with the operation of the Port are prevented or reduced. Under Section S91C (2b), tenants, licensees and service providers implement the EMP in line with the environmental duties that apply to the operation of the Port.

The environmental, health and safety management issues associated with the handling and shipment of HMC will be addressed in accordance with the specific requirements of the PoP EMP and the overarching Project EMS. Once loaded, the responsibility for the management of the HMC for export will primarily rest with the shipping company.

### *Radiation Act 2005* and *Radiation Regulations 2017*

Heavy mineral sands contain Naturally Occurring Radioactive Materials. The *Radiation Act 2005* and *Radiation Regulations 2017* provide the legislative framework for radiation protection and radioactive waste management. The purpose of the Act is to protect the health and safety of persons and the environment from the harmful effects of radiation.

The Radiation Act:

* Requires a licence for conducting radiation practice.
* Prohibits use of radiation source unless licenced.
* Prohibits construction of radiation facilities in certain cases.
* Exempts certain activities or substances from the need for a licence.

The *Radiation Regulations 2017*, which support the *Radiation Act 2005*, define the levels of radioactive substances for their application and contain provisions relating to the limits on occupational and public exposures arising from mining and processing operations. For the Project, these requirements will extend to the transport of HMC and the handling of HMC at the PoP. The Radiation Regulations set out the requirements for licensing, registration, emergency response, safety precautions, monitoring, disposal of radioactive materials, and other requirements for facilities handling radioactive substances.

The Regulations also prescribe the activity concentration and activity of material that spontaneously emits ionising radiation, radiation dose limits, the radiation sources that require a current certificate of compliance prior to use of the source, the date of expiry for compliance certificates issued in respect of prescribed radiation sources, and other matters required by the Radiation Act.

The Project must obtain approval from the Victorian Department of Health in the form of a management licence to authorise the handling and disposal of radioactive materials. An approved radiation management plan and waste management plan are also required for the Project. Approval of management plans is required prior to construction commencing. Additionally, Project activities must comply with the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) code of practice for mining and mineral processing in accordance with the ARPANSA ‘Guide for Radiation Protection of the Environment’ (ARPANSA, 2015).

Within the limits of the PoP, the existing PoP Radiation Management Plan will be utilised. The PoP Radiation Management Plan includes Standard Operating Procedures (SOPs) for the management and handling of HMC on-site (up to and including ship loading). The SOPs additionally references the PoP SEMS, with supporting documents including mineral sands operations, mineral sands ship loading and competency, and the company Radiation Management Policy.

Radiation aspects of the Project are discussed in Chapter 14 (Radiation).

### *Customs Act 1901* (Cth) and *Customs (Prohibited Exports) Regulations 1958*

The *Customs Act 1901* controls the import and export of goods to and from Australia. The Act prohibits the export of certain substances, as specified in the regulations. Regulation 9 of the *Customs (Prohibited Exports) Regulations 1958* prohibits the export of nuclear material.

Permission is required from the Department of Industry, Science and Resources to export nuclear material containing uranium and thorium, both of which naturally occur. An application for permission to export nuclear material must be supported by the following information:

* Details about the company and its background and the export opportunity.
* Description of the material to be exported, including source and chemical composition.
* Gross weight of material to be exported.
* Uranium and thorium content of exported material.
* Details of the export arrangements, including quantity, timing and frequency.
* Commercial benefits from the export of material, i.e., the approximate value of exported material.

Details about the end use are also required, including ownership of the material and waste disposal arrangements. The Department of Industry, Science and Resources will consult the Australian Safeguards and Non-proliferation Office in assessing the application.

### *Climate Change Act 2017*

The *Climate Change Act 2017* establishes a long-term emissions reduction target of net zero by 2050 and requires 5-yearly interim targets to assess progress against this long-term target. The *Climate Change Act* *2017* introduces a new set of policy objectives and an updated set of guiding principles to embed climate change in government decision-making.

The EP Act defines greenhouse gas (GHG) emissions as a waste, and the GED applies. The Project has the responsibility to understand and minimise (so far as reasonably practicable) the risks of harm from GHG emissions from any activity. This applies whether small or large amounts of GHG emissions are emitted.

The Project is required to manage energy consumption and GHG emissions as part of ongoing integrated environmental management processes, systems and reporting. Businesses subject to EPA development licences are required to demonstrate they have identified and implemented best practice as it relates to energy use and GHG emissions as part of an integrated approach to environmental management.

### *Native Title Act 1993* and Indigenous Land Use Agreement

The *Native Title Act 1993* and its amendment, the Native Title Legislation Amendment Bill 2020, recognises and protects the right of Aboriginal people to have title over their land.

Through native title claims, the right or otherwise for Aboriginal people to have partial or exclusive legal rights to land are determined. Native title claims are processed and registered by the National Native Title Tribunal, and the Federal Court of Australia makes decisions about whether the common law of Australia recognises that native title exists. Claimants need to show they continue to hold rights and interests in their traditional country, under traditional laws and customs, and that these rights and interests have been continuous since the British claimed sovereignty over Victoria in 1788.

The development extent is largely in private ownership. Crown land contained within RL2014 falls within land parcels where Native Title has been determined not to exist under the Commonwealth *Native Title Act 1993* (Federal Court decision Number VID6002/1998; National Native Title Tribunal reference VCD2005/001).

The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples are the recognised original inhabitants of an area of western Victoria, which encompasses the Project area. A native title claim over this area was lodged by the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples, and the Federal Court referred the matter to the National Native Title Tribunal for mediation in September 1999. The native title claim focussed on the Wimmera River area, and the determination of the claim was made in December 2005, whereby the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples were recognised as having non-exclusive native title rights over some Crown reserves along the banks of the Wimmera River.

The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk peoples are represented by the Barengi Gadjin Land Council (BGLC) Aboriginal Corporation, a Registered Aboriginal Party (RAP) within the State of Victoria. The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples and the BGLC Aboriginal Corporation entered into an indigenous land use agreement (ILUA) with the Victorian and Australian Governments. The ILUA is an agreement that sets out how and when the native title holders will engage with the Victorian and Australian Governments about future dealings in the agreement area.

Stakeholder engagement and consultation with the BGLC Aboriginal Corporation and the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples is required throughout the Project phases. Community consultation is further addressed in Chapter 5.

### *Heritage Act 2017*

All non-Aboriginal archaeological sites in Victoria older than 75 years are protected by the *Heritage Act 2017.* The Act contains two different historic heritage listings: Victorian Heritage Register and the Victorian Heritage Inventory/Archaeological Sites.

It is an offence to excavate, uncover, damage, or disturb an archaeological site or relic or a site recorded in the Heritage Inventory without consent from the Executive Director. It is also an offence to undertake works in respect to a place or object on the Victorian Heritage Register without a permit issued by the Executive Director. Permit applications are typically subject to third-party notice.

An assessment of historic heritage has been carried out in accordance with the Heritage Act. Matters relating to historic heritage are discussed in Chapter 10 (Historic Heritage).

### *Flora and Fauna Guarantee Act 1988*

The *Flora and Fauna Guarantee Act 1988* provides a framework for biodiversity conservation in Victoria. It facilitates the listing of threatened species, communities of flora and fauna and potentially threatening processes.

The Project will result in the removal of native vegetation and protected flora. A permit will be required under this Act for activities that could harm listed threatened species and communities of flora and fauna within the Project area. Impacts on flora and fauna from the Project are discussed in Chapter 21 (Flora and Fauna).

### *Wildlife Act 1975*

The *Wildlife Act 1975* establishes procedures for the protection and conservation of wildlife. The Act includes procedures to prohibit and regulate the conduct of activities concerning or related to wildlife.

An authorisation under Section 28A of this Act will be required where fauna habitat is required to be translocated for the Project. The impacts on flora and fauna from the Project are discussed in Chapter 21.

### Catchment and Land Protection Act 1994

The *Catchment and Land Protection Act 1994* integrates the management and protection of catchments through the establishment of catchment management authorities.

The Project area is located within the jurisdiction of the Wimmera Catchment Management Authority, which was established under this Act. The regional catchment strategies outline natural resource management priorities for the future management of these regions.

The Project will be operated in accordance with the Act regarding the control and spread of pest plants and animals, protection of water resources, and minimisation of land degradation.

### *Water Act 1989*

Under the *Water Act 1989,* a licence must be sought for the construction of water management dams associated with the Project.

The Project’s water requirement of up to 4.6 gigalitres a year will need to be sought within the parameters of the Act, including ground and surface water licences under s51 of the Act. The availability of water for the Project is discussed in Chapter 16 (Surface Water) and Chapter 17 (Groundwater).

During the construction and operation of the Project, the following activities will be required:

* Water pipeline construction and operation.
* Groundwater extraction.

This will require a bore construction licence, groundwater extraction licence and bulk entitlement.

Depending on the activity, the relevant authorities are the Department of Environment, Land, Water and Planning, Grampians Wimmera Mallee Water Authority, and the Wimmera Catchment Management Authority.

### *Road Management Act 2004*

The *Road Management Act 2004* aims to establish a coordinated management system for public roads that will promote safe and efficient state and local public road networks. The Project area is serviced by declared State and local roads. The Department of Transport (DoT) is responsible for declared State roads. Horsham Rural City Council is responsible for local roads, as outlined in the *Local Government Act 1989* (Vic), and by agreement with DoT, some State roads.

The Project will require permission from DoT or Horsham Rural City Council for mining through road reserves, road closures, diversions and any upgrades required. The approvals required could range from written consent to road closure, diversion and/or opening permits.

### *Transport Integration Act 2010*

The *Transport Integration Act 2010* requires decisions relating to transport infrastructure be made within an integrated decision-making framework. VicTrack is a State-owned body that is the nominated competent authority, owning Victoria’s rail transport land, assets and infrastructure under the *Transport Integration Act 2010*.

As part of Project construction works, directional drilling under the railway easement will be required for the installation of high-voltage (HV) cabling and piping. VicTrack manages applications to build new infrastructure, such as the installation of electricity cables. As such, approval for the proposed works will need to be obtained from VicTrack.

## Summary of the Regulatory Framework

A summary of the regulatory framework, approvals, permits and licences relevant to the Project is provided in Table 4‑3.

Table 4‑3: Regulatory framework, approvals, permits and licences relevant to the Project

| Legislation | Relevant Authority | Approvals/Assessment Requirement | Reason/Activity |
| --- | --- | --- | --- |
| *Commonwealth* | | | |
| *Environment Protection and Biodiversity Conservation Act 1999* | Department of Climate Change, Energy, the Environment and Water | Approval is required under the EPBC Act. Environmental assessment under an accredited Victorian process. Commonwealth Minister of Environment and Water’s decision on assessment. | The Project has been determined to be a “controlled action”. |
| *State – Victorian* | | | |
| *Mineral Resources (Sustainable Development) Act 1990* | Department of Jobs, Precincts and Regions | Mining licence.  Approved mining work plan. Restricted Crown land consent.  Rehabilitation bond in place.  Consent from landholders. | Required for mining works and related activities within the area covered by the proposed mining licence.  A planning permit is not required for works and activities within a mining licence area as per s42(7) of the MRSD Act. |
| *Environment Effects Act 1978* | Department of Environment, Land, Water and Planning | Assessment of the environmental effects of the Project by the Minister for Planning. | Assessment by the Minister for Planning. |
| *Planning and Environment Act 1987* | Horsham Rural City Council  Department of Environment, Land, Water and Planning | Planning scheme amendment. | Development of infrastructure or activities within the WBA, as per Clause 45.12 of the P&E Act. |
| *Environment Protection Act 2017* and *Environment Protection Regulations 2021* | Environment Protection Authority Victoria | Permissions required, including A18 discharge for deposit of waste to an aquifer. | Discharge to an aquifer. |
| *Environment Protection Act 2017* and *Environment Protection Regulations 2021* | Horsham Rural City Council | A20 on-site wastewater management system permit. | Wastewater management system installation. |
| *Crown Land (Reserves) Act 1978* | Department of Environment, Land, Water and Planning | Ministerial consent. | Mining on Crown land. |
| *Land Act 1958* | Department of Environment, Land, Water and Planning | Ministerial consent. | Mining on Crown land. |
| *Radiation Act 2005* | Department of Health and Human Services | Approved radiation management plan and radioactive waste management plan.  Radiation licence. | Compliance with the Australian Radiation Protection and Nuclear Safety Agency code of practice for mining and mineral processing (ARPANSA 2015). |
| *Customs Act 1901* (Cth)and *Customs (Prohibited Exports) Regulations 1958* | Department of Home Affairs | An export permit under the Customs (Prohibited Exports) Regulations 1958. | Export of radioactive material. |
| *Aboriginal Heritage Act 2006* | Registered Aboriginal Party First Peoples State Relations | Approved CHMP. | Impacts on Aboriginal cultural heritage values. |
| *Heritage Act 2017* | Heritage Victoria | Consent to disturb known/ registered historic sites if found. | Disturbance of historic sites. |
| *Flora and Fauna Guarantee Act 1988* | Department of Environment, Land, Water and Planning | Permit to take protected flora. Approved offset management plan. | Removal or destruction of native vegetation and protected flora. |
| *Wildlife Act 1975* | Department of Environment, Land, Water and Planning | Wildlife Act permit. | Fauna surveys, salvage and translocation activities. |
| *Catchment and Land Protection Act 1994* | Wimmera Catchment Management Authority | Pest plant and animal assessment. | Required for mining.  Potential for the Project to introduce and/or spread the distribution of pest plants and pest animals. |
| *Water Act 1989* | Department of Environment, Land, Water and Planning.  Grampians Wimmera Mallee Water Authority.  Wimmera Catchment Management Authority | Bore construction licence. Groundwater extraction licence.  Bulk Entitlement. | Groundwater extraction.  Water pipeline construction and operation. |
| *Road Management Act 2004* | Department of Transport  Horsham Rural City Council. | Written consent.  Road closure, diversion and/or opening permits. | Mining through road reserves.  Road closure, diversion and/or upgrade. |
| *Transport Integration Act 2010* | Department of Transport  VicTrack | Permit to Work. | Installation of HV cables and piping across the existing railway line easement. |