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21 December 2023

General Manager
Narromine Shire Council
118 Dandaloo Street
NARROMINE NSW 2821

By email – mail@narromine.nsw.gov.au

Attn: Jane Redden

Dear Jane,

Re: Response to questions arising from DA 2023/64 (Integrated Development) Subdivision and proposed roads relating to Tomingley Gold Extension Project SSD-9176045

The information below in response to NSC request for additional information (dated 27 November 2023) has been submitted to the planning portal today. The DA fee should be paid by TGO overnight.

1. Value of the development \$123,291

Langford & Rowe Consulting Surveyors have done survey work in the field and drawn plans for the Newell Highway Realignment, set out of the Crown Land parcels (adjoining), Mining Lease 1858 boundaries and subdivision. Wayne Rowe has stated that it is difficult to separate the highway survey work with subdivision work as the alignment has informed the new cadastral boundaries.

Wayne Rowe estimated that 50% of the cost of their invoices (March 2022, June 2022 and June 2023 totalling \$101,029) could be attributed to the subdivision DA.

Legal advice from Squire Patton Boggs on the highway & 22kV powerline realignment and land swaps related to this DA has amounted to \$72,221. Of that total approximately 20% attributed to powerline advice.

Value of the subdivision development estimated to be;

Survey to date + est \$5,000 to completion \$55,514

Legal Fees to date + est \$10,000 to completion \$67,777

2. Schedule of Affected Parcels

Lot 3 DP1213503	Lot 4 DP1213503	Lot 2 DP1281392	Lot 3 DP1281392
Lot 101 DP1271511	Lot 1 DP1273565	Lot 1621 DP1178801	Lot 1622 DP1178801
Lot 105 DP755110	Lot 169 DP755093	Lot 175 DP755093	Lot 176 DP722842
Newell Highway	Back Tomingley West Road	McNivens Lane	Kyalite Road

Kenilworth house on Lot 101 DP1271511 was given as the address of the DA in the online application.

Schedule of Proposed Lots and Notable Features

Lot 1	Southwestern portion of Devonish's	199.88Ha	Continued agricultural use
Lot 2	Northern half of Wyoming One open cut and RSF	101.4Ha Existing Lot with	Within Mining Lease 1684. Slither of land required for highway realignment.



Lot 3	South western portion of Old Thornycroft and part Kenilworth	139.5Ha	Continued agricultural use. Outside Mining lease
Lot 4	Area between existing highway and proposed re-alignment and southwest corner of Myall	404.58Ha (incorporates former Lot 169/755093)	Within Mining Lease and contains Kenilworth house . Proposed for Haul Road and water storage
Lot 5	Part of Dunoon East and Kenilworth north of McNivens Lane	39.13Ha	Within Mining Lease and contains vent rise
Lot 6	Part of Myall north of realigned Kyalite Road includes former Lot 176/722842	249.7Ha	Contains SAR admin area within mining lease. Part agriculture. Easement for realigned 22kV power line.
Lot 7	Part Dunoon East contains Wyoming One open cut mine	32.07Ha Existing Lot with 1.633Ha being resumed for highway	Within Mining Lease
Lot 8	Realigned Newell Highway corridor	57.32Ha to be dedicated as a public road under section 9 of the Roads Act 1993	McPhail to Back Tomingley West Road
Lot 9	Realigned Kyalite Road	8.305Ha to be dedicated as a public road under section 9 of the Roads Act 1993	Contains an overpass. Easement for realigned 22kV powerline
Lot 10	Wedge of land off Kenilworth where realignment moves west from existing highway	1.649Ha to be dedicated as a public road under section 9 of the Roads Act 1993	Widens the Newell Highway corridor. Within ML1684
Lot 11	Wedge of land widening Newell corridor on southeastern edge of Wyoming One open cut	1.633Ha to be dedicated as a public road under section 9 of the Roads Act 1993	Within ML1684

- Temporary Lots 8,9, 10 and 11 will disappear once the Road Opening has been transacted. Lots 8,9,10,11 will be dedicated as a public road under section 9 of the Roads Act 1993

3. Information to confirm the scope of proposed works for the subdivision to occur – DA2023/64 (PAN-38882).

a.

- Tomingley Gold Extension Project (TGE) Scoping Report provided to DPE June 2021
- Nine rural properties were acquired by TGO to facilitate the development of the TGE
- TGO negotiated a WAD with TfNSW for the design and construction of a realigned 8.3km section of Newell Highway south of Tomingley
- Public Consultation before during and after EIS for Tomingley Gold Extension Project (SSD-9176045) was prepared, exhibited and approved February 2023.
- Final design of Newell Highway approved by TfNSW.
- Newell Highway corridor was pegged and surveyed by Langford & Rowe Surveyors. The western side of the Newell corridor has been fenced on the Lot boundaries (90% complete).
- Eastern side of the new highway alignment will be fenced on cadastral boundary at the completion of road works.



- Kyalite Road, Back Tomingley West Road corridors will be fenced on proposed new Lot boundaries in 2024.
 - Legal advice on the process was provided by Squire Patton Boggs.
 - Draft Plan of Subdivision circulated by L&R will constitute a subdivision of land and creation of new public roads. The Admin Sheet accompanying the 5 sheets will state “Plan of Land to be acquired for the purposes of the Roads Act 1993”.
 - In order to register the deposited plan with NSW LRS it must be accompanied by a subdivision certificate
 - A DA has been sought from Narromine Shire to effect the above.
 - Pursuant to the terms of the WAD, TfNSW requires the land to be dedicated prior to practical completion of the road realignment works
 - Temporary Lots 8,9,10,11 will be dedicated as a public road under section 9 of the Roads Act 1993
 - L&R have prepared a Plan of Proposed Road closures
 - TGO have entered into a Deed with NSC to effect the land transfers.
 - TGO will ask Constructive Solutions (Steve O’Rourke) to lodge with NSC a s138 application for the road works for the tie-ins of realigned Newell Highway, Kyalite Road, Back Tomingley West Road and McNivens Lane.
 - Road works to construct the Newell Highway realignment, Kyalite Road and Back Tomingley West Road will commence in 2024 and except for tie-ins that work will be conducted entirely on TGO-owned land.
 - New driveways/access to Kenilworth and Rosewood (Lot 43/755093) will be created off Kyalite Road (rather than Newell Highway) in consultation with NSC (see attached plan with an ‘x’ on Kyalite marking the driveway/access.
 - TGO expect NSC to condition the approval for this new driveway.
 - Currently Kenilworth and Rosewood have four driveways onto the Newell Highway but TGO committed to TfNSW to remove all driveways from the new highway alignment (to increase safety)
 - Proposed Lot 6 will ultimately be burdened with an easement in favour of Essential Energy for a re-aligned 22kV power line (plan attached of the realignment). The 22kV powerline easement in favour of Essential Energy will be created post-construction.
- b. The survey plans of Subdivision now have the title block; “Plan of land to be acquired for the purposes of the Roads Act 1993”
- c. New fencing has been erected on the western boundary of the realigned highway corridor (on the cadastral boundary). The eastern side of the highway will be fully fenced once highway construction is completed. Fencing the new alignments for Kyalite Road, McNivens Lane and Back Tomingley West Road will be erected at the completion of road works.
- d. A plan will be submitted to the planning portal with this response showing the proposed 22kV powerline easement.

4. Controlled Activity Approvals do not apply to SSD-9176045

Section 4.41 of the EP&A Act states the following in relation to SSD applications.

s4.41 Approvals etc legislation that does not apply (cf previous s 89J)

(1) The following authorisations are not required for State significant development that is authorised by a development consent granted after the commencement of this Division (and accordingly the provisions of any Act that prohibit an activity without such an authority do not apply)—

(a) (Repealed)

(b) a permit under section 201, 205 or 219 of the Fisheries Management Act 1994,

(c) an approval under Part 4, or an excavation permit under section 139, of the Heritage Act 1977,



- (d) an Aboriginal heritage impact permit under section 90 of the National Parks and Wildlife Act 1974,
- (e) (Repealed)
- (f) a bush fire safety authority under section 100B of the Rural Fires Act 1997,
- (g) 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.

As the realigned highway and all culverts were identified in the DA application for TGEP and that is now an approved SSD project, we would argue that a Section 91 controlled activity approval is not required.

The Newell realignment design was informed by a flood study and culverts will be installed in the appropriate place to ensure minimal disruption to overland flows and Bulldog Creek which crosses under the highway.

The redesign of this section of the highway has significantly reduced the risk of the highway being overtopped by surface water flows.

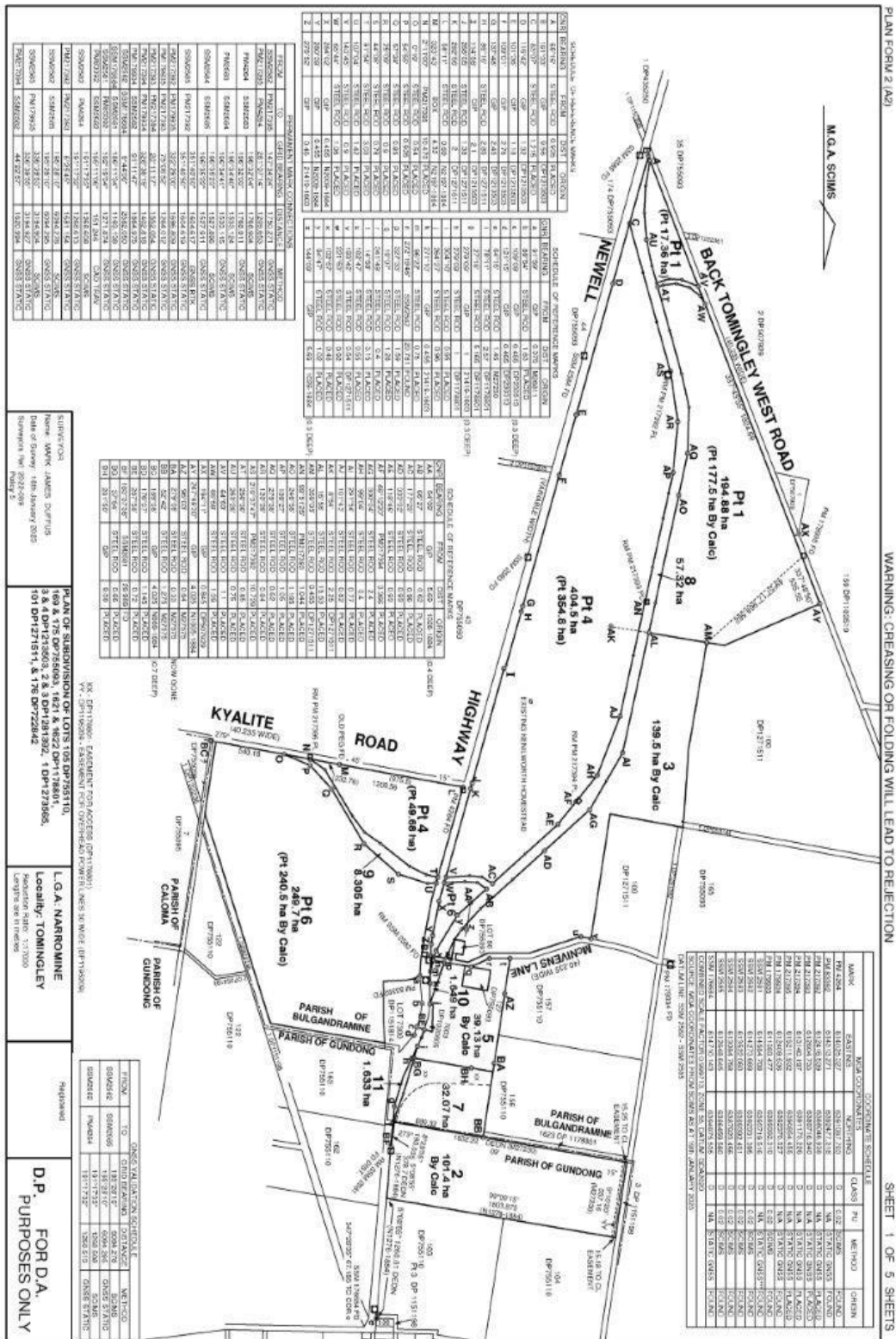
Sections of Bulldog Creek will be fenced and planted to Fuzzy Box (*Eucalyptus conica*) as detailed in the Biodiversity Management Plan (RWC 2023).

5. Rural Fires Act referral to RFS

- a. The plan below shows Kenilworth house and farm dams adjacent to the north (see below). An access driveway will ultimately come off the eastern end of the realigned Kyalite Road. Final design of the access point to be conditioned by NSC. Existing driveways are off the Newell Highway will be used for emergency access until such time that the realigned highway is opened.



Aerial image of Kenilworth and Rosewood Homesteads with adjacent farm dams to supply water for fire fighting.





- c. TGO does have existing significant Emergency Response and Fire Fighting Capacity on site. Once the Mining Lease fence is installed around TGEF only TGO and RFS personnel will have emergency access to the site.

It is unlikely the Kenilworth house will be occupied during open cut mining operations as it is just on the edge of the blast exclusion zone boundary.

6. Provisions of the Narramine LEP2011

a.

Clause 4.1 Minimum subdivision lot size

- (1) Objectives of the clause are met -

- a. This proposed subdivision has been triggered by the need to realign an 8.3km section of the Newell Highway to facilitate open cut gold mining in the existing highway corridor.

Opening a new road corridor effectively cuts the existing lots in half and by amalgamation and boundary adjustment 9 existing lots will become 7 new lots.

The proposed Lot 4 will meet the minimum lot size (400Ha) to permit the retention of the Kenilworth house. At the end of mine life Kenilworth should be a viable small farm with a three-bedroom dwelling.

- b. TGO has made a commitment in the EIS to maintain the productive capacity of the land despite the proposed final landform which will contain a void and rehabilitated waste rock emplacement. No net loss to agricultural productivity from this development will be achieved by TGO through fencing smaller paddocks, periodic high stocking rates and then rest and with supply of bore water via pipe and troughs.

Mining on land class RU1 is permissible with consent which TGO has obtained in February 2023 (SSD-9176045).

- c. The increased lot size from this development will not impede adequate servicing of the land nor impose physical or environmental constraints.

- d. N/A

- (2). This land is shown on Lot Size Map 005 (1 May 2015 to date) and subdivision requires consent.

- (3.) The Lot Size Map shows minimum lot size 400Ha applies.

- (4.) N/A

Clause 4.1C Exceptions to minimum subdivision lot sizes for certain split zones

- (1) *The objectives of this clause are as follows—*

- (a) *to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,*
- (b) *to ensure that the subdivision occurs in a manner that promotes suitable land use and development.*

Approval of the Tomingley Gold Extension Project has necessitated this proposed subdivision. The project was assessed to be sustainable development (EIS Jan 2022).

b.

Clause 4.2 Rural Subdivision

- (1) *The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*

- (2) This clause applies to RU1 Primary Production



Clause 4.2B Erection of dwelling houses on land in certain rural and conservation zones

(1) *The objectives of this clause are as follows—*

- (a) to minimise unplanned rural residential development,*
- (b) to enable the replacement of lawfully erected dwelling houses in rural and conservation zones.*

(2) *This clause applies to land in the following zones—*

- (a) Zone RU1 Primary Production,*

(3) *Development consent must not be granted for the erection of a dwelling house on land in a zone to which this clause applies, and on which no dwelling house has been erected, unless the land is—*

- (a) a lot that is at least the minimum lot size specified for that land by the [Lot Size Map](#), or*
- (b) a lot created under an environmental planning instrument before this Plan commenced and on which the erection of a dwelling house was permissible immediately before that commencement, or*
- (c) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement.*



The current Kenilworth house is a transportable home (in 3 sections) built circa 2007 to replace a pre-existing dwelling. Photo taken 18 December 2019.

c.

4.2E Boundary adjustments in certain rural and conservation zones

- (1) *The objective of this clause is to facilitate boundary adjustments between lots where one or more resultant lots do not meet the minimum lot size but the objectives of the relevant zone can be achieved.*
- (2) *This clause applies to land in the following zones—*
 - (a) *Zone RU1 Primary Production,*



This proposed subdivision satisfies this criteria

- (3) *Despite clause 4.1 (3), development consent may be granted to subdivide land by way of a boundary adjustment between adjoining lots where one or more resultant lots do not meet the minimum lot size shown on the [Lot Size Map](#) in relation to that land if the consent authority is satisfied that—*
- (a) *the subdivision will not create additional lots or the opportunity for additional dwellings, and*
 - (b) *the number of dwellings or opportunities for dwellings on each lot after subdivision will remain the same as before the subdivision, and*

There will be no increase in the number lots as a result of this proposed subdivision and boundary adjustment and no additional dwellings.

- (c) *the potential for land use conflict will not be increased as a result of the subdivision, and*

TGO has been employing approximately 250 people at the Tomingley Gold Mine since 2013. The recently approved Tomingley Gold Extension Project which will see mine life extended to 2032 received just one objection during public exhibition. TGO does not share a boundary with that neighbour. The objection did not relate to the subdivision but rather the advance of the mine in a southerly direction from the original development.

- (d) *if the land is in Zone RU1 Primary Production or Zone RU3 Forestry—the subdivision will not have a significant adverse effect on the agricultural viability of the land, and*

As explained above there should be no net loss of agricultural productivity however the proposed subdivision will create road openings which will see an additional 15 hectares of RU1 land transferred from TGO to Narromine Shire Council. This increasing in road reserve area is due to TfNSW requirement for an 80m wide corridor for the realignment of the Newell Highway.

- (e) *if the land is in Zone C2 Environmental Conservation or Zone C3 Environmental Management—the subdivision will result in the continued protection and long-term maintenance of the land.*

Incidental to the proposed subdivision TGO will be fencing (excluding stock) from drainage lines and planting trees and shrubs to increase biodiversity across the farmscape as per biodiversity TGO Biodiversity Management Plan

- (4) *Before determining a development application for the subdivision of land under this clause, the consent authority must consider the following—*

- (a) *the existing uses and approved uses of other land in the vicinity of the subdivision,*

Tomingley Gold Extension Project SSD-9176045 was approved in February 2023.

- (b) *whether or not the subdivision is likely to have a significant impact on land uses that are likely to be preferred and the predominant land uses in the vicinity of the development,*

TGO has in excess of 3,000Ha of land around Tomingley which encloses the mining operation and provides a buffer from neighbours.

- (c) *whether or not the subdivision is likely to be incompatible with a land use on any adjoining land,*

SSD-9176045 was approved in February 2023

- (d) *whether or not the subdivision is appropriate having regard to the natural and physical constraints affecting the land,*

SSD-9176045 was approved in February 2023

- (e) *whether or not the subdivision is likely to have a significant adverse impact on the environmental values of the land.*

Development of TGEP will deliver a positive impact on the environmental values of the land. Re-establishing Fuzzy Box (*Eucalyptus conica*) grassy woodland along hydrolines will be a focus for the new development.



d.

Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones

(1) *The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or conservation zones concerned (particularly between residential land uses and other rural land uses).*

(2)

This DA for a proposed subdivision is a consequence of SSD-9176045 approval in February 2023. In order to facilitate the development of the new open cut gold mine four roads need to be realigned.

(2) *This clause applies to land in the following zones—*

- (a) *Zone RU1 Primary Production,*
- (b) *Zone RU2 Rural Landscape,*
- (c) *Zone RU3 Forestry,*
- (d) *Zone RU4 Primary Production Small Lots,*
- (e) *Zone RU6 Transition,*
- (f) *Zone R5 Large Lot Residential,*
- (g) *Zone C2 Environmental Conservation,*
- (h) *Zone C3 Environmental Management,*
- (i) *Zone C4 Environmental Living.*

(3) *A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes—*

- (a) *subdivision of land proposed to be used for the purposes of a dwelling,*

A previous DA sought to move the Kenilworth house to another site because it no longer complied with the minimum lot size for dwelling. This proposed subdivision will satisfy the minimum lot size for dwelling so that the house may be retained.

- (b) *erection of a dwelling.*

N/A

(4) *The following matters are to be taken into account—*

- (a) *the existing uses and approved uses of land in the vicinity of the development,*

Tomingley Gold Extension Project was approved in February 2023

- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

See above.

- (c) *whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

- (d) *any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).*

There was only one community objection to the TGEP when it was placed on public exhibition which is an indication that the local community see mining as a compatible landuse in the Tomingley district.

e.

Clause 6.4 Terrestrial biodiversity

(1) *The objective of this clause is to maintain terrestrial biodiversity, by—*

- (a) *protecting native fauna and flora, and*
- (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.*

(2) *This clause applies to land identified as “Sensitive Area” on the [Terrestrial Biodiversity Map](#).*

(3) *Before determining a development application for development on land to which this clause applies, the consent authority must consider whether or not the development—*

- (a) *is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*



- (b) *is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (c) *has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (d) *is likely to have any adverse impact on the habitat elements providing connectivity on the land.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

The impacts of the TGEP were assessed across the entire area which is the subject to this DA. While there is some sensitive land (as mapped in the NSC LEP 2011) the impacts of the development were considered acceptable with conditions.

A Biodiversity Management Plan is currently being updated by specialist consultants to allow TGO to manage the combine sites (see plan below) for no nett loss to terrestrial biodiversity. TGO will stage the retirement of 1,724 ecosystem credits over the first few years of the development. Credits will be retired through a combination of paying into the Biodiversity Conservation Trust and through a Biodiversity Stewardship Agreement (BSA). The BSA is currently under development and will focus on re-establish Fuzzy Box Woodland on hydrolines. The mapped sensitive areas (PCT55) will also be protected in patches on TGO-owned land and managed in perpetuity for their conservation value.

f.

Clause 6.8 Essential services

Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required —

- (a) *the supply of water,*
TGO has a water supply independent of NSC and that water will be reticulated to TGEP from the existing RAW water pond (supplied from Woodlands bore – WAL 20270) on site.
- (b) *the supply of electricity,*
There is existing 22kV infrastructure to Kenilworth house.
- (b) *the disposal and management of sewage,*
Kenilworth house has a septic system. The new TGO Admin area for TGEP will have a NSC approved sewage treatment system (Aerofloat) on the proposed Lot 6.
- (c) *stormwater drainage or on-site conservation,*
A Construction Environmental Management Plan will be prepared by the contractor who wins the tender to construct the highway alignment. That CEMP will contain design for erosion and sediment control.
- (e) *suitable road access.*
TGO will access Kenilworth and Rosewood from a new driveway off Kyalite road. See plan.

Additional volunteered information

Legal advice from Ben Chahoud (Squire Patton Boggs)

1. What should the dedication statement on the administration sheets say?

Further to our email dated 17 May 2023, we propose the following wording for the statement of intention section: *Lots 8,9,10,11 will be dedicated as a public road under section 9 of the Roads Act 1993.*

2. What is the timing of the new road dedication?



Pursuant to the terms of the WAD, TfNSW requires the land to be dedicated prior to practical completion of the road realignment works.

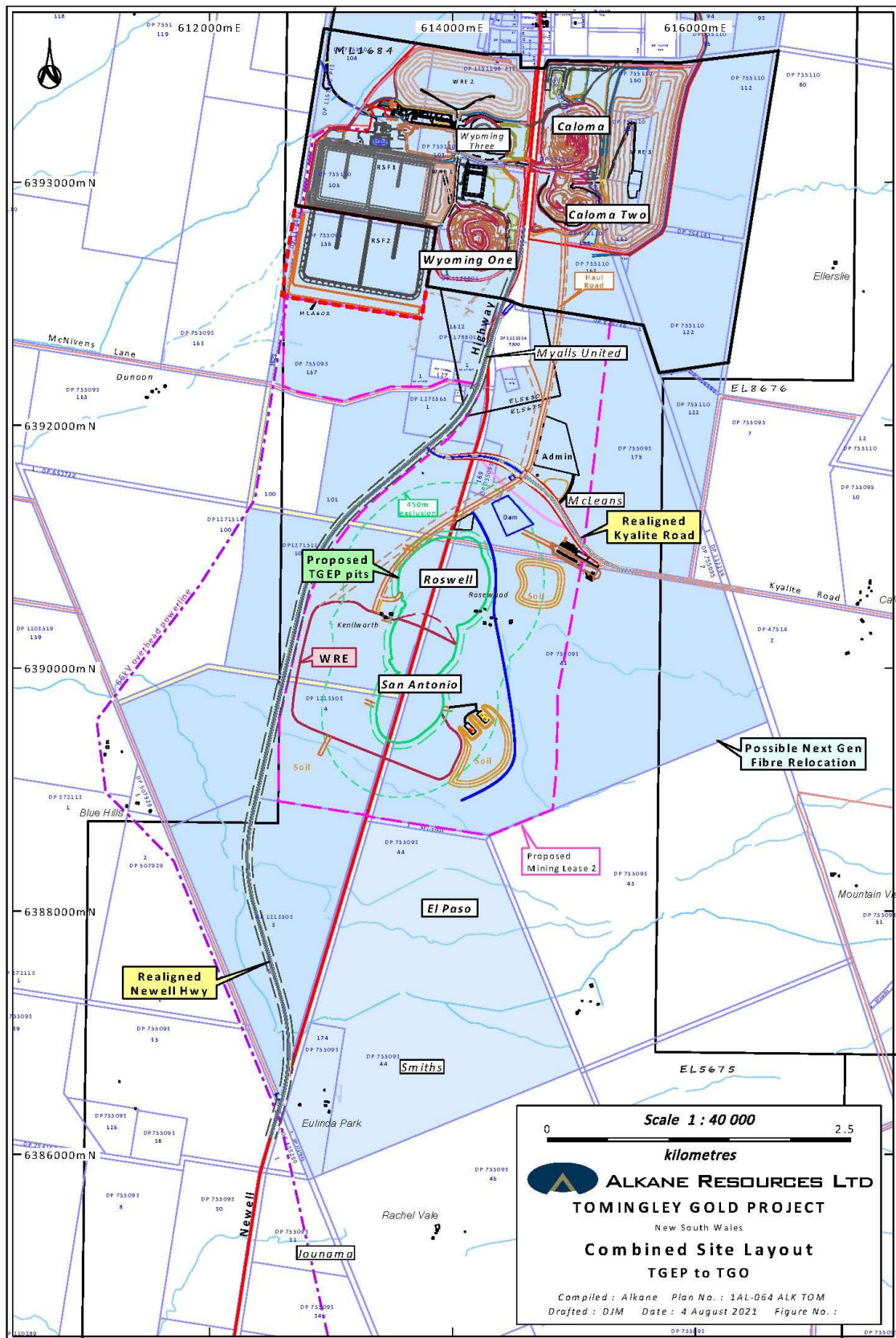
3. **Is a development consent for the subdivision required from Narromine Shire Council?**

- a. Yes, in our view, development consent for the subdivision is required, noting that:
 - i. the draft deposited plan circulated by Wayne on 26 June 2023 will constitute a 'subdivision of land'; and
 - ii. in order to register the deposited plan with NSW LRS, it must be accompanied by a subdivision certificate.
- b. We have considered a number of options and instruments in order to confirm if development consent will be required in order to obtain the subdivision certificate. In short, it appears that it will. In particular we have considered:
 - i. the terms of the State Significant Development Consent;
 - ii. whether the proposed subdivision might be exempt under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (s 2.75); and
 - iii. the provisions of the *State Environmental Planning Policy (Resources and Energy) 2021* which allows certain subdivision to be undertaken as complying.
- c. In our view, the relevant consent authority is Narromine Shire Council.

I hope the information enclosed adequately resolves your questions. Should you have additional queries, please do not hesitate to contact me on 0427 691 733

Yours sincerely

Michael Sutherland
General Manager NSW



Plan of combined site (TGO and TGE) layout (dated August 2021)