

## 5 Statutory approvals

### 5.1 Introduction

This chapter outlines the statutory framework that applies to the proposed modification. It provides an overview of the applicable environmental planning approval process under NSW and Commonwealth legislation and details of other NSW legislation relevant to the proposed modification.

### 5.2 Environmental Planning and Assessment Act 1979

#### 5.2.1 Part 3A modification

Xstrata Mangoola is seeking approval for the proposed modification to PA 06\_0014, granted under the provisions of Part 3A of the EP&A Act.

Part 3A was repealed by the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011* (Part 3A Repeal Act). However, transitional provisions were introduced (Schedule 6A of the EP&A Act) enabling 'transitional Part 3A projects' to continue to be subject to Part 3A of the EP&A Act (as in force immediately before the repeal and as modified by the Part 3A Repeal Act). Transitional Part 3A projects include certain projects that were the subject of an existing approval under Part 3A.

Therefore, Mangoola Coal is a transitional Part 3A project and the proposed modification may be made under the now repealed section 75W of the EP&A Act. Section 75W enables a proponent to request the Minister (or PAC under delegation from the Minister) to modify a project approval granted under Part 3A.

#### 5.2.2 Permissibility

The proposed modification does not alter the approved project disturbance boundary.

Mangoola Coal is on land zoned primarily E3 Environmental Management and partially RU1 Primary Production under the Muswellbrook Local Environmental Plan 2009. Open-cut mining is permissible with development consent in the RU1 Zone but prohibited under the E3 Zone. However, clause 7 of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP) provides that mining may be carried out, with development consent, on land where development for the purposes of agriculture or industry may be carried out. Agriculture is permissible in both zones. Mining is therefore permissible with consent in the location.

#### 5.2.3 State Environmental Planning Policies

State environmental planning policies (SEPPs) are made under the EP&A Act to address issues significant to NSW. The following SEPPs are relevant to the proposed modification:

- Mining SEPP;
- SEPP (Major Development) 2005; and
- SEPP (State and Regional Development) 2011.

The Mining SEPP aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State. The policy establishes matters for consideration in assessing development applications. The proposed modification, comprising modification of existing approved coal mining operations, including gravel crushing and discharging saline water to the Hunter River is consistent with definition of mining as prescribed in clause 3(2) of the Mining SEPP.

The definition of mining under clause 2 of the Mining SEPP states:

**mining** means the winning or removal of materials by methods such as excavating, dredging, or tunnelling for the purpose of obtaining minerals, and includes:

- (a) the construction, operation and decommissioning of associated works, and
- (b) the stockpiling, processing, treatment and transportation of materials extracted, and
- (c) the rehabilitation of land affected by mining.

The proposed modification, including alteration to existing approved coal mining operations, proposed gravel crushing and discharging to the Hunter River is consistent with the aims and controls of the Mining SEPP.

SEPP (Major Development) 2005 previously defined classes of development to which Part 3A of the EP&A Act applied. This SEPP was amended by SEPP (State and Regional Development) 2011 in accordance with the repeal of Part 3A, though it is still relevant to the proposed modification as it continues to apply to transitional Part 3A projects.

Clause 6 and Schedule 1 of SEPP (Major Development) 2005 provides that coal mining and development for the purpose of mining related works, ancillary to a Part 3A project (including primary processing plants or facilities for storage, loading or transporting any mineral, ore or waste material) is declared to be a project to which Part 3A of the Act applies. The proposed modification elements include alteration to existing approved coal mining operations, gravel crushing and discharging to the Hunter River are consistent with coal mining and development for the purpose of mining related works, ancillary to a Part 3A project.

## 5.3 Other NSW legislation and policies

### 5.3.1 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) requires that premises defined in Schedule 1 of the POEO Act be required to operate under an EPL issued by the EPA. Mangoola Coal is a scheduled premises operating under EPL No. 12894.

The EPL currently includes mining for coal and land based extractive activities. The EPL may require a variation to incorporate alterations to the site water management system.

### 5.3.2 Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002

The proposed modification includes the discharge of saline site water to the Hunter River, via an existing approved pipeline and infrastructure. Discharge is regulated by the Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002. The HRSTS provides for the management of discharges of saline water into the Hunter River catchment. The operation of the HRSTS requires the licence holder to obtain credits that are used to calculate the allowable discharge of salt. Mangoola Coal holds existing credits and will operate in accordance with the provisions of the HRSTS. Credits may also be traded with other Xstrata operations as required.

### 5.3.3 Mining Act 1992

The *Mining Act 1992* regulates the granting of mining leases and mining activities generally. The proposed modification and revised mine plan are in accordance with ML 1626, which applies to the current operations.

Further approval under the *Mining Act 1992* is required for alterations to the mine plan and maximum rate of extraction under the proposed modification. The approved MOP will require updating to incorporate the changes proposed in this modification. Mangoola Coal will submit the modified MOP to DTIRIS, subject to approval of the proposed modification.

### 5.3.4 Coal Mine Health and Safety Act 2002

The principal aim of the *Coal Mine Health and Safety Act 2002* is to secure the objectives of the *Occupational Health and Safety Act 2000* in relation to coal operations. It does this by imposing certain specific safety requirements on coal mines.

The proposed modification is not anticipated to alter Xstrata Mangoola's status with respect to the requirements of the *Coal Mine Health and Safety Act 2002*.

### 5.3.5 Roads Act 1993

The *Roads Act 1993* determines the rights of the public and adjacent land owners to use public roads, and establishes procedures for the opening and closing of public roads.

Under section 138 of the *Roads Act 1993*, an approval is required for the erection of a structure or the carrying out of works in, on or over a public road. Applications under section 138 of the *Roads Act 1993* cannot be refused and must be applied consistently if required for the carrying out of a project approved under Part 3A of the EP&A Act.

The activities proposed are within the approved project disturbance boundary. As erection of structures or carrying out of works in, on or over a public road is not required as a result of the proposed modification, further approvals under the *Roads Act 1993* are not anticipated.

### 5.3.6 Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) provides for the conservation of threatened species, populations and ecological communities of animals and plants by setting out a number of specific objects relating to the conservation of biological diversity and the promotion of ESD.

There is no change to the approved project disturbance boundary proposed under the modification and therefore no additional disturbance to vegetation communities currently listed under the TSC Act is proposed.

### 5.3.7 Water Management Act 2000

The *Water Management Act 2000* (WM Act) regulates water resources and use. The WM Act governs the issue of new water licences and the trade of water licences and allocations for those water sources (rivers, lakes and groundwater) in NSW where water sharing plans have commenced.

There are three water sharing plans commenced for the areas near Mangoola Coal:

- Wybong Creek Water Sharing Plan 2003;
- Hunter Regulated River Water Sharing Plan 2003; and
- Hunter Unregulated and Alluvial Water Sources Water Sharing Plan 2009.

Under the requirement of PA 06\_0014, Mangoola Coal operates within a SWMP that performs to the requirements of the water sharing plans. This includes provisions for Mangoola Coal to access security units of Hunter Regulated River water shares and a licence to take water from the Hunter River, via Mangoola Coal's Hunter River Pipeline, to supplement on-site water requirements.

The proposed modification to enable additional discharges from the water management system to the Hunter River will be undertaken in accordance with the rules and regulations of the HRSTS as discussed in Chapter 11.

Changes to site water management, including alterations to extraction and discharge will be undertaken in accordance with the requirements of the WM Act. Xstrata Mangoola will liaise with NOW to determine licence variation requirements prior to commencement of the proposed modification.

### 5.3.8 Other policies

The NSW government has recently prepared the Strategic Regional Land Use Policy (DP&I 2012b) which aims to protect strategic agricultural land and valuable water resources in areas of regional NSW where mining and coal seam gas resources are prevalent. Seven regions in NSW have been identified as applying under this Policy with each region having a SRLUP. In September 2012, the Upper Hunter SRLUP was released. The site is mapped as SAL under the Upper Hunter SRLUP.

Under the NSW Strategic Regional Land Use Policy all state significant development and coal seam gas projects that may impact agricultural resources, whether or not they are on land mapped as SAL under the Upper Hunter SRLUP, require an Agricultural Impact Statement (AIS) to accompany a project application. The proposed modification is not state significant development or a coal seam gas project and does not require an AIS to be prepared. Nonetheless, an assessment against the Strategic Regional Land Use Policy has been undertaken for the proposed modification to provide a comprehensive assessment of agricultural impacts (see Chapter 15).

The Strategic Regional Land Use Policy also included preparation of a state-wide Aquifer Interference Policy which was released in September 2012 (DPI 2012). The Aquifer Interference Policy requires licensing for any aquifer interference activities and details requirements for obtaining water licences for aquifer interference activities. It also establishes minimal harm considerations to key water-dependent assets. It is considered that the Aquifer Interference Policy does not apply to the proposed modification as no aquifer interference activities are proposed other than those already approved under the current operations.

#### 5.4 Commonwealth legislation

The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) aims to protect matters deemed to be of national environmental significance (NES) including:

- world heritage properties;
- places listed on the National Heritage Register;
- Ramsar wetlands of international significance;
- threatened flora and fauna species and ecological communities;
- migratory species;
- Commonwealth marine areas; and
- nuclear actions (including uranium mining).

If an action (or project) will, or is likely to, have a significant impact on any of the matters of NES, it is deemed to be a Controlled Action and requires approval from the Commonwealth Environment Minister or the Minister's delegate. To determine whether a proposed action will or is likely to be a Controlled Action, an action may be referred to the Department of Sustainability, Environment, Water, Population and Communities (DSEWPAC).

A referral under the EPBC Act was submitted in August 2010 for Modification 4 to PA 06\_0014, which included disturbance of additional areas outside the (then) approved project disturbance boundary. The assessment determined that the activities proposed under Modification 4 were not a controlled action under the EPBC Act.

As the proposed modification does not seek to alter the approved project disturbance boundary and will not affect additional areas which have not previously been assessed, the proposed modification will not have a significant impact on any matters of NES. Accordingly, approval under Commonwealth legislation is not required.

