



**Narrabri Underground Mine
Stage 3 Extension Project**
Environmental Impact Statement

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4 STATUTORY CONTEXT

This section outlines the existing primary approvals held by NCOPL and the application of key State and Commonwealth legislation to the Project, including preconditions to the grant of approval and mandatory matters for consideration by the decision-maker in deciding whether to grant approval.

Additional analysis of the consistency of the Project with relevant legislation, state environmental planning policies (SEPPs) and local environmental plans (LEPs) is provided in Attachment 7. Additional justification of the Project is provided in Section 7.

4.1 EXISTING APPROVALS AND REGULATORY CONTROLS

An overview of approved mining activities at the Narrabri Mine is provided in Section 2. Key approvals pertaining to the Narrabri Mine include:

- Project Approval 05_0102 granted under the EP&A Act in 2007 (surrendered in accordance with Project Approval 08_0144).
- Project Approval 08_0144 granted under the EP&A Act in 2010 for longwall mining operations.
- EPBC Act Approval 2009/5003 granted under the EPBC Act in 2011 for longwall mining operations.
- ML 1609 issued under the NSW *Mining Act 1992*.
- WALs issued under the NSW *Water Management Act 2000*.
- EL 6243 issued under the NSW *Mining Act 1992*.
- EPL 12789 issued by the EPA under the NSW *Protection of the Environment Operations Act 1997* (PoEO Act).

Exploration activities in the Project area are currently regulated under ML 1609 and EL 6243 issued under the NSW *Mining Act 1992* (and associated exploration approvals from the NSW Resources Regulator).

A register of current licences, permits and approvals is maintained on-site by NCOPL, and a summary of current approvals for the Narrabri Mine is available on the Whitehaven Coal website:

<https://whitehavencoal.com.au/our-business/our-assets/narrabri-mine/>

Existing environmental management, monitoring, mitigation and reporting measures that are implemented in accordance with the existing Narrabri Mine approvals and EL 6243 are described in Section 6, where relevant.

4.2 STATUTORY REQUIREMENTS FOR THE PROJECT

This section outlines the relevant statutory requirements for the Project under applicable State and Commonwealth legislation and planning instruments. Supporting analysis is provided in Attachment 7, including a statutory compliance summary table.

4.2.1 Power to Grant Approval

Division 4.1 of the EP&A Act creates a threefold classification of development under the Act:

- development that may be carried out without development consent;
- development that may be carried out with development consent; and
- development that is prohibited.

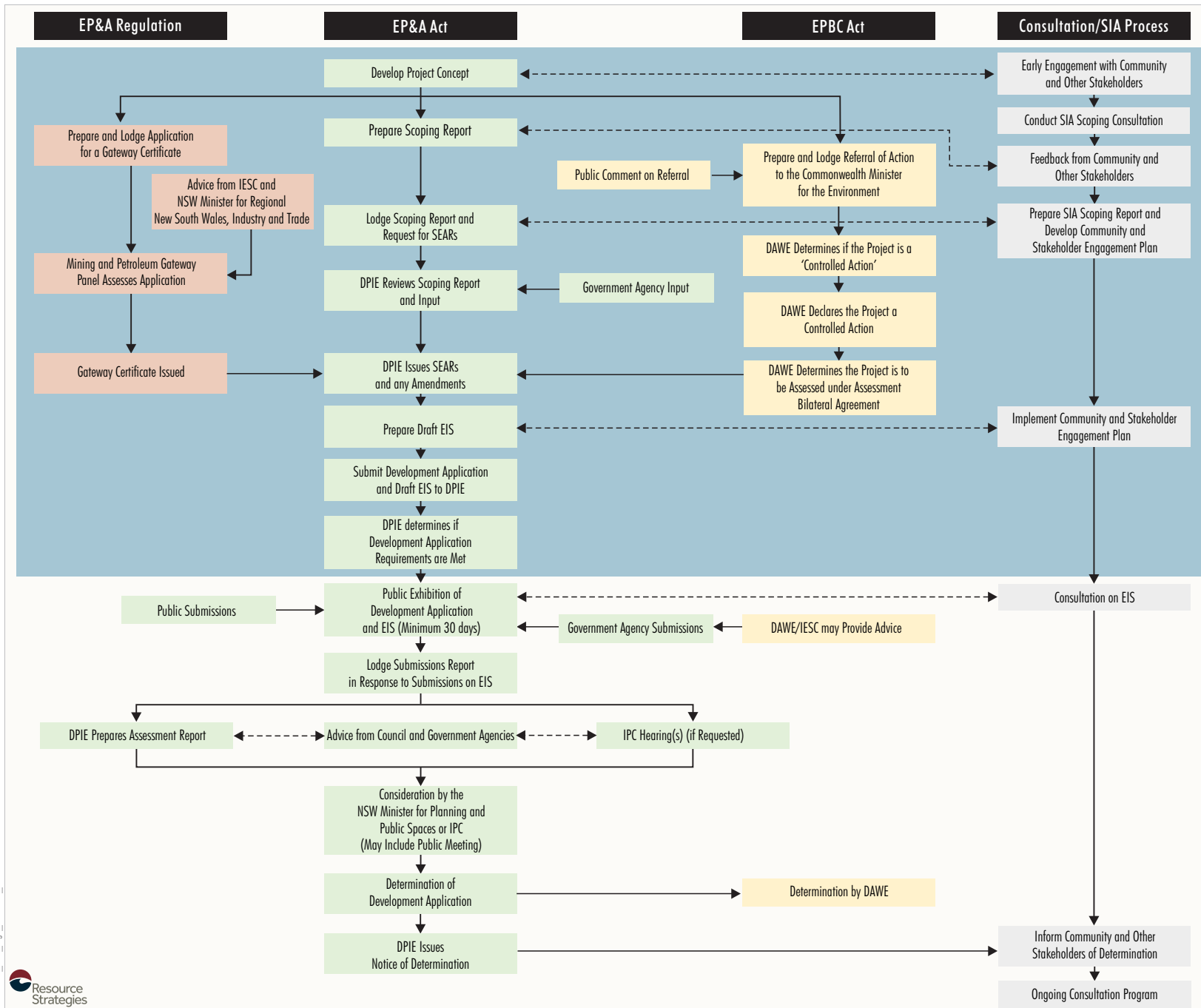
The Project falls into the classification of development that may be carried out with development consent.

The EP&A Act and EP&A Regulation set the framework for planning and environmental assessment in NSW. Approval for the Project is sought under the SSD provisions (Division 4.7) of Part 4 of the EP&A Act. An overview of the assessment pathway for the Project is presented in Figure 4-1.

Under section 4.36 of the EP&A Act, any development, or any class or description of development, such as mining, may be declared as SSD by a SEPP.

Clause 8 of the State and Regional Development SEPP states that development is declared to be SSD for the purposes of the EP&A Act if:

- the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without Development Consent under Part 4 of the EP&A Act (first criterion); and



- LEGEND**
- Steps Complete
 - DAWE Department of Agriculture, Water and the Environment
 - DPIE NSW Department of Planning, Industry and Environment
 - EIS Environmental Impact Statement
 - IESC Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development
 - IPC Independent Planning Commission
 - SEARs Secretary's Environmental Assessment Requirements
 - SIA Social Impact Assessment

Figure 4-1

- the development is specified in Schedule 1 or 2 of the State and Regional Development SEPP (second criterion).

In regard to the first criterion identified above, the Project is not permissible without development consent under Part 4 of the EP&A Act.

In regard to the second criterion identified above, Schedule 1, Item 5 of the State and Regional Development SEPP specifies the following development for the purpose of mining as being SSD:

- (a) *is coal or mineral sands mining, or*
- ...
- (c) *has a capital investment value of more than \$30 million*

The Project is development for the purpose of coal mining and has a capital investment value of more than \$30 million. Therefore, the Project is SSD.

In accordance with section 4.5(a) of the EP&A Act and clause 8A of the State and Regional Development SEPP, the Minister or the IPC will be the consent authority for the Project.

4.2.2 Permissibility

Section 4.38 of the EP&A Act provides that development consent may not be granted under Division 4.7 of Part 4 if the development is *wholly* prohibited by an environmental planning instrument, but may be granted despite the development being *partly* prohibited by an environmental planning instrument.

The Development Application Area is within the Narrabri LGA (Figure 1-1) and, therefore, the Narrabri LEP is relevant.

The Development Application Area includes land zoned under the Narrabri LEP as Zone RU1 (Primary Production) and Zone RU3 (Forestry).

If not for the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP), underground mining would fall within the general category of development that is prohibited under the Narrabri LEP in these zones.

Clause 4 of the Mining SEPP relevantly provides:

4 Land to which Policy applies

This Policy applies to the State.

Clause 5(3) of the Mining SEPP gives the Mining SEPP primacy where there is any inconsistency between the provisions in the Mining SEPP and the provisions in any other environmental planning instrument (subject to limited exceptions).

The practical effect of clause 5(3) for the Project is that, if there is any inconsistency between the provisions of the Mining SEPP and those contained in the Narrabri LEP, the provisions of the Mining SEPP will prevail.

Clauses 6 and 7 of the Mining SEPP provide what types of mining development are permissible without development consent and what types are permissible only with development consent.

In this regard, clause 7(1) states:

7 Development permissible with consent

(1) Mining

Development for any of the following purposes may be carried out only with development consent—

- (a) *underground mining carried out on any land,*
- ...
- (d) *facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land,*
- ...

The term “underground mining” in the Mining SEPP is given an extended definition in clause 3(2) as follows:

underground mining means—

- (a) *mining carried out beneath the earth’s surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and*

- (b) shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth's surface),

but does not include open cut mining.

The effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that, notwithstanding any prohibition in the Narrabri LEP, development for the purpose of underground mining and facilities for the processing and transportation of coal may be carried out with Development Consent.

Accordingly, the Minister or the IPC is entitled to grant approval under section 4.38 of the EP&A Act for the Project. This is reinforced by section 4.38(3) of the EP&A Act, which states that development consent may be granted for SSD despite the development being partly prohibited by an environmental planning instrument.

4.2.3 Integrated Approvals

Section 4.42 of the EP&A Act prescribes the authorisations that cannot be refused if they are necessary for carrying out an approved SSD under Division 4.7 of Part 4, and are to be substantially consistent with the Development Consent.

These authorities are:

- An aquaculture permit under section 144 of the *NSW Fisheries Management Act 1994* (FM Act).
- An approval under section 15 of the *NSW Mine Subsidence Compensation Act 1961*¹.
- A mining lease under the *NSW Mining Act 1992*.
- A production lease under the *NSW Petroleum (Onshore) Act 1991*.
- An EPL under Chapter 3 of the *PoEO Act* (for any of the purposes referred to in section 43 of the *PoEO Act*).

- A consent under section 138 of the *NSW Roads Act 1993*.
- A licence under the *NSW Pipelines Act 1967*.

The Project would require a mining lease and a variation to EPL 12789 (Section 4.4). Consents under section 138 of the *NSW Roads Act 1993* would be obtained where required, in consultation with the relevant roads authority.

4.2.4 EPBC Act Approvals

The EPBC Act defines a proposal that is likely to have a significant impact on a matter of national environmental significance as a “controlled action”.

A proposal that is, or may be, a controlled action is required to be referred to the Commonwealth Minister for a determination as to whether or not the action is a controlled action.

Matters of national environmental significance are set out in Part 3 of the EPBC Act as follows:

- world heritage properties;
- national heritage places;
- wetlands listed under the Ramsar Convention;
- listed threatened species and communities;
- listed migratory species;
- nuclear actions;
- the Commonwealth marine environment;
- the Great Barrier Reef Marine Park; and
- water resources, in relation to CSG development and large coal mining developments.

The Project, as a proposed action to extend underground mining and processing operations at the Narrabri Mine, was referred to the Commonwealth Minister in April 2019 (EPBC 2019/8427) (the proposed action).

¹ The *NSW Mine Subsidence Compensation Act 1961* was repealed on the commencement of section 60 of the *NSW Coal Mine Subsidence Compensation Act 2017* (CMSC Act) on 1 January 2018.

A delegate of the Commonwealth Minister determined on 30 September 2019 that the proposed action is a controlled action and, therefore, the action also requires approval under the EPBC Act due to potential impacts on the following provisions under Part 3 of Chapter 2 of the EPBC Act:

- listed threatened species and communities (sections 18 and 18A); and
- a water resource, in relation to CSG development and large coal mining development (sections 24D and 24E).

The delegate of the Commonwealth Minister also determined on 30 September 2019 that, pursuant to section 87 of the EPBC Act, the proposed action is to be assessed by accredited assessment under Part 4 of the EP&A Act.

The SEARs for the Project were originally issued by the DP&E on 28 May 2019, with revised SEARs issued on 20 November 2019 (Attachment 1). Attachment 3 of the revised SEARs requires information about the controlled action and its relevant impacts, and the matters outlined in the Commonwealth *Environment Protection and Biodiversity Conservation Regulations 2000* to be addressed in this EIS.

A summary indicating where the relevant requirements of the revised SEARs have been addressed in this EIS is provided in Attachment 2.

The Project will be assessed in accordance with the NSW accredited assessment process and will require approval under both the EP&A Act and the EPBC Act (Figure 4-1).

Consideration of the Project against the objects of the EPBC Act is provided in Attachment 7.

Consideration of the environmental record of the proponent is also provided in Attachment 7.

4.2.5 Other Approvals

The following approvals must be obtained before the Project may commence:

- Development Consent issued under the EP&A Act, and any relevant secondary approvals under the Development Consent conditions which need to be approved before commencement (e.g. management plans); and

- approval of the proposed action (EPBC 2019/8427) under sections 130(1) and 133 of the EPBC Act, and any relevant secondary approvals under the approval conditions that need to be approved before commencement (e.g. management plans).

Other approvals and licences required to support the Project include, but are not limited to:

- grant of mining leases under the NSW *Mining Act 1992*;
- a variation of EPL 12789 under the PoEO Act;
- MOP prepared under the conditions of relevant mining leases;
- relevant WALs under the NSW *Water Management Act 2000*; and
- mining and occupational health and safety-related approvals granted by the NSW Resource Regulator and WorkCover NSW.

The following other NSW Acts are or may be applicable to the Project:

- *Aboriginal Land Rights Act 1983*;
- *Biosecurity Act 2015*;
- *Biodiversity Conservation Act 2016* (BC Act);
- *Coal Mine Subsidence Compensation Act 2017* (CMSC Act);
- *Contaminated Land Management Act 1997*;
- *Crown Land Management Act 2016*;
- *Dams Safety Act 2015*;
- *Dangerous Goods (Road and Rail Transport) Act 2008*;
- *Electricity Supply Act 1995*;
- *Explosives Act 2003*;
- FM Act;
- *Forestry Act 2012*;
- *Heritage Act 1977*;
- *National Parks and Wildlife Act 1974*;
- *Native Title (New South Wales) Act 1994*;
- *Petroleum (Onshore) Act 1991*;
- *Pipelines Act 1967*;
- *Roads Act 1993*;

- *Work Health and Safety Act 2011; and*
- *Work Health and Safety (Mines and Petroleum Sites) Act 2013.*

Relevant licences or approvals required under these Acts would be obtained for the Project as required.

Additional details on these relevant licences or approvals are provided in Attachment 7.

4.2.6 Approvals and Authorisations that are not Required for State Significant Development

Section 4.41 of the EP&A Act outlines the authorisations that are not required for SSD that is authorised by a Development Consent granted under Division 4.7 of Part 4. The authorisations that are not required under section 4.41(1) are:

- A permit under section 201, 205 or 219 of the FM Act.
- An approval under Part 4, or an excavation permit under section 139, of the NSW *Heritage Act 1977*.
- An Aboriginal heritage impact permit under section 90 of the NSW *National Parks and Wildlife Act 1974*.
- A bush fire safety authority under section 100B of the NSW *Rural Fires Act 1997*.
- 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 NSW *Water Management Act 2000*.

4.2.7 Preconditions to Grant of Approval

Under the EP&A Act and EP&A Regulation, there are several administrative and procedural requirements that must be addressed before the consent authority exercises its power to grant approval for a Development Application, including the following requirements:

- making the Development Application;
- exhibiting the Development Application and EIS for at least 28 days;
- publicly notifying the exhibition of the Development Application and EIS;
- providing a copy of the submissions to the applicant; and

- making all relevant information on the Development Application publicly available on the DPIE's website.

Table 4-1 provides a summary of how the preconditions have or will be met, and the section of the EIS that addresses the preconditions, where relevant.

4.2.8 Mandatory Matters for Consideration

Under Section 4.40 of the EP&A Act, the consent authority is required to evaluate the merits of the Project against the relevant matters for consideration set out in Section 4.15 of the EP&A Act prior to making its determination. This includes:

- the provisions of any environmental planning instruments;
- any draft planning agreement that a development has offered to enter into under section 7.4 of the EP&A Act;
- the prescribed matters for consideration in Division 8 of Part 6 of the EP&A Regulation;
- the likely impacts of the Project, including the environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for the Project;
- any submissions on the Project; and
- the public interest, including any relevant objects of the EP&A Act.

Matters that the consent authority is required to consider in deciding whether to grant approval for the Project include those presented in Table 4-2. Further discussion is presented in Attachment 7, including the permissibility of the Project and consideration of relevant objectives and special provisions.

Planning Agreements

Section 7.4 of the EP&A Act describes voluntary planning agreements that may be entered into between a planning authority and the applicant (developer) who has made, or proposes to make, a Development Application, under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards, a public purpose.

**Table 4-1
Preconditions to Grant of Approval**

Statutory Reference	Precondition	Relevance of the Precondition	Relevant Section of EIS
EP&A Act and EP&A Regulation			
<i>Clause 50 of the EP&A Regulation</i>	Submission of a completed Development Application form.	A completed Development Application form has been submitted with this EIS.	-
<i>Part 1, Schedule 1 of the EP&A Regulation</i>	Provision of information required under Part 1, Schedule 1 of the EP&A Regulation.	Relevant information required under Part 1, Schedule 1 of the EP&A Regulation has been provided with the Development Application.	This EIS.
<i>Clause 49(2) of the EP&A Regulation</i>	Provision of landowner’s consent.	Not required as the Project is classified as public notification development under Clause 49 of the EP&A Regulation and NCOPL will give notice of the Development Application in accordance with the requirements in Clause 49(2) of the EP&A Regulation.	N/A
<i>Clause 50 of the EP&A Regulation</i>	Payment of fee in accordance with the requirements of the EP&A Regulation.	NCOPL will pay the Development Application fee in accordance with the requirements of the EP&A Regulation.	-
<i>Section 4.12(8) of the EP&A Act</i>	Preparation of EIS in accordance with the SEARs and the form and content requirements in Schedule 2 of the EP&A Regulation.	<p>Section 4.12(8) of the EP&A Act specifies that a Development Application for SSD is to be accompanied by an EIS prepared by, or on behalf of, the applicant, in the form prescribed by the regulations.</p> <p>Clause 6 of Schedule 2 of the EP&A Regulation states the required form of an EIS. This EIS contains the information required by clause 6 of Schedule 2 of the EP&A Regulation, including the address of relevant lands and the name, address, professional qualifications and declaration of the person by whom the EIS has been prepared in consideration of the requirements of clause 6 (refer inside front cover of Volume 1).</p> <p>Clause 7 of Schedule 2 of the EP&A Regulation describes the required content of an EIS.</p> <p>Subclause 7(2) of Schedule 2 of the EP&A Regulation states that the requirements set out in subclause (1) are subject to the environmental assessment requirements that relate to the EIS.</p> <p>The Project SEARs set out the environmental assessment requirements in accordance with clause 3 of Schedule 2 of the EP&A Regulation.</p>	Section 1 and Attachments 1, 2 and 7.

Table 4-1 (Continued)
Preconditions to Grant of Approval

Statutory Reference	Precondition	Relevance of the Precondition	Relevant Section of EIS
<i>EP&A Act and EP&A Regulation (Continued)</i>			
<i>Clause 50A of the EP&A Regulation</i>	Submission of a current Gateway Certificate with the Development Application.	A current Gateway Certificate for MLAs 1 and 2 is submitted with the EIS.	Attachments 1 and 7.
<i>Part 1, Schedule 1 of the EP&A Act</i>	Exhibiting the Development Application and EIS for at least 28 days.	DPIE will exhibit the EIS for at least 28 days.	-
<i>Clause 50(5) and Clause 77 of the EP&A Regulation, Clause 16(2) of the Mining SEPP and the consultation requirements in the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP).</i>	Publicly notifying the exhibition of the Development Application and EIS.	DPIE will publicly notify the exhibition of the Development Application and EIS.	-
<i>Clause 82(1) of the EP&A Regulation</i>	Providing a copy of the submissions to the applicant.	DPIE will provide a copy of the submissions to NCOPL.	-
<i>Clause 82(3) of the EP&A Regulation</i>	Making all relevant information on the Development Application publicly available on the DPIE's website.	DPIE will make all relevant information on the Development Application publicly available on its website.	-
<i>Mining Act 1992</i>			
<i>Section 380AA</i>	An application for development consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority that is in force in respect of coal for the relevant land, or the applicant has the written consent of the holder of such an authority to make the application.	The Project involves a Development Application for mining of coal. NCOPL will make the Development Application for the Project. The Narrabri Mine Joint Venture partners are the holders of ML 1609 and EL 6243. The written consent of the Narrabri Mine Joint Venture partners is therefore required as holders of ML 1609 and EL 6243.	Attachments 7 and 9.

Table 4-1 (Continued)
Preconditions to Grant of Approval

Statutory Reference	Precondition	Relevance of the Precondition	Relevant Section of EIS
<i>Dams Safety Act 2015</i>			
<i>Section 48(4)</i>	A consent authority must, before granting Development Consent for mining within in a notification area of a declared dam, notify Dams Safety NSW and take into consideration any matters raised by Dams Safety NSW.	The Project would not involve mining activities and ancillary activities within the notification areas of a declared dam and therefore this precondition is not relevant to the Project.	N/A
<i>Infrastructure SEPP</i>			
<i>Clause 45(2)</i>	If applicable, the consent authority must give written notice to the electricity supply authority for development in the vicinity of an electricity substation, electricity easement or overhead electricity transmission line and consider any response received within 21 days.	The Project may involve electrical works and works/activities in the vicinity of existing electricity substations or transmission corridors.	Attachment 7.
<i>Clause 85(2)</i>	If applicable, the consent authority must give written notice to the rail authority for development that is in or adjacent to a rail corridor and consider any response received within 21 days and certain guidelines.	The Project may involve works in the vicinity of the Werris Creek Mungindi Railway.	Attachment 7.
<i>Clause 86(2)</i>	If applicable, the consent authority must give written notice to the rail authority for excavation within 25 m of a rail corridor and consider any response received within 21 days and certain guidelines.	The Project may involve works in the vicinity of the Werris Creek Mungindi Railway.	Attachment 7.

Table 4-1 (Continued)
Preconditions to Grant of Approval

Statutory Reference	Precondition	Relevance of the Precondition	Relevant Section of EIS
Infrastructure SEPP (Continued)			
<i>Clause 104(3)</i>	If applicable, the consent authority must give written notice to the RMS of a traffic generating development including the enlargement of an existing premises and consider, among other things, any response received within 21 days.	The Project would not materially change the existing Narrabri Mine operational road transport characteristics (i.e. traffic volumes and distribution).	Section 6.13 and Appendix J.
Mining SEPP			
<i>Clause 16(2)</i>	A consent authority must, within 7 days after receiving a Development Application that includes the transport of materials on a public road, provide a copy of the application to each roads authority for the road and the RMS.	The Project would involve transport of materials on the public road network.	Section 6.13, Attachment 7 and Appendix J.
<i>Clause 16(3)(a)</i>	The consent authority must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority.		

Table 4-1 (Continued)
Preconditions to Grant of Approval

Statutory Reference	Precondition	Relevance of the Precondition	Relevant Section of EIS
Mining SEPP (Continued)			
<i>Clause 17B</i>	Before determining an application for development consent for mining or petroleum development that is accompanied by a gateway certificate, the consent authority must: <ul style="list-style-type: none"> (a) refer the application to the Minister for Regional Water, and (b) consider any recommendations set out in the certificate; any written advice provided by the Minister for Regional Water; any written advice of the Gateway Panel in relation to the development; any written advice of the IES Committee provided to the Gateway Panel; and any cost benefit analysis of the proposed development submitted with the application. 	A Conditional Gateway Certificate in relation to the Project was issued on 5 June 2019.	Section 6, Attachments 1 and 7 and Appendices B, C, G and L.

Table 4-2
Mandatory Matters for Consideration

Statutory Reference	Matter for Consideration	Relevant Section of EIS
EP&A Act and EP&A Regulation		
<i>Section 4.40 of the EP&A Act</i>	Draft planning agreement that a developer has offered to enter into under section 7.4 of the EP&A Act.	N/A
	The prescribed matters for consideration in Division 8 of Part 6 of the EP&A Regulation (including the <i>Dark Sky Planning Guideline</i> [DP&E, 2016]).	Section 6.10.
	The likely impacts of the Project, including the environmental impacts on both the natural and built environments, and social and economic impacts in the locality	This EIS.
	The suitability of the site for the Project.	Section 7.1 and Appendices A, B, C, D, E, F, G, J, K, M and O.
	The issues raised in any submissions on the Project.	N/A
	The public interest, including any relevant objects of the EP&A Act: <ul style="list-style-type: none"> ▪ Promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources. ▪ Facilitate ESD by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment. ▪ Promote the orderly and economic use and development of land. ▪ Protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats. ▪ Promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage). ▪ Promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State. ▪ Provide increased opportunity for community participation in environmental planning and assessment. 	Section 7.5, Attachment 7 and Appendix K.

Table 4-2 (Continued)
Mandatory Matters for Consideration

Statutory Reference	Matter for Consideration	Relevant Section of EIS
<i>Biodiversity Conservation Act 2016</i>		
Section 7.14	A consent authority for SSD is to take into consideration under the EP&A Act the likely impact of the proposed development on biodiversity values as assessed in the biodiversity development assessment report. A consent authority may (but is not required to) further consider under the EP&A Act the likely impact of the proposed development on biodiversity values.	Appendix D.
Section 7.16(3)	If the consent authority is of the opinion that a proposed SSD is likely to have serious and irreversible impacts on biodiversity values, the consent authority must take those impacts into consideration and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted.	Appendix D.
<i>State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33)</i>		
Clause 13	A consent authority for an application to carry out development for the purposes of a potentially hazardous or offensive industry must consider the matters specified in clause 13, including relevant DPIE circulars and guidelines and a Preliminary Hazard Analysis.	Section 6.18, Attachment 7 and Appendix P.
<i>State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)</i>		
Clause 7	A consent authority, among other things, must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of the Project.	Section 6.6, Attachment 7 and Appendix M.
Mining SEPP		
Clause 12	The consent authority must: (a) consider— (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).	Sections 6 and 7 and Attachment 7.
Clause 12A	The consent authority must consider relevant provisions of the <i>Voluntary Land Acquisition and Mitigation Policy</i> (NSW Government, 2018).	Sections 6.8 and 6.9, Attachment 7 and Appendices H and I.

Table 4-2 (Continued)
Mandatory Matters for Consideration

Statutory Reference	Matter for Consideration	Relevant Section of EIS
<i>Mining SEPP (Continued)</i>		
<i>Clause 13</i>	Before determining an application for development in the vicinity of mining, petroleum or extractive industry, the consent authority must (among other things) consider whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery.	Attachment 7.
<i>Clause 14</i>	The consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner (including conditions to ensure that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, and that greenhouse gas emissions are minimised to the greatest extent practicable.).	Sections 3, 6 and 7, Attachment 7 and Appendices B, C, D and I.
<i>Clause 15</i>	The consent authority must consider the efficiency of the development in terms of resource recovery and whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.	Sections 2.3 and 2.6 and Attachment 7.
<i>Clause 16(1)</i>	The consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following: (a) require that some or all of the transport of materials in connection with the development is not to be by public road, (b) limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools, require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.	Section 6.13, Attachment 7 and Appendix J.
<i>Clause 17</i>	The consent authority must consider whether or not the consent should be issued subject to conditions regarding rehabilitation.	Section 2.14 and Attachment 5.
<i>State Environmental Planning Policy (Koala Habitat Protection) 2019 (Koala Habitat Protection SEPP)</i>		
<i>Clause 9(2)</i>	Before a Council may grant consent to a development application for consent to carry out development on certain land that does not have an approved koala plan of management, the Council must either consider the requirements of the Guideline or other prescribed information.	Section 6.7, Attachment 7 and Appendix D.

Table 4-2 (Continued)
Mandatory Matters for Consideration

Statutory Reference	Matter for Consideration	Relevant Section of EIS
<i>Narrabri LEP</i>		
Clause 2.3	A consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within that zone.	Attachment 7.
Clause 5.10(4)	If applicable, a consent authority must consider the effect of a proposed development on the heritage significance of a heritage item or area.	Section 6.12 and Appendix F.
Clause 5.10(8)	If applicable, a consent authority must consider the effect of a proposed development on Aboriginal places of heritage significance.	Section 6.11 and Appendix E.
Clause 7.6	If applicable, a consent authority must consider the effect of proposed earthworks on drainage patterns, soil stability, quality of fill, likely amenity impacts, likelihood of disturbing relics and proximity to and potential impacts on water courses.	Section 6 and Appendices C, E, F, G, H and I.

The existing Narrabri Mine has planning agreements with NSC and GSC as set out in Appendix 4 of Project Approval 08_0144, which includes a \$1.5 million contribution towards the Narrabri Swimming Complex and annual monetary contributions to the GSC.

Section 7.4(2) of the EP&A Act indicates that a public purpose includes any of the following:

- the provision of (or recoupment of the cost of providing) public amenities or public services; affordable housing; transport or other infrastructure relating to land;
- the funding or recurrent expenditure relating to the provision of public amenities or public services, affordable housing, transport or other infrastructure;
- the monitoring of the planning impacts of development; or
- the conservation or enhancement of the natural environment.

Under section 7.7 of the EP&A Act, the Minister (or delegate) can only impose a condition of consent requiring a planning agreement to be entered into, if it is in the terms of an offer made by the applicant, in connection with the Development Application. NCOPL proposes to enter into a planning agreement with the NSC for the Project. The terms of the planning agreement are proposed to be negotiated with NSC following exhibition of the EIS.

Local Infrastructure Contributions

Subject to any exclusions or inclusions with respect to sections 7.11 or 7.12 of the EP&A Act in any Project voluntary planning agreement (refer to above discussion), the Minister or IPC may grant Development Consent to the Project subject to a condition requiring contributions under either section 7.11 or 7.12 of the EP&A Act.

Sections 7.11 and 7.12 of the EP&A Act refer to contributions towards provision or improvement of amenities or services, and fixed development consent levies.

Contributions under section 7.11 can only be required in circumstances where the development will, or is likely to, require the provision of, or increase the demand for, public amenities or services within the area.

Section 7.13(2) of the EP&A Act provides that, where the consent authority is not a council (as is the case for the Project [Section 4.2.1]), the consent authority may impose a condition under section 7.11 or 7.12 even though it is not authorised (or of a kind allowed) by, or determined in accordance with, an applicable contributions plan, as long as the consent authority has regard to any contributions plan that applies to the whole or any part of the area in which the development is to be carried out.

The Development Application Area is located within the Narrabri LGA.

The NSC has a *Narrabri Shire Section 7.11 – Fixed Contributions Plan 2016* (NSC, 2019) that may potentially be relevant to the Project.

4.2.9 Public Notification of the Development Application

In accordance with clause 49(1) of the EP&A Regulation, a Development Application may be made by the owner of the land to which the Development Application relates, or by any other person, with the consent in writing of the owner of that land. However, clause 49(2) of the EP&A Regulation relevantly states:

- (2) *The consent in writing of the owner of the land is not required for a development application made by a public authority, or for a development application for public notification development, if the applicant instead gives notice of the application—*
 - (a) *to the owner of the land in writing before the application is made, or*
 - (b) *by publishing a notice no later than 14 days after the application is made—*
 - (i) *in a newspaper circulating in the area in which the development is to be carried out, and*
 - (ii) *in the case of an application made by a public authority, on the public authority's website, or, in the case of public notification development, on the NSW planning portal.*

For the purposes of clause 49, subclause 49(5) relevantly defines public notification development as:

public notification development means—

- (i) State significant development set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to State Environmental Planning Policy (State and Regional Development) 2011 but it does not include development to the extent that is carried out on land that is a state conservation area reserved under the National Parks and Wildlife Act 1974, or*

...

The Project is a public notification development as it falls within Item 5 of Schedule 1 of the State and Regional Development SEPP (Attachment 7).

As such, the Development Application will be notified no later than 14 days after the application is made in accordance with paragraph 49(2)(b) of the EP&A Regulation.