CHAPTER 5.0

Planning Considerations

5.0 PLANNING CONSIDERATIONS

The Airly Mine Extension Project has been assessed with full consideration of the applicable legislative requirements of the Commonwealth and State, along with the local planning and environmental frameworks of the Lithgow LGA, where applicable. This section describes the relevant regulatory framework and the application to the Project.

5.1 Approval Pathway and Permissibility

The development assessment and approval system in NSW is set out in Parts 4 and 5 of the EP&A Act. Division 4.1 in Part 4 provides for the assessment and determination of State significant development (SSD). Pursuant to Section 89C of the EP&A Act, projects are classified as SSD if they are declared to be such by the *SEPP (State and Regional Development) 2011* (SRD SEPP). Schedule 1 of the SRD SEPP identifies development for the purpose of coal mining as SSD, and as outlined in Section 5.4.1, the Project is permissible with development consent. As a result, pursuant to clause 8(1) of the SRD SEPP, the Project comprises SSD.

The Minister for Planning and Infrastructure (or his delegate) determines development applications for SSD under Part 4 of the EP&A Act. The Minister has delegated his consent authority function to the Planning Assessment Commission for development applications made by private proponents for SSD.

A Project Briefing Paper (Centennial 2012b) was submitted to the then NSW P&I, along with various other State and local government agencies, in September 2012 seeking the DGRs for the form and content of the EIS to accompany the development application. The DGRs were first issued by the NSW P&I on 06 November 2012 outlining the general requirements and key issues to be addressed within the EIS. Revised DGRs, following the declaration of the Project as a controlled action on 24 December 2013 in relation to EPBC 2013/7076 referral, were re-issued on 4 February 2014 and contained the Department of the Environment’s requirements. The DGRs and input received from other consulted government agencies are contained within Appendix A and summarised in Chapters 1.0 and 7.0. The Project was subsequently declared a controlled action on 24 December 2013 and DGRs issued on 4 February 2014.

The Project will be assessed under the EPBC Act through the bilateral agreement with NSW, accrediting the EP&A Act (SSD process). The bilateral agreement between the Commonwealth of Australia and the State of New South Wales relating to environmental assessment (the bilateral agreement), allows the Commonwealth Minister for the Environment to rely on specified environmental impact assessment processes of the State of New South Wales in assessing actions under the EPBC Act.

5.2 Commonwealth Legislation

5.2.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is administered by the Commonwealth Department of the Environment, the former Department of Sustainability, Environment, Water, Population and Communities (SEWPaC), and provides a legal framework to protect and manage nationally important flora, fauna, ecological communities and heritage places defined as matters of ‘national environmental significance’ (NES). An action that “*has, will have or is likely to have a significant impact on a matter of National Environmental Significance*” may not be undertaken without prior approval from the Commonwealth Minister, as provided under Part 9 of the EPBC Act. Approval under the EPBC Act is also required where actions are proposed on, or will affect, Commonwealth land and its environment.

Airly Mine has the benefit of the "grandfather clause" contained in Section 43A of EPBC Act. It is also important to recognise that, by reason of the relevant transitional provision, namely item 10 in Part 2 of Schedule 2 to the *Environment and Heritage Legislation Amendment Act (No 1) 2006*, it is the original Section 43A which was inserted in the EPBC Act on 11 July 2001 which applies to the Airly Mine. The effect of Section 43A for the Airly Mine, is that no approval under Part 9 of the EPBC Act is required for the carrying out of the already approved activities.

An assessment of whether the Project may have a significant impact on any matters of NES or on the environment of Commonwealth land was undertaken during the EIS investigations and preparation. Specifically, RPS Australia East Pty Ltd (RPS) conducted an on-line search of the EPBC Act Protected Matters Search Database (accessed in September 2013) to generate a list of those matters of NES within a 10 km radius of the Project Application Area. RPS used this data, together with other local knowledge and records, to assess whether the Project will have, or is likely to have, a significant impact upon a matter of NES or on the environment of Commonwealth land.

RPS (2014a) concluded that the Project was considered to have or is likely to have, a significant impact on any of the matters of NES listed under the EPBC Act]. Consequently a referral to the Department of the Environment was made on 02 December 2013 (EPBC 2013/7076) and the Project was declared a controlled action on 24 December 2013.

The groundwater (GHD 2014a) and surface water (GHD 2014b) impact assessments were undertaken based on the recommended guidelines provided by IESC (2014). The outcomes of these assessments are discussed in detail in Section 10.1 of this EIS.

5.2.2 Native Title Act 1993

The *Native Title Act 1993* recognises that Aboriginal people have rights and interests to land and waters which derive from their traditional laws and customs. Native title may be recognised in places where Indigenous people continue to follow their traditional laws and customs and have maintained a link with their traditional country. It can be negotiated through a Native Title Claim, an Indigenous Land Use Agreement (ILUA) or future act agreements.

An ILUA is an agreement between a native title group and other parties who use or manage the land and waters. The ILUA process allows for negotiation between indigenous groups and other parties over the use and management of land and water resources, and the ability to establish a formal agreement. An ILUA is binding once it has been registered on the Native Title Tribunal's Register of Indigenous Land Use Agreements.

Any native title matters will be managed within the provisions of the *Native Title Act 1993* (and *Mining Act 1992*).

5.2.3 National Greenhouse and Energy Reporting Act 2007

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) provides a single national framework for the reporting and dissemination of information about the greenhouse gas emissions, greenhouse gas projects, and energy use and production of corporations. It makes registration and reporting mandatory for corporations whose energy production, energy use or greenhouse gas emissions meet specified thresholds. Centennial Coal reports emissions from the corporation on an annual basis, including those from the Airly Mine, in accordance with the NGER Act.

5.3 NSW State Legislation

5.3.1 Environmental Planning and Assessment Act 1979

Objects of the EP&A Act

The EP&A Act is the principal piece of legislation overseeing the assessment and determination of development proposals in NSW. It aims to encourage the proper management, development and conservation of resources, environmental protection and ecologically sustainable development.

The objects of the EP&A Act generally seek to promote management and conservation of natural and artificial resources, while also permitting appropriate development to occur. The principles of ecologically sustainable development and public participation are also objects of the EP&A Act. The consistency of the Project with these objects is summarised in Table 5.1

Table 5.1: Objects of the EP&A Act

Objects of the EP&A Act	Consistency of the Project
(a) to encourage:	
(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,	Specialist consultants have been engaged to assess and report on the potential for the Project to impact upon the natural and artificial resources within the vicinity of the Project Application Area. Notably: • The impacts on the natural environment have been addressed within Chapter 8.0 and Chapter 10.0. • The impacts on agricultural land have been addressed within Section 10.8. • The social and economic implications have been addressed within Chapter 6.0.
(ii) the promotion and co-ordination of the orderly and economic use and development of land,	The orderly and economic use of land is best served by development which is permissible under the relevant planning regime and predominantly in accordance with the prevailing planning controls. The Project comprises a permissible development which is consistent with the statutory and strategic planning controls. As detailed in this EIS, the proposal will result in positive economic impacts, with appropriate mitigation measures and management strategy being proposed to reduce adverse environmental impacts.
(iii) the protection, provision and co-ordination of communication and utility services,	The Project will not affect public communication networks or utilities.
(iv) the provision of land for public purposes,	Not applicable to the Project.
(v) the provision and co-ordination of community services and facilities, and	Not applicable to the Project.
(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and	Specialist consultants have been engaged to assess and report on the potential for the Project to impact upon the local environment. Notably, the impacts on flora and fauna have been addressed within Section 10.2.
(vii) ecologically sustainable development, and	The Project is consistent with the principles of ecological sustainable development as outlined in Chapter 12.0, addressing both this object of the EP&A Act and clause 7(1)(f) in Schedule 2 of the EP&A Regulation.
(viii) the provision and maintenance of affordable housing, and	Not applicable to the Project.
(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and	As outlined in Section 5.1, the SSD proposal is subject to the provisions of Part 4 of the EP&A Act, where the Minister for Planning and Infrastructure is the consent authority.
(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.	As outlined in Chapter 7.0, Centennial Airy has undertaken significant consultation in relation to the Project with government agencies, the local community and other stakeholders. This consultation process is continuing with respect to the progression towards obtaining development consent and a mining lease for the Project. Any relevant public representations will need to be considered by the NSW P&Eduring the assessment of the development application.

Section 79C Evaluation

Section 79C of the EP&A Act applies to the determination of development applications for SSD. In determining the Project, the consent authority is required to consider the matters listed in Section 79C (1) of the EP&A Act as are of relevance to the development. Each of the relevant matters has been addressed in the EIS and will need to be considered by the consent authority during the assessment of the Project.

Other Approvals

Pursuant to Section 89J of the EP&A Act, the following authorisations are not required for approved SSD proposals:

- the concurrence under Part 3 of the *Coastal Protection Act 1979* of the Minister administering that Part of the Act
- a permit under section 201, 205 or 219 of the *Fisheries Management Act 1994*
- an approval under Part 4, or an excavation permit under section 139, of the *Heritage Act 1977*
- an Aboriginal heritage impact permit under section 90 of the *National Parks and Wildlife Act 1974*
- an authorisation referred to in section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation or State protected land
- a bushfire safety authority under section 100B of the *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 *Water Management Act 2000*
- an order under Division 8 of Part 6 of the *Heritage Act 1977* restricting harm to buildings, works or relics that are not protected by a heritage listing.

Pursuant to Clause 89K of the EP&A Act, an authorisation of the following kind cannot be refused if it is necessary for carrying out an approved SSD proposal, and must be granted "substantially consistent" with the SSD consent:

- an aquaculture permit under section 144 of the *Fisheries Management Act 1994*
- an approval under section 15 of the *Mine Subsidence Compensation Act 1961*
- a mining lease under the *Mining Act 1992*
- a production lease under the *Petroleum (Onshore) Act 1991*
- an environment protection licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in section 43 of that Act)
- a consent under section 138 of the *Roads Act 1993*
- a licence under the *Pipelines Act 1967*.

The need to obtain any of the above approvals for the Project is outlined in Section 5.3.2.

5.3.2 Other Key NSW State Legislation

The existing approvals relevant to the Project are described in Section 3.1.

In addition to the requirement for development consent under Part 4 of the EP&A Act, the Project will require approvals, licences and/or authorities under various other pieces of NSW State legislation. Table 5.2 lists the key relevant pieces of NSW State legislation and indicates the implications, if any, for the Project.

Table 5.2: Relevant NSW State Legislation

NSW State Legislative Act	Project Implications (approvals, licences and/or authorities)
Protection of the Environment Operations Act 1997 (POEO Act)	Airly Mine is a premises-based "scheduled activity" under Schedule 1 of the POEO Act and currently operates under the provisions of EPL 12374. The Project will operate under an EPL, which will include the existing LDP001, LDP002 and LDP003 as discussed in Section 4.11.6. Under the POEO Act, the regulatory authority is required to consider the matters listed in section 45 of the Act. The regulatory authority is required to take into consideration the following matters as are of relevance: ▪ any protection of the environment policies ▪ the objectives of the EPA as referred to in section 6 of the *Protection of the Environment Administration Act 1991* ▪ the pollution caused or likely to be caused by the carrying out of the activity or work concerned and the likely impact of that pollution on the environment ▪ the practical measures that could be taken to prevent, control, abate or mitigate the pollution and to protect the environment from harm as a result of the pollution ▪ the environmental values of water affected by the activity or work, and the practical measures that could be taken to restore or maintain those values ▪ any guidelines issued by the EPA to the authority. These matters have been addressed within this EIS.
Mining Act 1992	To permit the extraction of coal within the Project Application Area a new mining lease will be required over the Project Application Area under the *Mining Act 1992*. It is expected that the conditions of the new mining lease and SSD consent will require a new Mining Operations Plan and Extraction Plan to be prepared and approved for the Project. Schedule 1 of the *Mining Act 1992* provides for the consultation required with respect to the granting of mining leases. Division 2 provides that landowner consent is not required to accompany an application for development consent. However, section 47J of the *National Parks and Wildlife Act 1974* requires that a mining lease interest cannot be granted without the concurrence of the Minister for the Environment. Therefore, the Minister for the Environment's concurrence is required for the mining lease application for A232.
Water Act 1912	The *Water Act 1912* governs access, trading and allocation of licences associated with surface water and groundwater sources where a Water Sharing Plan is not in place. Airly Mine holds one groundwater production bore licence (10BL6035) and two monitoring bore licences (10BL6045, 10BL6053).

NSW State Legislative Act	Project Implications (approvals, licences and/or authorities)
Water Management Act 2000 (WM Act)	The WM Act is intended to ensure that water resources are conserved and properly managed for sustainable use benefitting both present and future generations. Water sharing plans prepared in accordance with the WM Act include rules for protecting the environment and administrating water licencing and trading. The Project Application Area is within an area covered by two water sharing plans: ▪ Water Sharing Plan for the Greater Metropolitan Region Unregulated River Source 2011. ▪ Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011. In accordance with clause 4(1) of the *Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011* the Project Application Area falls within the Hawkesbury and Lower Nepean Rivers Water Source. In accordance with clause 4(1) of the *Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011* the Project Application Area falls within Sydney Basin North Groundwater Source. Airly Mine holds two water access licences for the extraction of groundwater from the Sydney Basin North Groundwater Source: ▪ WAL36565 for 120 ML granted in October 2013 ▪ WAL24386for 158 ML, granted in Febrruary 2011. Appendix E and Appendix F, respectively, list the groundwater and surface water licencing required for the Project under the WM Act as a result of the Project. By the operation of Section 89J of the EP&A Act, the Project will not require water use approvals under Section 89 of the WM Act, water management approvals under Section 90 or a controlled activity approval under Section 91. However, it may require an aquifer interference approval under Section 91 of the WM Act.
Coal Mine Health and Safety Act 2002 (CMH&S Act)	Centennial Airly currently holds all necessary approvals under the CMH&S Act, which aims to assist in securing and promoting the health, safety and welfare of people at work at coal operations. Gas drainage and management at Airly Mine will continue to be regulated under the provisions of the Act.
Mine Subsidence Compensation Act 1961	The Project Application Area is not located within any Mine Subsidence District.
Dams Safety Act 1978	The Project does not propose any underground mining or surface disturbance on or in the vicinity of any dams prescribed under the *Dam Safety Act 1978.* The proposed REA will not trigger the Dam Safety Act.
Crown Lands Act 1989	There is Crown land within the Project Application Area. Surface infrastructure at the pit top has been partly constructed on Crown Land and all the access portals are located on Crown Land. No additional surface infrastructure is proposed for the Crown Land parcels. The Project will require a licence to use Crown Land under the provisions of the *Crown Lands Act 1989*.
Roads Act 1993	Section 138 of the *Roads Act 1993* requires consent be obtained prior to disturbing or undertaking work in, on or over a public road. The Project proposes no additional disturbance of public roads**.** By operation of Clause 89K of the EP&A Act, consent under Section 138 of the *Roads Act 1993* cannot be refused if it is necessary for carrying out an approved SSD proposal, and must be granted substantially consistent with the SSD consent.

NSW State Legislative Act	Project Implications (approvals, licences and/or authorities)
Threatened Species Conservation Act 1995 (TSC Act)	The TSC Act provides protection for threatened plants and animals native to NSW excluding fish and marine vegetation) and integrates the conservation of threatened species into development control processes under the EP&A Act (Appendix H and Section 10.2).
National Parks and Wildlife Act 1974 (NPW Act)	The NPW Act contains provisions for the protection and management of national parks, historic sites, nature reserves and Aboriginal heritage. By operation of Section 89J of the EP&A Act, the Project does not require an Aboriginal Heritage Impact Permit under the NPW Act. An application for a mining lease will be made over the land currently covered by A232. To the extent that this land falls within the boundaries of the Mugii Murum-ban State Conservation Area, it will be necessary to obtain the concurrence of the Minister for the Environment to the grant of the mining lease. An Aboriginal Heritage Assessment is provided in Section 10.3 and Appendix J.
Aboriginal Land Rights Act 1983	The *Aboriginal Land Rights Act 1983* provides for the constitution of local, regional and State Aboriginal Land Councils and a mechanism for Land Councils to claim Crown land. There are no known granted claims over Crown land in the Project Application Area. Updated land status reports will be obtained as part of the Extraction Plan process to confirm the status of any claims.
Heritage Act 1977	Historical archaeological relics, buildings, structures, archaeological deposits and features are protected under the *Heritage Act 1977*. There are no references to heritage items in the Project Application Area within the World Heritage List, NSW Heritage Register, Australian Heritage Database or the relevant Local Environmental Plans. In any event, Approval is not required under Part 4 of the *Heritage Act 1977* due to the operation of Section 89J of the EP&A Act.
Contaminated Land Management Act 1997	The relevance of this legislation to the Project is outlined in Section 5.4.6.

5.4 State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) are Environmental Planning Instruments (EPIs) prepared by the Minister to address issues significant to NSW. The SEPPs outlined in the below sub-sections contain provisions that are relevant to the Project and therefore are matters to be taken into consideration by the consent authority.

5.4.1 SEPP (State and Regional Development) 2011

SEPP (State and Regional Development) 2011 (SRD SEPP) came into effect upon the repeal of Part 3A of the EP&A Act and identifies development to which the SSD assessment and determination process under Division 4.1 in Part 4 of the EP&A Act applies. The relevance of the SRD SEPP for the purposes of the Project is outlined in Section 6.1.

5.4.2 SEPP (Mining, Petroleum Production and Extractive Industries) 2007

SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (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 NSW. Section 5.5 discusses the permissibility of the Project due to the application of clauses 7(1)(a) and 5(3) of the Mining SEPP.

Part 3 of the Mining SEPP stipulates matters for consideration by the consent authority before determining an application for consent in respect of development for the purposes of mining. Specifically, Clauses 12 to 17 (inclusive), requires consideration to be given to the significance of the resource, the compatibility of projects with other surrounding land uses, including the existing and potential extraction of minerals, natural resource management and environmental management, resource recovery, transportation and rehabilitation.

In July 2014 amendments were made to the Mining SEPP to, amongst other things, provide clarification on the transitional arrangements pertaining to development on strategic agricultural land, specifically the need to obtain a site verification certificate.

Clause 21 of the Mining SEPP states that Part 4AA of this Policy does not apply to an application for development consent under Part 4 of the EP &A Act that involves mining or petroleum development on strategic agricultural land if:

(a) the land to which the application relates was not included on the Strategic Agricultural Land Map before 28 January 2014, and

(b) the relevant environmental assessment requirements under Part 2 of Schedule 2 to *the Environmental Planning and Assessment Regulation 2000* for the development were issued on or before 3 October 2013.

For Airly Mine the land to which the application relates was not included on the Strategic Agricultural Land Map before 28 January 2014 and the environmental assessment requirements were issued on 6 November 2014. Regardless, Airly Mine has made an application to obtain the site verification certificate for the Project Application Area.

The information presented in this EIS addresses each of the matters for consideration prescribed in the abovementioned clauses, and the assessment undertaken has been multi-disciplinary and involved consultation with various government agencies and stakeholders. Emphasis has been placed on anticipation and prevention of potential environmental and social impacts, with various mitigation measures, management strategies, and monitoring activities proposed to minimise adverse impacts.

5.4.3 SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007 (Infrastructure SEPP) aims to facilitate the effective delivery of infrastructure across NSW by improving regulatory certainty and efficiency through a consistent planning regime and greater flexibility in the location of infrastructure and service facilities.

Clause 45 of the Infrastructure SEPP provides that for a development application in respect of development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists)
- immediately adjacent to an electricity substation
- within 5 m of an exposed overhead electricity power line.

The consent authority must give written notice to the electricity supply authority for the area and invite comments about potential safety risks, and take into consideration any response to that notice received within 21 days after the notice is given.

5.4.4 SEPP No. 55 – Remediation of Land

SEPP No. 55 – Remediation of Land (SEPP 55) provides for a state-wide planning approach to the remediation of contaminated land in order to reduce the risk to human health or any other aspect of the environment.

Clause 7(1) of SEPP 55 provides that a consent authority must not consent to the carrying out of any development on land unless:

- it has considered whether the land is contaminated
- if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out
- if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Further, clause 7(2) of SEPP 55 provides that before determining an application for consent to carry out development that would involve a "change of use" in respect of certain land specified in clause 7(4) of SEPP 55, the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines (being the 1998 publication *Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land*).

Given that the Airly pit top infrastructure was very recently built, Centennial Coal did not assess the site when it undertook a contaminated site assessment across all its other sites in accordance with the *Contaminated Land Management Act 1997* to determine whether any site triggered the Duty to Report criteria.

The proposed mining area in the Project has not been used for industrial purposes (the Torbane processing plant site is west of the mining area), and so the potential for contamination in these areas is low. Construction and operation of the surface facilities at the pit top will involve the storage and handling of hydrocarbon fuels. To reduce the potential for contamination, all pipework and tanks will be constructed to Australian Standard AS 1692. Refuelling of mobile equipment during construction will be via mobile tankers, equipped with spill kits and will be undertaken in bunded areas.

Centennial Airly will implement best management practices for hydrocarbons, along with the approved EMS and occupation health and safety management systems to ensure the potential for contamination and associated issues remains low.

5.4.5 SEPP No. 44 – Koala Habitat Protection

SEPP No. 44 – Koala Habitat Protection provides for the protection of koala habitat by ensuring that areas subject to development proposals are considered for their value as habitat or potential habitat for koalas. The Greater Lithgow LGA is listed under Schedule 1 of SEPP No. 44 as an area to which the SEPP applies.

RPS (2014a), Appendix H considers the Project Application Area contains core koala habitat.

5.4.6 SEPP No. 33 – Hazardous and Offensive Development

SEPP No. 33 - Hazardous and Offensive Development (SEPP 33) regulates, amongst other things, the determination of development applications to carry out what is defined in SEPP 33 as development for the purposes of a "potentially hazardous industry" or "potentially offensive industry". With the continued implementation of best management practices for hydrocarbons and explosives used within the Project Application Area and the other measures outlined in this EIS to reduce or minimise the impact of the Project, as well as effective implementation of the approved EMS and occupation health and safety management systems, the Project would not pose any significant risk, in relation to its locality, to human health, life or property or to the biophysical environment.

Further, by employing the management and mitigation measures outlined in this EIS during the Project's operation, the Project would not result in the emission of a polluting discharge in a manner which would have a significant adverse impact in its locality or on the existing or likely future development on other land.

On the above bases, the Project is not considered to comprise a "potentially hazardous industry" or a "potentially offensive industry" within the meaning of these expressions in SEPP 33, and therefore a preliminary hazard analysis was not prepared as required by clause 12 of SEPP 33 and nor does clause 13 of SEPP 33 apply to the consent authority's determination of the Project's development application.

5.5 Local Environmental Plans

Local Environmental Plans (LEPs) are EPIs that guide planning decisions for LGAs and allow Councils to manage the ways in which land is used through zoning and development consents.

5.5.1 Lithgow City Local Environmental Plan 1994

The aims of the *Lithgow City Local Environmental Plan 1994* (Lithgow LEP 1994) include the encouragement of the proper management, development and conservation of natural resources and the built environment within the City of Lithgow, by protecting, enhancing or conserving, amongst other things, timber, minerals, soil, water quality, stream environment and other natural resources.

The land use zoning of the majority of the Project Application Area (Figure 2.4) pursuant to the Lithgow LEP 1994 is Zone No 1(a) Rural (General).

Development for the purposes of "mining" is permissible with development consent under the Lithgow LEP 1994 within Zone No 1(a) Rural (General).

Sub-clause 7(1)(a) of the Mining SEPP (Section 5.4.2) also states that development for the purpose of underground mining may be carried out on any land with development consent. In relation to any inconsistency between the Mining SEPP and an LEP, sub-clause 5(3) provides that the Mining SEPP prevails to the extent of the inconsistency. On this basis, any provision in the Lithgow LEP 1994 that would otherwise operate to prohibit the Project has no effect, and accordingly, the Project is permissible with development consent on the land in which the Project will be carried out that is within the Lithgow LGA.

The Lithgow LEP 1994 also contains the following provisions:

- the consent authority must not grant consent unless it is of the opinion that the development is consistent with the objectives for the zone in which it is proposed to be carried out (clause 9(2))

The objective of Zone No 1(a) Rural (General) is to promote the proper management and utilisation of natural resources by:

(a) protecting, enhancing and conserving:

(i) rural land, in particular prime crop and pasture land, in a manner which sustains its efficient and effective agricultural production potential

(ii) soil, by controlling and locating development in accordance with soil capability

(iii) forests of existing and potential commercial value for timber production

(iv) valuable deposits of minerals, coal and extractive materials, by controlling the location of development for other purposes in order to ensure the efficient extraction of those deposits

(v) trees and other vegetation in environmentally sensitive areas, where the conservation of the vegetation is significant for scenic amenity or natural wildlife habitat or is likely to control land degradation

(vi) water resources for use in the public interest, preventing the pollution of water supply catchment and major water storages

(vii) localities of significance for nature conservation, including places with rare plants, wetlands and significant wildlife habitat

(viii) items of heritage significance.

(b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture

(c) facilitating farm adjustments

(d) minimising the cost to the community of:

(i) fragmented and isolated development of rural land

(ii) providing, extending and maintaining public amenities and services.

(e) providing land for other non-agricultural purposes, in accordance with the need for that development

- clause 11 of the Lithgow LEP 1994 provides that before determining a development application within Zone No 1(a) Rural (General), the consent authority must take into consideration the effect the proposed development would have on:

(a) the present use of the land, and the potential for sustained agricultural production of so much (if any) of the land as is prime crop and pasture land

(b) vegetation, timber production, land capability and water resources (including the quality of the water, stability of watercourses, groundwater storage and riparian rights)

(c) the future recovery from known or prospective areas of valuable deposits of minerals, coal, petroleum, sand, gravel or other extractive materials

(d) the protection of areas of nature conservation significance or of high scenic or recreational value, and of items of heritage significance

(e) the cost of providing, extending and maintaining public amenities and services

(f) development on adjoining land and on other land in the locality, including any cumulative impact

(g) the future expansion of settlements in the locality.

- certain relevant provisions in Parts 3 and 4 of the Lithgow LEP 1994 that operate as controls in respect of the decision-making function of the consent authority, including certain development standards

The operation of the above provisions in respect of the Project is subject to the application of clause 8 of the Mining SEPP, which provides:

8 Determination of permissibility under local environmental plans

(1) If a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if provisions of the plan are satisfied:

(a) development for that purpose may be carried out on that land with development consent without those provisions having to be satisfied

(b) those provisions have no effect in determining whether or not development for that purpose may be carried out on that land or on the determination of a development application for consent to carry out development for that purpose on that land.

(2) Without limiting subclause (1), if a local environmental plan provides that development for the purposes of mining, petroleum production or extractive industry may be carried out on land with development consent if the consent authority is satisfied as to certain matters specified in the plan, development for that purpose may be carried out on that land with development consent without the consent authority having to be satisfied as to those specified matters.

Notwithstanding the application of clause 8 of the Mining SEPP, the assessment of the Project in this EIS:

- enables the consent authority to form the opinion that the development is consistent with the objectives for the zones in which the Project is to be carried out
- enables the consent authority to take into consideration the effect of the Project on the matters set out in clause 11 of the Lithgow LEP 1994
- demonstrates that the Project is consistent with any relevant controls set out in Parts 3 and 4 of the Lithgow LEP 1994.

5.5.2 Rylstone Local Environmental Plan 1996

The land use zoning of the northeast odportion of land within the Project Application Area not covered by Lithgow LEP 1994 is zoned Zone No 1(a) Rural (General) pursuant to *Rylstone Local Environmental Plan* (Rylstone LEP 1996).

Development for the purposes of "mining" is permissible with development consent under the Rylstone LEP 1996 within Zone No 1(a) Rural (General).

The objective of Zone No 1(a) Rural (General) is to promote the proper management and utilisation of natural resources by:

(a) protecting, enhancing and conserving:

(i) agricultural land in a manner which sustains its efficient and effective agricultural production potential,

(ii) soil stability by controlling and locating development in accordance with soil capability,

(iii) forests of existing and potential commercial value for timber production,

(iv) valuable deposits of minerals, coal, petroleum and extractive materials by controlling the location of development for other purposes in order to ensure efficient extraction of those deposits,

(v) trees and other vegetation in environmentally sensitive areas where the conservation of the vegetation is significant to scenic amenity, recreation or natural wildlife habitat or is likely to control land degradation,

(vi) water resources for use in the public interest,

(vii) places and buildings of archaeological or heritage significance, including Aboriginal relics and places,

(viii) the rural character and amenity of the zone,

(b) preventing the unjustified development of prime crop and pasture land for purposes other than agriculture, and

(c) facilitating farm adjustments, and

(d) minimising the cost to the community of:

(i) fragmented and isolated development of rural land, and

(ii) providing, extending and maintaining public amenities and services, and

(e) providing land for future urban development, for future rural residential development and for future development for other non-agricultural purposes, in accordance with the need for that development, and

(f) encouraging the establishment of rural and rural-related industries.

5.5.3 Draft Lithgow City Local Environmental Plan 2013

Lithgow City Council has prepared a planning proposal for the *Draft Lithgow City Local Environmental Plan 2013* (Draft Lithgow LEP 2013), which was lodged with the NSW Department of Planning and Infrastructure in April 2013. It is intended that the Draft Lithgow LEP 2013 would implement the Standard Instrument LEP across the Lithgow LGA, and repeal the Lithgow LEP 1994.

The Draft Lithgow LEP 2013 will seek to implement the key strategic directions of the *Lithgow Land Use Strategy 2010-2030* (Section 5.6.1).

The planning proposal for the Draft Lithgow LEP 2013 received its Gateway Determination from the NSW Department of Planning and Infrastructure in May 2013, after which the Draft Lithgow LEP 2013 was prepared in compliance with the conditions of the Gateway Determination, and then publicly exhibited. The exhibition period concluded on 6 August 2014.

5.6 Other Considerations

5.6.1 Lithgow Land Use Strategy 2010-2030

Lithgow City Council's *Lithgow Land Use Strategy 2010-2030* (LLUS) was adopted by Council on 31 October 2011 and endorsed by the NSW Department of Planning and Infrastructure on 24 May 2012.

The LLUS is a combined Land Use Issues Paper and Strategy. It explores the issues that currently face the Lithgow LGA and recommends a new planning approach to address these issues. The Strategy will be implemented through the planning system, primarily through the Draft Lithgow LEP 2013 and Development Control Plan, as well as Council’s other policy, regulatory and governance functions. This Strategy is significant to Council and the community because it will set directions and policy for the Lithgow LGA’s settlement and land use management for the next 20 years. The Strategy will be reviewed throughout this period every five years to ensure that its findings and recommendations remain relevant, are in keeping with sound planning principle and are continuing to meet the needs and expectations of the community.

5.6.2 Water Sharing Plans

Water sharing plans prepared in accordance with the *Water Management Act 2000* include rules for protecting the environment, extractions, managing licence holders' water accounts, and water trading within defined areas and specified water sources. The Project Application Area is within an area covered by the three water sharing plans outlined below. The Project’s water licensing requirements under the *Water Management Act 2000*, are summarised in Appendices E and F.

The Project Application Area is within an area covered by two water sharing plans.

- Water Sharing Plan for the Greater Metropolitan Region Unregulated River Source 2011.
- Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011.

In accordance with clause 4(1) of the *Water Sharing Plan for the Greater Metropolitan Region Unregulated River Water Sources 2011* the Project Application Area falls within the Hawkesbury and Lower Nepean Rivers Water Source. In accordance with clause 4(1) of the *Water Sharing Plan for the Greater Metropolitan Region Groundwater Sources 2011* the Project Application Area falls within Sydney Basin North Groundwater Source

5.6.3 Strategic Regional Land Use Policy

The NSW Government's *Strategic Regional Land Use Policy* was introduced in September 2012 and sets out a range of initiatives to better balance growth in the mining industry with the need to protect agricultural land and water resources. The Policy includes a package of measures including the following key elements:

- the preparation of *Strategic Regional Land Use Plans* (SRLUPs) for both the Upper Hunter and the New England North West regions of NSW which identify and map Strategic Agricultural Land (SAL) and Critical Industry Clusters (equine and viticulture land uses) within these areas
- the introduction of the *NSW Aquifer Interference Policy* (Section 5.6.4)
- the requirement for Agricultural Impact Statements to accompany SSD applications for mining projects that have the potential to affect agricultural resources (Section 10.8).

The proposed key policy response for resolving land use conflict between mining and coal seam gas proposals and agricultural land is a 'gateway process'. Under this process, a panel of independent experts would assess proposals involving mining or coal seam gas development on mapped SAL at an early stage before the lodgement of a development application. The outcome of the 'gateway process' would be that the proposal either meets the gateway criteria relating to agricultural and water impacts, or the proposal does not meet the criteria and therefore stringent requirements will be imposed that must be addressed at the development application stage. The 'gateway process' will commence when the relevant amendments to the Mining SEPP and EP&A Regulation are made.

The existing SRLUPs do not apply to the Project Application Area. Notwithstanding, matters relating to soil landscapes, land use impacts, land capability and agricultural suitability have been addressed within this EIS. Section 10.8 discusses the soils, land suitability and agricultural suitability aspects of the Project Application Area. These assessments concluded that the Project Application Area does not contain biophysical SAL or BSAL.

5.6.4 NSW Aquifer Interference Policy

The *NSW Aquifer Interference Policy* (AIP) (NSW Office of Water 2012) is a key component of the NSW Government's *Strategic Regional Land Use Policy* (DP&I, 2012). The AIP clarifies the water licensing and approval requirements for aquifer interference activities, including the taking of water from an aquifer in the course of carrying out mining, and defines the considerations for assessing potential impacts to key water-dependent assets.

The AIP indicates that where mining results in the loss of water from an overlying source that is covered by a WSP, a water access licence is required under the WM Act to account for this take of water. According to the AIP, proponents of a mining project seeking development consent under Part 4 of the EP&A Act must provide estimates of all quantities of water likely to be taken from any water source during and following cessation of the activity and all predicted impacts associated with the activity. Hydrogeological modelling for the Project has been undertaken by GHD contained in Appendix E.

The AIP requires that potential impacts on groundwater sources, including their users and groundwater dependent ecosystems (GDEs), be assessed against minimal impact considerations. If the predicted impacts are less than the Level 1 minimal impact considerations, then these impacts will be considered as acceptable Appendix E considers groundwater impacts and aquifer interference requirements and clarifies that the Project is compliant with Level 1 Minimum Harm Criteria of the NSW Aquifer Interference Policy for Porous Rock Water Sources.

Any impacts on potential GDEs, basic landholder rights and existing registered bores are addressed in Appendix E.