



SECTION 4

Strategic and Statutory Context

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4 STRATEGIC AND STATUTORY CONTEXT

This section outlines the strategic planning context and the requirements and application of State and Commonwealth legislation, including relevant state environmental planning policies (SEPPs) and LEPs.

The Project will be assessed in accordance with the framework established by the EP&A Act, the EP&A Regulation and the Commonwealth EPBC Act.

4.1 STRATEGIC PLANNING DOCUMENTS

This section identifies relevant policies that provide the strategic planning context for the Project. This section also describes how the Project complies with relevant strategic policies and planning documents.

4.1.1 Strategic Statement on NSW Coal

The NSW Government's (2014a) *Strategic Statement on NSW Coal* outlines the NSW Government's objective to deliver strong and sustainable economic growth by maintaining the correct balance between resource development and the management of other State assets.

The *Strategic Statement on NSW Coal* (NSW Government, 2014a) recognises the value of coal production to the NSW economy, including:

- The long history of coal mining in NSW, and its close ties with regional communities in the Illawarra.
- The potential for coal production to deliver significant economic benefits to local communities, including jobs and investment.
- Coal production's significant contribution to export earnings as the State's biggest single export earner.

The NSW Government's (2014a) *Strategic Statement on NSW Coal* provides the following relevant objectives to guide the growth and performance of the NSW coal sector:

- Co-existence – land use decisions do not exclude other potential uses without considering the benefits and consequences for other land users and all NSW residents.
- Transparency – decisions are open, transparent and evidence-based to minimise corruption risks.

- Sustainability – decisions are governed by triple bottom line considerations to promote comprehensive and balanced decision-making.
- Safety – coal exploration and production risks are managed through consultation and safe systems to achieve zero fatalities in the mining industry.
- Best practice and leading technologies – the regulation of the coal sector promotes the adoption of best practices and world-leading technologies.
- Achieving value for the economy and adequate returns for taxpayers – coal development prioritises the highest value resources, and generates financial returns for the Government by capturing an appropriate share of that value.
- Regional economic development – support opportunities and economic development in the region of a resource.

The Project would be consistent with the *Strategic Statement on NSW Coal* (NSW Government, 2014a), because:

- The Project has been developed in a manner that considers the benefits and consequences of the development for other land uses, including coexistence with other uses of the Metropolitan Special Area and the road transport network (Section 6).
- This EIS considers the potential benefits and consequences to the residents of NSW, including a cost-benefit analysis (Appendix L).
- The decision-making process will be informed by public involvement and participation through the Project EIS consultation program (Section 5), the public exhibition of the EIS document and DPE/Independent Planning Commission (IPC) assessment of the Project in accordance with the requirements of the EP&A Act (and EPBC Act).
- The Project incorporates relevant ESD considerations (Section 9.3.5).
- The Project would operate within both South32's safety management system and NSW legislation, to manage potential risks to workers and other persons.
- This EIS has been prepared using the best available science, and the Project would incorporate comprehensive management, monitoring and adaptive management (Section 8).

- The Project would generate significant returns for society through contributions to State royalties, State taxes, Commonwealth tax revenue and Council rates (Appendix L).
- Illawarra Coal is a local company that has been mining metallurgical coal for steelmaking for over 80 years. The Project would facilitate continued local and regional employment and economic development opportunities (Appendix K).

4.1.2 Illawarra-Shoalhaven Regional Plan

The *Illawarra-Shoalhaven Regional Plan* (NSW Government, 2015a) applies to the Wollongong, Kiama, Shellharbour and Shoalhaven LGAs. The Regional Plan provides the policy, planning and decision-making framework for the sustainable growth of the region over the 20 years from 2015.

The Project is partially located within the area covered by the *Illawarra-Shoalhaven Regional Plan* (NSW Government, 2015a).

The Project is located within the Southern Coalfield, which provides the only hard coking coal in NSW. This coal is in high demand for steel production around the world (NSW Government, 2015a).

The *Illawarra-Shoalhaven Regional Plan* recognises steel making and manufacturing as critical industry sectors within the region (NSW Government, 2015a). The Project would provide continued support for BlueScope Steel's coking coal requirements and for the Port Kembla Coal Terminal.

The *Illawarra-Shoalhaven Regional Plan* acknowledges that coal mining within the Sydney Drinking Water Catchment Special Areas has the potential to affect water supply, security and infrastructure, and ecological integrity (NSW Government, 2015a). In this regard, the *Illawarra-Shoalhaven Regional Plan* (NSW Government, 2015a) concludes:

These risks can be managed and it is important that these proposals continue to be assessed and regulated, informed by the best available science.

This EIS presents an assessment of the potential impacts of the Dendrobium Mine continuing to operate in the Metropolitan Special Area (Section 6). The assessments have been prepared by appropriately qualified specialists. In addition, peer review of the groundwater and surface water assessments has been undertaken (Section 1.4).

The *Illawarra-Shoalhaven Regional Plan* recognises that the Dendrobium Mine and other collieries are located near current and future residential developments (NSW Government, 2015a). The *Illawarra Shoalhaven Regional Plan* describes the need to balance the ability of these mines to continue to operate, and any future extraction of resources, with the expectations of current and future residents (NSW Government, 2015a).

Potential road transport, noise and air quality impacts of the continuation of the Dendrobium Mine under the Project on proximal residents have been assessed and are presented in Section 6 and Appendices H to J.

4.1.3 Other Strategic Planning Documents

The following strategic planning documents have also been considered in the planning of the Project and the preparation of this EIS:

- *WaterNSW Principles for Managing Mining and Coal Seam Gas Impacts in Declared Catchment Areas* (WaterNSW, undated).
- *Special Areas Strategic Plan of Management 2015* (WaterNSW and OEH, 2015).
- *A Plan for Growing Sydney* (NSW Government, 2014b).
- *South East and Tablelands Regional Plan* (NSW Government, 2017).
- *Western City District Plan* (NSW Government, 2018a).
- *Wollongong 2022: Our Community Strategic Plan 2012-2022* (Wollongong City Council, 2012).
- *Wingecarribee Local Planning Strategy 2015-2031* (Wingecarribee Shire Council, 2016).
- *Wollondilly Community Strategic Plan 2033* (Wollondilly Shire Council, 2013).
- *Greater Sydney Local Strategic Plan 2016-2021* (Greater Sydney Local Land Services, 2016).

- *NSW Climate Change Policy Framework* (Office of Environment and Heritage, 2016b).
- *Guidelines for the Developments Adjoining Land Managed by the Office of Environment and Heritage* (Office of Environment and Heritage, 2013).

These strategic planning documents are discussed further in Attachment 6.

4.2 EXISTING APPROVALS AND REGULATORY CONTROLS

General descriptions of the approval histories of the Dendrobium Mine and Cordeaux Colliery are provided in Section 2.

Key approvals and documentation pertaining to the Dendrobium Mine include:

- Development Consent DA 60-03-2001 issued by the NSW Minister for Urban Affairs and Planning on 20 November 2001, as amended by subsequent modifications (Section 2.2.7).
- Approval Decision EPBC 2001/214 under the EPBC Act issued on 20 December 2001.
- CCL 768, ML 1510 and ML 1566 issued under the *NSW Coal Mining Act, 1973* (now repealed) and the *NSW Mining Act, 1992*, administered under the *NSW Mining Act, 1992*.
- EPL 3241 issued by the EPA under the *NSW Protection of the Environment Operations Act, 1997* (PoEO Act).
- MOP approved by the Department of Energy and Resources (DRE) (now Division of Resources and Geoscience (DRG)) for the period 1 July 2015 to 1 July 2022 under the conditions of CCL 768, Mining Licence (ML) 1510 and ML 1566.
- Water supply works approval 10WA118772, and associated Water Access Licences (WALs) 36473 and 37465, issued under the *NSW Water Management Act, 2000* for the extraction of water in the Sydney Basin South Groundwater Source.
- Consent D2015/17013 issued by WaterNSW under the *Water NSW Regulation, 2013* to enter the Metropolitan Special Area and carry out activities permitted by statutory approvals.
- DSC endorsements and approvals issued by the DRG for mining within the Cordeaux Dam and Avon Dam Notification Areas pursuant to Condition 13 of CCL 768.

- Mining and occupational health and safety related approvals granted by the DRG and WorkCover NSW (including Explosives Licence number XSTR100152).
- *NSW Radiation Control Act, 1990* Registration, Licence number RL30137.
- Exploration licences AUTH 143 and AUTH 374 issued under the *NSW Coal Mining Act, 1973* (now repealed), administered under the *NSW Mining Act, 1992*.

The Dendrobium CPP is located in the Port Kembla industrial precinct and operates under EPL 6092 held by BlueScope issued by the EPA under the *NSW PoEO Act*.

Key approvals and documentation pertaining to the Cordeaux Colliery include:

- Development Consent D74/134 issued by the Wollongong City Council on 20 December 1974.
- CCL 768 issued under the *NSW Coal Mining Act, 1973* (now repealed), administered under the *NSW Mining Act, 1992*.
- EPL 611 issued by the EPA under the *NSW PoEO Act*.
- MOP approved by the DRE (now DRG) for the period 1 July 2015 to 1 July 2022 under the conditions of CCL 768, ML 1510 and ML 1566.
- Consent D2015/17013 issued by WaterNSW under the *Water NSW Regulation, 2013* to enter the Metropolitan Special Area and carry out activities permitted by statutory approvals.
- Mining and occupational health and safety related approvals granted by the DRG and WorkCover NSW.
- Exploration licence AUTH 338 issued under the *NSW Coal Mining Act, 1973* (now repealed), administered under the *NSW Mining Act, 1992*.

The West Cliff Stage 3 and Stage 4 Coal Wash Emplacements are approved under Development Consent DA 60-03-2001 and the Bulli Seam Operations Project Approval 08_0150, respectively. The West Cliff Coal Wash Emplacement is operated in accordance with the Bulli Seam Operations EPL 2504 (issued by the EPA under the *NSW PoEO Act*).

A register of current licences, permits and approvals is maintained on-site by South32, and a summary of current approvals is presented in the Annual Review, which is available at the South32 website:

<https://www.south32.net/what-we-do/places-we-work/illawarra-metallurgical-coal/documents>

Existing environmental management, monitoring, mitigation and reporting measures that are implemented in accordance with the existing Dendrobium Mine and Cordeaux Colliery approvals are described in Sections 6 to 8, where relevant.

South32 undertakes exploration activities in the surrounding area in accordance with the relevant exploration tenements (listed above) and associated approvals from the DRG.

4.3 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The EP&A Act and EP&A Regulation set the framework for planning and environmental assessment in NSW. Approval for the Project will be sought under the State Significant Development provisions (Division 4.7) of Part 4 of the EP&A Act.

Consideration of the Project against the objects of the EP&A Act is provided in Section 9.3.1

4.3.1 Permissibility and Requirement for Development Consent

The Project area is within the Wollongong, Wingecarribee and Wollondilly LGAs (Figure 1-1), which are covered by the:

- *Wollongong Local Environmental Plan 2009* (Wollongong LEP);
- *Wingecarribee Local Environmental Plan 2010* (Wingecarribee LEP); and
- *Wollondilly Local Environmental Plan 2011* (Wollondilly LEP).

The Project area includes land zoned under the Wollongong LEP as:

- Zone RU1 (Primary Production);
- Zone RU2 (Rural Landscape);
- Zone E1 (National Parks & Nature Reserves)¹;

¹ The Development Application area includes depth restrictions to avoid development in the Upper Nepean and Illawarra Escarpment State Conservation Areas (Section 4.5.1).

- Zone E2 (Environmental Conservation);
- Zone E3 (Environmental Management);
- Zone E4 (Environmental Living); and
- Zone SP2 (Infrastructure).

The Project area includes land zoned under the Wingecarribee and Wollondilly LEPs as:

- Zone E2 (Environmental Conservation); and
- Zone SP2 (Infrastructure).

In the absence of the *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007* (Mining SEPP), underground mining would be prohibited under the Wollongong, Wingecarribee and Wollondilly LEPs in these zones.

However, the Dendrobium CPP and a portion of the Kemira Valley Rail Line are located within Zone IN3 (Heavy Industrial) under the *State Environmental Planning Policy (Three Ports) 2013* (Three Ports SEPP). Port facilities and heavy industries are permissible with consent within this zone.

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 it 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 Wollongong, Wingecarribee and Wollondilly LEPs, the provisions of the Mining SEPP will prevail.

Clauses 6 and 7 of the Mining SEPP lists the types of mining development that 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,*
- (b) *mining carried out:*
 - (i) *on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or*
 - (ii) *on land that is, immediately before the commencement of this clause, the subject of a mining lease under the Mining Act 1992 or a mining licence under the Offshore Minerals Act 1999,*
- ...
- (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), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that notwithstanding any prohibition in the Wollongong, Wingecarribee and Wollondilly LEPs, development for the purposes of the following may be carried out with development consent: underground mining; development on land that was the subject of a mining lease under the *Mining Act, 1992* prior to commencement of the Mining SEPP; and facilities for the processing and transportation of coal.

Accordingly, the NSW IPC or the Minister would not be precluded from granting approval under section 4.38 of the EP&A Act for the Project in respect of those parts of the Project land where mining is prohibited under the Wollongong LEP, Wingecarribee LEP and Wollondilly LEP.

4.3.2 Application of Division 4.7 of Part 4 (State Significant Development) of the Environmental Planning and Assessment Act, 1979

Development Consent for the Project will be sought under the State Significant Development provisions (Division 4.7) under Part 4 of the EP&A Act.

Under section 4.36 of the EP&A Act, a class of development such as mining may be declared as State Significant Development by a SEPP.

Clause 8 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) provides that the development is declared to be State Significant Development 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
- the development is specified in Schedule 1 or 2 (second criterion).

In respect of the first criterion identified above, pursuant to the Wollongong, Wingecarribee, Wollondilly LEPs and clause 7 of the Mining SEPP, the Project is permissible with development consent under Part 4 of the EP&A Act.

In respect of the second criterion identified above, development for the purpose of mining that:

(a) is coal or mineral sands mining ...

is specified in Schedule 1, Item 5 of the State and Regional Development SEPP as being State Significant Development.

The Project is development for the purpose of coal mining (Section 2) and, therefore, is State Significant Development for the purposes of the EP&A Act.

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

4.3.3 Approvals and Authorisations that are not required for State Significant Development

Section 4.41 of the EP&A Act prescribes the authorisations that are not required for a State Significant Development authorised by a development consent 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 *NSW Fisheries Management Act, 1994* (FM Act).
- Division 8 of Part 6, 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* (NPW Act).
- 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*.

4.3.4 Other Approvals and Legislation that must be Applied Consistently for State Significant Development

Section 4.42 of the EP&A Act outlines the authorisations that cannot be refused if they are necessary for the carrying out of an approved State Significant Development under Division 4.7, and provides that those authorisations are to be substantially consistent with the Division 4.7 development consent.

These authorisations are of the following kind:

- An aquaculture permit under section 144 of the FM Act.
- 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 EPL under Chapter 3 of the PoEO Act (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*.

4.3.5 Environmental Impact Statement Requirements for State Significant Development

Section 4.12(8) of the EP&A Act specifies that a Development Application for State Significant Development is to be accompanied by an EIS prepared by, or on behalf of, the applicant, in the form prescribed by the regulations.

Clause 6 of Schedule 2 of the EP&A Regulation describes the required form of an EIS:

An environmental impact statement must contain the following information:

- (a) *the name, address and professional qualifications of the person by whom the statement is prepared,*
- (b) *the name and address of the responsible person,*
- (c) *the address of the land:*
 - (i) *in respect of which the development application is to be made, or*
 - (ii) *on which the activity or infrastructure to which the statement relates is to be carried out,*
- (d) *a description of the development, activity or infrastructure to which the statement relates,*
- (e) *an assessment by the person by whom the statement is prepared of the environmental impact of the development, activity or infrastructure to which the statement relates, dealing with the matters referred to in this Schedule,*
- (f) *a declaration by the person by whom the statement is prepared to the effect that:*
 - (i) *the statement has been prepared in accordance with this Schedule, and*
 - (ii) *the statement contains all available information that is relevant to the environmental assessment of the development, activity or infrastructure to which the statement relates, and*
 - (iii) *that the information contained in the statement is neither false nor misleading.*

This EIS contains the information outlined above, including the address of relevant lands (Attachment 3) and the name, address, professional qualifications and declaration of the person by whom the EIS has been prepared in consideration of the requirements of Schedule 2 of the EP&A Regulation (refer inside front cover of Volume 1).

Clause 7 of Schedule 2 of the EP&A Regulation describes the required content of an EIS. Table 1-4 provides a reconciliation of each requirement in subclause (1) and the relevant section of this EIS where the information is provided.

Subclause (2) of clause 7 of Schedule 2 of the EP&A Regulation indicates that the requirements set out in subclause (1) (Table 1-4) are subject to the environmental assessment requirements that relate to the EIS.

The Project SEARs that set out the environmental assessment requirements in accordance with clause 3 of Schedule 2 of the EP&A Regulation are provided in Attachment 1 and summarised in Table 1-3.

4.3.6 Documents to Accompany Development Application

Subclauses 2(1) to 2(3) of Schedule 1 of the EP&A Regulation describe documentation that is required to accompany a Development Application. This EIS satisfies relevant documentation requirements outlined by these subclauses.

4.3.7 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. Alternatively, clause 49(2) of the EP&A Regulation provides:

Subclause (1) (b) does not require the consent in writing of the owner of the land 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) *by written notice to the owner of the land before the application is made, or*
- (b) *by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.*

For the purposes of clause 49, clause 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 it is carried out on land that is a state conservation area reserved under the National Parks and Wildlife Act 1974, or*

...

The Project is public notification development as it falls within Item 5 of Schedule 1 of the State and Regional Development SEPP (Section 4.3.2). The Development Application will be notified in accordance with clause 49(2) (b) of the EP&A Regulation.

Clause 49(3A) of the EP&A Regulation provides that:

- (3A) *Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.*

There is no land within the Project Development Application Area that is owned by a Local Aboriginal Land Council (LALC) and, therefore, the consent of the NSW Aboriginal Land Council is not required for the Development Application.

The Project would not be carried out on land that is a State Conservation Area (Section 4.5.1); therefore, the consent of the Minister for the Environment is not required with respect to the development application. Consideration of the implications of Project development on land proximal to the State Conservation Area is provided in Section 9.3.1.

4.3.8 Division 7.1 Development Contributions

Planning Agreements

Section 7.4 of the EP&A Act describes voluntary planning agreements that may be entered into between a planning authority and an applicant/developer (including an applicant 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.

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

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

South32 currently finances community projects as part of the Approved Mine, primarily through an annual contribution per saleable tonne of coal, administered by the Dendrobium Community Enhancement Program (DCEP), which would continue for the Project.

Local Infrastructure Contributions

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

Subject to any exclusions or inclusions with respect to sections 7.11 or 7.12 in any Project voluntary planning agreement (refer to above discussion), the IPC or Minister 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.

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.

For the Project, the Minister (or delegate) may impose a condition under section 7.11 or section 7.12 that is not authorised by or determined in accordance with an applicable contributions plan, as long as the consent authority has regard to any relevant contributions plan (as provided by section 7.13(2)).

The Project Development Application area is located within the Wollongong, Wingecarribee and Wollondilly LGAs.

The Wollongong City Council (Wollongong City Council, 2017) and Wollondilly Shire Council (Wollondilly Shire Council, 2011) have section 94 or 94A Contributions Plans that may be potentially applicable to the Project if adopted by the respective councils.

South32 currently finances community projects as part of the Approved Mine, including an annual contribution per saleable tonne of coal to the community (administered by the DCEP), which would continue for the Project.

4.4 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT, 1999

The EPBC Act defines proposals that are 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 the Environment for a determination as to whether or not the action is a controlled action. Matters of national environmental significance include:

- world heritage properties;
- wetlands listed under the Ramsar Convention;
- listed threatened species and ecological communities;

- listed migratory species protected under international agreements;
- nuclear actions;
- the Commonwealth marine environment;
- national heritage places; and
- water resources, in relation to coal seam gas development and large coal mining developments.

The proposed Action to extend underground mining and processing operations at the Dendrobium Mine was referred to the Commonwealth Minister in December 2016 (EPBC 2017/7855) (the proposed Action).

A delegate of the Commonwealth Minister determined on 6 March 2017 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 controlling 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 coal seam gas development and large coal mining developments (sections 24D and 24E).

The delegate of the Commonwealth Minister also determined on 6 March 2017 that the proposed Action is to be assessed under the assessment bilateral agreement with the NSW Government.

The Commonwealth of Australia and the State of NSW Governments signed a bilateral agreement (Bilateral Agreement) in February 2015 that accredits the NSW assessment regime under Part 4 of the EP&A Act for assessment purposes under the EPBC Act.

Clause 3.2 of Schedule 1 of the Bilateral Agreement states:

3.2 Guidelines or Directions

...

- (b) *In addition to standard guidelines and directions, the NSW Minister, the Secretary, the consent authority or the determining authority must issue guidelines to proponents of controlled actions that are designed to ensure that material prepared by the proponent as part of the assessment:*

- (i) *contains an assessment of all impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;*
- (ii) *contains enough information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the controlled action under the EPBC Act; and*
- (iii) *addresses the matters outlined in Schedule 4 of the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth).*

Supplementary SEARs were issued on 9 May 2017 requiring information about the controlled action and its relevant impacts, and the matters outlined in Schedule 4 of the Commonwealth *Environment Protection and Biodiversity Conservation Regulations, 2000* to be addressed in this EIS.

A summary and index indicating where the supplementary SEARs have been addressed in the EIS is provided in Attachment 2.

The Project will be assessed in accordance with the Bilateral Agreement and will require approval under both the EP&A Act and the EPBC Act.

Consideration of the Project against the objects of the EPBC Act is provided in Section 9.3.2.

4.4.1 Environmental Record of the Proponent

The Project would be undertaken in accordance with South32’s Sustainability Policy (South32, 2018) which comprises 10 points as follows:

- *We monitor the external environment for opportunities to invest and develop natural resources that deliver shared value for society;*
- *We work to achieve positive social, environmental and economic outcomes as a result of our decisions;*
- *We commit to respecting human rights in accordance with the UN Guiding Principles on Business and Human Rights in all of our stakeholder relationships. Our approach is guided by international human rights principles included in the Universal Declaration of Human Rights and other core international standards including the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work, the International Council for Mining and Metals Sustainable Development Framework and the Voluntary Principles on Security and Human Rights;*

- *We support employment and community practises which empower people to make choices and have control over their process of development as it affects their lives, beliefs, institutions, well-being and the lands they occupy or otherwise use;*
- *We identify and control risks, and continually improve our management of safety, health, environment and social impacts, through systematic management systems and processes;*
- *We practise responsible stewardship for the commodities we extract as well as the natural resources we consume;*
- *We develop and participate in conservation and rehabilitation activities to ensure ecosystems continue providing value to future generations;*
- *To meet the challenge of climate change, we work to reduce our greenhouse gas emissions. We continually assess our risks and opportunities to protect and create value, and monitor our impact to ensure we do not compromise the ecosystems which provide resilience against climate change for our host communities;*
- *We uphold stringent health, safety, environment, community and governance standards in all jurisdictions in which we operate; and*
- *We publicly report our progress and encourage high standards of transparency and accountability in our business governance, risk and government interactions.*

Greenhouse gas emissions are minimised to reduce South32's contribution to climate change. South32 has a Climate Change Strategy that includes both short-term and long-term emission reduction targets and has considered the potential implications of climate change (Section 9.3.4).

Aware of the sensitive environment in which it operates, South32 has a history of designing its mine plans to avoid significant impacts to key environmental features in the area, such as Avon and Cordeaux Dams, Sandy Creek, Sandy Creek Waterfall and Wongawilli Creek.

An Independent Environmental Audit of the Dendrobium Mine in 2017 (ERM Australia, 2017) concluded: "Overall, conformance was achieved with the audit documents that were reviewed".

South32 undertakes open discussion with the community and other stakeholders on issues directly relating to the mine's operations, environmental performance and community relations, and keeps the community informed on these matters.

Copies of Annual Reviews for the Dendrobium Mine are available on the South32 website:

<https://www.south32.net/what-we-do/places-we-work/illawarra-metallurgical-coal/documents>

Proceedings Under Commonwealth, State or Territory Law

In 2012 civil enforcement proceedings were commenced in the Land and Environment Court against Endeavour Coal Pty Ltd and Illawarra Coal Holdings Pty Ltd. The proceedings related to the alleged discharge of arsenic, zinc, copper, aluminium and nickel into the Georges River from the West Cliff Colliery via Brennans Creek.

The proceedings were discontinued at the initiation of the EPA, and by agreement of the parties on the basis that, in 2013, the EPA issued a licence variation notice that permitted the pollution alleged in the case. Accordingly, no conviction was made against either entity in this case.

In February 2019, Endeavour Coal (a subsidiary of Illawarra Coal Holdings Pty Ltd) was fined by the EPA for an incident that occurred on 18 to 19 October 2018, when a sediment pond at the Appin Colliery was allegedly overdosed with ferric chloride, used to treat and clarify water, and water was subsequently discharged from there into the Georges River. Endeavour Coal subsequently carried out remediation work and has improved its maintenance, monitoring and warning systems.

4.5 OTHER APPLICABLE STATUTORY APPROVALS AND LEGISLATION

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 (e.g. management plans) (Section 4.3);

- approval of the proposed Action (EPBC 2017/7855) under sections 130(1) and 133 of the EPBC Act, and any relevant secondary approvals under the approval conditions (e.g. management plans) (Section 4.4); and
- MOP prepared under the conditions of the mining leases.

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

- variation of the premises and other components of EPL 3241 and EPL 611 under the PoEO Act;
- relevant water access licences, and water supply works and use approvals under the *NSW Water Management Act, 2000* where applicable;
- access consents under the *Water NSW Regulation, 2013*; and
- mining and occupational health and safety related approvals granted by the DRG and WorkCover NSW.

4.5.1 Relevant NSW Legislation

The following NSW Acts may be applicable to the Project:

- *Aboriginal Land Rights Act, 1983*;
- *Biodiversity Conservation Act, 2016*;
- *Biosecurity Act, 2015*;
- *Coal Mine Subsidence Compensation Act, 2017* (CMSC Act);
- *Contaminated Land Management Act, 1997*;
- *Crown Land Management Act, 2016*;
- *Dams Safety Act, 1978*;
- *Dams Safety Act, 2015*;
- *Dangerous Goods (Road and Rail Transport) Act, 2008*;
- *Fisheries Management Act, 1994*;
- *Heritage Act, 1977*;
- *Mining Act, 1992*;
- *National Parks and Wildlife Act, 1974*;
- *Native Title (New South Wales) Act, 1994*;
- *Petroleum (Onshore) Act, 1991*;

- *Pipelines Act, 1967*;
- PoEO Act;
- *Roads Act, 1993*;
- *Threatened Species Conservation Act, 1995* (TSC Act)²;
- *Water Management Act, 2000*;
- *Water NSW Act, 2014*;
- *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 detail on the likely Project requirements under the: *Mining Act, 1992*; PoEO Act; *Roads Act, 1993*; *Water Management Act, 2000*; *Dams Safety Act, 2015* and *National Parks and Wildlife Act, 1974*, are provided in the subsections below.

Mining Act, 1992

The objects of the *Mining Act, 1992* are to encourage and facilitate the discovery and development of mineral resources in NSW, having regard to the need to encourage ESD.

Mining Tenements

Illawarra Coal Holdings is the applicant for the Development Application for the Project.

South32 is also the holder of AUTH 143, AUTH 338, AUTH 374, CCL 768, CCL 724, ML 1510 and ML 1566 for Group 9 minerals (Coal) over all relevant land where mining for coal is proposed to be carried out for the Project. Therefore, there is no impediment under section 380AA of the *Mining Act, 1992* to South32 making the Development Application.

No additional mining tenements would be required for the Project.

² In March 2018, the DPE confirmed that the Project is a 'pending or interim planning application' under the *Biodiversity Conservation (Savings and Transitional) Regulation, 2017*. Although the TSC Act has been repealed, some provisions of the TSC Act that would be in force if that Act had not been repealed (such as assessment guidelines) apply to the Project.

Mining Operations Plan

Under the *Mining Act, 1992*, environmental protection and rehabilitation are regulated by conditions included in all mining leases, including requirements for the submission of a MOP prior to the commencement of operations, and subsequent Annual Reviews.

All mining operations must be carried out in accordance with the MOP, which has been prepared to the satisfaction of the relevant regulatory agency. The MOP describes site activities and the progress toward environmental and rehabilitation outcomes required under mining lease conditions and development consent conditions under the EP&A Act and other approvals.

The MOP, together with environmental conditions of other approvals, forms the basis for ongoing adaptive management of mining operations and their environmental impacts (Department of Planning [DoP], 2008). The MOP must apply best available practice and technology to mine operations, and include strategies to control identified environmental risks (DoP, 2008).

Protection of the Environment Operations Act, 1997

The PoEO Act and the *NSW Protection of the Environment Operations (General) Regulation, 2009* set out the general obligations for environmental protection for development in NSW, which is regulated by the EPA.

Under section 48 of the PoEO Act, it is an offence to carry out a “scheduled activity” without an EPL. Schedule 1 of the PoEO Act lists “scheduled activities” for the purposes of section 48.

Clause 10 of Schedule 1 of the PoEO Act describes “coal works” which is defined as any activity (other than coke production) that involves storing, loading or handling coal (whether at any coal loader, conveyor, washery or reject dump or elsewhere) at an existing coal mine or on a separate coal industry site.

Clause 10(2) provides that a “coal work” is declared to be a scheduled activity if:

- (a) *it has a capacity to handle more than 500 tonnes per day of coal, or*
- (b) *it has a capacity to store more than 5,000 tonnes of coal (not including storage within a closed container or building).*

Clause 28 of Schedule 1 of the PoEO Act describes “mining for coal”, which is defined as the mining, processing or handling of coal at underground mines or open cut mines.

Clause 28(2) provides that “mining for coal” is declared to be a scheduled activity if:

- (a) *it has a capacity to produce more than 500 tonnes of coal per day, or*
- (b) *it has disturbed, is disturbing or will disturb a total surface area of more than 4 hectares of land by:

 - (i) *clearing or excavating, or*
 - (ii) *constructing dams, ponds, drains, roads, railways or conveyors, or*
 - (iii) *storing or depositing overburden or coal (including tailings and chitter).**

Section 45 of the PoEO Act outlines matters to be taken into consideration by the relevant regulatory authority with respect to licensing functions.

The Dendrobium Mine currently operates under EPL 3241 granted under the PoEO Act and the Cordeaux Colliery operates under EPL 611. The Dendrobium CPP operates under EPL 6092 held by BlueScope Steel (AIS) Pty Ltd. The West Cliff Coal Wash Emplacement operates under Bulli Seam Operations EPL 2504. The EPLs contain conditions that relate to emission and discharge limits, environmental monitoring and reporting. If approved, the Project may require a variation of EPL 3241, EPL 611 and/or EPL 2504.

Roads Act, 1993

The Project would involve the construction of an additional access road (Section 3.10.2) and intersection (Section 3.4.5) with Cordeaux Road at the Dendrobium Pit Top, to service new Project parking facilities to be constructed, as well as an associated pedestrian tunnel or crossing proposed to be constructed underneath or across Cordeaux Road. Additionally, it may be necessary to upgrade the Picton Road intersection at the Cordeaux Pit Top based on future traffic levels (Section 6.12).

If the Project is approved, South32 would also apply for necessary consents under section 138 of the *Roads Act, 1993* associated with mining under any public road.

In accordance with section 4.42(1)(f) of the EP&A Act, if the Project is approved, consent under section 138 of the *Roads Act, 1993* cannot be refused, and is to be substantially consistent with the Development Consent granted under Division 4.7 of Part 4 of the EP&A Act.

Water Management Act, 2000

Under section 4.41(1) of the EP&A Act, if the Project is approved as a State Significant Development, water use approvals under section 89, water management work approvals under section 90, or activity approvals (excluding aquifer interference approvals) under section 91 of the *Water Management Act, 2000* would not be required for the Project.

Consideration of the Project against the water management principles and access licence dealing principles under the *Water Management Act, 2000* and a discussion of the access licences required for the Project area provided in Attachment 7.

Appropriate licences under the *Water Management Act, 2000* would be sought and obtained in consultation with Department of Industry (DI) Water.

Dams Safety Act, 2015 and Dams Safety Act, 1978

The *Dams Safety Act, 2015* was assented on 28 September 2015, although some provisions of this Act have not yet commenced. The objects of the *Dams Safety Act, 2015* are to manage matters relating to dams safety, and promote the application of risk management.

The *Dams Safety Act, 1978* continues to regulate the safety of certain dams until the relevant provisions of the *Dams Safety Act, 2015* commence.

The Cordeaux Dam and Avon Dam are “prescribed dams” under the *Dams Safety Act, 1978* and “declared dams” under the *Dams Safety Act, 2015*. Portions of the Project longwall mining area are located within the declared Notification Areas for the Cordeaux Dam and Avon Dam (Figure 3-3).

South32 would comply with any DSC requirements or conditions relating to mining within the Cordeaux Dam and Avon Dam Notification Areas for the Project.

Section 48(4) of the *Dams Safety Act, 2015* requires the following relevant provision:

- (4) *A consent authority must, before granting development consent for the carrying out of any mining operations under the Mining Act 1992 in a notification area:*
 - (a) *refer the application for the development consent to Dams Safety NSW, and*
 - (b) *take into consideration any matters that are raised by Dams Safety NSW in relation to the application within 28 days (or such other period as is agreed between the consent authority and Dams Safety NSW) after the application is referred to Dams Safety NSW.*

Biodiversity Conservation Act, 2016

The *Biodiversity Conservation Act, 2016* (BC Act) was enacted by the NSW Parliament to replace:

- the *Threatened Species Conservation Act, 1995*;
- the *Nature Conservation Trust Act, 2001*; and
- the animal and plant provisions of the *National Parks and Wildlife Act, 1974*.

One of the main purposes served by the BC Act is to prescribe the approach to be followed for conducting assessment of biodiversity for different activities and developments as prescribed in Part 7 of the BC Act.

However, one of the regulations made under the BC Act is the *Biodiversity Conservation (Savings and Transitional) Regulation, 2017* (BC Savings Regulation).

Clause 28 of the BC Savings Regulation states that:

- (1) *The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.*

In March 2018, the DPE confirmed that the Project is a ‘pending or interim planning application’ under the BC Savings Regulation. Although the TSC Act has been repealed, some provisions of the TSC Act that would be in force if that Act had not been repealed (such as assessment guidelines) continue to apply to the Project.

Notwithstanding, to ensure that contemporary threatened species listings and key threatening processes have been considered in the preparation of this EIS, the most recent BC Act listings have been used to evaluate potential Project impacts, where applicable (Sections 6.7 to 6.9 and Appendices D and E).

National Parks and Wildlife Act, 1974

The Illawarra State Recreation Area was reserved under the provisions of sections 37B and 37Q of the *Crown Lands Consolidation Act, 1913* on 4 July 1980³. Within the Development Application Area, the reservation is restricted to a depth of 15.24 m.

The Upper Nepean State Conservation Area was reserved under the provisions of sections 30A(1) and 30A(2) of the *National Parks and Wildlife Act, 1974* on 28 February 2007, restricted to a depth of 50 m.

Although the Project would involve some activities beneath state conservation areas (e.g. continued use of the existing Dendrobium and Kemira Valley Tunnels), the Development Application Area excludes lands that form part of a state conservation area.

Any access to, or activities within, state conservation areas that may be conducted by South32 would be conducted in accordance with any separate licences, leases and/or approvals (e.g. a licence under sections 150 and 151A (a) (viii) of the *National Parks and Wildlife Act, 1974*).

Coal Mine Subsidence Compensation Act, 2017

The CMSC Act commenced on 1 January 2018, and provides a scheme for the provision of compensation for damage caused by subsidence resulting from coal mine operations, and the assessment and management of risks associated with subsidence resulting from coal mine operations.

At all times while the Dendrobium Mine is an active mine, South32 (or the relevant proprietor) would be liable to pay compensation in relation to damage caused by subsidence arising from the Project on improvements or goods under Part 2 of the CMSC Act. Any claims for compensation by another party under the CMSC Act would be lodged with Subsidence Advisory NSW.

³ The *National Parks and Wildlife Amendment Act, 2001* changed the name of the Illawarra State Recreation Area to the Illawarra State Conservation Area.

The Project is not located within a Mine Subsidence District declared under section 20 of the CMSC Act.

4.5.2 Relevant Commonwealth Legislation

The relevance of the EPBC Act to the Project is described in Section 4.4.

The relevance of the *Commonwealth National Greenhouse and Energy Reporting Act, 2007* (NGER Act) and the *Commonwealth Native Title Act, 1993* to the Project are described in the subsections below.

National Greenhouse and Energy Reporting Act, 2007

The NGER Act introduced a single national reporting framework for the reporting and dissemination of corporations' greenhouse gas emissions and energy use. The NGER Act makes registration and reporting mandatory for corporations whose energy production, energy use or greenhouse gas emissions meet specified thresholds.

Section 3 of the NGER Act defines the objects of the Act:

- (1) *The first object of this Act is to introduce a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations to:*
 - (b) *inform government policy formulation and the Australian public; and*
 - (c) *meet Australia's international reporting obligations; and*
 - (d) *assist Commonwealth, State and Territory government programs and activities; and*
 - (e) *avoid the duplication of similar reporting requirements in the States and Territories.*
- (2) *The second object of this Act is to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.*

South32 triggers the NGER Act reporting threshold and, accordingly, reports energy use and greenhouse gas emissions from its activities. This would include the continuation of greenhouse gas emissions from the Dendrobium Mine under the Project.

Native Title Act, 1993

The *Native Title Act, 1993* provides for the recognition and protection of Native Title rights in Australia.

The *Native Title Act, 1993* provides a mechanism to determine whether Native Title exists and identify the rights and interests that comprise that Native Title. The process is designed to ensure that Indigenous people who claim to have an interest in a parcel of land have the opportunity to express this interest formally, and to negotiate with the Government and the applicant about the proposed grant or renewal of a mining tenement, or consent to access Native Title land.

The *Mining Act, 1992* must be administered in accordance with the *Native Title Act, 1993*. The primary effect of the *Native Title Act, 1993* on exploration and mining approvals is to provide Native Title parties with 'Rights to Negotiate' about the grant and some renewals by Governments of exploration and mining titles.

The *Native Title Act, 1993*, where applicable, would be complied with in relation to the renewal of any necessary mining tenements for the Project.

Relevant provisions and objectives of the above SEPPs are considered in Attachment 6.

4.6.2 Local Environmental Plans

The Development Application Area is within the Wollongong, Wingecarribee and Wollondilly LGAs (Figures 1-1a and 1-1b), which are covered by the Wollongong LEP, Wingecarribee LEP and Wollondilly LEP, respectively. Permissibility under the LEPs is addressed in Section 4.3.1.

The aims of the LEPs, permissibility and special provisions are discussed in Attachment 6.

4.6 ENVIRONMENTAL PLANNING INSTRUMENTS

4.6.1 State Environmental Planning Policies

The following SEPPs may potentially be relevant to the Project:

- *State Environmental Planning Policy (State and Regional Development) 2011*;
- Mining SEPP;
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*;
- *State Environmental Planning Policy (Infrastructure) 2007*;
- Three Ports SEPP;
- *State Environmental Planning Policy No. 33 (Hazardous and Offensive Development)* (SEPP 33);
- *State Environmental Planning Policy No. 44 - Koala Habitat Protection* (SEPP 44); and
- *State Environmental Planning Policy No. 55 (Remediation of Land)* (SEPP 55).