



ATTACHMENT 7

Consideration of Environmental
Planning Instruments

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A7 CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

As discussed in Section 5, in accordance with section 5.22(2) of the New South Wales (NSW) *Environmental Planning & Assessment Act 1979* (EP&A Act), Environmental Planning Instruments (EPIs) do not apply to State Significant Infrastructure (SSI), beyond the declaration of the Dendrobium Mine Extension Project (the Project) as SSI.

Accordingly, the provisions of Part 4 of the EP&A Act do not apply, and the Project is not prohibited under any EPIs.

Notwithstanding, this Attachment provides further discussion on the requirements and application of State Environmental Planning Policies (SEPPs), the *Wollongong Local Environmental Plan 2009* (Wollongong LEP), the *Wingecarribee Local Environmental Plan 2010* (Wingecarribee LEP) and the *Wollondilly Local Environmental Plan 2011* (Wollondilly LEP) that would have been relevant to the Dendrobium Mine Extension Project (the Project), but for its SSI declaration by the Minister for Planning (the Minister) (Section 5).

References to Sections 1 to 8 in this Attachment are references to the Sections in the Main Report of the Environmental Impact Statement (EIS). References to Appendices A to S in this Attachment are references to the Appendices of the EIS. Internal references within this Attachment are prefixed with "A7".

A7.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AND ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

Objects of the Environmental Planning and Assessment Act 1979

Section 1.3 outlines the objects of the EP&A Act, with the following objects of particular relevance to the Project:

- Promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

- Facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.
- Promote the orderly and economic use and development of land.
- Protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.
- Promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).
- Promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.
- Provide increased opportunity for community participation in environmental planning and assessment.

The analysis conducted in this EIS has found that the proposed Project is generally consistent with the objects of the EP&A Act. Further discussion of the Project's alignment with these objectives is presented in Section 8.

Mandatory Considerations

Under section 5.22(2) of the EP&A Act, EPIs do not apply to SSI, beyond the declaration of the Project as SSI.

However, relevant preconditions, concurrence or consultation requirements, and mandatory considerations in EPIs, that would have applied to the Project but for its SSI declaration, are described in the following sub-sections.

Summary tables are also provided in Section 5.

A7.2 STATE ENVIRONMENTAL PLANNING POLICIES

A7.2.1 State Environmental Planning Policy (Planning Systems) 2021

The *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP) is relevant to the Project's SSI declaration.

Clause 2.1(b) of the Planning Systems SEPP outlines the aims of the SEPP, including the following of relevance to the Project:

- (b) to identify development that is State significant infrastructure and critical State significant infrastructure,*

Clause 2.14 of the Planning Systems SEPP provides that a development is declared SSI for the purposes of the EP&A Act if it is specified in Schedule 4 of the Planning Systems SEPP.

In December 2021, the Minister declared the Project to be SSI. This declaration came into effect in December 2021 and is included in Schedule 4 of the Planning Systems SEPP (Section 5).

A7.2.2 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 3 (Hazardous and Offensive Development)

Chapter 3 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) applies to the whole of NSW. The Resilience and Hazards SEPP would have been relevant to the Project, but for its SSI declaration.

Clause 3.1 outlines the aims of Resilience and Hazards SEPP, of which the following would have been relevant to the Project, but for its SSI declaration:

- (a) to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*
- ...
- (d) to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*
- (e) to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and*
- ...

Clause 3.11 of Resilience and Hazards SEPP requires persons proposing to carry out development for the purposes of potentially hazardous industry to prepare a Preliminary Hazard Analysis (PHA) in accordance with the current circulars or guidelines published by the NSW Department of Planning (DoP) (now the NSW Department of Planning and Environment [DPE]) and to submit the analysis with the Development Application.

Clause 3.12 of Resilience and Hazards SEPP requires that in determining an application to carry out development for the purposes of a potentially hazardous industry, the consent authority must consider:

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.*

Notwithstanding that Resilience and Hazards SEPP does not apply to the Project, the Secretary's Environmental Assessment Requirements specified the Resilience and Hazards SEPP is considered as part of the EIS (Appendix N). A PHA has been prepared in accordance with the general principles of risk evaluation and assessment outlined in *Multi-Level Risk Assessment* (Department of Planning and Infrastructure, 2011) and the Resilience and Hazards SEPP.

In addition, the PHA considers the qualitative criteria provided in *Hazardous Industry Planning Advisory Paper No. 4: Risk Criteria for Land Use Safety Planning* (DoP, 2011a) and has been documented in general accordance with *Hazardous Industry Planning Advisory Paper No. 6: Hazard Analysis* (DoP, 2011b).

Consultation has been undertaken with public authorities during the preparation of this EIS, as described in Section 6.

Project alternatives (including the Project location, scale of the mining and the mining method employed) are discussed in Section 8 and Attachment 11.

The Project Area includes land zoned under the Wollongong LEP (Section A7.3):

- Zone RU1 (Primary Production);
- Zone RU2 (Rural Landscape);
- Zone E1 (National Parks & Nature Reserves)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 LEP and Wollondilly LEP as (Sections A7.4 and A7.5):

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

In addition to the above, the Dendrobium Coal Preparation Plant (CPP) and a portion of the Kemira Valley Rail Line are located within Zone IN3 (Heavy Industrial) under Chapter 5 of *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP).

The Project comprises a combination of ongoing use of existing infrastructure and a new underground mining domain (with limited surface infrastructure). Given the history of coexistence of underground mining with surrounding land uses in the Southern Coalfield, it is considered that the Project would not affect surrounding land or permissible uses of surrounding land.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Chapter 4 (Remediation of Land)

The Chapter 4 of the Resilience and Hazards SEPP applies to the whole of NSW and is concerned with the remediation of contaminated land. It sets out matters relating to contaminated land that a consent authority must consider in determining an application for Development Consent.

The Resilience and Hazards SEPP would have been relevant to the Project, but for its SSI declaration.

“Contaminated land” in the Resilience and Hazards SEPP has the same meaning as it has in Schedule 6, Clause 1 of the EP&A Act:

contaminated land means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Clause 4.6(1) of the Resilience and Hazards SEPP provides that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) 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, and
- (c) 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.

Clause 4.6 of the Resilience and Hazards SEPP further provides:

- ...
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), 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.

¹ The Infrastructure Application Area includes depth restrictions to avoid development in the Upper Nepean and Illawarra Escarpment State Conservation Areas (Section A7.2.3).

- (3) *The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (4) *The land concerned is–*
- (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*

Clause 4.6(2) provides that before a consent authority determines an application for Development Consent, a “preliminary investigation” is required where:

- the application for consent is to carry out development that would involve a “change of use”; and
- that “change of use” is relevant to certain land specified in clause 4.6(4).

The certain land specified in clause 4.6(4) on which the “change of use” must relate is either:

- land that is an “investigation area” – defined in the Resilience and Hazards SEPP as land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the *NSW Contaminated Land Management Act 1997*; or
- land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines (being *Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land* [Department of Urban Affairs and Planning and Environment Protection Agency, 1998]) is being, or is known to have been, carried out.

If the Resilience and Hazards SEPP did apply to the Project, the parts of the Project described in Section 4 that would involve a change of use under the Resilience and Hazards SEPP are the proposed underground mining Area 5 as well as the development of surface infrastructure, including a proposed carpark for the Dendrobium Pit Top, temporary construction carpark along Cordeaux Dam Access Road, proposed ETL along Fire Trail 6 and proposed water supply infrastructure (Figure 4-6) (Appendix O).

JBS&G (2022) (Appendix O) completed a Land Contamination Assessment in accordance with the Resilience and Hazards SEPP. This investigation included a desktop review and site inspection. It is noted that, although proposed underground mining in Area 5 constitutes a change of use under the Resilience and Hazards SEPP, contamination of these lands is not a potential constraint (Appendix O). In addition, no activities listed in Table 1 of the contaminated land planning guideline are being, or are known to have been, carried out in the Project underground mining area (JBS&G, 2022).

JBS&G (2022) conducted a preliminary investigation of the proposed carpark extension area in accordance with the Resilience and Hazards SEPP. The findings of the land contamination review and preliminary investigation are provided in Appendix O and summarised in Section 7.4.

JBS&G (2022) concluded that there is low potential for the proposed carpark site to have become contaminated as a result of historical and/or current site uses, and no contamination has been identified that would preclude the development of the Project.

Work, health, safety and environmental management controls (including protocols to manage unexpected finds) would be implemented by IMC during any future ground disturbance works (Section 7.3). Land contamination management measures, including post-mining investigation and remediation measures, are described in Section 7 and Attachment 9.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

A7.2.3 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3 (Koala Habitat Protection 2020) and Chapter 4 (Koala Habitat Protection 2021)

The *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (Biodiversity and Conservation SEPP) commenced on 1 March 2022 and is currently in force.

Chapter 4 of the Biodiversity and Conservation SEPP applies to certain Local Government Areas (LGAs) (including Wollongong, Wingecarribee and Wollondilly), however, excludes land zoned as RU1, RU2 and RU3 (outside of the Sydney Metropolitan Area and the Central Coast) of which Chapter 3 of the Biodiversity and Conservation SEPP continues to apply.

The Biodiversity and Conservation SEPP requires the councils in certain LGAs (including Wollongong, Wingecarribee and Wollondilly) to consider whether the land that is the subject of the Development Application comprises “core koala habitat”.

Core koala habitat is defined in the Biodiversity and Conservation SEPP as:

- (a) *an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or*
- (b) *an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.*

Clause 4.9 of the Biodiversity and Conservation SEPP requires:

- (2) *Before a council may grant consent to a development application for consent to carry out development on the land, the council must assess whether the development is likely to have any impact on koalas or koala habitat.*
- (3) *If the council is satisfied that the development is likely to have low or no impact on koalas or koala habitat, the council may grant consent to the development application.*
- (4) *If the council is satisfied that the development is likely to have a higher level of impact on koalas or koala habitat, the council must, in deciding whether to grant consent to the development application, take into account a koala assessment report for the development.*

As the majority of the approved Dendrobium Mine underground mining area and entirety of the Project underground mining area are zoned E2, the Biodiversity and Conservation SEPP would have applied to the Project, but for its SSI declaration.

Since the Project is SSI under Part 5 of the EP&A Act, SEPPs do not apply, beyond the declaration of the Project as SSI, and the Minister is the approval authority (Section 5.2.2) rather than the Council.

Notwithstanding, an assessment of koala habitat has been undertaken (Section 7.9 and Appendix D).

Extensive surveys did not identify any koalas within the proposed ventilation shaft site for the Project (Appendix D). Koalas are known to occur within Shale Sandstone Transition Forest Threatened Ecological Community approximately 450 m north of proposed ventilation shaft site; however, the Project would avoid direct disturbance of these areas (Appendix D).

The proposed ventilation shaft site is considered to be low quality habitat based on the lack of koala use in the landscape position and prevailing soil types; however, on a conservative basis, the site is considered important habitat and potential impacts would be offset accordingly (Appendix D).

Furthermore, large areas of suitable habitat, including areas containing higher quality foraging habitat, would continue to provide habitat for koalas and other threatened fauna. Movement across the landscape may be altered, but the Project would not hinder movement between sub-populations that would impact upon local or bioregional persistence (Appendix D).

A Koala Plan of Management would also be prepared for the Project to provide further safeguards to minimise impacts to the Koala.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Chapter 8 (Sydney Drinking Water Catchment)

Chapter 8 of the Biodiversity and Conservation SEPP applies to all land within the Sydney drinking water catchment.

Chapter 8 of the Biodiversity and Conservation SEPP would have been relevant to the Project, but for its SSI declaration.

Clause 8.1 sets out the aims of Chapter 8 of the Biodiversity and Conservation SEPP of which the following would have been relevant to the Project but for its SSI declaration as follows:

- a) *to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and*
- b) *to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and*
- c) *to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.*

Clause 8.7 of the Biodiversity and Conservation SEPP relevantly provides:

- (1) *Any development or activity proposed to be carried out on land to which this Policy applies should incorporate Water NSW's current recommended practices and standards.*
- (2) *If any development or activity does not incorporate Water NSW's current recommended practices and standards, the development or activity should demonstrate to the satisfaction of the consent authority or determining authority how the practices and performance standards proposed to be adopted will achieve outcomes not less than those achieved by Water NSW's current recommended practices and standards.*

Clause 8.8 of the Biodiversity and Conservation SEPP relevantly provides:

- (1) *A consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.*

...

Clause 8.9 of the Biodiversity and Conservation SEPP relevantly provides:

- (1) *A consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment except with the concurrence of the Regulatory Authority.*

(2) *For the purposes of section 3.18 (3) of the Act, the matters that are to be taken into consideration by the Regulatory Authority in deciding whether to grant concurrence are:*

- (a) *whether the development incorporates Water NSW's current recommended practices and standards, and*
- (b) *if the development does not incorporate those practices and standards, whether the alternative practices that relate to the protection of water quality that have been adopted in relation to the development will achieve outcomes not less than those achieved by Water NSW's current recommended practices and standards, and*
- (c) *whether the development would have a neutral or beneficial effect on water quality.*

Clause 8.10 of the Biodiversity and Conservation SEPP also relevantly provides:

the carrying out of the proposed development will have a neutral or beneficial effect on water quality if it will have the same or a lesser adverse impact on water quality when compared to the adverse impact that the continuing development would have if it were extended or expanded under similar conditions as the existing development consent.

Notwithstanding that Chapter 8 of the Biodiversity and Conservation SEPP does not apply to the Project, the Project would incorporate a number of measures that achieve a neutral or beneficial effect on water quality in the Sydney drinking water catchment (Section 7.6 and 8).

It is noted that the NSW Government in their "whole-of-government" Assessment Report for the previous application concluded that the previous application satisfied NorBE (i.e. accepted the previous project would have a neutral or beneficial effect to water quality in the catchment [including post-mining]).

In addition, the Independent Planning Commission in their Statement of Reasons for the previous application stated:

Accordingly, the Commission finds that the NorBE test in the Drinking Water SEPP is satisfied with respect to the Project...

Consistent with WaterNSW's current recommended practices and standards, sediment control at the new ventilation shaft has been designed to be consistent with *Managing Urban Stormwater Soils and Construction – Volume 2E – Mines and Quarries* (Department of Environment and Climate Change, 2008) and potential water quality impacts have been assessed using the *Model for Urban Stormwater Improvement Conceptualisation* (MUSIC) (Appendix C). Information provided in this EIS has considered WaterNSW's (2020) *Developments in the Sydney Drinking Water Catchment – Water Quality Information Requirements*.

The Project mine plan would also include the following:

- minimum longwall mining setback distance of 1,000 m from dam walls;
- minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;
- longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
- no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
- avoidance of longwall mining beneath mapped key stream features identified during site investigations.

The Project would not have a significant adverse impact on the quality or yield of water in the Sydney drinking water catchment Special Area storages and would incorporate suitable water offset measures, where applicable (Sections 7.5 and 7.6).

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

A7.2.4 State Environmental Planning Policy (Resources and Energy) 2021

The *State Environmental Planning Policy (Resources and Energy) 2021* (Resources and Energy SEPP) is applicable to the whole of NSW.

The Resources and Energy SEPP would have been relevant to the Project, but for its SSI declaration.

Clause 2.1 sets out the aims of the Resources and Energy SEPP, of which the following would have been relevant to the Project but for its SSI declaration, as follows:

- (a) *to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
- (b) *to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*
- (c) *to promote the development of significant mineral resources, and*
- (d) *to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources, and*
- (e) *to establish a gateway assessment process for certain mining and petroleum (oil and gas) development–*
 - (i) *to recognise the importance of agricultural resources, and*
 - (ii) *to ensure protection of strategic agricultural land and water measures, and*
 - (iii) *to ensure a balanced use of land by potentially competing industries, and*
 - (iv) *to provide for the sustainable growth of mining, petroleum and agricultural industries.*

Parts 2.2 to 2.4 of the Resources and Energy SEPP seek to achieve the aims outlined in clause 2.1. Clauses that would have been relevant to the Project but for its SSI declaration, are addressed below.

Part 2.2 (Permissible Development)

Clause 2.9(1) of the Resources and Energy SEPP states that development for any of the following purposes may be carried out only with Development Consent:

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

The Project comprises underground mining and associated processing and transportation of coal (Section 2.2.1) and requires Infrastructure Approval under Division 5.2 of Part 5 of the EP&A Act (rather than Development Consent under Part 4 of the EP&A Act).

Descriptions of the relevant LEP land use zones and the applicability of the Resources and Energy SEPP to Project permissibility (where relevant), that would have been relevant to the Project but for its SSI declaration, are provided in Sections A7.3 to A7.5.

Part 2.3 (Matters for Consideration)

Part 2.3 of the Resources and Energy SEPP provides matters for consideration for Development Applications.

Clause 2.16

Section 4.15(2) of the EP&A Act, which would have been relevant to the Project but for its SSI declaration, prescribes:

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority–

- (a) is not entitled to take those standards into further consideration in determining the development application, and*
- (b) must not refuse the application on the ground that the development does not comply with those standards, and*
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,*

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

Clause 2.16 identifies non-discretionary development standards for the purposes of section 4.15(2) of the EP&A Act in relation to the carrying out of development for the purposes of mining.

Table A7-1 provides each of the non-discretionary development standards listed in clause 2.16 of the Resources and Energy SEPP and a summary of the conclusions of this EIS with respect to the Project.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Clause 2.17

Clause 2.17 of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, requires that, before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

(a) consider–

- (i) the existing uses and approved uses of land in the vicinity of the development, and*
- (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
- (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*
- (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and*
- (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).*

The existing Dendrobium Pit Top and Kemira Valley Coal Loading Facility are located proximal to the town of Mount Kembla, while the Cordeaux Pit Top is located in a remote bushland setting. The existing Dendrobium CPP is located within the Port Kembla industrial precinct.

The existing underground mine development areas and the proposed Project mining extension encompass various other land uses in the vicinity of the Project, including infrastructure, water supply catchment and Nature Conservation Areas (Sections 3 and 4).

The West Cliff Stage 3 Coal Wash Emplacement Area is located proximal to the Appin township, and other land uses in the vicinity include water supply catchment, National Park and State Conservation Areas.

Table A7-1
Clause 2.16 Non-Discretionary Development Standards for Mining
(Not Applicable to the Project Due to its SSI Declaration)

Subclause of Clause 2.16	Compliance of the Project
(3) Cumulative noise level <i>The development does not result in a cumulative amenity noise level greater than the recommended amenity noise levels, as determined in accordance with Table 2.2 of the Noise Policy for Industry, for residences that are private dwellings.</i>	The cumulative noise levels from the concurrent operation of the Project would comply with the recommended acceptable amenity criterion outlined in Table 2.2 of the <i>Noise Policy for Industry</i> at all relevant receivers (Section 7.13 and Appendix J).
(4) Cumulative air quality level <i>The development does not result in a cumulative annual average level greater than 25 µg/m³ of PM₁₀ or 8 µg/m³ of PM_{2.5} for private dwellings.</i>	The Project would not result in any additional exceedances of the cumulative annual average level greater than 25 micrograms per cubic metre (µg/m ³) of PM ₁₀ or 8 µg/m ³ of PM _{2.5} at any privately-owned dwellings when considered cumulatively with existing background sources (Section 7.17 and Appendix I).
(5) Airblast overpressure <i>Airblast overpressure caused by the development does not exceed–</i> (a) 120 dB (Lin Peak) at any time, and (b) 115 dB (Lin Peak) for more than 5% of the total number of blasts over any period of 12 months, <i>measured at any private dwelling or sensitive receiver.</i>	The Project may require small blasts in the underground working to allow mining to continue through igneous dykes or other geological features. Some very small and highly controlled blasts may also be undertaken during specific surface construction activities. Airblast overpressure caused by the Project would not exceed the relevant criteria as measured at any privately-owned dwelling or sensitive receiver (Section 7.16 and Appendix J).
(6) Ground vibration <i>Ground vibration caused by the development does not exceed–</i> (a) 10 mm/sec (peak particle velocity) at any time, and (b) 5 mm/sec (peak particle velocity) for more than 5% of the total number of blasts over any period of 12 months, <i>measured at any private dwelling or sensitive receiver.</i>	The Project may require small blasts in the underground working to allow mining to continue through igneous dykes or other geological features. Some very small and highly controlled blasts may also be undertaken during specific surface construction activities. Ground vibration caused by the Project would not exceed the relevant criteria as measured at any privately-owned dwelling or sensitive receiver (Section 7.16 and Appendix J).
(7) Aquifer interference <i>Any interference with an aquifer caused by the development does not exceed the respective water table, water pressure and water quality requirements specified for item 1 in columns 2, 3 and 4 of Table 1 of the Aquifer Interference Policy for each relevant water source listed in column 1 of that Table.</i>	The Project would have “minimal impact” (as defined by the Aquifer Interference Policy) to the water table, water pressure and water quality requirements for the relevant ‘highly productive’ water source (Appendix B).

The potential impacts of the Project on buildings and infrastructure as a result of mine subsidence (including potential impacts on heritage values, where relevant) are described in Sections 7.3 and 7.11.

The Project is not located within a Mine Subsidence District declared under section 20 of the *Coal Mine Subsidence Compensation Act 2017*. Potential impacts on other infrastructure and proposed mitigation and management processes are described in Appendix A and Section 7.3.

Consideration of the potential noise, air quality, biodiversity, and road transport impacts have been assessed for the Project and have concluded that there would be no significant incremental impacts on adjoining land uses in the vicinity of the Project surface installations (Appendices D, H, I and J).

The Project would not have a significant adverse impact on the quality or yield of water in the Metropolitan Special Area storages, or on the nature conservation values of these protected areas (the Project would also incorporate suitable offset measures, where applicable) (Sections 7.5 to 7.9).

The Project mine plan would also include the following:

- minimum longwall mining setback distance of 1,000 m from dam walls;
- minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;
- longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
- no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
- avoidance of longwall mining beneath mapped key stream features identified during site investigations.

Although the Project would involve some activities beneath State Conservation Areas, the Infrastructure Application Area excludes land that forms part of a State Conservation Area. The Project is, therefore, not considered to be incompatible with these existing land uses (Section 7.4).

The development of the Project would result in significant socio-economic benefits to the regional economy and the State of NSW (Section 8).

Additionally, a Rehabilitation strategy and Mine Closure Addendum has been prepared by IMC for the Project (Attachment 9). The content of this document would inform the rehabilitation of the Project and closure of the Dendrobium Mine such that any potential incompatibility of the Project with current and future land uses in the area would be minimised.

IMC would, where practicable, implement a range of measures to avoid or minimise incompatibility of the Project with existing and future land uses in the Project area (Sections 7 and 8).

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Clause 2.19

Clause 2.19 of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, outlines considerations for an application for consent for development in the vicinity of an existing mine, petroleum production facility or extractive industry.

The Project underground mining area does not overlap with any other mineral or petroleum tenements or other extractive industry. Therefore, the Project would not have a significant impact on current or reasonably foreseeable extraction or recovery of minerals, petroleum or extractive materials.

Clause 2.20

Clause 2.20(1) of the Resources and Energy SEPP, which would have been relevant to the Project, but for its SSI declaration, requires that, before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

- that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,*
- that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,*
- that greenhouse gas emissions are minimised to the greatest extent practicable.*

In addition, clause 2.20(2), which would have been relevant to the Project but for its SSI declaration, requires that, without limiting subclause (1), in determining a Development Application for mining:

... the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.

The potential impacts of the Project on groundwater and surface water resources are discussed in Sections 7.5 and 7.6 and Appendices B and C, respectively. The Project mine plan would also include the following:

- minimum longwall mining setback distance of 1,000 m from dam walls;
- minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;
- longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
- no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
- avoidance of longwall mining beneath mapped key stream features identified during site investigations.

The Project would not have a significant adverse impact on the quality or yield of water in the Metropolitan Special Area storages and would incorporate suitable offset measures, where applicable (Sections 7.5 and 7.6).

The potential impacts of the Project on threatened species and biodiversity are described in Sections 7.7 to 7.9, and Appendices D and E. The Project would include a proposal for offsetting unavoidable residual impacts on ecology consistent with the *Biodiversity Conservation Act 2016* (BC Act) requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (NSW Office of Environment and Heritage [OEH], 2016).

It is noted, that under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW.

Project greenhouse gas emissions calculations are provided in Section 7.21 and Appendix I, and further analysis of the Project's greenhouse gas emissions is provided in Appendix R. Greenhouse gas abatement measures and relevant state or national policies, programs and guidelines are described in Sections 7.21, 8.3 and Appendix R.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Clause 2.21

Clause 2.21 of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, requires that:

- (1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.*
- (2) *Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.*
- (3) *The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.*

The proposed Project underground mining operations would use established longwall mining methods. The Project longwall layout and dimensions have been designed to target the high-quality metallurgical coal resource and maximise resource recovery efficiency while addressing the Independent Planning Commission's concerns on the previous application.

In addition, the Project would include upgrades to existing infrastructure (including the Dendrobium Pit Top and Kemira Valley Coal Loading Facility) to provide for ongoing efficient recovery and transportation of saleable coal. Coal wash would also continue to be transported for emplacement at the West Cliff Coal Wash Emplacement Area, supplied to customers to be recycled for engineering purposes (e.g. civil construction fill) or for other beneficial purposes (Section 4.8).

IMC has presented Project description information, mine layout plans and other information to the NSW Department of Mining, Exploration and Geoscience (within the Department of Regional NSW) during the development of this EIS (Section 5.2.1).

It is in the financial interest of IMC to maximise the efficiency and long-term value of underground mining operations and coal production, and to minimise the generation and emplacement of coal wash.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Clause 2.22

Clause 2.22(1), which would have been relevant to the Project but for its SSI declaration, requires that, before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following:

- (a) *require that some or all of the transport of materials in connection with the development is not to be by public road,*
- (b) *limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,*
- (c) *require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.*

Run-of-mine (ROM) coal is transported from the Kemira Valley Coal Loading Facility to the Dendrobium CPP, via the Kemira Valley Rail Line. Coal wash from the Dendrobium CPP would continue to be transported to the West Cliff Coal Wash Emplacement Area² and to customers for beneficial use via the public road network (Section 4.8).

Road movements for the construction and operational workforce and deliveries would also be associated with the Project.

Potential impacts of the road movements associated with the Project are assessed and described in Section 7.12 and Appendix H.

The Road Transport Assessment concluded that, subject to the proposed mitigation measures, no significant impacts on the performance capacity, efficiency and safety of the road network are expected to arise as a result of the Project (Appendix H).

In accordance with Condition 25 of Schedule 4 of the existing Dendrobium Mine Development Consent (DA 60-03-2001), IMC implements a Traffic Management Plan, including a Drivers' Code of Conduct, across its relevant operations. The purpose of this plan is to specify requirements to minimise potential impacts of traffic on the wider community (including near Mount Kembla public school and day-care) and maintain road safety (e.g. through travel time restrictions and behaviour requirements). IMC employees as well as contractor staff would be required to continue to observe the Drivers' Code of Conduct as a component of the Project, and the existing Traffic Management Plan would be revised if required, and implemented for the Project.

Clause 2.22(2) of the Resources and Energy SEPP, which would have been relevant to the Project, but for its SSI declaration, provides that, if the consent authority considers the development involves the transport of materials on a public road, the consent authority must, within seven days after receiving the Development Application, provide a copy of the application to each roads authority for the road, and Transport for NSW (TfNSW) (if it is not a roads authority for the road).

In addition, clause 2.22(3) of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, requires that the consent authority:

- (a) *must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application, and*

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

² For the majority of the Project, this would occur in backloaded trucks after they have hauled coal from Appin Mine to the Port Kembla industrial precinct, as was assessed and approved via Project Approval 08_0150.

Clause 2.23

Clause 2.23 of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, outlines various rehabilitation requirements. Clause 2.23(1) requires that, before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development.

Clause 2.23(2), which would have been relevant to the Project but for its SSI declaration, provides that, in particular, the consent authority must consider whether conditions of the consent should:

- (a) *require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or*
- (b) *require waste generated by the development or the rehabilitation to be dealt with appropriately, or*
- (c) *require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under clause 3 of Schedule 6 to the Act and the Contaminated Land Management Act 1997), or*
- (d) *require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.*

A Rehabilitation Strategy and Mine Closure Addendum has been prepared for the Project (Attachment 9). The content of this document would inform the development of subsequent Rehabilitation Management Plans (formerly Mining Operations Plan), should the Project be approved (Section A9.2).

The proposed management of coal wash is discussed in Section 4.8 and the management of other wastes is discussed in Section 4.11.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Part 2.4 (Mining and Petroleum Development on Strategic Agricultural Land)

Under Part 2.4 of the Resources and Energy SEPP, which would have been relevant to the Project but for its SSI declaration, “mining or petroleum development” means:

- (a) *development specified in clause 5 (Mining) of Schedule 1 to State Environmental Planning Policy (State and Regional Development) 2011, but only if–*
 - (i) *a mining lease under the Mining Act 1992 is required to be issued to enable the development to be carried out because–*
 - (A) *the development is proposed to be carried out outside the mining area of an existing mining lease, or*
 - (B) *there is no current mining lease in relation to the proposed development, or*
 - (ii) *the development is for the purposes of extracting a bulk sample as part of resource appraisal or a trial mine comprising the extraction of more than 20,000 tonnes of coal or of any mineral ore, or*

Mining activities for the Project would be carried out within existing mining leases (CCL 768, ML 1510 and ML 1566) and no mining leases are required to be issued to enable the Project to be carried out. Therefore, the proposed development is not “mining or petroleum development” for the purpose of Part 2.4 and does not require a gateway certificate or site verification certificate under that Part, irrespective of its SSI declaration.

A7.2.5 State Environmental Planning Policy (Transport and Infrastructure) 2021

Chapter 2 (Infrastructure)

The *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP) applies to the whole of NSW and includes provisions for consultation with relevant public authorities about certain development during the assessment process prior to development commencing.

The Transport and Infrastructure SEPP would have been relevant to the Project, but for its SSI declaration.

Electricity Transmission and Distribution Networks

Subdivision 2 of Division 5 of Part 3 of the Transport and Infrastructure SEPP, which would have been relevant to the Project but for its SSI declaration, relates to developments that are likely to affect an electricity transmission or distribution network.

Clause 2.48 of the Transport and Infrastructure SEPP, relevantly provides:

- (1) This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following–*
 - (a) the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) development carried out–*
 - (i) within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) immediately adjacent to an electricity substation, or*
 - (iii) within 5m of an exposed overhead electricity power line,*

...

- (2) Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must–*
 - (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
 - (b) take into consideration any response to the notice that is received within 21 days after the notice is given.*

The Endeavour Energy high voltage distribution network would continue to supply most of the electricity requirements of the Project.

Electricity for the Project underground mining operations would be distributed via the existing substation located adjacent to the Kemira Valley Coal Loading Facility.

Electricity would be reticulated to the underground mining operations through cables running through underground roadways (e.g. along the coal conveyor route).

Construction power supply for Shaft Site No. 5A would be via a new 33 kV ETL proposed along Fire Trail 6 (primarily within existing disturbed areas) connecting the site to the existing Endeavour Energy 33kV distribution network.

Following construction of Shaft Site No. 5A, the ETL would be upgraded (if required) for use as operational power supply for Shaft Site No. 5A.

As the Project progresses, additional powerlines and/or substations (e.g. down-hole electricity supply to advancing longwall operation and surface facilities) and upgrades to existing powerlines would be required, and may be subject to separate approvals through the relevant electricity supply authority.

Subsidence impacts on the existing electricity distribution infrastructure, associated with the Project, are not anticipated to be experienced due to the distance from Area 5.

Consultation has been conducted with Endeavour Energy (the relevant electricity supply authority) regarding the Project (Section 6). Further consultation with Endeavour Energy would be conducted during the detailed design phase of the Project, if required.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Railways and Rail Corridors

Subdivision 2 of Division 15, Part 2.3 of the Transport and Infrastructure SEPP, which would have been relevant to the Project but for its SSI declaration, sets out provisions for development in relation to rail corridors.

Clause 2.98 of the Transport and Infrastructure SEPP relevantly provides:

- (1) This section applies to development (other than development to which section 2.100 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land–*
 - (a) within, below or above a rail corridor, or*
 - (b) within 25m (measured horizontally) of a rail corridor, or*

- (c) *within 25m (measured horizontally) of the ground directly below a rail corridor, or*
- (d) *within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
- (2) *Before determining a development application for development to which this section applies, the consent authority must–*
 - (a) *within 7 days after the application is made, give written notice of the application to the rail authority for the rail corridor, and*
 - (b) *take into consideration–*
 - (i) *any response to the notice that is received within 21 days after the notice is given, and*
 - (ii) *any guidelines issued by the Secretary for the purposes of this section and published in the Gazette.*
- (3) *Subject to subsection (5), the consent authority must not grant consent to development to which this section applies without the concurrence of the rail authority for the rail corridor to which the development application relates.*
- ...
- (5) *The consent authority may grant consent to development to which this section applies without the concurrence of the rail authority concerned if–*
 - (a) *the rail corridor is owned by or vested in ARTC or is the subject of an ARTC arrangement, or*
 - (b) *in any other case, 21 days have passed since the consent authority gave notice under subsection (2)(a) and the rail authority has not granted or refused to grant concurrence.*

The Kemira Valley Rail Line is privately owned, and does not fall within the definition of a “rail corridor” under clause 2.90 of the Infrastructure SEPP.

The abandoned Maldon-Dombarton Rail Corridor crosses proposed underground mining Area 5. Construction of the rail corridor was suspended in 1988; however, there is potential for development to recommence in the future. Owned by the ARTC (the relevant rail authority), the Maldon-Dombarton Rail Corridor is defined as a “rail corridor” under the Transport and Infrastructure SEPP.

Potential impacts to the Maldon-Dombarton Rail Corridor due to subsidence have been assessed in Appendix A.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Chapter 4 (Three Ports—Port Botany, Port Kembla and Newcastle)

Chapter 4 of the Transport and Infrastructure SEPP would have applied to the Dendrobium CPP and a portion of the Kemira Valley Rail Line, located within Zone IN3 (Heavy Industrial), but for its SSI declaration.

Objectives

Clause 5.1 of the Transport and Infrastructure SEPP outlines the aims of the SEPP, that would have been relevant to the Project, but for its SSI declaration:

- (a) *to provide a consistent planning regime for the development and delivery of infrastructure on land in Port Botany, Port Kembla and the Port of Newcastle,*
- (b) *to allow the efficient development, re-development and protection of land at Port Botany, Port Kembla and the Port of Newcastle for port purposes,*
- (c) *to identify certain development within the Lease Area as exempt development or complying development,*
- (d) *to specify matters to be considered in determining whether to grant consent to development adjacent to development for port purposes,*
- (e) *to provide for development at Port Botany that does not, by its nature or scale, constitute an actual or potential obstruction or hazard to aircraft,*
- (f) *to identify certain development as State significant development or State significant infrastructure,*
- (g) *to ensure that land around the Lease Area is maintained for port-related and industrial uses, including heavy industry on land around Port Kembla.*

The Project is consistent with the aims of Chapter 4 of the Transport and Infrastructure SEPP, despite the Transport and Infrastructure SEPP not being relevant to the Project due to its SSI declaration, as:

- the Project would maintain the industrial use of the land around Port Kembla through the continued operation of the Dendrobium CPP and the Kemira Valley Rail Line;
- the Project has been developed in a manner that considers the need to upgrade, replace or augment existing infrastructure over the life of the Project to maintain key infrastructure items; and
- the Project would continue to facilitate the use of Port Kembla and associated industrial uses, by supplying product coal to the PKCT for use in steelmaking domestically or for export (Section 4.2).

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Permissibility

Part 5.2 of the Transport and Infrastructure SEPP outlines the land use zone objectives relevant in determining whether a development is prohibited by the Transport and Infrastructure SEPP.

The Dendrobium CPP and a portion of the Kemira Valley Rail Line are located within Zone IN3 (Heavy Industrial) under the Transport and Infrastructure SEPP.

If the Transport and Infrastructure SEPP was relevant to the Project, but for its SSI declaration, these activities are classified as “Port facilities” and “heavy industries” activities under the Transport and Infrastructure SEPP and are permissible with consent within this zone.

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

Zone Objectives

The objectives of Zone IN3 (Heavy Industrial) are as follows:

- *To provide suitable areas for those industries that need to be separated from other land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of heavy industry on other land uses.*
- *To provide transport infrastructure and intermodal facilities.*
- *To allow a diversity of activities that will not significantly detract from the operation of existing or proposed industries.*

The Project is consistent with the objectives of Zone IN3 (Heavy Industrial) as:

- the Project would facilitate ongoing local and regional employment, including employment related to the operation of the Dendrobium CPP and Kemira Valley Rail Line, as well as economic development opportunities within the broader Southern Coalfield economic ecosystem (Appendix K);
- the Dendrobium CPP is located wholly within the Port Kembla industrial precinct and the continued use of this facility would not adversely impact on the use of surrounding lands; and
- the Kemira Valley Rail Line has historically co-existed with the surrounding land uses, and would continue to be operated with restricted operating hours and ongoing reasonable and feasible noise improvements for the Project (Section 4.4).

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

A7.3 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Portions of the Project area located within the Wollongong LGA include the Dendrobium Pit Top, Kemira Valley Coal Loading Facility and portions of the Kemira Valley Rail Line.

The Wollongong LEP would have been relevant to the Project, but for its SSI declaration.

A7.3.1 Objectives

Clause 1.2 of the Wollongong LEP outlines the aims of the plan, with the following aims particularly of relevance to the Project:

- (2) *The particular aims of this Plan are as follows–*
- ...
- (a) *to provide a framework for land use management,*
 - (b) *to encourage economic and business development to increase employment opportunities,*
 - ...
 - (e) *to conserve and enhance remnant terrestrial, aquatic and riparian habitats, native vegetation and fauna species,*
 - (f) *to conserve and enhance heritage,*
 - (g) *to ensure that development is consistent with the constraints of the land and can be appropriately serviced by infrastructure,*
 - (h) *to ensure that significant landscapes are conserved, including the Illawarra Escarpment, Lake Illawarra, the drinking water catchment and the coastline.*

The Project has regard to the aims of the Wollongong LEP as

- The Project has been developed in a manner that considers the impacts, mitigation measures and management measures required for effective land use and rehabilitation activities (Section 7).
- The Project would facilitate local and regional employment and economic development opportunities (Appendices K and L).

- The Project would include a proposal for offsetting unavoidable residual impacts on ecology consistent with BC Act requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016). It is noted that, under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW.
- Aboriginal and historic heritage assessments have been completed for any potential impacts of the Project on items of Aboriginal and historic heritage (Appendices F and G, respectively). Measures to manage and mitigate potential impacts are discussed in Sections 7.10 and 7.11.
- The Project has been developed in a manner that considers potential impacts to landscapes within the region, including to the Metropolitan Special Area and Illawarra Escarpment (Section 7).

Notwithstanding, as EPIs do not apply to SSI, beyond the declaration of the Project as SSI, the Minister does not need to be satisfied as to these matters.

A7.3.2 Permissibility

Part 2 of the Wollongong LEP outlines the land use zone objectives that are relevant in determining whether a development is prohibited by the Wollongong 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);
- Zone E2 (Environmental Conservation);
- Zone E3 (Environmental Management);
- Zone E4 (Environmental Living); and
- Zone SP2 (Infrastructure).

In the absence of the declaration of the Project as SSI, underground mining would be prohibited under the Wollongong LEP in these zones.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI and the Project is not prohibited under the Wollongong LEP. Therefore, the Minister does not need to be satisfied as to these matters.

A7.3.3 Zone Objectives

Zone RU1 (Primary Production)

The objectives of Zone RU1 (Primary Production) are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The Project is consistent with the objectives of Zone RU1 (Primary Production) as:

- mining is a primary industry;
- the Project is not inconsistent with surrounding land uses in the RU1 (Primary Production) zone, as underground mining is permissible with consent under the Mining SEPP;
- the Project would not result in the fragmentation or alienation of resource lands; and
- mining operations and nearby land uses, such as State Conservation Areas and rural residential and suburban areas have historically co-existed and this would continue for the Project; therefore, the Project would not be inconsistent with adjoining land use zones.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone RU2 (Rural Landscape)

The objectives of Zone RU2 (Rural Landscape) are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To encourage the retention, management or restoration of native vegetation.*

The Project is consistent with the objectives of Zone RU2 (Rural Landscape) despite the Wollongong LEP not being relevant to the Project due to its SSI declaration, as:

- mining is a primary industry;
- Project surface activities outside of the current disturbance area of the Dendrobium Mine would not impact the rural landscape character of the land;
- the Project would not result in the fragmentation or alienation of resource lands, and would not inhibit agricultural production of the land within the broader region; and
- the Project would be developed in a manner that would manage and mitigate potential impacts on the environment, and would encourage the restoration of native vegetation through rehabilitation measures (Section 7 and Attachment 10).

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone E1 (National Parks & Nature Reserves)

The objectives of Zone E1 (National Parks & Nature Reserves) are as follows:

- To enable the management and appropriate use of land that is reserved under the National Parks and Wildlife Act 1974 or that is acquired under Part 11 of that Act.
- To enable uses authorised under the National Parks and Wildlife Act 1974.
- To identify land that is to be reserved under the National Parks and Wildlife Act 1974 and to protect the environmental significance of that land.

Reserved land relevant to the Project includes:

- 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 Infrastructure Application Area, the reservation is restricted to a depth of 15.24 metres (m); and
- 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 Dendrobium and Kemira Valley Tunnels), the Infrastructure 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 IMC 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*).

The Project is consistent with the objectives of Zone E1 (National Parks & Nature Reserves); however, as the Wollongong LEP does not apply to the Project, due to its declaration as SSI, the Minister does not need to be satisfied as to these matters.

Zone E2 (Environmental Conservation)

The objectives of Zone E2 (Environmental Conservation) are as follows:

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To retain and enhance the visual and scenic qualities of the Illawarra Escarpment.
- To maintain the quality of the water supply for Sydney and the Illawarra by protecting land forming part of the Sydney drinking water catchment (within the meaning of State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011) to enable the management and appropriate use of the land by Water NSW.

The Project is consistent with the objectives of Zone E2 (Environmental Conservation) as:

- the Project would be developed in a manner that would manage and mitigate potential impacts on high value biodiversity areas;
- the Project would not directly mine beneath previously identified high archaeological (scientific) significance Aboriginal and historic heritage sites;
- the Project has been developed to consider portions of the Project that are within the Illawarra Escarpment. Additional surface disturbances associated with the Dendrobium Pit Top outside the existing disturbance area would not have an adverse effect on the Illawarra Escarpment, and rehabilitation measures would be implemented post-mine closure; and
- the Project area is located within the Sydney drinking water catchment; however, the Project would not have a significant adverse impact on the quality or yield of water in the Metropolitan Special Area storages and would incorporate suitable water quality offset measures, where applicable (Sections 7.5 and 7.6).

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

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

Zone E3 (Environmental Management)

The objectives of Zone E3 (Environmental Management) are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

The Project is consistent with the objectives of Zone E3 (Environmental Management) as:

- the Project would be developed in a manner that would manage and mitigate potential impacts on high value biodiversity areas;
- the Project would not directly mine beneath previously identified high archaeological (scientific) significance Aboriginal and historic heritage sites; and
- IMC has conducted mining operations in the region for over 85 years, and development would continue to be in accordance with the values of protecting, managing and restoring areas of ecological, scientific, cultural and aesthetic value.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone E4 (Environmental Living)

The objectives of Zone E4 (Environmental Living) are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

The Project is consistent with the objectives of Zone E4 (Environmental Living) as the development of the Project would not impact on the potential for the Wollongong City Council to provide low impact residential development in the region.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone SP2 (Infrastructure)

The objectives of Zone SP2 (Infrastructure) are as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To provide for key transport corridors.*

The Project is consistent with the objectives of Zone SP2 (Infrastructure) as:

- the Project would facilitate the continued use and upgrade of key infrastructure sources, including the Kemira Valley Rail Line;
- the Project would be compatible with the provision of infrastructure in the region; and
- the Project would enhance the potential for infrastructure development in the region.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.3.4 Special Provisions

Part 5 to Part 8 of the Wollongong LEP provide a number of provisions, including the clauses described below, that would have been of potential relevance to the Project, but for its SSI declaration.

Heritage Conservation

Clause 5.10 relates to the assessment and management of impacts to historic heritage or Aboriginal heritage and includes the following subclauses that would have been potentially relevant to the Project, but for its SSI declaration:

5.10 Heritage conservation

Note. *Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.*

(1) Objectives

The objectives of this clause are as follows—

- to conserve the environmental heritage of Wollongong,*

- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

(2) Requirement for consent

Development consent is required for any of the following–

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)–
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land–
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,
- (f) subdividing land–
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.

...

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development–

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b),

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies)–

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) **Aboriginal places of heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance–

- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Clause 5.10 set out above would have been potentially applicable to the Project but for its SSI declaration, with respect to direct disturbance or indirect effects (e.g. subsidence) that could impact on Aboriginal or historic heritage sites as a result of the Project.

Aboriginal and historic heritage assessments have been conducted for the Project and are provided in Appendices F and G. Where relevant, these studies identified suitable management and mitigation measures for potential direct and indirect impacts of the Project.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Public Utility Infrastructure

Clause 7.1 outlines considerations relating to the provision of public utility infrastructure:

7.1 Public utility infrastructure

- (1) *The objective of this clause is to ensure that sufficient infrastructure is available to service development.*
- (2) *Development consent must not be granted for development on land unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.*

...

(4) *In this clause–*

public utility infrastructure *includes infrastructure for any of the following–*

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage.*

Adequate arrangements have been made for the provision of infrastructure services for the Project as follows:

- Underground and surface operations at the Dendrobium Mine would continue to use a combination of potable and recycled water. Potable water would be supplied by Sydney Water. Recycled water would continue to be sourced from underground workings, including the adjacent Nebo workings (Section 4.10.7).
- The Endeavour Energy high voltage distribution network would continue to supply the majority of electricity requirements for the Project, while electricity for the Project underground mining operations would be distributed via the existing substation located adjacent to the Kemira Valley Coal Loading Facility. Electricity required for construction (Shaft Site No. 5A) would be via a new ETL connecting to the existing Endeavour Energy network at a location proximal to Cordeaux Dam (Section 4.10.4).
- Sewage produced at the Dendrobium Pit Top and sewage and effluent produced at the Dendrobium CPP would continue to be plumbed into the town sewerage system. Wastewater from bathhouses at the Dendrobium Pit Top would be treated at the on-site water treatment facility. Treated bathhouse water from the Dendrobium Pit Top would be recycled on-site.
- Sewage and effluent at the Kemira Valley Coal Loading Facility would continue to be removed by a licensed waste contractor. Sewage and effluent at the Cordeaux Pit Top would continue to be held in the sewage holding tank and removed by a licensed waste contractor.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Terrestrial Biodiversity

Clause 7.2 relates to the assessment and management of impacts to biodiversity. As parts of the Project area are identified under the Wollongong LEP as land within the Natural Resource Sensitivity – Biodiversity area, the following subclauses would have been relevant to the Project, but for its SSI declaration:

7.2 Natural resource sensitivity - biodiversity

- (1) *The objective of this clause is to protect, maintain or improve the diversity and condition of the native vegetation and habitat, including–*
 - (a) *protecting biological diversity of native flora and fauna, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of threatened species, communities, populations and their habitats.*
- (2) *This clause applies to land that is identified as “Natural resource sensitivity—biodiversity” on the Natural Resource Sensitivity—Biodiversity Map.*
- (3) *Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the impact of the development on–*
 - (a) *native terrestrial flora and fauna and its habitat, and*
 - (b) *native aquatic flora and fauna and its habitat, and*
 - (c) *the ecological role of the land, waterways, riparian land or wetland, and*
 - (d) *threatened species, communities, populations and their habitats.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development is consistent with the objectives of this clause and–*
 - (a) *the development is designed, sited and managed to avoid potential adverse environmental impact, or*
 - (b) *if a potential adverse environmental impact cannot be avoided, the development–*
 - (i) *is designed and sited so as to have minimum adverse environmental impact, and*
 - (ii) *incorporates effective measures so as to have minimal adverse environmental impact, and*
 - (iii) *mitigates any residual adverse environmental impact through the restoration of any existing disturbed or modified area on the site.*

Clause 7.2 set out above would have been potentially applicable to the Project but for its SSI declaration, with respect to direct disturbance or indirect effects that could impact on the diversity and condition of the flora and fauna located within or adjacent to the Infrastructure Application Area.

Additionally, clause 7.4 outlines considerations relating to Riparian lands:

- (1) *The objective of this clause is to ensure that development does not adversely impact upon riparian lands.*
- (2) *This clause applies to land shown as “riparian land” on the Riparian Land Map.*
- (3) *Despite any other provision of this Plan, development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the impact of the proposed development on the land and any opportunities for rehabilitation of aquatic and riparian vegetation and habitat on that land.*

Clause 7.4 would have been applicable to the Project but for its SSI declaration, as areas located near the Dendrobium Pit Top and Kemira Valley Coal Loading Facility are classified as “Riparian land”, as referred to in the Wollongong LEP. Surface upgrades to the Dendrobium Pit Top outside the current disturbance area (including the development of additional carparking) would not impact on identified Riparian land. Similarly, upgrades to the Kemira Valley Coal Loading Facility during the life of the Project would be within the current disturbance footprint and would not impact on Riparian land.

Additionally, Biodiversity and Aquatic Ecology assessments have been undertaken for the Project and are provided in Appendices D and E and, where relevant, identified offsets for unavoidable residual impacts on ecology consistent with BC Act requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016).

It is noted that under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW (Sections 7.7 to 7.9). Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Earthworks

Clause 7.6 outlines considerations relating to earthworks:

7.6 Earthworks

- (1) *The objectives of this clause are as follows–*
 - (a) *to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land,*
 - (b) *to allow earth works of a minor nature without separate development consent.*
- (2) *Development consent is required for earthworks, unless–*
 - (a) *the work is exempt development under this Plan, or*
 - (b) *the consent authority is satisfied the work is of a minor nature.*
- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters–*
 - (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or of the soil to be excavated, or both,*
 - (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material or the destination of any excavated material,*
 - (f) *the likelihood of disturbing Aboriginal objects or other relics,*
 - (g) *proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Earthworks would be associated primarily with the construction of additional carparking facilities at the Dendrobium Pit Top, as well as for the development of additional surface infrastructure associated with mine ventilation and gas management and installation of the ETL to the ventilation shaft site.

The development of an additional ventilation shaft site would include the installation of erosion and sediment control infrastructure. Excavated material resulting from construction of the shafts would be used as engineering fill and for the construction of sediment dams. Excess material would be stockpiled on-site, revegetated and used for future rehabilitation of the shaft site upon decommissioning (Section 4.4.3).

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Illawarra Escarpment Conservation Area

Clause 7.8 outlines considerations relating to the Illawarra Escarpment conservation area:

7.8 Illawarra Escarpment area conservation

- (1) *The objective of this clause is to provide specific controls to protect, conserve and enhance the Illawarra Escarpment.*
- (2) *This clause applies to land shown as being within the Illawarra Escarpment area on the Illawarra Escarpment Map.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development–*
 - (a) *will be located so as to minimise any adverse impact on the natural features and environment of the Illawarra Escarpment, and*
 - (b) *will incorporate on the land, conservation and rehabilitation measures to enhance the Illawarra Escarpment.*

Surface infrastructure at the Dendrobium Pit Top and Kemira Valley Coal Loading Facility are located proximal to the Illawarra Escarpment State Conservation Area. Additional Project surface disturbance associated with the Dendrobium Pit Top outside the existing disturbance area would not have an adverse effect on the Illawarra Escarpment. Upgrades to the Kemira Valley Coal Loading Facility would be within the current disturbance area and would not impact on the Illawarra Escarpment. Additionally, rehabilitation measures will be incorporated post-mine closure.

Notwithstanding, the Wollongong LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.4 WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010

Portions of the Project area located within the Wingecarribee LGA include the proposed new underground mining Area 5 and associated ventilation shaft site as well as a portion of the ETL to the ventilation shaft site.

The Wingecarribee LEP would have been relevant to the Project, but for its SSI declaration.

A7.4.1 Objectives

Clause 1.2 of the Wingecarribee LEP outlines the aims of the plan, with the following aims, which would have been of particular relevance to the Project, but for its SSI declaration:

(2) *The particular aims of this Plan are as follows–*

...

(a) *to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Wingecarribee,*

...

(d) *to provide opportunities for development and land use activities that–*

(i) *make an effective contribution towards the economic wellbeing of the community in a socially and environmentally responsible manner, and*

(ii) *do not adversely impact on natural systems and processes and the overall quality of Wingecarribee's natural environment, and*

(iii) *retain the critical natural, rural and built environmental landscape elements that make up the scenic and cultural heritage value of Wingecarribee,*

...

(g) *to strengthen the viability of Wingecarribee's business centres as central places for investment, employment and cultural activity, and encourage a majority of future housing opportunities to be located in relatively close proximity to those centres,*

(h) *to promote the economic wellbeing of the community in a socially and environmentally responsible way, focusing new employment growth at identified employment hubs like business centres and enterprise zones that can be better accessed by public and private transport,*

...

(j) *to conserve the Aboriginal and European cultural and environmental heritage of Wingecarribee,*

(k) *to protect areas of high scenic landscape value,*

(l) *to develop an ecologically sustainable future for Wingecarribee through the conservation, rehabilitation and regeneration of native vegetation (particularly threatened species populations and ecological communities), soil, waterways, riparian land and water quality (surface and groundwater),*

(m) *to prevent loss of life and property by bush fires, by discouraging the establishment of incompatible uses in bush fire prone areas and incorporating as part of compatible developments protective measures that minimise bush fire risk without unacceptable environmental degradation,*

...

(o) *to ensure that extractive resources and mineral deposits are not rendered sterile by future development, but at the same time ensuring that subsequent extraction, open cut mining and transportation activities are undertaken in a way that maintains residential amenity,*

(p) *to protect and enhance waterways, riparian land and water quality in the drinking water catchments of Wingecarribee.*

The Project has regard to the aims of the Wingecarribee LEP as:

- Mining operations and nearby land uses, such as State Conservation Areas and suburban areas have historically co-existed, and this would continue for the Project. Therefore, the Project would not adversely impact on, or be inconsistent with, adjoining land uses.
- The Project includes Biodiversity, Ecology, Groundwater and Surface Water assessments and a proposal for offsetting unavoidable impacts on ecology in consideration of the requirements of the BC Act and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016) (Sections 7.5 to 7.9), as well as other management and mitigation measures (Sections 7 and 8 and Appendices B to E).
- The Project would continue to facilitate local and regional employment and economic development opportunities (Appendices K and L).
- The Project would continue to operate in accordance with the existing Bushfire Management Plan, which would be updated as required for the Project (Section 7.22.3).
- The Project has been developed in a manner that has considered potential impacts to the drinking water catchment and Riparian land, and the Project mine plan would also include the following:
 - minimum longwall mining setback distance of 1,000 m from dam walls;
 - minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;
 - longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
 - no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
 - avoidance of longwall mining beneath mapped key stream features identified during site investigations.

- The Project would incorporate a number of measures that achieve a net neutral or beneficial effect on water quality in the Sydney drinking water catchment (Section 7.6).
- The Project includes Aboriginal and historic heritage assessments, which identify suitable management and mitigation measures for potential direct and indirect impacts of the Project (Section 7 and Appendices F and G).

The potential Project impacts of the continuation of the Dendrobium Mine surface facilities have been considered from an amenity perspective in the Air Quality and Noise and Blasting Assessments (Sections 7.13, 7.14 and 7.17 and Appendices I and J).

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.4.2 Permissibility

Part 2 of the Wingecarribee LEP outlines the land use zone objectives that are relevant in determining whether a development is prohibited by the Wingecarribee LEP.

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

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

In the absence of the declaration of the Project as SSI, underground mining would be prohibited under the Wingecarribee LEP in these zones.

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, the Project is not prohibited under the Wingecarribee LEP. Therefore, the Minister does not need to be satisfied as to these matters.

A7.4.3 Zone Objectives

Zone E2 (Environmental Conservation)

The objectives of Zone E2 (Environmental Conservation) are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The Project is consistent with the objectives of Zone E2 (Environmental Conservation) as:

- the Project would be developed in a manner that would manage and mitigate potential impacts on high value biodiversity areas; and
- the Project would not directly mine beneath previously identified high archaeological (scientific) significance Aboriginal and historic heritage sites.

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone SP2 (Infrastructure)

The objectives of Zone SP2 (Infrastructure) are as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To ensure that the scale and character of infrastructure is compatible with the landscape setting and built form of surrounding development.*

The Project is consistent with the objectives of Zone SP2 (Infrastructure) as:

- the Project would enhance the potential for infrastructure development in the region;
- the Project would be compatible with the provision of infrastructure in the region; and
- additional infrastructure developed for the Project would not have an adverse impact on the surrounding environment setting.

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.4.4 Special Provisions

Parts 5 to 7 of the Wingecarribee LEP provide a number of provisions of potential relevance to the Project, including the relevant clauses described below that would have been of potential relevance to the Project, but for its SSI declaration.

Heritage Conservation

Clause 5.10 relates to the assessment and management of impacts to historic heritage or Aboriginal heritage and includes the following subclauses that would have been relevant to the Project, but for its SSI declaration:

5.10 Heritage conservation

Note—

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

(1) Objectives

The objectives of this clause are as follows—

- (a) *to conserve the environmental heritage of Wingecarribee,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(2) Requirement for consent

Development consent is required for any of the following—

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—*
 - (i) *a heritage item,*
 - (ii) *an Aboriginal object,*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*

- (b) *altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) *disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) *disturbing or excavating an Aboriginal place of heritage significance,*
- (e) *erecting a building on land–*
 - (i) *on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*
- (f) *subdividing land–*
 - (i) *on which a heritage item is located or that is within a heritage conservation area, or*
 - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

...

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development–

- (a) *on land on which a heritage item is located, or*
- (b) *on land that is within a heritage conservation area, or*
- (c) *on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies)–

- (a) *notify the Heritage Council of its intention to grant consent, and*
- (b) *take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance–

- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Clause 5.10 set out above would have potentially been applicable to the Project but for its declaration as SSI with respect to direct disturbance or indirect effects (e.g. subsidence) that could impact on Aboriginal or historic heritage sites located within or adjacent to the Infrastructure Application Area.

Aboriginal and historic heritage assessments have been conducted for the Project and are provided in Appendices F and G and, where relevant, identify suitable management and mitigation measures for potential direct and indirect impacts of the Project.

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Earthworks

Clause 7.3 outlines considerations relating to earthworks:

7.3 Earthworks

- (1) *The objectives of this clause are as follows–*
 - (a) *to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage items and features surrounding land,*
 - (b) *to allow earthworks of a minor nature without separate development consent.*
- (2) *Development consent is required for earthworks unless–*
 - (a) *the work does not alter the ground level (existing) by more than 600 millimetres, or*
 - (b) *the work is exempt development under this Plan or another applicable environmental planning instrument, or*
 - (c) *the work is ancillary to other development for which development consent has been granted.*
- ...
- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters–*
 - (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
 - (c) *the quality of the fill or of the soil to be excavated, or both,*
 - (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
 - (e) *the source of any fill material or the destination of any excavated material,*
 - (f) *the likelihood of disturbing Aboriginal objects or other relics,*
 - (g) *proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Earthworks would include the development of an additional ventilation shaft site that would include the installation of erosion and sediment control infrastructure as well as installation of an ETL to the shaft site along existing fire trails. Excavated material resulting from construction of the shaft would be used as engineering fill and for the construction of sediment dams. Excess material would be stockpiled on-site, revegetated and used for future rehabilitation of the shaft site upon decommissioning (Section 4.4.3).

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Terrestrial Biodiversity

Clause 7.4 relates to the assessment and management of impacts to biodiversity. As parts of the Project area are identified as land within the Natural Resource Sensitivity – Biodiversity area, the following subclauses would have been relevant to the Project, but for its SSI declaration:

7.4 Natural resource sensitivity - biodiversity

- (1) *The objective of this clause is to maintain terrestrial and aquatic biodiversity, including–*
 - (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of native fauna and flora, and their habitats.*
- (2) *This clause applies to land identified as “Regional Wildlife Habitat Corridor” on the Natural Resource Sensitivity Map.*
- (3) *Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the following–*
 - (a) *the native ecological community,*
 - (b) *the habitat of any threatened species, population or ecological community,*
 - (c) *any regionally significant species of fauna, flora or habitat,*
 - (d) *habitat elements providing connectivity.*

- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
- (a) *the development is designed, sited and managed to avoid any potential adverse environmental impact, or*
 - (b) *if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Clause 7.4 set out above would have been potentially applicable to the Project, but for its SSI declaration, with respect to direct disturbance or indirect effects that could impact on the diversity and condition of the flora and fauna located within or adjacent to the Infrastructure Application Area.

Additionally, Biodiversity and Aquatic Ecology assessments have been undertaken for the Project and are provided in Appendices D and E and, where relevant, identified offsets for unavoidable residual impacts on ecology consistent with BC Act requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016). It is noted that, under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW (Sections 7.7 to 7.9).

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Water

Clause 7.5 outlines considerations relating to water quality and Riparian lands and natural waterbodies:

7.5 Natural resource sensitivity-water

- (1) *The objective of this clause is to maintain the hydrological functions of riparian land waterways and aquifers, including—*
- (a) *protecting water quality, and*
 - (b) *protecting natural water flows, and*
 - (c) *protecting stability of the bed and banks of waterways, and*
 - (d) *protecting groundwater systems.*
- (2) *This clause applies to riparian land or land identified as “Natural Waterbodies” on the Natural Resources Sensitivity Map.*

- (3) *Before granting development consent for development on land to which this clause applies, the consent authority must consider any potential adverse impact of the proposed development on the following—*
- (a) *the natural flow regime,*
 - (b) *the water quality of receiving waters,*
 - (c) *the waterway’s natural flow paths,*
 - (d) *the stability of the waterway’s bed, shore and banks,*
 - (e) *the flow, capacity and quality of groundwater systems.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—*
- (a) *the development is designed, sited and managed to avoid any potential adverse environmental impact, or*
 - (b) *if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Consideration of potential groundwater and surface water impacts associated with the Project are provided in Sections 7.5 and 7.6 and Appendices B and C.

The Project lies within the Metropolitan Special Area. However, the Project mine plan would also include the following:

- minimum longwall mining setback distance of 1,000 m from dam walls;
- minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;
- longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
- no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
- avoidance of longwall mining beneath mapped key stream features identified during site investigations.

The Project would not have a significant adverse impact on the quality or yield of water in the Metropolitan Special Area storages and would incorporate suitable water offset measures, where applicable (Sections 7.5 and 7.6).

Components of the Project area are located near areas identified as “Riparian land”, as referred to in the Wingecarribee LEP. Project subsidence effects are not expected to impact other Riparian land identified within the Project area.

Additionally, Biodiversity and Aquatic Ecology assessments have been undertaken for the Project and are provided in Appendices D and E and, where relevant, identified offsets for unavoidable residual impacts on ecology consistent with BC Act requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016). It is noted that, under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW (Sections 7.7 to 7.9).

Notwithstanding, the Wingecarribee LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.5 WOLLONDILLY LOCAL ENVIRONMENTAL PLAN 2011

Portions of the Project area located within the Wollondilly LGA include portions of the proposed ETL to Shaft Site No. 5A, the temporary carparking facility on Cordeaux Dam Access Road as well as the West Cliff stage 3 Coal Wash Emplacement Area.

The Wollondilly LEP would have been relevant to the Project, but for its SSI declaration.

A7.5.1 Objectives

Clause 1.2 of the Wollondilly LEP outlines the aims of the plan, with the following aims particularly of relevance to the Project:

- (2) *The particular aims of this Plan are as follows:*
- (a) *to provide for the management of natural resources and the protection of the natural landscape character,*
 - (b) *to protect, conserve and enhance the built, landscape and Aboriginal cultural heritage,*
 - (c) *to protect water quality in land that is situated within water supply catchments,*
 - (d) *to encourage development that provides for an integrated transport and infrastructure system and adequate facilities and service provision for future growth,*
 - (e) *to recognise, manage and protect rural resource lands for sustainable agriculture and extractive industry practices,*

The Project has regard to the aims of the Wollondilly LEP, despite the Wollondilly LEP not being relevant to the Project due to its SSI declaration, as:

- Mining operations and nearby land uses, such as State Conservation Areas, National Parks and the Illawarra Escarpment, have historically co-existed. This would continue for the Project and the proposal would not be inconsistent with maintaining the character of the current landscape.
- Aboriginal and historic heritage assessments have been completed for any potential impacts of the Project on items of Aboriginal and historic heritage (Appendices F and G, respectively). Measures to manage and mitigate potential impacts are discussed in Sections 7.10 and 7.11.
- The Project has been developed in a manner that considers the potential impacts to the Metropolitan Special Area, including potential impacts on groundwater and surface water (Sections 7.3 to 7.6 and Appendices A to C). The Project mine plan would also include the following:
 - minimum longwall mining setback distance of 1,000 m from dam walls;
 - minimum longwall mining setback distance of 300 m from the existing Full Supply Level of the Avon Dam;

- longwall mining distance of at least 400 m from named watercourses (i.e. the Avon River, Cordeaux River and Donalds Castle Creek);
- no longwall mining beneath 3rd, 4th and 5th order (or above) streams; and
- avoidance of longwall mining beneath mapped key stream features identified during site investigations.
- The Project has been developed in a manner that considers the benefits and consequences of the Project, including use of the public road transport network (Section 7).

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.5.2 Permissibility

Part 2 of the Wollondilly LEP outlines the land use zone objectives relevant in determining whether a development is prohibited by the Wollondilly LEP.

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

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

In the absence of the declaration of the Project as SSI, a number of land uses are prohibited under the Wollondilly LEP in these zones.

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, the Project is not prohibited under the Wollondilly LEP. Therefore, the Minister does not need to be satisfied as to these matters.

A7.5.3 Zone Objectives

Zone E2 (Environmental Conservation)

The objectives of Zone E2 (Environmental Conservation) are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

The Project is consistent with the objectives of Zone E2 (Environmental Conservation) as:

- the Project would be developed in a manner that would manage and mitigate potential impacts on high value biodiversity areas; and
- the Project would not directly mine beneath previously identified high archaeological (scientific) significance Aboriginal and historic heritage sites.

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Zone SP2 (Infrastructure)

The objectives of Zone SP2 (Infrastructure) are as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

The Project is consistent with the objectives of Zone SP2 (Infrastructure) as:

- the Project would enhance the potential for infrastructure development in the region; and
- the Project would be compatible with the provision of infrastructure in the region.

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.5.4 Special Provisions

Parts 5 to 7 of the Wollondilly LEP provide a number of provisions that would have been of potential relevance to the Project but for its SSI declaration, including the relevant clauses described below.

Heritage Conservation

Clause 5.10 relates to the assessment and management of impacts to historic heritage or Aboriginal heritage and includes the following subclauses that would have been relevant to the Project:

5.10 Heritage conservation

Note–

Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

(1) Objectives

The objectives of this clause are as follows:

- (a) *to conserve the environmental heritage of Wollondilly,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

(2) Requirement for consent

Development consent is required for any of the following:

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
 - (i) *a heritage item,*
 - (ii) *an Aboriginal object,*
 - (iii) *a building, work, relic or tree within a heritage conservation area,*
- (b) *altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) *disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) *disturbing or excavating an Aboriginal place of heritage significance,*

(e) *erecting a building on land:*

- (i) *on which a heritage item is located or that is within a heritage conservation area, or*
- (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*

(f) *subdividing land:*

- (i) *on which a heritage item is located or that is within a heritage conservation area, or*
- (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

...

(4) Effect of proposed development on heritage significance

The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) *on land on which a heritage item is located, or*
- (b) *on land that is within a heritage conservation area, or*
- (c) *on land that is within the vicinity of land referred to in paragraph (a) or (b),*

require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) **Archaeological sites**

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies):

- (a) *notify the Heritage Council of its intention to grant consent, and*
- (b) *take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

(8) **Aboriginal places of heritage significance**

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

- (a) *consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) *notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Clause 5.10 set out above would have been potentially applicable to the Project but for its SSI declaration, with respect to direct disturbance or indirect effects (e.g. subsidence) that could impact on Aboriginal or historic heritage sites located within or adjacent to the Infrastructure Application Area.

Aboriginal and historic heritage assessments conducted for the Project are provided in Appendices F and G. These studies have, where relevant, identified suitable management and mitigation measures for potential direct and indirect impacts of the Project.

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Essential Services

Clause 7.1 outlines considerations relating to the provision of essential services:

7.1 Essential services

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

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewerage.*

Adequate arrangements have been made for the provision of essential services for the Project as follows:

- Underground and surface operations would continue to use a combination of potable and recycled water. Potable water would be supplied by Sydney Water. Recycled water would continue to be sourced from underground workings, including the adjacent Nebo workings. Water supply for ventilation shaft construction would be provided by pipeline located within existing disturbed corridors (subject to agreement from WaterNSW), water truck along Fire Trail 6 and/or via a previous borehole site from the underground workings. Top-up water for the gas plant would be supplied by water truck and/or from the underground fire water system (Section 4.10.7).
- The Endeavour Energy high voltage distribution network would continue to supply the majority of electricity requirements for the Project, while electricity for the Project underground mining operations would be distributed via the existing substation located adjacent to the Kemira Valley Coal Loading Facility. Electricity required for construction (Shaft Site No. 5A) would be via a new ETL connecting to the existing Endeavour Energy network at a location proximal to Cordeaux Dam (Section 4.10.4). IMC has consulted with Endeavour Energy in regard to electricity requirements for the Project (Section 6).

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Terrestrial Ecology

Clause 7.2 outlines considerations relating to the protection of biodiversity:

7.2 Biodiversity protection

- (1) *The objective of this clause is to maintain terrestrial and aquatic biodiversity, including:*
 - (a) *protecting native fauna and flora, and*
 - (b) *protecting the ecological processes necessary for their continued existence, and*
 - (c) *encouraging the recovery of native fauna and flora, and their habitats, and*
 - (d) *protecting water quality within drinking water catchments.*
- (2) *This clause applies to land identified as “sensitive land” on the Natural Resources—Biodiversity Map.*
- (3) *Before determining a development application for land to which this clause applies, the consent authority must consider any adverse impact of the proposed development on the following:*
 - (a) *native ecological communities,*
 - (b) *the habitat of any threatened species, populations or ecological community,*
 - (c) *regionally significant species of fauna and flora or habitat,*
 - (d) *habitat elements providing connectivity,*
 - (e) *water quality within drinking water catchments.*
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid any adverse environmental impact, or*
 - (b) *if that impact cannot be avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Clause 7.2 set out above would have been potentially applicable to the Project, but for its SSI declaration, with respect to direct disturbance or indirect effects that could impact on the diversity and condition of the flora and fauna located within or adjacent to the Infrastructure Application Area.

Biodiversity and Aquatic Ecology assessments have been undertaken for the Project and are provided in Appendices D and E and, where relevant, identified offsets for unavoidable residual impacts on ecology consistent with BC Act requirements and the *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence* (OEH, 2016). It is noted that, under the BC Act, potential ecological impacts from the Project have been assessed in accordance with the *Biodiversity Assessment Method* (DPIE, 2020), which sets a standard that would result in no net loss of biodiversity values in NSW (Sections 7.7 to 7.9).

The Project is situated within the Sydney drinking water catchment; however, the Project would not have a significant adverse impact on the quality or yield of water in the Metropolitan Special Area storages and would incorporate suitable water offset measures, where applicable (Sections 7.5 and 7.6). Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

Earthworks

Clause 7.5 outlines considerations relating to earthworks:

7.5 Earthworks

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure that any earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
 - (b) *to allow earthworks of a minor nature without requiring separate development consent.*
- (2) *Development consent is required for earthworks unless:*
 - (a) *the work is exempt development under this Plan or another applicable environmental planning instrument, or*
 - (b) *the work is ancillary to other development for which development consent has been given.*
- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters:*
 - (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
 - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*

- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Earthworks involved with the development of the ETL would include the installation of erosion and sediment control infrastructure. If required, excess material would be stockpiled on-site, revegetated and used for future rehabilitation of the site upon decommissioning (Section 4.4.3).

Notwithstanding, the Wollondilly LEP does not apply to the Project, due to its declaration as SSI, and the Minister does not need to be satisfied as to these matters.

A7.6 OTHER LEGISLATION

The following NSW Acts may also be applicable to the Project:

- *Aboriginal Land Rights Act 1983*;
- BC Act;
- *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*;
- *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. Further detail of Acts relevant to the Project is provided in Section 5.

A7.7 REFERENCES

- Department of Environment and Climate Change (2008). *Managing Urban Stormwater Soils and Construction – Volume 2E – Mines and Quarries*.
- Department of Planning, Industry and Environment (2020). *Biodiversity Assessment Method*.
- Department of Planning (2011a). *Hazard Industry Planning Advisory Paper No. 6: Hazard Analysis*.
- Department of Planning (2011b). *Hazardous and Offensive Development Application Guidelines: Applying SEPP 33*.
- Department of Planning and Infrastructure (2011). *Assessment Guideline: Multi-level Risk Assessment*.
- Department of Urban Affairs and Planning and Environment Protection Agency (1998). *Managing Land Contamination – Planning Guidelines SEPP55 – Remediation of Land*.
- JBS&G (2022). *Dendrobium Mine Extension Project – Land Contamination Assessment*.
- Office of Environment and Heritage (2016). *Addendum to NSW Biodiversity Offsets Policy for Major Projects: Upland swamps impacted by longwall mining subsidence*.
- WaterNSW (2020). *Developments in the Sydney Drinking Water Catchment – Water Quality Information Requirements*.