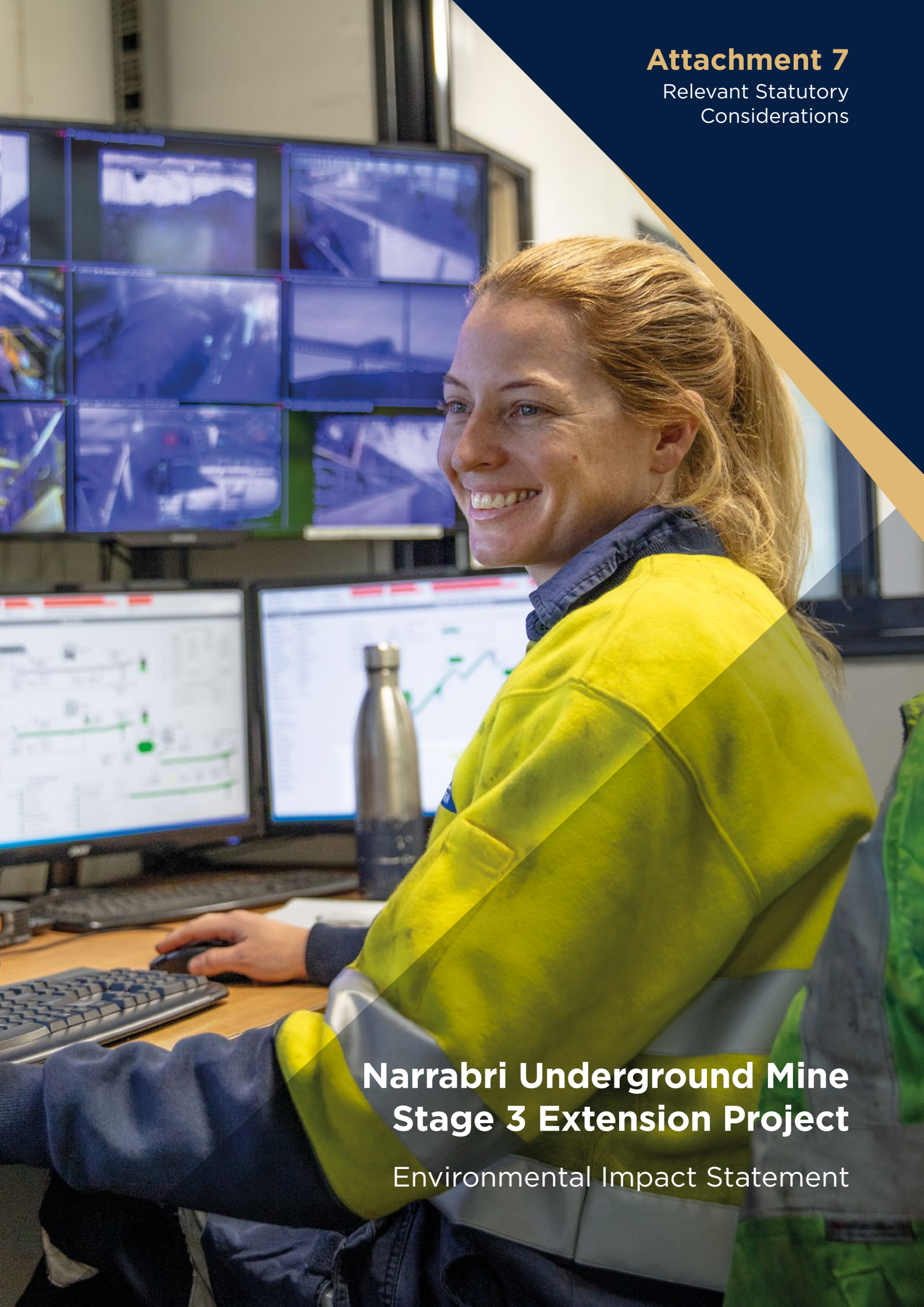

Attachment 7

Relevant Statutory Considerations

Narrabri Underground Mine Stage 3 Extension Project

Environmental Impact Statement

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A7 RELEVANT STATUTORY CONSIDERATIONS

This attachment supports Section 4 of the Main Report of the Environmental Impact Statement (EIS) by providing further discussion of statutory requirements, mandatory considerations relevant to the Project and other key regulatory approvals and also summarises how the Project complies with relevant statutory requirements.

References to Sections 1 to 9 in this Attachment are references to Sections in the Main Report of the EIS. References to Appendices A to P in this Attachment are references to 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 2000

Objects of the EP&A Act

The objects of the New South Wales (NSW) *Environmental Planning and Assessment Act 1979* (EP&A Act) are outlined in section 1.3:

> *(a) to 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,*
>
> *(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
>
> *(c) to promote the orderly and economic use and development of land,*
>
> *(d) to promote the delivery and maintenance of affordable housing,*
>
> *(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
>
> *(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
>
> *(g) to promote good design and amenity of the built environment,*
>
> *(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
>
> *(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
>
> *(j) to provide increased opportunity for community participation in environmental planning and assessment.*

The Project is considered to be generally consistent with the objects of the EP&A Act, as:

- The Project would facilitate continued and additional local and regional employment and economic development opportunities (Section 6.15 and Appendix L).
- The Project would continue to develop the State's mineral resources (i.e. coal resources) and coexist with the local community, as well as with the wider land uses within the region.
- The design, planning and assessment of the Project has been carried out applying the principles of Ecologically Sustainable Development (ESD) (Section 7.4.3).
- Mining operations and nearby land uses have historically co-existed and this would continue for the Project, therefore the Project would not adversely impact, or be inconsistent with, adjoining land uses.
- The Project would incorporate a range of measures for the protection of the environment, including the protection of native plants and animals, threatened species, and their habitats (Section 6).
- The EIS includes Aboriginal and historic heritage assessments, which identify suitable management and mitigation measures for potential direct and indirect impacts of the Project (Sections 6.11 and 6.12 and Appendices E and F).
- The Project would utilise the existing/approved Pit Top Area, which has limited the requirement to develop new infrastructure. The Project design mitigates the potential visual impacts of new Project infrastructure (Section 6.10).
- A PHA has been conducted to assess the potential hazards associated with the Project (Section 6.18 and Appendix P), and existing occupational health and safety measures would continue to be employed for the Project.

Statutory Requirements

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

- the provisions of any applicable environmental planning instruments;
- any draft planning agreement that a developer has offered to enter into under section 7.4 of the EP&A Act;
- the prescribed matters for consideration in Division 8 of the NSW *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation);
- the likely impacts of the Project, including the environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for the Project;
- the issues raised in any submissions on the Project; and
- the public interest, including any relevant objects of the EP&A Act.

Part 4 of the EP&A Act provides the relevant statutory requirements for the assessment of development applications and the granting of development consent.

In particular, Division 4.7 of the EP&A Act regulates State significant development (SSD).

As a result of section 4.13(2A) of the EP&A Act, the consultation or concurrence requirements under section 4.13 do not apply to SSD unless the requirement of an environmental planning instrument for consultation or concurrence specifies that it applies to SSD.

A summary of where section 4.15 of the EP&A Act has been considered in the EIS is provided in Section 7.3.3.

A7.2 STATE ENVIRONMENTAL PLANNING POLICIES

A7.2.1 State Environmental Planning Policy (State and Regional Development) 2011

Clause 3 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) sets out the aims of the SEPP, including the following of relevance to the Project:

> *(a) to identify development that is State significant development,*
>
> *…*

The Project falls within Item 5 of Schedule 1 of the State and Regional Development SEPP as it is development for the purpose of mining that is coal mining. Under clause 8 of the State and Regional Development SEPP, the Project is, therefore, SSD for the purposes of the EP&A Act (Section 4.2.1).

A7.2.2 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP) applies to the whole of NSW.

Part 1 – Clause 2

Clause 2 sets out the aims of the Mining SEPP, 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*
>
> *(b1) to promote the development of significant mineral resources, and*

(c) 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

(d) 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 resources, 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 to 4AA of the Mining SEPP seek to achieve the aims outlined in clause 2. Clauses from Parts 2 to 4AA of the Mining SEPP relevant to the Project are addressed below.

Part 2 – Clause 7

Clause 7(1) of the Mining 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,

(b) mining carried out—

(i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or

(ii) on land that is, immediately before the commencement of this clause, the subject of a mining lease under the Mining Act 1992 or a mining licence under the Offshore Minerals Act 1999,

(c) mining in any part of a waterway, an estuary in the coastal zone or coastal waters of the State that is not in an environmental conservation zone,

(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,

…

Further discussion of the permissibility of mining in accordance with the Mining SEPP is provided below.

Part 3 – Clauses 12AB to 17

Part 3 of the Mining SEPP provides matters for consideration for development applications.

Clause 12AB

Section 4.15(2) of the EP&A Act states:

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.

Section 4.15(3) of the EP&A Act states:

If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Clause 12AB of the Mining SEPP identifies non-discretionary development standards for the purposes of subsections 4.15(2) and 4.15(3) 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 12AB of the Mining SEPP and a summary of the conclusions of this EIS with respect to the Project. Where the Project complies with non-discretionary development standards in clause 12AB of the Mining SEPP, the NSW Minister for Planning and Public Spaces (the Minister) or the Independent Planning Commission (IPC) must act in accordance with subsection 4.15(2) of the EP&A Act.

Clause 12

Clause 12 of the Mining SEPP requires that, before determining an application for development consent for the purposes of mining, the consent authority (in this case the Minister or the IPC) must:

(a) consider—

(i) the existing uses and approved uses of land in the vicinity of the development, and

(i) 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

(ii) 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).

Existing land uses in the vicinity of the Narrabri Mine are characterised by a combination of coal mining, agricultural enterprises, rural dwellings and forestry operations (Pilliga East and Jacks Creek State Forests).

The majority of the approved Narrabri Mine and the Project is located on NCOPL-owned land (Figures 1-2a and 1-2b).

The Project is expected to have no significant impacts on local or regional agricultural production (Appendix G).

The potential impacts of the Project on buildings and infrastructure as a result of mine subsidence are described in Section 6.3. The Project is not located within a Mine Subsidence District declared under section 20 of the *Coal Mine Subsidence Compensation Act 2017*, however, there is publicly owned infrastructure that may be affected by mine subsidence. Potential impacts on infrastructure and proposed mitigation and management processes are described in Appendix A and Section 6.3.

Consideration of the potential noise, air quality and visual impacts have been assessed for the Project and it was concluded that there would be no significant incremental impacts on rural dwellings in the vicinity of the Project (Appendices H and I and Sections 6.8, 6.9 and 6.10).

NCOPL has consulted with Forestry Corporation of NSW (Forestry Corporation) regarding the Project and would apply for necessary permits for activities that would be conducted as a component of the Project within Pilliga East and Jacks Creek State Forests.

Additionally, the rehabilitation strategy would be implemented by NCOPL in order to rehabilitate the Project site to include post-mining land uses that would be consistent with surrounding existing land uses (Attachment 5).

Given the above, there would not be any material incompatibility between the Project and the existing and approved land uses in the vicinity of the Project.

In considering likely preferred land uses and land use trends, it is noted that the Project would not be located in an area identified as where coal exploration and mining cannot occur on the supporting map that was released with the *Strategic Statement on Coal Exploration and Mining in NSW* (NSW Government, 2020). Therefore, within the Project area, underground mining is considered a likely preferred land use.

Having regard to historic, current and approved uses of the land, land zoning, land use zone objectives, land use trends, strategic planning documents (discussed further in Sections 3, 4 and 6), other likely preferred land uses in the vicinity of the Project include the existing and approved land uses (i.e. coal mining, agricultural enterprises, rural dwellings and forestry operations) and the Narrabri Gas Project.

Table A7-1
Clause 12AB Non-discretionary Development Standards for Mining

Subclause of Clause 12AB	Compliance of the Project
(3) Cumulative noise level *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.*	The cumulative amenity noise level from the concurrent operation of the Project and adjacent Narrabri Gas Project would comply with the recommended amenity noise levels outlined in Table 2.2 of the *Noise Policy for Industry* (Environment Protection Authority, 2017) at all privately-owned receivers (Section 6.8 and Appendix H) with the exception of one private landholder (Receiver 601a). Narrabri Coal Operations Pty Ltd (NCOPL) would seek to form a negotiated outcome with the owner of this receiver.
(4) Cumulative air quality level *The development does not result in a cumulative annual average level greater than 25 µg/m^3 of PM_{10} or 8 µg/m^3 of $PM_{2.5}$ for private dwellings.*	The Project would not result in a cumulative annual average 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 with existing background sources (Section 6.9 and Appendix I).
(5) Airblast overpressure *Airblast overpressure caused by the development does not exceed:* *(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,* *measured at any private dwelling or sensitive receiver.*	Airblast overpressure caused by the Project would not exceed the relevant criteria as measured at any privately-owned dwelling or sensitive receiver (Section 6.8 and Appendix H).
(6) Ground vibration *Ground vibration caused by the development does not exceed:* *(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,* *measured at any private dwelling or sensitive receiver.*	Ground vibration caused by the Project would not exceed the relevant criteria as measured at any privately-owned dwelling or sensitive receiver (Section 6.8 and Appendix H).
(7) Aquifer interference *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.*	The Project would not exceed the 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 (AIP) for 'highly productive' water sources (Section 6.4 and Appendix B). The Project is predicted to exceed the water table and water pressure requirements specified for item 1 in columns 2, 3 and 4 of Table 1 of the AIP for 'less productive' water sources, but would meet the requirements in item 2 (Section 6.4 and Appendix B). NCOPL has committed to 'make good' provisions for affected groundwater users in accordance with the AIP.

Note: $PM_{2.5}$ – particulate matter less than 2.5 micrometres (µm) in aerodynamic equivalent diameter.
PM_{10} – particulate matter less than 10 µm in aerodynamic equivalent diameter.

The compatibility of the Project with existing and approved land uses is considered in the sub-sections above.

The Narrabri Gas Project by Santos NSW (Eastern) Pty Ltd (Santos) (Section 3.3) is approved to be located adjacent to the Project (Figure 1-1) within Petroleum Exploration Licence (PEL) 238. NCOPL would continue to consult with Santos to manage interactions between the Narrabri Gas Project and the Project, including the assessment and management of potential cumulative impacts (Section 6). Based on the engagement outcomes to date (Section 5.3.4), there is not anticipated to be any material incompatibility between the Project and the Narrabri Gas Project.

The Project would generate a significant net benefit to the locality and the State of NSW (Section 7 and Appendix L).

Accordingly, the Minister or IPC can be satisfied as to these matters.

Clause 12A

Clause 12A(2) requires that, before determining an application for consent for SSD for the purposes of mining, the consent authority must consider any applicable provisions of a voluntary land acquisition and mitigation policy and, in particular:

> *(a) any applicable provisions of the policy for the mitigation or avoidance of noise or particulate matter impacts outside the land on which the development is to be carried out, and*
>
> *(b) any applicable provisions of the policy relating to the developer making an offer to acquire land affected by those impacts.*

The applicable provisions of the *Voluntary Land Acquisition and Mitigation Policy – For State Significant Mining, Petroleum and Extractive Industry Developments* (NSW Government, 2018a) are addressed in Sections 6.8 and 6.9 and Appendices H and I.

Clause 13

Clause 13(2) of the Mining SEPP requires that, before determining any application for consent for development in the vicinity of an existing mine, petroleum production facility or extractive industry (clause 13[1]), to which this clause applies, 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 current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and*
>
> *(iii) any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and*
>
> *(b) evaluate and compare the respective public benefits of the development and the uses, extraction and recovery 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 approved Narrabri Mine is located within Mining Lease (ML) 1609 issued under the NSW *Mining Act 1992*. The Project would involve the extension of the underground mining areas at the Narrabri Mine to gain access to additional areas of run-of-mine (ROM) coal reserves within Exploration Licence (EL) 6243. This extension would also include additional mine life, development of additional supporting infrastructure and continued use of existing infrastructure.

The use of the existing and approved infrastructure for the Project results in less disturbance and a significantly lower initial capital cost than would otherwise be required for a greenfield project to access the coal resource within EL 6243.

In the absence of approval for the Project, this existing infrastructure would be decommissioned at the cessation of the approved Narrabri Mine and the potential benefits of its ongoing use would be forgone.

It is in the financial interest of NCOPL to maximise the efficiency and long-term value of underground mining operations and coal production.

The Narrabri Gas Project by Santos is approved to be located adjacent to the Project (Figure 1-1) within PEL 238. NCOPL has consulted with Santos regarding potential interactions between the Narrabri Gas Project and the Project (Section 5.2.5). NCOPL will continue to consult and work closely with Santos regarding potential interactions between the Narrabri Gas Project and the Project to maximise cooperation, efficiencies and positive environmental outcomes. With these measures in place, the extraction of coal at the Project or gas at the Narrabri Gas Project would not be significantly impacted by the potential interactions between the projects (should they be approved).

There would be no direct interaction between the Project and other existing or proposed mining operations (Section 3.3). As such, it is not expected that the Project would have a significant impact on future extraction of minerals (e.g. coal mining to the north or south of the Project area). Similarly, it is not expected that the Project would have a significant impact on any future extractive industry.

Where relevant, consideration of potential cumulative environmental impacts with the Narrabri Gas Project is provided in Section 6.

Accordingly, the Minister or IPC can be satisfied as to these matters.

Clause 14

Clause 14(1) of the Mining SEPP requires that, before granting consent for development for the purposes of mining, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

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

In addition, clause 14(2) requires that, without limiting subclause (1), in determining a development application for development for the purposes of 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 6.4 and 6.5 and Appendices B and C, including measures to minimise potential impacts.

The potential impacts of the Project on threatened species and biodiversity are described in Section 6.7 and Appendix D, including measures to minimise potential impacts. The Project would include the provision of a biodiversity offset strategy that has been developed in consideration of the requirements of the NSW *Biodiversity Conservation Act 2016* (Section 6.7).

The Project's greenhouse gas emissions assessment, greenhouse gas abatement measures and relevant State or national policies, programs and guidelines are described in Sections 3.5.6 and 6.17. This EIS demonstrates that Scopes 1 and 2 greenhouse gas emissions of the Project have been minimised to the greatest extent practicable (based on the existing knowledge of gas quantity and content) (Section 6.17).

Accordingly, the Minster or IPC can be satisfied as to these matters.

Clause 15

Clause 15 of the Mining SEPP requires:

> *(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.

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

A detailed description of the Project coal resource and geology, and the proposed mining operations (including mine layout plans) is provided in Sections 2.3 and 2.6.

Constraints on the extent of the Project's underground mine are discussed in Section 2.3. NCOPL would seek to efficiently maximise resource recovery within geological, environmental and infrastructure constraints via continued use of the existing longwall mining method. NCOPL would also maximise resource recovery by minimising waste (i.e. coal rejects) generation during coal handling and preparation.

Further geological exploration, mine design and ongoing geotechnical evaluation may result in changes to the Project's recoverable coal resource. NCOPL also recognises that mining technology will continue to develop and commodity price fluctuations will also occur over the life of the Project, both of which may influence economically recoverable Project coal reserves.

Accordingly, the Minister or IPC can be satisfied as to these matters.

Clause 16

Clause 16(1) of the Mining SEPP requires that before granting consent for development for the purposes of mining 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.

As detailed in Section 2.8, Project product coal would continue to be transported via the Werris Creek Mungindi Railway to the Port of Newcastle for export. No changes to existing rail transport routes are proposed for the Project (i.e. movement of product coal on the road network is not proposed).

The primary public road network transport routes to and from the Narrabri Mine include potential routes that are adjacent to rural areas, industrial/commercial areas, residential areas and schools. The Project would continue to use the existing primary access to the Narrabri Mine from the Kamilaroi Highway via Kurrajong Creek Road and an internal sealed mine access road connecting to the Pit Top Area (Figure 2-3).

The Project Road Transport Assessment concluded that the existing road network can satisfactorily accommodate the forecast traffic demands resulting from the Project (e.g. employee movements and deliveries), such that no specific measures or upgrades are required to mitigate the impacts on the capacity, safety and efficiency of the road network (Appendix J).

Clause 16(2) of the Mining SEPP provides that, if the consent authority considers that 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 the Roads and Traffic Authority (now Roads and Maritime Services) (if it is not a roads authority for the road).

In addition, clause 16(3) of the Mining SEPP 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*
>
> *…*

NCOPL has consulted with Roads and Maritime Services, Transport for NSW and Narrabri Shire Council during the development of this EIS (Section 5), and these authorities are aware of the continued and expanded use of relevant roads for the Project.

Clause 17

Clause 17 of the Mining SEPP outlines various rehabilitation requirements.

Clause 17(1) requires that, before granting consent for development for the purposes of mining, 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 17(2) 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.*

Attachment 5 outlines the rehabilitation and mine closure strategy for the Project. The content of this document would inform the development of subsequent Project Mining Operations Plans (MOPs), should the Project be approved (Section A5.4).

Following the completion of mining, the Project area would primarily be rehabilitated to native vegetation (Mine Site Ecological Rehabilitation/other woodland areas/biodiversity offset areas), agricultural (pasture) and forestry (State Forest) land uses, subject to the agreed final land use developed in consultation with relevant stakeholders prior to mine closure.

In regard to clause 17(2)(b), the Project would include a proportion of coal reject material generated during coal preparation being disposed in the reject emplacement area. Exploration drilling waste from other nearby Whitehaven operations would be co-disposed with the coal reject. The proposed management of coal reject and exploration drilling waste material is discussed further in Section 2.9 and the management of other wastes is discussed in Section 2.12.

As outlined in Attachment 5, investigations would be undertaken at Project closure to identify and remediate any contaminated soil that may exist (e.g. in the Pit Top Area), in accordance with the requirements of the NSW *Contaminated Land Management Act 1997*, which addresses clause 17(2)(c). Any contaminated land would be remediated by removal of contaminated materials for disposal at an appropriately licensed facility, encapsulation, or appropriate remediation treatment on-site.

In regard to clause 17(2)(d), a key objective of the rehabilitation and mine closure strategy is to provide a landscape that is safe, stable and non-polluting (Attachment 5).

Accordingly, the Minister or IPC can be satisfied as to these matters.

Part 4A – Clause 17B

Clause 17B relates to "mining and petroleum development" on strategic agricultural land:

> *(1) Before determining an application for development consent for mining or petroleum development that is accompanied by a gateway certificate, the consent authority must:*
>
> *(a) refer the application to the Minister for Regional Water for advice regarding the impact of the proposed development on water resources, and*
>
> *(b) consider:*
>
> *(i) any recommendations set out in the certificate, and*
>
> *(ii) any written advice provided by the Minister for Regional Water in response to a referral under paragraph (a), and*
>
> *(iii) any written advice of the Gateway Panel in relation to the development given as part of the consultations undertaken by the Director-General under clause 3(4A)(b) of Schedule 2 to the Environmental Planning and Assessment Regulation 2000, and*
>
> *(iv) any written advice of the IES Committee provided to the Gateway Panel as referred to in clause 17g(1) (whether that advice was received before or after the expiry of the 60-day period referred to in clause 17G(1)(b)(i)), and*
>
> *(v) any cost benefit analysis of the proposed development submitted with the application*
>
> *(2) In determining an application for development consent for mining or petroleum development that is accompanied by a gateway certificate, the consent authority must consider whether any recommendations set out in the certificate have or have not been addressed and, if addressed, the manner in which those recommendations have been addressed.*
>
> *(3) The Minister for Regional Water, when providing advice under this clause on the impact of the proposed development on water resources, must have regard to:*
>
> *(a) the minimal impact considerations set out in the Aquifer Interference Policy, and*
>
> *(b) the provision of that Policy.*

There is approximately 215 hectares (ha) of verified biophysical strategic agricultural land (BSAL) within Mining Lease Applications (MLAs) 1 and 2. NCOPL lodged an application for a Gateway Certificate to the Mining and Petroleum Gateway Panel (Gateway Panel) in relation to the MLAs 1 and 2 components of the Project.

A Conditional Gateway Certificate was issued on 5 June 2019 and is provided in Attachment 1. A copy of the written advice provided by the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) to the Gateway Panel is available via the following link:

http://www.iesc.environment.gov.au/system/files/iesc-advice-narrabri-2019-102.pdf

The advice provided by the IESC has been considered in the preparation of relevant specialist studies (Appendices A, B, C and D).

In relation to clause 17B(b)(v), a cost-benefit analysis for the Project has been undertaken by AnalytEcon (2020) in accordance with the *Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals* (NSW Government, 2015) and the *Technical Notes Supporting the Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals* (Department of Planning and Environment [DP&E], 2018). The cost-benefit analysis is provided in Appendix L.

Table A7-2 outlines where the recommendations of the Conditional Gateway Certificate have been addressed in the EIS. All recommendations of the Gateway Certificate have been addressed in this EIS.

Accordingly, the Minister or IPC can be satisfied as to these matters.

Table A7-2
Consideration of the Recommendations of the Conditional Gateway Certificate

Relevant Criteria	Recommendation	EIS Reference
17H4(a)(i)	*The panel requires a landscape management plan to be prepared as part of the EIS detailing how surface cracking and altered drainage patterns will be managed as subsidence occurs. This plan must include detailed mapping of potential BSAL currently not verified.*	Appendix G
17H4(a)(ii)	*The panel requires a landscape management plan to be prepared as part of the EIS detailing how altered drainage patterns resulting in soil saturation for extended periods will be managed as subsidence occurs.*	Appendix G
17H4(a)(iii)	*The panel requires within the EIS landscape management plan a documented procedure for managing the altered micro-relief resulting from subsidence within the current agricultural production systems.*	Appendix G
17H4(a)(iv)	*The Panel requires more geological detail and baseline data acquisition in any upgraded groundwater model that is to be used in an EIS. Also, any future groundwater flow modelling should include cumulative impact studies of the nearby (proposed) Santos Coal Seam Gas Project. Additional studies are required to more fully identify and evaluate cracking formed from the effects of mining and the possible loss of water in ephemeral streams due to surface cracking.*	Appendix B
17H4(a)(vi)	*The panel requires a detailed plan for the storage of BSAL topsoil removed for surface infrastructure development and its subsequent re-establishment in the mine rehabilitation process at the end of mine life.*	Appendix G

A7.2.3 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

The *State Environmental Planning Policy No 33 – Hazardous and Offensive Development* (SEPP 33) applies to the whole of NSW.

Clause 2 sets out the aims of SEPP 33, of which the following are relevant to the Project:

> *(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 12 of SEPP 33 requires an person, who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry, to prepare (or cause to be prepared) a Preliminary Hazard Analysis (PHA) in accordance with the current circulars or guidelines published by the NSW Department of Planning (DoP) (now the Department of Planning, Industry and Environment) and submit the analysis with the development application.

Clause 13 of SEPP 33 requires that, in determining an application to carry out development for the purposes of a potentially hazardous or offensive industry, the consent authority (the Minister or IPC) must consider (in addition to any other matters specified in the EP&A Act or in an environmental planning instrument applying to the development):

> *(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.

In accordance with the Secretary's Environmental Assessment Requirements (SEARs) and as part of the preparation of this EIS, a PHA has been prepared in accordance with SEPP 33 (Appendix P).

The PHA has been conducted in accordance with the general principles of risk evaluation and assessment outlined in the NSW Government *Assessment Guideline: Multi-level Risk Assessment* (Department of Planning and Infrastructure [DP&I], 2011) and has been documented in general accordance with *Hazardous Industry Planning Advisory Paper (HIPAP) No. 6: Hazard Analysis* (DoP, 2011).

In regard to clause 13(b), extensive consultation has been undertaken with various public authorities during the preparation of this EIS, as described in Section 5.

Project alternatives (including the Project location) are discussed in Section 7, which addresses clause 13(d) of SEPP 33.

Potential future uses of the land are considered in Section 7 and Attachment 5.

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.2.4 State Environmental Planning Policy (Koala Habitat Protection) 2019

The *State Environmental Planning Policy (Koala Habitat Protection) 2019* (Koala Habitat Protection SEPP) replaced the *State Environmental Planning Policy No 44—Koala Habitat Protection* on 1 March 2020.

Clause 3 outlines the aims of the Koala Habitat Protection SEPP:

> *This Policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.*

Part 2 of the Koala Habitat Protection SEPP requires the councils in certain Local Government Areas (LGAs) (including Narrabri LGA) to consider certain development controls for koala habitats and regulates a council's determination of development applications. For example, clause 9(2) of the Koala Habitat Protection SEPP (which relates to certain land without an approved koala management plan) states:

(2) Before a council may grant consent to a development application for consent to carry out development on the land, the council must take into account—

(a) the requirements of the Guideline, or

(b) information, prepared by a suitably qualified and experienced person in accordance with the Guideline, provided by the applicant to the council demonstrating that—

(i) the land does not include any trees belonging to the feed tree species listed in Schedule 2 for the relevant koala management area, or

(ii) the land is not core koala habitat.

Since the Project is SSD under Division 4.7 of Part 4 of the EP&A Act, the Minister or IPC is the consent authority (Section 4.2.1) rather than the Council.

Notwithstanding that Part 2 of the Koala Habitat Protection SEPP does not apply in circumstances where the consent authority is the Minister or IPC, an assessment of koala habitat for the purpose of the Koala Habitat Protection SEPP has been undertaken (Appendix D) and found that the Project Development Application Area comprises "core koala habitat".

An assessment of the potential impacts on the koala concluded that the Project is unlikely to lead to a decline in the viability of the local koala population (Appendix D).

Given the above, the Project is consistent with the aims of the Koala Habitat Protection SEPP.

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.2.5 State Environmental Planning Policy No.55 – Remediation of Land

The *State Environmental Planning Policy No 55 – Remediation of Land* (SEPP 55) 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.

"Contaminated Land" in SEPP 55 has the same meaning as it has in 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 7(1) of SEPP 55 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 7 of SEPP 55 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 subclause (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.*
>
> *(3) The applicant for development consent must carry out the investigation required by subclause (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,*
>
> *…*

As set out above, clause 7(2) provides that, before a consent authority determines an application for development consent, a "preliminary investigation" is required where:

- the application for consent to carry out development that would involve a "change of use"; and
- that "change of use" is relevant to certain land specified in clause 7(4).

The certain land specified in clause 7(4) on which the "change of use" must relate is either:

- land that is an "investigation area" – defined in SEPP 55 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 the 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* [NSW Department of Urban Affairs and Planning {DUAP} and Environment Protection Authority {EPA}, 1998]) is being, or is known to have been, carried out.

The component of the Project located within the boundary of Project Approval 08_0144 for the Narrabri Mine does not involve a 'change of use' because the Project would involve the continued development of underground mining and associated activities within this area.

Where these activities are to be undertaken within the boundary of Project Approval 08_0144 for the Narrabri Mine, these Project activities would not result in any change in the use of land, as mining-related activities are already approved and occurring.

Ground Doctor Pty Ltd (Appendix M) completed a Land Contamination Assessment of the lands within MLAs 1 and 2, including a preliminary investigation in accordance with the *Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land* (DUAP and EPA, 1998).

The preliminary investigation included a desktop review, site inspection, interviews with existing landholders and identification of potentially contaminated areas. The findings of the preliminary investigation are provided in Appendix M and summarised in Section 6.6.

On the basis of the preliminary investigation, Ground Doctor Pty Ltd (Appendix M) concluded that the land within MLAs 1 and 2 is suitable for the Project use.

Land contamination management measures, including post-mining investigation and remediation measures are described in Section 6.6 and Attachment 5.

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.2.6 State Environmental Planning Policy (Infrastructure) 2007

The *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) applies to the whole of NSW and includes provisions for consultation with relevant public authorities about certain development during the development assessment process.

Electricity Transmission and Distribution Networks

Subdivision 2 of Division 5 of Part 3 of the Infrastructure SEPP relates to developments that are likely to affect an electricity transmission or distribution network.

Clause 45 of the Infrastructure SEPP relevantly provides:

> *(1) This clause 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 clause 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 existing spur line from Essential Energy's 66 kilovolt (kV) supply system adjacent to the Kamilaroi Highway would continue to supply most of the electricity requirements of the Project (Section 2.11.3).

Transformers in the Pit Top Area step down the 66 kV supply to 11 kV for distribution by overhead cable or underground cable where necessary (Section 2.11.3).

The electricity transmission line would be progressively extended as ventilation complexes and the mine are developed (Section 2.11.3).

In addition, three Essential Energy 11 kV electricity transmission lines are located above the underground mining area (Section 6.3). The management of potential mine subsidence impacts on these electricity transmission lines would be managed in accordance with management plans prepared in consultation with Essential Energy (Appendix A).

Consultation has been conducted with Essential Energy (the relevant electricity supply authority) regarding the Project (Section 5.2.4). Further consultation with Essential Energy would be conducted during the Project operations (e.g. preparation of management plans).

Accordingly, the Minister or IPC can be satisfied as to these matters.

Rail Corridor

Subdivision 2 of Division 15 of Part 3 of the Infrastructure SEPP relates to development in or adjacent to rail corridors.

Clause 86 of the Infrastructure SEPP relevantly provides:

> *(1) This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
>
> *(a) within or above a rail corridor, or*
>
> *(b) within 25m (measured horizontally) of a rail corridor, or*
>
> *(b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or*
>
> *(c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.*
>
> *(2) Before determining a development application for development to which this clause 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 clause and published in the Gazette.*
>
> *(3) Subject to subclause (5), the consent authority must not grant consent to development to which this clause 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 clause 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 subclause (2)(a) and the rail authority has not granted or refused to grant concurrence.*

The Project would involve activities adjacent to the Werris Creek Mungindi Railway and the Project rail loop.

NCOPL has consulted with Transport for NSW and the Australian Rail Track Corporation (ARTC) (the relevant rail authority) in relation to the Project (Section 5.2.4).

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.3 NARRABRI LOCAL ENVIRONMENTAL PLAN 2012

The Project would be located wholly within the Narrabri LGA and, therefore, the *Narrabri Local Environmental Plan 2012* (Narrabri LEP) is relevant.

A7.3.1 Objectives

Clause 1.2 of the Narrabri LEP sets out the aims of the plan, with the following of particular relevance to the Project:

> *(a) to encourage the orderly management, development and conservation of resources by protecting, enhancing and conserving—*
>
> *(i) land of significance for agricultural production, and*
>
> *(ii) timber, minerals, soil, water and other natural resources, and*
>
> *(iii) areas of high scenic or recreational value, and*
>
> *(iv) native plants and animals including threatened species, populations and ecological communities, and their habitats, and*
>
> *(v) places and buildings of heritage significance,*
>
> *(b) to provide a choice of living opportunities and types of settlements,*
>
> *(c) to facilitate development for a range of business enterprise and employment opportunities,*
>
> *(d) to ensure that development is sensitive to both the economic and social needs of the community, including the provision of community facilities and land for public purposes.*

The Project is considered to be generally consistent with the aims of the Narrabri LEP, as:

- The Project is an underground mining operation, and any subsidence impacts to agricultural land use would be short-term, with minimal or no impacts to production, including over areas identified as BSAL or other areas with highly productive soils (Section 6.6.3 and Appendix G).
- The majority of land disturbed by the Project would be low to moderate capability agricultural land (Class 4, 5 or 6) (Section 6.6.3 and Appendix G).
- Project design measures and other measures would be adopted by NCOPL to allow for compatibility with agricultural land uses and would have minimal additional visual impact (Sections 6.6, 6.10 and 7.1).
- The Project would involve the development of a mineral resource (coal) in a manner that would avoid or mitigate potential impacts on the environment (including soils, groundwater, surface water, remnant native vegetation and other biodiversity values) and places and buildings of archaeological or heritage significance (Section 6).
- NCOPL has consulted with Forestry Corporation regarding the Project and would apply for necessary permits for activities that would be conducted as a component of the Project within Pilliga East and Jacks Creek State Forests (Section 5).
- The design, planning and assessment of the Project has been carried out applying the principles of ESD (Section 7.4.3).
- The Project would facilitate continued and additional local and regional employment and economic development opportunities (Section 6.15 and Appendix L).
- NCOPL is committed to ongoing financial support for community groups in the region (Section 5.3).

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.3.2 Permissibility

Part 2 of the Narrabri LEP outlines the land use zone objectives that are relevant in determining whether the Project (or any part of the Project) is permissible under the Narrabri LEP.

Zone RU1 (Primary Production) and Zone RU3 (Forestry) are the relevant land use zones under the Narrabri LEP represented within the Project Development Application Area (Figure A7-1).

Subject to the application of the Mining SEPP, underground mining would fall within the general category of development, which is prohibited under the Narrabri LEP in these zones.

Clause 4 of the Mining SEPP relevantly provides:

> ***4 Land to which Policy applies***
>
> *This Policy applies to the State.*

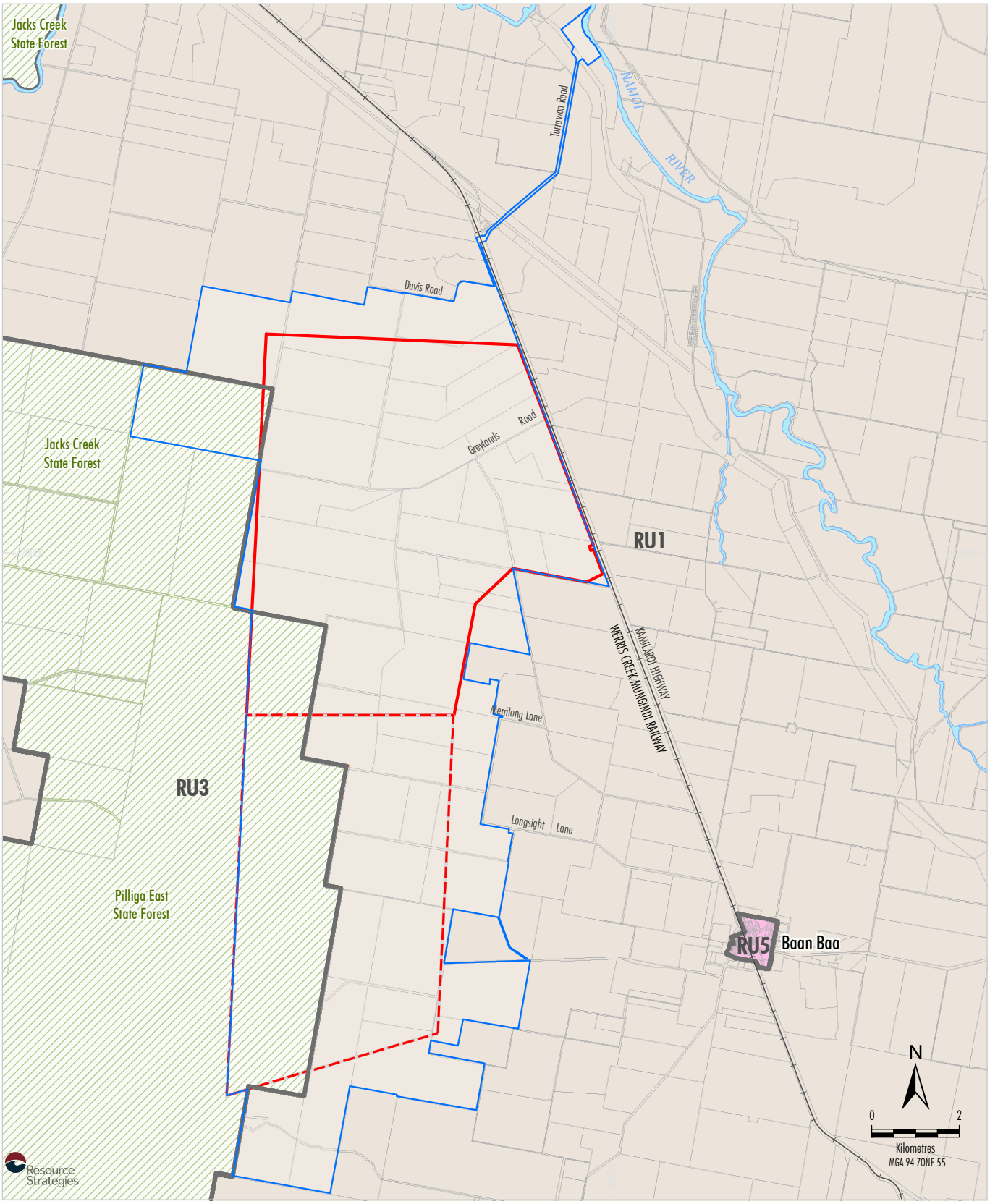
Clause 5(3) of the Mining SEPP gives the Mining SEPP primacy where there is any inconsistency between the provisions in the Mining SEPP and the provisions in any other environmental planning instrument (subject to limited exceptions).

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

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

In this regard, clause 7(1) states:

> *(1) Mining Development for any of the following purposes may be carried out only with development consent—*
>
> *(a) underground mining carried out on any land,*
>
> *…*
>
> *(d) facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land*



LEGEND

- Mining Lease (ML 1609)
- Provisional Mining Lease Application Area
- State Forest
- Development Application Area

Narrabri Local Environmental Plan (LEP)

- RU1 Primary Production
- RU3 Forestry
- RU5 Village

Source: NCOPL (2019); NSW Spatial Services (2019, 2020)

WHITEHAVEN COAL

NARRABRI STAGE 3 PROJECT

Land Zoning

Figure A7-1

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

> ***underground mining*** *means—*
>
> *(a) mining carried out beneath the earth's surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and*
>
> *(b) shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth's surface),*
>
> *but does not include open cut mining.*

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

Accordingly, the Minister or the IPC would not be precluded from granting approval under section 4.38 of the EP&A Act for the Project in respect to those parts of the Project land where mining is prohibited under the Narrabri LEP. This is reinforced by section 4.38(3) of the EP&A Act, which states that Development Consent may be granted for SSD despite the development being partly prohibited by an environmental planning instrument.

A7.3.3 Zone Objectives

With respect to the land use zones under the Narrabri LEP, clause 2.3(2) of the Narrabri LEP relevantly provides:

> *The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.*

A consideration of the objectives of the four zones within the Project Development Application Area is provided below.

Objectives of Zone RU1 (Primary Production)

The objectives of the RU1 (Primary Production) Zone are under the Narrabri LEP 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.*
- *To allow for non-agricultural land uses that will not restrict the use of other land for agricultural purposes.*

The Project is not inconsistent with the objectives of Zone RU1 (Primary Production), as:

- The Project would not result in the fragmentation or alienation of natural resource lands and would optimise the recovery of coal within EL 6243 by using existing and approved infrastructure for the Project.
- The Project site is considered suitable, and incorporates measures to allow for compatibility with existing, approved and likely preferred land uses (Section 7.1).
- The Project is an underground mining operation, and any impacts to agricultural production associated with subsidence would be short-term, with minimal to no impacts to production, including over areas identified as BSAL or other highly productive soil areas (Section 6.6.3 and Appendix G).
- The majority of land disturbed by the Project would be low to moderate capability agricultural land (Class 4, 5 or 6) (Section 6.6.3 and Appendix G).
- The Project would include the re-establishment of agricultural land post-mining (Attachment 5).

Accordingly, the Minister or IPC can be satisfied as to these matters.

Objectives of Zone RU3 (Forestry)

The objectives of the RU3 (Forestry) Zone under the Narrabri LEP are as follows:

- *To enable development for forestry purposes.*
- *To enable other development that is compatible with forestry land uses.*

The Project is not inconsistent with the objectives of Zone RU3 (Forestry), as:

- The Project site is considered suitable, and incorporates measures to allow for compatibility with existing, approved and likely preferred land uses (Section 7).
- The Project would include the re-establishment of forestry post-mining (Attachment 5).
- NCOPL has consulted with Forestry Corporation regarding the Project and would apply for necessary permits for activities that would be conducted as a component of the Project within Pilliga East and Jacks Creek State Forests.

Accordingly, the Minister or IPC can be satisfied as to these matters.

A7.4 OTHER APPROVALS

A7.4.1 Mining Act 1992

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

Mining Tenements

The Narrabri Mine is operated by NCOPL, on behalf of the Narrabri Mine Joint Venture, which consists of Whitehaven Coal Limited's wholly owned subsidiaries Narrabri Coal Pty Ltd (NCPL) (70 per cent [%]) and Narrabri Coal Australia Pty Ltd (7.5%), Upper Horn Investments (Australia) Pty Ltd (7.5%), J-Power Australia Pty Limited (7.5%), Posco International Narrabri Investment Pty Ltd (5%) and Kores Narrabri Pty Limited (2.5%) (Section 1).

The Narrabri Mine Joint Venture partners are the holders of ML 1609 and EL 6243 for Group 9 minerals (coal and oil shale) (i.e. the Narrabri Mine Joint Venture are the tenement holders) over all relevant land where mining for coal is proposed to be carried out for the Project.

NCOPL will make the Development Application for the Project, in accordance with section 380AA of the *Mining Act 1992*. Attachment 9 addresses the relevant requirements of section 380AA of the *Mining Act 1992*.

The Narrabri Mine Joint Venture partners will lodge mining lease applications separately with the MEG (within the Department of Regional NSW) for the Project, which would cover the underground mining area and relevant surface infrastructure outside of the existing mining lease.

Under section 4.42(1)(c) of the EP&A Act, if the Project is approved as SSD, mining leases granted under the *Mining Act 1992* that are required for carrying out the Project cannot be refused and are to be substantially consistent with the Development Consent granted under Division 4.7 of the EP&A Act.

Mine Operations Plan

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

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

The *ESG3: Mining Operations Plan (MOP) Guidelines* (Department of Trade and Investment, Regional Infrastructure and Services – Division of Resources and Energy, 2013) describes the purpose and function of the MOP as:

> *A MOP is intended to fulfil the function of both a rehabilitation plan and a mine closure plan. It should document the long-term mine closure principles and outcomes whilst outlining the proposed rehabilitation activities during the MOP term.*
>
> *A MOP also forms the basis for the estimation of the security deposit imposed to ensure compliance with conditions of authorisation granted under the Mining Act.*

A7.4.2 Protection of the Environment Operations Act 1997

The NSW *Protection of the Environment Operations Act 1997* (PoEO Act) and the NSW *Protection of the Environment Operations (General) Regulation 2009* set out the general environmental obligations for development in NSW, and are administered by the NSW EPA.

Under section 48 of the PoEO Act, it is an offence to carry out a "scheduled activity" without an Environment Protection Licence (EPL). Schedule 1 of the PoEO lists "scheduled activities" for the purposes of section 48.

Clause 10 of Schedule 1 defines "coal works", as any activity (other than coke production) that involves storing, loading or handling coal (whether at any coal loader, conveyor, washery or reject dump or elsewhere) at an existing coal mine or on a separate coal industry site.

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

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

Clause 28 of Schedule 1 of the PoEO Act defines "mining for coal", as the mining, processing or handling of coal (including tailings and chitter) at underground mines or open cut mines.

Clause 28(2) provides that "mining for coal" is declared a scheduled activity if:

> *(a) it has a capacity to produce more than 500 tonnes of coal per day, or*
>
> *(b) it has disturbed, is disturbing or will disturb a total surface area of more than 4 hectares of land by:*
>
> *(i) clearing or excavating, or*
>
> *(ii) constructing dams, ponds, drains, roads, railways or conveyors, or*
>
> *(iii) storing or depositing overburden or coal (including tailings and chitter).*

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

The Narrabri Mine currently operates under EPL 12789, granted under the PoEO Act, which allows for coal works and mining for coal as scheduled activities.

EPL 12789 contains conditions that relate to emission and discharge limits, environmental monitoring and reporting. If the Project is approved, EPL 12789 would require a variation to incorporate the Project.

NCOPL would consult with the EPA regarding the requirement to vary EPL 12789 to incorporate an additional "schedule activity" to allow for the co-disposal of exploration drilling waste from other nearby Whitehaven exploration activities in the reject emplacement area (Section 2.9.3).

A7.4.3 Water Management Act 2000

The objects of *Water Management Act 2000* are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations.

Approvals

Part 3 of the *Water Management Act 2000* provides for the following approvals:

- water use approval (section 89) – confers a right on its holder to use water for a particular purpose at a particular location;
- water management works approval (section 90) – authorises its holder to construct and use a specified water management work at a specified location; and
- activity approvals (section 91), including:
  - controlled activity approval – confers a right on its holder to carry out a specified controlled activity at a specified location in, on or under waterfront land; and
  - aquifer interference approval – confers a right on its holder to carry out one or more specified aquifer interference activities at a specified location, or in a specified area, in the course of carrying out specified activities.

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

Notwithstanding that no water management works approvals (e.g. water supply works approvals) would be required for the Project, metering equipment would be installed and maintained in accordance with the *NSW Non-Urban Water Metering Policy* (NSW Government, 2018b) on all works used for the extraction of water under an access licence.

The requirement to obtain an aquifer interference approval (under section 91 of the *Water Management Act 2000*) is only triggered when a proclamation is made (under section 88A) specifying that aquifer interference approvals apply to a particular part of the State (or to the whole State) or to a particular water source. To date, no such proclamation has been made specifying that aquifer interference approvals are required in any part of NSW. As such, aquifer interference approvals are not currently required to be obtained for the Project.

An assessment of the Project against the licensing requirements and minimal impact considerations of the AIP is provided in Section 6.4 and Appendix B. A summary of the minimal impact considerations assessment is also provided in Table A7-1.

Water Licensing

Under the *Water Management Act 2000*, it is an offence to "take" water without a water licence unless a statutory exemption applies.

The AIP requires that all water taken by aquifer interference activities be accounted for within the extraction limits set by the relevant water sharing plan. A water access licence (WAL) is required where water is taken either incidentally or for consumptive use, or where any act by a person carrying out an aquifer interference activity causes (Department of Primary Industries – Office of Water, 2012):

- the removal of water from a water source; or
- the movement of water from one part of an aquifer to another part of an aquifer; or
- the movement of water from one water source to another water source, such as:
  - from an aquifer to an adjacent aquifer; or
  - from an aquifer to a river/lake; or
  - from a river/lake to an aquifer.

The AIP also requires consideration of the continued take of water from groundwater or connected surface waters following cessation of an aquifer interference activity. For example, the post-mining inflow that occurs until a groundwater system reaches equilibrium following cessation of underground mining must be considered.

The AIP states that licences are required to be held to adequately account for the ongoing take of water until the system returns to equilibrium, or alternatively, sufficient licences to account for the ongoing take of water are to be surrendered to the NSW Minister for Water.

Project Water Requirements

Details of the current WALs held by NCOPL for the Narrabri Mine are summarised in Table 6-8. The predicted annual groundwater volumes required to be licensed over the life of the Project and post-mining, based on groundwater modelling (Appendix B) and site water balance modelling (Appendix C), are summarised in Table 6-9.

NCOPL currently holds sufficient licences to cover the predicted licensing requirements for the Project, with the exception of the following water sources (Table 6-9):

- Gunnedah Oxley Basin Murray Darling Basin (MDB) Groundwater Source regulated by the *Water Sharing Plan for the NSW Murray Darling Basin Porous Rock Groundwater Sources 2020*; and
- Lower Namoi Groundwater Source regulated by the *Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020*.

Notwithstanding the above, NCOPL currently holds sufficient licences to cover the predicted licensing requirements for the commencement of the Project.

Entitlements would be transferred from other Whitehaven operations to cover Project requirements for the Gunnedah Oxley Basin MDB.

For the predicted licensing requirements in the Lower Namoi Groundwater Source, NCOPL would seek and obtain the appropriate entitlements on the open market in accordance with the appropriate trading rules of the *Water Sharing Plan for the Namoi Alluvial Groundwater Sources 2020*. Based on recent water trading statistics (Table 6-10), there is sufficient market depth in the Lower Namoi Groundwater Source to accommodate the very small allocation required for the Project.

Table 6-10 also includes water trading statistics for the Gunnedah Oxley Basin MDB Groundwater Source that shows there is also sufficient market depth in this groundwater source in the event NCOPL is not able to obtain sufficient entitlements from other Whitehaven operations.

It is noted that additional entitlements for the Gunnedah Oxley Basin MDB Groundwater Source may also be obtained via the controlled allocation order process. Under section 65 of the NSW *Water Management Act 2000*, the Minister for Water can make a controlled allocation order to make new entitlements available in water sources with unassigned water. Controlled allocation orders relevant to the Gunnedah Oxley Basin MDB Groundwater Source have been made in 2013, 2014, 2017 and 2020. There is approximately 181,528 ML/year of unassigned water in the Gunnedah Oxley Basin MDB Groundwater Source (Table 6-10).

At the completion of the Project, relevant entitlements would be surrendered to account for groundwater take post-mining in accordance with the AIP.

Excluded Works under the Water Management (General) Regulation 2018

The Project would involve the use of the existing/approved water management infrastructure with minor augmentations and extensions, including the progressive development of pumps, pipelines, water storage and other water management infrastructure (Section 2.10.1).

Item 12 of Schedule 4 of the *Water Management (General) Regulation 2018* provides access licence exemptions in relation to water take from or by means of an 'excluded work' specified in Schedule 1.

Where applicable, these exemptions would be relied on for the Project water storages (Appendix C).

Harvestable Rights

Harvestable rights orders made by the Minister for Water under section 54 of the *Water Management Act 2000* give a landholder the right to capture 10% of the average regional rain water runoff on the land by means of a dam or dams not having more than the total capacity calculated in accordance with Schedule 1 of the order, which are located on minor streams (as defined in Schedule 1 of the order). This water may be used for any purpose, except where a harvestable rights dam is also used for holding water taken in accordance with:

- a domestic and stock right conferred on a landholder by section 52 of the *Water Management Act 2000*;
- a right to take water from a river or lake in accordance with a licence issued under Part 2 of the *Water Act 1912*, which is subject to a condition restricting its use to stock and/or domestic purposes; or
- a right to take water from a river or lake in accordance with an access licence granted under Part 2 of Chapter 3 of the *Water Management Act 2000*.

An assessment of the potential impacts on surface water flows is provided in Appendix C and summarised in Section 6.5.

Flood Work Approvals

The *Floodplain Management Plan for the Upper Namoi Valley Floodplain 2019* has been developed for the Upper Namoi Valley Floodplain in pursuance of section 50 of the *Water Management Act 2000*.

The Project area (with the exception of the existing/approved Namoi River pump station, alluvial production bore and the pipeline) is located outside the plan area defined within the *Floodplain Management Plan for the Upper Namoi Valley Floodplain 2019*.

The Project would not require a flood work approval under section 90 of the *Water Management Act 2000* as this requirement does not apply to SSD as per section 4.41 of the EP&A Act.

Notwithstanding the above, an assessment of potential flooding impacts of the Project is provided in Appendix C.

A7.4.4 Dams Safety Act 2015

The *Dams Safety Act 2015* regulates the safety of dams. The *Dams Safety Regulation 2019* sets out operational details and safety standards that declared dam owners must comply with to satisfy the provisions of the *Dams Safety Act 2015*.

The *Dams Safety Act 2015* is administered by Dams Safety NSW.

Each of the existing "Rail Loop Dams" at the Narrabri Mine (i.e. Dams A1, A2, A3, B1, B2, C and D [Figure 2-3]) is a "declared dam" under the *Dams Safety Act 2015.* These dams would continue to be used for the Project (Section 2.10.1) and managed in accordance with the requirements of the *Dams Safety Act 2015*.

Under section 48 of the *Dams Safety Act 2015*, the area of land surrounding, or in the vicinity of, a declared dam can be declared to be a notification area.

Before granting development consent for any mining operations in a notification area, a consent authority must refer the application for development consent to Dams Safety NSW and take into consideration any matters that are raised by Dams Safety NSW in relation to the application.

The Project is not located within a "notification area" declared by Dams Safety NSW.

NCOPL would comply with the Dams Safety Act 2015, where relevant (Section 2.5.10).

A7.4.5 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* (BC Act) provides the legislative framework for biodiversity conservation in NSW.

Section 7.9 of the BC Act states that an application for development consent under Part 4 of the EP&A Act for a SSD must be accompanied by a Biodiversity Development Assessment Report unless the DPIE and the BCD determine that the proposed development is not likely to have any significant impacts on biodiversity values.

A Biodiversity Development Assessment Report for the Project is provided in Appendix D.

A7.4.6 Forestry Act 2012

The *Forestry Act 2012* (Forestry Act) provides for the dedication, management and use of State Forests and other Crown-timber land for forestry and other purposes.

The Project would involve activities within Pilliga East and Jacks Creek State Forests, which are dedicated as State Forest pursuant to the Forestry Act.

Section 35 of the Forestry Act provides that the exercise of any right under the Mining Act on land within a State Forest is subject to conditions and restrictions relating to forestry as may be prescribed by the relevant regulations. For the portion of the Project within the Pilliga East and Jacks Creek State Forests, NCOPL holds ML 1609 and will lodge MLA 2.

NCOPL would apply for any necessary permits under the Forestry Act for Project activities that would be conducted within Pilliga East and Jacks Creek State Forests.

For disturbance within Pilliga East and Jacks Creek State Forests associated with the Project, NCOPL would consult with Forestry Corporation regarding harvesting of timber or forest materials pursuant to Part 4 of the Forestry Act.

As described in Section 5.2.1, Scratch Road (an existing forestry road/track that would be impacted by the Project) would be re-aligned by Forestry Corporation within the Pilliga East State Forest pursuant to the Forestry Act.

Although the alignment of the re-aligned Scratch Road is to be confirmed, potential environmental impacts associated with the re-alignment are expected to be related to biodiversity and Aboriginal heritage. It is understood that any impacts associated with the re-alignment would be assessed and considered by Forestry Corporation.

NCOPL has consulted with the Forestry Corporation regarding the Project (Section 5).

A7.4.7 Roads Act 1993

The Project would not involve any works associated with formed public roads. It would however involve works within road reserves that currently do not include a formed public road.

Consents under section 138 of the *Roads Act 1993* would be obtained where required, in consultation with the relevant roads authority.

A7.4.8 Coal Mine Subsidence Compensation Act 2017

The *Coal Mine Subsidence Compensation Act 2017* (CMSC Act) provides a scheme for the provision of compensation for damage caused by subsidence resulting from coal mine operations, and the assessment and management of risks associated with subsidence resulting from coal mine operations.

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

The Project is not located within a Mine Subsidence District declared under section 20 of the CMSC Act, and in the regulations made under the CMSC Act.

A7.4.9 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) defines proposals that are likely to have a significant impact on a matter of national environmental significance as a "controlled action".

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

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

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

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

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

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

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

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

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

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

Objects of the Act

Section 3 of the EPBC Act describes the objects of the EPBC Act as follows:

> *(a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and*
>
> *(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and*
>
> *(c) to promote the conservation of biodiversity; and*
>
> *(ca) to provide for the protection and conservation of heritage; and*
>
> *(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples; and*
>
> *(e) to assist in the co-operative implementation of Australia's international environmental responsibilities; and*
>
> *(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and*
>
> *(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.*

The Project is considered to be generally consistent with the objects of the EPBC Act, as:

- The Project incorporates measures to protect the environment (including aspects of the environment that are of national significance), via the Project design and the application of mitigation, offsets and other measures (Section 6).
- The Project would continue to develop the State's mineral resources (i.e. coal resources) while incorporating relevant ESD considerations (Section 7.4.3).
- An assessment of potential biodiversity impacts has been undertaken, and the Project includes a proposal for offsetting unavoidable impacts on ecology (Section 6.7 and Appendix D).
- The proposed action under the EPBC Act would not have a significant impact on water resources in consideration of the guidance in the *Significant Impact Guidelines for Water Resources* (DotE, 2013) (Sections 6.4.3 and 6.5.3 and Appendices B and C).
- The EIS includes Aboriginal and historic heritage assessments, which identify relevant cultural values (including the significance of biodiversity in Aboriginal cultural values) and suitable management and mitigation measures for potential direct and indirect impacts of the Project (Sections 6.11 and 6.12 and Appendices E and F).
- The Project would be developed in a manner that incorporates engagement from the community, landholders and Indigenous peoples through the Project EIS consultation program (Section 5), the public exhibition of the EIS document and the major Project assessment process.
- The Project includes consideration of NCOPL's contribution to maintaining Australia's international environmental responsibilities and the potential impacts on these (e.g. migratory species protected under international agreements and consideration of greenhouse gas emissions).

Environmental Record of the Proponent

As per Attachment 3 of the SEARs for the Project, information in relation to the environmental record of the person proposing to take the action must include details as prescribed by clause 6 in Schedule 4 to the EPBC Regulations.

Clause 6 states:

> ***6 Environmental record of person proposing to take the action***
>
> *6.01 Details of any proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources against:*
>
> *(a) the person proposing to take the action; and*
>
> *(b) for an action for which a person has applied for a permit, the person making the application.*
>
> *6.02 If the person proposing to take the action is a corporation--details of the corporation's environmental policy and planning framework.*

The proponent for the Project is NCOPL, who operates the Narrabri Mine on behalf of the Narrabri Mine Joint Venture (Section 1).

With respect to clause 6.01, at the time of writing, the NSW Resources Regulator has commenced prosecution proceedings against NCOPL and NCPL in the NSW Land and Environment Court for 19 alleged offences against Section 378D of the *Mining Act 1992* in respect of a total of ten alleged contraventions of conditions of ML 1609 and EL 6234.

Under section 378D of the *Mining Act 1992*, each holder of an exploration licence or mining lease commits an offence if a condition of the exploration licence or mining lease is contravened. Proceedings have been commenced against NCPL as a holder of EL 6243 and ML 1609, for each of the ten alleged contraventions.

Proceedings have also been commenced against NCOPL as operator, in relation to nine of the ten alleged contraventions (being the alleged contraventions of EL 6243), under section 378EA of the *Mining Act 1992*. Section 378EA of the *Mining Act 1992* provides that a person who causes or permits the commission of an offence under the Act is guilty of that offence.

In the proceedings, the NSW Resources Regulator alleges that:

(a) a condition of ML 1609 was contravened because an exploration borehole was not sealed in accordance with departmental guidelines once the borehole ceased to be used; and

(b) a condition of EL 6243 was contravened on nine occasions because:

- three access tracks were constructed at different locations to those referred to in a review of environmental factors for the Narrabri South Exploration Program;
- three boreholes were drilled other than in accordance with a review of environmental factors for the Narrabri South Exploration Program;
- one borehole was not sealed within the timeframe set out in a review of environmental factors for the Narrabri South Exploration Program;
- one borehole was not rehabilitated in accordance with the timeframe set out in a review of environmental factors for the Narrabri South Exploration Program; and
- a site rehabilitation plan was not prepared until on or around 9 September 2019 for three boreholes and several tracks that were completed between January and May 2019 (the relevant commitment in the 2018 review of environmental factors for the Narrabri South Exploration Program was to "[p]repare a site rehabilitation plan for the impacted areas").

The access tracks and boreholes, the subject of the abovementioned alleged contraventions, were rehabilitated by NCOPL before the prosecution proceedings were commenced.

By way of context to the number of alleged contraventions, the 2016 review of environmental factors in relation to the Narrabri South Exploration Program provided for the drilling of 41 exploration boreholes. The 2018 review of environmental factors in relation to the Narrabri South Exploration Program provided for the drilling of 25 exploration boreholes.

The Narrabri Mine has been in existence for more than a decade. Construction of the Narrabri Mine commenced in April 2008 and coal production commenced in June 2010. No other court proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources have been taken against NCOPL or NCPL.

With respect to clause 6.02, the Project would be undertaken consistent with Whitehaven Coal Limited's (2020) *Health, Safety, Environment & Communities Policy*.

> *Whitehaven Coal intends to conduct business in a way that maintains a safe and healthy workplace for its workers, visitors and the surrounding community, and protects the environmental, community and cultural heritage values of the area throughout all stages of exploration, development, operation, closure and associated activities.*
>
> *Whitehaven Coal aims to:*
>
> - *Achieve zero workplace injuries and illnesses.*

- *Achieve zero environmental incidents.*
- *Maintain mutually beneficial relationships with the communities which host our operations.*

Whitehaven Coal will strive to achieve these goals by:

- *Considering health, safety, environment and community (HSEC) matters when planning and undertaking work activities.*
- *Consulting and communicating HSEC matters in a fair and effective manner.*
- *Having processes in place for identifying and eliminating or minimising HSEC risks and impacts and sharing and applying learnings' in a timely manner.*
- *Working to continuously improve HSEC performance.*
- *Providing an effective injury management and return to work program for workers.*
- *Complying with applicable HSEC legal and other requirements.*
- *Providing workers with necessary HSEC information, instruction, training and supervision to enable effective performance of their work.*
- *Utilising HSEC resources and processes to implement and maintain the requirements of this Policy and associated management systems.*

A description of the existing environmental management system implemented by NCOPL at the Narrabri Mine is provided in Section 2.1.13.

A7.4.10 National Greenhouse and Energy Reporting Act 2007

The *National Greenhouse and Energy Reporting Act 2007* (NGER Act) introduced a single national reporting framework for the reporting and dissemination of companies' greenhouse gas emissions and energy use. The NGER Act makes registration and reporting mandatory for companies whose energy production, energy use or greenhouse gas emissions meet specified thresholds. The Narrabri Mine currently reports its greenhouse gas emissions and energy use under the NGER Act.

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

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

The Project is anticipated to trigger the current NGER Act reporting threshold during the Project life, based on the Scope 1 and 2 greenhouse gas emission estimates provided in Appendix I. Accordingly, NCOPL would continue to report relevant energy use and greenhouse gas emissions associated with its activities.

Further discussion of greenhouse gas emission policy and guidance materials is provided in Sections 3.5.6 and 6.17 and 7.

A7.4.11 Native Title Act 1993

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

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

The *Mining Act 1992* must be administered in accordance with the *Native Title Act 1993*. The primary effect of the *Native Title Act 1993* on exploration and mining approvals is to provide Native Title parties with 'Rights to Negotiate' about the grant and some renewals by Governments of exploration and mining titles. The *Native Title Act 1993*, where applicable, would be complied with in relation to MLAs 1 and 2 and the renewal of ML 1609 for the Project.

A7.4.12 Other Legislation

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

- *Aboriginal Land Rights Act 1983;*
- *Biosecurity Act 2015;*
- *Contaminated Land Management Act 1997;*
- *Crown Land Management Act 2016;*
- *Dangerous Goods (Road and Rail Transport) Act 2008;*
- *Electricity Supply Act 1995;*
- *Explosives Act 2003;*
- *Fisheries Management Act 1994;*
- *Heritage Act 1977;*
- *National Parks and Wildlife Act 1974;*
- *Native Title (New South Wales) Act 1994;*
- *Petroleum (Onshore) Act 1991;*
- *Pipelines Act 1967;*
- *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.

A7.5 PROJECT COMPLIANCE WITH STATUTORY REQUIREMENTS

The *NSW Guideline for State Significant Projects – Preparing an Environmental Impact Statement* (June 2019, unpublished) requires that "a statutory compliance table must be included as an appendix to the EIS and identify all the relevant statutory requirements and where they have been addressed". A summary of the Project's compliance with relevant statutory requirements is provided in Table A7-3.

Table A7-3
Statutory Compliance for the Project

Relevant Statute	Section Addressed	Project Compliance
Commonwealth Legislation		
Environment Protection and Biodiversity Conservation Act 1999	Sections 4, 7 and A7.4.9	✓
National Greenhouse and Energy Reporting Act 2007	Sections 4, 6.18, 7 and A7.4.10	✓
Native Title Act 1993	Sections 4 and A7.4.11	✓
NSW Legislation		
Environmental Planning and Assessment Act 1979	Sections 4, 7 and A7.1	✓
Mining Act 1992	Sections 4 and A7.4.1	✓
Protection of the Environment Operations Act 1997	Sections 4, 6.5, 6.9, 6.10 and A7.4.2	✓
Water Management Act 2000	Sections 4, 6.4, 6.5 and A7.4.3 and Appendices B and C	✓
Dams Safety Act 2015	Sections 4 and A7.4.4 and Appendix C	✓
Biodiversity Conservation Act 2016	Sections 6.7 and A7.4.5 and Appendix D	✓
Forestry Act 2012	Sections 4 and A7.4.6	✓
Roads Act 1993	Sections 4 and A7.4.7	✓
Coal Mine Subsidence Compensation Act 2017	Sections 4, 6.3 and A7.4.8 and Appendix A	✓
Other legislation	Section A7.4.12	✓
NSW Planning Policies		
State Environmental Planning Policy (State and Regional Development) 2011	Sections 4 and A7.2.1	✓
State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007	Sections 4 and A7.2.2	✓
State Environmental Planning Policy No. 33 – Hazardous and Offensive Development	Sections 4 and A7.2.3	✓
State Environmental Planning Policy (Koala Habitat Protection) 2019	Sections 4 and A7.2.4	✓
State Environmental Planning Policy No.55 – Remediation of Land	Sections 4 and A7.2.5 and Appendix M	✓
State Environmental Planning Policy (Infrastructure) 2007	Sections 4 and A7.2.6	✓
Narrabri Local Environmental Plan 2012	Sections 4 and A7.3	✓

A7.6 REFERENCES

AnalytEcon (2020) *Narrabri Underground Mine Stage 3 Extension Project Economic Assessment.*

Department of Planning (2011) *Hazardous Industry Planning Advisory Paper No.6: Hazard Analysis*.

Department of Planning and Environment (2018) *Technical Notes Supporting the Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals*.

Department of Planning and Infrastructure (2011) *Assessment Guideline: Multi-level Risk Assessment*.

Department of Primary Industries – Office of Water (2012) *Aquifer Interference Policy*.

Department of the Environment (2013) *Significant Impact Guidelines for Water Resources.*

Department of Trade and Investment, Regional Infrastructure and Services – Division of Resources and Energy (2013) *ESG3: Mining Operations Plan (MOP) Guidelines*.

Department of Urban Affairs and Planning and Environment Protection Authority (1998) *Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land*.

Environment Protection Authority (2017) *Noise Policy for Industry*.

New South Wales Government (2015) *Guidelines for the Economic Assessment of Mining and Coal Seam Gas Proposals*.

New South Wales Government (2018a) *Voluntary Land Acquisition and Mitigation Policy – For State Significant Mining, Petroleum and Extractive Industry Developments.*

New South Wales Government (2018b) *NSW Non-Urban Water Metering Policy*.

New South Wales Government (2020) *Strategic Statement on Coal Exploration and Mining in NSW.*

Whitehaven Coal Limited (2020) *Health, Safety, Environment & Communities Policy*.