



## **SECTION 5**

Statutory Context

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## 5 STATUTORY CONTEXT

This section outlines the existing primary approvals held by the Dendrobium Mine and the application of key State and Commonwealth legislation to the Project, including preconditions to the grant of approval and mandatory considerations.

Additional analysis of the consistency of the Project with relevant legislation, plus State Environmental Planning Policies (SEPPs) and LEPs that would have applied, but for the Project's SSI declaration, is provided in Attachment 7. Additional justification of the Project is provided in Section 8.

### 5.1 EXISTING APPROVALS AND REGULATORY CONTROLS

General descriptions of the approval histories of the Dendrobium Mine and Cordeaux Colliery are provided in Section 3.

Key approvals and documentation pertaining to the Dendrobium Mine include:

- Development Consent DA 60-03-2001 issued by the NSW Minister for Urban Affairs and Planning on 20 December 2001, as amended by subsequent modifications (Section 2.2.1).
- Approval Decision EPBC 2001/214 under the EPBC Act issued on 20 December 2001.
- CCL 768, ML 1510 and ML 1566 issued under the NSW *Coal Mining Act 1973* (now repealed) and the *Mining Act 1992*, administered under the *Mining Act 1992*.
- EPL 3241 issued by the EPA under the PoEO Act.
- MOP approved by the Department of Energy and Resources (DRE) (now MEG) for the period 1 July 2015 to 1 July 2022 under the conditions of CCL 768, ML 1510 and ML 1566.
- Water supply works approval 10WA118772, and associated Water Access Licences (WALs) 36473 and 37465, issued under the NSW *Water Management Act 2000* for the extraction of water in the Sydney Basin South Groundwater Source.
- Consent F2020/1545 issued by WaterNSW under the *Water NSW Regulation 2013* to enter the Metropolitan Special Area and carry out activities permitted by statutory approvals.

- Dams Safety NSW endorsements and approvals issued by the MEG (within the Department of Regional NSW) for mining within the Cordeaux Dam and Avon Dam Notification Areas pursuant to Condition 13 of CCL 768.
- Mining and occupational health and safety related approvals granted by the DRG (now MEG) and WorkCover NSW (including Explosives Licence number XSTR100152).
- NSW *Radiation Control Act 1990* Registration, Licence number RL30137.
- Exploration licences AUTH 143 and AUTH 374 issued under the *Coal Mining Act 1973* (now repealed), administered under the *Mining Act 1992*.

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

Key approvals and documentation pertaining to the Cordeaux Colliery include:

- Development Consent D74/134 issued by the Wollongong City Council on 20 December 1974.
- CCL 768 issued under the NSW *Coal Mining Act 1973* (now repealed), administered under the *Mining Act 1992*.
- EPL 611 issued by the EPA under the PoEO Act.
- MOP approved by the DRE (now MEG) for the period 1 July 2015 to 1 July 2022 under the conditions of CCL 768, ML 1510 and ML 1566.
- Consent F2020/1545 issued by WaterNSW under the *Water NSW Regulation 2013* to enter the Metropolitan Special Area and carry out activities permitted by statutory approvals.
- Mining and occupational health and safety related approvals granted by the MEG and WorkCover NSW.
- Exploration licence AUTH 338 issued under the *Coal Mining Act 1973* (now repealed), administered under the *Mining Act 1992*.

The West Cliff Stage 3 Coal Wash Emplacement Area was approved on 20 December 2007 by the Minister for Planning under Condition 1.1(c) of Development Consent DA 60-03-2001.



However, it is noted that activities at the West Cliff Coal Wash Emplacement Area are now covered by the Appin Mine Project Approval 08\_0150, approved in December 2011, in accordance with Condition 8, Schedule 5 of Development Consent DA 60-03-2001 (Section 1.1.7).

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

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

Existing environmental management, monitoring, mitigation and reporting measures implemented in accordance with the existing Dendrobium Mine and Cordeaux Colliery approvals are described in Section 7 and Attachment 10, where relevant.

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

## 5.2 STATUTORY REQUIREMENTS FOR THE PROJECT

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

The EP&A Act and EP&A Regulation set the framework for planning and environmental assessment in NSW. Approval for the Project will be sought under the SSI provisions (i.e. Division 5.2) under Part 5 of the EP&A Act.

Consideration of the Project against the objects of the EP&A Act is provided in Section 8.

### 5.2.1 Power to Grant Approval

Under section 5.12 of the EP&A Act any development, or class of development, may be declared as SSI by a SEPP.

Clause 2.14 of the *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP) provides that a development is declared SSI for the purposes of the EP&A Act if it is specified in Schedule 4 of the Planning Systems SEPP.

In December 2021, the NSW Minister for Planning declared the Project to be SSI. This declaration came into effect in December 2021 and is included in Schedule 4 of the Planning Systems SEPP, as follows:

### 8 Dendrobium Mine Extension Project

- (1) *Development for the purposes of the Dendrobium Mine Extension Project, including the following—*
  - (a) *the construction and operation of an underground coal mine, including—*
    - (i) *extraction of coal within Consolidated Coal Lease (CCL) 768, and*
    - (ii) *development and use of underground roadways to access the underground mining operations, and*
    - (iii) *development and use of surface infrastructure associated with—*
      - (A) *mine ventilation, gas management and abatement, and*
      - (B) *water management, and*
    - (iv) *development and use of other ancillary infrastructure,*
  - (b) *the handling and processing of extracted coal,*
  - (c) *the continued use, augmentation and extension of existing infrastructure and operations at the Dendrobium Mine including—*
    - (i) *the Dendrobium pit top area, Kemira Valley Coal Loading Facility, Dendrobium Coal Preparation Plant and Dendrobium Shafts, and*
    - (ii) *transport of coal via the Kemira Valley Rail Line, and*
    - (iii) *augmentation and use of the Cordeaux Pit Top to support mining operations, and*
    - (iv) *delivery of product coal to BlueScope steelworks and the Port Kembla Coal Terminal, and*
    - (v) *transport of coal wash to the West Cliff coal wash emplacement area, and*
    - (vi) *supply of coal wash for beneficial uses, and*
    - (vii) *water management, and*
    - (viii) *other ancillary infrastructure to support mining operations,*
  - (d) *remediation, rehabilitation, decommissioning and monitoring of the development.*
- (2) *The development is to be carried out on land in the following local government areas—*
  - (a) *Wingecarribee,*
  - (b) *Wollondilly,*
  - (c) *Wollongong.*

As the Project has been declared to be SSI and may be carried out without obtaining Development Consent under Part 4 of the EP&A Act, the Project requires assessment and approval under Part 5, Division 5.2 of the EP&A Act.

The NSW Minister for Planning is the approval authority for SSI developments (including the Project) under Part 5 of the EP&A Act.

### 5.2.2 Permissibility

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

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

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

- Zone RU1 (Primary Production);
- Zone RU2 (Rural Landscape);
- Zone E1 (National Parks & Nature Reserves)<sup>1</sup>;
- Zone E2 (Environmental Conservation);
- Zone E3 (Environmental Management);
- Zone E4 (Environmental Living); and
- Zone SP2 (Infrastructure).

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

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

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

The Dendrobium CPP and a portion of the Kemira Valley Rail Line are located within Zone IN3 (Heavy Industrial) under the *State Environmental Planning Policy (Transport and Infrastructure) 2021* (Transport and Infrastructure SEPP). Port facilities and heavy industries are permissible with consent within this zone.

In accordance with section 5.22 of the EP&A Act, Environmental Planning Instruments (EPIs) do not apply to SSI, beyond the declaration of the Project as SSI:

- (1) *Part 4 and Division 5.1 do not, except as provided by this Division, apply to or in respect of State significant infrastructure (including the declaration of the infrastructure as State significant infrastructure and any approval or other requirement under this Division for the infrastructure).*
- (2) *Part 3 and environmental planning instruments do not apply to or in respect of State significant infrastructure, except that—*
  - (a) *they apply to the declaration of infrastructure as State significant infrastructure or as critical State significant infrastructure (and to the declaration of development that does not require consent), and*
  - (b) *they apply in so far as they relate to section 3.16, and for that purpose a reference in that section to enabling development to be carried out in accordance with an environmental planning instrument or in accordance with a consent granted under this Act is to be construed as a reference to enabling State significant infrastructure to be carried out in accordance with an approval granted under this Division.*

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

Notwithstanding, the requirements of EPIs that would have applied to the Project, but for its SSI declaration, are described in Attachment 7.

<sup>1</sup> The Infrastructure Application area includes depth restrictions to avoid development in the Upper Nepean and Illawarra Escarpment State Conservation Areas (Section 5.2.11).

### 5.2.3 Approvals and Authorisations that are Not Required for State Significant Infrastructure

Section 5.23 of the EP&A Act prescribes the authorisations that are not required for SSI authorised by an Infrastructure Approval under Division 5.2 of Part 5.

The authorisations that are not required under section 5.23(1) are:

- A permit under section 201, 205 or 219 of the *NSW Fisheries Management Act 1994* (FM Act).
- An approval under Part 4, or an excavation permit under section 139 of the *NSW Heritage Act 1977*.
- An Aboriginal heritage impact permit under section 90 of the *NSW National Parks and Wildlife Act 1974* (NPW Act).
- A bushfire safety authority under section 100B of the *NSW Rural Fires Act 1997*.
- A water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *Water Management Act 2000*.

### 5.2.4 Other Approvals and Legislation that Must be Applied Consistently for State Significant Infrastructure

Section 5.24 of the EP&A Act outlines the authorisations that cannot be refused if they are necessary for the carrying out of approved SSI under Division 5.2 and provides that those authorisations are to be substantially consistent with the Division 5.2 Infrastructure Approval.

These authorisations are of the following kind:

- An aquaculture permit under section 144 of the FM Act.
- An approval under the *NSW Coal Mine Subsidence Compensation Act 2017* (CMSC Act).
- A mining lease under the *Mining Act 1992*.
- A production lease under the *NSW Petroleum (Onshore) Act 1991*.
- An EPL under Chapter 3 of the PoEO Act (for any of the purposes referred to in section 43 of the PoEO Act).

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

### 5.2.5 Preconditions to Exercising the Power to Grant Approval

Relevant preconditions to the approval authority exercising its power to grant approval are presented in Table 5-1.

For completeness, relevant preconditions that would have applied but for the Project's SSI declaration are also presented in Table 5-2.

### 5.2.6 Mandatory Matters for Consideration

Matters the approval authority is required to consider in deciding whether to grant approval for the Project are presented in Table 5-3.

For completeness, relevant matters the approval authority would have been required to consider but for the Project's SSI declaration are also presented in Table 5-4.

### 5.2.7 Environmental Assessment Requirements for State Significant Infrastructure

Section 5.16 of the EP&A Act specifies that following an application for the Minister's approval of SSI, the Planning Secretary is to prepare environmental assessment requirements, and these requirements must include an EIS be prepared by, or on behalf of, the applicant, in the form prescribed by the regulations.

Clause 190 of the EP&A Regulation describes the required form of an EIS:

- (1) *An environmental impact statement must contain the following information—*
  - (a) *the name, address and professional qualifications of the person who prepared the statement,*
  - (b) *the name and address of the responsible person,*
  - (c) *the address of the land—*
    - (i) *to which the development application relates, or*
    - (ii) *on which the activity or infrastructure to which the statement relates will be carried out,*

**Table 5-1**  
**Applicable Preconditions to Granting Approval**

Statutory Reference	Precondition	Relevance	Relevant Section of EIS
<b><i>Environmental Planning and Assessment Act 1979</i></b>			
section 5.19	The Minister, when deciding whether to approve or disapprove the carrying out of SSI, is to consider the Planning Secretary's report, any advice provided by the Minister with portfolio responsibility for the Proponent (i.e. the Minister for Regional NSW), and any findings following a review conducted in respect of the SSI proposal.	To be satisfied after the EIS is submitted to DPE.	-
<b><i>Environmental Planning and Assessment Regulation 2021</i></b>			
clause 181	Under clause 181 the applicant for SSI mining projects is required to: <ul style="list-style-type: none"> <li>publish a notice on the NSW planning portal; and</li> <li>give notice of the application during the relevant period by: <ul style="list-style-type: none"> <li>giving written notice to the owner of the land, or</li> <li>an advertisement published in a newspaper circulating in the area in which the infrastructure will be carried out.</li> </ul> </li> </ul> <p>Note: the relevant period is the period ending 14 days before the environmental impact statement relating to the infrastructure is publicly exhibited.</p>	IMC will satisfy relevant notification requirements prior to the Project Infrastructure Application being determined by the Minister for Planning.	Satisfied by notices published on 2 March and 9 March 2022 (at least 14 days before exhibition of EIS).
<b><i>Environment Protection and Biodiversity Conservation Act 1999</i></b>			
section 131AB	Before deciding whether or not to approve the taking of an action that involves a large coal mining development that the Commonwealth Minister for the Environment believes is likely to have a significant impact on water resources and may have an adverse impact on a matter protected by a provision of Part 3 of the EPBC Act, the Commonwealth Minister for the Environment must obtain the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Mining Development (IESC).	On 13 January 2022, the proposed action was determined to be a controlled action.  The relevant controlling provisions are: <ul style="list-style-type: none"> <li>listed threatened species and communities (sections 18 and 18A); and</li> <li>a water resource, in relation to large coal mining development (sections 24D and 24E).</li> </ul> <p>IESC advice to be obtained by DPE following submission of the EIS.</p>	Sections 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, and 7.9, Attachment 2 and Appendices A, B, C, D and E  IESC advice to be obtained by DPE following submission of the EIS.

**Table 5-2**  
**Other Typical Mining Preconditions to Granting Development Consent (Not Applicable Due to the Project SSI Declaration)**

Statutory Reference	Precondition	Relevance	Relevant Section of EIS
<b>State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP)</b>			
<i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>			
clause 4.6(1)	A consent authority must consider whether the land is contaminated and be satisfied that, if the land is contaminated, the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of the Project.	Resilience and Hazards SEPP is not applicable to the Project due to its SSI declaration.  Notwithstanding, Resilience and Hazards SEPP has been considered in the EIS for the Project and a Land Contamination Assessment is included in this EIS.	Section 7.4 and Appendix O
<b>Mining Act 1992</b>			
section 380AA	An application for Development Consent to mine for coal cannot be made or determined unless the applicant is the holder of an authority that is in force in respect of coal for the relevant land, or the applicant has the written consent of the holder of such an authority to make the application.	IMC <sup>2</sup> is the holder of AUTH 143, AUTH 338, AUTH 374, CCL 768, CCL 724, ML 1510 and ML 1566 for Group 9 minerals (Coal) over all relevant land where mining for coal is proposed to be carried out for the Project. No additional mining tenements would be required for the Project.  Irrespective that section 380AA of the <i>Mining Act 1992</i> does not apply to SSI, there is no impediment under section 380AA to IMC making the application for Project Infrastructure Approval.	Section 5.2. and Attachment 7
<b>Dams Safety Act 2015</b>			
section 48(4)	A consent authority must, before granting Development Consent for mining operations within a notification area of a declared dam, refer the application to Dams Safety NSW and take into consideration any matters raised by Dams Safety NSW.	The Project would involve activities associated with mining operations within the notification area of the Avon Dam.  The NSW <i>Dams Safety Act 2015</i> is not applicable to the Project due to its SSI declaration. Notwithstanding, the <i>Dams Safety Act 2015</i> has been considered in this EIS.	Section 5.2, Attachment 7 and Appendices A, M and N
<b>Wollongong Local Environmental Plan 2009, Wingecarribee Local Environmental Plan 2010 and Wollondilly Local Environmental Plan 2011</b>			
Various	Aims, permissibility and special provisions LEPs may be applicable to the granting of Development Consent for a mine.	The LEPs are not applicable to the Project due to its SSI declaration. Notwithstanding, the requirements of the <i>Wollongong Local Environmental Plan 2009</i> , <i>Wingecarribee Local Environmental Plan 2010</i> and <i>Wollondilly Local Environmental Plan 2011</i> that would have applied, but for its SSI declaration, have been considered.	Section 5.2 and Attachment 7

<sup>2</sup> At all relevant times in relation to the Project, Illawarra Coal Holdings Pty Ltd will be acting as agent for and on behalf of Dendrobium Coal Pty Ltd (Dendrobium Coal) in respect of all mining and exploration tenements held by Dendrobium Coal.



**Table 5-3**  
**Applicable Mandatory Matters for Consideration**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
<b>Considerations under the Environmental Planning and Assessment Act 1979</b>		
section 1.3	<p>Relevant objects of the EP&amp;A Act:</p> <ul style="list-style-type: none"> <li>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.</li> <li>Facilitate ecologically sustainable development (ESD) by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.</li> <li>Promote the orderly and economic use and development of land.</li> <li>Protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.</li> <li>Promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).</li> <li>Promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.</li> <li>Provide increased opportunity for community participation in environmental planning and assessment.</li> </ul>	Sections 2.1, 6, 7.7, 7.8, 7.9, 7.19, 7.20 and 8 and Appendices D, E, K, L and M
section 5.22	As per section 5.22 of the EP&A Act, environmental planning instruments do not apply to SSI except in limited circumstances.	Section 5 and Attachment 7
<b>Considerations under the Environmental Planning and Assessment Regulation 2021</b>		
clause 179	An application for approval of the Minister to carry out SSI must be in the form approved by the Planning Secretary, made available, and lodged on the NSW planning portal.	Completed prior to preparation of this EIS
<b>Considerations under the Biodiversity Conservation Act 2016</b>		
section 7.14(2)	The Minister for Planning is to take into consideration the likely impact of the proposed development on biodiversity values as assessed in the Project (BDAR).	Sections 7.3, 7.7, 7.8 and 7.9 and Appendices A, D and E
section 7.16(3)	<p>If the Minister for Planning is of the opinion that the Project is likely to have serious and irreversible impacts on biodiversity values, the Minister is required to:</p> <ul style="list-style-type: none"> <li>take those impacts into consideration; and</li> <li>determine whether there are any additional and appropriate measures that will minimise those impacts if approval is to be granted.</li> </ul>	Sections 7.3, 7.7, 7.8 and 7.9 and Appendices A, D and E

**Table 5-3 (Continued)**  
**Applicable Mandatory Matters for Consideration**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
<i>Considerations under the Environment Protection and Biodiversity Conservation Act 1999</i>		
section 136(1)	<p>In deciding whether or not to approve the taking of an action, and what conditions to attach to an approval, the Commonwealth Minister for the Environment must consider the following:</p> <ul style="list-style-type: none"> <li>• matters relevant to any matter that the Minister has decided is a controlling provision for the action; and</li> <li>• economic and social matters.</li> </ul>	Sections 6, 7.18, 7.19 and 7.20 and Appendices K and L
section 136(2)	<p>In considering the matters referred to in section 136(1), the Commonwealth Minister for the Environment must take into account:</p> <ul style="list-style-type: none"> <li>• the principles of ESD; and</li> <li>• the assessment report (if any) relating to the action.</li> </ul> <p>In addition, section 136(2) (ca) to (g) specify the Commonwealth Minister for the Environment must take into account, if applicable:</p> <ul style="list-style-type: none"> <li>• the finalised EIS;</li> <li>• the recommendation report relating to the action;</li> <li>• if a relevant inquiry was conducted, the report of the commissioners;</li> <li>• any other information the Minister has on the relevant impacts of the action;</li> <li>• any relevant comments given to the Minister;</li> <li>• relevant advice obtained by the Minister from the IESC; and</li> <li>• notices or relevant comments provided in accordance with the EPBC Act.</li> </ul>	Sections 7 and 8
section 139(1)	<p>In deciding whether or not to approve the taking of an action with respect to threatened species and endangered communities, and what conditions to attach to such approval, the Commonwealth Minister for the Environment must not act inconsistently with:</p> <ul style="list-style-type: none"> <li>• Australia's obligations under: <ul style="list-style-type: none"> <li>– the Convention on Biological Diversity; or</li> <li>– the Convention on Conservation of Nature in the South Pacific; or</li> <li>– the Convention on International Trade in Endangered Species of Wild Fauna and Flora; or</li> </ul> </li> <li>• a recovery plan or threat abatement plan.</li> </ul>	Sections 7 and 8
section 139(2)	<p>If the Commonwealth Minister for the Environment is considering whether to approve the taking of an action and the action has or will have, or is likely to have, a significant impact on a particular listed threatened species or a particular listed threatened ecological community the Minister must, in deciding whether to so approve the taking of the action, have regard to any approved conservation advice for the species or community.</p>	Sections 7.3, 7.7, 7.8, 7.9 and 8 and Appendices A, D and E

**Table 5-4**  
**Other Typical Mining Mandatory Matters for Consideration (Not Applicable Due to the Project SSI Declaration)**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
<b>Considerations under the Environmental Planning and Assessment Regulation 2021</b>		
clause 61(1)	For the demolition of a building, the consent authority must consider the provisions of AS 2601-1991: <i>The Demolition of Structures</i> .	Section 7.13
<b>Considerations under Resilience and Hazards SEPP</b>		
<i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>		
clause 3.12	A consent authority must consider current circulars or guidelines published by the DPE relating to hazardous or offensive development, whether to consult with relevant public authorities regarding any environmental or land use safety requirements, a preliminary hazard analysis prepared by the applicant, feasible alternatives to the development and likely future use of surrounding land.	Sections 7.4 and 7.22, Attachment 7 and Appendices N and O
clause 4.6(1)	A consent authority must consider whether the land is contaminated and be satisfied that, if the land is contaminated, the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose of the Project.	Sections 7.4 and 7.22 Attachment 7 and Appendices N and O
<b>Considerations under the State Environmental Planning Policy (Resources and Energy) 2021 (Resources and Energy SEPP)</b>		
<i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>		
clause 2.17	Before determining an application for consent for the purposes of mining the consent authority must: (a) consider – (i) the existing uses and approved uses of land in the vicinity of the development, and (ii) whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and (iii) any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and (b) evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a)(i) and (ii), and (c) evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a)(iii).	Sections 7.4, 7.22 and 8 Attachment 7 and Appendices N and O
clause 12A	Before determining an application for consent for the purposes of mining the consent authority must consider relevant provisions of the <i>Voluntary Land Acquisition and Mitigation Policy (VLAMP)</i> (NSW Government, 2018b).	Sections 7.13 and Appendix J
clause 2.19	Before determining an application for development in the vicinity of mining, petroleum or extractive industry, the consent authority must (among other things) consider whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery.	Section 8, Attachment 7 and Appendix Q

**Table 5-4 (Continued)**  
**Other Typical Mining Mandatory Matters for Consideration (Not Applicable Due to the Project SSI Declaration)**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
<b>Considerations under the State Environmental Planning Policy (Resources and Energy) 2021 (Resources and Energy SEPP) (continued)</b> <i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>		
clause 2.20	Before determining an application for consent 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 that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable, that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable, and that greenhouse gas emissions are minimised to the greatest extent practicable). This includes considering an assessment of greenhouse gas emissions (including downstream emissions) having regard to any applicable State or national policies, programs of guidelines concerning greenhouse gas emissions.	Sections 7.3, 7.5, 7.6, 7.7, 7.8, 7.9, 7.21 and 8, Attachment 7 and Appendices A, B, C, D, E, I and R
clause 2.21	Before determining an application for consent for the purposes of mining the consent authority must consider the efficiency of the development in terms of resource recovery and whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resources recovery and the reuse or recycling of material.	Sections 4.5 and 4.6 and Attachment 7
clause 2.22	Before determining an application for consent for the purposes of mining the consent authority must consider whether or not the consent should be issued subject to conditions regarding transport of materials.	Section 7.12, Attachment 7 and Appendix H
clause 2.23	Before determining an application for consent for the purposes of mining the consent authority must consider whether or not the consent should be issued subject to conditions regarding rehabilitation, including the particular considerations set out in clause 2.23(2).	Section 4.13 and Appendix Q
<b>Considerations under the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)</b> <i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>		
clauses 2.97(2)(b)(ii) and 2.98(2)(b)(ii)	If applicable, before determining a development application for development that is in or adjacent to a rail corridor (and to which clause 2.97(1) applies) or that involves penetration of ground to a depth of at least 2 m below ground level within 25 m of a rail corridor, the consent authority must take into consideration any guidelines issued by the Secretary for the purposes of those clauses and published in the NSW Government Gazette (i.e. the <i>Development Near Rail Corridors and Busy Roads – Interim Guideline</i> [NSW Government, 2008b]).	Section 7.12, Attachment 7 and Appendix H
clause 2.121(4)	If applicable, before determining a development application for development to which clause 2.121 applies, the consent authority must take into consideration: (i) the accessibility of the site concerned, including the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and (ii) any potential traffic safety, road congestion or parking implications of the development.	Section 7.12, Attachment 7 and Appendix H



**Table 5-4 (Continued)**  
**Other Typical Mining Mandatory Matters for Consideration (Not Applicable Due to the Project SSI Declaration)**

Statutory Reference	Mandatory Consideration	Relevant Section of EIS
<b>Considerations under the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)</b> <i>(EPIs [including SEPPs] are not applicable to the Project due to its SSI declaration; however, the EPIs have been considered for the Project)</i>		
Clause 8.8(1)	A consent authority must not grant consent to the carrying out of development on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.	Section 7.5, 7.6, Attachment 7 and Appendices B and C
Clause 8.9(1)	A consent authority must not grant consent to the carrying out of development on land in the Sydney drinking water catchment except with the concurrence of the Minister administering the <i>Water NSW Act 2014</i> .	Section 7.5, 7.6, Attachment 7 and Appendices B and C
<b>Considerations under the Dams Safety Act 2015</b>		
Section 48(4)	Before granting Development Consent for the carrying out of any mining operations in a notification area of a declared dam, the consent authority must refer the application to Dams Safety NSW and take into consideration any matters raised by Dams Safety NSW.	Section 7.22, Attachment 7 and Appendices A, M and N
<b>Considerations under the Wollongong Local Environmental Plan 2009, Wingecarribee Local Environmental Plan 2010, Wollondilly Local Environmental Plan 2011</b>		
Various	Local Environmental Plans may specify mandatory matters for consideration by the consent authority for mining projects.	Attachment 7

- (d) *a description of the development, activity or infrastructure,*
- (e) *an assessment by the person who prepared the statement of the environmental impact of the development, activity or infrastructure, dealing with the matters referred to in this Division.*
- (2) *The person preparing the statement must consider—*  
...  
(b) *for State significant infrastructure—State Significant Infrastructure Guidelines.*

This EIS contains the information outlined above, including the address of relevant lands (Attachment 3). The name, address, professional qualifications and declaration of the person by whom the EIS has been prepared in consideration of the requirements of clauses 190 and 192 of the EP&A Regulation has also been provided. Further, the person in preparation of the EIS has also had regard to the *State Significant Infrastructure Guidelines* (DPIE, 2021a).

Clause 192 of the EP&A Regulation describes the required content of an EIS. Table 1-4 provides a reconciliation of each requirement in subclause 192 (1) and the relevant section of this EIS where the information is provided.

Subclause 192(2) of the EP&A Regulation indicates that the requirements set out in subclause 192(1) (Table 1-4) are subject to the environmental assessment requirements that relate to the EIS.

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

### 5.2.8 Public Notification of the Infrastructure Application

In accordance with clause 193(1) of the EP&A Regulation, the consent of the owner of the land on which SSI is to be carried out is required for an infrastructure application, unless the application or request relates to specific types of infrastructure.

One such excluded infrastructure type is development for a purpose specified in Planning Systems SEPP, Schedule 1, clause 5(1)-(4) (i.e. mining).

In this case, clause 181 of the EP&A Regulation provides:

- (5) *Consent of the owner is not required for an application for the following State significant infrastructure—*  
...  
(d) *State significant infrastructure that involves development for a purpose specified in State Environmental Planning Policy (Planning Systems) 2021, Schedule 1, section 5(1)-(4).*
- (6) *The proponent of State significant infrastructure specified in subsection (5) must—*  
(a) *arrange for the Minister to publish notice of the application on the NSW planning portal, and*  
(b) *give notice of the application during the relevant period by—*  
(i) *giving written notice to the owner of the land, or*  
(ii) *an advertisement published in a newspaper circulating in the area in which the infrastructure will be carried out.*
- (7) *In this section—*  
...  
**relevant period means—**  
(a) *for written notice under subsection (6)(b)(i)—the period ending 14 days after the application is made, or*  
(b) *for an advertisement under subsection (6)(b)(ii) for an application for the Minister's approval—the period ending 14 days before the environmental impact statement relating to the infrastructure is publicly exhibited, or*

The Project is public notification development as it falls within Item 5(1)(a) of Schedule 1 of the Planning Systems SEPP (i.e. coal mining). The Infrastructure Application will, therefore, be notified in accordance with clause 181(6)(b) of the EP&A Regulation.

Clause 181(3) of the EP&A Regulation also requires:

*If an application relates to land owned by a Local Aboriginal Land Council and requires the consent of the Local Aboriginal Land Council, the consent of the New South Wales Aboriginal Land Council is also required.*

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

The Project would not be carried out on land that is a State Conservation Area. Consideration of the implications of Project development on land proximal to the State Conservation Area is provided in Section 8.

### 5.2.9 Development Contributions

#### *Planning Agreements*

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

Under section 7.7 of the EP&A Act, the Minister (or delegate) can only impose a condition of consent requiring a planning agreement to be entered into if it is in the terms of an offer made by the applicant, in connection with a Development Application.

It is noted that the Project does not involve an application for Development Consent, as it has been declared to be SSI (Section 5.2.1). However, under section 5.22(3) of the EP&A Act, voluntary planning agreements may apply to SSI that is not carried out by or on behalf of a public authority.

There have been no requests for voluntary planning agreements during consultation to date for the Project.

IMC also currently finances community projects as part of the approved Dendrobium Mine, primarily through an annual contribution per saleable tonne of coal, administered by the DCEP, which would continue for the life of the Project.

#### *Local Infrastructure Contributions*

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

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

It is noted that the Project does not involve an application for Development Consent, as it has been declared to be SSI (Section 5.2.1). However, under section 5.22(3) of the EP&A Act, infrastructure contributions may apply to SSI that is not carried out by or on behalf of a public authority.

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

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

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

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

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

#### *Water Offset Agreements*

For the previous application, the NSW Government proposed a planning agreement that would require IMC to make payments to the NSW Government to offset water quantity and quality impacts during and post-mining. The terms of the proposed planning agreement for the previous application were accepted by IMC.

This planning agreement was developed consistent with the recommendations of the IEPMC to provide a “net beneficial” effect to Sydney’s drinking water supplies. IMC would seek to enter a similar agreement with the NSW Government to offset water quantity and quality impacts during and post-mining for the Project.

The agreement would allow the Minister for Water, Property and Housing to spend these funds (as required) on priority water projects to result in a net benefit to Sydney’s drinking water supply.

#### 5.2.10 Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act defines proposals that are likely to have a significant impact on a matter of national environmental significance as a “controlled action”. A proposal that is, or may be, a controlled action is required to be referred to the Commonwealth Minister for the Environment for a determination as to whether or not the action is a controlled action.

Matters of national environmental significance include:

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

The EPBC Act referral (Referral 2017/7855) provided as part of the previous application to the Commonwealth Minister for the Environment was declared to be a controlled action.

IMC has also separately referred the Project (proposed Action) to the Commonwealth Minister for the Environment. The proposed Action to extend underground mining and processing operations at the Dendrobium Mine was referred to the Commonwealth Minister in December 2021 (EPBC 2021/9115) (the proposed Action).

A delegate of the Commonwealth Minister determined on 13 January 2022 that the proposed Action is a “Controlled Action”.

Therefore, the Action also requires approval under the EPBC Act due to potential impacts on the following controlling provisions under Part 3 of Chapter 2 of the EPBC Act:

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

The delegate of the Commonwealth Minister also determined on 13 January 2022 that the proposed Action is to be assessed under the Assessment Bilateral Agreement with the NSW Government.

The Commonwealth of Australia and the State of NSW Governments signed a Bilateral Agreement in February 2015 (since amended in 2020) that accredits the NSW assessment regime under Part 5 of the EP&A Act for assessment purposes under the EPBC Act.

Clause 3.2 of Schedule 1 of the Bilateral Agreement states:

#### 3.2 Guidelines or Directions

...

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

(i) *contains an assessment of all impacts that the action has, will have or is likely to have on each matter protected by a provision of Part 3 of the EPBC Act;*

(ii) *contains enough information about the controlled action and its relevant impacts to allow the Commonwealth Minister to make an informed decision whether or not to approve the controlled action under the EPBC Act; and*

(iii) *addresses the matters outlined in Schedule 4 of the Environment Protection and Biodiversity Conservation Regulations 2000 (Cth).*



Supplementary SEARs were issued on 25 January 2022 requiring information about the controlled action and its relevant impacts, and the matters outlined in Schedule 4 of the Commonwealth *Environment Protection and Biodiversity Conservation Regulations 2000* to be addressed in this EIS.

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

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

Consideration of the Project against the objects of the EPBC Act is provided in Section 8.6.

### **Environmental Record of the Proponent**

The Project would be undertaken in accordance with South32's *Sustainability Policy* (South32, 2019) which comprises 10 points as follows:

*In alignment with the South32 Code of Business Conduct we:*

- *Provide and maintain a safe workplace so that our people, contractors and visitors go home safe and well;*
- *Identify and manage risks, impacts and opportunities within our operations and host communities;*
- *Are responsible stewards of the commodities we extract and the natural resources we use, while promoting enduring environmental, social and economic benefits;*
- *Creating shared value with our stakeholders;*
- *Implement our approach to climate change to reduce emissions and build climate change resilience;*
- *Respect and promote human rights;*
- *Recognise indigenous and land-connected peoples' relationship with land, water and the environment;*
- *Continually improving our systems and processes, working with suppliers, customers and communities to drive our performance;*
- *Meet our legal and other agreed commitments in all jurisdictions in which we operate; and*
- *Publicly report our progress and encourage high standards of transparency and accountability in our business governance, risk and government interactions.*

Greenhouse gas emissions are minimised to reduce South32's contribution to climate change. South32 has a climate change strategy that includes material medium-term (2035) and long-term (2050) emission reduction targets and has considered the potential implications of climate change (Appendix R).

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

An Independent Environmental Audit of the Dendrobium Mine in 2020 (ERM Australia, 2021) concluded: *"Overall, compliance was generally achieved with the audit documents that were reviewed"*.

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

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

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

### **Proceedings Under Commonwealth, State or Territory Law**

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

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

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

A release of water occurred due to the failure of the sediment dam at the Kemira Valley Coal Loading Facility on 10 August 2020 during a significant weather event, resulting with environmental effects assessed as minor or temporary. The EPA issued IMC a Penalty Infringement Notice as a result of the investigation.

IMC is subject to an ongoing investigation by the NSW Natural Resources Access Regulator (NRAR) for potential breaches of surface water licencing requirements under the *Water Management Act 2000*.

#### 5.2.11 Other Key Applicable Statutory Approvals and Legislation

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

- approval issued under the EP&A Act, and any relevant secondary approvals under the Infrastructure Approval conditions (e.g. management plans);
- approval of the proposed Action (EPBC 2021/9115) under sections 130(1) and 133 of the EPBC Act, and any relevant secondary approvals under the approval conditions (e.g. management plans); and
- RMP (formerly MOP), forward program and other relevant requirements prepared under the conditions of the mining leases.

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

- variation of the premises and other components of EPL 3241 and EPL 611 under the PoEO Act;
- relevant WALs, and water supply works and use approvals under the *Water Management Act 2000* where applicable;

- access consents under the *Water NSW Regulation 2013*; and
- mining and occupational health and safety related approvals granted by the MEG and WorkCover NSW.

#### Relevant NSW Legislation

The following NSW legislation may be applicable to the Project:

- *Aboriginal Land Rights Act 1983*;
- BC Act;
- *Biosecurity Act 2015*;
- CMSC Act;
- *Contaminated Land Management Act 1997*;
- *Crown Land Management Act 2016*;
- *Dams Safety Act 1978*;
- *Dams Safety Act 2015*;
- *Dangerous Goods (Road and Rail Transport) Act 2008*;
- FM Act;
- *Heritage Act 1977*;
- *Mining Act 1992*;
- NPW Act;
- *Native Title (New South Wales) Act 1994*;
- *Petroleum (Onshore) Act 1991*;
- *Pipelines Act 1967*;
- PoEO Act;
- *Roads Act 1993*;
- *Water Management Act 2000*;
- *Water NSW Act 2014*;
- *Work Health and Safety Act 2011*; and
- *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

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

Additional detail on the likely Project requirements under the: *Mining Act 1992*; *PoEO Act*; *Roads Act 1993*; *Water Management Act 2000*; *Dams Safety Act 2015* and *NPW Act*, are provided in the subsections below.

Attachment 7 also explores some relevant statutory requirements and their application to the Project in finer detail.

#### *Mining Act 1992*

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

#### *Mining Tenements*

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

South32 is also the holder of AUTH 143, AUTH 338, AUTH 374, CCL 768, CCL 724, ML 1510 and ML 1566 for Group 9 minerals (Coal) over all relevant land where mining for coal is proposed to be carried out for the Project. Therefore, there is no impediment under section 380AA of the *Mining Act 1992* to IMC making the Infrastructure Application, irrespective that section 380AA does not apply due to the Project's SSI declaration.

No additional mining tenements would be required for the Project.

#### *Rehabilitation Management Plan and Forward Program*

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 Forward Program that provides a schedule of mining activities, a Rehabilitation Management Plan (RMP), (which comes into effect from July 2022 and replaces Mining Operations Plans) and subsequent Annual Rehabilitation Reports.

Rehabilitation activities must be carried out in accordance with an RMP. The RMP describes the rehabilitation objectives, completion criteria and final land use outcomes (among other things) required under mining lease conditions and approval conditions under the EP&A Act. The Forward Program details the spatial progression of mining development and rehabilitation.

The mining lease conditions, together with environmental conditions of other approvals regulate environmental management, and the protection and rehabilitation of land within mining leases.

Mining lease conditions also require leaseholders to rehabilitate land and water disturbed by mining as soon as reasonably practicable after disturbance.

#### *Protection of the Environment Operations Act 1997*

The PoEO Act and the *Protection of the Environment Operations (General) Regulation 2021* set out the general obligations for environmental protection for development in NSW, which is regulated by the EPA.

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

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

Clause 10(2) of Schedule 1 of the PoEO Act provides that a "coal work" is declared to be a scheduled activity if:

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

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

Clause 28(2) of Schedule 1 of the PoEO Act provides that “mining for coal” is declared to be a scheduled activity if:

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

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

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

#### Roads Act 1993

The Project would involve the construction of an additional access road (Section 4.10.2) and intersection (Section 4.4.5) with Cordeaux Road at the Dendrobium Pit Top, to service new Project parking facilities, as well as a crossing proposed to be constructed across Cordeaux Road (Section 7.12).

In accordance with section 5.24(1) of the EP&A Act, if the Project is approved, consent under section 138 of the *Roads Act 1993* cannot be refused and is to be substantially consistent with the Infrastructure Approval granted under Division 5.2 of Part 5 of the EP&A Act.

#### Water NSW Act 2014

Under section 47(1) of the *Water NSW Act 2014*, an area of land may be declared to be a “Special Area”. Section 47(2) of the *Water NSW Act 2014* states that land may be declared to be a Special Area if it is necessary for either or both of the following purposes:

#### **47 Special areas**

...

- (a) *protecting the quality of stored waters, whether intended for use for drinking or other purposes,*
- (b) *maintaining the ecological integrity of an area of land to be declared to be a special area in a manner that is consistent with Water NSW’s objectives.*

The Project is located within the Metropolitan Special Area, which was created prior to the *Water NSW Act 2014*, being established in 1923 and later amended in 1933 (WaterNSW and OEH, 2015).

Section 52 of the *Water NSW Act 2014* states that for each Special Area a plan of management must be prepared. Of relevance to the Project, the Special Areas Strategic Plan of Management 2015 (WaterNSW and OEH, 2015) was developed to provide the strategic framework for the planning, delivery and reporting of land management activities within the Special Areas, including the Metropolitan Special Area, to secure high quality water for the storages, maintain ecosystem integrity and manage cultural values.

The *Special Areas Strategic Plan of Management 2015* is discussed further in Attachment 6.

#### Water Management Act 2000

Under section 5.23(1) of the EP&A Act, if the Project is approved as SSI, water use approvals under section 89, water management work approvals under section 90, or activity approvals (excluding aquifer interference approvals) under section 91 of the *Water Management Act 2000* would not be required for the Project.

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



Appropriate licences under the *Water Management Act 2000* would be sought and obtained in consultation with DPIE – Water.

#### *Dams Safety Act 2015 and Dams Safety Act 1978*

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

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

The Avon Dam is a “prescribed dam” under the *Dams Safety Act 1978* and a “declared dam” under the *Dams Safety Act 2015*. Portions of the Project longwall mining area are located within the declared Notification Area of the Avon Dam (Figure 3-3).

IMC would comply with any Dams Safety NSW requirements or conditions relating to mining within the Avon Dam Notification Areas for the Project.

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

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

It is noted that section 48(4) of the *Dams Safety Act 2015* is not applicable to the Project, due to its SSI declaration. Notwithstanding, the requirements of the *Dams Safety Act 2015* have been considered in the design of the Project and the preparation of this EIS (Sections 4 and 7 and Appendices M and N).

#### *National Parks and Wildlife Act 1974*

The Illawarra State Recreation Area was reserved under the provisions of sections 37B and 37Q of the *Crown Lands Consolidation Act 1913* on 4 July 1980<sup>3</sup>. Within the Infrastructure Application Area, the reservation is restricted to a depth of 15.24 m.

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

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

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

#### *Coal Mine Subsidence Compensation Act 2017*

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

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

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

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

### Relevant Commonwealth Legislation

The relevance of the EPBC Act to the Project is described in Section 5.2.10.

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

#### National Greenhouse and Energy Reporting Act 2007

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

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

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

IMC triggers the NGER Act reporting threshold and, accordingly, reports energy use and greenhouse gas emissions from its activities. This would include the continuation of greenhouse gas emissions from the Dendrobium Mine under the Project. Appendix R and Section 7.21 describe greenhouse gas abatement measures to be implemented for the Project.

#### Native Title Act 1993

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

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

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

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

### 5.3 PROJECT COMPLIANCE WITH STATUTORY REQUIREMENTS

In accordance with the *NSW Guideline for State Significant Infrastructure – Preparing an Environmental Impact Statement* (DPIE, 2021b), a statutory compliance table to identify relevant statutory requirements and where they have been addressed in the EIS is provided in Table 5-5. Tables 5-1, 5-2, 5-3 and 5-4 set out the preconditions to granting approval and the mandatory matters for consideration that apply to SSI projects.

**Table 5-5  
Project Statutory Compliance Summary**

Relevant Statute and Key Requirement	Relevant EIS Reference	Project Compliance Status
<b>NSW Acts</b>		
EP&A Act	Sections 2 and A7.1.	✓
Roads Act 1993	Sections 5.2.4, 5.2.11, 7.12, A7.6 and Appendix H.	✓
Mining Act 1992	Sections 4, 5.2.4, 5.2.11 and A7.6	✓
BC Act	Sections 7.7 to 7.9, A7.2.5, A7.3.1 and A7.6	✓
PoEO Act	Sections 3, 4, 5.1, 5.2.11, 7.13 to 7.17, and A7.6	✓
Water Management Act 2000	Sections 5.2.11, 7.5, 7.6, and A7.6	✓
Dams Safety Act 2015 and Dams Safety Act 1978	Sections 5.2.5, 5.2.6, 5.2.11, 7.5, 7.6, 7.22 and A7.6	✓
CMSC Act	Section A7.6	✓
NPW Act	Sections 7.10, A7.3.3 and A7.6	✓
Heritage Act 1977	Sections 7.11 and A7.6	✓
Other NSW Legislation	Section A7.6	✓
<b>NSW Planning Policies</b>		
Planning Systems SEPP	Sections 5 and A7.2.1.	✓
<b>Commonwealth Acts</b>		
EPBC Act	Sections 5.2.10 and 7.5 to 7.9.	✓
NGER Act	Sections 5.2.11 and 7.21.	✓
Native Title Act 1993	Section A7.6.	✓