

## APPENDIX D – STATUTORY CONSIDERATIONS

The Department's assessment of the Project has given detailed consideration to the applicable statutory requirements. A summary of these considerations is provided below. Reference should also be made to **Sections 4 and 6** of this report.

### D.1 Ecological Sustainable Development

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*, as follows:

*“ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:*

- (a) the precautionary principle;*
- (b) inter-generational equity;*
- (c) conservation of biological diversity and ecological integrity; and*
- (d) improved valuation, pricing and incentive mechanisms.”*

The Department has considered the principles and programs of ESD, as follows:

#### **Precautionary Principle**

The Department has assessed the Project's threat of serious or irreversible environmental damage and is satisfied that there is sufficient scientific certainty to enable the determination of the application. In this regard, the Department has noted the material provided by Bloomfield in its EIS and Revised RTS, and has consulted closely with key Government agencies to obtain input and advice on various aspects of the Project.

While the Project would result in a number of environmental impacts of varying significance, the key matters that could cause serious or irreversible environmental damage relate to unmitigated impacts on biodiversity values and impacts on water resources.

The Project incorporates a number of design measures to avoid and mitigate these impacts to a significant extent. The Department notes that, whilst groundwater drawdown associated with the Project is an irreversible impact, it is not predicted to result in serious environmental damage or adversely affect other water users. These measures are further discussed in **Section 6.4**.

Bloomfield would be required to offset the residual impact on biodiversity values in accordance with the FBA (or UHSA if finalised) and to ensure that it held sufficient water licences as part of the relevant water sharing plan to account for impacts to both surface and groundwater resources, including the final void.

Finally, the Department notes that the Project would need to be operated in accordance with strict conditions of consent, as well as the requirements of an EPL for the site and any necessary licences and approvals related to water take and management. Recommended conditions should include obligations for Bloomfield to offset residual impacts to biodiversity values in accordance with the FBA (or UHSA).

Overall, the Department has assessed all of these matters in detail (see **Section 6**), and has recommended a range of risk-based performance measures to govern the Project and provide appropriate protection for the environment. The Department considers that these performance measures reflect best practice for open-cut coal mines in NSW and would allow the Project to be managed in a manner that would minimise the potential for any serious or irreversible environmental damage.

#### **Intergenerational Equity**

The Department acknowledges that coal and other fossil fuel combustion is a contributor to climate change, which has the potential to impact future generations. However, the Department also recognises that there remains a clear need to develop coal deposits to meet society's basic energy needs for the foreseeable future. Bloomfield has proposed measures to mitigate potential GHGEs from operation of the Project, which would be recommended as part of the Project's operating conditions and outlined in the site's Air Quality and Greenhouse Gas Management Plan.

Subject to the proposed mitigation measures, which could be secured in conditions of consent, the Project's direct energy use and associated GHGEs (ie Scope 1 and 2 emissions) are expected to be low and comprise a very small contribution towards climate change at both the national and global scale. Finally, the Department considers that the socio-economic benefits and downstream energy generated by the Project would benefit future generations, particularly through the provision of national and international energy needs in the short to medium term.

### ***Conservation of Biological Diversity and Ecological Integrity***

The Project's potential impacts on biodiversity have been a fundamental consideration in the Department's assessment of the Project. As outlined in **Section 6**, the Department is satisfied that these impacts can be mitigated and/or offset to achieve beneficial long-term biodiversity outcomes in the region.

### ***Improved Valuation, Pricing and Incentive Mechanisms***

The EIS was accompanied by a CBA that sought to identify, quantify and weigh up the Project's costs and benefits based on its full range of environmental, social and economic impacts. The Department has carefully considered the costs and economic benefits of the Project and is satisfied that it would deliver a significant net benefit to the local region and the State of NSW (see **Section 6**).

Consistent with the principle of 'polluter pays', Bloomfield would bear the cost of implementing the necessary mitigation measures and management plans to comply with any recommended conditions of consent and also any additional impact limits or monitoring requirements set out in the mine's EPL. Bloomfield has committed to bearing the costs of offsetting its unavoidable impacts on biodiversity, which are designed to maintain or improve biodiversity values over the long-term. Bloomfield would also be required to develop a rehabilitation plan to remove redundant equipment and revegetate all disturbed areas.

Finally, the Department recommends the application of performance-based conditions, where possible, to provide incentive to Bloomfield to achieve environmental outcomes and objectives in the most cost-effective way.

## ***D.2 Environmental Planning Instruments***

Under section 4.15 of the EP&A Act, the consent authority is required to consider, amongst other things, the provisions of relevant EPIs, including any exhibited draft EPIs and development control plans.

The Department notes Bloomfield's consideration of these instruments in its EIS, and has undertaken its own consideration of the Project against the applicable provisions of relevant EPIs. The key EPLs relating to the Project include:

- *Singleton LEP;*
- *Hunter Regional Environmental Plan 1989 (Heritage);*
- *SEPP No.33 – Hazardous and Offensive Development;*
- *SEPP No.44 – Koala Habitat Protection;*
- *SEPP No.55 – Remediation of Land;*
- *SEPP (State and Regional Development) 2011;*
- *Infrastructure SEPP; and*
- *Mining SEPP.*

### ***Singleton Local Environmental Plan 2013***

The Department has analysed the permissibility of the proposed development under the Singleton LEP and is satisfied that all aspects of the Project are permissible with consent on the site (see **Section 4.2**). The Department has also considered potential impacts to the Coke Ovens, which is a locally listed heritage item situated in the Project area (see **Sections 6.3** and **6.9**). The Department has considered the effect of the Project on the heritage significance of the Coke Ovens and is satisfied that appropriate mitigation and management measures can be put in place to ensure the protection of this item.

### ***Hunter Regional Environmental Plan (REP) 1989 (Heritage)***

This plan was repealed on 4 August 2016 but must be considered in accordance with the transitional arrangements under *State Environmental Planning Policy (Integrations and Repeals) 2016*. The Department is satisfied that the development does not affect items of heritage significance listed under this instrument in the vicinity of the site and suitable precautionary measures have been included in the consent (stop-work protocol) to manage the chance of unexpected finds. Subject to this, the Project is consistent with the aims and objectives of this plan.

**SEPP No. 33 – Hazardous and Offensive Development**

The EIS has considered the potential hazards and risks associated with the Project, including the storage of hazardous goods, potential for fire and/or explosion, contamination of land, water and air and spontaneous combustion. These hazards and risks would continue to be managed in accordance with established policies and procedures. Bloomfield has also proposed a range of mitigation measures to manage these risks, which include:

- *storage of dangerous goods in accordance with relevant Australian Standards and management plans;*
- *implementation of policies and practices to reduce the risk of bushfire, in consultation with the Rural Fire Service;*
- *management of any spillages in accordance with the mine's incident response policy; and*
- *regular inspection of stockpiles*

With the proposed measures in place, the Project is not considered to be potentially hazardous or offensive and a Preliminary Hazard Analysis is not required. The Department considers the Project to be consistent with the aims and objectives of *SEPP 33*.

**SEPP No. 44 – Koala Habitat Protection**

*SEPP 44* aims to conserve and manage Koala habitat to reverse the current trend of Koala population decline. The Department notes that surveys undertaken at the Project site have not identified Koalas, or their potential habitat (including preferred food trees listed under Schedule 2 of *SEPP 44*). The EIS therefore concludes there is no suitable habitat for Koalas, or evidence of Koalas being present on the site. On this basis, the Department is satisfied that the Project is consistent with the aims, objectives and requirements of *SEPP 44*.

**SEPP No. 55 – Remediation of Land**

The Project site has a long history of use for coal-mining purposes (from 1881) and grazing. Past and current areas of mining are managed by Bloomfield. Existing disturbed land that has been historically used for grazing is unlikely to be contaminated by previous land uses. Bloomfield proposes to continue to manage potentially contaminating hazards and risks based on existing practices, which aim to avoid hydrocarbon spills. The Department is satisfied that the Project could be appropriately managed and remediated (if necessary) to ensure it is suitable for existing or future land uses.

Overall, the Department is satisfied that there is limited risk of any material contamination of the Project site and that the Project is generally consistent with the aims, objectives, and provisions of *SEPP 55*.

**SEPP (State and Regional Development) 2011**

The proposed development is declared to be State significant development under section 4.36 of the EP&A Act as it is 'development for the purposes of coal mining', which is specified in clause 5 of Schedule 1 of *SEPP (State and Regional Development) 2011*.

In accordance with section 4.5 of the EP&A Act and clause 8A(1) of *SEPP (State and Regional Development) 2011*, the Independent Planning Commission of NSW (IPCN) is the consent authority and must determine the application, as more than 25 public submissions in the nature of objection were received.

**SEPP (Infrastructure) 2007**

The Infrastructure SEPP requires the consent authority to notify relevant public authorities about developments that may affect public infrastructure or public land. To this end, the Department notified Council, the RMS, Transport NSW and the ARTC, particularly in relation to the Project's proposed cut-and-cover tunnel and increased train movements. No objections were received from these authorities.

In addition, electricity and telecommunications assets located in the New England Highway's road reserve may be impacted by the proposed cut and cover tunnel. The Department recommends that Bloomfield consult with the relevant authorities during finalisation of the tunnel's design. Additionally, the Department will provide any draft conditions of consent to these authorities. The Department is satisfied that conditions of consent could be recommended which would provide appropriate protection for public infrastructure, in line with the aims and objectives of this policy.

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

Clause 7(1)(b) of the Mining SEPP identifies that mining is permissible with consent on any land where development for the purposes of agriculture or industry may be carried out (with or without development

consent). Consequently, the proposed development is permissible with consent under the Mining SEPP, and the IPCN may determine the application.

In addition, Part 3 of the Mining SEPP lists a number of matters that a consent authority must consider before determining an application for consent to undertake development for the purposes of mining. The Department has considered these matters in its assessment of the proposed Project and has included a summary of these considerations below.

*Non-Discretionary Development Standards for Mining (clause 12AB)*

The Department's assessment has considered the non-discretionary development standards set out in clause 12AB of the Mining SEPP. These standards relate to a range of considerations concerning potential noise, air quality, blasting and water resource impacts. The Department has considered the application of these standards in the relevant sections of **Section 6**.

*Compatibility with Other Land Uses (clause 12)*

The Department's assessment has considered the potential impacts of the Project on other land uses in the area, including surrounding grazing lands, nearby residences and also proposed future residential areas near Singleton Heights. In addition, the potential impacts on downstream water users and potential noise, air quality and visual impacts at nearby private residences have been considered. This assessment has been undertaken in consideration of the public benefits of the Project, surrounding land uses and measures to avoid, mitigate and minimise any land use compatibility.

The Department's assessment concludes that the Project is unlikely to result in any material impacts on regional water quality or downstream water users and that the mine should be able to be operated to meet accepted amenity levels for noise and blasting at nearby residences. Visual impacts have also been assessed and requirements to undertake progressive rehabilitation are proposed to be established in conditions of consent.

The Department has carefully considered the potential air quality impacts on receivers near the Project and notes that mining would move away from the more populated areas of Singleton Heights, McDougalls Hill and Maison Dieu. While potential air quality impacts have been reduced through a reduction to the ROM coal production profile, private residences to the northwest of the mine and vacant land to the west of the proposed Pit 3 extension would experience exceedances to criteria. The private residences to the northwest of the mine already have acquisition rights from other nearby mines. In applying the VLAMP, the Department has recommended that the residual impacts of the Project that may cause exceedances at affected receivers lead to acquisition and mitigation rights in the event that these properties are not purchased by other mines (in particular the Ashton South East Open Cut Project).

Overall, the Department is satisfied that, subject to appropriate conditions, including performance measures and adaptive management, the Project could be managed to minimise any potential land use conflicts and meet the aims, objectives, and provisions of clause 12.

*Voluntary Land Acquisition and Mitigation Policy (VLAMP) (clause 12A)*

The Department's assessment has considered the NSW Government's *Voluntary Land Acquisition and Mitigation Policy* (December 2014). With respect to air quality and noise impacts, this assessment concluded that:

- one receiver and four vacant land holdings should be afforded voluntary acquisition rights;
- two receivers and three vacant land holdings should be afforded voluntary acquisition rights, only if acquisition is not reasonably achievable under other nearby mining consents; and
- four receivers should be afforded air quality mitigation rights.

The Department has considered the application of the VLAMP in detail in its assessment (see **Sections 6.1 and 6.2**). The Department has also considered potential future amendments to the VLAMP to reflect air quality criteria under the Approved Methods 2016.

In summary, the Department is satisfied that the Project could be managed to minimise Project-related and amenity impacts at surrounding private properties and that appropriate landowner rights could be offered through any recommended conditions of consent.

*Compatibility with Mining, Petroleum and Extractive Industries (clause 13)*

The Department is satisfied that the Project has been designed in a manner that is compatible with, and would not adversely affect, adjacent current or future mining-related activities.

Since the EIS was publicly exhibited, Bloomfield has acquired the adjacent Rix's Creek North mine and is continuing to integrate its operations and management with those at Rix's Creek Mine. The Department considers this arrangement to be compatible and likely to deliver improved outcomes by enabling integrated management of environmental matters such as water, rehabilitation and monitoring programs. The Department would recommend conditions to enable Bloomfield to prepare and implement management plans and programs that cover both mining operations.

Overall, the Department is satisfied that the Project has been designed in a manner that is compatible with and would not adversely affect adjacent current or future mining-related activities.

Natural Resource Management and Environmental Management (clause 14)

The Department would recommend a number of conditions aimed at ensuring that the Project is undertaken in an environmentally responsible manner, including conditions in relation to soils, water resources, threatened species and biodiversity and GHGEs.

Resource Recovery (clause 15)

The Department has considered resource recovery in its assessment of the Project, and is satisfied that the Project can be carried out in an efficient manner that optimises resource recovery within environmental constraints. The Department would recommend conditions requiring Bloomfield to implement reasonable and feasible measures to minimise waste and maximise the salvage and re-use of resources within the disturbance area (including water, soil and vegetative resources).

Transport (clause 16)

The Department notes that the off-site transport of coal would involve haulage of product coal on trains along the Main Northern Railway to the Port of Newcastle for export. The Department has also taken into consideration submissions from relevant road authorities in its assessment of the Project.

Rehabilitation (clause 17)

Overall, the Department is satisfied that the proposed final landforms and rehabilitation plans could be undertaken in a manner that would meet contemporary best practice in the NSW mining industry. The Department considers that conditions should be developed to monitor and enforce the progressive and final achievement of these outcomes, as well as the review and continual improvement of land use outcomes prior to mine closure.

Rehabilitation standards and outcomes are discussed further in **Section 6.6**.

Conclusion

The Department is satisfied that:

- the Project could be managed to comply with the assessed non-discretionary standards in the Mining SEPP;
- the Project could be managed to ensure compatibility with other land uses in the area;
- with the implementation of appropriate mitigation, management and compensatory measures, the Project would have acceptable impacts on major natural resources, including surface and groundwater resources and the biodiversity values of the site and region;
- the residual biodiversity impacts of the Project would be appropriately offset, leading to an ultimate long-term improvement in biodiversity outcomes;
- the GHGEs of the Project could be appropriately minimised;
- the resource recovery of the Project is appropriate, as it would maximise recovery of coal while minimising a range of potential environmental impacts;
- none of the coal produced by the Project would be trucked on public roads; and
- the site would be suitably rehabilitated over time to blend in with the surrounding landscape and enhance the biodiversity values of the region.