



15 October 2018

Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Dear Carolyn

Determination of Tahmoor North Coal Mine Modification 4 (DA 67/98)

1. Thank you for your Department's letter received on 17 September 2018, referring the above modification application to the Independent Planning Commission NSW (the **Commission**) for determination. The Commission has determined the modification application (the **application**) in accordance with the Minister's delegation dated 14 September 2011 due to reportable political donations declared by Glencore Coal who were the previous owner of the north and south sections of the Tahmoor mine (the **Tahmoor mine**) prior to its sale to SIMEC Mining on 20 April 2018.
2. Under section 10.4(3) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* a person who makes a relevant planning application to the Minister or Secretary is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined. At the time of the application being lodged, Glencore had a financial interest in the application because its subsidiary company, Tahmoor Pty Ltd was the owner of the Tahmoor mine and proponent to the application.
3. According to the Department's Environmental Assessment Report (**Department's EAR**), the modification is a transitional Part 3A application under Schedule 2 of the *Environmental Planning and Assessment (Savings and Transitional and Other Provisions) Regulation 2017*. On 1 March 2018, the EP&A Act was amended, and the ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued; however, as the modification application was lodged before 1 March 2018, the provisions of Schedule 2 continue to apply.
4. Development consent for the south section of the Tahmoor mine was granted by Wollondilly Shire Council in March 1975 (DA 1975). Development consent for the Tahmoor North area was later sought, which included areas where mining was then prohibited, from Wollondilly Shire Council in April 1993. Consent was granted in the Land and Environment Court in September 1994 (DA 57/93), except in some areas where mining was not permitted to occur.
5. A subsequent development application was lodged with the Minister for Planning in April 1998 which sought approval to mine the areas where mining was not allowed to occur. Consent was granted by a Commission of Inquiry in February 1999, and the Minister for Planning issued development consent (DA 67/98) on 25 February 1999 to allow mining in the prohibited areas, however subsidence is currently not allowed under condition 6(i) of the DA 67/98 consent, unless it obtains further approval under Part 4 of the EP&A Act.

6. Professor Mary O’Kane, Chair of Commission, nominated Mr Andrew Hutton (Chair) and Professor Alice Clark, to constitute the Commission to determine the modification application.
7. According to the Department’s EAR, Tahmoor Coal Pty Ltd (**proponent**), a subsidiary of SIMEC Mining, seeks to allow subsidence within the area which currently does not allow for subsidence to occur (**modification area**). The proposal does not involve any changes to the approved mining operations, surface facilities or production. The need for the proposal has arisen as a result of an increase in the area to be affected by subsidence from mining Longwall 32 due to improved accuracy in subsidence predictions, as informed by ongoing review of subsidence monitoring data and additional geotechnical information.
8. The development application was lodged by the proponent on 26 October 2017, and it was made publicly available on the Department’s website from 8 November 2017 to 22 November 2017 (the **exhibition period**). According to the Department’s EAR, the Department received submissions from five public authorities including, the Division of Resources and Geoscience (**DRG**), NSW Resources Regulator, Office of Environment and Heritage (**OEH**), Department of Industry – Lands and Water Division (**Dol**), and Subsidence Advisory NSW (**SA**) (formerly the Mine Subsidence Board).
9. According to the Department’s EAR, none of the public authorities objected to the proposal, however, the NSW Resources Regulator requested additional investigation and sensitivity analysis due to the uncertainty on the likely extent of subsidence particularly in relation to the potential influence of the major geological structure referred to as the Nepean Fault complex to cause abnormal subsidence. The Department also received one public submission from a member residing in Elanora Heights, objecting on the grounds that subsidence should not be allowed to occur in the excluded areas.
10. On June 2018, the proponent provided a response to submission (**RtS**) which sought to address comments from government agencies and the public submission.
11. The Department’s EAR, identified subsidence impacts to be the key issues associated with this modification application.
12. As part of its determination, the Commission met with the Department and met with the proponent on 26 September 2018. The transcripts from these meetings were made available on the Commission’s website on 12 October 2018.
13. Following review of the Department’s EAR and after reviewing the technical information provided, the Commission did not find it necessary to carry out a site inspection for this modification application.
14. In determining this modification application, the Commission considered:
 - Original development consent DA 67/98;
 - the proponent’s modification application, dated 26 October 2017;
 - the proponent’s political donations disclosure statement, dated 24 October 2017;
 - the proponent’s Environmental Impact Statement (**EIS**) and Appendices 1-6, dated October 2017;
 - the proponent’s Response to the Resources Regulator, dated 6 February 2018, and its RtS dated June 2018;
 - the Department’s Assessment Report, dated 17 September 2018, and the proposed draft Modification Instrument DA 67/98;
 - the public submission, undated;

- SA's comments, dated 24 November 2017;
- DRG's comments, dated 29 November 2017;
- Dol's comments, dated 30 November 2017;
- OEH's comments, dated 21 December 2017 and 10 July 2018;
- NSW Resources Regulator comments, dated 21 December 2017, and 19 July 2018
- the proponent's presentation during the meeting on the 26 September 2018;
- further information provided by the proponent, dated 3 October 2018 regarding End of Panel reports for longwalls 24 to 27, 29 and 30; and
- section 75W of the EP&A Act, and the public interest. (the **Material**)

NSW Resources Regulator and NSW Office of Environment and Heritage Comments

15. The NSW Resources Regulator comments to the Department, dated 21 December 2017; during the exhibition period stated that:

"low levels of subsidence, as predicted by Tahmoor Colliery, would be expected. However, there is a noticeable level of uncertainty about the likely extent of the subsidence because:

- *the subject area is in close proximity to a major geological structure, i.e. the Nepean Fault;*
- *there is a buried creek within the subject area. Any built structures located above this creek may be subject to the effects of valley closure/upsidence. Note that a number of buildings, including those within the Tahmoor High School are located above this buried creek;*
- *there is a possibility that the above-mentioned buried creek is the surface expression of geological complexities, thus the potential for higher-than-predicted subsidence, in addition to the above-mentioned valley closure / upsidence;*
- *some buildings within the Tahmoor High School may be more vulnerable to subsidence as compared with the nearby residential structures."*

16. In their response dated 21 December 2017, the NSW Resource Regulator requested further information to *"understand the likely extent of the subsidence and the impact it may have on surface structures."*

17. Following the proponent's response, dated 21 December 2017, which included field mapping of the Nepean Fault to gain an improved understanding of the fault structure and reviews of the available information on the potential for fault interactions with longwall extraction, leading to abnormal subsidence. The NSW Resources Regulator comments, dated 19 July 2018; stated that:

"response to submissions adequately addresses the issues raised in the Environmental Operations review of the MOD4 application (INT17/253765/DOI)..."

18. The NSW Resource Regulator also stated:

"It also should be noted that the mine operator has not completed the investigations into the following matters raised in the Resources Regulator submission (OUT17/49826):

- *an investigation into the feasibility of undertaking high frequency subsidence monitoring within the Tahmoor High School; and*
- *the undertaking of sensitivity analysis by competent structural engineers based on relevant subsidence scenarios."*

19. The NSW Resources Regulator also acknowledged the additional investigations undertaken by the proponent and stated that:
- “due to the proximity of longwall extraction to a major geological complexity it is our view that there is inherent uncertainty in the potential for development of abnormal subsidence. This uncertainty together with the sensitivity of the site (i.e. presence of Picton High School) should be noted.”*
20. Further, the NSW Resource Regulator stated in relation to paragraphs 18 and 19 that:
- “These matters are related to the mine operator’s understanding of the hazards and the effectiveness of risk controls. As such these are operational matters that will be regulated under the Work Health and Safety (Mines and Petroleum Sites) Act 2013 by the Resources Regulator.”*
21. The OEH comments to the Department, dated 10 July 2018; in response to the proponent’s RtS, dated June 2018, stated that:
- “OEH acknowledges the proponent’s intention to undertake Probable Maximum Flood (PMF) modelling. However, as per OEH earlier advice dated 20 November 2017, the modelling should not be limited to the impacts of the subsidence on the PMF event, rather it should provide a sound understanding of flood behaviour of this extreme event so that flood risk on the project (operations and personnel) and to the adjacent community can be understood and managed.”*

Proponent’s consideration

22. The proponent’s EIS overall concluded that:
- “subsidence associated with the proposed modification is likely to result in nil to negligible impacts on the land surface, natural or built environment or on existing land uses within the Modification Area. This is primarily due to the very low levels of subsidence predicted within the Modification Area, the substantial depth of cover above the coal seam, the overlying site characteristics and the continued implementation of existing subsidence monitoring, management and mitigation measures...”*
23. The proponent included in its EIS, a Subsidence Impact Assessment (SIA) prepared by Mining Subsidence Engineering Consultant (MSEC), dated 15 September 2017. The SIA reviewed the potential subsidence impacts associated with the proposed modification, including impacts on houses, buildings, and natural and built features; within the modification area.
24. The SIA predicted that maximum vertical subsidence in the modification area would range from 20 to 70 millimetres (mm), and that:
- “due to the depth of mining (greater than 480m), the small magnitude of predicted ground curvature and strains and the absence of any steep slopes or valley within the Modification Area, the potential for surface cracking is low. Based on low levels of subsidence predicted and previous experience within Tahmoor Underground, remediation of surface cracking in soils is unlikely to be required within the Modification Area.”*
25. The SIA also stated that:
- “the height of continuous fracturing above the extracted longwall within the SMP (LW31-37) area is predicted to extend approximately 150m above the seam (GeoTerra 2014). Given the depth of cover within the Modification Area is 480 to 510m and the Modification Area is not located directly above any longwalls, hydraulic connection to the surface water or alluvial groundwater systems in (sic) not likely.”*

26. The SIA concluded that:

“the levels of impact and damage to all identified natural and built features within the Modification Area are nil to negligible, and readily manageable through the implementation of the exiting Subsidence Management Plan framework. All structures within the Modification Area will remain in a safe and serviceable condition throughout the mining period, with minor or no repair required;

All houses within the Modification Area are expected to experience no or negligible impacts, requiring either no repairs or minor serviceability repairs to door or window jams or wings, cornices and/or external or internal expansion joints;

All buildings within Picton High School are expected to experience similarly low levels of impact, requiring only minor serviceability and/or façade repairs. Predicted subsidence and any required minor repairs are not expected to impact on the safety of students and staff, or affect the use of the buildings at any time for education or other purposes.”

27. In addition to the above, the SIA overall concluded that:

“Given the depth of cover and low levels of subsidence predicted, subsidence is unlikely to impact significantly on any natural features within the Modification Area. Subsidence impacts on the ground surface are predicted to be minimal, with surface cracking unlikely to occur. Hydraulic connection to surface water or alluvial groundwater systems is unlikely, and no adverse impacts to watercourses, steep slopes, cliffs, rocky outcrops are predicted as these features do not occur within the Modification Area.”

28. The proponent in its response dated 6 February 2018 to the NSW Resources Regulator, , and also in section 6.1.3 of the RtS dated June 2018, sought to address the NSW Resources Regulator concerns (discussed in paragraph 15 above) The proponent’s full response can be found in the RtS documents included on the Department’s website.

29. OEH raised concerns in relation to Section 6.1.5 of the proponent’s RtS, dated June 2018, as discussed in paragraph 21. The RtS stated:

“The PMF represents an extreme flooding scenario which is typically used for emergency planning, not for impact assessment. It is possible that the PMS flood extend may cover some part of the Modification 4 area, however, given the very low levels of subsidence predicted within the Modification 4 area, there are unlikely to be any implication for flood emergency planning. In order to confirm the potential influence of subsidence on the PMF event, TCCO will undertake modelling of the PMF event as part of the LW32 Subsidence Management Plan, prior to mining commencing in the area subject of Modification 4.”

Department’s considerations

30. The Department’s EAR stated that:

“The proposed modification would not change the purpose of the development for which the existing development consent was granted, or involve any changes to the existing mining operations. Underground mining in the modification area is permissible under State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (the Mining SEPP). Consequently, the Department is satisfied that the proposed modification is within the scope of section 75W, and may be determined accordingly.”

31. The Department's EAR concluded that the subsidence effects and impacts within the modification area:

"would be relatively minor and that all building, structures and infrastructure in the area would remain safe, serviceable and repairable throughout the mining operations, with no significant structural issues expected".

To manage subsidence during mining operations, Tahmoor Coal proposes to implement a range of measures consistent with its existing approval, including preparing of Subsidence Management Plans (SMP) for all second working, risk management plans, property-specific management plans (PSMP) and subsidence monitoring programs.

The Department considers that the modification application represents a reasonable expansion of the anticipated subsidence footprint for the Tahmoor North mine, and that its assessment indicates that the proposal would not result in any significant environmental impacts. Subject to the adoption of subsidence-related management, monitoring and mitigation measures generally consistent with the exiting approvals, the Department considers that the modification is in the public interest."

32. The Department's EAR acknowledged the proponent's undertaking of the SIA and stated that:

"The EA includes a detailed Subsidence Assessment, prepared by Mine Subsidence Engineering Consultants (MSEC), which assesses potential subsidence and subsidence impacts associated with the proposed modification. The Subsidence Assessment indicates that subsidence in the modification area would be relatively minor, ranging from 20 to 70 millimetres (mm) vertical subsidence."

33. The Department's EAR also acknowledged the proponent's undertaking of further information requested by the NSW Resources Regulator and stated:

"the Resources Regulator cautioned that there is some uncertainty about the likely extent of subsidence, given the proximity of a major geological structure in the locality (ie the Nepean Fault) and a buried creek within the modification area. These geological complexities have the potential to result in higher than predicted subsidence and/or 'valley closure' or 'upsidence' effects.

In response to these issues, Tahmoor Coal commissioned specialist engineering geologists SCT Operations to map and assess the potential effects associated with the Nepean Fault. It also commissioned MSEC to further consider the issues raised by the Resources Regulator, including the buried creek"

34. In relation to the Picton High School, the Department's EAR stated that:

"Tahmoor Coal would manage subsidence impacts on the school in a similar manner as residential houses, with a PSMP to be prepared in consultation with the school."

"Monitoring for Picton High School is proposed to involve 'high frequency' monitoring (as suggested by the Resources Regulator), which would be developed as part of the PSMP for the school. The PSMP would be developed in consultation with the school."

35. The Department's EAR recommended for the monitoring referred to in paragraph 34 to occur by way of proposed condition 11 (iv).

36. In relation to OEH's comments, discussed in paragraph 21; the Department EAR noted the proponent's response in paragraph 29, and stated:

"The Department accepts that the flood modelling indicates that the modification area is well outside the 1 in 100-year flood level and acknowledges Tahmoor Coal's commitment for additional flood modelling prior to mining closer to the area. The Department has recommended a condition formalising this commitment.

The Department also notes that condition 7 of Schedule 2 of the existing consent requires Tahmoor Coal to manage mining so as not to result in the subsidence of any habitable floors to below the 1% AEP flood level.

In addition to these requirements, the Department has also recommended that all future Extraction Plans include a flood management protocol to:

- identify secondary access routes for those properties that could potentially be adversely impacted by 1% AEP flood events;*
- regularly consult with landowners that would not have either a primary or secondary access route during 1% AEP flood events;*
- provide up-to-date information (including subsidence and flooding predictions) to the State Emergency Service and Council regarding privately-owned residences that could be adversely affected by lack of access during 1% AEP flood events; and*
- work with landowners, State Emergency Service and Council to develop evacuation plans to ensure landowners know what to do in the event of emergency as a result of a 1% AEP flood event."*

37. The Department's EAR recommended for the proponent to *"undertake additional flood modelling prior to mining Longwall 32 as part of the SMP process. The Department also recommends that a flood management protocol be developed as part of future Extraction Plans."* This is reflected by way of proposed condition 11(v).

38. In addition to the above, the Department's EAR has recommended by way of proposed conditions 13 A-F, for Longwall 33 and all subsequent longwalls, that:

"the existing SMP process is replaced by a best-practice Extraction Plan process, managed under updated conditions of consent. Extraction Plans would include detailed Subsidence Monitoring Programs and PSMPs. Furthermore, the Department has recommended performance measures for built features, including public infrastructure (i.e. the Picton High School)."

39. In relation to potential environmental constraints, the Department's EAR accepted that:

"Tahmoor Coal's subsidence assessments demonstrate that the proposal is unlikely to result in any significant subsidence-related impacts within the modification area, and that subsidence can be managed in accordance with the existing risk management and SMP approval frameworks established for the mine.

In this regard, in addition to the SMP approval framework under the mining lease, the existing consent requires Tahmoor Coal to (among other things):

- prepare and implement a detailed subsidence monitoring program in consultation with DRG and Council. The monitoring program is required to include monitoring of strains and impacts in the vicinity of the Nepean Fault;*
- notify landowners within the subsidence area of the intention to proceed with second workings;*
- undertake pre-mining structural inspections of improvements in the subsidence area;*
- rectify or compensate any damage caused by project-related subsidence; and*
- acquire properties where damage is, or is likely to be, severe or unrepairable."*

40. The Department's EAR also stated *"There are no known Aboriginal or non-indigenous heritage items in the modification area, and the proposed modification is not expected to result in any impact to the heritage values of the locality."*
41. Further to the above, the Department's EAR stated that:
"these conditions (and the SMP approval process) are adequate to address the potential impacts associated with the proposed modification. However, in accordance with the Resources Regulator's recommendations, the Department has recommended a condition requiring Tahmoor Coal to undertake high frequency subsidence monitoring and additional structural sensitivity analyses at Picton High School."
42. In addition to the existing requirements, the Department's EAR updated the consent and has included proposed condition 13 to:
"reflect current best practice for management of underground coal mines in NSW, including recommending performance measures and requiring that all longwalls from Longwall 33 onwards be managed under a contemporary Extraction Plan process. The performance measures are drafted so that individual impact limits apply to groups of similar and related features."
43. The Department's EAR explained that:
"The performance measures provide a management regime based not only on the significance and sensitivity of the feature being protected, but also the risk profile, likelihood and severity of potential impacts occurring at the particular feature."
- The performance measures are not intended to act in isolation; rather, they operate to provide an umbrella framework under which a range of other considerations and assessments are undertaken either prior to, during or following the extraction of each longwall panel to avoid and minimise subsidence impacts. In particular, these assessments relate to the preparation and approval of Extraction Plans. The Extraction Plan process provides a detailed assessment process which supports the achievement of the performance measures."*

Commission's consideration

44. The Commission has carefully considered the Material before it including the additional information provided by the Department and the proponent following the meetings on 26 September 2018.
45. The Commission accepts the Department's conclusion that the modification application is within the scope of section 75W and may be determined accordingly, because the proposed modification would not change the purpose of the development for which the existing development consent was granted, or involve any changes to the existing mining operations, as discussed in paragraphs 3 and 30.
46. The Commission notes that the proponent has responded to the agencies in its RtS, and has undertaken additional investigations as requested by the NSW Resources Regulator. These investigations are discussed in paragraphs 16 and 28 above.
47. The Commission also notes, that the NSW Resource Regulator was satisfied with the information, as discussed in paragraph 17; however it noted that the proponent had not completed the investigations into the feasibility of undertaking high frequency subsidence monitoring within the Tahmoor High School; and the undertaking of sensitivity analysis by competent structural engineers based on relevant subsidence scenarios, as discussed in paragraph 18.

48. Based on the above paragraphs 46 and 47, the Commission finds that the concerns of the NSW Resource Regulator have been adequately addressed in the proponent's RtS and by the Department; because the Department has included a proposed condition 11(iv) relating to undertaking high frequency subsidence monitoring; and sensitivity analysis on relevant subsidence scenarios, as part of an SMP approval, as discussed in paragraphs 34 and 35.
49. The Commission accepts that the current SMP process is adequate to manage the subsidence impacts relating to Longwall 32, because it adequately addresses the NSW Resources Regulator comments, dated 19 July 2018, as discussed in paragraphs 17, and 31 and - 48.
50. The Commission also accepts the Department's inclusion of proposed condition 13 H-J, as discussed in paragraph 42; requiring the preparation of an Extraction Plan for all secondary workings in Longwall 33 and beyond, under "*a contemporary Extraction Plan process*" because it will "*reflect current best practice for management of underground coal mines in NSW.*"
51. The Commission finds that the concerns of the OEH have been adequately addressed by the Department because:
- current condition 7 of schedule 2, requires for management of mining so as not to result in the subsidence of any habitable floors to below the 1% AEP flood level, as discussed in paragraph 36; and
 - a new condition of consent 11(v) relating to undertaking "*additional flood modelling prior to mining Longwall 32 as part of the SMP process;*" has been included, as discussed in paragraphs 37; and which requires for all future Extraction Plans include a flood management protocol, as discussed in paragraphs 36 and 37.
52. The Commission accepts the Department's inclusion of proposed conditions 13A-F requiring Tahmoor Coal to meet the current industry subsidence impact performance measures relating to built features, as discussed in paragraph 38.
53. The Commission accepts the proponent's conclusions in paragraphs 22 and 27; that: "*subsidence associated with the proposed modification is likely to result in nil to negligible impacts on the land surface, natural or built environment or on existing land uses within the Modification Area;*" because of the:
- "*low levels of subsidence predicted;*" within the modification area, as discussed in paragraph 24;
 - "*depth of cover within Modification Area is 480 to 510m;*" as discussed in paragraph 25;
 - proponent's EIS conclusions in paragraph 26; and
 - "*continued implementation of existing subsidence monitoring, management and mitigation measures...*" as discussed in paragraph 27.
54. The Commission accepts the Department's conclusion that "*the modification application represents a reasonable expansion of the anticipated subsidence footprint for the Tahmoor North mine,*" as discussed in paragraphs 30; because of the proponent's conclusions, as discussed in paragraphs 26 and 27; the NSW Resources Regulator's comments in paragraph 17, and the Department's recommended conditions:
- to require the proponent to manage and monitor subsidence impacts on Picton High school through a PSMP to be prepared in consultation with Picton High school, as discussed in paragraph 34; and
 - for Longwall 33 and all subsequent longwalls, to replace the existing SMP process by a best-practice Extraction Plan process, that would include detailed Subsidence Monitoring Programs and PSMPs, also including performance measures for built features, including public infrastructure, as discussed in paragraph 38, and 41- 43.

Objects of the Act and Public Interest

55. The Commission notes that the proponent's EIS is silent on how the modification meets the objects of the EP&A Act.

56. The Commission notes that the Department's EAR stated that:

"The Department is satisfied that the proposal would permit the continued proper management and development of a regionally significant coal resource (Objects 1.3(a) and (j)). The Department is also satisfied that the proposal represents an orderly and economic use of land (Object 1.3(c)).

The Department has considered the principles of ecologically sustainable development (ESD, Object 1.3(b)) in its assessment of the proposed modification and considers that the proposed modification is able to be carried out in a manner that is consistent with the principles of ESD. The Department's assessment has sought to integrate all significant environmental, social and economic considerations.

Consideration of the protection of the environment and heritage (Objects 1.3(e) and(f)) is provided in Section 5 of this report. The proposed modification does not involve any material changes to environment and heritage matters.

The Department exhibited the modification application and accompanying EA and also made them publicly available (Object 1.3(j))."

57. The Commission finds that the Department's EAR does not sufficiently address how the proposed modification meets the principle of Ecologically Sustainable Development (**ESD**).

58. However, the Commission notes that the proponent has included a section in its EIS in how its development meets the ESD requirement. According to the proponent's EIS, the modification application meets the ESD requirement because:

- the precautionary principle has been applied as the proposed modification:
 - identified the *"likelihood and consequences" of the "environmental outcomes'* in the environmental assessment;
 - identified *"management and mitigation measures that are designed to address potential environmental impacts;"* and
 - continues to implement *"existing monitoring and reporting mechanisms;"*
- it addresses the inter-generational equity which ensures that *"the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations through the implementation of existing management and mitigation measures that would address the potential environmental impacts;"* through *"the implementation of existing management and mitigation measures that are designed to address the potential environmental impacts;"*
- it will not result in *"any direct or indirect adverse impacts to the ecological values of the area"*, as concluded in the assessment of the potential ecological and biodiversity impacts of the proposed modification; and
- it *"maximises the efficient use and management of resources through viable recovery of coal that is readily accessible within existing mining leases."*

59. The proponent's full explanation can be found in section 8.3 of its EIS.

60. For the reasons in the proponent's explanation in section 8.3 of its EIS, the Commission accepts that the proposal is consistent with the ESD because the proposal meets the four main ESD principles as discussed in paragraph 58.
61. The Commission notes that the proponent is silent in its EIS, in how the modification is in the public interest. However, the Department's EAR stated that:
- "Subject to the adoption of subsidence-related management, monitoring and mitigation measures generally consistent with the existing approvals, the Department considers that the modification is in the public interest."*
62. The Commission accepts the Department's assessment of the public interest as set out in paragraph 61; and therefore, finds that the development is in the public interest because:
- it represents a reasonable expansion of the anticipated subsidence footprint, as discussed in paragraph 31
 - it would manage subsidence impacts through:
 - the SMP approval up to Longwall 32, which includes high frequency subsidence monitoring, sensitive analysis on relevant subsidence scenarios, as discussed in paragraphs 18, and 46 - 49; and
 - the preparation of contemporary extraction plan for all secondary workings in Longwall 33 and beyond, reflecting current best practice for management of underground mines in NSW, as discussed in paragraphs 38, 42 and 50;
 - current industry subsidence impact performance measures relating to built features, as discussed in paragraph 52;
 - it would monitor undertake additional flood modelling prior to mining Longwall 32 as part of the SMP process, as discussed in paragraph 51;
 - is in accordance with the objects of the EP&A Act, as listed under section 1.3 (a), (b), (c), (e), (f), and (j) because:
 - it encourages the proper management and development of resource, as discussed in paragraph 56;
 - it promotes the orderly and economic use of land, with the Commission accepting the Department's conclusion discussed in paragraph 56;
 - is consistent with the ESD principle, the Commission accepting the proponent's conclusion discussed in paragraph 58;
 - it does not involve any material changes to environment and heritage matters discussed in paragraph 40 and 56; and
 - it was publicly exhibited and made publicly available, as discussed in paragraph 56; and
 - it would not result in any significant environmental impacts, as discussed in paragraph 30.

Commission's Determination

63. The Commission has determined to approve the modification application, subject to the attached conditions of consent, for the following reasons:
- the modification application represents a reasonable expansion of the anticipated subsidence footprint for the Tahmoor North mine, as discussed in paragraphs 31 and 54; and it is within the scope of 75W, as outlined in paragraphs 3, 30 and 45;
 - the modification would not result in any significant environmental impacts, subject to the adoption of subsidence-related management, monitoring and mitigation measures, as discussed in paragraphs 31 and 39;
 - subsidence within the modification area is likely to result in nil to negligible impacts on the land surface, natural and built features and on existing land uses, as discussed in paragraphs 22, 26 and 53;
 - subsidence related issues within the Modification 4 area can be addressed through the continued implementation of existing subsidence monitoring, management and mitigation measures required by the consent, as discussed in paragraphs 31, 37- 41, 48 and 53;
 - the modification application meets the objects of the EP&A Act, as discussed in paragraph 62; and is in the public interest, as discussed in paragraph 62.
64. As noted above at paragraph 63, setting out decision, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:
- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
 - set standards and performance measures for acceptable environmental performance;
 - require regular monitoring and reporting; and
 - provide for the ongoing environmental management of the development.
65. The reasons for the Decision are given in this Statement of Reasons for Decision dated 15 October 2018.



Andrew Hutton (Chair)
Member of the Commission



Prof Alice Clark
Member of the Commission

cc. The Hon. Anthony Roberts, MP
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