



## Appendix D – Updated Statutory Consideration

In line with the requirements of Section 4.15 of the EP&A Act the Department’s assessment of the project has given detailed consideration to a number of statutory requirements. These include:

- the objects found in Section 1.3 of the EP&A Act; and
- the matters listed under Section 4.15(1) of the EP&A Act, including applicable environmental planning instruments and regulations.

The Department has considered all of these matters in its assessment of the project, including the Department’s Preliminary Assessment Report (PAR) and this Final Assessment Report (FAR) and has provided a summary of this assessment in **Table D1** below.

Reference should also be made to Sections 4 and 6 of the EIS, where the Applicant has also considered applicable legislation and environmental planning instruments in detail.

**Table D1** | Summary of Statutory Consideration

Aspect	Summary
Relevant Objects of the EP&A Act	
1.3 (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources.	The objects of most relevance to the Commission’s decision on whether or not to approve the Project are found in Section 1.3(a), (b), (c), (e), (f) and (j) of the EP&A Act.  The Department is satisfied that objects 1.3(a) and (c) are met as:
1.3 (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.	<ul style="list-style-type: none"><li>○ the Project involves permissible land uses on the subject land;</li><li>○ the Department’s Division of Resources and Geoscience has determined that the targeted coal resource is significant from a State and regional perspective;</li><li>○ the targeted coal resource is located almost entirely within existing coal exploration and mining lease areas, in a region that is dominated by coal mining operations, thereby promoting the continued efficient use of the land;</li><li>○ the Project can be largely carried out using existing mine site and transport infrastructure;</li><li>○ the Project would provide an overall benefit of \$414 million (net present value) to NSW, including substantial royalties of up to \$369 million over the life of the Project; and</li><li>○ the Project would provide considerable socio-economic benefits to the region and to NSW.</li></ul>
1.3 (c) to promote the orderly and economic use and development of land.	
1.3 (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.	
1.3 (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).	
1.3 (j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department is satisfied that object 1.3(b) is met as:  <ul style="list-style-type: none"><li>○ the four main principles of ecologically sustainable development have been considered through the EIS (Section 9.3) and the Department’s PAR (Section 4.3 and Appendix D);</li></ul>

- the *precautionary principle* has been applied as the EIS included an environmental risk analysis to identify the likelihood and consequences of the environmental outcomes of the Project; the EIS and Department's PAR identified management and mitigation measures to address potential environmental impacts, and include commitments and requirements to continue to implement monitoring, auditing and reporting mechanisms;
- *inter-generational equity* has been addressed through maximising efficiency and coal resource recovery and developing environmental management measures which are aimed at ensuring the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations;
- *conservation of biological biodiversity* has been applied through avoiding and minimising biological biodiversity impacts, including setbacks from significant watercourses, avoidance of certain threatened flora (ie *Acacia pendula*), creation of improved landform and rehabilitation outcomes; and offsetting of residual biodiversity impacts in accordance with the *NSW Biodiversity Offset Policy for Major Projects (2014)* and the *Framework for Biodiversity Assessment*;
- *valuation and pricing of resource* has been considered through numerous economic, social and cost-benefit analyses which have been completed and independently reviewed to identify, quantify and weigh up the Project's costs and benefits based on its full range of environmental, social and economic impacts and support the conclusion that the Project would generate a significant net benefit to NSW and the regional economy; and
- the proposed Project is able to be carried out in a manner that is consistent with and would facilitate the principles of ESD.

The Department is satisfied that objects 1.3(e) and (f) are met as:

- the Project has sought to avoid, minimise and manage potential impacts on biodiversity and heritage;
- the Project has offset residual biodiversity impacts in accordance with NSW and Commonwealth Government policy;
- the EIS and PAR have confirmed that the Project would not directly impact any Aboriginal cultural heritage items of high scientific significance or historic heritage listed items; and
- the proposed mitigation and management measures would ensure the Project would have acceptable impacts on Aboriginal cultural and historic heritage.

The Department is satisfied that object 1.3(j) is met as:

- the Project was exhibited for 44 days with 103 submissions received;
- the Department commissioned independent peer reviews of certain aspects of the Project, including air quality and economics;
- a review of the Project, including a public hearing was held by the Independent Planning Commission, with 12 verbal presentations and 22 written submissions, mainly objecting to the Project; and

Aspect	Summary
Environmental Planning Instruments (EPIs)	<p data-bbox="718 235 1426 347">o ongoing correspondence and submissions on the Project from individuals and special interest groups have been considered by the Department in this final assessment of the Project.</p> <p data-bbox="718 380 1426 526">Appendix D of the PAR provides a summary of the Department's consideration of the relevant EPI's. Further consideration is provided below where relevant, due to minor changes to the Project or revisions to EPIs and/or related legislation.</p> <p data-bbox="718 548 1426 616"><u>Singleton Local Environmental Plan (LEP) 2013</u> – see the Department's consideration in the PAR.</p> <p data-bbox="718 638 1426 705"><u>SEPP No.33 – Hazardous and Offensive Development</u> – see the Department's consideration in the PAR.</p> <p data-bbox="718 728 1426 795"><u>SEPP No.44 – Koala Habitat Protection</u> – see the Department's consideration in the PAR.</p> <p data-bbox="718 817 1426 884"><u>SEPP No.55 – Remediation of Land</u> – see the Department's consideration in the PAR.</p> <p data-bbox="718 907 1426 929"><u>SEPP (State and Regional Development) 2011</u></p> <p data-bbox="718 952 1426 1019">Under Section 4.36 of the EP&amp;A Act the project is considered a State Significant Development.</p> <p data-bbox="718 1041 1426 1243">Under clause 8A of the <i>SEPP (State and Regional Development) 2011</i> and Section 4.5(a) of the EP&amp;A Act, the Independent Planning Commission is the consent authority for the development as there were more than 25 public submissions in the nature of objections and a related entity, Glencore Australia Holdings Pty Ltd, has declared reportable political donations.</p> <p data-bbox="718 1265 1426 1288"><u>SEPP (Infrastructure) 2007</u></p> <p data-bbox="718 1321 1426 1422">All relevant public infrastructure authorities have been notified and have endorsed the proposed public infrastructure realignment and relocation works required as part of the Project.</p> <p data-bbox="718 1444 1426 1624">The Department has recommended conditions of consent requiring the Applicant to carry out public infrastructure realignment/relocation works for the Golden Highway, Ausgrid and Transgrid's transmission lines and the telecommunications line in consultation with and to the satisfaction of the respective public authorities.</p> <p data-bbox="718 1646 1426 1713"><u>SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)</u></p> <p data-bbox="718 1736 1426 1758"><u>Non-discretionary Development Standards for Mining (Clause 12AB)</u></p> <p data-bbox="718 1780 1426 1915">In the PAR, the Department considered the potential noise, air quality, air blast, ground vibration and aquifer interference impacts of the Project. These have been further considered in this report in light of the recent amendments to noise and air quality standards.</p> <p data-bbox="718 1937 1426 2004">In relation to noise, it has been determined that that the Project should be assessed against the former <i>NSW Industrial Noise Policy 2000</i> except for</p>

low frequency noise which must be assessed against the *NSW Noise Policy for Industry 2017*.

In relation to air quality, the Department considers that the impacts of the Project should be assessed against the more conservative and contemporary *Approved Methods for the Modelling and Assessment of Air Pollutants in NSW* (Approved Methods 2016), which have replaced the equivalent 2005 version. This is consistent with recent practice and in recognition of the fact that the air quality modelling and assessment criteria established in the EPA's Approved Methods 2016 have been developed for the purposes of protecting human health and amenity. The overall findings of the air quality assessment did not change with the application of the updated Approved Methods 2016.

In relation to blasting, the Department is satisfied that blasting impacts from the Project could be managed through blast design controls and negotiated agreements.

*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 the residential land uses in Moses Crossing and Warkworth Village. This assessment has been undertaken in consideration of the public benefits of the Project.

The Department undertook a detailed assessment of the potential impacts of the Project on all nearby land uses (see Section 6 of the PAR and Section 2 of this report) and found that the Project could be managed to meet acceptable health and amenity criteria for noise, dust and blasting impacts at most sensitive receivers. Those receivers who are predicted to experience moderate to significant impacts would be afforded mitigation and acquisitions rights, respectively.

Further, the Department is satisfied that other indirect impacts of the Project on surrounding land uses are able to be minimised, mitigated or managed to achieve acceptable environmental and amenity outcomes.

*Consideration of Voluntary Land Acquisition and Mitigation Policy (Clause 12A)*

The Department's assessment has considered the NSW Government's *Voluntary Land Acquisition and Mitigation Policy* (September, 2018). Seven private receivers are predicted to have a significant impact such that acquisition rights would be afforded, and 19 private receivers are predicted to have a moderate impact such that mitigation rights would be afforded. The Applicant has since acquired some of these land holdings, and therefore the recommended conditions of consent refer to five receivers with acquisition rights and 18 with mitigation rights.

*Compatibility with Mining, Petroleum Production or Extractive Industry (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 (particularly HVO South and the existing Wambo Coal Mine) or future mining-related activities.

*Natural Resource Management and Environmental Management (Clause 14)*

The Department has recommended a number of conditions aimed at ensuring that the Project is undertaken in an environmentally responsible manner, including but not limited to, conditions in relation to water resources, threatened species and biodiversity, and greenhouse gas emissions.

*Resource Recovery (Clause 15)*

The Department and DRG are satisfied that the Project can be carried out in an efficient manner that optimises resource recovery within environmental constraints. The Department has also recommended conditions requiring the Applicant to implement reasonable and feasible measures to minimise waste.

*Transport (Clause 16)*

The Department notes that the project would transport all product coal off-site via the Main Northern Rail Line and that there would be a range of heavy and light vehicle deliveries via the Wambo mine access road and the Golden Highway. The Department has consulted with the applicable road and rail authorities in relation to the Project, and taken these submissions into consideration in its assessment.

*Rehabilitation (Clause 17)*

The Department has thoroughly considered the full range of final landform options presented by the Applicant. The Department accepts that maintaining final voids in the final landform would assist in preventing the off-site migration of salt to downstream receiving environments. The Department also accepts that filling of the voids could be prohibitively expensive and would result in up to 6 years of additional impact to the community.

The Department is satisfied that the proposed final landforms and rehabilitation plans could be achieved to meet contemporary best practice in the NSW mining industry, and has recommended a number of conditions to ensure the appropriate rehabilitation of land that would be affected by the Project.

The Department notes that the ecological mine rehabilitation, which is proposed to be relied upon by the Applicant for offsetting, is subject to a robust regulatory framework which has a number of levels of control and requires financial guarantees to support the delivery of required conservation and rehabilitation outcomes. This has been reflected in the recommended conditions of consent for the Project

The recommended conditions also require the Applicant to prepare and implement a Rehabilitation Management Plan, to effectively manage waste and to meet a number of rehabilitation objectives, including ensuring public safety, outcomes to rehabilitate land and improved

**Aspect**

**Summary**

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integration with the existing landscape, and to ensure that the mine site as a whole is safe, stable and non-polluting.

Summary – Mining SEPP

Based on its assessment of the development, the Department is satisfied that the project can be managed in a manner that is generally consistent with the aims, objectives and provisions of the SEPP.

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Commonwealth Approval

In accordance with the EPBC Act, the project (EPBC 2015/7600) was determined to be a 'controlled action' on 7 December 2015, due to likely significant impacts to listed threatened species and communities (sections 18 and 18A) and water resources (sections 24D and 24E).

The Departments assessment of all matters that the Commonwealth Minister must consider under the EPBC Act is provided in Sections 6.4 and 6.6 of the PAR and Sections 2.3 and 2.5 and Appendix D of this FAR.