



BULLI SEAM OPERATIONS

ATTACHMENT 5
RELEVANT LOCAL GOVERNMENT
PLANNING INSTRUMENTS

A5 RELEVANT LOCAL GOVERNMENT PLANNING INSTRUMENTS

The Bulli Seam Operations (the Project) Application area falls within three Local Government Areas (LGAs) (i.e. Wollondilly, Campbelltown and Wollongong). The majority of the Project Application area is located in the Wollondilly LGA (Figures 1 to 4). In the north a small portion of the Project Application area is within the Campbelltown LGA. The eastern edge and south-eastern corner of the Project Application area is within the Wollongong LGA.

Part 4 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) does not apply to a project approved under Part 3A of the EP&A Act. Notwithstanding, certain clauses of the Wollondilly, Campbelltown and Wollongong Local Environmental Plans (LEPs) that would ordinarily be applicable, but for the Project being assessed under Part 3A, may be taken into account by the Minister in deciding whether or not to approve the carrying out of the Project. Therefore, relevant clauses of these LEPs are discussed below.

References to Sections 1 to 7 in this Attachment are references to the Sections of the Main Report of the Environmental Assessment (EA). Internal references within this Attachment are prefixed with “A5”.

A5.1 WOLLONDILLY LEP

A5.1.1 Objectives of the Wollondilly LEP

Clause 2 of the Wollondilly LEP outlines the aim to provide a framework for landuse management in the LGA to achieve certain objectives. Those objectives relevant to the Project are:

...

- (d) *to conserve the environmental heritage of the Shire of Wollondilly, and*
- (e) *to integrate heritage conservation into the planning and development control processes, and*
- (f) *to provide for public involvement in the matters relating to the conservation of the Shire of Wollondilly’s environmental heritage, and*
- (g) *to ensure that new development is undertaken in a manner that is sympathetic to and does not detract from the significance of heritage items and their settings..., and*

- (h) *to ensure that development does not compromise the protection and maintenance of water quality within water supply catchment areas, and*
- (i) *to ensure that development reflects the integrated resource management principles of total catchment management, and*
- ...
- (o) *to protect areas of identified ecological significance,*
- ...

The Project is consistent with these objectives of the Wollondilly LEP, in that it would be developed in a manner that would minimise potential impacts on heritage, water quality, catchments and the environment (Section 5).

A5.1.2 Permissibility

Pursuant to clause 80(1) of the *Environmental Planning and Assessment Regulation, 2000* (EP&A Regulation), a project to which Part 3A of the EP&A Act applies (other than a critical infrastructure project) may not be given project approval if that project, or any part of that project, is not the subject of an authorisation or requirement under section 75M of the EP&A Act to apply for approval of a concept plan and would be prohibited by an Environmental Planning Instrument (EPI) if Part 3A of the EP&A Act did not apply.

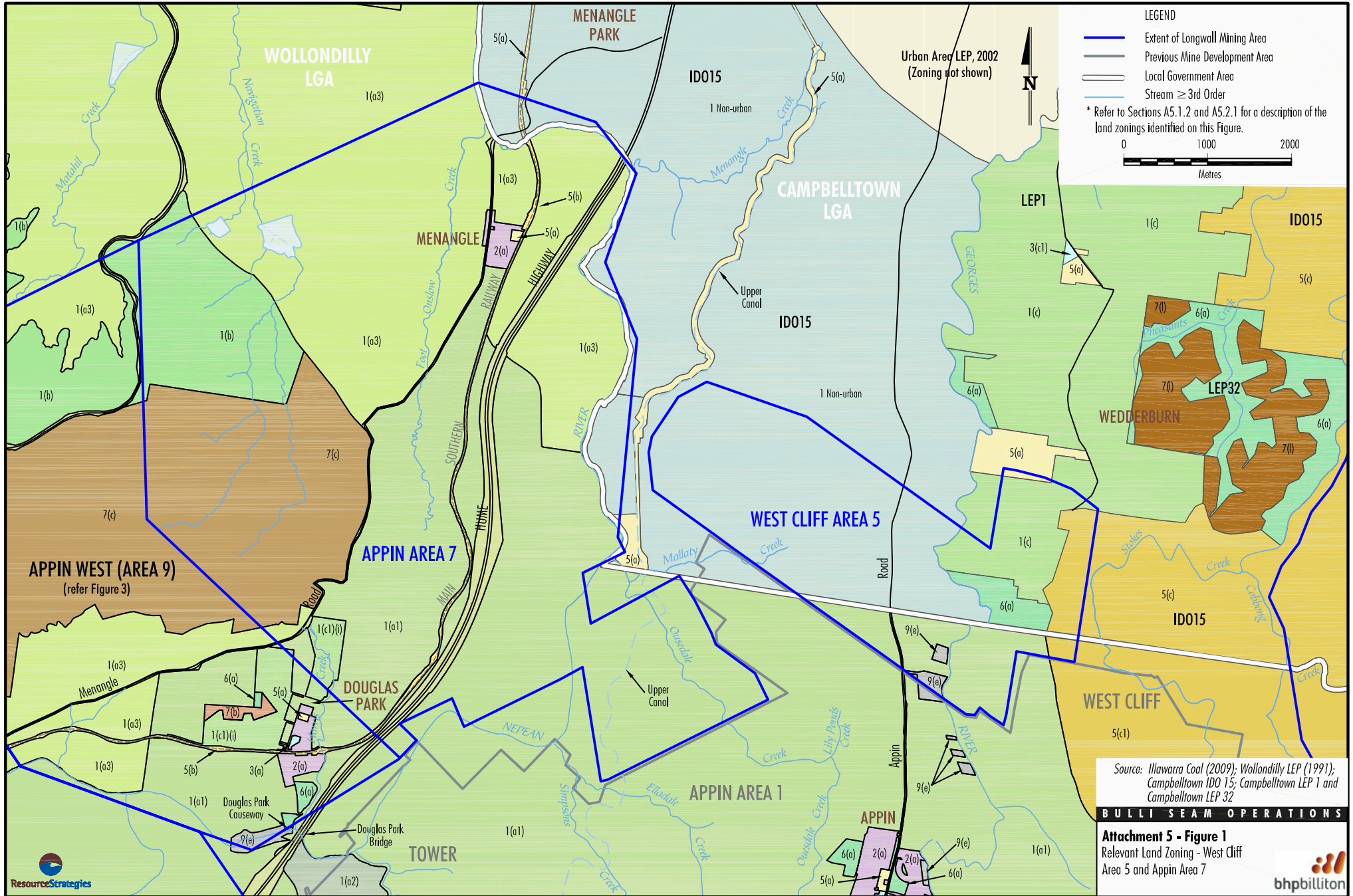
Clause 10 of the Wollondilly LEP sets out the zone objectives and the development control table that is relevant in determining whether the Project, or any part of the Project, is prohibited by the Wollondilly LEP in any of the zones within the Project land. Further, clause 10(3) provides:

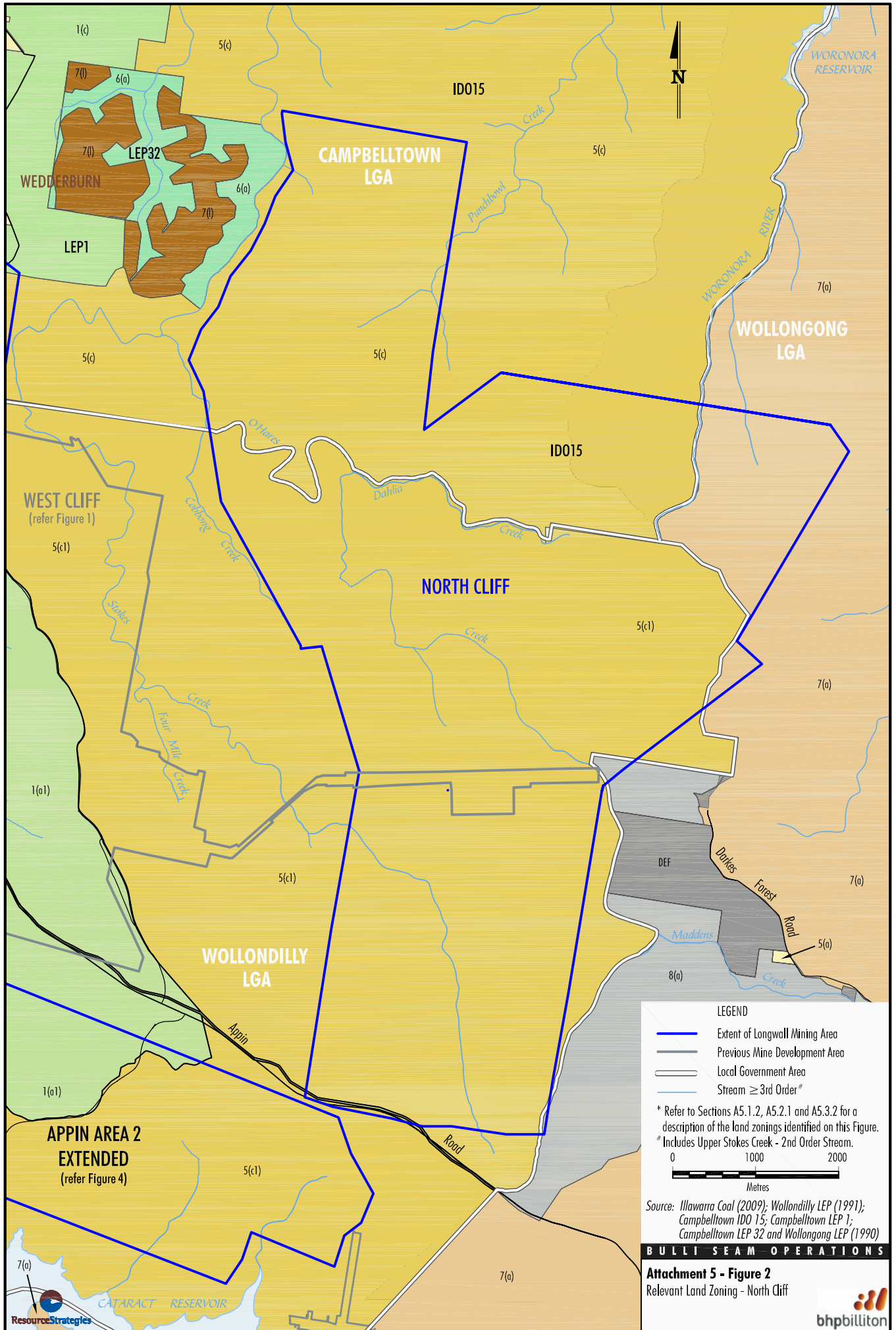
Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

The Project land is largely situated within the Wollondilly LGA.

The Project Application area (Attachment 2) includes land in the Wollondilly LGA zoned:

- 1 (a1) (Rural “A1”);
- 1 (a2) (Rural “A2”);
- 1 (a3) (Rural “A3”);
- 1 (b) (Agricultural Landscape);





- 1 (c1) (i) (Rural “C1 [i]” [Small Holdings]);
- 2 (a) (Residential “A”);
- 3 (a) (Business Zone);
- 4 (a) (Industrial);
- 5 (a) (Special Uses “A”);
- 5 (b) (Special Uses “B” [Railway]);
- 5 (c1) (Special Uses “C1” [Water Catchment]);
- 5 (c2) (Special Uses “C2” [Water Catchment]);
- 6 (a) (Open Space “A” [Recreation]);
- 7 (b) (Environmental Protection “B” [Soil Conservation]);
- 7 (c) (Environmental Protection “C” [Rural Living]);
- 9 (b) (Arterial Road Reservation); and
- 9 (e) (Regional Open Space Reservation).

While these zonings are included in the Project Application area, a number of these zonings occur within previous West Cliff Colliery and Appin Mine development areas and are not directly relevant to the future Project development activities.

The locations of the zones described above are shown on Figures 1 to 4.

If Part 3A of the EP&A Act did not apply to the Project, the Project would be permissible with consent in the following zones:

- 1 (a1) (Rural “A1”);
- 1 (a2) (Rural “A2”);
- 1 (a3) (Rural “A3”);
- 1 (b) (Agricultural Landscape);
- 1 (c1) (i) (Rural “C1 [i]” [Small Holdings]);
- 5 (c1) (Special Uses “C1” [Water Catchment]);
- 5 (c2) (Special Uses “C2” [Water Catchment]); and
- 7 (c) (Environmental Protection “C” [Rural Living]).

However, if Part 3A of the EP&A Act did not apply to the Project, the Project would not be permissible in the following zones, which are primarily associated with linear infrastructure and villages in the Project area:

- 2 (a) (Residential “A”);
- 5 (a) (Special Uses “A”);
- 3 (a) (Business Zone);
- 4 (a) (Industrial);
- 5 (b) (Special Uses “B” [Railway]);

- 6 (a) (Open Space “A” [Recreation]);
- 7 (b) (Environmental Protection “B” [Soil Conservation]);
- 9 (b) (Arterial Road Reservation); and
- 9 (e) (Regional Open Space Reservation).

Given that part of the Project is prohibited under the Wollondilly LEP, in order to ensure that clause 8O of the EP&A Regulation will not operate to preclude the Minister for Planning (the Minister) from granting Project Approval, it is necessary to consider whether another EPI can operate to override the prohibition under the Wollondilly LEP and provide for the permissibility of the Project in those zones under the Wollondilly LEP where part of the Project is prohibited.

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (the Mining SEPP) commenced operation on 16 February 2007.

Clause 4 of the Mining SEPP states:

4. *This Policy applies to the State.*

Clause 5(3) gives the Mining SEPP primacy where there is an inconsistency between its provisions and the provisions in any other EPI. Clause 5(3) relevantly provides:

- 5(3) *... if this Policy is inconsistent with any other environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

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

The aims of the Mining SEPP are set out in clause 2 as follows:

2. *The aims of this Policy are, in recognition of the importance to New South Wales of mining, petroleum production and extractive industries:*
- (a) *to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
 - (b) *to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*

- (c) *to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources.*

Clauses 6 and 7 of the Mining SEPP provide what types of mining development are permissible without consent and what types are permissible with development consent. In this regard, cl 7(1) relevantly states:

7(1) *Mining*

Development for any of the following purposes may be carried out only with development consent:

- (a) *underground mining carried out on any land,*
...

The effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that notwithstanding any prohibition contained in the landuse table of the Wollondilly LEP, development for the purpose of underground mining may be carried out with development consent.

Accordingly, clause 80(1) of the EP&A Regulation has no effect and therefore the Minister is not precluded from granting approval under section 75J for the Project in respect of those parts of the Project land where mining is prohibited under the Wollondilly LEP.

A5.1.3 Zone Objectives

Clause 10(3) of the Wollondilly LEP provides that consent shall not be granted to the carrying out of development on land to which the Wollondilly LEP applies, unless Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Whilst the Minister would not be precluded from granting approval on this basis, the Minister may still, pursuant to section 75J(3), take into account the zone objectives.

The following provides the zone objectives of the Wollondilly LEP lands relevant to the Project:

4 (c) *Extractive Industrial Zone*

- (a) *to manage the extractive and landfill resources of the City of Wollongong in a co-ordinated manner to meet community needs while ensuring that adverse impact on the environment and the community are minimal, and*
(b) *to ensure that development proposals for land containing extractive resources are assessed in relation to the potential problem of rendering those resources unavailable.*

1 (a1) *Rural "A1" Zone*

- (a) *to protect the agricultural potential of rural land and to prevent fragmentation of viable rural holdings, and*
(b) *to prevent inappropriate, premature and sporadic subdivisions and to ensure consolidation of urban areas so as to enhance the prospect of economic provision of services, and*
(c) *to prevent, on the fringe of urban areas, subdivision of land into small lots which would prejudice the proper layout of additional urban areas as a result of natural growth, and*
(d) *to retain the scenic quality and overall character of the land, and*
(e) *to encourage agricultural activities that are within the rural capability of the land.*

1 (a2) *Rural "A2" Zone*

- (a) *to protect the agricultural potential of rural land and to prevent fragmentation of viable rural holdings, and*
(b) *to prevent inappropriate, premature and sporadic subdivisions and to ensure consolidation of urban areas so as to enhance the prospect of economic provision of services, and*
(c) *to prevent, on the fringe of urban areas, the subdivision of land into small lots which would prejudice the proper layout of additional urban areas as a result of natural growth, and*
(d) *to retain the scenic quality and overall character of the land,*
(e) *to encourage agricultural activities that are within the rural capability of the land.*

- 1 (a3) Rural “A3” Zone
- (a) to protect the agricultural potential of rural land and to prevent fragmentation of viable rural holdings, and
 - (b) to prevent inappropriate, premature and sporadic subdivisions and to ensure consolidation of urban areas so as to enhance the prospect of economic provision of services, and
 - (c) to prevent, on the fringe of urban areas, the subdivision of land into small lots which would prejudice the proper layout of additional urban areas as a result of natural growth, and
 - (d) to retain the scenic quality and overall character of the land,
 - (e) to encourage agricultural activities that are within the rural capability of the land.
- 1 (b) Agricultural Landscape Zone
- (a) to encourage the preservation of the rural landscape character by ensuring that development is compatible with that character, and
 - (b) to allow for the continuation of existing agricultural practices, and
 - (c) to provide for community titles subdivision subject to appropriate controls, and
 - (d) to maintain existing significant stands of indigenous vegetation, and
 - (e) to protect the water quality of receiving streams and to reduce the incidence of land degradation, and
 - (f) to minimise the visual impact of development on the rural landscape.
- 1 (c1) (i) Rural “C1 (i)” (Small Holdings) Zone
- (a) to accommodate demands for rural residential use, and confine this form of development generally to land not being of prime crop and pasture potential or to places where services are available or to which services may be reasonably extended, and
 - (b) to ensure development is carried out in a manner that minimises risks from natural hazards, particularly bushfires, flooding and soil erosion, and does not detract from the scenic quality of the rural area, and
 - (c) to provide for such community uses as are necessary to meet community needs in this zone, and
- (d) to ensure that small holding zones are not sited in localities that have been identified for future residential expansion.
- 2 (a) Residential “A” Zone
- The objectives of this zone are to provide an environment primarily for detached housing and to ensure that the range of other development permitted in a residential area is compatible with the residential environment.
- 3 (a) Business Zone
- (a) to focus and consolidate retail and business development in accessible locations, and
 - (b) to promote the amenity and efficiency of business commercial centres, and
 - (c) to ensure that there is adequate provision for car parking facilities in the vicinity of commercial centres.
- 4 (a) Industrial Zone
- The objective of this zone is to identify land to be set aside in strategic locations for business establishments and employment opportunities in industry other than industries of an offensive or hazardous nature.
- 5 (a) Special Uses “A” Zone
- The objective of this zone is to identify and set aside land required to provide those uses, usually of a public nature, necessary to provide essential services to a community.
- 5 (b) Special Uses “B” (Railway) Zone
- The objective of this zone is to set aside certain land for railway purposes including any purpose authorised under the Transport Administration Act 1988.
- 5 (c1) Special Uses “C1” (Water Catchment) Zone
- The objective of this zone is to protect land which is designated as being part of a water catchment area from land uses which adversely affect, or are likely to adversely affect, the environmental quality of these areas.
- 5 (c2) Special Uses “C2” (Water Catchment) Zone
- The objective of this zone is to protect land which is designated as being part of a water catchment area from land uses which adversely affect, or are likely to adversely affect, the environmental quality of these areas.

6 (a) *Open Space “A” (Recreation) Zone*

The objectives of this zone are to recognise and ensure that publicly owned land is developed for open space recreation, to encourage the development of open space which best satisfies community needs and to permit development associated with or complementary to open space.

7 (b) *Environmental Protection “B” (Soil Conservation) Zone*

The objective of this zone is to identify and protect various areas which are environmentally sensitive and which enhance visual amenity and to ensure the protection of soil which has been identified as being highly erodible.

7 (c) *Environmental Protection “C” (Rural Living) Zone*

The objectives of this zone are:

- (a) *to provide for rural living opportunities, and*
- (b) *to encourage the preservation of the rural landscape character by ensuring that development is compatible with that character, and*
- (c) *to ensure that land degradation does not occur and that the water quality of receiving streams is protected, and*
- (d) *to maintain existing significant stands of indigenous vegetation.*

Zone No 9 (b) *Arterial Road Reservation Zone*

The objective of this zone is to identify and protect land intended to be acquired for new arterial roads or the widening of existing arterial roads.

Zone No 9 (e) *Regional Open Space Reservation Zone*

The objectives of this zone are:

- (a) *to ensure that land required for future regional open space is clearly identified and reserved,*
- (b) *to provide for the acquisition of reserved land,*
- (c) *to permit limited development of reserved land where acquisition is not immediately required, and*
- (d) *to ensure that any development of reserved land does not reduce its significance as regional open space.*

The Project is considered to be generally consistent with the above zone objectives, because, as described in Section 5, management and mitigation measures would be implemented where practicable, to minimise the potential impacts of the Project on other landuses, and the environment.

A5.1.4 Special Provisions

Part 3 of the Wollondilly LEP provides a number of miscellaneous provisions of potential relevance to the Project, including the following:

18B Assessment of development in Zone No 9 (e)

- (1) *The council shall not consent to the carrying out of development on land within Zone No 9 (e) unless in addition to those matters listed in section 90 of the Act, it has made an assessment of:*
 - (a) *the extent to which the land will be disturbed or modified by works and vehicular access associated with the development,*
 - (b) *the extent to which the land has been previously disturbed or modified with particular regard to:*
 - (i) *weed infestation,*
 - (ii) *drainage,*
 - (iii) *clearing, and*
 - (iv) *construction,*
 - (c) *the adequacy of measures to safeguard and rehabilitate the environment,*
 - (d) *whether consideration has been given to an alternative site for the development,*
 - (e) *whether consideration has been given to an alternative method of carrying out the development,*
 - (f) *whether adequate measures have been or will be taken with respect to the proper disposal of sewage, and*
 - (g) *land capability and soil erosion hazard.*

As described above, the Project includes the carrying out of longwall mining on small parcels of land zoned 9(e) in the Wollondilly LEP. No specific surface infrastructure is proposed in the areas zoned 9(e) (Regional Open Space).

The potential impacts of the Project are limited by the underground nature of the mining operation. The Project would be developed with the implementation of management and mitigation measures to minimise the need for vegetation clearance and any opportunity for weed infestation, manage the potential for erosion or water pollution and/or alteration of land capability (Section 5). No significant effects are expected in this regard.

Accordingly the Minister can be satisfied as to these matters.

29 Development along arterial roads

- (1) *The council shall not consent to an application for consent to carry out development on land which has frontage to an arterial road unless:*
 - (a) *access to that land is provided by a road other than the arterial road, wherever practicable, and*
 - (b) *in the opinion of the council, the safety and efficiency of the arterial road will not be adversely affected by:*
 - (i) *the design of the access to the proposed development,*
 - (ii) *the emission of smoke or dust from the proposed development, or*
 - (iii) *the nature, volume or frequency of vehicles using the arterial road to gain access to the proposed development.*

...

The Project Application area includes numerous parcels of land that have frontage to arterial roads and includes mining at depth beneath or adjacent to arterial roads (e.g. Appin Road).

The Air Quality Assessment (Appendix J) of the EA has considered the potential air quality emissions of the Project and has concluded that the Project would meet applicable air quality criteria and no significant off-site emissions would be expected (Section 5.13).

As discussed in Section 5.15, traffic movements on the local and regional road network would be increased by the Project, including increased traffic turning onto and off arterial roads to access the Appin East and West Cliff pit top sites. In accordance with the Director-General's Environmental Assessment Requirements (EARs), the Road Transport Assessment (Appendix K of the EA) has considered the potential impacts of the increased traffic generation associated with the Project and concluded that no particular safety and traffic efficiency issues are raised by the Project with the implementation of the Project traffic management measures (Section 5.15.3).

Accordingly the Minister can be satisfied as to these matters.

30 Heritage items

- (1) *A person must not, in respect of a heritage item:*
 - (a) *demolish or alter the building or work, or*
 - (b) *damage or move the relic, or*
 - (c) *excavate for the purpose of exposing the relic, or*
 - (d) *damage or despoil the place or tree, or*
 - (e) *erect a building on or subdivide land on which the building, work or relic is situated or that comprises the place, or*
 - (f) *damage any tree on land on which the building, work or relic is situated or on the land which comprises the place,*
except with the consent of the council.
- (2) *The council must not grant consent to a development application required by subclause (1) unless it has taken into consideration the extent to which the carrying out of the proposed development would affect the heritage significance of the item and any stylistic or horticultural features and its setting.*

31 Development in the vicinity of heritage items

The council must not grant consent to an application to carry out development on land in the vicinity of a heritage item unless it has made an assessment of the effect the carrying out of that development will have on the heritage significance of the item and its setting.

32 Heritage conservation areas

- (1) *A person must not, in respect of a heritage conservation area:*
- (a) *demolish or alter a building or work within the area, or*
 - (b) *damage or move a relic within the area, or*
 - (c) *excavate for the purpose of exposing a relic within the area, or*
 - (d) *damage or despoil a place within the area, or*
 - (e) *erect a building on or subdivide land within the area,*

except with the consent of the council.

33 Heritage advertisements and notifications

- (1) *Except as provided by this clause, the provisions of sections 84, 85, 86, 87 (1) and 90 of the Act apply to and in respect of:*
- (a) *the demolition of a heritage item, and*
 - (b) *the demolition of a building work, relic or place within a heritage conservation area, and*
 - (c) *the use of a building or land for a purpose which, but for clause 35, would be prohibited under this plan,*
- in the same way as those provisions apply to and in respect of designated development.*

(2), (3) *(Repealed)*

- (4) *This clause does not apply to the partial demolition of a heritage item or of a building or work within a heritage conservation area if, in the opinion of the council of the partial demolition will be of a minor nature and will not adversely affect the heritage significance of the heritage item, building or work in relation to the environmental heritage of the land to which this plan applies.*

34 Provisions relating to heritage items covered by a conservation instrument

Clauses 30, 32 and 33 shall not apply where the building, work, relic or place that is a heritage item or is within a heritage conservation area is the subject of a conservation instrument within the meaning of, and made pursuant to, the Heritage Act 1977.

Clauses 30 to 34 set out above are potentially applicable to the Project with respect to the Project mine subsidence and surface activities that have the potential to impact heritage listed sites/areas (e.g. the St Mary's Towers) and on Aboriginal heritage sites located above the Project extent of longwall mining, or potentially affected by Project surface activities.

Aboriginal and Non-Aboriginal Heritage Assessments have been completed for the Project and are provided in Appendices G and H of the EA. A summary of how the above issues have been addressed is provided in Sections 5.10 and 5.11. Accordingly the Minister can be satisfied as to these matters.

36 Land subject to bushfire hazards

The council shall not consent to subdivision of or to the erection of a building on the land to which this plan applies which, in the opinion of the council is subject to bushfire hazards, unless it has made an assessment of:

- (a) *whether adequate provision has been made for access to the land for fire fighting vehicles, fire breaks, reserves and fire radiation zones, and*
- (b) *in the case of a subdivision of land, whether the depth of any allotments to be created by the subdivision which would adjoin a perimeter road is adequate, and*
- (c) *the design of any proposed dwelling-house in relation to bushfire hazard.*

The Project does not include any proposed dwellings. Notwithstanding, buildings and infrastructure that are proposed (e.g. infrastructure upgrades) would be developed with the implementation of management and mitigation measures to minimise the potential for bushfire risk (Section 5.3).

49 Environmentally significant land

- (1) *This clause applies to all land shown on the environmentally significant land map with diagonal hatching and specified in Schedule 7.*

- (2) *The objectives of designating land as environmentally significant land and for development of that land are as follows:*
- (a) *to identify environmentally significant land, and*
 - (b) *to maintain biodiversity, and*
 - (c) *to retain and enhance the natural functions of riparian corridors, and*
 - (d) *to provide for controlled pedestrian and bicycle access to, and sensitively integrated fire trails on, such land, and*
 - (e) *to allow for controlled recreational uses having regard to environmentally significant values of the land, and*
 - (f) *to protect items and places of Aboriginal heritage significance, and*
 - (g) *to enable the appropriate location on such land of gas drainage infrastructure required for underground coal mining, having regard to environmentally significant values of the land, and to ensure that such infrastructure is designed in accordance with industry best practice guidelines, where existing.*
- (3) *Before granting consent to the carrying out of development on land to which this clause applies, the consent authority must be satisfied that the development:*
- (a) *would substantially retain existing vegetation, and*
 - (b) *would not adversely affect to a significant extent:*
 - (i) *the ecological value of the existing bushland vegetation, or*
 - (ii) *native fauna, or*
 - (iii) *the scenic qualities of the locality.*
- (4) *Before granting consent to the carrying out of development on land to which this clause applies, the consent authority must consider whether:*
- (a) *the locality has high biological diversity, and*
 - (b) *the locality contains:*
 - (i) *a disjunct population of native species or a species that is near the limit of its geographic range, or*
 - (ii) *riparian vegetation, or*
 - (iii) *vegetation associated with wetlands, and*
- (c) *the land has connective importance as, or as part of, a corridor of bushland forming a connection that allows for the potential passage of species of flora or fauna between two or more areas of bushland, and*
 - (d) *the vegetation is adequately represented on land in the general locality, and*
 - (e) *the land is important as a site along a migratory route for wildlife, and*
 - (f) *the land functions as an important drought refuge for wildlife, and*
 - (g) *clearing of the land would be likely to contribute significantly to:*
 - (i) *soil erosion, or*
 - (ii) *salinisation of soil or water, or*
 - (iii) *acidification of soil, or*
 - (iv) *landslip, or*
 - (v) *deterioration in the quality of surface or ground water, or*
 - (vi) *increased flooding, or*
 - (h) *there is any need to conserve all or some of the bushland because:*
 - (i) *of its unusually good condition or its significance as a sample of its type, or*
 - (ii) *the development will increase the perimeter of the bushland, and so the ratio of the boundary to the area of the bushland, making it more vulnerable to negative impacts, or*
 - (iii) *there is an archaeological site that has Aboriginal heritage significance on the land.*
- (5) *(Repealed)*

In the Project Application area, a small portion of land is designated Environmentally Significant Land under the Wollondilly LEP. This land is associated with the riparian corridors of Allens and Stringybark Creeks within an area of future housing development defined by Development Control Plan (DCP) 56 - Wilton Park (Bingarra Gorge). DCP 56 is located near the margin of the proposed extent of Project longwall mining at Appin Area 8, to the north-west of Wilton (Figure 2-10 of the EA Main Report).

Clause 49 set out above is potentially applicable to the Project with respect to the Project mine subsidence and surface activities that have the potential to impact on the values of environmentally significant land. However, as noted in subclause (2), the future use of some of this land for gas drainage associated with coal mining was one of the reasons for designating these lands as environmentally significant.

There are no specific proposals for locating surface infrastructure in the DCP 56 area as a component of the Project. However, as described in Section 2.5.5, there may be advantages in implementing surface goaf gas drainage at the Project, and any such facilities would be assessed via a Surface Goaf Gas Drainage Management Plan, if required.

Consideration of the potential impacts of mine subsidence on terrestrial flora and fauna and Aboriginal heritage is provided in Sections 5.8 to 5.10, while management of potential impacts on surface water resources are described in Section 5.6.

Further consideration of the requirements of DCP 56 and the interaction of mining and housing development is provided in the following section.

A5.1.5 Development Control Plan No. 56 - Wilton Park

Development Control Plan No. 56 - Wilton Park

Section 1.8 of DCP 56 provides information relating to coal mining in the DCP 56 area (Figure 2-10 of the EA Main Report) as follows:

The land the subject of DCP 56 is subject to existing Mining leases for coal. The current holder of that lease is BHP Billiton. BHP Billiton intends to mine the resource using the longwall method of mining. Such mining will include surface works to facilitate gas drainage. The location of coal mining infrastructure on the land surface is set out in Wollondilly Local Environmental Plan, 1991. The land the subject of DCP 56 is within a Mine Subsidence District and accordingly any improvements on the land, including residential development, must comply with the Mine Subsidence Compensation Act, 1961.

Section 2 of DCP 56 outlines that all development in Wilton Park is designed, developed and maintained in accordance with the following objectives, and that Council will not grant consent to development unless it is of the opinion that the development is consistent with the relevant objectives of DCP 56:

Land Capability

- *identify land suitable for development by determining land capabilities prior to subdivision;*
- *remediate any contaminated land prior to development;*
- *subdivision and building works to be responsive to, and minimise impacts on environmentally significant land, topography, riparian areas and drainage patterns, vegetation and other pre-development site features;*
- *subdivision and development to be compatible with the constraints imposed by existing and potential nearby land uses including rural residential use, Hume Highway, Maldon Dombarton railway land, and environmentally significant land and the natural gas and ethane pipelines.*

Urban Design

- *integration with the existing Wilton township through an urban layout respectful of existing Wilton township and existing features of the locality;*
- *enhance the streetscape and minimise the impact on the character and amenity of adjoining properties;*
- *promote a mix of lot sizes which respond to the features of the site and minimise the impacts on the scenic qualities of the rural landscape;*
- *facilitate provision of land required for open space, business, community and special uses;*
- *a safe environment for all members of the community with opportunities for surveillance, obvious ownership and use of space and a well maintained environment;*
- *maximise potential for ecologically sustainable development and promote energy efficient and energy saving design; and*
- *optimise stormwater and wastewater re-use.*

Water Cycle Management

- *development protects and enhances and does not have a negative effect on rivers, creeks and riparian areas and drainage patterns;*
- *maintain post development water quality at pre-development standards or better;*
- *limit the quantity and frequency of post-development discharges to pre-development levels;*
- *minimise stormwater impacts on downstream properties and the wider catchment; and*
- *encourage best practice waste water management, stormwater re-use and water sensitive urban design.*

Residential Development

- a wide choice of residential development which is environmentally sensitive and complements the natural environment;
- encourage the principles of ecologically sustainable development and innovation in good housing design;
- optimise opportunities for design and construction to incorporate passive solar principles and efficient use of energy and resources.

Employment & Services

- a range of land uses to meet the needs of the residents of the locality;
- land uses compatible with the character and amenity of adjoining and nearby land uses;
- a positive, self-help, community-based approach to economic development;
- environmentally, socially and economically sustainable;
- supported by high quality infrastructure and facilities;
- provide diversity of employment generation;
- energy and resource efficient development and land use activities.

Conservation of Flora, Fauna and Habitats

- protect and manage environmentally significant lands;
- support biodiversity and environmental quality by preserving and protecting existing native vegetation and local indigenous wildlife and their habitats and creating opportunities to enhance and add to native vegetation;
- manage the remnant vegetation and optimise the preservation, creation and integrity of reserves and linkages.
- Implement and maintain plans for the management of weeds and pest animals.

Conservation of Aboriginal Heritage

- conserve items and places of Aboriginal heritage and protect significant Aboriginal archaeology including the Wilton Art Cluster;
- avoid inadvertent impacts on Aboriginal heritage;
- consider Aboriginal heritage at all stages of development;
- preserve the context and setting of items of Aboriginal heritage through a Conservation Management Plan.

Transport & Accessibility

- a hierarchy and network of publicly accessible roads, shared pathways and trails within the site and linking the site with existing Wilton village;
- an access network for public transport;
- safe and efficient movement of vehicles, pedestrians and other transport modes within, to and from the area including access for waste servicing vehicles and vehicles servicing nonresidential land uses;
- promote permeability and connectivity and create opportunities for movement other than by private motor vehicles.
- All road crossings of watercourses are to be bridges.

Scenic Quality

- minimise the impact of development on the scenic qualities of the rural landscape;
- open space areas with high quality visual, recreational and ecological values;
- optimise the successful retention of existing mature trees; and
- identify and protect special features of the site with appropriate landscaping, tree planting and control of building works.

Facilities and Infrastructure

- appropriate street tree planting and landscaping of open space and parklands; and
- where site constraints allow all publicly accessible facilities are to be accessible for people with a disability and accessible to all members of the public in terms of costs, physical barriers, hours and days of access at least consistent with public facilities under the care, control and ownership of Council;
- maximise opportunities for installation of energy and resource efficient facilities and infrastructure.

Bushfire

- minimise the risk to life and property from the threat of bushfire;
- encourage sound management of bushfire-prone areas in a manner compatible with the provisions for environmentally significant land.

Mining and Mine Subsidence

- provide the opportunity to complete mine exploration work prior to residential development;
- minimise the risk to life, property and amenity as the result of potential installation and operation of gas extraction wells with wells being located, designed and operated in accordance with relevant Australian Standards and industry best practice guidelines and planning guidelines where these exist;
- rehabilitation of land upon completion of mining-related works.

Noise

- mitigate the impacts of noise from the Hume Highway and Picton Road and other significant noise sources in accordance with current standards.

Council will not grant consent to development unless it is of the opinion that the development is consistent with the relevant objectives of this Development Control Plan.

The DCP 56 objectives outlined above generally reflect the proposed development of housing within the DCP area. The Project is considered to be generally consistent with the relevant components of these, in that it is an underground mining operation that would generate significant and ongoing employment in the region (Sections 5.16 and 5.17) and incorporates measures to manage potential impacts on land capability, water resources, flora and fauna habitats, scenic quality, bushfire, transport and Aboriginal heritage (Section 5). The potential for the Appin West pit top to contribute industrial noise emissions to the DCP 56 area has also been considered in the Noise Impact Assessment (Appendix I of the EA), with the inclusion of representative DCP 56 receptor locations in the noise modelling.

In addition, Section 6.10 of DCP 56 outlines a range of requirements with respect to mining or gas extraction developments with the DCP 56 area:

Explanation

The land within Wilton Park is subject to authorised underground coal mining operations being underground coal mining operations carried out under mining leases or exploration licenses. Activities associated with authorised underground coal mining operations include;

- underground coal mining which can result in subsidence.

- coal bed methane gas extraction requiring surface vents, subsurface drilling and pipes for collection and reticulation of gas.
- air vent shaft to circulate air for underground mining.

Objectives

- Provide for authorised underground coal mining operations.
- Development that is compatible with the short term and long term undertaking of authorised underground coal mining operations.

Controls:

6.10.1 Mining Infrastructure

A Coal Mining Infrastructure Map is included in Wollondilly Local Environmental Plan, 1991. A development application for the subdivision of land must be compatible with the Coal Mining Infrastructure Map. Compatibility is to be achieved by:

- gas extraction wells to be contained within allotments for parkland, the golf course and environmentally significant land;
- infrastructure (pipelines) connecting gas extraction wells to be located within public road reserves and other publicly accessible land wherever practical;
- the creation of rights of way, easements, building envelopes and appropriate notations in Section 88B Instruments for private allotments to accommodate for gas extraction wells, infrastructure between gas wells and for typical activities associated with access for construction, testing, operation, inspection and decommissioning where appropriate.

6.10.2 Terms of Restrictions as to User

A Section 88B Instrument for private allotments shall provide typical details of the restrictions on the use of land where it is affected by gas extraction wells, infrastructure between gas wells and associated activities including construction, testing, operation and decommissioning so that potential purchasers of an allotment have a basic awareness of the possible future implications for property ownership and use in proximity to mining infrastructure. The mining leaseholder shall be an interested party to the Restriction as to User on the title of affected allotments.

6.10.3 Lease requirements for Gas Extraction Wells

Should a lease be granted for gas extraction under the Mining Act, 1992 then the layout of residential allotments must comply with the requirements of any guidelines adopted by the consent authority for the location of dwellings in proximity to gas drainage boreholes (being guidelines prepared by the consent authority after consultation with the Department of Primary Industries, the Department of Planning and the Department of Environment and Conservation).

Should a lease be granted for gas extraction under the Petroleum (Onshore) Act, 1991 then the layout of residential allotments must provide a minimum separation of 200 metres from any gas extraction well (as shown on the Mining Infrastructure Map) to any potential dwelling.

The Project is considered to be generally consistent with these requirements. No Project surface infrastructure is currently proposed in the DCP 56 area.

However, as described in Section 2.5.5, there may be benefits in implementing surface goaf gas drainage at the Project. The development of any such facilities would be assessed via a Surface Goaf Gas Drainage Management Plan.

A5.2 CAMPBELLTOWN ENVIRONMENTAL PLANNING INSTRUMENTS

The Campbelltown LGA does not have a single LEP, rather a number of plans that relate to specific areas or aspects of development in the LGA.

The Project Application area includes lands subject to Interim Development Order 15 (IDO 15) and part of the LEP 1 area of Campbelltown LGA (Figure 7-1 of the EA Main Report).

A5.2.1 Zone Objectives/Permissibility

In IDO 15, the Project Application area includes lands zoned:

- 1 (Non-Urban);
- 5(a) (Special Uses); and
- 5(c) (Water Catchment).

IDO 15 adopts part of the *Environmental Planning and Assessment Model Provisions, 1970* (Model Provisions). However, with respect to mines it adopts the following definition (Clause 2):

“Mine” means any place, open cut, shaft, tunnel, pit, drive, level or other excavation, drift, gutter, lead, vein, lode or reef whereon, wherein or whereby any operation is carried on for or in connection with the purpose of obtaining any metal or mineral by any mode or method and any place on which any product of the mine is stacked, stored, crushed or otherwise treated, but does not include a quarry.

The Project falls within the definition of 'mines' described above. If Part 3A of the EP&A Act did not apply to the Project, Clause 4 of IDO 15 indicates that the Project would be permissible with consent in the Non-Urban and Water Catchment zones under IDO 15. However, if Part 3A of the EP&A Act did not apply to the Project, Clause 4 of IDO 15 indicates that the Project would not be permissible in the 5(a) (Special Uses) zone.

Under Campbelltown LEP No. 1 the Project Application area includes lands zoned:

- 1 (c) (Rural “C” - Small holdings);
- 5 (a) (Special Use); and
- 6 (a) (Local Open Space).

If Part 3A of the EP&A Act did not apply to the Project, the Project would be permissible with consent in the 1 (c) (Rural “C” - Small holdings) zone. However, if Part 3A of the EP&A Act did not apply to the Project, the Project would not be permissible in the 5 (a) (Special Use) or 6 (a) (Local Open Space) zones.

Given that part of the Project is prohibited under the Campbelltown EPI zonings, in order to ensure that clause 80 of the EP&A Regulation will not operate to preclude the Minister from granting Project Approval, it is necessary to consider whether another EPI can operate to override the prohibition under the Campbelltown EPIs and provide for the permissibility of the Project in those zones where part of the Project is prohibited.

As per the discussion in Section A5.1.2, the effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that notwithstanding any prohibition contained in the landuse tables of the Campbelltown EPIs, development for the purpose of underground mining may be carried out with development consent.

Accordingly, clause 8O(1) of the EP&A Regulation has no effect and therefore the Minister is not precluded from granting approval under section 75J for the Project in respect of those parts of the Project land where mining is prohibited under the Campbelltown EPIs.

- (iii) *adequate space has been provided within the site of the building or development for the loading, unloading, and fuelling of vehicles and for the picking up and setting down of passengers;*

...

A5.2.2 Special Provisions

The following provisions of IDO 15 may also be applicable to the Project:

6. *Where application is made to the Council for consent or approval:*
 - (a) *to carry out development within view of any waterway or adjacent to any main road, railway or public reserve, the Council shall take into consideration the probable aesthetic appearance of the development when used for the proposed purpose and viewed from such waterway, main road, railway, or public reserve;*
 - (b) *to carry out development for the purpose of any extractive industry or mine, the Council shall take into consideration the advisability of imposing conditions to secure reinstatement of the land, the removal of waste material or refuse and securing of public safety and amenity of the neighbourhood;*
 - (c) *to erect or use a hotel, drive-in theatre or place of assembly or to carry out any other development likely to cause increased vehicular traffic on any road in the vicinity thereof, the Council shall take into consideration whether, having regard to the proposed use of any such building or development:*
 - (i) *adequate vehicular exits and entrances to the site have been provided so that vehicles using such exits and entrances will not endanger persons and vehicles using such road;*
 - (ii) *space, sufficient to provide for the parking or standing of such number of vehicles as the Council may determine having regard to the purposes of the building or development, has been provided on the site or on land adjoining the site not being a public road; and*

The Project would involve the development of lands within view of waterways, railways, main roads and public reserves within the region. However, as described in Section 5.19, due to the underground nature of the majority of Project development, potential visual impacts would be largely limited to surface infrastructure developments. The Stage 4 Coal Wash Emplacement would be visible from some elevated positions (similar to the existing Stage 2 and approved Stage 3 emplacements). Visual impact management measures are described in Section 5.19.

As described in Section 6, progressive rehabilitation of the operational areas (including the Coal Wash Emplacement), would be undertaken over the life of the Project. Consideration of potential off-site hazards and risks associated with the Project are provided in Section 5.18 and Appendix M of the EA.

The Road Transport Assessment (Appendix K of the EA) has considered the potential for the Project to generate additional traffic movements, intersection operation, on-site parking requirements and road safety aspects. This assessment has concluded that the Project would not raise any significant additional road safety issues and that adequate on-site parking and operational areas would be available (Section 5.15).

Consents

9. *Notwithstanding any other provision of this Order a building or work shall not, without the consent of the Council, be erected or carried out on any land forming part of the bed of a lagoon, lake, river, creek or any other natural watercourse shown uncoloured on the I.D.C. Map nor shall any such land be used for any purpose without such consent.*

As described in Section 6, the Project would involve stream restoration works within the bed and banks of streams in the Project Application area. These works and potential environmental impacts of these works are described in the EA and would be subject to a range of management and mitigation measures to minimise potential environmental impacts of these works as described in Sections 5 and 6.

Concurrence

12. (1) *Notwithstanding the provisions of clause 4 of the Council shall not within Zone No. 5(c) consent to the establishment of a mine or extractive industry without the prior concurrence of the Authority.*

As described above, the Mining SEPP overrides this clause.

Items of Environmental Heritage

19. (1) *A person shall not, in respect of a building, work, relic or place that is an item of the environmental heritage –*
- (a) *demolish, renovate or extend the building or work;*
 - (b) *damage or despoil the relic or place or any part of the relic or place;*
 - (c) *excavate any land for the purpose of exposing or removing the relic;*
 - (d) *erect a building on the land on which the building, work or relic is situated or on the land which comprises that place; or*
 - (e) *subdivide the land on which the building, work or relic is situated or the land which comprises that place, except with the consent of the Council.*
- (2) *The Council shall not grant consent as referred to in subclause (1) unless it has made an assessment of -*
- (a) *the significance of the item as an item of the environmental heritage of the City of Campbelltown;*
 - (b) *the extent to which the carrying out of the development in accordance with the consent would affect the historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the item and its site;*
 - (c) *whether the setting of the item and, in particular, whether any stylistic, horticultural or archaeological features of the setting, should be retained; and*
 - (d) *whether the item constitutes a danger to the users or occupiers of the item or to the public.*

Clause 19 set out above is potentially applicable to the Project with respect to potential subsidence impacts on heritage listed sites/areas (e.g. in Menangle) and on Aboriginal heritage sites located above the Project extent of longwall mining area, or potentially affected by Project surface activities.

Aboriginal and Non-Aboriginal Heritage Assessments have been completed for the Project and are provided in Appendices G and H of the EA. A summary of how the above issues have been addressed is provided in Sections 5.10 and 5.11. Accordingly the Minister can be satisfied as to these matters.

A5.3 WOLLONGONG LEP

A5.3.1 Objectives of the Wollongong LEP

Clause 4 of the Wollongong LEP outlines the aim to provide a framework for landuse management in the City of Wollongong to achieve certain objectives. Those objectives relevant to the Project are:

- (a) *to encourage the proper management, development and conservation of natural and man-made resources (including agricultural land, natural areas, forest, minerals, water and the built environment) for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (b) *to protect the environment from degradation and despoliation by protecting environmentally sensitive areas from development and minimising adverse impacts of urban development on both the built and natural environment,*
- (c) *to protect and improve the quality of life and the social well-being and amenity of local residents,*
- (d) *to encourage economic diversification and growth of the business and industrial base to increase employment,*
- (e) *to conserve the environmental heritage of the land to which this plan applies ...*

The Project is consistent with these objectives of the Wollongong LEP, in that it would develop mineral resources, facilitate employment of some 1,170 ICHPL staff and on-site contractors and continue ICHPL regional economic investment, and would be developed in a manner that would minimise potential impacts on the environment (Section 5).

A5.3.2 Zone Objectives/Permissibility

Clause 9 of the Wollongong LEP sets out the zone objectives and the development control table that is relevant in determining whether the Project, or any part of the Project, is prohibited by the Wollongong LEP in any of the zones within the Project land.

Further, clause 9(3) provides:

Except as otherwise provided by this plan, the Council shall not grant consent to the carrying out of development on land to which this plan applies unless the Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

The Project land is partly situated within the Wollongong LGA.

The Project Application area (Attachment 2) includes land in the Wollongong LGA zoned:

- 4c (Extractive Industrial);
- 5c (Special Uses - Main Roads);
- 7a (Special Environmental Protection);
- 7b (Environmental Protection Conservation);
- 8 (a) (National Parks, State Conservation Areas and Nature Reserves);
- 9 (b) (Arterial Road Reservation); and
- DEF (Deferred).

Whilst included in the Project Application area, a number of these zonings are located in the previous mine development areas in the south-east of Consolidated Coal Lease (CCL) 767, and are not directly relevant to the Project future development activities.

The Project extent of longwall mining area in the North Cliff domain includes lands zoned:

- 7a (Special Environmental Protection); and
- 8 (a) (National Parks, State Conservation Areas and Nature Reserves).

The locations of the zones described above are shown on Figure 2.

If Part 3A of the EP&A Act did not apply to the Project, the Project would be permissible in the following zones:

- 4c (Extractive Industrial);
- 5c (Special Uses - Main Roads);

- 7a (Special Environmental Protection); and
- 7b (Environmental Protection Conservation).

However, if Part 3A of the EP&A Act did not apply to the Project, the Project would not be permissible in the following zones:

- 8 (a) (National Parks, State Conservation Areas and Nature Reserves); and
- 9 (b) (Arterial Road Reservation).

Clause 8N(1) of the EP&A Regulation provides that a project to which Part 3A applies may not be given project approval if that project, or any part of the project, is located within an environmentally sensitive area of State significance or a sensitive coastal location and would be prohibited by an EPI if Part 3A did not apply.

Land reserved as a State Conservation Area under the *National Parks and Wildlife Act, 1974* is included in the definition of an environmentally sensitive area of State significance in Clause 3 of the State Environmental Planning Policy (Major Projects) (Major Projects SEPP).

In addition, Clause 8O(2) of the EP&A Regulation provides that a project to which Part 3A applies may not be given project approval if that project, or any part of the project, is prohibited by an EPI that would not (because of section 75R of the Act) apply to the project if approved.

Given that part of the Project is prohibited under the Wollongong LEP and part of this land also falls within an environmentally sensitive area of State significance (i.e. Dharawal State Conservation Area), in order to ensure that clauses 8N(1) or 8O will not operate to preclude the Minister from granting Project Approval, it is necessary to consider whether another EPI can operate to override the prohibition under the Wollongong LEP and provide for the permissibility of the Project in those zones under the Wollongong LEP where part of the Project is prohibited.

The effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP 9 (Section A5.1.2), is that notwithstanding any prohibition contained in the landuse table of the Wollongong LEP, development for the purpose of underground mining may be carried out with development consent.

Accordingly, clauses 8N(1) and 8O(1) of the EP&A Regulation have no effect and therefore the Minister is not precluded from granting approval under section 75J for the Project in respect of those parts of the Project land where mining is prohibited under the Wollongong LEP.

A5.3.3 Zone Objectives

Clause 9(3) of the Wollongong LEP provides that consent shall not be granted to the carrying out of development on land to which the Wollongong LEP applies, unless Council is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

Whilst the Minister would not be precluded from granting approval on this basis, the Minister may still, pursuant to section 75J(3), take into account the zone objectives.

The following provides the zone objectives of lands relevant to the Project.

4 (c) Extractive Industrial Zone

- (a) *to manage the extractive and landfill resources of the City of Wollongong in a co-ordinated manner to meet community needs while ensuring that adverse impact on the environment and the community are minimal, and*
- (b) *to ensure that development proposals for land containing extractive resources are assessed in relation to the potential problem of rendering those resources unavailable.*

5 Special Uses

The objective of the zone is to cater for the provision of community and public facilities and services.

7(a) Special Environmental Protection Zone [Water Catchment]

- (a) *to protect environmentally important land having special aesthetic, ecological or conservational value, and*
- (b) *to identify and protect the foreshore environment that enhances the visual amenity and possesses ecological or conservational value, and*
- (c) *to identify and protect land forming part of the catchment areas for water supply, and*

- (d) *to allow some diversity of activities on degraded land that will not prejudice achievement of the objectives referred to in paragraphs (a), (b) and (c) or significantly detract from the environmental or visual quality or character of the locality or the amenity or operation of any existing or proposed development in the locality.*

7(b) Environmental Protection Conservation Zone

- (a) *to identify, protect and enhance areas that have special conservational, aesthetic or scenic qualities that enhance the environment, and*
- (b) *to identify and protect escarpment areas that enhance the visual amenity and possess special aesthetic or conservational value, and*
- (c) *to allow some diversity of activities on degraded land that will not prejudice achievement of the objectives referred to in paragraphs (a) and (b) or significantly detract from the environmental or visual quality or character of the locality or the amenity or operation of any existing or proposed development in the locality.*

8(a) National Parks, State Conservation Areas and Nature Reserves Zone

- (a) *to identify land that is reserved or dedicated under the National Parks and Wildlife Act, 1974, and*
- (b) *to allow for the management and appropriate use of that land as provided for in the National Parks and Wildlife Act, 1974.*

9(b) Reservation Zone - Roads

- (a) *to ensure that land required for future essential services, roads, open space and community purposes is clearly designated, and*
- (b) *to provide for the acquisition of land within the zone, and*
- (c) *to permit development of land within the zone where it is not immediately required, and*
- (d) *to allow continued use of land within the zone until it is required.*

The Project is considered to be generally consistent with the above zone objectives, because, as described in Section 5, management and mitigation measures would be implemented where practicable, to minimise the potential impacts of the Project on other landuses, and the environment.

It is noted that the road reservation zone and extractive industrial zone under the Wollongong LEP are not within the Project extent of longwall mining area (i.e. they are only of relevance to the Project as they are in the south-eastern part of CCL 767, which forms the boundary of the Project Application area).

A5.3.4 Special Provisions

Part 3 of the Wollongong LEP provides a number of miscellaneous provisions of relevance to the Project, including the following:

- **Clause 17**

17 *Development in Zone No 7 (a), 7 (b) or 7 (d)*

- (1) *In deciding whether to grant consent to a development application to carry out development of any land within Zone No 7 (a), 7 (b) or 7 (d), the Council shall:*
 - (a) *consider the visual impact of the proposed development when viewed from a public place, and take such measures as will, in its opinion, minimise any visual impact, and*
 - (b) *be satisfied that the development minimises any detrimental impact on the environment by way of vegetation clearance, drainage pollution or bushfire risk.*
- (2) *The Council shall not grant development consent to an application to carry out development on land within Zone No 7 (a), 7 (b) or 7 (d) unless, after consultation with the Director-General of the Department of Environment and Conservation, it is satisfied that:*
 - (a) *the development will not have a detrimental effect on the rainforest or rainforest species, or*
 - (b) *any detrimental effect on the rainforest or rainforest species can be justified by other factors.*
- ...
- (4) *The Council shall not grant consent to the carrying out of development having the effect of bridging, obstructing or otherwise affecting waterways on land within Zone No 7 (a), 7 (b) or 7 (d) unless it has consulted with the Director-General of the Department of Environment and Conservation, Director-General of the Department of Infrastructure, Planning and Natural Resources and Director-General of the Department of Primary Industries and is satisfied that reasonable opportunities for wildlife movement will be maintained.*
- ...

As described above, the Project extent of longwall mining area is located within land zoned 7(a) in the Wollongong LEP.

The potential visual impacts of the Project are limited by the underground nature of the mining operation and the localised nature of any visual impacts and the limited public or private viewpoints of the Project in these lands (Section 5.19).

The Project would be developed with the implementation of management and mitigation measures to minimise the need for vegetation clearance (Section 5.8), and to minimise the potential for bushfire risk and/or water pollution (Sections 5.3, 5.6 and 5.18).

The potential impacts of the Project on terrestrial flora and fauna (including species and wildlife movement) are discussed in Sections 5.8 and 5.9. No significant effects are expected in this regard.

Accordingly the Minister can be satisfied as to these matters.

- **Clause 24**

24 *Extractive industries and mines*

- (1) *In determining an application to carry out development on land for the purposes of an extractive industry or mine, the Council shall take into consideration measures proposed by the applicant:*
 - (a) *to reinstate the land,*
 - (b) *to remove waste material or refuse,*
 - (c) *to secure public safety in the surrounding area, and*
 - (d) *to protect the amenity of the neighbourhood.*
- (2) *The Council shall not grant development consent to the carrying out of development for the purposes of a new coal mine, or the expansion of an existing coal mine or other major coal industry, unless it is satisfied that:*
 - (a) *there is a proposed environmentally acceptable mode of transport associated with the development which is, or is capable of being, integrated into a comprehensive system for handling all coal movements within the area of the land to which this plan applies, and*
 - (b) *if public road haulage is the only feasible mode of transport, it is restricted to the most environmentally acceptable route.*
- ...

At the cessation of the Project, a comprehensive programme would be implemented for the rehabilitation of the Appin East, Appin West and West Cliff pit tops and associated ancillary surface developments (e.g. ventilation shaft installations), if mining does not continue under a subsequent Project Approval (Section 6).

The proposed management of coal wash material for the Project is discussed in Section 2.8.

Public safety issues for the Project are considered in the Preliminary Hazard Analysis, Road Transport Assessment and Major Cliff Line Risk Assessment (Appendices M, K and R of the EA, respectively). Consideration of neighbourhood amenity with respect to noise and air quality impacts associated with on-site and off-site activities is provided in Appendices I and J of the EA, respectively. A summary of the findings of these assessments is provided in Sections 5.12 and 5.13.

Consideration of issues associated with the acceptability of the route used for delivery of coal is discussed in Section 7.6.4.

Accordingly the Minister can be satisfied as to these matters.

• **Clause 27**

27 *Protection of heritage items and heritage conservation areas*

(1) *When is consent required?*

The following development may be carried out only with development consent:

- (a) *demolishing or moving the whole or part of a heritage item or a building, work, relic, tree or place within a heritage conservation area,*
- (b) *altering a heritage item or a building, work, relic, tree or place within a heritage conservation area by making structural or non-structural changes to its exterior, such as to its detail, fabric, finish or appearance,*
- (c) *altering a heritage item by making structural changes to its interior,*
- (d) *disturbing or excavating a place of Aboriginal heritage significance or an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*

- (e) *erecting a building on, or subdividing, land on which a heritage item is located or that is within a heritage conservation area.*

(2) *What exceptions are there?*

Development consent is not required by this clause if:

- (a) *in the opinion of the consent authority:*
 - (i) *the proposed development is of a minor nature or consists of maintenance of the heritage item or of a building, work, archaeological site, tree or place within a heritage conservation area, and*
 - (ii) *the proposed development would not adversely affect the significance of the heritage item or heritage conservation area, and*
- (b) *the proponent has notified the consent authority in writing of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development will comply with paragraph (a) (i) and (ii) and that development consent is not otherwise required by this plan, and*
- (c) *the proposed work or development is described in a conservation management plan which has been endorsed by the Council (in the case of items classified in Part 2 of Schedule 1 as being of regional heritage significance) or the Heritage Council (in the case of items classified in Part 2 of Schedule 1 as being of State heritage significance).*

(3) *Development consent is not required by this clause for the following development in a cemetery or burial ground if there will be no disturbance to human remains, to relics in the form of grave goods or to a place of Aboriginal heritage significance:*

- (a) *the creation of a new grave or monument,*
- (b) *an excavation or disturbance of land for the purpose of carrying out conservation or repair of monuments or grave markers.*

(4) *What must be included in assessing a development application?*

Before granting a consent required by this clause, the consent authority must assess the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(5) *What extra documentation is needed?*

The assessment must include consideration of a heritage impact statement that addresses at least the issues described in subclause (6) (but is not to be limited to assessment of those issues, if the heritage significance concerned involves other issues). The consent authority may also decline to grant such a consent until it has considered a conservation management plan, if it considers the development proposed should be assessed with regard to such a plan.

(6) *The minimum number of issues that must be addressed by the heritage impact statement are:*

- (a) *for development that would affect a heritage item:*
 - (i) *the heritage significance of the item as part of the environmental heritage of the City of Wollongong, and*
 - (ii) *the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or horticultural features, and*
 - (iii) *the measures proposed to conserve the heritage significance of the item and its setting, and*
 - (iv) *whether any archaeological site or potential archaeological site would be adversely affected by the proposed development, and*
 - (v) *the extent to which the carrying out of the proposed development would affect the form of any historic subdivision, and*
- (b) *for development that would be carried out in a heritage conservation area:*
 - (i) *the heritage significance of the heritage conservation area and the contribution that any building, work, relic, tree or place affected by the proposed development makes to this heritage significance, and*
 - (ii) *the impact that the proposed development would have on the heritage significance of the heritage conservation area, and*

- (iii) *the compatibility of any proposed development with nearby original buildings and the character of the heritage conservation area, taking into account the size, form, scale, orientation, setbacks, materials and detailing of the proposed development, and*
- (iv) *the measures proposed to conserve the significance of the heritage conservation area and its setting, and*
- (v) *whether any landscape or horticultural features would be affected by the proposed development, and*
- (vi) *whether any archaeological site or potential archaeological site would be affected by the proposed development, and*
- (vii) *the extent to which the carrying out of the proposed development in accordance with the consent would affect any historic subdivision pattern, and*
- (viii) *the issues raised by any submission received in relation to the proposed development in response to the notification or advertising of the application.*

• **Clause 29A**

29A *Development affecting places or sites of known or potential Aboriginal heritage significance*

Before granting consent for development that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, the consent authority must:

- (a) *consider a heritage impact statement explaining how the proposed development would affect the conservation of the place or site and any relic known or reasonably likely to be located at the place or site, and*
- (b) *except where the proposed development is integrated development, notify the local Aboriginal communities (in such way as it thinks appropriate) and the Director-General of the Department of Environment and Conservation of its intention to do so and take into consideration any comments received in response within 28 days after the relevant notice is sent.*

- **Clause 29C**

29C *Development in vicinity of a heritage item*

- (1) *Before granting consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item and of any heritage conservation area within which it is situated.*
- (2) *This clause extends to development:*
 - (a) *that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or*
 - (b) *that may undermine or otherwise cause physical damage to a heritage item, or*
 - (c) *that will otherwise have any adverse impact on the heritage significance of a heritage item or of any heritage conservation area within which it is situated.*
- (3) *The consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.*
- (4) *The heritage impact statement should include details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.*

Clauses 27, 29A and 29C set out above are potentially applicable to the Project with respect to the proposed rehabilitation of the Bulli Shaft Nos. 1 and 2, and on Aboriginal heritage sites located above the Project extent of longwall mining, or potentially affected by Project surface activities.

Aboriginal and Non-Aboriginal Heritage Assessments have been completed for the Project and are provided in Appendices G and H of the EA, respectively. A summary of how the above issues have been addressed is provided in Sections 5.10 and 5.11. Accordingly the Minister can be satisfied as to these matters.

- **Clause 30**

30 *Services*

The Council shall not consent to the carrying out of development on any land unless:

- (a) *a water supply and facilities for the removal or disposal of sewage and facilities for drainage are available to that land, or*
- (b) *arrangements satisfactory to the Council have been made for the provision of that supply and those facilities.*

The Project general raw water supply would continue to be largely sourced from storages, licensed extractions and recycling through water treatment plants and metered supply from Sydney Water (Section 2.10). The existing sewage disposal arrangements would continue to be used for the Project (Section 2.12.1).

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

- **Clause 32**

32 *Consideration of certain applications*

- (1) *The Council shall, in respect of an application to carry out development on land within view of any waterway or adjacent to any main road, railway, public reserve or land zoned as open space, take into consideration the probable aesthetic appearance of the proposed building or work on that land when used for the proposed purpose and viewed from that waterway, main road, railway, public reserve or land zoned for open space.*
- (2) *The Council shall, in respect of an application to carry out development likely to cause increased vehicular traffic on any road in the vicinity of that development, take into consideration:*
 - (a) *whether adequate vehicular exits from and entrances to the sites have been provided so that vehicles using those exits and entrances will not endanger persons using those roads,*
 - (b) *provision of space on the site or on land adjoining the site, other than a public road, for the parking or standing of such number of vehicles as the Council may determine, and*
 - (c) *(Repealed)*
 - (d) *whether adequate space has been provided within the site of the building or development for the loading, unloading and fuelling of vehicles and for the picking up and setting down of passengers.*

The North Cliff mining domain is adjacent to Appin Road (Figure 2) and is located in part in the Dharawal State Conservation Area in the Wollongong LGA. The potential aesthetic appearance of the Project works is considered in Section 5.19. Issues associated with Project road traffic, parking and setdown areas are considered in Section 5.15 and Appendix K of the EA.

The Project would not result in any significant changes to the appearance of the lands overlying the Project extent of longwall mining area. Existing ventilation shafts and other supporting infrastructure at North Cliff are not generally visible from Appin Road. The upgraded North Cliff facilities would, however, continue to be visible from some nearby elevated locations in the Dharawal State Conservation Area, which is open to public access. Night lighting at these facilities may also be visible from a limited number of elevated viewpoints in the Wollongong LGA.

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