Australian Government
Department of Agriculture, Water and the Environment

APPROVAL

Tahmoor South Project, NSW (EPBC 2017/8084)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act). Note that section 134(1A) of the EPBC Act applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Tahmoor Coal Pty Ltd
ACN of approval holder	ACN: 076 663 968
Action	To upgrade, extract and process additional coal deposits and conduct life of mine rehabilitation at Tahmoor South Mine site, 10 km south of Picton, NSW [see EPBC Act referral 2017/8084, subject to variation request dated 12 October 2020].

Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve
Coal seam gas or large coal mining development impact on water resources	
Section 24D	Approve
Section 24E	Approve

Period for which the approval has effect

This approval has effect until 1 September 2061.

Decision-maker

Name and position	The Hon Sussan Ley MP Minister for the Environment
Signature	Sussan Ley
Date of decision	1st October 2021

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

Listed threatened species and ecological community

The objective of conditions 1 and 2 is to minimise the impacts of the action on **listed threatened species and ecological communities**.

1. The approval holder must not **impact** any **listed threatened species and ecological communities** outside the **Development Application Area**. Within the **Development Application Area**, the approval holder must not **impact** more than:
   a. 7.3 hectares of the **Shale Sandstone Transition Forest in Sydney Basin Bioregion;**
   b. 0 individuals of **Small-flower Grevillea;**
   c. 0 individuals of **Bargo Geebung;**
   d. 0 individuals of **Rufous Pomaderris;**
   e. 1.3 hectares of **Koala habitat**.
2. The approval holder must comply with the **State development consent** conditions A9, B37, B38, B39, B40, B56, B57, B58, B59, B60, C1, C2, C3, C4, C8, C9 and C10.

Water resources

The objective of conditions 3 to 12 is to minimise the impacts of the action on a **water resource.**

3. For the protection of **water resources**, the approval holder must comply with **State development consent** conditions A7, B23, B24, B30, B31, B32, B33, B34, B35, B36, C1, C2, C8, C9 and C10.
4. The approval holder must ensure there is no **adverse effect** on the **function** of a **water resource** as a result of the action.

First workings

5. The approval holder must submit to the **Department** the approved Water Management Plan required by condition B34 of the **State development consent** within 2 **business days** of its approval by the **NSW Planning Secretary**.
6. The approval holder must notify the **Department** within 5 **business days** of any proposed changes to the approved Water Management **Plan**. If the **NSW Planning Secretary** approves a revised version of the Water Management **Plan**, the approval holder must submit to the **Department** the approved revised Water Management **Plan** within 5 **business days** of its approval by the **NSW Planning Secretary**, accompanied by a detailed explanation of what changes have been made and any implications of the changes for **protected matters.**
7. If at any time until the end date of this approval, the approval holder detects an exceedance of any surface water **performance criteria** or groundwater **performance criteria**, specified in the approved Water Management Plan(s) as required by condition B34 of the **State development consent**, the approval holder must notify the **Department** of the exceedance within 10 **business days** of detecting or predicting the exceedance, and publish the notification and what corrective actions have been undertaken on the **website** within 3 months of the detection or exceedance, unless an alternative timeframe is agreed to by the **Minister** in writing.

Second workings

8. The approval holder must submit to **Department** each approved **Extraction Plan** for **second workings** within 2 **business days** of its approval by the **NSW Planning Secretary.**

9. The approval holder must notify the **Department** within 5 **business days** of any proposed changes to any approved **Extraction Plan.** If the **NSW Planning Secretary** approves a revised version of an **Extraction Plan,** the approval holder must provide the **Department** with the approved revised **Extraction Plan** within 5 **business days** of its approval by the **NSW Planning Secretary,** accompanied by a detailed explanation of what changes have been made and any implications the changes could have for **protected matters.**

10. If the approval holder detects or predicts an exceedance of a **performance measure,** the **approval holder** must notify the **Department** of the exceedance within 2 **business days.**

11. If the approval holder detects an exceedance as described in condition 10, the approval holder must submit to the **Department** for approval an Impact Response **Plan** that has been **peer reviewed.** Each Impact Response **Plan** must at a minimum:

    a. be prepared by a **suitably qualified person;**

    b. describe all potential and actual impacts to **water resources** arising from the exceedance;

    c. include conceptual modelling, as well as a review of all historical monitoring data to determine the stressor-response relationships for any potential **GDEs** and consideration of potential contributing activities;

    d. consider and where appropriate include local scale numerical modelling with consideration of potential contributing activities;

    e. derive a scientifically-robust rectification strategy based on multiple lines of evidence and field data to support the assessment of the **environmental value of water resources** (including the groundwater-dependence of any potential **GDEs**) within the **Development Application Area;**

    f. identify if any further investigations are required to determine the cause of, and/or corrective actions, for the exceedance;

    g. include the mitigation and management measures that the approval holder has taken and/or proposes to take to reverse the exceedance, including data demonstrating the effectiveness of the mitigation and management measures;

    h. provide justification for how the proposed mitigation and management measures will achieve and maintain the requirements of condition 4; and

    i. include a **peer review** and details of how the approval holder has addressed any inadequacies raised in the **peer review.**

    The approved Impact Response **Plan** must be implemented.

12. The approval holder must publish an approved Impact Response **Plan** on the **website** within 5 **business days** of approval. The approval holder must notify the **Department** within 2 **business days** of an Impact Response **Plan** being published and retain the Impact Response **Plan** on the **website** until the end date of this approval.

13. If the approval holder is required to submit an Impact Response **Plan** under condition 11, the approval holder must not commence mining, other than **first workings,** of any longwall panel not yet commenced unless and until the Impact Response **Plan** has been approved by the **Minister** in writing, unless allowed by condition 14.

14. If the approval holder has submitted an Impact Response **Plan** under condition 11, and the Impact Response **Plan** has not been approved, and the exceedance was detected within two months of the forecast completion of a longwall panel, and it can be demonstrated that any commencement or continuation of mining will not result in a new or increased **impact,** the **Minister** may approve

in writing the continuation of mining until a date not more than 2 months beyond the date on which the exceedance was detected.

15. If the **Minister** is not satisfied that the actions or rectification measures specified in the Impact Response **Plan** will ensure that the outcome required by condition 4 will be, or is likely to be, achieved and maintained, the **Minister** may direct the approval holder to undertake specific corrective action(s) or mitigation measures to limit and prevent impacts to **water resources.**

16. If the **Minister** directs the approval holder to undertake specific corrective action(s) under condition 15, the approval holder must not commence mining, other than **first workings,** of any longwall panel not yet commenced without written approval from the **Minister**.

Part B –Administrative conditions

Notification of date of commencement of the action

17. The approval holder must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.

18. If the **commencement of the action** does not occur within 5 years from the date of this approval, then the approval holder must not commence the action without the prior written agreement of the **Minister**.

Compliance records

19. The approval holder must maintain accurate and complete **compliance records**.

20. If the **Department** makes a request in writing, the approval holder must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

Note: Compliance records may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the **EPBC Act**, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the **Department's website** or through the general media.

Submission and publication of plans

21. The approval holder must:

    a. submit **plans** electronically to the **Department**;

    b. unless otherwise agreed to in writing by the **Minister**, publish each **plan** on the **website** within 20 **business days** of the date:

        i of this approval, if the version of the **plan** to be implemented is specified in these conditions; or

        ii that the **plan** is submitted to the **Minister** or the **Department** if the **plan** does not require the approval of the **Minister** but was not finalised before the date of this approval; or

        iii that the **plan** was approved in writing by the **Minister** or by the **NSW Planning Secretary**, if the plan requires the approval of the **Minister** or by the **NSW Planning Secretary**;

    c. exclude or redact **sensitive ecological data** from **plans** that are to be published on the **website** or provided to a member of the public; and

    d. keep **plans** published on the **website** for the period this approval has effect.

Annual compliance reporting

22. The approval holder must prepare a **compliance report** for each 12 month period following the date of **commencement of the action**, or otherwise as agreed in writing by the **Minister**. The approval holder must:

a. publish each **compliance report** on a **website** within 60 **business days** following the relevant 12 month period;

b. notify the **Department** by email that a **compliance report** has been published on the **website** and provide the **website's** link for the **compliance report** within five **business days** of the date of publication;

c. keep all **compliance reports** publicly available on the **website** until this approval expires,

d. exclude or redact **sensitive ecological data** from **compliance reports** published on the **website**; and

e. where any **sensitive ecological data** has been excluded from the version published, submit the full **compliance report** to the **Department** within 5 **business days** of publication.

Note: Compliance reports may be published on the **Department's website.**

Reporting non-compliance

23. The approval holder must notify the **Department** in writing of any: **incident,** or non-compliance with the conditions, or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:

    a. any condition which is in breach;

    b. a short description of the **incident** and/or non-compliance; and

    c. the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.

24. The approval holder must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:

    a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future;

    b. the potential impacts of the **incident** or non-compliance; and

    c. the method and timing of any remedial action that will be undertaken by the approval holder.

Independent audit

25. The approval holder must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister.**

26. For each **independent audit,** the approval holder must:

    a. provide the name and qualifications of the independent auditor and the draft audit criteria to the **Department;**

    b. only commence the **independent audit** once the audit criteria have been approved in writing by the **Department;** and

    c. submit an audit report to the **Department** within the timeframe specified in the approved audit criteria.

27. The approval holder must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Completion of the action

28. The approval holder must comply with condition A6 in Schedule 2 of the **State development consent.**

29. Within 20 **business days** after the **completion of the action**, the approval holder must notify the **Department** in writing and provide **completion data**.

Changes to State development consent

30. The approval holder must notify the **Department** in writing of any proposed change to the **State development consent** conditions referred to in these conditions within 10 **business days** of formally proposing a change or becoming aware of any proposed change.

31. The approval holder must notify the **Department** in writing of any change to the conditions of the **State development consent** referred to in these conditions, within 10 **business days** of a change to conditions being finalised.

Part C - Definitions

Adverse effect means the occurrence of any **impacts** greater than an impact predicted in the **assessment documentation.** Any exceedance of a **limit** constitutes an adverse effect.

Aquatic GDEs means groundwater dependent ecosystems dependent on the surface expression of groundwater, including:

- River baseflow systems, aquatic and riparian ecosystems that exist in or adjacent to streams (including the hyporheic zone (subsurface interface between surface and groundwater bodies)) which are fed by groundwater; and
- In **Wetlands** (aquatic communities and fringing vegetation dependent on groundwater-fed lakes and **wetlands**), including palustrine (non-tidal **wetlands** dominated by vegetation) and lacustrine (lake) **wetlands** that receive groundwater discharge, and can include spring and swamp ecosystems.

Associated user means any water supply bores, **aquatic GDEs, terrestrial GDEs** or **subterranean GDE** potentially partially or wholly affected by the specific **water resource.**

Assessment documentation means the Tahmoor South Coal Project documentation at: planningportal.nsw.gov.au/major-projects/project/10966.

Bargo Geebung means the threatened plant species (*Persoonia bargoensis*), listed as threatened under the **EPBC Act.**

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action.

Clear/clearance means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation.

Commencement of the action means the first instance of any specified activity associated with the action including **clearing** and **construction** of any infrastructure. **Commencement of the action** does not include minor physical disturbance necessary to:

i. undertake pre-clearance surveys or monitoring programs;

ii. install signage and /or temporary fencing to prevent unapproved use of the project area;

iii. protect environmental and property assets from fire, weeds and pests, including erection of temporary fencing, and use of existing surface access tracks;

iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the **protected matters.**

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department**'s preferred spatial data format is **shapefile**.

Completion of the action means the date on which all specified activities associated with the action have permanently ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.

Compliance report(s) means written reports:

i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the each of the conditions of this approval, including implementation of any management **plans** and strategies required under a condition of the **State development consent** that is referred to in this approval;

ii. consistent with the **Department's** *Annual Compliance Report Guidelines* (2014);

iii. including a **shapefile** of any **clearance** of any **protected matters**, or their habitat, undertaken within the relevant 12 month period; and

iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Construction means the erection of a building or structure that is or is to be fixed to the ground and wholly or partially fabricated on-site; the alteration, maintenance, repair or demolition of any building or structure; preliminary site preparation work which involves breaking of the ground (including pile driving); the laying of pipes and other prefabricated materials in the ground, and any associated excavation work; but excluding the installation of temporary fences and signage.

Department means the Australian Government agency responsible for administering the **EPBC Act.**

Development Application Area means the area represented in the map at Attachment 1 by the zone enclosed by the black line designated 'Subsidence study area'.

Environmental value means a quality or physical characteristic of an **associated user** that is conducive to ecological health, public amenity, or safety.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Extraction Plan means a plan for all **second workings** in the **Development Application Area** as specified in **State development consent** condition C8.

First workings means development of main headings, longwall gate roads, related cut throughs and other workings for mine access and ventilation. **First workings** does not include the extraction of coal made accessible by the **first workings**.

Function means the ecosystem components, processes and benefits or services that characterise the **associated user** including support for biological diversity or species composition.

GDE means **Groundwater dependent ecosystem.**

Groundwater dependent ecosystem means ecosystems that rely upon groundwater for their continued existence. They may be 100 per cent dependent on groundwater, such as aquifer

groundwater dependent ecosystems, or may access groundwater intermittently to supplement their water requirements, such as riparian tree species in arid and semi-arid areas.

Impact means causing any measurable direct or indirect disturbance or harmful change as a result of any activity associated with the action.

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)** except as permitted by this approval.

Independent means a person who does not have any individual, or by employment or family affiliation, conflicting or competing interests with the approval holder; the approval holder's staff, representatives or associated persons; or the project, including any personal, financial, business or employment relationship, other than receiving payment for undertaking the role for which the condition requires an independent person.

Independent audit means an audit conducted by an independent and **suitably qualified person** as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2019).

Limit/s means a **performance measure**.

Koala means the animal species *(Phascolarctos cinereus - combined populations of QLD, NSW and the ACT)*, listed as threatened under the **EPBC Act**.

Koala habitat means any forest or woodland containing species that are known **koala** food trees, or shrubland with emergent food trees. This can include remnant and non- remnant vegetation in natural, agricultural, urban and peri-urban environments. **Koala** habitat is defined by the vegetation community present and the vegetation structure; **koalas** do not necessarily have to be present.

Listed threatened species and ecological communities means threatened species and/or ecological communities listed as threatened under the **EPBC Act**.

New or increased impacts means a new or increased environmental impact or risk relating to **protected matters**, resulting from the action, when compared to the likely **impacts** of the action assessed in the **assessment documentation**.

NSW Planning Secretary means the Planning Secretary under the New South Wales *Environmental Planning and Assessment Act 1979*, or nominee.

Minister means the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and includes any delegate of the Minister.

NSW performance measures means the subsidence performance measures for water resources and biodiversity as set out in Table 7 of the **State development consent**.

Peer-reviewed means a review carried out by an **independent suitably qualified person.**

Performance measure means the thresholds set in each **Extraction Plan**, approved by the **NSW Planning Secretary,** as they related to water resource performance measures established by condition C1 of the **State development consent**.

Performance criteria means specific parameters, associated with the **function** of a **water resource** and relevant to the **NSW performance measures** that will be monitored.

Plan(s) means any of the documents required to be prepared, implemented by the approval holder and/or published on the **website** in accordance with these conditions (including those plans required by the **State development consent** and required under the **EPBC Act** conditions).

Protected matter means a matter protected under a controlling provision in Part 3 of the **EPBC Act** for which this approval has effect. This includes a **water resource** and **listed threatened species and ecological communities**.

Rufous Pomaderris means the plant species (*Pomaderris brunnea*), listed as threatened under the **EPBC Act**.

Second workings means the extraction of coal from longwall panels.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0, or as subsequently officially revised.*

Shale Sandstone Transition Forest in Sydney Basin Bioregion means the ecological community Shale Sandstone Transition Forest in Sydney Basin Bioregion, listed as threatened under the **EPBC Act**.

Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

Small-flower Grevillea means the plant species (*Grevillea parviflora subsp. parviflora*), listed as threatened under the **EPBC Act**.

State development consent means the NSW State development consent for the application number SSD-8445 approved by the Independent Planning Commission on 23 April 2021.

Subterranean GDEs means groundwater dependent ecosystems wholly or partially dependent on aquifer ecosystems, including stygofauna.

Suitably qualified person means a person who has professional qualifications, training, skills and/or experience related to the nominated subject matter and can give authoritative independent assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods and/or literature.

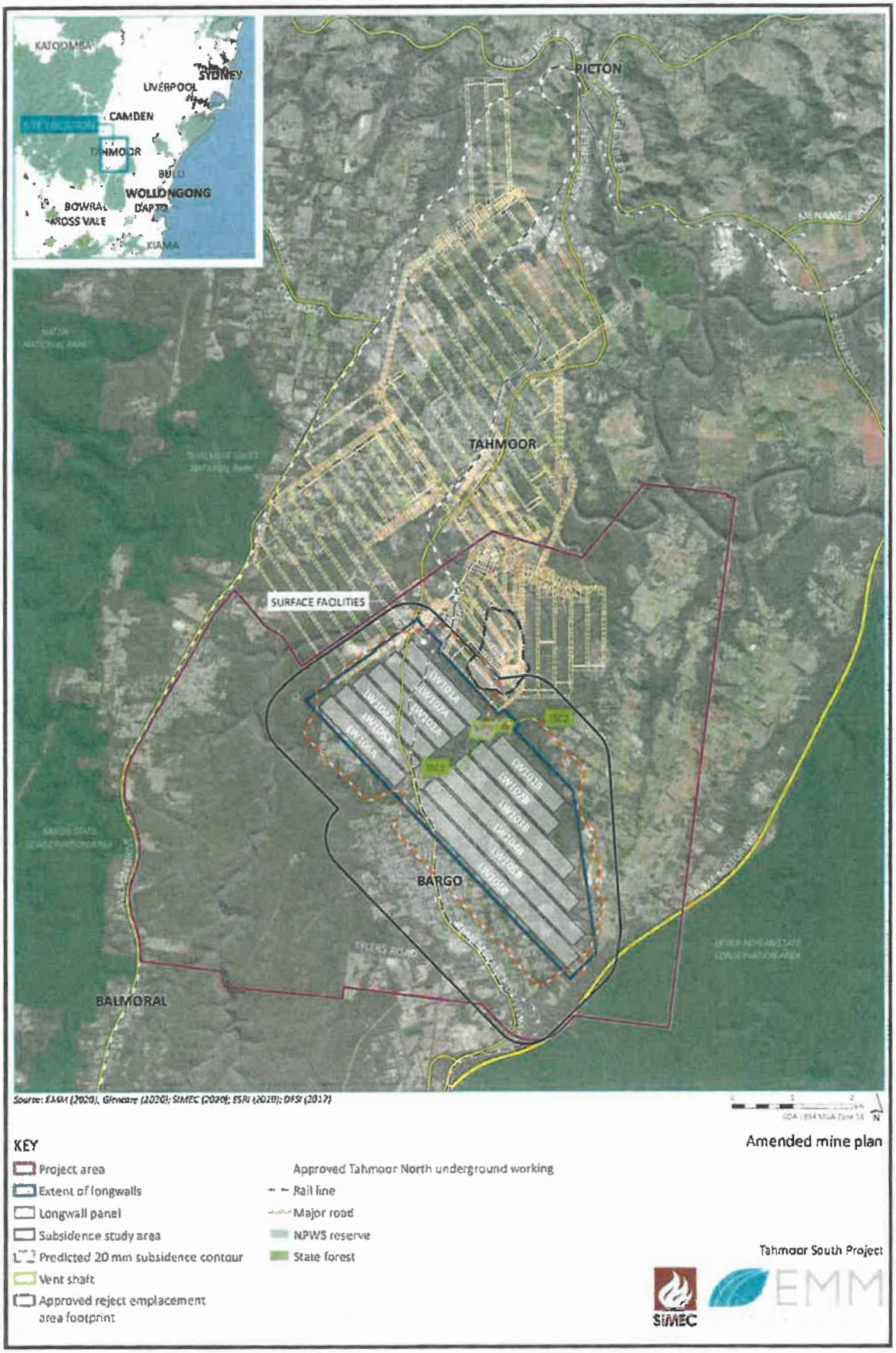
Terrestrial GDEs means land-based groundwater dependent ecosystems that are partially or wholly dependent on the subsurface presence of groundwater.

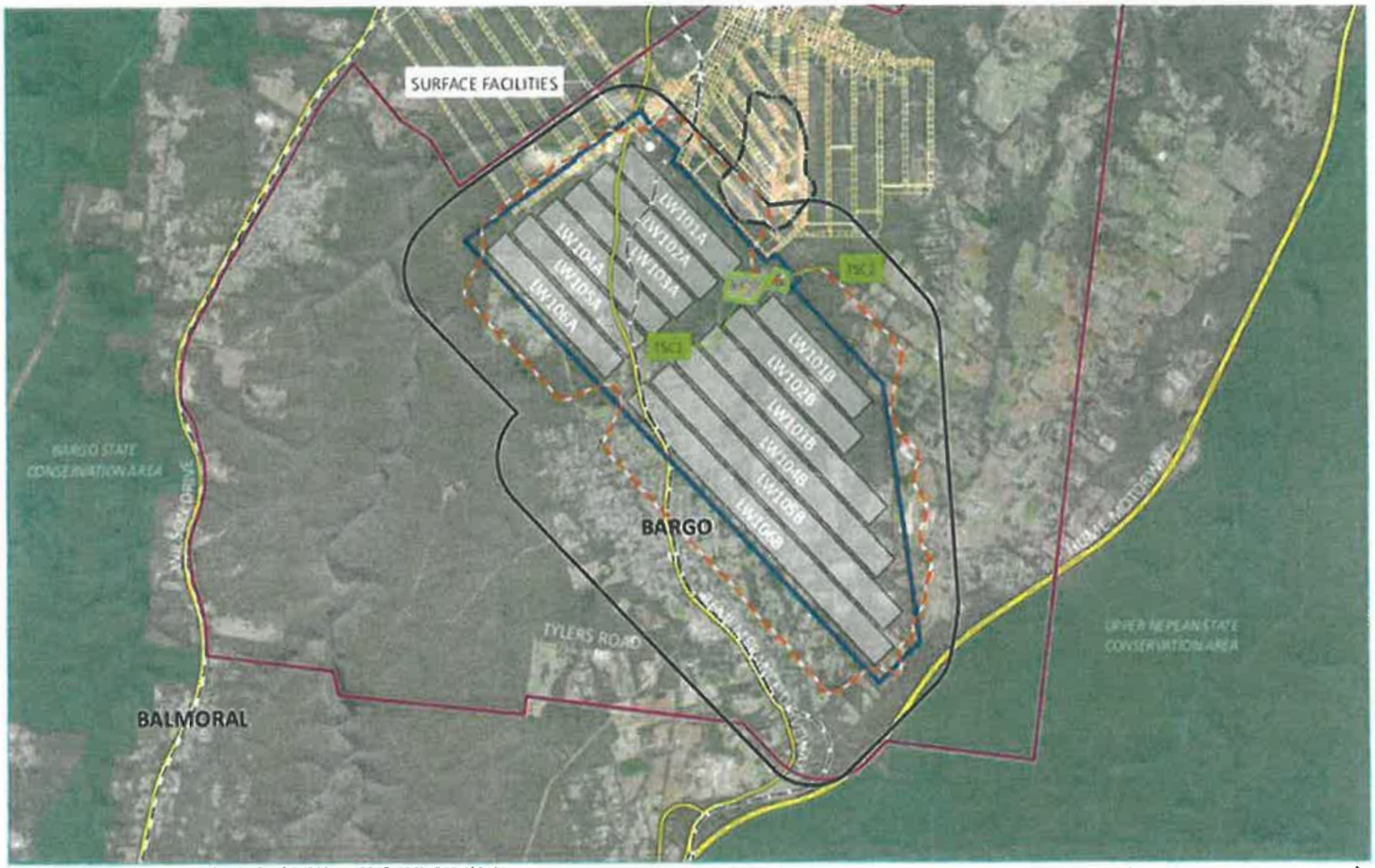
Water Resource means surface water or groundwater; or a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).

Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.

Wetland/s means land intermittently or permanently inundated with water that is usually slow moving or stationary, shallow, can be fresh, brackish or saline, and where the inundation affects the plant and animal communities present and the type and productivity of soil. **Wetlands** includes aquatic communities and fringing vegetation dependent on groundwater-fed lakes, including palustrine (non-tidal wetlands dominated by vegetation) and lacustrine (lake) wetlands that receive groundwater discharge, and can include spring and swamp ecosystems.

Attachment 1: Amended Mine Plan Area





Source. EMM (2020); Glencore (2020); SIMEC (2020); ESRI (2020); DFSI (2017)

GDA 1994 MGA Zone 56

Amended mine plan

KEY

- Project area
- Extent of longwalls
- Longwall panel
- Subsidence study area
- Predicted 20 mm subsidence contour
- Vent shaft
- Approved reject emplacement area footprint
- Approved Tahmoor North underground working
- Rail line
- Major road
- NPWS reserve
- State forest

Tahmoor South Project

SIMEC EMM