



# MOOLARBEN COAL PROJECT

## *SECTION 2*

### *Project Approval Framework*

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## 2 PROJECT APPROVAL FRAMEWORK

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### 2.1 Introduction

This section provides an assessment of the proposed development against relevant environmental planning controls applying to the land. The EP&A Act, 1979 is the principal form of legislation that governs, controls and guides land use (planning and development) within New South Wales. In August 2005 the EP&A Act, 1979 was amended by the addition of the newly proclaimed provisions of Part 3A.

### 2.2 Development Approval Process

#### 2.2.1 Environmental Planning and Assessment Act, 1979

The MCP is a coal mine. Mining is identified within State Environmental Planning Policy (Major Projects) 2005 as a Schedule 1 development and accordingly the MCP is classified as a "major project" under Part 3A (Section 75B) of the EP&A Act, 1979.

#### 2.2.2 Permissible Development

Lands to which the MCP apply are zoned as Zone No. 1 (a) (General Rural) and partly Zone No 7 (b) (Environmental Protection – Nature conservation) pursuant to the provisions of Mudgee Local Environmental Plan 1998 (MLEP 1998). Mining is a permissible form of development given the provisions of Mudgee Local Environmental Plan 1998.

The Mid-Western Regional Council has recently publicly exhibited the draft Mid-Western Regional Interim Local Environmental Plan 2006. The MCP is a permissible form of development given the provisions of the draft plan.

#### 2.2.3 Major Projects Application – Environmental Assessment Requirements

A Major Projects Application and a Preliminary Assessment were lodged by the proponent under Section 75E of the EP&A Act, 1979 for the MCP with the Department of Planning on 20 December 2005. On 20 January 2006 the Department of Planning issued the requirements for the project pursuant to Section 75F of the EP&A Act, 1979 which were revised and reissued on 16 March 2006 and are contained in **Appendix 1 of Volume 1**.

The key environmental assessment requirements for the project are:-

- Aboriginal and European Cultural Heritage;
- Air Quality;
- Cumulative Impacts;
- Flora and Fauna;
- Noise, Blasting and Vibration;
- Proposed Rehabilitation and Final Landform and Final Void Management;
- Social and Economic Impacts;

- Subsidence;
- Surface waters and Ground waters; and
- Transport – Traffic and Rail;

The Part 3A – Major Projects Application will be assessed in accordance with the provisions of the EP& A Act, 1979 and EP&A Regs, 2000 and determined by the Minister for Planning.

#### ***Legislation Which Does Not Apply***

If the MCP is granted approval under Part 3A of the EP&A Act 1979, the following approvals legislation, which might otherwise have been relevant, will not be required for the project, these being: -

- Fisheries Management Act, 1994 - Permit for works or structures in a waterway;
- Heritage Act 1977 -Disturbance to an item listed on a State Heritage Register, Interim Heritage Order or Excavation Permit;
- National Parks and Wildlife Act 1974 – Preliminary research permit – consent to destroy relics; and
- Water Management Act 2000 – Water use approval, water management works and/or activity approvals.

#### ***Applicable Legislation Consistently Applied***

If the MCP is granted approval under Part 3A of the EP&A Act 1979, the following approvals required for the project must not be refused by the relevant approval authority and be consistent with MCP approval terms, these being:-

- Mining Act 1992 – Mining Lease;
- Roads Act 1993 –Permit to impact public roads;
- Mine Subsidence Compensation Act 1961 –Development within Mine Subsidence District; and
- Protection of the Environment Operations Act 1999 – Environment Protection Licence.

## **2.3 State Environmental Planning Policies**

The following State Environmental Planning Policies (SEPP's) apply in respect to the project and are considered below:-

### **2.3.1 State Environmental Planning Policy No. 11 – Traffic Generating Developments**

This SEPP ensures that the Roads and Traffic Authority (RTA) can make representations on development applications that impact traffic, prior to determination. Mining is listed in Schedule 1 of SEPP No. 11 and the consent authority must refer the development application to the RTA.

### **2.3.2 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development**

This SEPP requires the consent authority to consider the merits of proposed activities including the location of the development and the way in which it is to be carried out. This SEPP does not technically apply to the proposed development, as it relates to an industry.

Although the project is not industry, it is acknowledged that there may be potential risks associated with the development. A preliminary hazard analysis (PHA) that complies with the relevant guidelines has been prepared and forms part of the Environmental Assessment.

### **2.3.3 State Environmental Planning Policy No. 44 – Koala Habitat Protection**

This SEPP encourages the conservation and management of koala habitats, to ensure permanent free-living koala populations will be maintained over their present range. The SEPP requires the consent authority to consider whether land the subject of a development application is "potential koala habitat" or "core koala habitat". An assessment of potential and core koala habitat has been undertaken for the MCP.

### **2.3.4 State Environmental Planning Policy No. 45 – Permissibility of Mining**

The objective of this SEPP is to facilitate development for the purposes of mining throughout the state. The SEPP covers mining on land, where an environmental planning instrument requires the consent authority to make a value judgement as to whether such development is permissible by virtue of satisfying certain provisions or matters. The SEPP permits mining without such provisions or matters having to be satisfied.

There are no such permissibility provisions within MLEP 1998 and therefore SEPP 45 does not apply.

### **2.3.5 State Environmental Planning Policy No. 55 – Remediation of Land**

This SEPP was enacted to provide a state-wide approach to the remediation of contaminated land for the purpose of minimising the risk of harm to the health of humans and the environment. Potentially contaminated sites within the project area include sheep dips, workshops/machinery sheds used for fuel, chemical and fertiliser storage and landfills.

No contaminated lands have been identified within the project area that will be disturbed for mining or mining associated purposes.

### **2.3.6 State Environmental Planning Policy (Major Projects) 2005**

This SEPP identifies development to which the development assessment and approval process under Part 3A of the EP&A Act 1979 applies and establishes the Minister for Planning as the consent authority for development classified as a "major project". Mining is classified as a major project by the SEPP.

## **2.4 Section 94 Contribution Plans**

Officers of the Mid-Western Regional Council and the proponent's representatives have been consulting on the level and type of contribution(s) required for the provision, extension or augmentation of public amenities and services to satisfy the additional demand that may result from the MCP proceeding.

The Minister for Planning is required to consider any section 94 contributions plan that might be in place, but the Minister is also empowered to impose conditions that might be inconsistent with the plan.

## **2.5 Environment Protection and Biodiversity Conservation Act 1999**

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) defines proposals that are likely to have a significant impact on a matter of national environmental significance. The EPBC Act requires that Commonwealth approval be obtained for any proposals that are likely to impact on a matter of national environmental significance as a "controlled action".

The project will be referred to the Commonwealth Minister for Environment and Heritage for a determination as to whether any component of the project includes a controlled action under the EPBC Act. Under the EPBC Act scope exists for the proponent to obtain a separate approval or a declaration by the Commonwealth that the assessment under the EP & A Act 1979 is sufficient.