

Appendix F -Updated Statutory Consideration

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

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

The Department has considered all of these matters in its assessment of the project, including the Department’s Preliminary Assessment Report and this Final Assessment Report and has provided a summary of this assessment in Table F1 below.

Reference should also be made to Sections 4 and 9 of the EIS and Section 3 of the RtPR Report where KEPCO has also considered applicable legislation and environmental planning instruments in detail.

Table F1 | Summary of Statutory Consideration

Aspect	Summary
<p>Relevant Objects of the EP&A Act</p> <p>1.3 (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources.</p> <p>1.3 (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.</p> <p>1.3 (c) to promote the orderly and economic use and development of land.</p> <p>1.3 (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.</p> <p>1.3 (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).</p> <p>1.3 (j)to provide increased opportunity for community participation in environmental planning and assessment.</p>	<p>The objects of most relevance to the Commission’s decision on whether or not to approve the project are found in Section 1.3(a), (b), (c), (e), (f) and (j) of the EP&A Act.</p> <p>The Department is satisfied that objects 1.3(a) and (c) are met as:</p> <ul style="list-style-type: none"> o the project is a permissible land use on the subject land; o the project is consistent with the <i>Central West and Orana Regional Plan 2036</i>, recognising the importance of both agriculture and mining to diversify the economy, along with the efficient use of water resources; o the Department’s Division of Resources and Geoscience confirmed the size and quality of the coal reserve; o the mine would be a mid-sized operation providing substantial royalties of up to \$278 million (present value); and o the project would provide considerable economic benefits to the region and to NSW as a whole. <p>The Department is satisfied that object 1.3(b) is met as:</p> <ul style="list-style-type: none"> o the principles of ecologically sustainable development have been considered through its assessment of the project; o the proposed modification is able to be carried out in a manner that is consistent with the principles of ESD; o the assessment has sought to integrate all significant environmental, social and economic considerations; and o the Revised Mine Plan has further reduced the environmental and social impacts of the project, while providing a significant net benefit to NSW and the regional economy. <p>The Department is satisfied that objects 1.3(e) and (f) are met as:</p> <ul style="list-style-type: none"> o the project has sought to avoid and minimise impacts on biodiversity and heritage and has offset residual biodiversity impacts in accordance with NSW and Commonwealth Government policy; o the Revised Mine Plan has further reduced impacts, particularly on heritage values associated with the Tarwyn Park property, including ensuring key heritage features are appropriately managed and conserved; and o the Revised Mine Plan also is designed to minimise landscape impacts associated with the Bylong Landscape Conservation Area and heritage features within the Upper Bylong Valley. <p>The Department is satisfied that object 1.3(j) is met as:</p> <ul style="list-style-type: none"> o the project was exhibited for 44 days with 364 submissions received; o a public information session was held at Bylong community hall during the exhibition period; o targeted consultation held with the local Bylong community and a social impact assessment expert engaged by the

Aspect	Summary
Environmental Planning Instruments (EPIs)	<p>Department, including one on one meetings and group consultation sessions;</p> <ul style="list-style-type: none"> o a review of the project including a public hearing was held by the Planning Assessment Commission, with 44 verbal submissions, mainly in support of the project and 1,123 written submissions; and o ongoing correspondence and submissions on the project from individuals and special interest groups considered by the Department in its assessment of the project. <p>Appendix J of the PAR provides a summary of the Department's consideration of the relevant EPI's. Further consideration is provided below where relevant, due to changes to the Revised Mine Plan or revisions to EPIs.</p> <p><u>Mid-Western Regional LEP 2012</u> – see the Department's consideration in the PAR.</p> <p><u>SEPP No.33 – Hazardous and Offensive Development</u> – see the Department's consideration in the PAR.</p> <p><u>SEPP No.44 – Koala Habitat Protection</u> – see the Department's consideration in the PAR.</p> <p><u>SEPP No.55 – Remediation of Land</u> – see the Department's consideration in the PAR.</p> <p><u>SEPP (State and Regional Development) 2011</u></p> <p>Under Section 4.38 of the EP&A Act the project is considered a State Significant Development.</p> <p>Under clause 8A of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> and Section 4.5(a) of the EP&A Act, the Independent Planning Commission is the consent authority for the development as there were more than 25 public submissions in the nature of objections.</p> <p><u>SEPP (Infrastructure) 2007</u> – see the Department's consideration in the PAR.</p> <p><u>SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)</u></p> <p><i>Non-discretionary Development Standards for Mining (Clause 12AB)</i></p> <p>In the PAR, the Department considered the potential noise, air quality, air blast, ground vibration and aquifer interference impacts of the project. The Department was satisfied that the project could be managed to comply with all relevant development standards. The Revised Mine Plan further reduces these impacts.</p> <p><i>Compatibility with other land uses (Clause 12)</i></p> <p>The Department's assessment has considered the potential impacts of the project on other land uses in the area, including the residential land uses associated with Bylong village, agricultural activity in the Bylong Valley and surrounds, forestry within Bylong State Forest, quarrying operations at the Bylong Quarry and National Park estate. This assessment has been undertaken in consideration of the public benefits of the project.</p> <p>The Department undertook a detailed assessment of the potential impacts of the project on all nearby land uses (see Section 6 of the PAR and Section 2 of this report) and found that the project could be managed to meet acceptable criteria for dust and blasting impacts established by the EPA. However, under the Revised Mine Plan two landowners have been afforded mitigation rights due to moderate noise impacts at their residences.</p> <p>Further, the Department is satisfied that other indirect impacts of the project on surrounding land uses and are able to be minimised, mitigated or managed to achieve acceptable environmental and amenity outcomes.</p> <p><u>Consideration of Voluntary Land Acquisition and Mitigation Policy (Clause 12A)</u></p>

Aspect**Summary**

The Department's assessment has considered the NSW Government's *Voluntary Land Acquisition and Mitigation Policy* (December 2014). As a result of additional land acquisitions/acquisition agreements and the reduction in noise impact as a result of the Revised Mine Plan no private receivers are predicted to have a significant impact such that acquisition rights would be afforded.

Compatibility with Mining, Petroleum Production or Extractive Industry (Clause 13)

The Department is satisfied that the project has been designed in a manner that is compatible with, and would not adversely affect, adjacent current or future mining-related activities.

Natural Resource Management and Environmental Management (Clause 14)

In the PAR, the Department has recommended a number of conditions aimed at ensuring that the project is undertaken in an environmentally responsible manner, including but not limited to, conditions in relation to soils, water resources, threatened species and biodiversity, and greenhouse gas emissions. The Revised Mine Plan further reduces environmental impacts on natural resources.

Resource Recovery (Clause 15)

While there is a small reduction in resource recovery with the Revised Mine Plan, the Department and DRG are satisfied that the project can be carried out in an efficient manner that optimises resource recovery within environmental constraints. The Department has also recommended conditions requiring KEPCO to implement reasonable and feasible measures to minimise waste.

Transport (Clause 16)

The Department notes that the project would transport all product coal off-site via the Gulgong to Sandy Hollow Railway. The Department has consulted with the applicable roads authorities and the ARTC in relation to the project, and taken these submissions into consideration in its assessment of the project.

The conditions require KEPCO to provide substantial road upgrades and maintenance contributions to MWRC where the majority of traffic impacts would occur during construction and operations. KEPCO has also committed to provide a substantive up front road safety contribution and payments based on pre and post construction road dilapidation surveys to MSC which the Department considers would appropriately mitigate traffic impacts.

Rehabilitation (Clause 17)

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

The recommended conditions require KEPCO to prepare and implement a Rehabilitation Management Plan, to effectively manage waste and to meet a number of rehabilitation objectives, including ensuring public safety, outcomes to rehabilitate land for agricultural land-use and landscape reinstatement of BSAL and Class 2-3 agricultural capability land and improved integration with the existing landscape, and that the mine site as a whole is safe, stable and non-polluting.

Summary – Mining SEPP

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

Dark Sky Planning Guideline

Clause 92(1)(d) of the EP&A Regulation requires that the consent authority must consider the *Dark Sky Planning Guideline* for any SSD development on land less than 200 kilometres from the Siding Spring Observatory.

Aspect	Summary
	The Department consideration of the Dark Sky Planning Guidelines and recommended condition to minimise the upward spill of light in accordance with good lighting design principles is provided in Section 2.9 of this report.
Commonwealth Approval	<p>In accordance with the EPBC Act, the project (EPBC 2015/7431) was determined to be a 'controlled action' on 12 March 2014 due to likely significant impacts to listed threatened species and communities (sections 18 and 18A) and a water resource (Sections 24D and 24E).</p> <p>The Departments assessment of all matters that the Commonwealth Minister must consider under the EPBC Act is provided in Appendix K, Appendix L, Section 6.3 and Section 6.6 of the PAR, and Section 3 of this report.</p>