



MOOLARBEN COAL PROJECT

Stage 2

SECTION 2

*Project Approval
Framework*

SECTION 2 – PROJECT APPROVAL FRAMEWORK

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2. PROJECT APPROVAL FRAMEWORK

2.1 Introduction

This section details the relevant New South Wales and Commonwealth legislation that applies to the environmental assessment of Stage 2 of the MCP and the modification of the Stage 1 Project Approval.

The principal legislative provisions relevant to the consideration of the applications for approval assessed in this Environmental Assessment (EA) report are as follows:

- Part 3A of the New South Wales *Environmental Planning and Assessment Act 1979* (EP&A Act), which provides the approval process for major projects.
- State Environmental Planning Policy (SEPP) (Major Projects) 2005 (Major Projects SEPP), which establishes the types of projects that require Part 3A approval, which includes development for the purposes of mining that is coal mining.
- Section 75R of the EP&A Act, which provides that environmental planning instruments (other than SEPPs) do not apply to an approved project.
- Section 75J(3) of the EP&A Act, by which in deciding whether to grant project approval, the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would apply but for section 75R if approved.
- SEPP (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP), under which Stage 1 and Stage 2 is permissible development.
- Section 75U of the EP&A Act, which provides that certain authorities and approvals under other legislation are not required for approved projects.
- Section 75V of the EP&A Act, which provides that certain authorities and approvals under other legislation cannot be refused and are to be issued in terms substantially consistent with any Part 3A approval.
- The Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), which provides a legal framework to determine controlled activities and protect matters of national environmental significance.
- Other New South Wales legislation that applies to the applications is discussed in Sections 2.4, 2.5 and 2.7.

2.2 New South Wales Legislation

2.2.1 Environmental Planning and Assessment Act 1979

2.2.1.1 Major Project

Clause 6(1) of the Major Projects SEPP identifies development to which the assessment and approval process under Part 3A of the EP&A Act applies and establishes the Minister for Planning as the consent authority for development classified as a 'major project'.

A Conceptual Project Development Plan proposal for Stage 2 formed the basis of an application to the Minister for Planning (Minister) for determination that Stage 2 is a project to which Part 3A of the EP&A Act applies.

On 10 April 2008, the Department of Planning (DoP) advised MCM that:

on 13 March 2008, the Director-General, as delegate of the Minister for Planning, formed an opinion under Clause 6(1) of the State Environmental Planning Policy (Major Projects) 2005, that the Moolarben Coal Project – stage two is a development referred to in clause 5(1)(a) 'development for the purposes of mining that is coal mining' – and is thus declared to be a project to which Part 3A of the Environmental Planning and Assessment Act 1979 applies.

As determined by the Minister, Stage 2 of the MCP comes under this definition and is therefore a project to which Part 3A of the EP&A Act applies. The Stage 2 application was allocated Major Project Application Number 08_0135.

2.2.2 Stage 2 Major Project Application

In July 2008, MCM prepared and submitted a Preliminary Environmental Assessment (PEA) report of Stage 2 of the MCP. The PEA report described Stage 2 and the proposed operation of the MCP as a mine complex comprising both Stage 1 and Stage 2 of the MCP, with minor changes to the already approved Stage 1.

On 11 September 2008, the DG of the DoP notified MCM of the environmental assessment requirements (DGRs) applying to the Stage 2 Project Application, prepared under section 75F of the EP&A Act (Appendix 1B of Volume 1). As required by section 75H of the EP&A Act, MCM has prepared this EA report in accordance with the DGRs to support the Stage 2 Project Application and the modification of Stage 1.

2.2.3 Modification of the Stage 1 Project Approval

2.2.3.1 Purpose of Modification

The operation of Stage 2 of the MCP requires minor modification of the Stage 1 Project Approval to achieve the effective interaction of Stage 1 and Stage 2 as a single mining complex. These modifications were contemplated and described in the Stage 2 Major Project Application and are listed in Section 4.6.

2.2.3.2 Section 75W EP&A Act

Section 75W(2) of the EP&A Act states that:

The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this part.

The Stage 1 Project Approval is a Minister's approval within the meaning of section 75W(1).

A 'modification of approval' is defined in section 75W(1) of the EP&A Act as:

- (a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and
- (b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.

2.2.3.3 Modification

The proposed modification of the Stage 1 Project Approval will not result in the radical transformation of the Stage 1 Project Approval and does not change the essential nature of Stage 1 as presently approved. Consequently, the proposed amendments sought would come within the power of the Minister to modify the existing Stage 1 Project Approval.

2.2.3.4 Assessment Requirements

On 2 February 2009, MCM lodged an application for the modification of Stage 1. The proposed modification of Stage 1 was envisaged in the PEA report and Stage 2 Major Project Application provided to the DG of the DoP.

On 18 February 2009, the DG of the DoP notified MCM of the DGRs applying to the application for the modification of Stage 1, prepared under section 75W of the EP&A Act (see Appendix 1C of Volume 1). This EA report has been prepared in accordance with the DGRs to support the Major Project application for Stage 2 and the modification of Stage 1.

2.2.3.5 Consent Authority

The Minister for Planning issued approval for Stage 1 and is therefore the person whose consent is required to approve the modification of Stage 1.

2.3 Environmental Planning Instruments

2.3.1 Effect of Environmental Planning Instruments – Section 75J(3) of the EP&A Act

Section 75R of the EP&A Act provides that environmental planning instruments (EPIs), other than SEPPs, do not apply to, or in respect of, the carrying out of a project approved under Part 3A.

Under section 75J(3) of the EP&A Act, the Minister for Planning, when deciding whether to approve a project, may (but is not required to) take into account the provisions of any EPI that would not (because of section 75R) apply to the project if approved. Therefore, the Minister may, if she so chooses, consider the Mid-Western Regional Interim Local Environmental Plan (LEP) 2008, as discussed in Section 2.3.7.

However, also pursuant to section 75J(3) of the EP&A Act, the EP&A Regulations may preclude approval for the carrying out of a class of project that an EPI would otherwise prohibit. Clause 8O(2) of the EP&A Regulations clarifies this by adding that a project is not prohibited under section 75J(3) if it is permitted under another EPI. As is discussed below in Section 2.3.2, Stage 2 is permissible development under the Mining SEPP.

2.3.2 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007

2.3.2.1 Mining SEPP

Clause 7 of the Mining SEPP states:

7 Development permissible with consent

(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,

(b) mining carried out at surface level:

(i) on land where development for the purposes of agriculture or industry may be carried out (with or without development consent), or

(ii) on land that is, immediately before the commencement of this clause, the subject of a mining lease under the Mining Act 1992 or a mining license under the Offshore Minerals Act 1999,

Stage 2 of the MCP will comprise both underground mining (UG1 and UG2) and mining carried out at surface level (OC4). Stage 2 will be permissible with development consent.

2.3.2.2 Permissibility

The Mining SEPP aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of the State of NSW. The SEPP allows underground mining and mining at surface level to be undertaken with development consent. The Mining SEPP establishes appropriate planning controls to encourage ecologically sustainable development.

The underground mine component of Stage 2 will be permissible with development consent under clause 7(1)(a) of the Mining SEPP.

The Stage 2 open cut and the surface facilities will be permissible under clause 7(1)(b) of the Mining SEPP if development for the purposes of agriculture or industry may be carried out (with or without development consent) under the terms of the relevant local environmental plan (LEP). As discussed in Section 2.3.7, Stage 2 of the MCP is permissible under the Mid-Western Regional Interim LEP, 2008 (the relevant LEP) and is therefore permissible under clause 7(1)(b) of the Mining SEPP.

2.3.2.3 Matters for Consideration

The Mining SEPP also establishes relevant matters for consideration by a consent authority. The considerations set out by clauses 12 to 17 of the Mining SEPP are examined and reported upon throughout this EA report, namely:

- Clause 12 requires the history of the land use of the area and surrounding areas to be detailed. This EA report describes the land use history of the Stage 2 Project Area in Section 5.17. Since the area in the vicinity of the MCP is used predominately for mining purposes, the potential for land use conflict and land use constraint with respect to adjacent land uses is low.
- Clause 13 details considerations to be had in regard to existing mining in the area. The anticipated effect of the MCP on neighbouring mining activities is detailed throughout Section 5.
- Clause 14 details the possible conditions that must be considered in any approval in order to ensure environmental responsibility. Particularly, these conditions must seek to minimise greenhouse gas emissions, water resource usage and the effect on threatened species and biodiversity. Sections 5.2 (greenhouse gas), 5.4 and 5.5 (groundwater and surface water), and 5.7 (ecology) provide an assessment of the impacts of the MCP on these respective aspects of the environment. The mitigation and management measures proposed by MCM to minimise such impacts are detailed in the above-listed sections.
- Clause 15 details considerations required regarding efficiency of resource recovery and waste minimisation. Section 5.2 details the energy reduction initiatives proposed by MCM in relation to the MCP. Section 4.5.8 provides the waste management practices that MCM will employ in the construction and management of Stage 2.
- Clause 16 details the considerations of the effect of the development on the public road system. The effect of the MCP on roads in the area is discussed in Section 5.12.
- Clause 17 details the considerations required with regard to a rehabilitation plan, the handling of waste and public safety issues. These issues are dealt with respectively in Sections 5.18, 4.5.8 and 5.15.

2.3.3 State Environmental Planning Policy (Infrastructure) 2007

The Infrastructure SEPP aims to provide a consistent planning regime for infrastructure and the provision of services across New South Wales, along with requiring consultation with relevant public authorities during the assessment process. The provision of public infrastructure for the MCP may be required to comply with the following planning regimes designated within the SEPP: electricity transmission or distribution, networks, emergency services facilities and bush fire hazard reduction, railway infrastructure facilities, development in railway corridors, road infrastructure facilities, development in or adjacent to road corridors and road reservations, traffic generating development, sewerage systems, soil conservation works, and stormwater management systems. MCM will observe the conditions of this SEPP in regard to infrastructure development and when modifying existing infrastructure.

2.3.4 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

SEPP No. 33 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. It applies to 'development for the purposes of a potentially hazardous industry, and... development for the purposes of a potentially offensive industry'. Therefore, the SEPP does not technically apply to Stage 2 of the MCP, as it is not an 'industry'.

Although the project is not an industry, it is acknowledged that there may be potential risks associated with the project and that potential noise emissions from the project may be offensive. In consideration of this, a preliminary hazard analysis (PHA) that complies with the relevant guidelines has been prepared and a noise impact assessment has been undertaken. These are described in Sections 4.5.9 and 5.15, and 5.3, respectively.

2.3.5 State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP No. 44 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 that is 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 and is provided in Appendix 7 in Volume 4. The assessment indicates that no areas of core habitat exist and that while mining would impact areas of potential habitat, there would be no long-term adverse impact due to revegetation and rehabilitation efforts. The assessment indicates that no management plans prepared under SEPP No. 44 are required for further consideration of the project.

2.3.6 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP No. 55 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. There are no known contaminated sites within the project area. Should contaminated sites be encountered during construction and operation of the project, these sites will be assessed and treated as required. This is further described in Section 4.5.10.

2.3.7 Mid-Western Regional Interim Local Environmental Plan 2008

Under the Mid-Western Regional Interim LEP, 2008 the Stage 2 open cut land and surface facilities are located within land zoned as:

- (a) Agriculture Zone.
- (b) Conservation Zone.

2.3.7.1 Agriculture Zone

Mining is permissible with consent in the Agriculture Zone. In addition, agriculture is permissible and, accordingly, under clause 7(1)(b)(i) of the Mining SEPP, mining is permissible with development consent (see Section 2.3.2).

2.3.7.2 Conservation Zone

Mining in the Conservation Zone is permissible with consent. In addition, agriculture is permissible and, accordingly, under clause 7(1)(b)(i) of the Mining SEPP, mining is permissible with development consent (see Section 2.3.2).

2.3.7.3 Development above the 520 m Australian Height Datum Contour and on Environmentally Sensitive Land

Clause 71(2) of the Mid-Western Regional Interim LEP, 2008 provides that the provisions of clause 71 of the Mid-Western Regional Interim LEP, 2008 apply to:

- (a) Land above the 520 metre [Australian Height Datum] contour as shown on the map.
- (b) Land within the Conservation Zone.

Therefore, clause 71 applies to the land that is the subject of Stage 2 of the MCP.

Clause 71(3) provides that prior to the approval of development within such land, the consent authority must consider the following:

- (a) the likely impact of the proposed development on skyline views in the locality,
- (b) the extent of timber clearing that is likely to be necessary in order to enable the proposed development to be carried out,
- (c) the relationship between the proposed development and the surrounding landscape,
- (d) the susceptibility of the proposed development to the hazards of bush fire, soil erosion, landslips and similar hazards.

This EA report includes an assessment of the above matters in Sections 5.13, 5.7, 5.17, 5.15, 5.11 and 5.8, respectively.

2.4 Other State Approvals and Authorisations

In addition to Major Project approval under the EP&A Act, Stage 2 of the MCP will require further authorisations and approvals under other New South Wales legislation, subject to the provisions of the EP&A Act. These are discussed below.

2.4.1 Section 75U of the EP&A Act

Pursuant to section 75U of the EP&A Act, a number of authorisations that would otherwise be required under New South Wales legislation are not required for Stage 2 of the MCP, as it is an approved Major Project under Part 3A of the EP&A Act. These authorisations include:

- (a) the concurrence under Part 3 of the Coastal Protection Act 1979 of the Minister administering that Part of the Act,
- (b) a permit under section 201, 205 or 219 of the Fisheries Management Act 1994,
- (c) an approval under Part 4, or an excavation permit under section 139, of the Heritage Act 1977,
- (d) a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974,
- (e) an authorisation referred to in section 12 of the Native Vegetation Act 2003 (or under any Act to be repealed by that Act) to clear native vegetation or State protected land,
- (f) a permit under Part 3A of the Rivers and Foreshores Improvement Act 1948 [now repealed],
- (g) a bush fire safety authority under section 100B of the Rural Fires Act 1997,
- (h) a water use approval under section 89, a water management work approval under section 90 or an activity approval under section 91 of the Water Management Act 2000.

2.4.2 Section 75V of the EP&A Act

Pursuant to section 75V of the EP&A Act, there are a number of authorisations that must be issued by the relevant authority in terms substantially consistent with the Part 3A approval. These authorisations are:

- (a) an aquaculture permit under section 144 of the Fisheries Management Act 1994,
- (b) an approval under section 15 of the Mine Subsidence Compensation Act 1961,
- (c) a mining lease under the Mining Act 1992,
- (d) a production lease under the Petroleum (Onshore) Act 1991,
- (e) an environment protection licence under Chapter 3 of the Protection of the Environment Operations Act 1997 (for any of the purposes referred to in section 43 of that Act),
- (f) a consent under section 138 of the Roads Act 1993,
- (g) a licence under the Pipelines Act 1967.

The authorisations that are required for the construction and operation of Stage 2 of the MCP are:

- A mining lease under the Mining Act.
- An Environmental Protection Licence (EPL) under the *Protection of the Environment Operations Act 1997* (POEO Act) (for any of the purposes referred to in section 43 of that Act).
- A consent under section 138 of the *Roads Act 1993*.

These authorisations must be applied consistently with the approval of the Minister under Part 3A of the EP&A Act.

2.4.3 Mining Act 1992

2.4.3.1 Mining Lease

Section 5 of the New South Wales Mining Act provides that:

A person must not prospect for or mine any publicly owned mineral on any land otherwise than in accordance with an authority... that is in force in respect of that mineral and that land.

The word 'mine' is defined in the Mining Act as:

when used as a verb—to extract material from land for the purpose of recovering minerals from the material so extracted or to rehabilitate land from which material has been so extracted, but does not include any activity declared not to be mining by a regulation under section 11A.

Therefore, a mining lease will be required by MCM in order to mine Stage 2.

The operation of section 75V of the EP&A Act (see Section 2.4.2) requires that the Minister for Mineral Resources must issue a mining lease in terms substantially consistent with the approval for Stage 2.

2.4.3.2 Mine Operations Plan and Subsidence Management Plan

Any approval for Stage 2 will require that all mining be in accordance with a Mine Operations Plan (MOP) and that subsurface mining (UG1 and UG2) be in accordance with a Subsidence Management Plan (SMP), each approved by the Minister for Mineral Resources. Conditions to this effect will be included in any mining lease issued by the Minister for Mineral Resources.

2.4.3.3 Property Subsidence Management Plan

The process for each of a MOP and a SMP approval is established by the protocols of the Department of Primary Industries – Mineral Resources (DPI-MR). The protocol for securing SMP approval requires that the miner complete a Property Subsidence Management Plan (PSMP) assessing the effect of subsurface mining on the surface of, and improvements on, each parcel of land in which subsurface mining is to occur.

2.4.3.4 Colliery Holding

Section 163 of the Mining Act provides that the holder of a mining lease for coal must apply to have the land registered as a colliery holding before commencing mining operations under the lease, thus triggering the application of the New South Wales *Coal Mine Health and Safety Act 2002*. Stage 1 was registered as a colliery on 12 November 2008, therefore this Act now applies.

2.4.3.5 Compensation for Compensable Loss

Part 13 of the Mining Act contains provisions enabling any land owner who becomes entitled to compensation for 'compensable loss' (as defined in section 262 of the Mining Act) suffered or likely to be suffered as a result of the exercise of the rights conferred on MCM by the grant of the mining lease.

2.4.3.6 Mine Subsidence Board

Any landholder whose 'improvement' is damaged by mine subsidence is entitled to compensation for that damage from the Mine Subsidence Board as provided in the New South Wales *Mine Subsidence Compensation Act 1962*.

2.4.4 Protection of the Environment Operations Act 1997

An Environmental Protection Licence (EPL) will be required for the operation of the MCP.

The New South Wales *Protection of the Environment Operations Act 1997* (POEO Act) provides an integrated system of licensing for polluting industries. Part 3.2 of the POEO Act provides that an EPL is required to be held by the proponent of any 'scheduled activity'. Clause 28 of Schedule 1 of the POEO Act provides the following:

- (1) This clause applies to mining for coal, meaning the mining, processing or handling of coal (including tailings and chitter) at underground mines or open cut mines.
- (2) The activity to which this clause applies is declared to be a scheduled activity if:
 - (a) it has a capacity to produce more than 500 tonnes of coal per day, or
 - (b) it has disturbed, is disturbing or will disturb a total surface area of more than 4 hectares of land by:
 - (i) clearing or excavating, or
 - (ii) constructing dams, ponds, drains, roads, railways or conveyors, or
 - (iii) storing or depositing overburden or coal (including tailings and chitter).

The operation of section 75V of the EP&A Act (see Section 2.4.2) requires that the Environmental Protection Authority (EPA) must issue an EPL in terms substantially consistent with the approval for Stage 2 of the MCP.

The EPA has already issued EPL 12932 in respect of Stage 1 and MCM will either seek that this licence be amended to incorporate Stage 2 or will seek a new EPL to apply to the whole of the MCP operating as one mining complex.

2.4.5 Roads Act 1993

Stage 2 proposes the closure of Carrs Gap Road, Murragamba Road and other unformed 'paper' roads that will be affected by open cut mining. It is also proposed to realign Ulan-Wollar Road (see Sections 4.5.11 and 5.12). Applications to close these roads will be made as may be appropriate to either the MWRC or the Department of Lands.

Consent under section 138 of the New South Wales Roads Act from the MWRC (or the appropriate roads authority) will be required for the proposed conveyor crossing that will underpass Ulan-Wollar Road. As an approved project, the relevant authority is required by section 75V of the EP&A Act (see Section 2.4.2) to issue the consent in terms consistent with the approval.

2.4.6 Water

The MCP is within the area proposed under the Draft Water Sharing Plan (DWSP) to be known as the Upper Goulburn Extraction Management Unit within the Hunter Catchment.

Until the commencement of the DWSP, licensing of activities, water use, water works and approvals are governed by the New South Wales *Water Act 1912*.

After the commencement of the DWSP, water use approvals and activities will be governed by the New South Wales *Water Management Act 2000* (WM Act) (particularly parts 2 and 3 of chapter 3), which will apply to the area of the MCP.

Licensing of groundwater bores within 'fractured rock aquifers and basement rocks' (which are not within the DWSP) will continue to be governed by the Water Act.

When the DWSP commences, licensing and trading rules of water associated with the unregulated rivers and alluvials associated with them (as described within the DWSP) will be governed by the rules contained within the DWSP and the approvals required under the WM Act.

The DWSP has been on exhibition and the Department of Water and Energy (DWE) is currently considering submissions before finalising the DWSP. It is anticipated that the DWSP will formally commence some time during the first half of 2009.

By virtue of section 75U of the EP&A Act, water use approvals under section 89, water management work approvals under section 90 and activity approvals under section 91 are not required for a project that has been approved under Part 3A of the EP&A Act (see Section 2.4.1). Section 75U of the EP&A Act does not provide any exemption from the obligation to secure a Water Access Licence (section 56 of the WM Act).

2.4.6.1 Approvals Required Prior to the Commencement of the DWSP

If Stage 2 is approved under Part 3A, the following additional approvals for water use will be required:

- Groundwater licences under Part 5 of the Water Act in respect of OC4.
- Groundwater licences under Part 5 of the Water Act in respect of UG1 and UG2.
- Dam licences above the maximum harvestable rights dam capacity.

2.4.6.2 Approvals Required After the Commencement of the DWSP

After the commencement of the DWSP, the following groundwater licences under Part 5 of the Water Act will be required for Stage 2:

- Extraction of water from underground mining (in respect of water that will be extracted and utilised from hardrock aquifers).
- Open cut mining (in respect of water that will be extracted and utilised from hardrock aquifers).
- Production bores (in respect of water that will be extracted and utilised from hardrock aquifers).
- Monitoring piezometers (in respect of piezometers that will intersect and take water from (for the purposes of water quality monitoring and test pumping) hardrock aquifers).

Upon commencement of the DWSP, dams will require a water access licence only when:

- They are located on a third-order (or greater) river, irrespective of the dam capacity or purpose.
- They exceed the maximum harvestable right dam capacity for the property.
- They are on a permanent (spring-fed) first or second-order stream.

Water use approvals, water management approvals and aquifer interference approval under sections 89, 90 and 91 of the WM Act that would ordinarily be required for Stage 2, are not required by virtue of section 75U of the EP&A Act (see Section 2.4.1).

2.4.6.3 Controlled Activity Approvals

Controlled activity approvals under section 91(2) of the WM Act apply to all areas of New South Wales regardless of whether they are part of a gazetted water sharing plan or not.

As discussed in Sections 4.5.2.3 and 5.5.5.2, development for Stage 2 involves the relocation of the Murragamba and Eastern Creeks. This relocation will be a *controlled activity* carried out on

waterfront land. Therefore, a controlled activity approval under section 91(2) of the WM Act would ordinarily be required.

However, section 75U of the EP&A Act provides that controlled activity approvals are not required for projects that have been approved by the Minister under Part 3A of the EP&A Act. Further, under clause 39A of the New South Wales *Water Management (General) Regulation 2004*, a controlled activity on waterfront land carried out in accordance with a lease or licence under the Mining Act is exempt from the requirement for a controlled activity approval.

2.4.7 Crown Lands Act 1989

The New South Wales *Crown Lands Act 1989* seeks to ensure that Crown land is managed for the benefit of the people of New South Wales and in particular to provide for the reservation and dedication of Crown land for public purposes and the management and use of the reserved or dedicated land.

The approval of the Department of Lands will be required under the Crown Lands Act for any works in Crown road reserves or on Crown land.

2.4.8 Coal Mine Health and Safety Act 2002

The primary objective of the New South Wales *Coal Mine Health and Safety Act 2002* is to assist in securing the objects of the New South Wales *Occupational Health and Safety Act 2000* in relation to coal operations and to put in place special provisions necessary for the control of particular risks arising from the mining of coal.

Under the Coal Mine Health and Safety Act, MCM will be required to seek the approval of the Minister for Mineral Resources for the establishment of emplacement areas and will need to comply with the requirements for minimum barriers for underground workings.

2.5 Non-Limiting State Legislation

2.5.1 Fisheries Management Act 1994

The New South Wales *Fisheries Management Act 1994* (FM Act) declares and lists threatened species of fish and marine vegetation, and endangered populations and ecological communities. The FM Act contains measures to conserve those identified species, populations and communities and to promote ecologically sustainable development. By virtue of section 75U of the EP&A Act, permits under sections 201, 205 and 219 of the FM Act are not required for the MCP.

The mitigation measures proposed by MCM to minimise the impact of Stage 2 on aquatic ecology are discussed in Section 5.7.

2.5.2 Heritage Act 1977

The New South Wales *Heritage Act 1977* aims to protect the natural and cultural history of New South Wales.

The potential heritage impacts of Stage 2 and the related mitigation measures proposed by MCM are discussed in Sections 5.9 and 5.10.

2.5.3 National Parks and Wildlife Act 1995

The New South Wales *National Parks and Wildlife Act 1995* aims to conserve nature and objects, places or features of cultural value within the landscape. Under section 75U of the EP&A Act, permits relating to the disturbance, excavation and destruction of Aboriginal objects are not required.

Sites within the Stage 2 Project Area that have a significant potential to contain Aboriginal objects are detailed in Section 5.9. The proposed procedures for dealing with Aboriginal objects are described in Section 5.9 and Appendix 9 in Volume 5.

2.5.4 Native Vegetation Act 1995

The New South Wales *Native Vegetation Act 1995* (NV Act) provides for the promotion, improvement and protection of native vegetation within New South Wales. By virtue of section 25, the NV Act does not apply to clearing authorised by a mining lease.

By virtue of section 75U of the EP&A Act, a section 12 authorisation to clear native vegetation will not be required for the MCP.

The effect of Stage 2 on native vegetation and the mitigation measures proposed by MCM are detailed in Sections 5.7, 5.18 and 5.19.

2.6 Commonwealth Legislation

2.6.1 Environment Protection and Biodiversity Conversation Act 1999

An approval from the Minister for Environment (Commonwealth) under the EPBC Act is required for actions that may have a significant impact on nationally and internationally important flora, fauna, ecological communities and heritage places (matters of national environmental significance).

Stage 2 was referred to the Department of the Environment, Water, Heritage and the Arts (DEWHA) for assessment under the provisions of the EPBC Act.

It was determined that Stage 2 is likely to have a significant impact on a matter of national environmental significance because it involves the clearing of the critically endangered ecological community White Box – Yellow Box Blakley’s Red Gum Woodland and Derived Native Grassland, and involves the clearing of potential foraging habitat for the migratory species Regent honeyeater.

On 2 October 2008, DEWHA advised that Stage 2 of the MCP is a ‘controlled action’ requiring the project to be assessed and approval obtained under the EPBC Act before it can proceed.

In accordance with the environmental assessment bilateral agreement between the Commonwealth and New South Wales (under section 45 B of the EPBC Act), the proposed action (being Stage 2) will be assessed under the accredited New South Wales Part 3A process. After assessment, the proposed action (Stage 2) will require approval from the Commonwealth Minister for the Environment under the EPBC Act.

2.7 Summary Table

Table 2.1 summarises the existing and required approvals, licences and permits and how these relate to Stage 1 and Stage 2.

STAGE 2

Table 2.1 Summary of existing and required approvals, licences and permits

Approval/Licence/ Permit	Stage 1	Stage 2
Project Approval Environmental Planning & Assessment Act 1979.	Major Project Approval Number 05_0117 granted 6 September 2007. Modification 1 approved 26 November 2008. Modification 2 approved 18 December 2008. Seeking modification of Approval 05_0117 to allow the effective concurrent operation of Stages 1 and 2.	Seeking approval under Major Project Application Number 08_0135 from DoP.
Exploration Licence (EL). Mining Lease (ML). Mining Lease Application (MLA). Mining Act 1992.	EL 6288 granted 23 August 2004. EL 7073 granted 12 February 2008. EL 7074 granted 12 February 2008. ML 1605 and 1606 granted 20 December 2007 for 21 years. MLA 316 made on 25 February 2008. MLA 317 made on 25 February 2008. MLA 318 made on 14 April 2008.	EL 6288. MLA 319 over Crown land lodged on 1 May 2008. MLA to be lodged with DPI-MR for the Stage 2 Project Area.
Environmental Protection Licence (EPL). Protection of the Environment Operations Act 1997.	EPL 12932 granted 18 August 2008.	Application to modify EPL 12932 to Department of Environment and Climate Change (DECC) to include Stage 2 operations will be lodged pending project approval.
Section 138 consent Roads Act 1993.	Under-passing of Ulan-Wollar Road for internal services road and conveyor.	Application to be lodged for under- passing of Ulan-Wollar Road for conveyors, pending project approval.
Section 34 application to close public road. Roads Act 1993.	Application to close Carrs Gap Road and Crown roads lodged.	Application to close Murragamba Road and Crown roads will be lodged pending project approval.
Part 5 Groundwater Licences (open cut mining). Water Act 1912.	Application submitted to DWE on 21 July 2008.	Application to be lodged with DWE prior to commencement of mining of OC4, pending project approval.
Part 5 Groundwater Licences (underground workings). Water Act 1912.	No applications made for dewatering boreholes, only applications for production bores.	Application to be lodged with DWE prior to commencement of mining of UG1 and UG2, pending project approval.
Part 5 Groundwater Licences (production borefield). Water Act 1912.	Production bore licence applications submitted to DWE: 10th July 2008. 21st July 2008. 23rd July 2008. Construction production bore licences issued 27 January 2009 for: 20BL172000 (Lot 2 DP 878678) 20BL171988 (Lot 87 DP 755464)	

Table 2.1 Summary of existing and required approvals, licences and permits (cont'd)

Approval/Licence/ Permit	Stage 1		Stage 2
Part 2 Surface Water Licences. Water Act 1912.	20SL060286: 4 September 2007.		
Part 5 Groundwater Licences (Monitoring wells).	20BL171923. 20BL171924. 20BL171925. 20BL171926. 20BL171927. 20BL171928. 20BL169899.	14 July 2008. 14 July 2008. 14 July 2008. 14 July 2008. 14 July 2008. 14 July 2008. 8 November 2005.	Application will be made for any additional monitoring bores, pending project approval.
Water Access Licence. Water Management Act 2000.	Application to be lodged subject to the commencement of the Draft Hunter Unregulated and Alluvial Water Sources Water Sharing Plan if required.		Application to be lodged subject to the commencement of the Draft Hunter Unregulated and Alluvial Water Sources Water Sharing Plan. Application to be lodged for dam licence above the maximum harvestable rights capacity, pending project approval. Application to be lodged to convert Splitters Hollow Dam to industrial use licence, pending project approval.
Environmental management and monitoring plans.	Construction environmental management plans and monitoring plans approved by DoP 17 December 2008.		Revised and updated environmental management and monitoring plans covering Stage 2 of the MCP to be lodged with Department of Planning for approval, pending project approval.
Licence to Occupy (Crown Lands Act 1989).	Approval to Occupy the Crown Land adjacent to Underground No 4, was issued by the Department of Lands in February 2009.		