



## Section 2

South East Open Cut Project  
&  
Modification to the  
Existing ACP Consent



## SECTION 2 - PROJECT APPROVAL FRAMEWORK

### Contents

<b>2</b>	<b>PROJECT APPROVAL FRAMEWORK</b>	<b>S2-3</b>
2.1	INTRODUCTION.....	2-3
2.2	CORE NEW SOUTH WALES LEGISLATION.....	2-4
2.2.1	Environmental Planning and Assessment Act	2-4
2.2.2	Permissibility	2-6
2.2.3	Environmental Planning Instruments	2-7
2.3	RELATIONSHIP TO OTHER NEW SOUTH WALES LEGISLATION .....	2-9
2.3.1	Section 75U EP&A Act 1979	2-9
2.3.2	Section 75V EP&A Act 1979	2-10
2.3.3	Mining Act 1992	2-10
2.3.4	Protection of the Environment Operations Act 1997	2-11
2.3.5	Roads Act 1993	2-11
2.3.6	Water Act 1912 and Water Management Act 2000	2-11
2.3.7	Crown Lands Act 1989	2-12
2.3.8	Coal Mine Health and Safety Act 2002	2-12
2.3.9	<i>Fisheries Management Act 1994</i>	2-12
2.3.10	<i>Heritage Act 1977</i>	2-12
2.3.11	<i>National Parks and Wildlife Act 1995</i>	2-12
2.3.12	<i>Native Vegetation Act 1995</i>	2-13
2.4	COMMONWEALTH LEGISLATION.....	2-13
2.4.1	Environment Protection and Biodiversity Conservation Act 1999	2-13
2.5	SECTION 94 CONTRIBUTION AND VOLUNTARY PLANNING AGREEMENT .....	2-13
2.6	SUMMARY OF LICENCES, APPROVALS AND PERMITS .....	2-13

### Tables

Table 2.1:	Summary of existing and required licences, approvals and permits. ....	2-14
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## 2 PROJECT APPROVAL FRAMEWORK

### 2.1 Introduction

This section provides an assessment of the proposed SEOC project and modification to the existing ACP development consent having regard to State and Commonwealth legislation.

In New South Wales, the EP&A Act, 1979 is the principal form of legislation that governs, controls and guides land use (planning and development) throughout the state. The EP&A Act, 1979 is supported by a series of State Environmental Planning Policies (SEPPs), Regional and Local Environmental Planning instruments.

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).
- 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 is 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.

On 26 June 2008 ACOL and its representatives presented the SEOC Conceptual Project Development Plan (CPDP) to the Department of Primary Industries – Mineral Resources (now Department of Industry and Investment – DII). From this meeting support was given to the CPDP to allow ACOL to begin its assessment of the SEOC proposal under the EP&A Act, 1979.

## 2.2 Core New South Wales Legislation

### 2.2.1 Environmental Planning and Assessment Act

On 6 August 2008 a letter was sent to the Department of Planning requesting that the SEOC project be considered a project to which Part 3A of the EP&A Act, 1979 applies and for the Department of Planning to convene a Planning Focus Meeting.

#### 2.2.1.1 Major Project and Approval Authority

##### **South East Open Cut Project**

On 9 September 2008, the Director-General, as delegate of the Minister for Planning, formed an opinion under Clause 6(1) of *State Environmental Planning Policy (Major Projects) 2005* (now *State Environmental Planning Policy (Major Developments) 2009*), that the Ashton South East Open Cut Coal Project is 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.

The SEOC Project was then assigned Major Project Number 08\_0182.

The approval authority for the project will be the Minister for Planning pursuant to the provisions of Part 3A (Major Projects) of the EP&A Act 1979 and *State Environmental Planning Policy (Major Development) 2005*.

##### **Existing Development Consent Modification**

The ACP was granted development consent under Part 4 of the EP&A Act, 1979 as designated, state significant, integrated development in October 2002 by the Minister for Planning.

ACOL is seeking approval from the Minister for Planning to modify DA 309-11-2001 pursuant to Section 75W of the EP&A Act, 1979

Had the ACP been approved after the commencement of Part 3A of the EP&A Act, 1979 the ACP would have been a project to which Part 3A applies because it is development for the purposes of coal mining (Schedule 1, Group 2 of the *State Environmental Planning Policy (Major Development) 2005*).

Consequently the ACP is "A *development consent in force immediately before the commencement of Part 3A*" of the EP&A Act, 1979 "...*that would be a project to which Part 3A of the [EPA] Act applies but for the operation of clause 6(2) (a) of State Environmental Policy (Major Projects) 2005*".

As such the ACP consent meets the prerequisite in Clause 8(J) 8 of the EP&A Regulations 2000 entitling the Minister to "...*approve of the development consent [ACP Consent] being treated as an approval for the purposes of Section 75W of the [EPA] Act*".

As outlined above, Section 75W of the EP&A Act permits the Minister to modify a Part 4 development consent pursuant to part 3A. This section addresses whether the modifications to the existing Ashton development consent constitute a modification.

The ACP development consent (DA309-11-2001) has the following key components:

- Development of an open cut mine (known as the North East Open Cut) and an underground mine.
- A maximum extraction rate of 5.2Mtpa of ROM coal.
- The construction of surface facilities including coal handling preparation plant, stockpiles, rail load out facilities and administration buildings.

The ACP development consent has been modified three times since it was granted. They are considered to be minor modifications.

At the time of the lodgment of this EA, a separate application to modify the existing Ashton development consent (known as Mod 4) has been lodged with the Department of Planning. This application seeks to modify pursuant to s 75W the existing Ashton development consent by mining an additional longwall panel and increasing the production rate by 250,000tpa.

The modifications sought by this application (listed in *Section 4.1*) will not result in a radical transformation of the existing ACP development consent for the following reasons:

- The modifications are required to integrate the existing ACP operations with the proposed SEOC and allow the ACP operations to be used to handle and process coal from the SEOC
- Receiving coal from the SEOC does not change the character or use of the existing Approved ACP infrastructure.
- The increase in through put from 5.2 Mtpa to 8.6Mtpa does not change the production rates of the existing approved underground mine which will remain within the approved 5.2Mtpa extraction limit.
- The increase in throughput is required to handle and process coal from the SEOC in conjunction with coal from the underground mine. This does not change the character or use of the existing ACP operations.
- Only minor infrastructure reconfigurations and upgrades will be built at the existing ACP operations to accommodate the processing and handling of SEOC coal.
- The disposal of reject from the underground mine in the SEOC does not change the character of the existing consent which permits disposal in both the NEOC and the Ravensworth Voids.

Accordingly when considered against the existing ACP development consent the modifications sought by the s75W application do not result in a radical transformation of the existing ACP development consent. Accordingly, it is within the power of the Minister to modify the existing ACP development consent pursuant to s 75W.

The proposed modification to the existing ACP consent has the reference number DA 309-11-2001 MOD 5.

### **2.2.1.2 Major Project Applications – Environmental Assessment Requirements**

A Major Projects Application pursuant to Section 75E of the EP&A Act, 1979 for the SEOC Project and an application to modify an existing development consent pursuant to Section 75W were lodged with the Department of Planning, with a supporting Preliminary Environmental Assessment Report on 11 March 2009. On 20 May 2009 the Department of Planning issued the requirements for both the proposed SEOC Project and the proposed modifications pursuant to Section 75F of the EP&A Act, 1979.

A summary of the requirements is contained within *Section 1*, while a complete copy is contained within **Appendix 1**.

### **2.2.1.3 Assessment and Determination of the Project Applications**

The EA report will be assessed by the Director General of Planning pursuant to Section 75H (2) of the EP&A Act, 1979 to ensure the report adequately addresses the Environmental Assessment Requirements.

Where the EA report adequately addresses the Environmental Assessment Requirements the Director General may accept the report and place it on public exhibition for a minimum period of 30 days.

An assessment of the SEOC project and proposed modifications will be prepared by the Director General of Planning and provided to the Minister for Planning for consideration and determination pursuant to Section 75J of EP&A Act, 1979.

## 2.2.2 Permissibility

### 2.2.2.1 Introduction

Under Section 75J (3), the Minister for Planning when deciding whether to approve the carrying out of a project may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of Section 75R) apply to the project if approved. However, the EP&A Regulations 2000 may preclude approval for the carrying out of a class of project that such an instrument would otherwise prohibit.

In this respect, Clause 8O of the EP&A Regulations 2000 states:

**“8O Other projects prohibited by environmental planning instruments for which project approval may not be given**

(1) For the purposes of section 75J (3) of the Act, approval for the carrying out of a project may not be given under Part 3A of the Act for any project, or part of a project, that:

(a) is not the subject of an authorization or requirement under section 75M of the Act to apply for approval of a concept plan, and

(b) is prohibited by an environmental planning instrument that would not (because of section 75R of the Act) apply to the project if approved.”

Clause 8O(2) of the EP&A Regs clarifies this by adding that a project is not prohibited under section 75J(3) if it is permitted under another EPI. Accordingly, it is necessary to consider whether the SEOC is prohibited by an environmental planning instrument.

### 2.2.2.2 SEPP (Mining)

Clause 7 of *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (SEPP (Mining))* 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](#),”

The SEOC will constitute mining carried out at surface level, while the modification to the existing ACP consent comprises both underground mining and is consistent with Clause b (ii).

The SEOC and associated facilities will be permissible under Clause 7(1) (b) of SEPP (Mining) if development for the purposes of agriculture or industry may be carried out (with or without development consent) under the terms of the relevant environmental planning instrument. It is therefore necessary to consider the zonings of the land and land uses permitted under the *Singleton Local Environmental Plan 1996* to determine whether the land upon which the SEOC and associated facilities are proposed that mining, agriculture or industry is permissible development.

### 2.2.2.3 Singleton Local Environmental Plan 1996

Under the Singleton Local Environmental Plan 1996, the SEOC project and associated facilities are located on land zoned 1(a) Rural, adjoining 1(d) Small Rural Holdings (refer to Plan 20 in Volume 2).

### **1(a) Rural Zone**

Mining is permissible with consent in the 1(a) Rural Zone. In addition, agriculture is permissible and accordingly under Clause 7(1) (b) (i) of SEPP (Mining) mining is permissible.

#### **2.2.2.4 Summary regarding permissibility**

The SEOC Project and modification to the existing ACP are permissible forms of development having regard to the provisions of Singleton Local Environmental Plan 1996 and Clause 7 of the SEPP (Mining).

Accordingly, the Minister for Planning is not precluded from granting approval to the SEOC project or the proposed modification by the provisions of Section 75J (3) of the EP&A Act 1979 and Clause 80 of the EP&A Regulations 2000.

### **2.2.3 Environmental Planning Instruments**

In addition to the SEPP (Mining) the following State Environmental Planning Policies (**SEPP's**) and Regional Environmental Plans may apply for consideration by the Minister for Planning for the proposed SEOC project, but for Section 75R which has the effect of removing the obligation for her to consider them but allows her to do so if she so elects. The development of the SEOC project is not prohibited by any of these instruments.

#### **2.2.3.1 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 an industry, it is acknowledged that there may be potential risks associated with the proposed development. A preliminary hazard analysis (PHA) that complies with the relevant guidelines has been prepared and forms part of the EA report.

#### **2.2.3.2 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 SEOC and has determined the SEOC project area does not contain any potential or core koala habitat.

#### **2.2.3.3 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 may include 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 by mining or for mining associated purposes. Should contaminated sites be encountered during construction and operation of the project, these sites will be assessed and treated as required.

#### **2.2.3.4 State Environmental Planning Policy (Major Development) 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.

### 2.2.3.5 SEPP (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 SEOC 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. ACOL will observe the conditions of this SEPP in regards to infrastructure development and when modifying existing infrastructure.

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

This SEPP repeals the SEPP No. 45 – Permissibility of Mining. This 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. The SEPP allows underground mining and mining at surface level to be undertaken with development consent, providing the provisions of the relevant planning instruments are satisfied. The Policy establishes appropriate planning controls to encourage ecologically sustainable development.

According to clause 5(3) of the SEPP “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.

Clause 7 of the SEPP 2007 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](#),”*

The SEOC project constitutes mining carried out at the surface level on land zoned 1(a) Rural. Surface level mining is permissible under clause 7(1) (b) of the SEPP as agriculture can be carried out without development consent in 1(a) Rural.

#### **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 SEOC and ACP. Since the area in the vicinity of the ACP and the SEOC 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 ACP as modified and the SEOC 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 5.7 (greenhouse gas), 5.10, 5.11, 5.12 and 5.13, (groundwater and surface water) and 5.16 and 5.17 (ecology) of this EA respectively provide an assessment of the impacts of the ACP (as modified) and the SEOC on these facets of the environment. The mitigation and management measures proposed by ACOL to minimise such effects are detailed in those sections.
- Clause 15 details considerations required regarding efficiency of resource recovery and waste minimisation. *Section 4* of this EA details the resource recovery initiatives proposed by ACOL in relation to the SEOC and ACP modification. *Section 5.26* of this EA provides the waste management practices that ACOL will employ in the construction and management of ACP modification and SEOC.
- Clause 16 details the considerations of the effect of the development on the public road system. The effect of the SEOC on roads in the area is discussed in *Section 5.22*.
- 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 5.25, 5.29 and 5.30*

#### 2.2.3.7 Hunter Regional Environmental Plan 1989

As of 1 July 2009 the Hunter Regional Environmental Plan 1989 was repealed by the State Environmental Planning Policy (Repeal of REP Provisions) 2009. Accordingly, assessment against the provisions of this instrument is not required.

## 2.3 Relationship to other New South Wales Legislation

In addition to major project approval under the EP&A Act, 1979 the SEOC project will also require authorisations under various laws. These are discussed below.

### 2.3.1 Section 75U EP&A Act 1979

Pursuant to Section 75U of the EP&A Act, 1979 there are a number of authorisations that will not be required for the SEOC if approval is granted by the Minister for Planning under Part 3A and the SEOC becomes an approved project. Relevantly, the authorisations that will not apply because of Section 75U include:

- A permit under Section 87 or a consent under Section 90 of the *National Parks and Wildlife Act 1974*.
- 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*.
- *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.
- *Native Vegetation Act 2003* - authorisation to clear native vegetation.

### 2.3.2 Section 75V EP&A Act 1979

Pursuant to Section 75V of the EP&A Act, 1979 there are a number of authorisations that must be issued in terms substantially consistent with the Part 3A approval if such approval is required for the conduct of the approved project. These authorisations are (relevantly):

- A mining lease under the *Mining Act 1992*.
- An environment protection licence (EPL) 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).
- Consent under Section 138 of the *Roads Act 1993*.

### 2.3.3 Mining Act 1992

A mining lease will be required to carry out the SEOC project. If the SEOC project becomes an approved project the Minister for Mineral Resources must issue a mining lease in terms that are substantially consistent with the project approval granted by the Minister for Planning.

#### 2.3.3.1 Section 58 and Section 62

Under Section 58 of the Mining Act 1992 a mining lease cannot be granted over an existing exploration title without the written consent of the title holder. The SEOC project includes the construction of an out of pit emplacement and facilities within the neighbouring Authorisation A81 held by Navidale Pty Limited. Consultation has been undertaken with the holders of A81. Navidale Pty Limited have provided a letter of support for the SEOC Major Project Application. Ongoing consultation is directed towards some form of agreement that will enable the transfer of the surface entitlements.

Under Section 62 of the Mining Act 1992 a mining lease cannot be granted within prescribed distances of dwelling-houses, gardens and improvements without the written consent of the landholder. However, it is not necessary for the NSW Minister for Planning under the EP&A Act 1979 to have regard to the limitations and protections of the Mining Act 1992 when determining the project application. Those limitations and protections will be activated when an application for a mining lease is lodged, notification is given to landholders, an objection or claim can be made by the landholder and any dispute is referred to the Land & Environment Court (for dwelling houses and gardens) or a valuer (for substantial improvements).

#### 2.3.3.2 Mine Operations Plan and Subsidence Management Plan

Any approval for ACP modification and SEOC will require that all mining be in accordance with a Mine Operations Plan (MOP) and that sub-surface mining be in accordance with a Subsidence Management Plan (SMP) approval, 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.

#### 2.3.3.3 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 sub-surface mining is to occur.

#### 2.3.3.4 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*.

### 2.3.3.5 Compensation for Compensable Loss

Part 13 of the Mining Act contains provisions enabling any landholder 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 ACOL by the grant of the mining lease.

### 2.3.3.6 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*.

## 2.3.4 Protection of the Environment Operations Act 1997

An Environment Protection Licence (EPL) under the *Protection of the Environment Operations Act 1997* will be required for the SEOC project. If the SEOC becomes an approved project the Department of Environment and Climate Change (DECC) must issue an Environment Protection Licence (EPL) in terms that are substantially consistent with the project approval granted by the Minister for Planning.

The existing ACP EPL 11879 will be amended to incorporate the proposed SEOC, thereby providing integrated environmental reporting.

## 2.3.5 Roads Act 1993

The SEOC project requires the closure of minor local roads and unformed "paper" roads which will be affected by open cut mining. A new intersection with the New England Highway for the main access road and a conveyor crossing of the New England Highway is required for the SEOC Project. An approval under Section 138 of the *Roads Act 1993* from the Roads and Traffic Authority (RTA) and Singleton Council will be required for these works. If the SEOC project becomes an approved project the RTA and Singleton Council must issue approvals under Section 138 in terms that are substantially consistent with the project approval granted by the Minister for Planning.

## 2.3.6 Water Act 1912 and Water Management Act 2000

The ACP and SEOC area are currently administered under both the Water Act 1912 and the Water Management Act 2000 with respect to water approvals and licensing.

The following water sharing plans are in force or will soon be in force for the area:

- *Water Sharing Plan for the Hunter Regulated River Water Source 2003* – applies to Glennies Creek and the unconsolidated alluvial sediments underlying waterfront land (i.e. within 40m of the top bank).
- *Hunter Unregulated and Alluvial Water Sources Water Sharing Plan* – applies to the unregulated alluvial water sources (outside of Glennies Creek) located within the Glennies Creek Extraction Management Unit within the Hunter Catchment.

On 24 July 2009 the Hunter Unregulated and Alluvial Water Sources Water Sharing Plan was gazetted and commenced on 1 August 2009. The licensing provisions of the Water Management Act 2000 will apply once a proclamation is made under section 55A of the Water Management Act 2000. It is expected that this will occur shortly and thereafter the licensing provisions of the Water Management Act 2000 will apply to all of the waters contained within the project area other than water within the fractured rock aquifers and basement rock.

Waters within the fractured rock aquifers and basement rocks will continue to be governed by the Water Act 1912.

Under the *Hunter Unregulated and Alluvial Water Sources Water Sharing Plan*, the licensing of activities, water use, water works and approvals provisions of Water Management Act 2000

(contained within Parts 2 and 3 of Chapter 3 of the Water Management Act 2000) will apply to the area of the ACP and SEOC.

ACOL will be required to obtain the relevant licences in consultation with the NSW Office of Water to cater for the project's predicted impacts on water resources pursuant to the relevant legislation.

By virtue of Section 75U of the EP&A Act 1979 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 which has been approved under Part 3A of the EPA Act. Section 75U does not provide any exemption from the obligation to secure a Water Access Licence (under Section 56 of the Water Management Act 2000).

### **2.3.7 Crown Lands Act 1989**

The approval of the Department of Lands will be required under the *Crown Lands Act 1989* for any works or mining in Crown road reserves or on Crown land. This will apply in respect of Crown roads within the project area and the Camberwell Village Temporary Common.

The Camberwell Temporary Common is also administered by the Commons Management Act 1989 and Commons Management Regulation 2006, by the Common Trust and the Department of Lands.

Refer to *Section 4.7* for further detail on Crown roads and the Temporary Common.

### **2.3.8 Coal Mine Health and Safety Act 2002**

The primary objective of the *Coal Mine Health and Safety Act 2002* is to assist in securing the objects of the *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 2002* ACOL 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.

### **2.3.9 Fisheries Management Act 1994**

The New South Wales *Fisheries Management Act 1994* declares and lists threatened species of fish and marine vegetation and endangered populations and ecological communities. It 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 this Act are not required for the SEOC.

The mitigation measures proposed by ACOL to minimise the impact of ACP modification and SEOC on aquatic ecology are discussed in *Section 5.17*.

### **2.3.10 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 ACP modification and SEOC and the related mitigation measures proposed by ACOL are discussed in *Sections 5.19* and *5.20*.

### **2.3.11 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 SEOC Project Area which have a significant potential to contain Aboriginal objects are detailed in *Section 5.19*. The proposed procedures for dealing with Aboriginal items are described in *Section 5.19*.

### 2.3.12 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 of the NV Act the prohibitions of clearing native vegetation do 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 SEOC (if approved).

The effect of ACP modification and SEOC on native vegetation and the mitigation measures proposed by ACOL are detailed in *Section 5*.

## 2.4 Commonwealth Legislation

### 2.4.1 Environment Protection and Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) Cth defines actions that are likely to have a significant impact on a matter of national environmental significance as “controlled actions”. The EPBC Act prohibits the taking of controlled actions without an approval under Part 9 of the EPBC Act.

MNES include (relevantly) listed threatened species and listed ecological communities and listed migratory species.

Flora and fauna surveys undertaken as part of the assessments for this EA have determined there will be no significant impact or likelihood of significant impact from the SEOC or the modification to the ACP to MNES. However a referral under the EPBC Act, 1979 has been made.

## 2.5 Section 94 Contribution and Voluntary Planning Agreement

The Singleton Section 94 Contribution plan (S94 Plan) provides for the provision, extension or augmentation of public amenities and services to satisfy the additional demand that may result from a development. The development of the SEOC does not seek any additional permanent jobs, nor additional demand on public amenities and services provided by Singleton Council, as such no contribution under the S94 Plan is proposed. ACOL will seek to enter into a Voluntary Planning Agreement (VPA) with Singleton Council for the implantation of an enhancement program for Camberwell village.

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

## 2.6 Summary of Licences, Approvals and Permits

**Table 2.1** contains a summary of the licences, approvals and permits currently held (including the immediate history) by ACOL for the existing ACP and those that will be required for proposed SEOC project and modification to the existing ACP development consent. A copy of the Development Consent (as amended) and the EPL is provided within **Appendix 2**, copies of the other approvals can be downloaded from the Ashton Coal website [www.ashtoncoal.com.au](http://www.ashtoncoal.com.au).

**Table 2.1: Summary of existing and required licences, approvals and permits.**

Detail	Granted	Expiry	Status	Amendments / New Approvals Required	
				ACP Modification	SEOC Project
<b>PLANNING APPROVALS</b>					
309-11-2001-i Development Consent	11/10/02	11/10/23	Current	MOD 5 proposed to amend consent	MOD 5 provides for inclusion of SEOC coal.
309-11-2001-i (MOD 1) Modification to Development Consent (allows EPA to specify noise criteria in Table 5)	15/10/03	11/10/23	Current	-	-
309-11-2001-i (MOD 2) Modification to Development Consent (permits 10 m increase in height of Eastern Emplacement Area)	27/01/05	11/10/23	Current	-	-
309-11-2001-i (MOD 3) Modification to Development Consent (for the construction and operations of tailings pipelines between the mine and the former Ravensworth Mine)	19/02/07	11/10/23	Current	-	-
309-11-2001-i-(MOD 4) – Modification to Development Consent (for an additional Longwall Panel, an increase in annual underground coal ROM production to 3.2Mtpa and deletion of specific conditions of consent)			Under consideration by Minister of Planning	MOD 4 proposed to amend consent.	
Approval of MPA 08_0182 pursuant to S75E in Part 3A of the EP& A Act 1979				-	Approval required.
Approval of DA 309-11-2001-MOD5 pursuant to S75W in Part 3A of the EP&A Act 1979				Approval required	-
<b>MINING TENEMENTS</b>					
ML 1533 (Open Cut & facilities)	26/02/03	26/02/24	Current	-	-
ML 1529 (Underground)	17/09/03	11/11/12	Current	-	-
ML 1623 (Underground)	30/10/08	30/10/29	Current	-	-
Exploration Licence (EL) 5860	14/03/04	21/05/09	Current	-	ML within this tenement
Exploration Licence (EL) 4918	17/09/99	17/12/10	Current	-	ML within this tenement
Authorisation (A) 81 (held by Navidale Pty Limited)	04/04/77	16/12/2009	Current	-	ML within this tenement
<b>Environment Protection Licences (EPL)</b>					
EPL 11879 (as amended) (Open Cut Area and processing facilities)	02/09/03 (28/04/09)	06/11/11	Current	-	EPL 11879 to be amended to incorporate the SEOC.
<b>MINING OPERATIONS PLAN</b>					
MOP for the Ashton Coal Mine (amalgamation of the open cut and underground MOPs)	01/09/08	31/12/12	Current	Variation required for the incorporation of the SEOC Project.	Interim stand alone MOP will be sought for construction and first 12 months. Then variation to existing ACP MOP.

Detail	Granted	Expiry	Status	Amendments / New Approvals Required	
				ACP Modification	SEOC Project
<b>SUBSIDENCE MANAGEMENT PLAN</b>					
Subsidence Management Plan (for the extraction of LW1-4)	08/03/07	01/03/14 or upon expiry or release of ML 1533	Current	-	-
Subsidence Management Plan (for the extraction of LW5-9)	02/07/09		Current	-	-
<b>MINING RELATED APPROVALS</b>					
Clause 88(1) approval for safe operations and stability of workings and resource recovery longwall mining	28/02/07	1/06/11	Current	-	-
S126 Approvals for emplacement of carbonaceous materials Ravensworth Void 4	08/04/04	NA	Current	-	-
S126 Approvals for emplacement of carbonaceous materials Ravensworth Void 4	17/01/07	NA	Current	-	-
S126 Approvals for emplacement of carbonaceous materials in the SEOC Void.				-	Approval required prior to tailings emplacement.
<b>WATER LICENCES</b>					
Surface Water Licences:					
<ul style="list-style-type: none"> <li>• 20AL201311 Glennies Creek High Security 3ML</li> <li>• 20AL203056 Glennies Creek Supplementary 4ML</li> <li>• 20AL200568 Glennies Creek Stock and Domestic 3ML</li> <li>• 20AL201712 Glennies Creek Stock and Domestic 3ML</li> <li>• 20AL201083 Glennies Creek Stock and Domestic 3ML</li> </ul>	N/A	30/06/17  11/03/09  01/07/06  30/06/17  23/05/08	Current	-	-
<ul style="list-style-type: none"> <li>• 20AL200508 Glennies Creek Stock and Domestic 3ML</li> <li>• 20AL200690 Glennies Creek Stock and Domestic 3ML</li> <li>• 20AL201031 Glennies Creek Stock and Domestic 8ML</li> <li>• 20AL201624 Hunter River High Security 3ML</li> <li>• 20AL201625 Hunter River General Security 335ML</li> <li>• 20AL203106 Hunter River Supplementary 15.5 ML</li> <li>• 20SL044434 Bowmans Creek Irrigation 366ML</li> <li>• 20SL042214 Bowmans Creek Irrigation</li> </ul>		30/06/17  TBC  30/06/17  07/04/09  07/04/09  07/04/09  16/10/09  23/02/12		-	-

Detail	Granted	Expiry	Status	Amendments / New Approvals Required	
				ACP Modification	SEOC Project
14ML					
<ul style="list-style-type: none"> <li>Surface Water Licence for dams above the MHRDC.</li> </ul>				-	Licences if required, will be obtained.
Groundwater Licences:					
<ul style="list-style-type: none"> <li>20BL136766 Stock Domestic</li> </ul>	12/01/88	Perpetuity	Current	-	-
<ul style="list-style-type: none"> <li>20BL168848 Test Bore</li> </ul>	27/08/03	Perpetuity	Current	-	-
<ul style="list-style-type: none"> <li>20BL168849 Test Bore</li> </ul>	27/08/03	Perpetuity	Current	-	-
<ul style="list-style-type: none"> <li>20BL169508 Mining 10ML</li> </ul>	15/03/05	14/03/10	Current	-	-
<ul style="list-style-type: none"> <li>20BL169937 Mining 100ML</li> </ul>	06/04/06	5/04/08	Current	-	-
<ul style="list-style-type: none"> <li>20BL170596 Monitoring</li> </ul>	16/10/06	Perpetuity	Current	-	-
<ul style="list-style-type: none"> <li>20BL171364 Mining 100ML</li> </ul>	17/05/07	16/05/12	Current	-	-
<ul style="list-style-type: none"> <li>Groundwater licence required for use of Permian strata groundwater in SEOC under the Water Act 1912.</li> </ul>				-	Licences if required, will be obtained.
<ul style="list-style-type: none"> <li>Groundwater licence required for use of alluvial/ colluvial groundwater in SEOC under Water Management Act 2000 / Water Sharing Plan.</li> </ul>				-	Licences if required, will be obtained.
<b>WATER APPROVALS</b>					
Part 3A (Rivers and Foreshores Improvement Act 1948 – Act now repealed) permit No P1819 to install two power poles near Bowmans Creek	05/12/03	05/12/04	Current	-	-
Permit No CW802609 to construct levee bank on Bowmans Creek	08/09/03	07/09/08	Current	-	-
<b>HERITAGE</b>					
AHIMS Permit No 1591 to collect Aboriginal artefacts north of the New England Highway under S90 of NPW Act	21/07/03	21/07/08	Complete	-	-
AHIMS Permit No 2783 to collect Aboriginal artefacts EWA86 under S90 of NPW Act	28/09/07	NA	Current	-	-
<b>BUILDING CONSTRUCTION APPROVALS</b>					
Construction Certificates (CC) from Singleton Council issued under the Environmental Planning and Assessment Regulation 2000				-	CC required prior to construction of certain buildings in the infrastructure and facilities areas.
Occupation Certificates (OC) from Singleton Council issued under the Environmental Planning and Assessment Regulation 2000				-	OC required prior to use of certain buildings in the infrastructure and facilities areas.
<b>ROAD RELATED APPROVALS</b>					
S138 permit under the Roads Act 1993 from					Permit required at:

Detail	Granted	Expiry	Status	Amendments / New Approvals Required	
				ACP Modification	SEOC Project
Singleton Council and the RTA for works within the New England Highway Road Reserve, or other local road.					<ul style="list-style-type: none"> <li>• Access Road Location</li> <li>• Drainage Culverts</li> <li>• Highway Conveyor Crossing</li> </ul>
Approval to temporarily close the New England Highway and other local roads when blasting within 500m.					
<b>OTHER APPROVALS</b>					
Licensing of Dangerous Goods pursuant to the Occupational Health and Safety Act 2000, and Occupational Health and Safety (Dangerous Goods Amendment) Regulation – 2005.					Licencing required for dangerous goods (e.g. diesel and ANFO / magazine storage)
Approvals under the Crown Land Act 1989 from the Department of Lands and Singleton Council for closure of Crown Roads.					Approval required for southern end of Glennie Street and potentially Perry Street, Camberwell.
Approvals under the Commons Management Act 1989 for closure or relocation of the Temporary Common					Approvals required for Temporary Common on Glennie Street, Cambwerwell
<i>S/S – superseded</i> <i>N/A – Not available</i>					