



# Tasman Extension Project Environmental Impact Statement

## ATTACHMENT 3

# RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

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### **A3 RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

This Attachment provides further discussion on the requirements and application of State Environmental Planning Policies (SEPPs), Local Environmental Plans (LEPs) and relevant strategic planning documents to the Tasman Extension Project (the Project).

References to Sections 1 to 7 in this Attachment are references to the Sections of the Main Report of the Environmental Impact Statement (EIS). Internal references within this Attachment are prefixed with “A3”.

#### **A3.1 STATE ENVIRONMENTAL PLANNING POLICIES**

##### **A3.1.1 State Environmental Planning Policy (State and Regional Development) 2011**

Clause 3 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) outlines the aims of the SEPP, including the following of relevance to the Project:

- (a) *to identify development that is State significant development,*

...

The Project falls within clause 5 of Schedule 1 of the State and Regional Development SEPP as it represents development for the purpose of coal mining, and as it requires development consent it therefore comprises State Significant Development for the purposes of the New South Wales (NSW) *Environmental Planning and Assessment Act, 1979* (EP&A Act) (Section 6.2.2).

##### **A3.1.2 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development**

*State Environmental Planning Policy No. 33 – Hazardous and Offensive Development* (SEPP 33) applies to the whole of NSW.

Clause 2 sets out the aims of SEPP 33, the following being relevant to the Project:

- (a) *to amend the definitions of hazardous and offensive industries where used in environmental planning instruments, and*

...

- (d) *to ensure that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and*

- (e) *to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimise any adverse impact, and*

...

For the purposes of a potentially hazardous industry, clause 12 of SEPP 33 requires that a preliminary hazard analysis (PHA) must be prepared in accordance with the current circulars or guidelines published by the NSW Department of Planning (DoP) (now NSW Department of Planning and Infrastructure [DP&I]) and the analysis submitted with the Development Application.

Clause 13 of SEPP 33 requires that in determining an application to carry out development for the purposes of a potentially hazardous industry or potentially offensive industry, the consent authority (in this case the NSW Minister for Planning and Infrastructure [the Minister]) must consider:

- (a) *current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*

- (b) *whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*

- (c) *in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*

- (d) *any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) *any likely future use of the land surrounding the development.*

In accordance with the Director-General's Requirements (DGRs) and as part of the preparation of this EIS, a PHA has been conducted in accordance with SEPP 33 (Appendix N). The PHA has been prepared in accordance with the general principles of risk evaluation and assessment outlined in *Multi-Level Risk Assessment* (DP&I, 2011). In addition, the PHA considers the qualitative criteria provided in *Hazardous Industry Planning Advisory Paper No. 4: Risk Criteria for Land Use Safety Planning* (DoP, 2011a) and has been documented in general accordance with *Hazardous Industry Planning Advisory Paper No. 6: Hazard Analysis* (DoP, 2011b).

Extensive consultation has been undertaken with public authorities during the preparation of this EIS as described in Section 3.1.

Project alternatives (including the location of the new pit top and other ancillary surface facilities) are discussed in Section 6.7.2.

The land surrounding the Project site comprises a wide range of rural, conservation, forestry and infrastructure zonings under the LEPs as discussed in Sections A3.2, A3.3 and A3.4.

Consideration of the potential for the Project to adversely affect Sugarloaf State Conservation Area and Heaton State Forest and measures proposed to reduce and minimise any potential impacts are discussed in Section 4.3.3.

Consideration of the potential for the Project to adversely affect surface development is provided in Appendix A and Sections 4.2 and 4.3. Management of mine subsidence to minimise potential impacts on surface infrastructure is provided in Appendix A and Sections 2.6.3 and 4.2.

Accordingly the Minister can be satisfied as to these matters.

### A3.1.3 State Environmental Planning Policy No. 44 – Koala Habitat Protection

*State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP 44) requires the council in certain Local Government Areas (LGAs) (including Cessnock and Lake Macquarie) to consider whether the land which is the subject of the Development Application is “potential koala habitat” or “core koala habitat”.

Clause 9 of SEPP 44 requires:

- (1) *Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a core koala habitat, there must be a plan of management prepared in accordance with Part 3 that applies to the land.*
- (2) *The council's determination of the development application must not be inconsistent with the plan of management.*

Since the Project is State Significant Development to which Division 4.1 of Part 4 of the EP&A Act applies, the Minister is the consent authority (Section 6.2.2) rather than Council.

Clause 5(2) of SEPP 44 states that the SEPP:

*...does not apply to land dedicated or reserved under the National Parks and Wildlife Act 1974...*

Sugarloaf State Conservation Area is reserved under the *National Parks and Wildlife Act, 1974* and hence SEPP 44 does not apply to the reserved land.

An assessment of koala habitat for the purposes of SEPP 44 has been undertaken (Section 4.9 and Appendix G) and this assessment has found that portions of the Development Application area outside the Sugarloaf State Conservation Area comprise potential koala habitat, but the Development Application area does not comprise core koala habitat.

Accordingly the Minister can be satisfied as to these matters.

### A3.1.4 State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) applies to the whole of NSW and is concerned with the remediation of contaminated land. It sets out matters relating to contaminated land that a consent authority must consider in determining an application for development consent. “Contaminated land” in SEPP 55 has the same meaning as it has in Part 7A of the EP&A Act:

**contaminated land** means land in, on or under which any substance is present at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Clause 7(1) of SEPP 55 provides that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Clause 7 of SEPP 55 further provides:

- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subclause (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is:

- (a) land that is within an investigation area,
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,

...

Clause 7(2) provides that before a consent authority determines an application for development consent, a “preliminary investigation” is required where:

- the application for consent is to carry out development that would involve a “change of use”; and
- that “change of use” is to certain land specified in clause 7(4).

The certain land specified in clause 7(4) on which the “change of use” must relate is either:

- land that is an “investigation area” – defined in SEPP 55 as land declared to be an investigation area by a declaration in force under Division 2 of Part 3 of the *Contaminated Land Management Act, 1997*; or
- land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines (being *Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land* [Department of Urban Affairs and Planning and Environmental Protection Authority, 1998]) is being, or is known to have been carried out.

The portion of Project related to the continuation of the existing Tasman Underground Mine does not involve a “change of use” because the Project would involve the continued development of underground mining and associated activities within the existing mining tenements held by Donaldson Coal Pty Limited (Donaldson Coal).

The part of the Project described in Section 2 as the development of the new pit top facility and other surface infrastructure and the future extension of underground mining activities into Mining Lease Application (MLA) areas would involve a change of use.

Ardill Payne & Partners (Appendix P) completed a Preliminary Investigation of the MLA areas in accordance with *Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land*. This investigation included a desktop review, site inspection and a sampling program. Following review of the results of the investigation, Ardill Payne & Partners concluded no further investigation was required and that the MLA areas are suitable for the Project use, following the licensed removal of a small amount of asbestos material illegally dumped at the new pit top facility area (Appendix P).

In addition, Ardill Payne & Partners (Appendix P) completed a review of the contamination status of the existing Tasman Underground Mine operational areas and the remainder of the Development Application area. Ardill Payne & Partners concluded that while there may be some localised areas of contamination associated with existing operational areas such as the workshops, that Donaldson Coal implement management measures to control the potential impacts of these activities and the existing operational areas are suitable for use by the Project (Appendix P). Land contamination management measures, including post-mining investigation and remediation measures are described in Sections 4.3 and 5.

Accordingly the Minister can be satisfied as to these matters.

#### **A3.1.5 State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007**

The *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP) applies to the whole of NSW.

##### **Part 1 - Clause 2**

Clause 2 sets out the aims of the Mining SEPP, as follows:

- (a) *to provide for the proper management and development of mineral, petroleum and extractive material resources for the purpose of promoting the social and economic welfare of the State, and*
- (b) *to facilitate the orderly and economic use and development of land containing mineral, petroleum and extractive material resources, and*

- (c) *to establish appropriate planning controls to encourage ecologically sustainable development through the environmental assessment, and sustainable management, of development of mineral, petroleum and extractive material resources.*

##### **Part 2 - Clause 7**

Clause 7(1) of the Mining SEPP states that development for any of the following purposes may be carried out only with development consent:

- (a) *underground mining carried out on any land,*

...

The Project requires development consent. Descriptions of the relevant LEP land use zones and the applicability of the Mining SEPP to Project permissibility are provided in Sections A3.2, A3.3 and A3.4.

##### **Part 3 – Clauses 12 to 17**

Part 3 of the Mining SEPP provides matters for consideration for development applications.

##### **Clause 12**

Clause 12 of the Mining SEPP requires that before determining an application for consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must:

- (a) *consider:*
  - (i) *the existing uses and approved uses of land in the vicinity of the development, and*
  - (ii) *whether or not the development is likely to have a significant impact on the uses that, in the opinion of the consent authority having regard to land use trends, are likely to be the preferred uses of land in the vicinity of the development, and*
  - (iii) *any ways in which the development may be incompatible with any of those existing, approved or likely preferred uses, and*
- (b) *evaluate and compare the respective public benefits of the development and the land uses referred to in paragraph (a) (i) and (ii), and*
- (c) *evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).*

As described in Section 4.3.1, the lands in the vicinity of the Project are used for rural residential, industrial, conservation (Sugarloaf State Conservation Area), State owned forestry (Heaton State Forest) and mining operations (existing Tasman Underground Mine).

Consideration of the potential for the Project to adversely affect surface development is provided in Appendix A and Sections 4.2 and 4.3. Management of mine subsidence to minimise potential impacts on surface infrastructure is provided in Appendix A and Sections 2.6.3 and 4.2.

The Project is not incompatible with existing, approved or likely adjoining land uses. As described in Sections 4 and 7, the Project would be operated in a manner as to minimise the potential impacts on the environment.

The development of the Project would result in significant socio-economic benefits to the regional economy and the State of NSW (Appendix M). The Socio-economic Assessment (Appendix M) includes a cost-benefit analysis of the Project, including the consideration of the public benefits of the Project.

Donaldson Coal would implement a progressive rehabilitation program (Section 5) which aims to rehabilitate the site to a state that would minimise the incompatibility of the Project with existing and future land uses in the area.

Accordingly the Minister can be satisfied as to these matters.

#### Clause 13

Clause 13 of the Mining SEPP requires that before determining any application for consent for development in the vicinity of an existing mine, petroleum production facility or extractive industry, to which this clause applies, the consent authority must:

- (a) *consider:*
  - (i) *the existing uses and approved uses of land in the vicinity of the development, and*
  - (ii) *whether or not the development is likely to have a significant impact on current or future extraction or recovery of minerals, petroleum or extractive materials (including by limiting access to, or impeding assessment of, those resources), and*

(iii) *any ways in which the development may be incompatible with any of those existing or approved uses or that current or future extraction or recovery, and*

(b) *evaluate and compare the respective public benefits of the development and the uses, extraction and recovery referred to in paragraph (a) (i) and (ii), and*

(c) *evaluate any measures proposed by the applicant to avoid or minimise any incompatibility, as referred to in paragraph (a) (iii).*

The Project includes the continuation of the existing approved Tasman Underground Mine in the Fassifern Seam, therefore clause 13 is applicable to the Project. The Project also involves the extension of the Tasman Underground Mine into the West Borehole Seam.

The Project is not incompatible with the completion of mining in the Fassifern Seam, however, the Project would involve the early completion of mining in the Fassifern Seam. This is because the coal quality, working conditions and the presence of geological structures in the Fassifern Seam make it currently less economic than mining in the West Borehole Seam. Notwithstanding, the underground mine access along with existing Tasman Underground Mine pit top may be placed under care and maintenance subject to necessary approvals under the *Mining Act, 1992*.

Donaldson Coal has progressively presented Project description information, mine layout plans and other information to the NSW Division of Resources and Energy (DRE) during the development of this EIS (Section 3.1). It is in the financial interest of Donaldson Coal to maximise the efficiency of coal recovery.

The Development Application area is covered by Petroleum Exploration Licence (PEL) 267 granted to AGL Upstream Investments Pty Limited. It is noted that PEL 267 expired on 19 January 2012 and Donaldson Coal is unaware of a current application to renew PEL 267 or any proposal for future coal seam gas extraction in this area. In addition, any coal seam gas reserve is likely to be located below the Fassifern and West Borehole Seams, and the Project would not impede future access to any resources.

There are no active quarries within the Development Application area. Daracon's Buttai Quarry and Stockrington Quarry are located approximately 5 km to the north and 3 km to the north-east of the Tasman Underground Mine, respectively, and are unlikely to be impacted by Project subsidence.

The Project would involve the construction of a roundabout with the Buttai Quarry access road on George Booth Drive for the new pit top facility. The roundabout would improve the performance of the intersection for trucks turning out of the Buttai Quarry access road.

Accordingly the Minister can be satisfied as to these matters.

#### Clause 14

Clause 14(1) of the Mining SEPP requires that before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring that the development is undertaken in an environmentally responsible manner, including conditions to ensure the following:

- (a) *that impacts on significant water resources, including surface and groundwater resources, are avoided, or are minimised to the greatest extent practicable,*
- (b) *that impacts on threatened species and biodiversity, are avoided, or are minimised to the greatest extent practicable,*
- (c) *that greenhouse gas emissions are minimised to the greatest extent practicable.*

In addition, clause 14(2) requires that, without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.

The potential impacts of the Project on groundwater and surface water resources are discussed in Sections 4.4 and 4.6 and Appendices B and C, including measures to minimise potential impacts. The potential impacts of the Project on threatened species and biodiversity are described in Sections 4.7 to 4.9 and Appendices E, F and G, including measures to minimise potential impacts.

The Project greenhouse gas emissions assessment is provided in Section 4.15 and Appendix J. Greenhouse gas abatement measures and relevant State or national policies, programs and guidelines are described in Sections 4.15 and 6.7.3.

Accordingly the Minister can be satisfied as to these matters.

#### Clause 15

Clause 15 of the Mining SEPP requires that:

- (1) *Before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider the efficiency or otherwise of the development in terms of resource recovery.*
- (2) *Before granting consent for the development, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at optimising the efficiency of resource recovery and the reuse or recycling of material.*
- (3) *The consent authority may refuse to grant consent to development if it is not satisfied that the development will be carried out in such a way as to optimise the efficiency of recovery of minerals, petroleum or extractive materials and to minimise the creation of waste in association with the extraction, recovery or processing of minerals, petroleum or extractive materials.*

Donaldson Coal has progressively presented Project description information, mine layout plans and other information to the DRE during the development of this EIS (Section 3.1). Constraints to the extent of the underground workings in the West Borehole Seam are described in Section 2.6.1.

As described above, the Project would involve the early completion of mining in the Fassifern Seam. This is because the coal quality, working conditions and the presence of geological structures in the Fassifern Seam make it currently less economic than mining in the West Borehole Seam. Notwithstanding, the underground mine access along with existing Tasman Underground Mine pit top may be placed under care and maintenance subject to necessary approvals under the *Mining Act, 1992*.

It is in the financial interest of Donaldson Coal to maximise the efficiency and long-term value of mining operations and coal production.

The processing of run-of-mine (ROM) coal and handling and disposal of tailings and coarse rejects do not form part of the Project as these activities would be covered by the Abel Underground Mine Project Approval (05\_0136) (Section 2.4).

Accordingly the Minister can be satisfied as to these matters.

*Clause 16*

Clause 16(1) of the Mining SEPP requires that, before granting consent for development for the purposes of mining or extractive industry that involves the transport of materials, the consent authority must consider whether or not the consent should be issued subject to conditions that do any one or more of the following:

- (a) *require that some or all of the transport of materials in connection with the development is not to be by public road,*
- (b) *limit or preclude truck movements, in connection with the development, that occur on roads in residential areas or on roads near to schools,*
- (c) *require the preparation and implementation, in relation to the development, of a code of conduct relating to the transport of materials on public roads.*

The Project would involve the transport of ROM coal along public roads (i.e. George Booth Drive and John Renshaw Drive) for processing at the Bloomfield Coal Handling and Preparation Plant (CHPP) (Section 2.7).

Potential impacts of ROM coal transport are assessed and described in Section 4.12 and Appendix H. An assessment of alternatives to transport on public roads has been conducted and is summarised in Section 6.7.2 and Appendix M.

In accordance with Condition 6, Schedule 4 of the existing Development Consent DA-274-9-2002, Donaldson Coal has implemented a Road Transport Protocol including a Code of Conduct for drivers for the existing Tasman Underground Mine. The Road Transport Protocol would be revised and implemented for the Project.

Accordingly the Minister can be satisfied as to these matters.

Clause 16(2) of the Mining SEPP requires that if the consent authority considers that the development involves the transport of materials on a public road, the consent authority must, within seven days after receiving the Development Application, provide a copy of the application to each roads authority for the road, and Roads and Maritime Services (RMS) (if it is not a roads authority for the road).

In addition, clause 16(3) of the Mining SEPP requires that the consent authority:

- (a) *must not determine the application until it has taken into consideration any submissions that it receives in response from any roads authority or the Roads and Traffic Authority within 21 days after they were provided with a copy of the application,*

...

Donaldson Coal has consulted with the RMS, Lake Macquarie City Council and Cessnock City Council during the development of this EIS and these authorities are aware of the proposed continuation and increase in ROM coal transport on the public road network (Section 2.7) as a component of the Project.

*Clause 17*

Clause 17 of the Mining SEPP requires that before granting consent for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider whether or not the consent should be issued subject to conditions aimed at ensuring the rehabilitation of land that will be affected by the development. In particular, the consent authority must consider whether conditions of the consent should:

- (a) *require the preparation of a plan that identifies the proposed end use and landform of the land once rehabilitated, or*
- (b) *require waste generated by the development or the rehabilitation to be dealt with appropriately, or*
- (c) *require any soil contaminated as a result of the development to be remediated in accordance with relevant guidelines (including guidelines under section 145C of the Act and the Contaminated Land Management Act 1997), or*
- (d) *require steps to be taken to ensure that the state of the land, while being rehabilitated and at the completion of the rehabilitation, does not jeopardize public safety.*

During the decommissioning of the existing and new pit top facilities, a comprehensive program would be implemented for the rehabilitation of the surface facilities, including the remediation of any contaminated soil, if applicable (Section 5).

The processing of ROM coal and handling and disposal of tailings and coarse rejects do not form part of the Project (Section 2.4).

Waste rock from the excavation of the boxcut, drifts and other earthworks would be used for construction on-site or trucked to the Donaldson Open Cut Mine and emplaced in the open cut (Section 2.5.2). The Donaldson Open Cut Mine Development Consent (DA 98/01173 and 118/698/22) would be modified separately to allow for the receipt and management of Project waste rock.

One of the key objectives of the Rehabilitation Management Plan (Section 5) would be the development of landforms which are stable in the long-term, and therefore do not jeopardise public safety.

### A3.1.6 State Environmental Planning Policy (Infrastructure) 2007

The *State Environmental Planning Policy (Infrastructure) 2007* (Infrastructure SEPP) applies to the whole of NSW and includes provisions for consultation with relevant public authorities about certain development during the assessment process or prior to development commencing.

Subdivision 2 of Division 5 of the Infrastructure SEPP sets out mechanisms for developments that are likely to affect an electricity transmission or distribution network.

Clause 45 of the Infrastructure SEPP relevantly provides:

- (1) *This clause applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following:*

...

- (b) *development carried out:*
- (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*

...

...

- (2) *Before determining a development application (or an application for modification of a consent) for development to which this clause applies, the consent authority must:*

- (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
- (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*

The new pit top facility, including excavation of the boxcut, is adjacent to 132 kilovolt (kV) electricity transmission lines owned and operated by Ausgrid (Figure 2-9).

Consultation has been conducted with Ausgrid (the relevant electricity supply authority) regarding the Project (Section 3.1.5) and is ongoing.

Subdivision 2 of Division 17 of the Infrastructure SEPP sets out mechanisms for developments in or adjacent to road corridors and road reservations.

Clause 101 of the Infrastructure SEPP relevantly provides:

- (1) *The objectives of this clause are:*

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) *where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
- (i) *the design of the vehicular access to the land, or*
- (ii) *the emission of smoke or dust from the development, or*
- (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The existing and new pit top facility have frontage to George Booth Drive (Main Road 527), which is a classified road for the purposes of the Infrastructure SEPP.

No modifications are proposed to the existing intersection of the existing pit top facility with George Booth Drive.

The Project would involve construction of a new intersection (roundabout) with George Booth Drive, which would reduce the distance for the transport of ROM coal by approximately 6 km (return trip). Alternatives to the Project are described in Section 6.7.2.

The new intersection and access road for the new pit top facility with George Booth Drive has been designed in consultation with RMS (Section 3.1.2) and is the subject of on-going consultation. The proposed roundabout on George Booth Drive at the new pit top facility is predicted to increase the level of service for existing turning movements out of the Daracon Quarry access road and provide additional turning capacity at this intersection (Appendix H).

The Project's contribution to overall traffic conditions on George Booth Drive would be such that no significant impacts on the safety, efficiency and performance of the road network are expected to arise as a direct result of the Project (Appendix H).

The Project is not expected to result in smoke or dust emissions that would adversely impact on the safety, efficiency or operation of George Booth Drive.

Given the pit top facility is a mining development, it is not considered sensitive to traffic noise or vehicle emissions.

### A3.1.7 Hunter Regional Environmental Plan 1989 (Heritage)

As of 1 July 2009, regional environmental plans (REPs) are no longer part of the hierarchy of environmental planning instruments in NSW.

As a result of the *State Environmental Planning Policy (Repeal of REP Provisions) 2009* all existing REPs are now deemed SEPPs.

The general aims and objectives of the *Hunter Regional Environmental Plan 1989 (Heritage)* are outlined in clause 2:

- (a) *to conserve the environmental heritage (including the historic, scientific, cultural, social, archaeological, architectural, natural and aesthetic heritage) of the Hunter Region,*
- (b) *to promote the appreciation and understanding of the Hunter Region's distinctive variety of cultural heritage items and areas including significant buildings, structures, works, relics, towns, precincts and landscapes, and*
- (c) *to encourage the conservation of the Region's historic townscapes which contain one or more buildings or places of heritage significance or which have a character and appearance that is desirable to conserve.*

Clauses 7 and 10 outline requirements for Councils with respect to development applications that pertain to listed heritage items or items requiring further investigation. However, a review of the items listed in Schedules 1 and 4 of the *Hunter Regional Environmental Plan 1989 (Heritage)* indicate that no relevant items in the Cessnock or Lake Macquarie LGAs are located within the Project area.

Notwithstanding, a Non-Aboriginal Heritage Assessment of the Project has been completed by Maxim Archaeology and Heritage (Appendix L).

## A3.2 CESSNOCK LOCAL ENVIRONMENTAL PLAN 2011

### A3.2.1 Objectives

Clause 1.2 of the *Cessnock Environmental Plan 2011* (Cessnock LEP 2011) outlines the aims of the plan, with the following aims particularly relevant to the Project:

- ...
- (2) *The particular aims of this Plan are as follows:*
- ...
- (b) *to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Cessnock,*
- (c) *to encourage development for employment purposes in appropriate locations having regard to proximity to appropriate infrastructure, to ensure the efficient use of land and services...*
- ...

The Project has regard to aims of the Cessnock LEP 2011, as:

- The Project would be developed in a manner that would minimise and manage potential impacts on the environment (including, ecology) and areas of environmental and conservation significance (Sections 4 and 7).
- The Project includes a proposal for offset of unavoidable impacts on ecology and other compensatory measures (Sections 4 and 7).
- The Project includes measures to minimise and manage potential impacts on heritage (Sections 4.10 and 4.11 and Appendices K and L).
- The Project would facilitate continued employment opportunities and expenditure in the region.
- The Project is unlikely to significantly impact access to infrastructure and land services in the Cessnock LGA (Section 4.17 and Appendix M).

Accordingly the Minister can be satisfied as to these matters.

### A3.2.2 Permissibility

Part 2 of the Cessnock LEP 2011 outlines the zone objectives that are relevant in determining whether the Project (or any part of the Project) is prohibited by the Cessnock LEP 2011, in any of the zones within the Development Application area.

The Development Application area includes land zoned under the Cessnock LEP 2011 as (Figure A3-1):

- Zone RU2 (Rural Landscape);
- Zone RU3 (Forestry);
- Zone SP2 (Infrastructure); and
- Zone E1 (National Parks and Nature Reserves).

The Development Application Area also includes land marked as “Deferred Matter” (Figure A3-1), to which the Cessnock LEP 2011 does not apply pursuant to clause 1.3(1A).

Mining is listed as permissible with consent on lands within Zone RU2 (Rural Landscape) under the Cessnock LEP 2011.

Mining is not listed as permissible on lands within Zone RU3 (Forestry), SP2 (Infrastructure) and Zone E1 (National Parks and Nature Reserves).

However, the Cessnock LEP 2011 states:

*Note. A type of development referred to in the Land Use Table is a reference to that type of development only to the extent it is not regulated by an applicable State environmental planning policy. The following State environmental planning policies in particular may be relevant to development on land to which this Plan applies:*

...

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

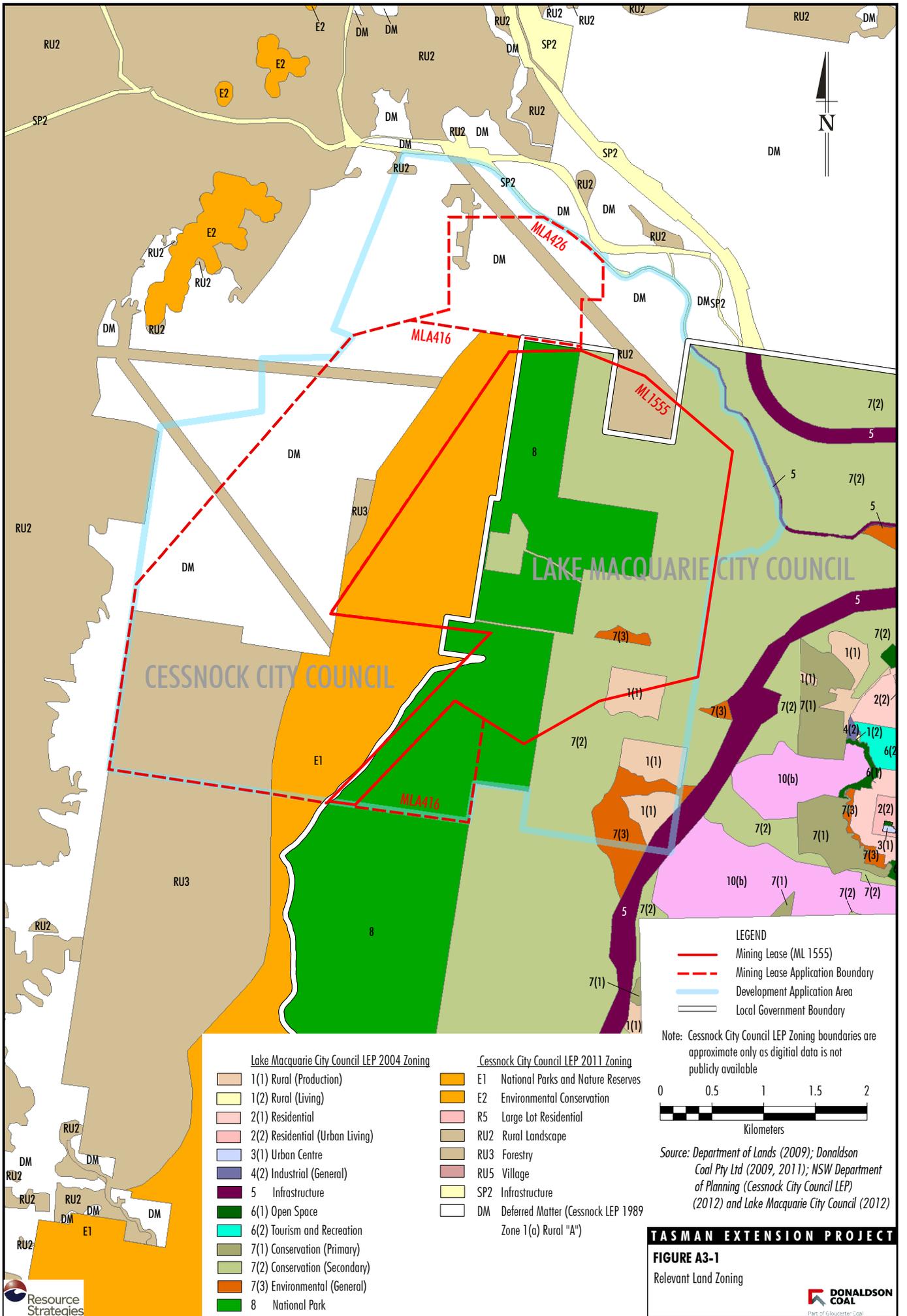
...

Clause 4 of the Mining SEPP relevantly provides:

#### **4 Land to which Policy applies**

*This Policy applies to the State.*

Clause 5(3) gives the Mining SEPP primacy where there is any inconsistency between the provisions in the SEPP and the provisions in any other environmental planning instrument (subject to limited exceptions).



**Lake Macquarie City Council LEP 2004 Zoning**

1(1) Rural (Production)
1(2) Rural (Living)
2(1) Residential
2(2) Residential (Urban Living)
3(1) Urban Centre
4(2) Industrial (General)
5 Infrastructure
6(1) Open Space
6(2) Tourism and Recreation
7(1) Conservation (Primary)
7(2) Conservation (Secondary)
7(3) Environmental (General)
8 National Park

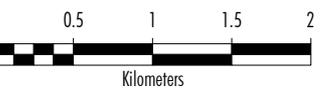
**Cessnock City Council LEP 2011 Zoning**

E1 National Parks and Nature Reserves
E2 Environmental Conservation
R5 Large Lot Residential
RU2 Rural Landscape
RU3 Forestry
RU5 Village
SP2 Infrastructure
DM Deferred Matter (Cessnock LEP 1989 Zone 1(a) Rural "A")

**LEGEND**

- Mining Lease (ML 1555)
- Mining Lease Application Boundary
- Development Application Area
- Local Government Boundary

Note: Cessnock City Council LEP Zoning boundaries are approximate only as digital data is not publicly available



Source: Department of Lands (2009); Donaldson Coal Pty Ltd (2009, 2011); NSW Department of Planning (Cessnock City Council LEP (2012) and Lake Macquarie City Council (2012)

**TASMAN EXTENSION PROJECT**

**FIGURE A3-1**  
Relevant Land Zoning



Clause 5(3) relevantly provides:

**5 Relationship with other environmental planning policies**

- (3) ...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.

The practical effect of clause 5(3) for the Project is that if there is any inconsistency between the provisions of the Mining SEPP and those contained in the Cessnock LEP 2011, the provisions of the Mining SEPP will prevail.

Clauses 6 and 7 of the Mining SEPP provide what types of mining development are permissible without development consent and what types are permissible only with development consent. In this regard, clause 7(1) 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,*

...

The term 'underground mining' in the Mining SEPP is given an extended definition in clause 3(2) as follows:

**underground mining means:**

- (a) *mining carried out beneath the earth's surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and*
- (b) *shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth's surface),*

*but does not include open cut mining.*

The effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that notwithstanding any prohibition contained in the land use table of the Cessnock LEP 2011, development for the purpose of underground mining may be carried out with development consent.

**A3.2.3 Zone Objectives**

Clause 2.3(2) of the Cessnock LEP 2011 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The following provides the zone objectives of the Cessnock LEP 2011 relevant to the Project:

**Zone RU2 Rural Landscape**

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To maintain the rural landscape character of the land.*
- *To provide for a range of compatible land uses, including extensive agriculture.*
- *To enable other forms of development that are associated with rural activity and require an isolated location or support tourism and recreation.*
- *To ensure that the type and intensity of development is appropriate in relation to the rural capability and suitability of the land, the preservation of the agricultural, mineral and extractive production potential of the land, the rural environment (including scenic resources) and the costs of providing services and amenities.*

**Zone RU3 Forestry**

- *To enable development for forestry purposes.*
- *To enable other development that is compatible with forestry land uses.*

**Zone SP2 Infrastructure**

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

**Zone E1 National Parks and Nature Reserves**

- *To enable the management and appropriate use of land that is reserved under the National Parks and Wildlife Act 1974 or that is acquired under Part 11 of that Act.*
- *To enable uses authorised under the National Parks and Wildlife Act 1974.*
- *To identify land that is to be reserved under the National Parks and Wildlife Act 1974 and to protect the environmental significance of that land.*

The Project is considered to be generally consistent with the above zone objectives, because, as described in Section 4, management and mitigation measures would be implemented where practicable, to minimise the potential impacts of the Project on other land uses, and the environment.

Accordingly the Minister can be satisfied as to these matters.

### A3.2.4 Special Provisions

Parts 5 and 7 of the Cessnock LEP 2011 provide a number of provisions of potential relevance to the Project, including the relevant clauses described below.

Clause 5.10 relates to the assessment and management of impacts to non-Aboriginal heritage or Aboriginal heritage and includes the following subclauses potentially relevant to the Project:

#### 5.10 Heritage conservation

**Note.** Heritage items (if any) are listed and described in Schedule 5. Heritage conservation areas (if any) are shown on the Heritage Map as well as being described in Schedule 5.

##### (1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Cessnock,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

##### (2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
  - (i) a heritage item,
  - (ii) an Aboriginal object,
  - (iii) a building, work, relic or tree within a heritage conservation area,

- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
  - (i) on which a heritage item is located or that is within a heritage conservation area, or
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,

...

The Project would not involve demolishing, disturbing, moving or altering a heritage item, an archaeological site or an Aboriginal place of heritage significance as defined by the Cessnock LEP 2011 (Appendices K and L). The Project is not located within a heritage conservation area as defined by the Cessnock LEP 2011.

Clause 5.10 set out above is potentially applicable to the Project with respect to the Project mine subsidence and surface activities that have the potential to impact Aboriginal heritage sites located above the Project mining areas.

An Aboriginal Heritage Assessment has been conducted for the Project and is provided in Appendix K. A summary of how the above issues have been addressed is provided in Section 4.10.

Accordingly the Minister can be satisfied as to these matters.

Clause 7.2 outlines relevant considerations for development for the purposes of earthworks:

### 7.2 Earthworks

- (1) *The objectives of this clause are as follows:*
- (a) *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*
  - (b) *to allow earthworks of a minor nature without requiring a separate development consent.*
- ...
- (3) *Before granting development consent for earthworks, the consent authority must consider the following matters:*
- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,*
  - (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*
  - (c) *the quality of the fill or the soil to be excavated, or both,*
  - (d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*
  - (e) *the source of any fill material and the destination of any excavated material,*
  - (f) *the likelihood of disturbing relics,*
  - (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
  - (h) *any measures proposed to minimise or mitigate the impacts referred to in paragraph (g).*

**Note.** The *National Parks and Wildlife Act 1974*, particularly section 86, deals with disturbing or excavating land and Aboriginal objects.

The Project would involve earthworks as a component of the construction and development of the new pit top facility.

The Surface Water Assessment (Appendix C) includes an assessment of the potential impacts on drainage patterns and waterways. Sections 4.3.3 and 4.6.3 and Appendix C describe the erosion and sediment control measures that would be implemented for construction of the new pit top facility.

Rehabilitation and decommissioning of the new pit top facility, including the final land use, are described in Section 5.

Potential impacts on amenity, including transport, dust, noise and visual impacts are described in Sections 4.12, 4.13, 4.14 and 4.19 and Appendices H, I and J.

Waste rock from the excavation of the boxcut, drifts and other earthworks would be used for construction on-site or trucked to the Donaldson Open Cut Mine and emplaced in the open cut (Section 2.5.2).

Aboriginal and non-Aboriginal Heritage Assessments have been conducted for the Project and are provided in Appendices K and L.

Accordingly the Minister can be satisfied as to these matters.

Clause 7.3 outlines relevant considerations for development at or below the flood planning level:

### 7.3 Flood planning

- (1) *The objectives of this clause are as follows:*
- (a) *to minimise the flood risk to life and property associated with the use of land,*
  - (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
  - (c) *to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to land at or below the flood planning level.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
- (a) *is compatible with the flood hazard of the land, and*
  - (b) *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
  - (c) *incorporates appropriate measures to manage risk to life from flood, and*
  - (d) *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*

- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.*
- (5) *In this clause, **flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

Underground mining associated with the Project is not likely to adversely affect flood behaviour.

The new pit top facility would be located within the Cessnock LGA and is located in proximity to a tributary to Surveyors Creek. Ardill Payne & Partners has designed the new pit top facility such that a 1 in 100 year Average Recurrence Interval (ARI) flood would not interact with the surface runoff storage dam, coal stockpile, administration area or workshop area. The new pit top facility is unlikely to significantly impact on downstream flow behaviour (Appendix C).

Based on the above, the Project is considered to be compatible with the flood hazard of the land and is not likely to result in unsustainable costs to the community as a result of flooding.

Donaldson Coal implements an Emergency Management System as part of a Health and Safety Management System, which would continue to apply for the Project. The Emergency Management System includes measures to manage risk to life from flood.

Erosion and sediment control measures are described in Sections 4.3.3. and 4.6.3 and Appendix C. Potential impacts and mitigation measures for riparian vegetation and watercourses are described in Sections 4.5, 4.6 and 4.8 and Appendices B, C, D, E and F.

Accordingly the Minister can be satisfied as to these matters.

### **A3.3 CESSNOCK LOCAL ENVIRONMENTAL PLAN 1989**

The Development Application Area includes land identified as “Deferred Matter” in the Cessnock LEP 2011. Pursuant to clause 1.3(1A) of the Cessnock LEP 2011, the *Cessnock Local Environmental Plan, 1989* (Cessnock LEP 1989) applies to these lands.

#### **A3.3.1 Permissibility**

Part 2 of the Cessnock LEP 1989 outlines the zone objectives that are relevant in determining whether the Project (or any part of the Project) is prohibited by the Cessnock LEP 1989.

The Development Application area includes land zoned under the Cessnock LEP 1989 as Zone 1(a) (Rural “A”).

Mining is permissible with consent on lands within Zone 1(a) (Rural “A”) under the Cessnock LEP 1989. Therefore, all development for the purpose of the Project would be permissible under the Cessnock LEP 1989.

#### **A3.3.2 Zone Objectives**

Clause 9(3) of the of the Cessnock LEP 1989 provides that consent must not be granted for development unless the consent authority is of the opinion that the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.

The following provides the zone objectives of Zone 1(a) (Rural “A”) under the Cessnock LEP 1989 relevant to the Project:

- (a) *to enable the continuation of existing forms of agricultural land use and occupation,*
- (b) *to ensure that potentially productive land is not withdrawn from production,*
- (c) *to encourage new forms of agricultural land use,*
- (d) *to enable other forms of development which are associated with rural activity and which require an isolated location, or which support tourism and recreation, and*
- (e) *to ensure that the type and intensity of development is appropriate in relation to:*
  - (i) *the rural capability and suitability of the land,*
  - (ii) *the preservation of the agricultural, mineral and extractive production potential of the land,*
  - (iii) *the rural environment (including scenic resources), and*
  - (iv) *the costs of providing public services and amenities.*

The Project is considered to be generally consistent with the above zone objectives, because, as described in Section 4, management and mitigation measures would be implemented where practicable, to minimise the potential impacts of the Project on other land uses.

Accordingly the Minister can be satisfied as to these matters.

### A3.3.3 Special Provisions

Part 3 of the Cessnock LEP 1989 provides a number of provisions of potential relevance to the Project, including the relevant clauses described below.

It is noted for all of the clauses below, the Minister is the relevant consent authority for the Project (Section 6.2.2). Reference in the Cessnock LEP 1989 to “Council” has been construed as reference to the Minister.

Clause 10 outlines general development principles for development on rural land:

#### **10 General development principles—rural and environmental protection zones and Hunter Employment Zone**

(1) *In determining any application for consent to carry out development on land within Zone No 1 (a), 1 (a1), 1 (bwc), 1 (c), 1 (c1), 1 (c2), 1 (f), 1 (v) or 7 (d1), the Council shall have regard, in addition to the matters specified in section 90 (1) of the Act:*

(a) *to the following general principles:*

- (i) *development should be generally compatible with the rural suitability and capability of the land on which it is to be carried out, as indicated on maps deposited in the office of the Council,*
- (ii) *development should be of a type compatible with the maintenance and enhancement, as far as is practicable, of the existing rural and scenic character of the City of Cessnock,*
- (iii) *development (other than development on land within Zone No 1 (c), 1 (c1) or 1 (c2)) should not materially reduce the agricultural production potential of the land on which it is to be carried out, or of adjoining land,*

- (iv) *the existing and possible future use of the land and of other land in the locality should not be prejudiced (particularly in the case of land which contains recoverable mineral or extractive resources),*
- (v) *development should not materially affect any wildlife refuge, significant wetland or any identified site containing Aboriginal archaeological relics and such relics or places should be preserved where necessary,*
- (vi) *development (including associated access roads) should not create or worsen soil erosion potential through the action of wind or water or the alteration of land form, and adequate measures should be taken to avoid such an effect,*
- (vii) *adequate utility services and community facilities should be available to the land and its future occupants, and the land should be capable of accommodating on-site disposal of domestic waste and the provision of a domestic water supply, including a fire-fighting capacity,*
- (viii) *development should not have the possible effect of creating demands for unreasonable or uneconomic provision or extension of services by the Council or any other public authority,*
- (ix) *development should not create significant additional traffic or create or increase a condition of ribbon development on any road, particularly a main or arterial road, relative to the capacity, standard and safety of the road,*
- (x) *the creation of vehicular access to a main or arterial road should be minimised and where no alternative access is available, the location and treatment of the access should minimise potential traffic hazards,*

- (xi) *development should incorporate adequate drainage measures, including sediment and waste control, and prevention of the uncontrolled flow of water across the land or adjoining land,*
- (xii) *development should not lead to any deterioration of water supply or water quality within a water catchment,*
- (xiii) *where land is proposed to be cleared, vegetation should be retained in appropriate locations to reduce the visual impact of clearing to the maximum extent consistent with the rural character of the area,*
- ...
- (c) *to the following principles with respect to buildings:*
- (i) *buildings should be sited and designed and be of an appropriate scale so as to maintain the rural character of the locality, to minimise disturbance to the landscape through clearing, earthworks, access roads, the use of platforms or stilts and other similar construction methods, to maintain slope stability, and to generally fit into their environment to the maximum extent consistent with their being sited to minimise flood and bushfire hazards,*
- (ii) *buildings should not intrude into the skyline, when viewed from roads or other public places,*
- ...
- (iv) *building materials and painting or other finishes should preferably be of dark natural tones with low reflective quality to the maximum extent consistent with effective heat insulation of the building and the comfort of its occupants,*
- (v) *the curtilage of buildings should, wherever possible, be landscaped so as to lessen the impact of buildings on their natural or rural setting,*

- (vi) *essential buildings should be sited in positions of least flood risk, and the floor levels of dwellings should be above the 100 year flood level and be capable of withstanding floodwater pressures,*

...

The Project is consistent with the above development principles given the following:

- Management and mitigation measures would be implemented to minimise the potential impacts of the Project on other land uses, including the rural uses and the Sugarloaf State Conservation Area (Section 4 and 7).
- Management measures would be implemented to minimise potential impacts on scenic character, including the maintenance of vegetation along George Booth Drive, construction of a visual bund and use of appropriate building materials and finishes at the new pit top facility (Section 4.19).
- Management, mitigation and monitoring measures would be implemented to minimise impacts on Aboriginal heritage (Section 4.10 and Appendix K).
- Management and mitigation measures would be implemented to minimise impacts to water resources and soil erosion potential, including the implementation of erosion and sediment control measures and SCZs for streams (Sections 2.6.3 and 4 and Appendices A and C).
- An on-site sewage treatment and disposal system would be constructed at the new pit top in accordance with *Environmental Guideline: Use of Effluent by Irrigation* (NSW Department of Environment and Conservation [DEC], 2004) (Section 2.11.1).
- A site water management system would be implemented to allow for adequate supply of water for the life of the Project, including water for fire fighting purposes (Section 2.9 and Appendix C).
- The Project is unlikely to significantly impact access to public services in the Cessnock LGA (Section 4.17 and Appendix M).

- The Project’s contribution to overall traffic conditions on George Booth Drive would be such that no significant impacts on the safety, efficiency and performance of the road network are expected to arise as a direct result of the Project (Appendix H).
- The Project would involve construction of a new intersection (roundabout) with George Booth Drive, which would reduce the distance for the transport of ROM coal by approximately 6 km (return trip).
- The new intersection and access road for the new pit top facility with George Booth Drive has been designed in consultation with RMS (Section 3.1.2) and would provide additional turning capacity at this intersection (Appendix H).
- Bushfire mitigation measures would be implemented for the Project, including a Bushfire Management Plan prepared in consideration of *Planning for Bushfire Protection* (Rural Fire Service [RFS], 2006) (Section 4.3.3).
- The new pit top facility would be designed such that a 1 in 100 year ARI flood would not interact with the surface runoff storage dam, coal stockpile, administration area or workshop area.

Accordingly the Minister can be satisfied as to these matters.

Clause 20 includes provisions regarding clearance of Class VII and Class VIII land:

**20 Clearing**

...

- (5) *A person shall not, without the consent of the Council, clear land (other than for the purposes of bushfire hazard reduction) within Zone No 1 (a), 1 (c) or 1 (c2) and which is identified as Class VII or Class VIII on the Rural Capability Map prepared by the Soil Conservation Service as part of the Land Resources Study—City of Greater Cessnock 1982.*
- (6) *In granting consent to an application for clearing as referred to in subclause (5), the Council may attach conditions to the consent intended to minimise the risk of soil erosion.*

...

The construction of upcast ventilation infrastructure for the Project would involve the clearance of a small area of Class VII land for an access track (Section 4.3). Erosion and sediment control measures would be implemented as described in Sections 4.3.3 and 4.6.3 and Appendix C.

Accordingly the Minister can be satisfied as to these matters.

Clause 21 relates to consideration for development on arterial roads on Zone 1(a) (Rural “A”) land:

**21 Development on main and arterial road frontages—Zone No 1 (a)**

- (1) *This clause applies to land within Zone No 1 (a):*
  - (a) *having frontage to a main or arterial road,*
  - ..
- (2) *The Council shall not grant consent to development on land to which this clause applies unless it is satisfied that:*
  - (a) *the development by its nature, intensity or the volume and type of traffic likely to be generated is unlikely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main or arterial road,*
  - (b) *the development is of a type that (whether or not because of the characteristics of the land on which it is proposed to be carried out) justifies a location in proximity to a main or arterial road,*
  - (c) *the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main or arterial road are not impeded, and*
  - (d) *the development will not prejudice future improvements to or realignment of the main or arterial road, as may be indicated to the Council from time to time by the Roads and Traffic Authority.*

...

The new pit top facility has frontage to George Booth Drive (Main Road 527).

The Project’s contribution to overall traffic conditions on George Booth Drive would be such that no significant impacts on the safety, efficiency and performance of the road network are expected to arise as a direct result of the Project (Appendix H).

It is considered that the Project is of a type which justifies a location in proximity to a main or arterial road, given the Project involves the transportation of ROM coal by road.

Consultation has been conducted with the RMS in regard to the Project (Section 3.1.2) and Donaldson Coal is not aware of any future improvement to George Booth Drive that would be prejudiced by the Project.

Accordingly the Minister can be satisfied as to these matters.

Clause 31 relates to development on land within a floodway:

**31 Flood affected land**

*A person shall not carry out development on land within a floodway unless the Council is satisfied that the carrying out of the development is not likely:*

- (a) *to impede the flow of flood waters on the land,*
- (b) *to imperil the safety of persons on the land in the event of the land being inundated with flood waters,*
- (c) *to aggravate the consequences of flood waters flowing on the land with regard to erosion, siltation and the destruction of vegetation,*
- (d) *to have an adverse effect on the water table of the land or of land in its immediate vicinity,*
- (e) *to have an adverse effect on riverbank stability, or*
- (f) *to increase the level or flow of flood waters on other land.*

Underground mining associated with the Project is not likely to impede the flow of flood waters, aggravate the consequences of flood waters flowing on the land, or increase the level or flow of flood water on other land.

The new pit top facility would include land covered by the Cessnock LEP 1989. The new pit top facility is located in proximity to a tributary to Surveyors Creek, and Ardill Payne & Partners has designed the new pit top facility such that a 1 in 100 year ARI flood would not interact with the surface runoff storage dam, coal stockpile, administration area or workshop area. The new pit top facility is unlikely to significantly impact on downstream flow behaviour (Appendix C).

Donaldson Coal implements an Emergency Management System as part of a Health and Safety Management System, which would continue to apply for the Project. The Emergency Management System includes measures to manage safety in the event of a flood.

Potential impacts on riverbank stability and the groundwater table are described in Sections 4.4 to 4.6 and Appendices B, C and D. Erosion and sediment control measures are described in Section 4.3.3 and 4.6.3 and Appendix C.

Accordingly the Minister can be satisfied as to these matters.

Clause 32 relates to development on land which is subject to bushfire hazard:

**32 Land subject to bushfire hazards**

- (1) *The Council shall not grant consent to any development on land to which this plan applies which is subject to bushfire hazards until it has made an assessment of:*
  - (a) *the nature and degree of the hazard, relative to the appropriate measures available to reduce the hazard,*
  - ...
- (2) *Notwithstanding subclause (1), the Council may refuse consent to a development application where it is of the opinion that the development is inappropriate, having regard to bushfire hazard affecting the land the subject of the application.*

The Project includes land which is subject to bushfire hazard (Section 4.3.1).

Bushfire mitigation measures would be implemented for the Project, including a Bushfire Management Plan prepared in consideration of *Planning for Bushfire Protection* (RFS, 2006) (Section 4.3.3).

Accordingly the Minister can be satisfied as to these matters.

Clause 44 relates to access to an arterial road:

**44 Restrictions on access**

*A road or other means of access to an arterial road shall not be formed without the consent of the Council.*

The Project would include the construction of a new intersection with George Booth Drive to provide access to the new pit top facility. The Minister is the consent authority for the Project.

### A3.4 LAKE MACQUARIE LOCAL ENVIRONMENTAL PLAN 2004

#### A3.4.1 Objectives

Clause 3 of the *Lake Macquarie Local Environmental Plan 2004* (Lake Macquarie LEP) outlines the objective to achieve development of land with the Lake Macquarie LGA in accordance with the principles of ecologically sustainable development by:

- (a) *promoting balanced development of that land, and*
- (b) *implementing the Lifestyle 2020 Strategy adopted by the Council on 27 March 2000.*

The Project is consistent with the objectives of the Lake Macquarie LEP, in that the Project has been developed and assessed in consideration of the principles of ecologically sustainable development (Section 6.7.4).

Further to the above, clause 16(a) of the Lake Macquarie LEP provides that consent must not be granted for development unless the consent authority has had regard to the vision, values and aims of the *Lake Macquarie Lifestyle 2020 Strategy*.

Clause 12 of the Lake Macquarie LEP provides that the vision for the Lake Macquarie LGA is described in the *Lifestyle 2020 Strategy*. The *Lifestyle 2020 Strategy* (Lake Macquarie City Council, 2000) provides that the vision for the Lake Macquarie LGA is that it is:

- *A place where the environment is protected and enhanced.*
- *A place where the scenic, ecological, recreational and commercial values and opportunities of the Lake and coastline are promoted and protected.*
- *A place with a prosperous economy and a supportive attitude to balance economic growth, managed in a way to enhance quality of life and satisfy the employment and environmental aims of the community.*
- *A place that recognises and develops its diverse cultural life and talents and protects and promotes its heritage.*
- *A place that encourages community spirit, promotes a fulfilling lifestyle, enhances health and social well being, encourages lifestyle choices and has opportunities to encourage participation in sport and recreation.*
- *A place that promotes equal access to all services and facilities and enable all citizens to contribute to and participate in the City's economic and social development.*

The values of the *Lake Macquarie Lifestyle 2020 Strategy* are outlined in clause 13 of the Lake Macquarie LEP as sustainability, equity, efficiency and liveability.

The aims of the *Lake Macquarie Lifestyle 2020 Strategy* are outlined in clause 14 of the Lake Macquarie LEP. The aims of the *Lifestyle 2020 Strategy* relevant to the Project are:

- ...
- (c) *provide local employment opportunities for residents and promote economic development consistent with the City's natural, locational and community resources, and*
- ...
- (g) *manage the City's natural environment so that its ecological functions and biological diversity are conserved and enhanced, and contribute to the City's overall well being, and*
- (h) *manage the City's heritage and economic resources in a way that protects the value of these resources and enhances the City's character, and*
- ...

The Project has regard to the vision, values and aims of the *Lake Macquarie Lifestyle 2020 Strategy*, as:

- The Project would facilitate continued employment opportunities and expenditure in the region (Appendix M).
- The Project is unlikely to significantly impact access to community services and facilities in the Lake Macquarie LGA (Section 4.17 and Appendix M).
- The Project would be developed in a manner that would minimise and manage potential impacts on the natural environment, including ecological function and biological diversity (Sections 4 and 7).
- The Project includes a proposal for offset of unavoidable loss of vegetation and fauna habitat and other compensatory measures (Section 7).
- The Project includes measures to minimise and manage potential impacts on heritage items (Sections 4.10 and 4.11 and Appendices K and L).
- The Project includes management and mitigation measures to minimise potential impacts on amenity (Sections 4.12, 4.13, 4.14 and 4.19 and Appendices H, I and J).

Accordingly the Minister can be satisfied as to these matters.

#### A3.4.2 Permissibility

Part 3 of the Lake Macquarie LEP outlines the zone objectives that are relevant in determining whether the Project (or any part of the Project) is prohibited by the Lake Macquarie LEP, in any of the zones within the Development Application area.

The Development Application area includes land zoned under the Lake Macquarie LEP as (Figure A3-1):

- Zone 1(1) (Rural [Production]);
- Zone 5 (Infrastructure);
- Zone 7(2) (Conservation [Secondary]);
- Zone 7(3) (Environmental [General]); and
- Zone 8 (National Park).

The land within Zone 5 (Infrastructure) is located within Exploration Licence (EL) 5337, however no Project activities would be conducted on this land.

Mining is listed as permissible with consent on lands within Zone 1(1) (Rural [Production]) under the Lake Macquarie LEP.

Mining is not listed as permissible on lands within Zone 5 (Infrastructure), Zone 7(2) (Conservation [Secondary]), Zone 7(3) (Environmental [General]) and Zone 8 (National Park).

As per the discussion in Section A3.2.2, the effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that notwithstanding any prohibition contained in the land use table of the Lake Macquarie LEP, development for the purpose of underground mining may be carried out with development consent.

#### A3.4.3 Zone Objectives

Clause 16(b) of the Lake Macquarie LEP provides that consent must not be granted for development unless the consent authority is satisfied that the development is consistent with the relevant objectives of the zone(s) for which it is proposed.

The following provides the zone objectives of the Lake Macquarie LEP relevant to the Project:

##### **Zone 1(1) Rural (Production) Zone**

- (a) *provide for economic and employment-generating agricultural activities, and*
- (b) *provide for a range of compatible land uses that maintain and enhance the rural environment of the locality, and*
- (c) *ensure development is carried out in a manner that improves the quality of the environment, including quality of design, and is within the servicing capacity of the locality, and*
- (d) *encourage development and management practices that are sustainable, and*
- (e) *encourage the development of good quality agricultural land for agriculture (other than intensive agriculture) to the greatest extent possible, and*
- (f) *encourage the development of low quality agricultural land for intensive agriculture, and*
- (g) *provide for sustainable forestry practices, and*
- (h) *avoid land use conflict by restricting or prohibiting development that has the potential to negatively affect the sustainability of existing agriculture, and*
- (i) *provide for sustainable water cycle management.*

##### **Zone 5 Infrastructure Zone**

- (a) *provide land for future infrastructure needs such as roads, drainage and other utilities, and*
- (b) *provide land required for the expansion of existing community facilities or the development of new community facilities, and*
- (c) *provide for limited development within the zone where it can be demonstrated that the development will not prejudice or have the potential to prejudice the intended future infrastructure development of that land, and*
- (d) *ensure that development on adjacent or adjoining land zoned infrastructure does not prejudice future infrastructure development within that zone, and*
- (e) *provide for sustainable water cycle management.*

##### **Zone 7(2) Conservation(Secondary) Zone**

- (a) *protect, conserve and enhance land that is environmentally important, and*
- (b) *protect, manage and enhance corridors to facilitate species movement, dispersal and interchange of genetic material, and*

- (c) *enable development where it can be demonstrated that the development will not compromise the ecological, hydrological, scenic or scientific attributes of the land or adjacent land in Zone 7 (1), and*
- (d) *ensure that development proposals result in rehabilitation and conservation of environmentally important land, and*
- (e) *provide for sustainable water cycle management.*

#### **Zone 7(3) Environmental (General) Zone**

- (a) *maintain and enhance biodiversity, scenic quality and native riparian vegetation and habitat, and*
- (b) *protect, manage and enhance corridors to facilitate species movement, dispersal and interchange of genetic material, and*
- (c) *ensure that development and land management practices do not have an adverse effect on water quality, land surface conditions and important ecosystems such as waterbodies, waterways, wetlands and rainforests, and*
- (d) *protect and enhance natural, rural and heritage landscapes, and*
- (e) *provide for sustainable water cycle management, and*
- (f) *encourage rehabilitation and conservation of environmentally important land.*

#### **Zone 8 National Park Zone**

- (a) *identify land that is reserved or dedicated under the National Parks and Wildlife Act 1974, and*
- (b) *allow for the management and appropriate use of that land as provided for in the National Parks and Wildlife Act 1974, and*
- (c) *promote the survival of flora and fauna by conserving viable reserves in large holdings with appropriate connections to other reserves.*

The Project is considered to be generally consistent with the above zone objectives, because, as described in Section 4, management and mitigation measures would be implemented where practicable, to minimise the potential impacts of the Project on other land uses, and the environment. Mitigation and management measures to minimise potential impacts on water resources are described in Sections 4.4 to 4.6 and Appendices B and C.

Accordingly the Minister can be satisfied as to these matters.

#### **A3.4.4 Special Provisions**

Parts 4 to 7 of the Lake Macquarie LEP provide a number of provisions of potential relevance to the Project, including the relevant clauses described below.

Clause 17 outlines the requirement for the consent authority to consider the provision of infrastructure to a development.

##### **17 Provision of essential infrastructure**

*Consent must not be granted for development on any land to which this plan applies unless the consent authority:*

- (a) *is satisfied that adequate arrangements have been made for the provision of any infrastructure that is essential for the proposed development, including the following:*
  - (i) *a supply of water,*
  - (ii) *provision of energy,*
  - (iii) *provision of telecommunications,*
  - (iv) *a system for the disposal and management of sewage, and*
- (b) *has considered the impacts of the provision of that infrastructure on the land to which the development application relates.*

The site water management system is described in Section 2.9. A site water balance for the Project has concluded that there is adequate supply of water for the life of the Project (Appendix C).

The provision of power supply and telecommunications to the new pit top facility would be the subject of a separate assessment and approvals process (Sections 2.10.3 and 2.10.4). Power supply would likely comprise an overhead 33 kV electricity transmission line from Heddon Greta. Power supply for construction and initial development of the mine would be provided by extension of the existing 11 kV supply to the Orica facilities (subject to separate assessment and approval) or diesel generators.

An on-site sewage treatment and disposal system would be constructed at the new pit top in accordance with *Environmental Guideline: Use of Effluent by Irrigation* (DEC, 2004) (Section 2.11.1).

Accordingly the Minister can be satisfied as to these matters.

Clause 30 relates to the implementation of pollution control measures:

**30 Control of pollution**

*Consent must not be granted to development unless the consent authority is satisfied that all reasonable and practicable control measures will be implemented to minimise pollution likely to arise from carrying out that development.*

**Note.** *Pollution may be of air, noise or water. Water pollution includes nutrient and sediment loading.*

Section 4 outlines control measures that would be implemented to minimise potential impacts on air quality, noise amenity and water resources.

Accordingly the Minister can be satisfied as to these matters.

Clause 31 relates to the implementation of erosion and sediment control measures:

**31 Erosion and sediment control**

(1) *This clause applies to development that involves or that, in the opinion of the consent authority, may give rise to the exposure of the soil surface of land to the action of wind or water, whether as a consequence of:*

- (a) *the carrying out of earthworks, or*
- (b) *the destruction or removal of vegetation, or*
- (c) *the carrying out of any other class of development.*

(2) *Consent must not be granted to development to which this clause applies unless:*

- (a) *the consent authority is satisfied that all reasonable and practicable control measures will be carried out to prevent or minimise the effects of erosion and sediment, and*

...

- (c) *where the area of soil surface exposure is 2,500 square metres or greater, the consent authority has considered a soil and water management plan complying with construction guidelines adopted by the Council, and whether the consent will include a condition requiring the development to be carried out in accordance with that plan.*

Donaldson Coal would implement erosion and sediment control measures during construction and operation, including water management and monitoring measures, as described in Section 4.3.3 and 4.6.3 and Appendix C.

The existing pit top facility is located with the Lake Macquarie LGA. Erosion and sediment control at the existing pit top is conducted in accordance with the approved Site Water Management Plan (Peter Dundon & Associates, 2006).

Accordingly the Minister can be satisfied as to these matters.

Clause 32 relates to development on flood prone land:

**32 Flood prone land**

(1) *Despite any other provision of this plan, a person must not erect a structure or carry out a work on flood prone land without development consent.*

...

Flood prone land is defined by the Lake Macquarie LEP is land affected by the 1% ARI.

The existing pit top is located within the Lake Macquarie LGA. In accordance with Condition 14 of the Tasman Underground Mine Development Consent (DA 274-9-2004), the works at the existing pit top used for the purpose of conveying, distributing or storing water do not obstruct the free passage of floodwaters flowing in to or from a river or lake.

Accordingly the Minister can be satisfied as to these matters.

Clause 33 relates to development on bushfire prone land:

**33 Bush fire considerations**

(1) *This clause applies to bush fire prone land.*

**Note.** *Section 146 of the Act provides that bush fire prone land is land recorded by the Council as such on a map certified by the Commissioner of the NSW Rural Fire Service as a bush fire prone land map for the area of the Council.*

...

- (3) *Before granting consent required by this clause, the consent authority must:*
- (a) *have regard to the relevant provisions of Planning for Bush Fire Protection, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006, and available at the office of the Council, and*
  - (b) *be satisfied that:*
    - (i) *the measures proposed to avoid or mitigate the threat from bush fire, including the siting of the proposed development, the design of, and materials used in, any structures involved, the clearing of vegetation, and the provision of asset protection zones, landscaping and fire control aids (such as roads and water supplies), are adequate for the locality, and*
    - (ii) *as far as possible, the potential impact on the environment of mitigation measures proposed is minimised.*

The Project includes land mapped as bushfire prone land. Bushfire mitigation measures would be implemented for the Project, including a Bushfire Management Plan prepared in consideration of *Planning for Bushfire Protection* (RFS, 2006) (Section 4.3.3).

Accordingly the Minister can be satisfied as to these matters.

Clause 34 relates to vegetation clearance:

**34 Trees and native vegetation**

- (1) *This clause applies to all land except:*
  - ...
  - (b) *land within Zone 8.*
- (2) *Except as provided by subclause (3), a person must not clear any tree or any native vegetation unless in accordance with a development consent that is in force.*
- ...

- (4) *Consent must not be granted for the clearing of any tree or native vegetation unless the consent authority has considered a statement of environmental effects that assesses in respect of the vicinity of the proposed clearing:*
- (a) *soil stability and prevention of land degradation, and*
  - (b) *water quality and associated ecosystems such as streams, rivers, waterbodies or waterways, and*
  - (c) *scenic or environmental amenity, and*
  - (d) *vegetation species, vegetation communities, flora and fauna corridors and natural wildlife habitats.*

This EIS can be considered a 'statement of environmental effects' for the purposes of this clause.

Vegetation disturbance within the Lake Macquarie LGA would include minor disturbance for monitoring, exploration and remediation purposes.

Consideration of the potential impacts of the Project on soil stability and scenic and environmental amenity is provided in Section 4.

Potential impacts on water quality and associated ecosystems are provided in Appendices B, C, D, E and F.

Potential impacts of the Project on vegetation species, vegetation communities, flora and fauna corridors and natural wildlife habitats have been assessed as a component of the Flora Assessment (Appendix F) and Fauna Assessment (Appendix G). The Project includes a proposal for offset of unavoidable loss of vegetation and fauna habitat (Section 7).

Accordingly the Minister can be satisfied as to these matters.

Part 6 of the Lake Macquarie LEP relates to the assessment and management of impacts to non-Aboriginal heritage or Aboriginal heritage and includes the following clauses potentially relevant to the Project:

**47 Assessment of heritage significance**

- (1) *Before granting consent required by this Part, the consent authority must assess the extent to which the carrying out of the proposed development will affect the heritage significance of the heritage item or heritage conservation area concerned.*

(2) *In the case of proposed development that would affect a heritage item, that assessment must include consideration of a heritage impact statement that addresses:*

- (a) *the heritage significance of the item as part of the environmental heritage of Lake Macquarie City local government area,*
- (b) *the impact that the proposed development will have on the heritage significance of the item and its setting, including any landscape or cultural features,*
- (c) *the measures proposed to conserve the heritage significance of the item and its setting,*
- (d) *whether any archaeological site or potential archaeological site will be adversely affected by the proposed development,*
- (e) *the extent to which the carrying out of the proposed development will affect the form of any historic subdivision.*

...

**50 Development affecting places or sites of known or potential Aboriginal heritage significance**

- (1) *Consent must not be granted for development that is likely to have an impact on a place of Aboriginal heritage significance or a potential place of Aboriginal heritage significance, or that will be carried out on an archaeological site of a relic that has Aboriginal heritage significance, unless the consent authority has considered a heritage impact statement explaining how the proposed development would affect the conservation of the place or site and any relic known or reasonably likely to be located at the place or site.*
- (2) *Except where the proposed development is integrated development, the consent authority must notify the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and take into consideration any comments received in response within 21 days after the relevant notice is sent.*
- (3) *(Repealed)*

(4) *In the instance of development in proximity to items or places identified in Schedule 6 or recorded or held by a local Aboriginal Land Council, consultation with the relevant local Aboriginal Land Council is required before consent may be granted. Consultation is sufficient for the purposes of this requirement if the consent authority has taken into consideration all comments received from the local Aboriginal Land Council within 21 days after a copy of the application and statement are sent to it by the consent authority.*

**52 Development in vicinity of a heritage item**

- (1) *Consent must not be granted for development in the vicinity of a heritage item unless the consent authority has considered a heritage impact statement that includes recommendations for the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works, and for any modification that will reduce the impact of the proposed development on the heritage significance of the heritage item.*
- (2) *Development is in the vicinity of a heritage item for the purposes of this clause if, in the opinion of the consent authority, the development:*
  - (a) *may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or*
  - (b) *may undermine or otherwise cause physical damage to a heritage item, or*
  - (c) *will otherwise have any adverse impact on the heritage significance of a heritage item or of any heritage conservation area within which it is situated.*
- (3) *Before granting consent for development to which this clause applies, the consent authority must take into account the impact of the proposed development on the heritage significance of the heritage item, on any heritage conservation area within which it is situated and on the visual curtilage and setting of the heritage item.*
- (4) *A heritage impact statement required by this clause should include recommendations for the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.*

The Project would not affect a heritage item other than of indigenous origin or a natural heritage item as defined by the Lake Macquarie LEP (Appendix L). The Project is not located within a heritage conservation area as defined by the Lake Macquarie LEP.

Clauses 47, 50 and 52 set out above are potentially applicable to the Project with respect to the Project mine subsidence and surface activities that have the potential to impact Aboriginal heritage sites located above the Project mining areas.

An Aboriginal Heritage Assessment has been conducted for the Project and is provided in Appendix K. A summary of how the above issues have been addressed is provided in Section 4.10.

Aboriginal community consultation was undertaken in accordance with the NSW Office of Environment and Heritage's (OEH's) *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (NSW Department of Environment, Climate Change and Water [DECCW], 2010) and the Draft *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (DEC, 2005).

The consultation process has included consultation with the Awabakal Local Aboriginal Land Council (LALC) and the Mindaribba LALC.

Accordingly the Minister can be satisfied as to these matters.

Under clause 50(2) of the Lake Macquarie LEP, the consent authority (the Minister) is required to provide notification to the local Aboriginal communities of the Development Application (in such a way as it thinks appropriate). Notification may be through the advertisement of the public exhibition of the Development Application and this EIS.

Under clause 50(4), the consent authority (the Minister) must provide a copy of the Development Application and this EIS to the Awabakal LALC and the Mindaribba LALC and consider their comments.

Clause 60 relates to relevant considerations for the consent authority for development adjoining lands zoned 5 (Infrastructure) and 8 (National Park):

**60 Development on land adjoining Zones 5, 7 (1), 7 (4) and 8**

(1) *Consent must not be granted for development on land adjoining land within Zone 5 unless the consent authority is satisfied that the proposed development will be consistent with the efficient operation of the potential or existing infrastructure development within the zone.*

...

(3) *The consent authority must not grant consent to development on land adjoining or adjacent to land within Zone 8 if it is of the opinion that the proposed development is not consistent with the provisions contained in the Guidelines for developments adjoining Department of Environment and Climate Change land (as in force on the day on which this subclause, as substituted by State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008, commenced).*

The Project would be consistent with the continuing operation of the Sydney to Newcastle (F3) Freeway and the Hunter Expressway (under construction) located within the land zoned 5 (Infrastructure).

The Project would include measures to minimise and manage potential direct and indirect impacts on the value of the Sugarloaf State Conservation Area, including potential impacts on hydrological regimes, surface runoff, access, biodiversity and ecological connectivity and amenity.

Accordingly the Minister can be satisfied as to these matters.

**A3.5 STRATEGIC PLANNING DOCUMENTS**

**A3.5.1 Development Control Plans**

Clause 11 of the State and Regional Development SEPP indicates that development control plans (whether made before or after the commencement of the SEPP) do not apply to State Significant Development, and hence do not apply to the Project.

### A3.5.2 Lower Hunter Regional Strategy

The Lower Hunter Regional Strategy (DoP, 2006) guides local planning in the five LGAs of Newcastle, Lake Macquarie, Port Stephens, Maitland and Cessnock, and informs decisions on service and infrastructure delivery. The Lower Hunter Regional Strategy is reviewed every five years, with the first review of the strategy currently underway.

The key elements of the Lower Hunter Regional Strategy are to (DoP, 2006):

- *Provide for up to 115 000 new dwellings by 2031 ensuring the potential to accommodate both the changing housing demands of smaller households and reduced occupancy rates of the existing population as well as meeting the housing demands for an additional 160 000 people.*
- *Identify and protect new green corridors between the Watagan Ranges and the Stockton Peninsula, across the Wallarah Peninsula and along the riverine environments of the Karuah River and the foreshores of Port Stephens.*
- *Promote Newcastle as the regional city of the Lower Hunter, supported by a hierarchy of major regional centres at Charlestown, Cessnock, Maitland and Raymond Terrace, emerging major regional centres at Morisset and Glendale–Cardiff as well as specialised centres and lower order centres.*
- *Boost the economic and housing capacity of key centres by refocusing a higher proportion of new housing in these centres. This will help to maintain the character of existing suburbs, provide greater housing choice, maximise use of existing and future infrastructure, including public transport, and achieve a more sustainable balance of infill to greenfield development.*
- *Utilise dwelling and employment projections as a focus for detailed planning of centres.*
- *Provide capacity within employment zones, major centres and strategic centres to accommodate up to 85 per cent of the anticipated 66 000 jobs required by 2031.*
- *Monitor the supply of residential dwellings and employment land through the creation of a new Lower Hunter Urban Development Program.*
- *Enable the release of up to 69 000 new greenfield lots in a coordinated way, with improved neighbourhood design and more efficient use of infrastructure.*

- *Where development or rezoning increases the need for State infrastructure, the Minister for Planning may require a contribution to the infrastructure having regard to the State Infrastructure Strategy and equity considerations.*
- *Maintain or improve the Region's biodiversity through a Regional Conservation Plan, which will establish a framework for biodiversity protection.*
- *Identify and protect environmental assets, rural land and natural resources, landscape and rural amenity, rural communities and the character of existing rural villages.*

The Project area is located within the Watagan to Stockton Corridor mapped in the Lower Hunter Regional Strategy (DoP, 2006).

The Lower Hunter Regional Strategy aims to protect and enhance the Watagan to Stockton Corridor for conservation purposes. The Strategy protects the corridor through the creation of additional protected areas identified in a Regional Conservation Plan for the Lower Hunter (Section A3.5.3) and appropriate planning controls on private land.

The Lower Hunter Regional Strategy requires that conservation land use change in the vicinity of mineral resources should be compatible with continued access to the resource (DoP, 2006). The Strategy also recognises that mining is a transitional land use and that former mining land offers opportunities for both conservation and development outcomes when activities are completed (DoP, 2006).

The Project is consistent with the Lower Hunter Regional Strategy as the implementation of SCZs and other mitigation measures (Sections 4 and 7) would minimise impacts to the conservation values of the area.

In addition, the Socio-economic Assessment for the Project considered the Lower Hunter Regional Strategy in the assessment of potential impacts of the Project on community infrastructure and services (Section 4.17 and Appendix M). Gillespie Economics (Appendix M) concluded that the maximum potential population influx to the region as a result of the Project is inconsequential in the context of the Lower Hunter Regional Strategy which plans for an additional 160,000 residents and 115,000 new dwellings between 2006 and 2031 (DoP, 2006).

The Road Transport Assessment (Appendix H) assessed the potential cumulative impacts of the Project with the outcomes of the Lower Hunter Regional Strategy by using future traffic estimates generated by the Lower Hunter Transport Needs Study (Hyder Consulting Pty Ltd, 2008).

### A3.5.3 Lower Hunter Regional Conservation Plan

The Lower Hunter Regional Conservation Plan (DECCW, 2009) is a partner document to the Lower Hunter Regional Strategy and sets out a 25 year program to direct and drive conservation planning and efforts in the Lower Hunter Valley.

The primary objectives of the Lower Hunter Regional Conservation Plan are to complement the Lower Hunter Regional Strategy by (DECCW, 2009):

- *describing the conservation values of the Lower Hunter Region*
- *analysing the current status of biodiversity within the region, and assessing the likely impacts of development on biodiversity*
- *assessing the biodiversity values of the region, at a landscape scale, and identifying strategic areas for biodiversity protection, enhancement or restoration*
- *contributing to a practical framework that can secure, improve or maintain biodiversity values as the Hunter grows over the next 25 years*
- *guiding local level planning with respect to biodiversity, including the development of local biodiversity conservation strategies and the development of new Local Environmental Plans (LEP) that can merit biodiversity certification.*

As part of the Lower Hunter Regional Conservation Plan, the NSW Government made a set of commitments to offset biodiversity impacts in the Lower Hunter, including the reservation of approximately 20,000 hectares of high conservation value public land to form the backbone of conservation corridors (DECCW, 2009). The lands were reserved through the *National Park Estate (Lower Hunter Region Reservations) Act, 2006* and came into effect on 1 July 2007.

Sugarloaf State Conservation Area was reserved as part of the Lower Hunter Regional Conservation Plan, due to its location in the Watagan to Stockton Corridor.

The NSW Government's intent in reserving land under the State Conservation Area category was to ensure that the new reserves do not sterilise economic mineral and coal resources that can be extracted through underground methods (DECCW, 2009). The State Conservation Area listing permits underground mining and recognises that mining may generate some surface impacts (mainly of a temporary nature) including subsidence and where ventilation or access infrastructure is required (DECCW, 2009).

The Project would involve the continuation of underground mining in Sugarloaf State Conservation Area.

The Lower Hunter Regional Strategy identifies 'high priority conservation lands' which are major contiguous areas of high conservation value vegetation (DECCW, 2009). Conservation of high priority conservation areas on private land will be secured through future planning agreements or other mechanisms, and these areas will be protected from an intensification of the current land uses (DECCW, 2009).

The new pit top facility and upcast ventilation shaft are not located within land identified as high priority conservation land in the Lower Hunter Regional Conservation Plan.

The Lower Hunter Regional Conservation Plan did not undertake a biodiversity impact analysis of mining activities and associated infrastructure. The Lower Hunter Regional Conservation Plan notes that biodiversity impacts associated within mining development will need to be assessed and offset through other mechanisms than those outlined in the Plan (DECCW, 2009).

Project would involve an offset package developed in consideration of the offsetting principles outlined in the Lower Hunter Regional Conservation Plan (Section 7).

### A3.5.4 Newcastle-Lake Macquarie Western Corridor Planning Strategy

The Newcastle-Lake Macquarie Western Corridor Planning Strategy (DoP, 2010) complements the Lower Hunter Regional Strategy and identifies key planning principles and known infrastructure requirements that will guide future urban expansion and conservation in the western corridor. The Newcastle-Lake Macquarie Western Corridor includes land from the New England Highway at Beresfield to the north and Killingworth to the south (DoP, 2010).

The Project is not located within the area covered by the Newcastle-Lake Macquarie Western Corridor Planning Strategy.

Notwithstanding, the Road Transport Assessment (Appendix H) includes consideration of potential cumulative traffic impacts of the proposed Black Hill employment lands (which are included in the Newcastle-Lake Macquarie Western Corridor Planning Strategy) on future road network performance.

### A3.5.5 Hunter-Central Rivers Catchment Action Plan

The Hunter-Central Rivers Catchment Action Plan (Hunter-Central Rivers CAP) provides an outline of the natural resource issues in the Hunter-Central Rivers region and guides natural resource management and investment. The Hunter-Central Rivers CAP was developed by the Hunter-Central Rivers Catchment Management Authority (Hunter-Central Rivers CMA) and is endorsed by the NSW Government.

The Hunter-Central Rivers CAP provides guiding principles which *provide direction for all natural resource managers to achieve Ecologically Sustainable Development and allow organisations to align their activities so that they are compatible with the CAP* (Hunter-Central Rivers CMA, 2007). The guiding principles include:

- principles to maintain or improve the condition of terrestrial biodiversity, soils, rivers and freshwater wetlands, groundwater systems, and estuary and marine areas;
- principles that outline appropriate ways of managing natural resources through landuse planning, integrated water cycle management, current best practice, managing mining and extractive operations and economic tools; and
- principles for considerations for all natural resource work (e.g. climate change, culture and heritage).

The Project is considered to be generally consistent with the relevant guiding principles of the Hunter-Central Rivers CAP, because:

- The Project has been developed in consideration of the principles of ecologically sustainable development (Section 6.7.4).
- The Project includes a biodiversity offset and compensatory package and other measures to maintain or improve biodiversity values (Sections 4.8.4 and 7).

- The Project includes implementation of SCZs to minimise Project impacts on biodiversity, streams, riparian vegetation and groundwater dependent ecosystems (Sections 2.6.3, 4.7 and 4.8), including achieving negligible connective cracking between the stream and underground workings.
- The EIS includes consideration of the Lower Hunter Regional Conservation Plan, which is a regional approach to biodiversity management (Section A3.5.3).
- Assessments of potential impacts on aquatic and terrestrial biodiversity included consideration of key threatening processes under the NSW *Threatened Species Conservation Act, 1995* (Appendices E, F and G).
- Assessment of the potential impacts on threatened species determined that the Project would not alter hydrological regimes such that it would adversely impact threatened species (Sections 4.8 and 4.9 and Appendices F and G).
- The Project includes identification, monitoring and management of weed and pest species to suppress their establishment and contributions to weed and pest management in the Sugarloaf State Conservation Area (Appendices F and G and Sections 4.8.3, 4.8.4, 4.9.3 and 7).
- The Project includes implementation of bushfire management measures to minimise adverse ecological impacts from fire (Section 4.3.3).
- The Project includes implementation of erosion and sediment control measures during construction and operational phases of the Project (Section 4.3.3 and 4.6.3).
- The Project has been designed to avoid the release of underground mine water from the new pit top facility (Section 2.9).
- Water would only be released subject to compliance with relevant Environment Protection Licences to the satisfaction of the NSW Environment Protection Agency (Section 2.9).
- The Project is consistent with the principles of the *Water Management Act, 2000* (Attachment 6).
- The Groundwater Assessment concluded that there is expected to be negligible deterioration in groundwater quality as a result of mining, including in the long-term (Appendix B and Section 4.4).

- The EIS includes consideration of the off-site and cumulative impacts of mining (Section 4), including the assessment of cumulative groundwater impacts with other existing and approved mines in the area (Appendix B).
- The potential implications of climate change on local surface water and groundwater resources have been addressed (Appendices B and C).
- The Project includes comprehensive environmental monitoring and reporting commitments (Section 7), including the development of a comprehensive groundwater monitoring and reporting program which would be undertaken throughout the Project (Appendix B and Sections 4.4).
- Water Management Plans would be prepared as a component of the Extraction Plan process for the Project prior to mining occurring in an area (Section 7).
- The EIS includes assessment of Aboriginal and Non-Aboriginal heritage sites and landscapes, and avoidance/mitigation of impacts, where practicable (Appendices K and L and Sections 4.10 and 4.11).
- Aboriginal stakeholders have been consulted as part of the Aboriginal Cultural Heritage Assessment in accordance with relevant guidelines (Appendix K).
- A rehabilitation strategy has been developed for the Project that allows for rehabilitation of the Project area to achieve final land uses that meet community and regulatory expectations in consideration of the pre-mining land use (Section 5).
- The Project description has been developed in consideration of relevant legislation, policies, plans and strategies (Section 6 and this Attachment).

### A3.6 REFERENCES

Department of Environment and Conservation (2004) *Environmental Guideline: Use of Effluent by Irrigation*.

Department of Environment and Conservation (2005) *Draft Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*.

Department of Environment, Climate Change and Water (2009) *Lower Hunter Regional Conservation Plan*.

Department of Environment, Climate Change and Water (2010) *Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010*.

Department of Planning (2006) *Lower Hunter Regional Strategy*. State of New South Wales through the Department of Planning.

Department of Planning (2010) *Newcastle-Lake Macquarie Western Corridor Planning Strategy*.

Department of Planning (2011a) *Hazardous Industry Planning Advisory Paper No. 4: Risk Criteria for Land Use Safety Planning*.

Department of Planning (2011b) *Hazardous Industry Planning Advisory Paper No. 6: Hazard Analysis*.

Department of Planning and Infrastructure (2011) *Multi-Level Risk Assessment*.

Department of Urban Affairs and Planning and Environmental Protection Authority (1998) *Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land*.

Hunter-Central Rivers Catchment Management Authority (2007) *Hunter-Central Rivers Catchment Action Plan*.

Hyder Consulting Pty Ltd (2008) *Lower Hunter Transport Needs Study Technical Paper 4 Traffic Analysis*.

Lake Macquarie City Council (2000) *Lifestyle 2020 Strategy*.

Peter Dundon & Associates (2006) *Tasman Mine Site Water Management Plan*. Report prepared for Newcastle Coal Company Pty Limited.

Rural Fire Service (2006) *Planning for Bush Fire Protection*. A Guide for Councils, Planners, Fire Authorities and Developers. Prepared by NSW Rural Fire Service in cooperation with the Department of Planning.