NEW HOPE GROUP

4. Project Approvals

4. Project Approvals

4.1 Overview of legislative regime

The following is a summary of the pieces of State and Federal legislation most relevant to the revised Project. The Terms of Reference (ToR) require separate consideration to be given to approvals which are required for "*each project component*" and "*separate consideration for approvals required for works located on and off-site the MLA*".

4.1.1 Queensland Government EIS process

The *State Development & Public Works Orgainsation Act 1971* (SDPWO Act) provides a mechanism for project proposals to be assessed through a public environmental impact statement (EIS) process. The SDPWO Act gives the Coordinator-General the power to declare a project, which meets criteria set down in the SDPWO Act, to be a “coordinated project” for which an EIS is required. The Coordinator-General coordinates a whole-of-government environmental impact assessment process, as set-out under Part 4 of the SDPWO Act.

The revised Project is a coordinated project for which an EIS is required under the SDPWO Act. On 14 November 2012, the Coordinator-General confirmed that, as a result of project modifications, it required the EIS process to restart at the draft ToR stage. A new ToR was released on 22 March 2013.

At the completion of the public notification and assessment process for the revised Project, the Coordinator-General will prepare a report (CG's Evaluation Report) that evaluates the EIS and other relevant material. The CG's Evaluation Report may state conditions for, or make recommendations with respect to, subsequent approvals required for the revised Project to proceed including for the Environmental Authority (EA) and Mining Lease (ML).

A submission made in relation to the EIS is taken to be a submission for a later impact-assessable development application under the *Sustainable Planning Act 2009* (SP Act).

4.1.2 Australian Government EIS process

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), a project will require approval by the Federal Environment Minister if the project has been determined to be a controlled action which will have, or is likely to have, a significant impact on a matter of national environmental significance. Matters of national environmental significance are:

a) World Heritage properties;

b) National Heritage properties;

c) wetlands of international importance (RAMSAR wetlands);

d) listed threatened species and communities;

e) listed migratory species;

f) Commonwealth land;

g) the Great Barrier Reef Marine Park;

h) nuclear actions;

i) the Commonwealth marine environment;

j) actions involving coal seam gas development or large coal mining development that have, will have, or are likely to have a significant impact on a water resource.

The Federal Environment Minister declared that the Project was a controlled action on 24 May 2007 (referral 2007/3423). The Federal Environment Minister accepted the Project variations on 9 November 2012 as variations to the proposed action. The relevant controlling provisions for the controlled action decision are Listed Threatened Species and Communities (sections 18 and 18A). On 17 October 2013, the Federal Environment Minister notified the proponent that the revised Project also requires assessment and approval under the EPBC Act as an action that is likely to have a significant impact on water resources (and that sections 24D and 24E are controlling provisions).

The revised Project is being assessed under the Bilateral Agreement between the State and the Commonwealth. Under the bilateral agreement, the Australian Government has accredited the SDPWO Act EIS process to meet the environmental assessment requirements under the EPBC Act.

At the conclusion of the SDPWO Act EIS process, the Federal Environment Minister will receive a copy of the CG's Evaluation Report and will take the CG's Evaluation Report into account when making his decision under the EPBC Act.

4.1.3 Key approvals under Queensland legislation

In addition to the EIS process, the revised Project will need to obtain a range of approvals under Queensland legislation before the revised Project can commence. The approvals which may be required for the revised Project are set out in Schedule 1 and include approvals under the following legislation:

- *Mineral Resources Act 1989;*
- *Environmental Protection Act 1994;*
- *Sustainable Planning Act 2009;*
- *Building Act 1975;*
- *Land Act 1994;*
- *Nature Conservation Act 1992;*
- *Vegetation Management Act 1999;*
- *Water Act 2000;*
- *Transport Operations (Road Use Management) Act 1995;*
- *Regional Planning Interests Act 2014; and*

- *Queensland Heritage Act 1992.*

Schedule 1 of the Regulatory Approvals Plan located in **Appendix A** of the AEIS, includes a list of approvals likely to be required for infrastructure located off-lease, including associated legislation and the administering authority (e.g. the assessment manager).

4.1.3.1 Mineral Resources Act 1989

A ML under the MR Act is required to permit the conduct of specified mining and associated activities within the ML. A Mining Lease Application (MLA 50232) has been made for the revised Project.

The development of the rail spur and balloon loop will proceed by way of an application for an Infrastructure ML under the MR Act.

An Infrastructure ML is commonly granted for the purpose of locating infrastructure to support mining operations on an adjacent or nearby mining lease, where no mining is actually proposed for the area of the Infrastructure ML. An Infrastructure ML would authorise the construction and operation of the rail loop Infrastructure because the rail loop Infrastructure is an activity that is associated with, arising from or promoting the activity of coal mining on MLA 50232 and the existing New Acland MLs.

The ML and EA amendment applications will be publicly notified after the CG's Evaluation Report has been issued. Any person who makes a properly made submission during that public notification about the MLA will be able to elect to become an objector for the MLA. Where an objection notice is given, the grant of the MLA would be referred to the Land Court. The Land Court would then decide whether to recommend the grant of the ML or refusal of the MLA.

The revised Project is excluded from Chapter 10 ("Roads") of the MR Act as it is a coordinated project under the SDPWO Act. Road impacts are addressed in **Chapter 13** of the EIS and will be assessed by the Coordinator-General as part of the environmental impact assessment process.

4.1.3.2 Environmental Protection Act 1994

An EA under the *Environmental Protection Act 1994* (EP Act) is required for undertaking a resource activity, which includes a mining activity authorised under a mining lease. A single EA is required for all resource activities that are carried out as a single integrated operation. An application to amend EA EPML00335713 (to include MLA 50232) has been made for the revised Project. An MLA will not be granted until after the EA amendment application is granted.

Any person who makes a properly made submission during public notification to the EA amendment application will be able to elect to give an objection notice to the administering authority against a proposal by the administering authority to approve the application to amend the EA. The objection notice must be given to the administering authority within 20 business days after the administering authority notifies the submitter of its proposal to approve the amendment of the EA. If a submitter gives such an objection notice to the administering authority, the grant of the EA amendment application must be referred to the Land Court. After the Land Court makes its decision on the objection, the application is then referred to the Minister for Natural Resources and Mines and Minister

for State Development Infrastructure and Planning for advice, before the administering authority is able to make a final decision on the EA Application.

4.1.3.3 Sustainable Planning Act 2009

The Sustainable Planning Act 2009 (SP Act) provides the framework for Queensland's planning and development assessment system.

Under the Act, development approvals are required for assessable development, unless an exemption applies. Development approvals under SP Act will be required for the revised Project in respect of the development of any infrastructure that is to be located outside of the mining leases.

Development applications can be required to go through the information and referral and public notification stages of IDAS. However, any development applications that relate to a coordinated project under the SDPWO Act and which are for a material change of use or impact assessable, will not be required to go through these stages and there will be no referral agencies for the application. However any properly made submission for the EIS will be taken to be a submission in relation to the development application under IDAS.

Under SP Act, submitters who make properly made submissions on impact assessable development applications may appeal to the Planning and Environment Court against a decision to grant a development approval or the conditions of the approval. If the development of the rail spur and balloon loop is to be authorised under SP Act, rather than under an Infrastructure ML, the application will be impact assessable.

The appeal period runs for 20 business days from the time the decision notice, or negotiated decision notice, for the development approval is given to the submitter.

Chapter of the draft EIS included a description of relevant planning instruments under the SP Act, including the Toowoomba Regional Planning Scheme and the Darling Downs Regional Plan. The individual State Planning Policies have been replaced with a single State Planning Policy (SPP), which commenced in December 2013. The SPP outlines the Queensland Government's position in regard to planning matters of State significance. There are 16 state interests which are divided into five categories, being liveable communities and housing, economic growth, environment and heritage, hazards and safety and infrastructure.

State interests relevant to the revised Project include:

- Mining and extractive resources;
- Agriculture;
- Development and construction;
- Biodiversity;
- Cultural heritage;
- Water quality;

- Emissions and Hazardous activities;
- Natural hazards;
- Energy and water supply; and
- State transport infrastructure.

Where an inconsistency exists between the SPP and a planning scheme, the SPP prevails to the extent of the inconsistency. The SPP applies to the assessment of certain development applications (identified in Part E of the SPP), to the extent that the SPP has not been identified as being appropriately integrated in the Planning Scheme.

4.1.3.4 Building Act 1975

The *Building Act 1975* regulates all building work in Queensland. It prescribes when building work constitutes assessable development under SPA and requires a development approval.

Under section 4A(3) of the MRA, building work carried out for development authorised under a mining tenement is self-assessable and therefore does not require a development approval under SPA. However, building work carried out on tenure must still comply with the relevant provisions of the Building Code of Australia and the Queensland Development Code.

4.1.3.5 Land Act 1994

Under the *Land Act 1994,* an application can be made to the Department of Natural Resources and Mines (DNRM) for the temporary or permanent closure of a road. It is expected that temporary and permanent closures of roads will be required for the revised Project. NAC will consult with DNRM in relation to these proposed road closures.

4.1.3.6 Nature Conservation Act 1992

Under the *Nature Conservation Act 1992* (NC Act), permits and licences are required to authorise interference with native wildlife. This includes for clearing native plants, tampering with animal breeding places and catching and relocating wildlife. There are, however, certain exemptions. For example, clearing of least concern plants will be exempt from requiring a clearing permit within an area that is not identified as high risk on the flora survey trigger map (i.e. where no endangered, vulnerable or near threatened (EVNT) plants are known to be present). For high risk areas, an exemption will be provided where it can be demonstrated that no EVNT plants are present or the clearing of these species can be avoided. These matters will also be regulated under the EA for the revised Project.

Rehabilitation permits, wildlife movement permits, species management programs and, in some instances, clearing permits are expected to be required for the revised Project.

4.1.3.7 Vegetation Management Act 1999

The *Vegetation Management Act 1999* (VM Act) regulates the clearing of vegetation in Queensland. Under the Act, clearing of remnant vegetation requires development approval under SPA, unless an exemption applies (for example, if the clearing is carried out in the course of a mining activity). Accordingly, any clearing of remnant vegetation conducted on tenure as part of the revised Project, will not require development approval. Approval will be required, however, for any clearing conducted off tenure. Clearing of vegetation on the mining lease would be regulated by the EA.

4.1.3.8 Water Act 2000

The *Water Act 2000* (Water Act) provides for the management of water and watercourses and the construction, control and management of works that affect watercourses. It seeks to achieve this by, amongst other things, providing for the preparation and implementation of Water Resource Plans (WRPs) and Resource Operations Plans (ROPs) and regulating the granting of water licences and riverine protection permits (RPPs).

Water licences are required to take water and to interfere with the flow of water on, under or adjoining land. This includes interfering with water in aquifers. RPPs are required to excavate or place fill in a watercourse, lake or spring, although exemptions apply in certain circumstances and relevantly where the clearing is undertaken in accordance with Guidelines.

4.1.3.9 Transport Operations (Road Use Management) Act 1995

The *Transport Operations (Road Use Management) Act 1995* provides for the effective and efficient management of road use in Queensland.

During the construction phase of the revised Project, the transport of over-mass or over-dimension loads may occur. This will need to be undertaken in accordance with the Act.

4.1.3.10 Regional Planning Interests Act 2014

Under the *Regional Planning Interests Act 2014* (RPI Act), a regional interests development approval (RIDA) will be required to carry out a resource activity in an area of regional interest, unless an exemption applies.

The RPI Act identifies four areas of regional interest:

- Priority Agricultural Areas (PAA);
- Priority Living Areas (PLA);
- Strategic Environmental Areas (SEA); and
- the Strategic Cropping Area (SCA).

The RPI Act is supported by regional plans. This includes, relevant to the revised Project, the Darling Downs Regional Plan (DDRP). The DDRP has been prepared to advance the purpose of the SP Act by providing integrated land use planning policy for the region. Amongst other things, it identifies PAAs within the Darling Downs region.

The RPI Act will apply to the revised Project, as it is mapped entirely within a PAA and contains SCAs.

There are exemptions in the RPI Act for:

- certain pre-existing resource activities;
- resource activities carried out within the period of one year from the day the first activity under the resource authority started; and
- where there is a conduct and compensation agreement or other voluntary agreement with the landowner and certain other conditions are met.

The RPI Act is supported by the *Regional Planning Interests Regulation 2014* (RPI Regulation).

Except to the extent exemptions apply to the revised Project, a RIDA will be required under the RPI Act and will be applied for in accordance with the RPI Act and RPI Regulation.

The RPI Act and RPI Regulation commenced on 13 June 2014.

4.1.3.11 Queensland Heritage Act 1992

The *Queensland Heritage Act 1992* provides for the establishment of the Queensland Heritage Register, which records places of heritage significance in Queensland.

Relevantly, the Acland No. 2 Colliery is included in the Heritage Register. This heritage place will not be disturbed by mining activities conducted in the course of the revised Project and therefore approvals under this Act will not be required for the revised Project works.

4.1.3.12 Environmental Offsets Act 2014

The *Environmental Offsets Act 2014* (Offsets Act) introduces a new framework for environmental offsets in Queensland. Under the Act, the existing five issue-specific offset policies are replaced by a single State policy governing the assessment of environmental offsets.

The new framework under the Offsets Act is expected to commence on 1 July 2014. It will be supported by the *Environmental Offsets Regulation 2014* (Offsets Regulation), the Queensland Environmental Offsets Policy and the Financial Settlement Offset Calculation Methodology.

Under the Offsets Act, an administering agency, being the entity that may grant or has granted an authority under another Act for a prescribed activity, may impose an offset condition on that authority only if:

- a prescribed activity will, or is likely to have, a significant residual impact on a prescribed environmental matter; and
- all reasonable on-site mitigation measures for the prescribed activity have been, or will be, undertaken.

The proposed Offsets Regulation will not change the "prescribed activities" for which an environmental offset may presently be required.

A "prescribed environmental matter" is any of the following matters prescribed under the proposed Offsets Regulation:

- matters of national environmental significance (MNES);
- matters of State environmental significance; and
- matters of local environmental significance.

A "significant residual impact" is an adverse impact, whether direct or indirect, that is caused by a prescribed activity to all or part of a prescribed environmental matter that remains or is likely to remain (whether temporarily or permanently) despite on-site mitigation and that is or is likely to be significant.

The Offsets Act also imposes additional conditions, that are deemed to apply to an authority granted under another Act, known as deemed conditions. This includes a requirement for the holder of an authority for a prescribed activity to provide the administering agency with a notice of election stating the type of offset they will deliver being either a proponent driven offset, a financial settlement offset or a combination.

Relevantly, the Offsets Act is expressed not to affect or limit the functions and powers of the Coordinator-General under the SDPWO Act. This would include evaluation by the Coordinator-General for coordinated projects.

State and Federal offset requirements for the revised Project are addressed in **Appendix M** of the AEIS.

4.1.3.13 Local Government

Some types of activities conducted off tenure, as part of the revised Project, may be assessed by the TRC under its Planning Scheme and other approvals may be required under local laws of the TRC. Relevant local laws include those that regulate interference with local government roads.

4.1.4 Native title and cultural heritage

4.1.4.1 Native Title

Native title refers to the rights of indigenous Australian people to their traditional land and waters as recognised at common law. The *Native Title Act 1993* (Cth) (NT Act) relevantly confers onto Aborigines who hold native title rights and interests (or who have made a native title claim or otherwise may hold native title) in relation to land or waters, the right to be consulted on, or to participate in, decisions about proposed "future acts".

As a result of the enactment of the NT Act, all project proponents need to consider if the future act provisions of the NT Act apply to their projects. An "act", such as the grant of tenure or of a statutory licence, permit or authority, may qualify as a future act if it is done or proposed to be done in relation to land or waters where native title has not been extinguished. Therefore, a project proponent needs to ascertain at an early stage the extent to which native title may continue to exist over the land or waters the subject of its project.

Analyses undertaken for the route of the rail spur and the area of MLA 50232 indicate that native title has been extinguished over the whole of these areas. In the circumstances, the proposed grant of the

mining lease and of any other statutory approvals or tenure for the revised Project will be valid from a native title perspective.

4.1.4.2 Cultural heritage

The *Aboriginal Cultural Heritage Act 2003* (ACH Act) came into force on 16 April 2004. Under the ACH Act, a "cultural heritage duty of care" is established for project proponents to take all reasonable and practicable measures to ensure that their development activities do not harm Aboriginal cultural heritage. A project proponent will be taken to have complied with their duty of care in relation to particular Aboriginal cultural heritage if acting under:

- an approved CHMP that applies to the Aboriginal cultural heritage; or
- a native title agreement (e.g. a registered ILUA) or another agreement with an Aboriginal party (frequently a current or former registered native title claimant) for the area, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement.

In addition, unless an exemption applies, if preparation of an EIS is required under legislation other than the ACH Act as part of a necessary approval for a project, it will be mandatory for the project proponent to develop a CHMP for the project (and have it approved by the Chief Executive). This requirement will not apply to the extent that any such projects are the subject of either:

- a native title agreement (e.g. a registered ILUA); or
- an "existing agreement", which is a cultural heritage agreement that was entered into before 16 April 2004 (and that is still in force) with an entity that became an Aboriginal party under the ACH Act after that date.

4.2 Regulatory authorities

4.2.1 Australian Government departments

4.2.1.1 Department of the Environment (DotE)

DotE is an Australian Government department involved in developing and implementing national policy to protect and conserve Australia's national environment and heritage. DotE administers Australian Government environmental, cultural heritage and arts legislation, including the EPBC Act, and provides advice to the Federal Environment Minister for Department of the Environment (Environment Minister).

4.2.2 Queensland government departments

4.2.2.1 Department of State Development, Infrastructure and Planning (DSDIP)

The DSDIP is responsible for overseeing planning and infrastructure projects in Queensland. It provides advice and technical support to the Coordinator-General.

The Coordinator-General determines whether certain major projects should be declared 'coordinated projects' under the SDPWO Act. If so, the Coordinator-General coordinates an EIS assessment process and evaluates the EIS for the project.

The DSDIP is also responsible for administering the RPI Act and RPI Regulations.

4.2.2.2 Department of Environment and Heritage Protection (DEHP)

Key functions of DEHP include environmental planning, environmental policy and management of wildlife, environmental operations, sustainable industries, environmental and technical services, corporate affairs and corporate development.

DEHP administers a number of Acts and statutory requirements including the EP Act and the Environmental Protection Policies (EPP), associated with the EP Act. DEHP is also responsible for managing and allocating Queensland's land and water resources, and managing native vegetation.

Under the development approvals process, DEHP has the following functions:

1. provision of advice under the SDPWO Act for proposals that have been declared a coordinated project (S26, SDPWO Act) or advice provided for environmental coordination by the CG (S25, SDPWO Act);
2. provision of advice to the Environment Minister for assessment under the EPBC Act; and
3. assessing and issuing applications for EAs for mining activities under the EP Act.

4.2.2.3 Department of Natural Resources and Mines

DNRM is responsible for the administration, enforcement (including licensing), and management of Queensland's mineral and coal resources under the MR Act and the Coal Mining Safety and Health Act 1999, managing and promoting industries in the State, allocating land for development and infrastructure provision under the SDPWO Act. Other roles include managing fresh water resources, including water allocation and entitlements, which is in part managed through the *Water Act 2000*.

4.2.2.4 Local government

Some types of activities outside the mining lease may be assessed by the TRC under its Town Planning Scheme and other approvals may be required under local laws. NAC will continue to liaise with the TRC to determine approvals required under local laws for the revised Project.

4.3 Issue a)

NAC is seeking a complete list of draft EA conditions to be stated within the CG's Evaluation Report for the mine component of the revised Project.

4.4 Issue b)

The development of the rail spur and balloon loop will proceed by way of an application for an Infrastructure ML under the MRA.

NAC will seek a complete list of draft EA conditions to be stated within the CG's Evaluation Report for the EA associated with the Infrastructure ML.

4.5 Issue c)

The following activities are also associated with off-lease infrastructure for the revised Project:

- Decommisioning of the JRLF;
- Realignment of Jondaryan-Muldu Road and other local government roads; and
- Realignment of electricity infrastructure.

It is noted that the Coordinator-General may recommend conditions for the approval of these activities. Please refer to **Appendix A** of the AEIS, which includes a detailed list of approvals for off-lease activities, including associated legislation and the administering authority. It is not anticipated that a complete set of conditions would be obtained for required approvals for this infrastructure until after detailed design has been completed and the necessary applications made to the relevant administering authorities.

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