

12. STATUTORY REQUIREMENTS

(SMP GUIDELINES SECTION 6.9)

This section identifies the statutory requirements that apply to the SMP Area and the proposed mining operation in relation to any potential subsidence impacts. A range of environmental legislation is applicable to mining in NSW and the DPIM aims to promote the responsible development of the State's resources for the community's benefit. The Department is therefore concerned to ensure that any adverse effects of mining are minimised, and that a consistent high standard of environmental protection and rehabilitation is practiced throughout NSW.

12.1. STATUTORY PROCESS FOR APPROVALS

Under current legislation, the major approvals required for mining Longwalls 705 to 710 using longwall extraction methods include:

- A mining lease granted under the *Mining Act 1992*;
- Various approvals required under the mining lease associated with land use and environmental impacts. To obtain this a Subsidence Management Plan (SMP) must be prepared and approved by the DPIM;
- Compliance by DPIM with Part 5 of the EP&A Act 1979 for approval of the Subsidence Management Plan; and
- Section 88 Approval under the *Coal Mines Health and Safety Act 2006*.

12.1.1 Mining Leases

The key mining leases covering Appin Colliery include:

- Consolidated Coal Lease No. 767 (renewal date 3 September 2010) covering the majority of the Appin Colliery lease area; and
- Coal Lease No. 388 (renewal date 22 January 2012). This lease covers the Upper Canal.

12.1.2. Mining Lease Conditions

The SMP approval process was introduced by DPIM by insertion of a new mining lease condition as detailed below. This lease condition requires the approval of an SMP prior to coal extraction that may result in subsidence of the surface.

Mining leases (CCL767 and CL388) contains the following SMP condition:

- The leaseholder shall prepare a Subsidence Management Plan prior to commencing any underground mining operations which will potentially lead to subsidence of the land surface.

- Underground mining operations which will potentially lead to subsidence include secondary extraction panels such as longwalls or miniwalls, associated first workings (gateroads, installation roads and associated main headings, etc), and pillar extractions, and are otherwise defined by the *Guideline for Applications for Subsidence Management Approvals*.
- The leaseholder must not commence or undertake underground mining operations that will potentially lead to subsidence other than in accordance with a Subsidence Management Plan approved by the Director-General, an approval under the *Coal Mines Regulation Act 1982*, or the document *New Subsidence Management Plan Approval Process - Transitional Provisions*.
- Subsidence Management Plans are to be prepared in accordance with the *Guideline for Applications for Subsidence Management Approvals*.
- Subsidence Management Plans as approved shall form part of the Mining Operations Plan required under Condition 2 and will be subject to the Annual Environmental Management Report process as set out under Condition 3. The SMP is also subject to the requirements for subsidence monitoring and reporting set out in the document *New Approval Process for Management of Coal Mining Subsidence – Policy*.

Consequently, as a lease condition, an SMP must be approved by the DPIM to allow the proposed longwall mining of Longwalls 705 to 710 to occur.

12.2. SMP

The main areas to be addressed by an SMP application include:

- The proposed mining system(s) and resource recovery;
- Community consultation;
- Statutory requirements that apply to the SMP Area;
- Expected subsidence and its potential impacts on public safety, the environment, community, land use, surface improvements and infrastructure; and
- The proposed Subsidence Management Plan for the expected subsidence impacts.

The SMP approval requires an outcome-based systems approach. The SMP must be capable of managing potential subsidence impacts to produce outcomes that are consistent with government policies and which take into account community expectations. The emphasis of the approach is on the quality and effectiveness of the proposed management solutions and their outcomes. An SMP approval is restricted to a maximum period of seven years.

The SMP application is assessed by a DPIM SMP Review Committee comprising the Director Environment (Chair), Assistant Director Environment, Chief Inspector of Coal Mines, Principal Subsidence Engineer, Manager Policy and Legislative Review and Chief Geologist Coal and Petroleum.

A Subsidence Management Plan Review Committee has been established to:

- Advise the Director-General on the environmental implications of predicted subsidence as detailed in Mine Subsidence Management Plans and to recommend an appropriate and effective suite of conditions to be attached to any approval.
- Review annually the results of monitoring supplied by mining companies in compliance with their approvals and to make recommendations on any amendments to subsidence management or to rehabilitation methods.
- Advise on the management of subsidence controlled under section 138 approvals, particularly in relation to sensitive areas and where those approvals are granted after 31 December 2003.

The DPIM is represented by the Director Strategic Planning and Policy, Director Environment and the Assistant Director Safety Operations. The Committee also includes representatives nominated by the CEO of each of the following agencies:

- Department of Planning;
- Department of Water and Energy;
- Department of Environment and Climate Change;
- Department of Primary Industries – Fisheries;
- Dams Safety Committee;
- Sydney Catchment Authority;
- Mine Subsidence Board; and
- Other agencies where their interest is recognised by the Committee.

The Committee is chaired by the Director Environment or Assistant Director Environment DPIM. The approach taken in assessing SMP applications is one of openness and consultation with all parties affected by the proposal. A consensus solution is always sought. However, where consensus is not possible, the Deputy Director-General (or delegate) will make a decision on the basis of all the available information.

12.2.1. Development Consent

Longwalls 705 to 710 are within an existing mining lease, where there is an existing mine, and is subject to the Wollondilly Local Environment Plan which adopts Clauses 35 and Schedule 1(7) of the Environmental Planning and Assessment Model Provisions. Under these provisions a Development Consent is therefore not required for the project. However, the EP&A Act requires that DPIM comply with Part 5 of the EP&A Act when determining the SMP application for Longwalls 705 to 710. This report provides information on the environmental impacts of the Activity (the activity being the proposed mining of Longwalls 705 to 710 and the mitigation and rehabilitation measures that will be implemented to minimise impacts from this mining).

12.3. OTHER RELEVANT LEGISLATION

12.3.1. Mining Act 1992

Primary regulatory control is exercised over mining by the DPIM through the provisions of the *Mining Act 1992* and the conditions attached to mining leases granted under the provisions of that Act. The preparation of an SMP is required where underground mining is likely to lead to subsidence. This SMP has been prepared as part of the application for submission to the DPIM, seeking approval to mine Longwalls 705 to 710.

12.3.2. Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* is administered by the Department of Planning. It institutes a system of environmental planning and assessment for NSW. The objectives of the EP&A Act are to encourage:

- The proper management, development and conservation of natural and constructed resources;
- Public involvement;
- Promotion and co-ordination of the orderly and economic use and development of land;
- Ecologically sustainable development; and
- The protection of the environment.

12.3.3. Coal Mines Health and Safety Regulation 2006

The *Coal Mines Health and Safety Regulation 2006* (CMH&S Reg) is administered by DPIM. Under Section 88 of the Regulation, a mining company must submit and have approved an application for approval to the DPIM prior to commencement of secondary extraction

An application for the extraction of coal under Section 88 of the CMH&S Reg for Longwalls 705 to 710 will be submitted for approval prior to the extraction of Longwall 705.

12.3.4. Environmental Protection and Biodiversity Conservation Act 1999

The Commonwealth's mechanism for national environmental protection is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). Under the EPBC Act, any action which has, will have, or is likely to have a significant impact on a matter of national environmental significance, or is undertaken on Commonwealth land is defined as a controlled action and requires approval by the Minister for the Environment.

12.3.5. Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) is administered by the DECC. The Act establishes the procedures for issuance of licences for environmental protection including waste, air, water and noise pollution control. The owner or operator of a premise that is engaged in scheduled activities is required to hold an Environment Protection Licence and comply with the conditions of the licence.

Appin Colliery holds Environment Protection Licence No. 398 granted by the EPA. No variance to this licence is required for the proposed longwall extraction.

12.3.6. Fisheries Management Act 1994

The *Fisheries Management Act 1994* was amended by the inclusion of provisions (listed in the *Fisheries Management Amendment Act 1997*) to declare and list threatened species of fish and marine vegetation, endangered populations and ecological communities and key threatening processes. One of the major features of the legislation is the integration of threatened aquatic species into the development control processes under the EP&A Act.

EP&A 1979 Act sets out the factors to be considered in a preliminary assessment of whether there is likely to be a significant effect on threatened species arising from a development. Eight factors are considered in a process referred to as the Eight-Part Test. The test is a series of questions, the answers to which assist in determining whether a planned action will significantly affect threatened species, populations, ecological communities or their habitats. For the Eight-Part Test to have relevance there must be the likelihood that one or more threatened species occur in an area which could be affected by the proposal.

If it is determined by the Government Regulator that, on the basis of the Eight-Part Test, that the proposal is likely to significantly affect threatened species, populations, ecological communities or their habitats, the preparation of a Species Impact Statement (SIS) is required as part of the environmental assessment process for approval of the development under Part 5 of the EP&A Act. In making such a determination, it is important that the proposal be considered in its entirety, including mitigative measures designed to remove or minimise impacts to the aquatic environment.

12.3.7. Dam Safety Act 1978

The proposed mining is not under any dams (including stored waters and reservoirs) and/or under structures or designated areas referred to by the Dams Safety Act 1978.

12.3.8. Sydney Water Catchment Management Act 1998

The *Sydney Water Catchment Management Act* establishes arrangements for the supply of bulk water, the management of water quality and the improvement of catchment health. It outlines the role, objectives and functions of the SCA including the management and protection of catchment areas, catchment infrastructure and water quality in the catchments.

12.3.9. National Parks and Wildlife Act 1974

The National Parks and Wildlife Act provides for the protection of Aboriginal sites and places. It is an offence to damage, deface or destroy any Aboriginal site or place without consent. Illawarra Coal may seek s90 consents prior to mining Longwalls 705 to 710, although the risk of damage to shelter sites is low. The Act also prescribes the protections and values of State Conservation Areas.

12.4. OTHER APPROVALS AND PROVISIONS

Any necessary approvals, consents, licenses or permits will be in place prior to any impact resulting from subsidence.

Agreement with infrastructure owners is required prior to mining in relation to the proposed mitigation and remediation works associated with the longwall extraction.

Following mining and prior to any identified remediation measures being carried out, additional approvals may be required. Such approvals cannot be obtained until the areas requiring remediation are identified and site specific plans developed.

12.4.1. Threatening Processes

On the 26 June 2005 the NSW Scientific Committee established by the NSW *Threatened Species Conservation Act* made a Final Determination to list Alteration of Habitat Following Subsidence due to Longwall Mining as a Key Threatening Process in Schedule 3 of the Act.

While longwall mining has been listed as a key threatening process the normal processes of assessment still apply to it. Meetings between the DECC and the DPIM to discuss the implications of the listing, it was decided that a threat abatement plan would not be prepared because SMP and other approval processes already satisfactorily addressed subsidence impacts on the environment, including impacts on threatened species and their habitats.

12.4.2. Mining under Heritage Items

There is one item listed on the NSW State Heritage Register - The Sydney Upper Canal, and there are two items listed on the NSW State Heritage Inventory - The Mountbatten Group and The Gilbulla Memorial Conference Centre.

It was predicted that the Upper Canal would not be impacted by the proposed longwalls. Pending SCA review of the subsidence predictions, no further archaeological or heritage assessment work is required and there is no requirement for statutory approvals. In all matters relating to the Upper Canal the existing CMP should be followed at all times. Consultation between Illawarra Coal, MSEC, the Sydney Catchment Authority heritage officer and the NSW Heritage Council / NSW Heritage Office should be an integral component of this process.

No further archaeological or heritage assessment work is required at the Mountbatten Group. No permits will be required from the NSW Heritage Office for the proposed longwall mining to proceed.

While there are no impacts predicted to any historical heritage items identified in this assessment the items that are associated with the Mountbatten Group will be included into a monitoring regime under the Property Subsidence Management Plan that has been developed in consultation with the property owner.

No further archaeological or heritage assessment work is required at the Gilbulla Conference Centre. No permits will be required from the NSW Heritage Office for the proposed longwall mining to proceed.

While there are no impacts predicted to any historical heritage items identified in this assessment the items that are associated with the Gilbulla Conference Centre will be included into a monitoring regime under the Property Subsidence Management Plan that has been developed in consultation with the property owner.

12.4.3. Mining under Areas of Potential Archaeological Significance

Aboriginal heritage management in NSW is provided for by 2 pieces of legislation: the *National Parks and Wildlife Act 1974* and the *Environmental Planning and Assessment Act 1979*. These acts provide protection for all material relating to the past Aboriginal occupation of Australia.

There are nineteen Aboriginal archaeological sites considered to be within the General SMP Area.

Based on the subsidence predictions provided by MSEC (2008), it is unlikely that there will be impacts to the archaeological sites resulting from the proposed longwall mining.

Aboriginal archaeological sites that have some potential, however unlikely, to be impacted by the proposed longwall mining, will be subject to monitoring. This will involve a site inspection 3 months prior to extraction and a site inspection at the completion of relevant Longwalls for the following Aboriginal archaeological sites where access is granted:

- Upper Nepean Hand Stencils (Possible Shelter with Art);
- Nepean River No. 8 (Shelter with Deposit);
- Nepean River 4 (Shelter with Midden);
- Nepean River 5 (Shelter with Deposit); and
- Nepean River 6 (Shelter with Deposit).

These sites will not require detailed monitoring however each site should be subject to a site inspection at the completion of the coal extraction.

If any notable ground surface impacts occur across the undulating open landscape of the Cumberland Lowlands, then such impacts should be considered against the location of all Aboriginal archaeological sites recorded within the SMP Area. No such impacts have ever been recorded in the past and it is extremely unlikely that impacts on surface Aboriginal sites will occur.

Ongoing consultation should continue between BHP Billiton Illawarra Coal, the Tharawal Local Aboriginal Land Council, Cubbitch Barta Native Title Claimants, and DECC as required.