

## 6.0 STATUTORY PROVISIONS

The Rocglen Extension Project has been assessed in full consideration of the applicable statutory planning instruments. The following sub-sections contain a summary of the relevant major pieces of Commonwealth and State legislation and outline the application of these instruments to the Project.

### 6.1 Commonwealth Legislation

#### 6.1.1 Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is administered by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities (SEWPaC), which was formally known as the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA), and provides a legal framework to protect and manage nationally important flora, fauna, ecological communities and heritage places defined as matters of national environmental significance. An action that “*has, will have or is likely to have a significant impact on a matter of National Environmental Significance*” may not be undertaken without prior approval from the Commonwealth Minister, as provided under Part 9 of the EPBC Act.

The Significant Impact Guidelines provide overarching guidance on determining whether an action is likely to have a significant impact on a matter protected under the Act.

An assessment of the applicability of the EPBC Act to the Rocglen Extension Project was included in the *Flora and Fauna Assessment* (RPS 2010a), which is contained within **Appendix K**. RPS (2010a) undertook an on-line search of the EPBC Act Protected Matters Search database (3 January 2010) to generate a list of those matters of National Environmental Significance (NES) within 40 km of the Project Site. This data, combined with other local knowledge and records, was utilised to assess whether the type of activity proposed will have, or is likely to have, a significant impact upon a matter of NES, or on the environment of Commonwealth land.

Of the eight matters of NES prescribed under the EPBC Act, RPS (2010a) reported the following with regard to the Rocglen Extension Project:

##### **Commonwealth Land**

*The site is not land owned by the Commonwealth, and hence this portion of the Act is not applicable.*

##### **World Heritage Properties**

*The site is not a World Heritage Property. There are no World Heritage Properties listed as occurring in the Region. The Proposal would not have a significant impact upon any World Heritage Properties.*

##### **National Heritage Places**

*The site is not a National Heritage Place. There are no National Heritage Places listed as occurring in the Region. The Proposal would not have a significant impact upon any National Heritage Place.*

##### **Wetlands Protected by International Treaty (the RAMSAR Convention)**

*There are no wetlands protected by international treaty (the RAMSAR Convention) arising from the EPBC Act Protected Matters Report generated for an area within 40 km of the site.*

### **Nationally Listed Threatened Species and Ecological Communities**

*A total of 27 threatened species or ecological communities listed under the EPBC Act have been recorded or have suitable habitat within a 40 km radius of the subject site.... The potential for the Proposal to significantly impact on threatened species and ecological communities has been assessed in Section 6.0 (of RPS 2010a).*

*The Proposal will require the removal of approximately 5.9 hectares of the White Box, Yellow Box, Blakeley's Red Gum Grassy Woodland in the form of intact remnants along Wean Road and Jaegar Lane and 10.9 hectares of the community as derived native grasslands, and 0.14 hectares of the Brigalow (*Acacia harpophylla* dominant and co-dominant). ELA (2010) provides a detailed Biodiversity Offset Strategy to provide a 'maintain or improve' outcome for the removal of the above vegetation communities.*

*None of the 14 threatened fauna species listed on the EPBC Act were recorded during field surveys. Only two species were assessed as having a moderate likelihood of occurrence on the subject site (Large-eared Pied Bat and Greater Long-eared Bat). Given the relatively small area of potentially suitable woodland and forest habitat for the 14 threatened fauna species in comparison to the much larger provision of woodland and forest habitat in Vickery State Forest and surrounding rural properties, it is unlikely that the Proposal would significantly affect any of the 14 threatened fauna species. Additionally ELA (2010) provides a detailed Biodiversity Offset Strategy to provide a 'maintain or improve' outcome for the removal of potential habitat areas for threatened fauna species.*

### **Nationally Listed Migratory Species**

*A total of 10 migratory species listed under the EPBC Act have been recorded or have suitable habitat within a 40 km radius of the site. The Proposal is unlikely to substantially modify, destroy or isolate an area of important habitat, result in an invasive species that is harmful to the migratory species becoming established in an area of important habitat or seriously disrupt the lifecycle of an ecologically significant proportion of the population of a migratory species.*

### **All Nuclear Actions**

*No type of nuclear activity is proposed for the site.*

### **The Environment of Commonwealth Marine Areas**

*No Commonwealth marine areas exist within or adjacent to the site.*

Following submission of a referral in late May 2010, the Rocglen Extension project was found to be considered a 'controlled action' under the EPBC Act. In summary, the then DEWHA advised the following:

*The proposed action is a controlled action. The project will require assessment and approval under the EPBC Act before it can proceed.*

*The project will be assessed through an accreditation of Part 3A of the New South Wales Environmental Planning and Assessment Act 1979.*

A copy of the letter and decision notice issued by the then DEWHA is contained within **Appendix N**.

## **6.2 NSW State Legislation**

### **6.2.1 Environmental Planning and Assessment Act 1979**

The EP&A Act is the principal piece of legislation overseeing the assessment and determination of development proposals in NSW. It aims to encourage the proper management, development and conservation of resources, environmental protection and ecologically sustainable development (ESD).

Coal mining is a class of development listed in Schedule 1 of the SEPP (Major Development) 2005 as requiring approval under Part 3A of the EP&A Act and determination by the Minister for Planning.

While the Rocglen Coal Mine operates under the provisions of an existing Part 3A Project Approval, consultation with the DoP has confirmed that the Rocglen Extension Project is outside the bounds of a Section 75W modification. On this basis, this EA has been prepared to accompany an application to the Minister for Planning seeking a new Project Approval under Part 3A of the EP&A Act. A copy of the project application form is contained within **Appendix A**.

In addition, the following key provisions of the EP&A Act are relevant to the Project under Part 3A.

### **Application of Environmental Planning Instruments**

Section 75R of the EP&A Act provides that environmental planning instruments, other than SEPPs, do not apply to projects approved under Part 3A of the Act, other than as outlined below.

### **Permissibility**

Under Section 75J(3), the Minister may (but is not required to) take into account the provisions of any environmental planning instrument that would not (because of Section 75R) apply to the project if approved. The EP&A Regulation may preclude approval for the carrying out of a class of project (other than a critical infrastructure project) that such an instrument would otherwise prohibit.

The Project is located wholly within the area to which the Gunnedah LEP 1998 applies and is zoned 1(a) Rural (Agricultural Protection). Coal mining is a permissible land use within this zone with development consent. As such, the Minister can approve the Rocglen Extension Project pursuant to Section 75J(3) and Clause 8O of the EP&A Regulation.

### **Approvals Legislation That Does Not Apply**

Under Section 75U of the EP&A Act, if the Project is granted approval under Part 3A, the following authorisations will not be required:

- A permit under Section 201, 205 or 219 of the *Fisheries Management Act 1994*;
- An approval under Part 4, or an excavation permit under Section 139, of the *Heritage Act 1977*;
- A permit under Section 87 or a consent under Section 90 of the *National Parks and Wildlife Act 1974*;
- An authorisation referred to in Section 12 of the *Native Vegetation Act 2003* (or under any Act to be repealed by that Act) to clear native vegetation or State protected land;
- A permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*;
- A bush fire safety authority under Section 100B of the *Rural Fires Act 1997*; and
- A water use approval under Section 89, a water management work approval under Section 90 or an activity approval under Section 91 of the *Water Management Act 2000*.

Nevertheless, the DoP will likely consider the relevant matters associated with these permits/authorisations/approvals during the assessment of the Project.

### **Approvals Legislation That Must Be Applied Consistently**

Under Section 75V of the EP&A Act, if the Project is granted approval under Part 3A, the following authorisations cannot be refused if it is necessary for carrying out the Project and is to be substantially consistent with the Project Approval:

- An approval under Section 15 of the *Mine Subsidence Compensation Act 1961*;
- A mining lease under the *Mining Act 1992*;

- An Environment Protection Licence under Chapter 3 of the *Protection of the Environment Operations Act 1997* (for any of the purposes referred to in Section 43 of that Act); and
- A consent under Section 138 of the *Roads Act 1993*.

### 6.2.2 Other Key NSW State Legislation

Below is a summary of other key pieces of NSW Legislative Acts relevant to the Project.

#### **Protection of the Environment Operations Act 1997**

The Rocglen Extension Project may require a variation to the site's existing EPL (No. 12870). Under Section 75V of the EP&A Act, if the Project is granted approval under Part 3A, an EPL under the *Protection of the Environment Operations Act 1997* (POEO Act) cannot be refused if it is necessary for carrying out the Project and is to be substantially consistent with the Project Approval. Whitehaven will undertake the necessary consultations with the DECCW in this regard following Project Approval.

#### **Mining Act 1992**

Rocglen currently operates within the mining lease identified as ML 1620. The Rocglen Extension Project will extend mining-related activities outside the bounds of ML 1620 (see **Figure 6**). Under Section 75V of the EP&A Act, if the Project is granted approval under Part 3A, a mining lease application under the *Mining Act 1992* cannot be refused if it is necessary for carrying out the Project and is to be substantially consistent with the Project Approval. Whitehaven will undertake consultation with the I&I NSW in this regard and revise statutory mining documents, such as the *Mining Operations Plan* (MOP), as necessary.

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

Rocglen currently holds all necessary approvals under the *Coal Mine Health and Safety Act 2002*. Whitehaven will ensure that any further approvals required for the Rocglen Extension Project are obtained in consultation with the I&I NSW.

#### **Water Act 1912 and Water Management Act 2000**

The *Water Act 1912* and *Water Management Act 2000* (WM Act) contain provisions for the licensing of water capture and use. Points to note in relation to the Rocglen Extension Project are:

- There is currently an embargo in place for commercial licences within the area under Gazette number 35 (17 March 2006). As a result, if Whitehaven wishes to construct any new dams that require licensing, it will be necessary to transfer an existing water access licence to the new location.
- The dams within the Project Site currently collecting 'clean' water are within the harvestable right of the property, and no new 'clean' water dams are proposed.
- There are new 'dirty water' dams (pollution control dams) proposed for the purpose of erosion and sediment control, however these are exempt from the licensing requirements.
- Rocglen currently holds three bore licences for the purposes of mining and dewatering (see **Section 7.6.2**), and the Project does not require any amendment to these licences or additional licenses.

Note that under Section 75U of the EP&A Act, if the Project is granted approval under Part 3A, a water use approval under Section 89, a water management work approval under Section 90 or an activity approval under Section 91 of the WM Act are not required. Water access licences required under the WM Act do not fall under the Section 75U exemption, however, as outlined above, no additional water licences are proposed and there is currently an embargo for commercial licences within the area.

### **National Parks and Wildlife Act 1994**

The cultural heritage assessment undertaken by RPS (2010b) for the Rocglen Extension Project (see **Section 7.8** and **Appendix O**) has been prepared in accordance with the *National Parks and Wildlife Act 1994* (NP&W Act). This assessment identified three Aboriginal stone artefacts within proposed disturbance areas. Management of these sites will be undertaken in consultation with the Aboriginal community stakeholders and the DECCW under the provisions of the NP&W Act and the *Aboriginal and Cultural Heritage Management Plan* (Whitehaven 2008c). Under Section 75U of the EP&A Act, if the Project is granted approval under Part 3A, a permit under Section 87 or a consent under Section 90 of the NP&W Act are not required.

## **6.3 State Environmental Planning Policies**

In addition to the SEPP (Major Development) 2005, which has been discussed above in **Section 6.2.1**, the following SEPPs are relevant considerations for the Project.

### **6.3.1 SEPP No. 33 – Hazardous and Offensive Development**

*SEPP No. 33 - Hazardous and Offensive Development* links the permissibility of industrial development proposals to their individual safety and environmental performance. Certain activities may involve handling, storing or processing a range of materials which, in the absence of location, technical and/or operational controls, may create an off-site risk or offence to people, property or the environment. Such activities would be defined as 'potentially hazardous industry' or 'potential offensive industry'.

In accordance with the Risk Screening undertaken by RWC (2007) for the original project proposal, there is no aspect of the currently approved Rocglen operation considered to be hazardous or offensive under SEPP No. 33. As the Rocglen Extension Project is essentially an expansion of the existing approved operation, it is not considered potentially hazardous or potentially offensive. On this basis, SEPP No. 33 is not applicable.

### **6.3.2 SEPP No. 44 – Koala Habitat Protection**

*SEPP No. 44 – Koala Habitat Protection* provides for the protection of koala habitat by ensuring that areas subject to development proposals are considered for their value as habitat or potential habitat for koalas. The flora and fauna assessment undertaken by RPS (2010a) for the Rocglen Extension Project (see **Section 7.7** and **Appendix K**) assessed the applicability of SEPP No. 44. In summary, RPS (2010a) determined the following:

- **Is the Land 'Potential Koala Habitat'** - *Eucalyptus albens* and *Eucalyptus populnea*, which are feed tree species listed in Schedule 2 of SEPP No. 44, were recorded within the Project Site and within the adjacent "Yarrowonga" property and nearby "Greenwood" property. Some areas have either or both of these species present in numbers approaching 15%, therefore parts of the study areas do constitute Potential Koala habitat.
- **Is the Land 'Core Koala Habitat'** - no koalas or evidence of koalas were observed within the Project Site or within "Yarrowonga" during field surveys. Due to the small size of the forest and woodland areas within the Project Site, and the open nature of most of the woodland areas, it is unlikely that any koalas present would be missed during two nights of spotlighting by two observers. It is considered that the Project Site is unlikely to provide suitable core breeding habitat for the koala and does not constitute Core Koala Habitat as defined under SEPP No. 44.

RPS (2010a) states that due to the relatively small area of forest and woodland vegetation within the Project Site in comparison to the area of suitable forest and woodland vegetation in the adjacent Vickery State Forest, it is unlikely that the koala would be significantly affected by the Project.

### 6.3.3 SEPP No. 55 – Remediation of Land

*SEPP No. 55 – Remediation of Land* provides for a state-wide planning approach to the remediation of contaminated land in order to reduce the risk to human health or any other aspect of the environment. Under the SEPP, a consent authority must not consent to the carrying out of development on land unless it has considered any potential contamination issues.

The Rocglen Extension Project is essentially an expansion of the existing approved operation. With continued implementation of the storage and handling procedures and management practices for hydrocarbons and explosives used on-site, the potential for contamination is considered low. Furthermore, the potential for acid generation from regolith material (topsoil and subsoil) and overburden within the Project Site is considered low.

The MOP amendment to be submitted to the I&I NSW for the Rocglen Extension Project and the detailed *Rehabilitation and Decommissioning Strategy* to be prepared within five years of planned mine closure will address land contamination commensurate with the requirements and guidelines of the NSW Government at that time.

### 6.3.4 SEPP (Mining, Petroleum Production and Extractive Industries) 2007

*SEPP (Mining, Petroleum Production and Extractive Industries) 2007* (Mining SEPP) aims to provide for the proper management and development of mineral, petroleum and extractive material resources for the social and economic welfare of NSW. The SEPP provides that development for the purpose of mining may be carried out with development consent, and defines mining developments that are prohibited, exempt or complying development.

The provisions of the SEPP requiring specified matters to be taken into account have been drafted using the language of Part 4 of the EP&A Act and do not expressly apply to Part 3A. However, given that the matters to be considered under Part 3A remain largely at the discretion of the Director-General, the Mining SEPP has been considered for completeness.

Part 3, specifically Clauses 12 and 13, of the Mining SEPP requires that consideration be given to the compatibility of projects with other surrounding land uses. There is no land use within or surrounding the Project Site (see **Section 3.5**) that is considered to be incompatible or sensitive to the Rocglen Extension Project. This is supported by the fact that the Project is essentially an expansion of the existing approved Rocglen operation.

Part 3 of the Mining SEPP also requires the consideration of natural resource management and environmental management, efficiency of resource recovery, transportation and rehabilitation. The information presented in this EA addresses each of these matters and indicates that the Project will not have any significant impacts over or above the currently approved Rocglen operation. The comprehensive set of environmental management plans and monitoring programs currently implemented at Rocglen will be updated as required to effectively cater for the expanded operations.

## 6.4 Other Considerations

### 6.4.1 Water Sharing Plan

The Project Site lies within an area covered by the *Water Sharing Plan for the Upper Namoi and Lower Namoi Regulated River Water Sources 2003*. However, this Plan only applies to those areas classified as 'water sources', with the drainage lines within and surrounding the Project Site not covered. On this basis, the provisions of the Water Sharing Plan do not apply to the Project Site.

## 6.4.2 Namoi Extractive Industries Policy

The *Namoi Extractive Industries Policy*, which was prepared by the Namoi CMA in November 2009, states that extractive industries compete for a wide range of resources including the natural resources of land, water, air and visual amenity. The Policy also acknowledges that exploration for and development of extractive industries within the Namoi Catchment has the potential to deliver substantial benefits to catchment communities.

Under the Policy, the CMA has a duty to advise and make recommendations to the Australian and NSW Governments to ensure that the catchment assets are sustained. To this end, the *Policy* states that the Namoi CMA:

- *Assumes a leadership role in advising on the impact of extractive industries in the Namoi Catchment, recognising that the NSW Government is the determining authority for mine approval and licensing.*

This EA includes a comprehensive and relevant assessment of the planning, development, operation, rehabilitation and environmental management and monitoring matters to a level of detail commensurate with the scale of the Rocglen Extension Project, industry standards and the legislative framework under which the Project is permitted. The EA has been prepared in accordance with the EP&A Act and associated Regulations, and should enable informed consideration of the implications of proceeding with the Project.

- *Acknowledges that exploration for minerals, gas and energy resources shall continue.*
- *Adopts the Precautionary Principle on extractive industries in the Namoi Catchment.*

Whitehaven has shown a commitment to the principles of Ecological Sustainable Development (ESD), including the Precautionary Principle, and understands that social, economic and environmental objectives are interdependent. Whitehaven also acknowledges that a well designed and effectively managed operation will avoid significant and/or costly environmental impact or degradation. The suite of environmental management plans and monitoring programs are designed to demonstrate environmental due diligence and to implement procedures that provide on-going management and monitoring of the Rocglen operation in-line with the objectives of ESD.

As outlined in **Section 9.3**, a detailed understanding of the issues and potential impacts associated with the Rocglen Extension Project has been obtained via appropriate consultation and assessment. Specialist assessments, including the use of engineering and scientific modelling, have been undertaken for the design of the mine expansion and for impacts relating to air quality (including greenhouse gas), noise and vibration, surface water, groundwater, flora and fauna, and Aboriginal heritage. Assessment has also been undertaken for other issues, including visual amenity, traffic and transport, waste management, bushfire hazard and socio-economic considerations. To this end, there has been careful evaluation undertaken in order to avoid, where possible, serious or irreversible damage to the environment.

This EA, combined with the consultation activities, has enabled Whitehaven to understand the potential implications of the Project, and therefore identify the required management strategies, mitigation measures and monitoring activities.

- *Opposes new approvals for extractive industries in the Namoi Catchment in the absence of a rigorous risk management assessment of cumulative impacts on the four key regional assets.*

As outlined in **Section 2.2**, the risk assessment undertaken was a broad brush pre-project assessment primarily aimed at identifying those issues that represent the greatest risk to the local environment and surrounding populace. While it may not be deemed as a rigorous risk assessment, where the individual risks were considered unacceptable, or where a knowledge gap was identified, specialist studies were commissioned and additional mitigation measures and/or management responses were nominated.

The potential impacts and cumulative impacts of the Project upon the four regional assets, being native plants and animals, surface and groundwater ecosystems, the landscape, and people and their communities, have been assessed and reported within this EA to a level of detail commensurate with the scale of the Project and level of risk.

- *Seeks to ensure that in-depth baseline natural resource management (NRM) databases are in place to ensure that adequate monitoring and evaluation of all extractive industry developments can take place.*

A comprehensive set of environmental management plans have been developed by Whitehaven (and engaged specialist consultants) and are implemented at Rocglen in accordance with PA 06\_0198 and EPL 12870. These plans are backed by an environmental monitoring network including meteorological, air quality, noise, blasting, surface water and groundwater. Similar management plans and monitoring activities are also implemented at Whitehaven's other mining operations in the Gunnedah Basin.

**Appendix H** contains the adopted schedule of monitoring activities from the *Environmental Monitoring Program* (Whitehaven Coal Mining 2009b) and a plan showing the locations of the monitoring sites.

- *Seeks to identify key catchment assets then seeks to identify the risks to those assets.*

As per discussion above in fourth dot point.

- *Seeks to have the Catchment Action Plan considered during the approval process.*

See below to **Section 6.4.3**.

- *Supports the ten International Council of Mining and Metals (ICMM) Principles.*

After reviewing the ten ICMM Principles, we believe that the contents of this EA and Whitehaven's commitment to the principles of ESD (see **Section 9.3**) demonstrate responsibility to the ICMM Principles.

- *Agrees to engage in constructive dialogue with the Australian/NSW Minerals Council on the risk management assessment together with the implementation and evaluation of the applicable ICMM principles.*

Noted. In addition to the discussion provided in relation to the above points, we confirm that Whitehaven is a member of the NSW Minerals Council.

- *Will seek the reimbursement of public NRM investment funds, from the developer, where these investments are impacted upon by mining or exploration, for reinvestment within the Namoi Catchment to maintain or improve the four key regional assets.*

Noted.

Overall, we believe that the relevant critical statements within the Namoi CMA's *Extractive Industries Policy*, as listed above, are adequately and appropriately addressed within the assessment and reporting contained within this EA.

### 6.4.3 Namoi Catchment Management Plan

The *Namoi Catchment Action Plan* (Namoi CAP), which was developed in consultation with the community and approved by the then Minister for Natural Resources in January 2007, is aimed at providing a strategic framework to guide natural resource management in the Namoi Catchment between 2007 and 2017. There are two documents (Parts A and B) which make up the Namoi CAP, with *Part B – The Natural Resource Management Plan* specifically developed to provide a clear strategic natural resource management focus and detail relevant Management Targets and Management Actions. Management Targets, which underpin broader Catchment Targets, address issues identified as having the most significant impact on the four catchment resources:

- The landscape;
- People and their communities;
- Native plants and animals; and
- Surface and groundwater ecosystems.

The relevant Management Targets from the Namoi CAP have been considered throughout this EA through the assessment of potential risks and impacts, and the identification of management plans, mitigation measures and monitoring activities to be implemented for the Rocglen Extension Project.

The assessment of the Project has been multi-disciplinary and involved consultation with various government agencies, surrounding landholders and community groups. Emphasis has been placed on anticipation and prevention of potential environmental and social impacts, with management strategies, mitigation measures and monitoring activities identified to keep potential impacts to a minimum.

The socio-economic output of the Rocglen Extension Project, particularly in terms of direct and indirect employment and flow-on benefits, is anticipated to make a significant contribution to Gunnedah and the surrounding region.

### 6.4.4 Other Environmental Guidelines

The DGRs and formal correspondences received from consulted government agencies (see **Appendix E**) identify various guideline documents recommended to be considered. These documents were reviewed and, where appropriate, considered by the Project Team in preparation of this EA and specialist assessments.

The Namoi CMA made particular reference to the following natural resource databases:

- *Land Management Units (LMU) in the Namoi Catchment* – this resource was utilised by GSSE in the investigation and preparation of the *Soil Survey and Land Resource Impact Assessment* (GSSEa 2010). These LMUs are considered broad-scale management zones and, on this basis, further field analysis and impact assessment was undertaken for the purposes of this EA.
- *Guide to Vegetation of the Namoi Catchment* – we understand that this resource was consulted by the specialist consultants (RPS) engaged to undertake the appropriate assessment and reporting of potential flora and fauna impacts associated with the Project. However, given that the database is considered a broad-scale guide, the site surveys, mapping and impact assessment undertaken by RPS (and ELA in preparation of the *Biodiversity Offset Strategy*) is considered far more site specific and accurate.