2

REGULATORY FRAMEWORK

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2 REGULATORY FRAMEWORK

This section describes the regulatory framework that has been updated since the Ensham Central Project Environmental Impact Statement and is relevant to the Revised Central Area Mining Methodology. Commonwealth, State and local legislation, associated planning tools and other requirements associated with the project are summarised in Section 2 – Regulatory Framework of the Ensham Central Project Environmental Impact Statement. The revised regulatory process for the project is also summarised in this section.

2.1 COMMONWEALTH LEGISLATION

Applicable Commonwealth legislation remains unchanged since the Ensham Central Project (ECP) Environmental Impact Statement (EIS) was submitted. For details of the Commonwealth legislation relevant to the Revised Central Area Mining Methodology (RCAMM), please refer to Section 2 – Regulatory Framework of the ECP EIS.

2.2 QUEENSLAND LEGISLATION

The *Environmental Protection Act 1994* (*EP Act*) sets out the environmental approval process for mining activities in Queensland and gives responsibility for the assessment and decision making regarding environmental management to the Department of Environment and Resource Management (DERM). Accordingly, the DERM is the lead agency for the environmental approval process for the RCAMM.

2.2.1 Environmental Protection Act

The *EP Act* was established to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes. The *EP Act* provides a framework for the regulation of mining activities. A key feature of the *EP Act* is the general environmental duty. Under this general environmental duty, persons undertaking an activity must take all reasonable and practicable measures to prevent or minimise environmental harm. The *EP Act* includes compliance tools such as environmental evaluations, environmental management programs, environmental protection orders and financial assurances. The *EP A*ct requires an Environmental Authority and a Plan of Operations (PoO) to be in place prior to commencement of mining under a mining lease. The DERM is the administering authority of the *EP Act*.

The proponent has an Environmental Authority (mining activities) (EA) for the current Ensham Mine. This Supplementary Report has been prepared in support of an application to amend this existing EA to include the project.

The *EP Act* provided the framework for the environmental impact assessment process for the ECP EIS project. The Supplementary Report is being provided pursuant to a request made under section 556 of the *EP Act*. The *EP Act* provides standard criteria against which the project will be assessed including the principles of Ecologically Sustainable Development (ESD) as set out in the *National Strategy for Ecologically Sustainable Development* (DEH, 1992). Section 2.4.2 of the ECP EIS describes the way in which the ECP EIS addressed the principles of ESD. These remain the same for the RCAMM. Section 2.5 describes the key steps involved in the assessment process for the project.

Environmental Protection Policies

Environmental Protection Policies (EPPs) are developed under the *EP Act* to provide frameworks and guidelines in conjunction with *Environmental Protection Regulation 2008 (EP Regulation),* to identify environmental values to be protected, and to manage specific aspects of Queensland's environment. A key objective of each EPP is to protect Queensland's environment while allowing for development that improves total quality of life, both now and in the future, and maintains the ecological processes on which life depends. Approved policies include air, noise, waste and water. These are described briefly below.

The *Environmental Protection (Air) Policy 2008 (EPP Air)* provides a framework to reduce air pollution and ensure air quality is improved or protected. The *Environmental Protection (Noise) Policy 2008 (EPP Noise)* is intended to ensure noise is prevented or reduced where possible. The *Environmental Protection (Water) Policy 1997 (EPP Water)* is intended to prevent activities that harm the environment or waterway. The *EPP Water* provides a framework for identifying environmental values to be protected including biological integrity and suitability for drinking, recreational, agricultural and industrial uses. One or all of the environmental values in the *EPP Water* can be chosen for a particular water body.

The *Environmental Protection (Waste Management) Policy 2000 (EPP Waste)* provides a strategic framework for managing waste in Queensland. It establishes a preferred waste management hierarchy and principles for achieving good waste management and provides a basis for waste management programs that may be required (e.g. as a condition of approval for an environmentally relevant activity).

Environmental Protection Regulation 2008

The *EP Regulation* lists Environmentally Relevant Activities (ERAs) that require an approval. Project activities that would be otherwise Level 1 ERAs (e.g. ERA 16 – extractive materials; ERA 21 – motor vehicle workshop operation; ERA 63 – sewage treatment; and ERA 8 – chemical storage) will be managed under the overarching EA.

The *EP Regulation* also establishes the relationship between the *Integrated Planning Act 1997* (*IP Act*) and the *EP Act*. The *Mineral Resources Act 1989* (*MR Act*) provides that mining activities authorised by the *MR Act* and carried out under a relevant mining tenement, are exempt from the *IP Act*.

In addition, the *EP Regulation* implements the National Pollutant Inventory (NPI) in Queensland thereby requiring some industrial facilities to report annually on emissions of 90 different substances to air, land and water. The Ensham Mine is currently required to report to the NPI. Project emissions will also be reported in accordance with the *National Pollutant Inventory Guide* (Environment Australia, 2004).

2.2.2 Health and Safety

Legislation related to health and safety is presented in detail in Section 20 – Health and Safety of the ECP EIS.

2.3 LOCAL GOVERNMENT LEGISLATION

2.3.1 Local Law (Levee Banks) No 1 1997

Nogoa River Flood Plain Board Local Law (Levee Banks) No 1 1997 was developed as part of the Nogoa River Interim Floodplain Management Plan. This legislation requires a permit to be obtained for levee banks within the Nogoa River floodplain. The Nogoa River Flood Plain Board (NRFPB) is responsible for assessing applications and issuing permits for levee banks within the Nogoa River floodplain. Applications are required to include plans and specifications of the levee bank and a report on the impact of the levee bank on the hydraulic characteristics of the Nogoa River floodplain.

2.4 OTHER REQUIREMENTS

The other requirements relevant to the RCAMM have remained unchanged since the ECP EIS was submitted. For details of the other requirements relevant to the RCAMM, please refer to Section 2 – Regulatory Framework of the ECP EIS.

2.5 REGULATORY PROCESS

The purpose of the ECP EIS process was to ensure that all direct and indirect environmental, social and economic impacts of the project were identified, understood, evaluated and addressed. The ECP EIS process provided stakeholder and community consultation and allowed for comprehensive consideration of potential impacts and management measures, ensuring environmental protection. The EPA was the lead government agency for the impact assessment process for this project.

The purpose of the Supplementary Report process is to provide additional information required by DERM under section 556 of the *EP Act* including an assessment of direct and indirect environmental, social and economic impacts of the RCAMM. The Supplementary Report also describes additional stakeholder and community consultation undertaken in respect of the RCAMM. The DERM, formally known as the Environmental Protection Agency (EPA), is the lead government agency for the assessment process for the proposed amendment of the EA for the Project.

2.5.1 EIS and SR Processes

The key steps involved in the ECP EIS process and assessment of the application for amendment of the EA for the Project are:

ECP EIS Process

Step 1 – Preliminary Planning

Prior to the preparation of the ECP EIS, background investigations including mine planning and the assessment of alternatives were undertaken. Preliminary investigations in key environmental areas were also undertaken.

Step 2 – Initial Enquiry & Voluntary EIS Application

The proponent made initial enquires regarding the proposed project and approval process to the EPA between July and September 2004. Following this enquiry, the proponent lodged an application to prepare a voluntary EIS to the EPA in October 2004. The application was accompanied by an Initial Advice Statement. The Initial Advice Statement provided background on the project. The EPA approved the application to prepare a voluntary EIS in November 2004.

Step 3 – Determination of significance under the Environment Protection and Biodiversity Conservation Act

The proponent referred the project to the Department of Environment and Heritage (Commonwealth DEH), now the Department of Environment, Water, Heritage and the Arts (DEWHA), under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* in October 2004. The project was referred on the basis of potential disturbance to a listed ecological community. The Commonwealth DEH determined the project to be a controlled action and indicated that it would make use of the Queensland assessment process (i.e. the EIS process under Chapter 3 of the *EP Act*) in assessing the project.

Impacts on *EPBC Act* listed communities and species are discussed in Section 16.6 of the ECP EIS and Section 16.3 of this Supplementary Report.

Step 4 – Community and Government Consultation

Community and government consultation has been ongoing throughout the ECP EIS and Supplementary Report process and is described further in Section 4 – Consultation of the ECP EIS and the Supplementary Report.

Step 5 – Terms of Reference

Draft Terms of Reference (TOR) for the ECP EIS were prepared under Section 41 of the *EP Act* and finalised under Section 46 of the *EP Act*. The draft TOR were placed on public exhibition between 29 November 2004 and 27 January 2005. Interested and affected parties were notified of the availability of the draft TOR, in accordance with Section 42 and 43 of the EP Act and notices were published in *The Courier Mail* and *Central Queensland News* on 27 November 2004. The final TOR for the ECP EIS were published by the EPA on 15 April 2005.

Step 6 – Preparation of EIS

The ECP EIS was prepared following the completion of baseline studies, environmental input into project planning, and consideration of potential impacts and mitigation measures. The ECP EIS was prepared by a team of multi-disciplinary technical specialists. The members of the team and their experience are detailed in Section 25 – EIS Study Team of the ECP EIS. The ECP EIS was prepared in accordance with the EP Act. It also considered issues and feedback from the comprehensive consultation program undertaken as part of the ECP EIS process. The ECP EIS was submitted to the EPA on 17 May 2006.

Step 7 – State Government Agency Presentations

Presentations of key technical studies were provided to the EPA, the Department of Natural Resources, Mines and Water, Nogoa River Flood Plain Board and SunWater. Feedback from the agencies was considered in finalising the ECP EIS.

Step 8 – Lodgement of Mining Lease and Environmental Authority Amendment Applications

The proponent lodged the mining lease applications on 6 October 2006, the accompanying EA amendment application on 2 October 2006 and the EIS on 17 May 2006.

Step 9 – Public Exhibition of EIS

The ECP EIS was placed on public exhibition from Monday 3 July 2006 to Friday 11 August 2006, once the EPA determined that the ECP EIS could proceed. During this period government agencies and the public were invited to make submissions to the EPA. The submission period was set for the minimum exhibition period of 30 business days.

Step 10 – Proponent Response

The EPA issued a copy of all accepted submissions to the proponent within ten business days after the submission period ended. The proponent summarised and responded to submissions and provided the EPA with amendments to the ECP EIS (in the form of the *Response to Submissions on the EIS* dated 26 October 2006 which included the *EIS Addendum* also dated 26 October 2006).

Step 11 – Assessment under the EP Act

The EPA assessed the ECP EIS, submissions received in response to the public exhibition of the ECP EIS and the proponent's responses. Following its assessment, the EPA produced an ECP EIS Assessment Report dated December 2006 which:

- assessed the adequacy of the ECP EIS in addressing the final TOR;
- assessed the adequacy of the ECP EIS against the *EP Act* standard criteria;
- assessed the adequacy of the environmental management plan for the project;
- made recommendations about the suitability of the project; and
- recommended conditions on which the approval required for the project was given.

Step 12 – Assessment under the EPBC Act

The EPA provided the ECP EIS Assessment Report to the former Commonwealth DEH for its consideration of issues related to the *EPBC Act*. The Commonwealth DEH granted its approval of the project on 10 February 2007, within the statutory timeframe of 30 business days. Conditions were imposed on the approval to protect the Brigalow ecological community, a matter of national environmental significance.

Step 13 – Environmental Authority

The EPA is yet to issue draft EA conditions for the Project.

Step 14 – The Flood and DIP Approval

In January 2008 there was an unprecedented flood event that inundated the Ensham mine. The approval process for the ECP was deferred by Ensham Resources at that time to focus on the flood recovery process. Part of the flood response included extending existing levees and increasing their design specifications to withstand a 1:1,000 ARI flood event as described below.

On 18 April 2008, the Ensham Mine Flood Recovery Project was declared a 'prescribed project' by the Minister for Infrastructure and Planning under section 76E of the *State Development and Public Works Organisation Act 1971*. On 1 July 2008, the Coordinator-General issued 'step in notices' for Ensham Resource's applications for permits for southern and northern levee banks which were lodged with the NRFPB on 13 November 2007. Following the 'step in notices', a report was prepared for the Coordinator-General assessing the levee applications against the Interim Flood Plain Management Plan (May 1997). The Coordinator-General then issued permits to the proponent for the construction of southern and northern levees on 8 August 2008 and 3 October 2008 respectively.

Step 15 – Revised Mining Methodology

In response to changed market conditions, learnings from the 2008 flood event and feedback from stakeholders, the proposed ECP mining methodology was modified (Figure 1-4) and is described in this report as the RCAMM. The longwall mining to the west of the Nogoa River will be slightly smaller in the RCAMM. The southern two longwall panels have been removed from in the RCAMM. The RCAMM is also no longer open cut mining the Anabranch channels of the Nogoa River. Instead there will be lower impact underground longwall mining in between the Nogoa River and the Anabranch channels. The RCAMM longwall mining has been designed to ensure that there is no subsidence within 100 m of the top of the highbank of the Nogoa River and the Anabranch channels. This will ensure that mining does not impact the stability of the river channels. Underneath the river channels there will be roadways

connecting the two longwall mining areas. These roadways will not impact the river channels. To the south of the longwall mining areas there will be bord and pillar mining. Although the bord and pillar mining will extend underneath both the Nogoa River and the Anabranch channels, the mining has been designed so that it will not have any impact on the river channels. The southern area of open cut mining from the ECP EIS remains similar to the ECP EIS design. It has increased slightly in area so that it aligns with the bord and pillar mining area of the RCAMM for access.

Step 16 – Ensham Central Project Supplementary Report

The Supplementary Report provides a description of the RCAMM and provides assessments and comparisons, where relevant, of any environmental impacts that are different to those presented in the ECP EIS. It should be noted that due to the removal from the mining methodology of approximately 830 ha of open cut mining from the central floodplain area, the overall environmental impact of the RACMM is significantly reduced in comparison to the impacts presented in the ECP EIS. The Supplementary Report does not repeat information from the ECP EIS that has not changed as a result of the RCAMM. The Supplementary Report also includes a revised Environmental Management Plan (EM Plan) for the project.

DERM, formally the EPA, requested under Section 556(3) of the *EP Act* the public advertisement of this Supplementary Report for the ECP.

Step 17 – Public Exhibition of the Supplementary Report on Revised Mining Methodologies

The Supplementary Report (including the ECP EIS and Assessment Report) will go on public exhibition for a period specified by DERM.

Step 18 – Proponent Response

The DERM will issue a copy of all accepted submissions to the proponent within ten business days after the submission period has ended. The proponent will summarise and respond to submissions and provide the DERM with any amendments to the EM Plan.

Step 19 – Assessment under the EP Act

The DERM will assess the EM Plan, and issue its *Environmental Management Plan Assessment Report.* The DERM has ten business days to decide whether to refuse or allow the EA amendment application for the project to proceed. If the application is allowed to proceed, the DERM has five business days to issue the draft EA to the Mining Registrar.

Step 20 – Draft Mining Environmental Authority and Mining Lease Applications

The DERM will issue a draft EA for the project. The draft EA and Mining Lease Application documentation will be advertised and the period for lodging objections is a minimum of 20 business days. During this period the public may lodge objections to the draft EA and Mining Lease Applications.

Step 21 – Decision

Any unresolved objections to the Mining Lease Applications and/or draft EA will be referred to the Land Court (LC) for an objections decision. The LC will make a decision on these objections and give a copy of the decision to the Minister administering the *MR Act* (Mineral Resources Minister) and the Minister administering the *EP Act* (EP Act Minister). The EP Act Minister must seek advice about the decision from the Mineral Resources Minister. The EP Act Minister will then decide if the EA will be granted with or without conditions or the application refused.

2.5.2 Key Approvals Required

Key approvals required for the project are summarised in Table 2-1.

Table 2-1
Key Approvals for the Project

Approval	Legislation	Approval Body	Timing
Amendment to the Environmental Authority (EA)	EP Act	Queensland Department of Environment and Resource Management (DERM)	As described in the preceding steps.
Mining Leases (ML)	MR Act	Queensland Department of Employment, Economic Development and Innovation (DEEDI)	
EPBC Act Assessment	EPBC Act	Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA)	
Plan of Operations	EP Act	Queensland Department of Environment and Resource Management (DERM)	Prior to commencement of the project.
Construction of a levee bank along the Nogoa River	Local Law (Levee Banks) No 1 1997	Nogoa River Flood Plain Board	Prior to construction of any levee which is part of the project.
Approved Cultural Heritage Management Plans	ACH Act	Queensland Department Environment and Resource Management (DERM)	Required prior to excavation, construction or other activity that may cause harm to Aboriginal cultural heritage.
Licence to interfere with a watercourse for any remedial works related to subsidence of Winton Creek	Water Act	Queensland Department of Environment and Resource Management (DERM)	As necessary, prior to the installation of remedial works to repair any subsidence damage to Winton Creek.