



VARIATION OF CONDITIONS ATTACHED TO APPROVAL Maxwell Coal Mine, Hunter Valley, NSW (EPBC 2018/8287)

This decision to vary conditions of approval is made under section 143 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Approved action

Person to whom the approval is granted Maxwell Ventures (Management) Pty Ltd
ACN: 002028257

Approved action To develop and operate an underground mining operation and utilise the existing Maxwell Infrastructure in the upper Hunter Valley, New South Wales [See EPBC Act referral 2018/8287 and variation request dated 14 June 2019]

Variation

Variation of conditions attached to approval The variation is:

Delete conditions 10 and 11 attached to the approval and substitute with the conditions specified in the table below.

Delete the definition of State development consent and substitute with the definition of State development consent specified in the table below.

Revoke the definition of EPBC Act listed threatened species and communities.

Add the definition of EPBC Act listed threatened species and ecological communities specified in the table below.

Delete Annexure 1 to the approval and substitute with the Annexure 1 specified in the table below.

Date of effect This variation has effect on the date the instrument is signed

Person authorised to make decision

Name and position Kim Farrant
Assistant Secretary
Environment Assessments (Vic, Tas) and Post Approvals Branch

Signature

Date of decision 14 December 2021

Date of decision	Conditions attached to approval
Original dated 10/3/2021	<p>Part A - Conditions specific to the action</p> <hr/> <p>Water Resources</p> <p>The objective of conditions 1 to 9 is to minimise the impacts of the action on a water resource.</p> <p>1. The approval holder must ensure there is no adverse effect on the function of a water resource as a result of the action.</p> <p>The approval holder must achieve and maintain the performance measures required by condition B40 and C1 of the State development consent and demonstrate, with evidence, in each compliance report, whether these performance measures have been achieved, and if so, are being maintained.</p>
Original dated 10/3/2021	<p>2. For the protection of water resources, the approval holder must comply with conditions B27, B28, B35, B36, B37, B38, B39, B40, B41, B42, B43 and B44 of Part B and C1, C2, C8 and C10 of Part C of the State development consent (to the extent the conditions in Part C relate to a water resource).</p>
Original dated 10/3/2021	<p>3. The approval holder must provide the Department with the final version of the Water Management Plan required by condition B42 of the State development consent within 2 business days of its approval by the NSW Planning Secretary.</p>
Original dated 10/3/2021	<p>4. The approval holder must notify the Department within 2 business days of any proposed changes to the final version of the Water Management Plan. If the NSW Planning Secretary approves a revised version of the Water Management Plan, the approval holder must provide the Department with the approved revised Water Management Plan within 2 business days of its approval by the NSW Planning Secretary.</p>
Original dated 10/3/2021	<p>5. In addition to the Groundwater Management Plan monitoring requirements specified in condition B42 of the State development consent, the approval holder must:</p> <p>a. Establish and maintain a network of groundwater monitoring bores across the Development Application Area designed to detect changes in groundwater levels. These monitoring bores must be installed prior to the commencement of the action.</p>

Date of decision	Conditions attached to approval
	<p>b. Monitor groundwater levels in each bore (required under condition 5.a.) at least once every 3-months, starting within one week from the commencement of the action and continue until the completion of the action; and</p> <p>c. Publish on the website all groundwater monitoring data from all bores, updated at least once every 3 months to add the most recent readings and maintain the data on the website until the completion of the action. The monitoring data must include hydrographs for all monitoring bores and explain what the data means in relation to the groundwater performance measures specified in the State development consent.</p>
Original dated 10/3/2021	<p>6. If, at any time until the end date of this approval:</p> <p>a. the approval holder detects an exceedance of any performance measures (including any trigger level), specified in the approved Groundwater Management Plan or Surface Water Management Plan required by condition B42 of the State development consent; and/or</p> <p>b. the groundwater model, including any updated version of the groundwater model required under condition B42 of the State development consent, predicts an exceedance of the groundwater performance criteria (including trigger levels), specified in the approved Groundwater Management Plan,</p> <p>the approval holder must notify the Department of the exceedance within 10 business days of detecting or predicting the exceedance.</p>
Original dated 10/3/2021	<p>7. If the approval holder detects or predicts an exceedance as described in condition 6, the approval holder must publish on the website an Impact Response Plan that has been peer reviewed. Each Impact Response Plan must:</p> <p>a. be prepared by a suitably qualified water resources expert</p> <p>b. describe all potential and actual impacts to water resources arising from the exceedance</p>

Date of decision	Conditions attached to approval
	<ul style="list-style-type: none"> c. include conceptual modelling, as well as a review of all historical monitoring data to determine the stressor-response relationships for any potential GDEs and consideration of potential contributing activities d. include local scale numerical modelling with consideration of potential contributing activities e. derive a scientifically-robust rectification strategy based on multiple lines of evidence and field data to support the assessment of the environmental value of water resources (including the groundwater-dependence of any potential GDEs) within the predicted impact area f. identify if any further investigations are required to be undertaken to determine the cause of, and/or corrective actions, for the exceedance g. include the mitigation and management measures that the approval holder has taken and/or proposes to take to reverse the exceedance, including data demonstrating the effectiveness of the mitigation and management measures h. provide justification for how the proposed mitigation and management measures will achieve and maintain the requirements of condition 1, and i. include a peer review, to be undertaken by an independent suitably qualified water resources expert, that including details of how the approval holder has addressed any inadequacies raised in the peer review. <p>The approval holder must publish the Impact Response Plan report within 3 months of the detection or prediction of an exceedance, unless an alternative timeframe is agreed to by the Minister. The approval holder must notify the Department within 2 business days of the report being published and retain the report on the website for the life of the approval.</p>
Original dated 10/3/2021	<p>8. Where the Minister is not satisfied that the rectification strategy outlined in the Impact Response Plan will ensure condition 1 will be, or is likely to be, achieved and maintained, the Minister may direct the approval holder to undertake specific corrective action(s) to manage impacts to water resources.</p>

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Original dated 10/3/2021	<p>9. The approval holder must not commence mining, other than first workings, of subsequent coal seams until the Impact Response Plan has been approved by the Minister. The approved Impact Response Plan must be implemented.</p>
As varied on the date this instrument was signed	<p>Listed threatened species and ecological communities</p> <p>The objective of conditions 10 to 11 is to minimise impacts and compensate for residual impacts of the action on EPBC Act listed threatened species and ecological communities.</p> <p>10. Within the Development Application Area, the approval holder must not clear more than:</p> <ul style="list-style-type: none"> a. 12.1 hectares of the Central Hunter Valley Eucalypt Forest and Woodland EPBC Act listed ecological community. b. 139 hectares of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland EPBC Act listed ecological community. c. 38.7 hectares of Pink-tailed Legless Lizard (<i>Aprasia parapulchella</i>) habitat. d. 157.1 hectares of Striped Legless lizard (<i>Delma impar</i>) habitat. e. 22.2 hectares of Regent Honeyeater (<i>Anthochaera phrygia</i>) habitat. f. 25 hectares of Swift Parrot (<i>Lathamus discolor</i>) habitat.
As varied on the date this instrument was signed	<p>11. The approval holder must comply with conditions B47, B48, B50, B50A, B51, B52, B53, B76, B77, B78, B79, B80, B81 and B82 of Part B and C1, C2, C3, C4 and C8 of Part C of the State development consent (to the extent these conditions relate to EPBC Act threatened species and ecological communities).</p>
Original dated 10/3/2021	<p>Part B - Administrative conditions</p> <hr/> <p>Notification of date of commencement of the action</p> <p>12. The approval holder must notify the Department in writing of the date of commencement of the action within 10 business days after the date of commencement of the action.</p>

Date of decision	Conditions attached to approval
Original dated 10/3/2021	13.If the commencement of the action does not occur within 5 years from the date of this approval, then the approval holder must not commence the action without the prior written agreement of the Minister .
Original dated 10/3/2021	<p>Compliance records</p> <p>14.The approval holder must maintain accurate and complete compliance records.</p>
Original dated 10/3/2021	<p>15.If the Department makes a request in writing, the approval holder must provide electronic copies of compliance records to the Department within the timeframe specified in the request.</p> <p>Note: Compliance records may be subject to audit by the Department or an independent auditor in accordance with section 458 of the EPBC Act, and or used to verify compliance with the conditions. Summaries of the result of an audit may be published on the Department's website or through the general media.</p>
Original dated 10/3/2021	<p>Submission and publication of plans</p> <p>16.The approval holder must:</p> <ul style="list-style-type: none"> a. submit plans electronically to the Department for approval by the Minister; b. unless otherwise agreed to in writing by the Minister; <ul style="list-style-type: none"> i. publish each plan on the website within 20 business days of the date the plan is approved by the Minister or of the date a revised action management plan is submitted to the Minister or the Department, unless otherwise agreed to in writing by the Minister; ii. publish the Water Management Plan on the website within 20 business days of the date the plan is approved by the NSW Planning Secretary iii. exclude or redact sensitive ecological data from plans published on the website or provided to a member of the public; and iv. keep plans published on the website until the end date of this approval.
Original dated 10/3/2021	<p>Annual compliance reporting</p> <p>17.The approval holder must prepare a compliance report addressing compliance with each of the conditions of this approval, including implementation of any management plans and strategies from the State development consent that are referred to in this approval, every calendar year, or otherwise in</p>

Date of decision	Conditions attached to approval
	<p>accordance with an annual date that has been agreed to in writing by the Minister. The approval holder must:</p> <ol style="list-style-type: none"> a. publish each compliance report on a website within 3 months following the relevant 12 month period, b. notify the Department by email that a compliance report has been published on the website and provide the website's link for the compliance report within five business days of the date of publication, c. keep all compliance reports publicly available on the website until this approval expires, d. exclude or redact sensitive ecological data from compliance reports published on the website, and e. where any sensitive ecological data has been excluded from the version published, submit the full compliance report to the Department within 5 business days of publication. <p>Note: Compliance reports may be published on the Department's website.</p>
Original dated 10/3/2021	<p>Reporting non-compliance</p> <p>18. The approval holder must notify the Department in writing of any: incident, or non-compliance with the conditions, or non-compliance with the commitments made in plans. The notification must be given as soon as practicable, and no later than two business days after becoming aware of the incident or non-compliance. The notification must specify:</p> <ol style="list-style-type: none"> a. any condition which is in breach, b. a short description of the incident and/or non-compliance, and c. the location (including co-ordinates), date, and time of the incident and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
Original dated 10/3/2021	<p>19. The approval holder must provide to the Department the details of any incident or non-compliance with the conditions or commitments made in plans as soon as practicable and no later than 10 business days after becoming aware of the incident or non-compliance, specifying:</p>

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	<ul style="list-style-type: none"> a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future, b. the potential impacts of the incident or non-compliance, and c. the method and timing of any remedial action that will be undertaken by the approval holder.
Original dated 10/3/2021	<p>Independent audit</p> <p>20. The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister.</p>
Original dated 10/3/2021	<p>21. For each independent audit, the approval holder must:</p> <ul style="list-style-type: none"> a. provide the name and qualifications of the independent auditor and the draft audit criteria to the Department, b. only commence the independent audit once the audit criteria have been approved in writing by the Department, and c. submit an audit report to the Department within the timeframe specified in the approved audit criteria.
Original dated 10/3/2021	<p>22. The approval holder must publish the audit report on the website within 10 business days of receiving the Department's approval of the audit report and keep the audit report published on the website until the end date of this approval.</p>
Original dated 10/3/2021	<p>Completion of the action</p> <p>23. The approval holder must comply with condition A6¹ in Schedule 2 of the State development consent.</p>
Original dated 10/3/2021	<p>24. Within 30 days after the completion of the action, the approval holder must notify the Department in writing and provide completion data.</p>

¹ Condition A6 in Schedule 2 states that mining operations may be carried out on the site until 30 June 2047.

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Original dated 10/3/2021	<p>Changes to State development consent</p> <p>25. The approval holder must notify the Department in writing of any proposed change to the State development consent that may relate to protected matters within 2 business days of formally proposing a change or and within 5 business days becoming aware of any proposed change.</p>
Original dated 10/3/2021	<p>26. The approval holder must notify the Department in writing of any change to the State development consent conditions that may relate to protected matters, within 10 business days of a change to conditions being finalised.</p>

Date of decision	Definitions attached to approval
Original dated 10/3/2021	Action means the Maxwell Coal Mine, Hunter Valley, NSW (EPBC 2018/8287) as described in the NSW State Assessment Report, the referral under the EPBC Act and the variation request dated 14 June 2019.
Original dated 10/3/2021	Adverse effect means the failure to achieve and/or maintain a performance measure specified in Table 4 of the State development consent and as defined in the Water Management Plan approved by the NSW Government as a result of the action.
Original dated 10/3/2021	Approval holder means the person to whom the approval is granted as identified on the approval notice for EPBC 2018/8287, or to whom the approval is transferred under S145B of the EPBC Act , or a person who may take the action in accordance with section 133(2A) of the EPBC Act .
Original dated 10/3/2021	Associated user(s) means groundwater supply bores, aquatic GDEs, terrestrial GDEs and subterranean GDEs .
Original dated 10/3/2021	Aquatic GDEs means groundwater dependent ecosystems dependent on the surface expression of groundwater, including: <ul style="list-style-type: none"> <li data-bbox="427 1077 1299 1227">i. river baseflow systems, aquatic and riparian ecosystems that exist in or adjacent to streams (including the hyporheic zone (subsurface interface between surface and groundwater bodies)) which are fed by groundwater; and <li data-bbox="427 1256 1299 1487">ii. wetlands (aquatic communities and fringing vegetation dependent on groundwater-fed lakes and wetlands), including palustrine (non-tidal wetlands dominated by vegetation) and lacustrine (lake) wetlands that receive groundwater discharge, and can include spring and swamp ecosystems.
Original dated 10/3/2021	Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the action .
Original dated 10/3/2021	Clear means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation.
Original dated 10/3/2021	Commencement of the action means the first instance of any specified activity associated with the action including clearing of vegetation and construction of any infrastructure. Commencement of the action does not include minor physical disturbance necessary to: <ul style="list-style-type: none"> <li data-bbox="459 1984 1331 2018">i. undertake pre-clearance surveys or monitoring programs;

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	<ul style="list-style-type: none"> ii. install signage and /or temporary fencing to prevent unapproved use of the Development Application Area; iii. protect environmental and property assets from fire, weeds and pests, including construction of fencing, and use/or maintenance of existing surface access tracks; iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the protected matters.
Original dated 10/3/2021	Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The Department's preferred spatial data format is shapefile .
Original dated 10/3/2021	Completion of the action means the time at which all activities associated with the action have ceased.
Original dated 10/3/2021	Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the approval holder's possession or that are within the approval holder's power to obtain lawfully.
Original dated 10/3/2021	<p>Compliance report(s) means written reports:</p> <ul style="list-style-type: none"> i. providing accurate and complete details of compliance, incidents, and non-compliance with the conditions and the plans, ii. consistent with the Department's Annual Compliance Report Guidelines (2014), iii. including a shapefile of any clearance of any protected matters, or their habitat, undertaken within the relevant 12 month period, and iv. annexing a schedule of all plans prepared and in existence in relation to the conditions during the relevant 12 month period.
Original dated 10/3/2021	Department means the Australian Government agency responsible for administering the EPBC Act .
Original dated 10/3/2021	Development Application Area means the area shown marked with brown shading and labelled as 'Development Application Area' at Annexure 1 to this approval.

Date of decision	Definitions attached to approval
Original dated 10/3/2021	Environmental value means a quality or physical characteristic of the associated user that is conducive to ecological health, public amenity, or safety.
Original dated 10/3/2021	EPBC Act means the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
As varied on the date this instrument was signed	EPBC Act listed threatened species and communities REVOKED
As varied on the date this instrument was signed	<p>EPBC Act listed threatened species and ecological communities means:</p> <ul style="list-style-type: none"> i. Pink-tailed Legless Lizard (<i>Aprasia parapulchella</i>), ii. Striped Legless Lizard (<i>Delma impar</i>), iii. Regent Honeyeater (<i>Anthochaera phrygia</i>), iv. Swift Parrot (<i>Lathamus discolor</i>), v. Central Hunter Valley eucalypt forest and woodland ecological community and vi. White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.
Original dated 10/3/2021	First workings means development of main headings, longwall gate roads, related cut throughs and other workings for mine access and ventilation. First workings does not include the extraction of coal made accessible by the first workings .
Original dated 10/3/2021	Function means the ecosystem components, processes and benefits or services that characterise the associated user including support for biological diversity or species composition.
Original dated 10/3/2021	GDE means a groundwater dependent ecosystem.
Original dated 10/3/2021	Incident means any event which has the potential to, or does, impact on one or more protected matter(s) other than as authorised by this approval.
Original dated 10/3/2021	Independent audit means an audit conducted by an independent and suitably qualified person as detailed in the <i>Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines</i> (2019).

Date of decision	Definitions attached to approval
Original dated 10/3/2021	Independent suitably qualified water resources expert means a person with at least a postgraduate degree (or equivalent) in a relevant discipline (such as hydrology or hydrogeology) and a minimum of 10 years relevant experience in water resources assessment, include at least one year of experience in Australia, who is independent of the suitably qualified water resources expert .
Original dated 10/3/2021	Minister means the Minister administering the EPBC Act and includes any delegate of the Minister.
Original dated 10/3/2021	Peer-reviewed means a review carried out by a person who meets the criteria for an independent suitably qualified water resources expert and who is independent to any other suitably qualified water resources expert(s) used under the requirements of condition 7.
Original dated 10/3/2021	Performance measures means the water management performance measures specified in Table 4 and Table 9 of the State development consent .
Original dated 10/3/2021	Plan(s) means any of the documents required to be prepared, and/or implemented by the approval holder and published on the website in accordance with these conditions (including those plans required by the State development consent and required under the EPBC Act conditions).
Original dated 10/3/2021	Protected matters means a water resource and, the following EPBC Act listed threatened species and ecological communities : Pink-tailed Legless Lizard (<i>Aprasia parapulchella</i>), Striped Legless Lizard (<i>Delma impar</i>), Regent Honeyeater (<i>Anthochaera phrygia</i>), Swift Parrot (<i>Lathamus discolor</i>), Central Hunter Valley eucalypt forest and woodland ecological community and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.
Original dated 10/3/2021	Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) <i>Sensitive Ecological Data -Access and Management Policy V1.0</i>
Original dated 10/3/2021	Shapefile means location and attribute information of the action provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

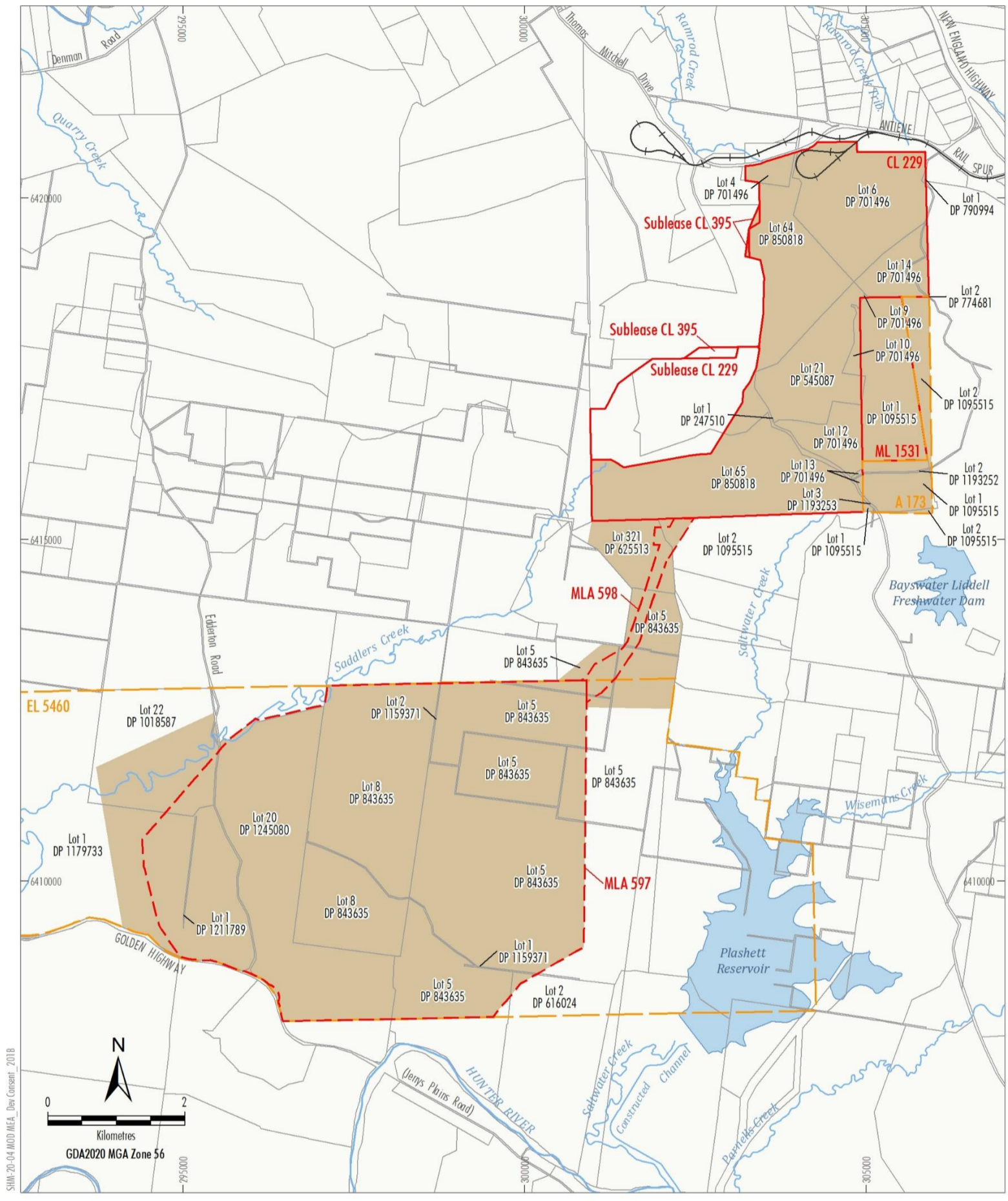
Date of decision	Definitions attached to approval
As varied on the date this instrument was signed	State development consent means the State development consent for application number SSD- 9526 approved on 22 December 2020, or a subsequent revised version as approved by the Independent Planning Commission of NSW (or its delegate).
Original dated 10/3/2021	Subterranean GDEs means groundwater dependent ecosystems partially or completely dependent on aquifer ecosystems, including stygofauna.
Original dated 10/3/2021	Suitably qualified water resources expert means a person with at least a postgraduate degree (or equivalent) in a suitable discipline (such as hydrology or hydrogeology) and a minimum of 10 years relevant experience in water resources assessment, include at least one year of experience in Australia.
Original dated 10/3/2021	Terrestrial GDEs means land-based groundwater dependent ecosystems that are partially or wholly dependent on the subsurface presence of groundwater.
Original dated 10/3/2021	Trigger level means a trigger level specified in the approved Groundwater Management Plan or Surface Water Management Plan (including the trigger action response plans) required by condition B42 of the State development consent that relate to exceedance of the performance measures in Table 4 or remedial action and not early-warning triggers.
Original dated 10/3/2021	Water Resource means surface water or groundwater; or a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource), as defined in the <i>Water Act 2007</i> (Cth).
Original dated 10/3/2021	Website means a set of related web pages located under a single domain name attributed to the approval holder and available to the public.
Original dated 10/3/2021	Wetland/s means land intermittently or permanently inundated with water that is usually slow moving or stationary, shallow, can be fresh, brackish or saline, and where the inundation affects the plant and animal communities present and the type and productivity of soil.

Date of decision

Annexures

As varied on the date this instrument was signed

Annexure 1 – Development Application Area



Source: NSW Spatial Services (2021)

- LEGEND
- Railway
 - Cadastral Boundary
 - Exploration Licence Boundary
 - Mining and Coal Lease Boundary
 - Mining Lease Application Boundary
 - Development Application Area

MALABAR
 MAXWELL UNDERGROUND MINE PROJECT
 Development Application Area

Figure 1