



MAXWELL PROJECT

SECTION 4

Strategic and Statutory Context



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4 STRATEGIC AND STATUTORY CONTEXT

This section outlines the strategic planning context and the requirements and application of State and Commonwealth legislation, including relevant State environmental planning policies (SEPPs) and local environmental plans (LEPs).

The Project will be assessed in accordance with the framework established by the NSW *Environmental Planning and Assessment Act, 1979* (EP&A Act), the NSW *Environmental Planning and Assessment Regulation, 2000* (EP&A Regulation) and the Commonwealth *Environment Protection and Biodiversity Conservation Act, 1999* (EPBC Act).

4.1 STRATEGIC PLANNING DOCUMENTS

This section identifies relevant policies that demonstrate the strategic planning context and need for the Project. This section also describes how the Project complies with relevant strategic policies and planning documents.

4.1.1 Strategic Statement on NSW Coal

The NSW Government's (2014) *Strategic Statement on NSW Coal* outlines the objective to deliver strong and sustainable economic growth by maintaining the correct balance between resource development and the management of other State assets.

The *Strategic Statement on NSW Coal* (NSW Government, 2014) recognises the value of coal production to the NSW economy, including:

- The long history of coal mining in NSW and its close ties with regional communities in the Hunter region.
- The potential for coal production to provide significant benefits to local communities, including jobs and investment.
- Coal production's significant contributions to export earnings as the State's biggest single export earner.

The NSW Government's (2014) *Strategic Statement on NSW Coal* provides the following relevant objectives to guide the growth and performance of the NSW coal sector:

- Co-existence – land use decisions do not exclude other potential uses without considering the benefits and consequences for other land users and all residents of NSW.
- Transparency – coal release, exploration and production decisions are open, transparent and evidence-based to minimise corruption risks.
- Sustainability – coal release, exploration and production decisions are governed by triple bottom-line considerations to promote comprehensive and balanced decision-making.
- Safety – coal exploration and production risks are managed through consultation and safe systems to achieve zero fatalities in the mining industry.
- Best practice and leading technologies – the regulation of the coal sector promotes the adoption of best practices and world leading technologies.
- Achieving value for the economy and adequate returns for taxpayers – coal development prioritises the highest-value resources, and generates financial returns for the NSW Government by capturing an appropriate share of that value. The provision of infrastructure will be integrated into decisions to develop particular resources.
- Regional economic development – coal release should support opportunities and economic development in the region in which the resource is located.

The Project would be consistent with the *Strategic Statement on NSW Coal* (NSW Government, 2014), given:

- The Project has been designed to allow for underground mining in EL 5460 to co-exist with its near neighbours, including neighbouring equine and viticulture businesses (Section 9.1.5). This EIS considers the benefits and consequences to the residents of NSW, including a cost benefit analysis (Appendix M).

- The decision-making process will be informed by public involvement and participation through the EIS engagement program (Sections 4.3 and 5), the public exhibition of this EIS document and DPIE assessment of the Project in accordance with the requirements of the EP&A Act.
- The Project incorporates relevant ecologically sustainable development (ESD) considerations (Section 9.3).
- The Project would operate within Malabar's safety management systems and NSW legislation to manage risks to workers and other persons.
- This EIS has been prepared using best practice available science, and the Project would incorporate comprehensive management and monitoring (Sections 6 and 8).
- The Project would generate significant returns for taxpayers through contributions to State royalties, State taxes, Commonwealth tax revenue and Council rates (Appendix M).
- The Project would facilitate local and regional employment and economic development opportunities (Appendices M and L). Malabar is committed to providing ongoing financial support for community groups as demonstrated for more than five years.

4.1.2 Hunter Regional Plan

The Project is located within the Muswellbrook LGA, and is covered by the *Hunter Regional Plan 2036* (NSW Government, 2016). The Regional Plan provides a blueprint for greater prosperity in the region over the next 20 years from 2016.

The *Hunter Regional Plan 2036* identifies mining as a significant opportunity for growth in the region, given the combination of undeveloped coal resources in the Hunter and Newcastle Coalfields and the export capability of the Port of Newcastle (NSW Government, 2016).

The *Hunter Regional Plan 2036* acknowledges that coal mining has driven investment in transport and energy infrastructure, and will continue to underpin the growth and diversification of the Hunter's economy and employment base (NSW Government, 2016). The Project would produce coal capable of being used in the making of steel (coking coals) and, therefore, would be less susceptible to changes in global and national energy demands and policies.

Relevant actions in the *Hunter Regional Plan 2036* (NSW Government, 2016) include:

- 11.2 *Work with relevant stakeholders, including councils, communities and industry, to prepare land use plans that respond to the lifecycle of resource activity for active and emerging mining areas.*
- 11.3 *Implement the cumulative impact assessment methodology when planning for important agricultural land and water resources.*

Malabar has consulted with Muswellbrook Shire Council and other stakeholders about land use during mining activities (Sections 5 and 6.6) and following the end of the Project life (Sections 5 and 7).

Section 2.3 outlines how this EIS takes into consideration past, present and reasonably foreseeable planned developments that are relevant due to their proximity and/or potential to interact with the Project.

The *Hunter Regional Plan 2036* responded to community concerns about the long-term future of coal mining around the State by providing greater guidance on assessing and managing the social impacts of State significant mining projects (NSW Government, 2016). An SIA has been prepared as part of this EIS (Section 6.17 and Appendix L).

4.1.3 Other Strategic Planning Documents and Policies

The following strategic planning documents and policies have also been considered in the planning of the Project and the preparation of this EIS:

- *NSW Climate Change Policy Framework* (OEH, 2016a);
- *Upper Hunter Strategic Regional Land Use Plan* (NSW Government, 2012b) (recommended for review in NSW Government [2016]);
- *Upper Hunter Economic Diversification Action Plan: Implementation Priorities* (NSW Government, 2018a);
- *Muswellbrook Shire Council Community Strategic Plan 2017-2027* (Muswellbrook Shire Council, 2017);
- *Singleton Community Strategic Plan 2017-2027* (Singleton Council, 2017);

- draft *Muswellbrook Local Strategic Planning Statement 2018-2038* (Muswellbrook Shire Council, 2018);
- *Muswellbrook Mine Affected Roads – Road Network Plan* (Muswellbrook Shire Council, 2015b);
- *Land Use Development Strategy* (Muswellbrook Shire Council, 2015a); and
- *Muswellbrook Industrial Lands Audit* (Muswellbrook Shire Council, 2015c).

These strategic planning documents are discussed in further detail in Attachment 7.

4.2 EXISTING APPROVALS AND REGULATORY CONTROLS

An overview of previous mining activities in the Project area is provided in Section 2.

Key approvals and documentation pertaining to the Maxwell Infrastructure include:

- Project Approval 06_0202 issued by the NSW Minister for Planning in 2007, as amended by subsequent modifications (Section 2.2.2).
- Development Consent DA 106-04-00 for the Antiene Rail Spur, issued by the then NSW Minister for Urban Affairs and Planning on 2 November 2000 (Section 2.2.5).
- ML 1531 issued under the NSW *Mining Act, 1992*.
- CL 229 and CL 395 issued under the NSW *Mining Act, 1973* (now repealed) and administered under the NSW *Mining Act, 1992*.
- Exploration licence A 173 issued under the NSW *Mining Act, 1973* (now repealed), administered under the NSW *Mining Act, 1992*.
- EPL 1323 issued by the EPA under the NSW *Protection of the Environment Operations Act, 1997* (PoEO Act).

Exploration activities in the Maxwell Underground area are currently regulated under EL 5460 issued under the NSW *Mining Act, 1992* (and associated approvals from the NSW Resources Regulator).

A register of current licences, permits and approvals is maintained on-site by Malabar, and a summary of current approvals for the Maxwell Infrastructure is available on the Malabar website:

<https://malabarcoal.com.au/maxwell-infrastructure-downloads#environmental-monitoring>

Existing environmental management, monitoring, mitigation and reporting measures that are implemented in accordance with the existing Maxwell Infrastructure approvals and EL 5460 are described in Sections 6 to 8, where relevant.

Exploration activities for the Spur Hill Underground Coking Coal Project (Section 2.3.6) are regulated under EL 7429 issued under the NSW *Mining Act, 1992* (and associated approvals from the NSW Resources Regulator).

4.3 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

The EP&A Act and EP&A Regulation set the framework for planning and environmental assessment in NSW. Approval for the Project is sought under the State Significant Development provisions (Division 4.7) of Part 4 of the EP&A Act. An overview of the assessment pathway for the Project is presented in Figure 4-1.

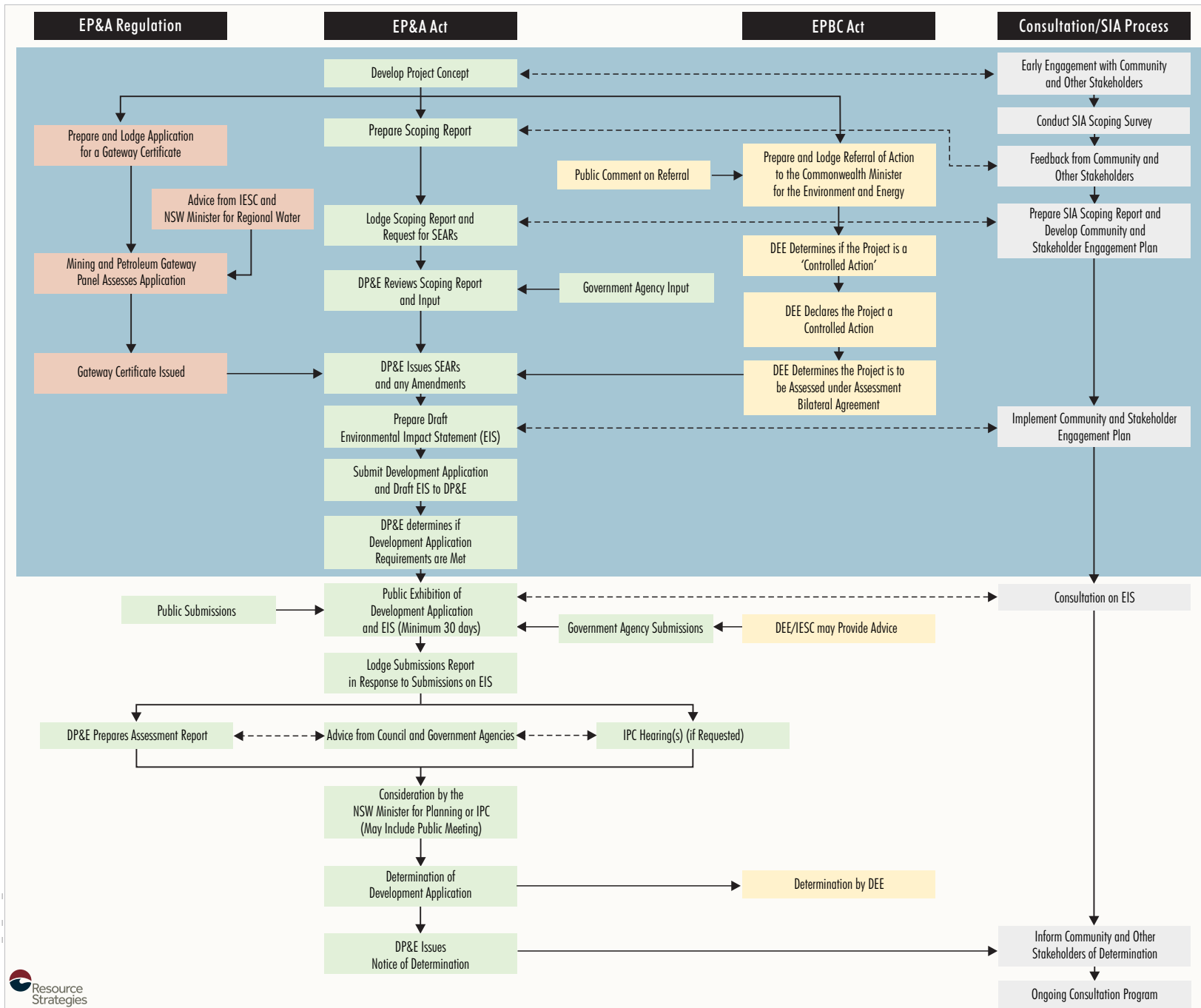
4.3.1 Permissibility and Requirement for Development Consent

The Development Application Area is within the Muswellbrook LGA (Figure 1-1), which is covered by the Muswellbrook LEP (*Muswellbrook Local Environmental Plan 2009*).

The Development Application Area includes land zoned under the Muswellbrook LEP as:

- Zone RU1 (Primary Production); and
- Zone SP2 (Power Station) (the East Void).

Subject to the application of the Mining SEPP (*State Environmental Planning Policy [Mining, Petroleum Production and Extractive Industries] 2007*), underground mining would be prohibited under the Muswellbrook LEP in these zones.



- LEGEND**
- Steps Complete
 - DEE Commonwealth Department of the Environment and Energy
 - DP & E NSW Department of Planning and Environment
 - EIS Environmental Impact Statement
 - IESC Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development
 - IPC Independent Planning Commission
 - SEARs Secretary's Environmental Assessment Requirements
 - SIA Social Impact Assessment


MALABAR COAL
MAXWELL PROJECT
Planning Approval Process and Consultation Process for the Project

Figure 4-1

Clause 4 of the Mining SEPP relevantly provides:

4 Land to which Policy applies

This Policy applies to the State.

Clause 5(3) of the Mining SEPP gives the Mining SEPP primacy where there is any inconsistency between the provisions in the Mining SEPP and the provisions in any other environmental planning instrument (subject to limited exceptions).

The practical effect of clause 5(3) for the Project is that, if there is any inconsistency between the provisions of the Mining SEPP and those contained in the Muswellbrook LEP, the provisions of the Mining SEPP will prevail.

Clauses 6 and 7 of the Mining SEPP provide what types of mining development are permissible without development consent and what types are permissible only with development consent.

In this regard, clause 7(1) states:

7 Development permissible with consent

(1) Mining

Development for any of the following purposes may be carried out only with development consent:

- (a) *underground mining carried out on any land,*
- ...
- (d) *facilities for the processing or transportation of minerals or mineral bearing ores on land on which mining may be carried out (with or without development consent), but only if they were mined from that land or adjoining land,*
- ...

The term ‘underground mining’ in the Mining SEPP is given an extended definition in clause 3(2) as follows:

underground mining means:

- (a) *mining carried out beneath the earth’s surface, including bord and pillar mining, longwall mining, top-level caving, sub-level caving and auger mining, and*
- (b) *shafts, drill holes, gas and water drainage works, surface rehabilitation works and access pits associated with that mining (whether carried out on or beneath the earth’s surface),*

but does not include open cut mining.

The effect of clause 7(1)(a), in conjunction with the operation of clause 5(3) of the Mining SEPP, is that, notwithstanding any prohibition in the Muswellbrook LEP, development for the purpose of underground mining and facilities for the processing and transportation of coal may be carried out with Development Consent.

Accordingly, the NSW Minister for Planning (the Minister) or the IPC would not be precluded from granting approval under section 4.38 of the EP&A Act for the Project in respect to those parts of the Project land where mining is prohibited under the Muswellbrook LEP. This is reinforced by section 4.38(3) of the EP&A Act, which states that development consent may be granted for State significant development despite the development being partly prohibited by an environmental planning instrument.

4.3.2 Application of Division 4.7 of Part 4 (State Significant Development) of the Environmental Planning and Assessment Act, 1979

Development Consent for the Project will be sought under the State Significant Development provisions (Division 4.7) of Part 4 of the EP&A Act.

Under section 4.36 of the EP&A Act, any development, or any class, or description of development, such as mining may be declared as State Significant Development by a SEPP.

Clause 8 of the *State Environmental Planning Policy (State and Regional Development) 2011* (State and Regional Development SEPP) states that the development is declared to be State Significant Development for the purposes of the EP&A Act if:

- the development on the land concerned is, by the operation of an environmental planning instrument, not permissible without Development Consent under Part 4 of the EP&A Act (first criterion); and
- the development is specified in Schedule 1 or 2 of the State and Regional Development SEPP (second criterion).

In regards to the first criterion identified above, pursuant to the Muswellbrook LEP and clause 7 of the Mining SEPP, the Project is permissible with development consent under Part 4 of the EP&A Act.

In regards to the second criterion identified above, development for the purpose of mining that:

- (a) is coal or mineral sands mining, or
- ...
- (c) has a capital investment value of more than \$30 million

is specified in Schedule 1, Item 5 of the State and Regional Development SEPP as being State Significant Development.

The Project is development for the purpose of coal mining and has a capital investment value of more than \$30 million. Therefore, the development would be State Significant Development.

In accordance with section 4.5(a) of the EP&A Act and clause 8A of the State and Regional Development SEPP, the Minister or the IPC will be the consent authority for the Project.

4.3.3 Approvals and Authorisations That Are Not Required for State Significant Development

Section 4.41 of the EP&A Act outlines the authorisations that are not required for a State Significant Development that is authorised by a Development Consent granted under Division 4.7 of Part 4. The authorisations that are not required under section 4.41(1) are:

- A permit under section 201, 205 or 219 of the *NSW Fisheries Management Act, 1994* (FM Act).
- An approval under Part 4, or an excavation permit under section 139, of the *NSW Heritage Act, 1977*.
- An Aboriginal heritage impact permit under section 90 of the *NPW Act (NSW National Parks and Wildlife Act, 1974)*.
- A bush fire safety authority under section 100B of the *NSW Rural Fires Act, 1997*.
- A water use approval under section 89, a water management work approval under section 90 or an activity approval (other than an aquifer interference approval) under section 91 of the *NSW Water Management Act, 2000*.

4.3.4 Other Approvals and Legislation That Must Be Applied Consistently for State Significant Development

Section 4.42 of the EP&A Act prescribes the authorisations that cannot be refused if they are necessary for carrying out an approved State Significant Development under Division 4.7 of Part 4, and are to be substantially consistent with the Development Consent.

These authorities are:

- An aquaculture permit under section 144 of the *FM Act*.
- An approval under section 15 of the *NSW Mine Subsidence Compensation Act, 1961*¹.
- A mining lease under the *NSW Mining Act, 1992*.
- A production lease under the *NSW Petroleum (Onshore) Act, 1991*.
- An EPL under Chapter 3 of the *PoEO Act* (for any of the purposes referred to in section 43 of the *PoEO Act*).
- A consent under section 138 of the *NSW Roads Act, 1993*.
- A licence under the *NSW Pipelines Act, 1967*.

The Project would require a mining lease, an EPL (or variation to EPL 1323) and consent(s) under section 138 of the *NSW Roads Act, 1993* (Section 4.5).

4.3.5 Environmental Impact Statement Requirements for State Significant Development

Section 4.12(8) of the EP&A Act specifies that a Development Application for State Significant Development is to be accompanied by an EIS prepared by, or on behalf of, the applicant, in the form prescribed by the regulations.

¹ The *NSW Mine Subsidence Compensation Act, 1961* was repealed on the commencement of section 60 of the *NSW Coal Mine Subsidence Compensation Act, 2017*, on 1 January 2018.

Clause 6 of Schedule 2 of the EP&A Regulation states the required form of an EIS. This EIS contains the information required by clause 6 of Schedule 2 of the EP&A Regulation (Table 1-4), including the address of relevant lands (Attachment 3) and the name, address, professional qualifications and declaration of the person by whom the EIS has been prepared in consideration of the requirements of clause 6 (refer inside front cover of Volume 1).

Clause 7 of Schedule 2 of the EP&A Regulation describes the required content of an EIS. Table 1-4 provides a reconciliation of each requirement in subclause (1) and the relevant section of this EIS where that requirement is met.

Subclause 7(2) of Schedule 2 of the EP&A Regulation states that the requirements set out in subclause (1) are subject to the environmental assessment requirements that relate to the EIS.

The Project SEARs set out the environmental assessment requirements in accordance with clause 3 of Schedule 2 of the EP&A Regulation and are provided in Attachment 1 and summarised in Table 1-3.

4.3.6 Documents to Accompany Development Application

Subclauses 2(1) to 2(3) of Schedule 1 of the EP&A Regulation describe documentation that is required to accompany a Development Application. This EIS satisfies relevant documentation requirements outlined in these subclauses.

4.3.7 Public Notification of the Development Application

In accordance with clause 49(1) of the EP&A Regulation, a Development Application may be made by the owner of the land to which the Development Application relates, or by any other person, with the consent in writing of the owner of that land. Alternatively, clause 49(2) of the EP&A Regulation states:

- (2) *Subclause (1)(b) does not require the consent in writing of the owner of the land for a development application made by a public authority or for a development application for public notification development if the applicant instead gives notice of the application:*
 - (a) *by written notice to the owner of the land before that publication is made,*
or

- (b) *by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 14 days after the application is made.*

For the purposes of clause 49, subclause 49(5) relevantly defines public notification development as:

public notification development means:

- (i) *State significant development set out in clause 5 (Mining) or 6 (Petroleum (oil and gas)) of Schedule 1 to State Environmental Planning Policy (State and Regional Development) 2011 but is does not include development to the extent that is carried out on land that is a state conservation area reserved under the National Parks and Wildlife Act 1974, or*

...
The Project is public notification development as it falls within Item 5 of Schedule 1 of the State and Regional Development SEPP (Attachment 7). The Development Application will be notified in accordance with paragraph 49(2)(b) of the EP&A Regulation.

Clause 49(3) of the EP&A Regulation states that:

- (3) *Despite subclause (1), a development application made by a lessee of Crown land may only be made with the consent in writing given by or on behalf of the Crown.*

However, clause 49(4) of the EP&A Regulation relevantly provides:

- (4) *Subclause (3) does not require the consent of the Crown if the development application is for State significant development made by a public authority or public notification development.*

As outlined previously, the Project is public notification development under Item 5 of Schedule 1 of the State and Regional Development SEPP. As such, consent of the Crown is not required for the Development Application.

Clause 49(3A) of the EP&A Regulation provides that:

- (3A) *Despite subclause (1), a development application made in respect of land owned by a Local Aboriginal Land Council may be made by a person referred to in that subclause only with the consent of the New South Wales Aboriginal Land Council.*

There is no land within the Development Application Area that is owned by a Local Aboriginal Land Council (LALC) and, therefore, the consent of the NSW Aboriginal Land Council is not required for the Development Application.

4.3.8 Division 7.1 Development Contributions

Planning Agreements

Section 7.4 of the EP&A Act describes voluntary planning agreements that may be entered into between a planning authority and the applicant (developer) who has made, or proposes to make, a Development Application under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Section 7.4(2) indicates that a public purpose includes the following:

- the provision of (or recoupment of the cost of providing) public amenities or public services; affordable housing; transport or other infrastructure relating to land;
- the funding or recurrent expenditure relating to the provision of public amenities or public services, affordable housing, transport or other infrastructure;
- the monitoring of the planning impacts of development; and
- the conservation or enhancement of the natural environment.

Under section 7.7 of the EP&A Act, the Minister (or delegate) can only impose a condition of consent requiring a planning agreement to be entered into, if it is in the terms of an offer made by the applicant, in connection with the Development Application. Malabar made a written offer to Muswellbrook Shire Council with draft terms of a planning agreement on 11 June 2019.

Local Infrastructure Contributions

Subject to any exclusions or inclusions with respect to sections 7.11 or 7.12 of the EP&A Act in any Project voluntary planning agreement (refer to above discussion), the Minister or IPC may grant Development Consent to the Project subject to a condition requiring contributions under either section 7.11 or 7.12 of the EP&A Act as stated by section 7.13 of the EP&A Act.

Sections 7.11 and 7.12 of the EP&A Act refer to contributions towards provision or improvement of amenities or services, and fixed development consent levies.

Contributions under section 7.11 can only be required in circumstances where the development will, or is likely to, require the provision of, or increase the demand for, public amenities or services within the area.

Section 7.13(2) of the EP&A Act provides that, where the consent authority is not a council, (as is the case for the Project [Section 4.3.2]), the consent authority may impose a condition under section 7.11 or 7.12 even though it is not authorised (or of a kind allowed) by, or determined in accordance with, an applicable contributions plan, as long as the consent authority has regard to any contributions plan that applies to the whole or any part of the area in which the development is to be carried out.

The Development Application Area is located within the Muswellbrook LGA.

The Muswellbrook Shire Council has section 94 and 94A contributions plans, *Section 94 Contributions Plan 2001* (Muswellbrook Shire Council, 2015d) and *Section 94A Development Contributions Plan 2010* (Muswellbrook Shire Council, 2009), respectively, that may potentially be applicable to the Project if adopted by the Council.

4.4 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT, 1999

The EPBC Act defines proposals that are likely to have a significant impact on a matter of national environmental significance as a 'controlled action'. A proposal that is, or may be, a controlled action is required to be referred to the Commonwealth Minister for the Environment and Energy (the Commonwealth Minister) for a determination as to whether or not the action is a controlled action.

Matters of national environmental significance include:

- world heritage properties;
- national heritage places;
- wetlands listed under the Ramsar Convention;
- listed threatened species and communities;

- listed migratory species;
- nuclear actions;
- the Commonwealth marine environment;
- the Great Barrier Reef Marine Park; and
- water resources, in relation to coal seam gas development and large coal mining developments.

The proposed action to develop and operate an underground mining operation and utilise the existing Maxwell Infrastructure, was referred to the Commonwealth Minister in September 2018 (EPBC 2018/8287) (the proposed action).

A delegate of the Commonwealth Minister determined on 12 November 2018 that the proposed action is a controlled action and, therefore, the action also requires approval under the EPBC Act due to potential impacts on the following provisions under Part 3 of Chapter 2 of the EPBC Act:

- listed threatened species and communities (sections 18 and 18A); and
- a water resource, in relation to coal seam gas development and large coal mining development (section 24D and 24E).

The delegate of the Commonwealth Minister also determined on 12 November 2018 that, pursuant to section 87 of the EPBC Act, the proposed action is to be assessed under the NSW accredited assessment process under Part 4 of the EP&A Act.

Attachment 4 of the revised SEARs issued on 17 January 2019 require information about the controlled action and its relevant impacts, and the matters outlined in the Commonwealth *Environment Protection and Biodiversity Conservation Regulations, 2000* to be addressed in this EIS.

A summary indicating where the relevant requirements of the revised SEARs have been addressed in this EIS is provided in Attachment 2.

In June 2019, Malabar notified the DEE of a variation to the proposed action, to incorporate the product stockpile extension and reflect the final proposed surface development area. The request to vary the proposed action was accepted by the DEE on 10 July 2019.

The Project will be assessed in accordance with the NSW accredited assessment process and will require approval under both the EP&A Act and the EPBC Act (Figure 4-1).

Consideration of the Project against the objects of the EPBC Act is provided in Section 9.3.2.

4.4.1 Environmental Record of the Proponent

The Project would be undertaken in accordance with Malabar's proactive approach to environmental management. Malabar has a strong record of compliance with its environmental obligations under EL 7429 (held since 2012), EL 5460 (held since February 2018) and other environmental legislation.

Malabar's Environmental Policy outlines Malabar's commitment to minimising impacts and conserving ecological processes in the surrounding communities by operating in an environmentally responsible manner through:

- establishing and promoting good environmental practices into all activities and decision-making processes;
- maintaining a risk-based approach to managing environmental impacts to achieve a level as low as reasonably practical; and
- promoting a culture of sustainability and social responsibility within operations owned by Malabar and surrounding communities.

Malabar has engaged with government agencies, community members and other interested parties regarding the Project prior to, and since, taking control of EL 5460 in February 2018 (Section 5).

Within one week of taking ownership of the Maxwell Infrastructure, Malabar re-commenced rehabilitation works, and contractors were retained to complete necessary works.

Proceedings Under Commonwealth, State or Territory Law

Malabar has no past or present proceedings under a Commonwealth, State or Territory law for the protection of the environment or the conservation and sustainable use of natural resources.

4.5 OTHER APPLICABLE STATUTORY APPROVALS AND LEGISLATION

The following approvals must be obtained before the Project may commence:

- Development Consent issued under the EP&A Act, and any relevant secondary approvals under the Development Consent conditions (e.g. management plans, construction activities, etc.) (Section 4.3);
- approval of the proposed action (EPBC 2018/8287) under sections 130(1) and 133 of the EPBC Act, and any relevant secondary approvals under the approval conditions (e.g. management plans) (Section 4.4); and
- an EPL or a variation of EPL 1323 under the PoEO Act (Section 4.5.1).

Other approvals and licences required to support the Project (and which would also need to be in place prior to the commencement of any component of the Project to which the particular approval or licence relates) include but are not limited to:

- grant of a mining lease (Section 4.5);
- MOP prepared under the conditions of relevant mining leases;
- necessary consents under section 138 of the *NSW Roads Act, 1993*;
- relevant WALs under the *NSW Water Management Act, 2000*; and
- mining and occupational health and safety related approvals granted by the NSW Resource Regulator and WorkCover NSW.

4.5.1 Relevant NSW Legislation

The following NSW Acts may be applicable to the Project:

- *Aboriginal Land Rights Act, 1983*;
- *Biodiversity Conservation Act, 2016*;
- *Coal Mine Subsidence Compensation Act, 2017* (CMSC Act);
- *Contaminated Lands Management Act, 1997*;
- *Crown Land Management Act, 2016*;
- *Dams Safety Act, 1978*;
- *Dams Safety Act, 2015*;

- *Dangerous Goods (Road and Rail Transport) Act, 2008*;
- *Electricity Supply Act, 1995*;
- *Explosives Act, 2003*;
- FM Act;
- *Heritage Act, 1977*;
- *Mining Act, 1992*;
- NPW Act;
- *Native Title (NSW) Act, 1994*;
- *Pipelines Act, 1967*;
- PoEO Act;
- *Roads Act, 1993*;
- *Water Management Act, 2000*;
- *Work Health and Safety Act, 2011*; and
- *Work Health and Safety (Mines and Petroleum Sites) Act, 2013*.

Relevant licences or approvals required under these Acts would be obtained for the Project as required.

Additional detail on the likely Project requirements under the: *Mining Act, 1992*; PoEO Act; *Roads Act, 1993*; *Water Management Act, 2000*; CMSC Act; *Dam Safety Act, 1978* and *Dams Safety Act, 2015*, is provided in the subsections below.

Mining Act, 1992

The objects of the *Mining Act, 1992* are to encourage and facilitate the discovery and development of mineral resources in NSW, having regard to the need to encourage ESD.

Mining Tenements

Maxwell Ventures (Management) Pty Ltd, a wholly owned subsidiary of Malabar, is the applicant for the Development Application for the Project.

Malabar Coal (Maxwell) Pty Ltd is the holder of EL 5460 for Group 9 minerals (coal and oil shale) over all relevant land where mining for coal is proposed to be carried out for the Project and is also a wholly owned subsidiary of Malabar. Maxwell Ventures (Management) Pty Ltd has obtained the written consent of Malabar Coal (Maxwell) Pty Ltd to make the Development Application for the Project, in accordance with section 380AA of the *Mining Act, 1992* (Attachment 4).

Malabar will lodge a mining lease application separately with the NSW Division of Resources and Geoscience (DRG) (within the DPIE) for the Project, which would cover the underground mining area and relevant surface infrastructure outside of existing mining leases.

Under section 4.42(1)(c) of the EP&A Act, if the Project is approved as State Significant Development, mining leases granted under the *Mining Act, 1992* that are required for carrying out the Project cannot be refused and are to be substantially consistent with any Development Consent granted under Division 4.7 of the EP&A Act.

Mining Operations Plan

Under the *Mining Act, 1992*, environmental protection and rehabilitation are regulated by conditions included in all mining leases, including requirements for the submission of a MOP prior to the commencement of operations, and subsequent annual reviews of environmental performance.

All mining operations must be carried out in accordance with the MOP, which has been prepared to the satisfaction of the relevant regulatory agency. The MOP describes site activities and the progress toward environmental and rehabilitation outcomes required under mining lease conditions and Development Consent conditions under the EP&A Act and other approvals.

The MOP, together with environmental conditions of other approvals, forms the basis for ongoing adaptive management of mining operations and their environmental impacts (Department of Planning, 2008). The MOP must apply best practice and technology to mine operations and include strategies to control identified environmental risks (Department of Planning, 2008).

Protection of the Environmental Operations Act, 1997

The PoEO Act and the NSW *Protection of the Environment Operations (General) Regulation, 2009* set out the general obligations for environmental protection for development in NSW, which is regulated by the EPA.

Under section 48 of the PoEO Act, it is an offence to carry out a “scheduled activity” without an EPL. Schedule 1 of the PoEO lists “scheduled activities” for the purposes of section 48.

Clause 10 of Schedule 1 of the PoEO Act defines “coal works”, as any activity (other than coke production) that involves storing, loading or handling coal (whether at any coal loader, conveyor, washery or reject dump or elsewhere) at an existing coal mine or on a separate coal industry site.

Clause 10(2) provides that a “coal work” is declared to be a scheduled activity if:

- (a) *it has a capacity to handle more than 500 tonnes per day of coal, or*
- (b) *it has a capacity to store more than 5,000 tonnes of coal (not including storage within a closed container or building).*

Clause 28 of Schedule 1 of the PoEO Act defines “mining for coal”, as the mining, processing or handling of coal (including tailings and chitter) at underground mines or open cut mines.

Clause 28(2) provides that “mining for coal” is declared a scheduled activity if:

- (a) *it has a capacity to produce more than 500 tonnes of coal per day, or*
- (b) *it has disturbed, is disturbing or will disturb a total surface area of more than 4 hectares of land by:*
 - (i) *clearing or excavating, or*
 - (ii) *constructing dams, ponds, drains, roads, railways or conveyors, or*
 - (iii) *storing or depositing overburden or coal (including tailings and chitter).*

Section 45 of the PoEO Act outlines matters to be taken into consideration by the relevant regulatory authority with respect to licensing functions.

The Maxwell Infrastructure currently operates under EPL 1323, granted under the PoEO Act, which allows for coal works and mining for coal as scheduled activities. The EPL contains conditions that relate to emission and discharge limits, environmental monitoring and reporting. If approved, the Project would require an EPL or a variation of EPL 1323.

Roads Act, 1993

If the Project is approved, Malabar would apply for the necessary consents under section 138 of the *Roads Act, 1993* associated with either mining under, or realigning, Edderton Road (Section 3).

In accordance with section 4.42(1)(f) of the EP&A Act, if the Project is approved as State Significant Development, the grant of a consent under section 138 of the *Roads Act, 1993* cannot be refused if that consent is necessary for the carrying out of the approved Project and is to be substantially consistent with the Project's Development Consent.

Water Management Act, 2000

Under section 4.41(1)(g) of the EP&A Act, if the Project is approved as State Significant Development, water use approvals under section 89, water management works approvals under section 90, or activity approvals (excluding aquifer interference approvals) under section 91 of the *Water Management Act, 2000* would not be required for the Project.

Consideration of the Project against the water management principles and access licence dealing principles of the *Water Management Act, 2000*, and a discussion of the access licences required for the Project area are provided in Attachment 8. Appropriate licences under the *Water Management Act, 2000* would be sought and obtained in consultation with WaterNSW, the NSW Natural Resources Access Regulator (NRAR) and the DPIE.

Coal Mine Subsidence Compensation Act, 2017

The CMSC Act commenced on 1 January 2018. This Act provides a scheme for the provision of compensation for damage caused by subsidence resulting from coal mine operations, and the assessment and management of risks associated with subsidence resulting from coal mine operations.

At all times while the Project is an active mine, Malabar (or the relevant proprietor) would be liable to pay compensation in relation to damage caused by subsidence arising from the Project on improvement or goods under Part 2 of the CMSC Act. Any claims for compensation under the CMSC Act would be lodged with Subsidence Advisory NSW.

The Project is not located within a Mine Subsidence District declared under section 20 of the CMSC Act, and in the regulations made under the CMSC Act.

Dams Safety Act, 1978 and Dams Safety Act, 2015

The *Dams Safety Act, 2015* was assented on 28 September 2015, although the majority of provisions of this Act have not yet commenced.

The *Dams Safety Act, 1978* continues to regulate the safety of certain dams until the relevant provisions of the *Dams Safety Act, 2015* commence.

The Access Road Dam is a 'prescribed dam' under the *Dams Safety Act, 1978* and a 'declared dam' under the *Dams Safety Act, 2015* (listed as the Drayton Water Supply Dam). The Access Road Dam would be used as part of the Project.

The Liddell Ash Levee and Plashett Reservoir (Plashett Dam) are also 'prescribed dams' under the *Dams Safety Act, 1978* and 'declared dams' under the *Dams Safety Act, 2015*. The Liddell Ash Levee and Plashett Reservoir are located to the east of the Development Application Area. The Project is located outside the Notification Area for the Plashett Reservoir.

Section 48(4) of the *Dams Safety Act, 2015* requires the following relevant provisions:

- (4) *A consent authority must, before granting development consent for the carrying out of mining operations under the Mining Act 1992 in a notification area:*
 - (a) *refer the application for development consent to Dams Safety NSW, and*
 - (b) *take into consideration any matters that are raised by Dams Safety NSW in relation to the application within 28 days (or such other period as is agreed between the consent authority and Dams Safety NSW) after the application is referred to Dams Safety NSW.*

Clause 4 of the *Mining Act, 1992*, defines 'mining operations' as:

mining operations carried out in the course of mining.

No extraction of coal is proposed within the declared Notification Areas for the Access Road Dam or Liddell Ash Levee. Use of the Maxwell Infrastructure, continued rehabilitation activities and the development of new infrastructure would occur within the declared Notification Areas for the Access Road Dam and Liddell Ash Levee.

Malabar would comply with the *Dams Safety Act, 1978* and/or *Dams Safety Act, 2015*, where relevant, for new dams constructed as part of the Project (Section 3.10).

4.5.2 Relevant Commonwealth Legislation

The relevance of the EPBC Act to the Project is described in Section 4.4.

The relevance of the Commonwealth *National Greenhouse and Energy Reporting Act, 2007* (NGER Act) and the Commonwealth *Native Title Act, 1993* to the Project are described in the subsections below.

National Greenhouse and Energy Reporting Act, 2007

The NGER Act introduced a single national reporting framework for the reporting and dissemination of corporations' greenhouse gas emissions and energy use. The NGER Act makes registration and reporting mandatory for corporations whose energy production, energy use or greenhouse gas emissions meet specified thresholds.

Section 3 of the NGER Act defines the objects of the Act:

- (1) *The first object of this Act is to introduce a single national reporting framework for the reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations to:*
 - (b) *inform government policy formulation and the Australian public; and*
 - (c) *meet Australia's international reporting obligations; and*

(d) *assist Commonwealth, State and Territory government programs and activities; and*

(e) *avoid the duplication of similar reporting requirements in the States and Territories.*

- (2) *The second object of this Act is to ensure that net covered emissions of greenhouse gases from the operation of a designated large facility do not exceed the baseline applicable to the facility.*

The Project is anticipated to trigger the current NGER Act reporting threshold during the Project life, based on the Scope 1 and 2 greenhouse gas emission estimates provided in Appendix J. If required, Malabar would report relevant energy use and greenhouse gas emissions associated with its activities.

Native Title Act, 1993

The *Native Title Act, 1993* provides for the recognition and protection of Native Title rights in Australia.

The *Native Title Act, 1993* provides a mechanism to determine whether Native Title exists and what the rights and interests are that comprise that Native Title. The process is designed to ensure that Indigenous people who claim to have an interest in a parcel of land have the opportunity to express this interest formally, and to negotiate with the Government and the applicant about the proposed grant or renewal of a mining tenement, or consent to access Native Title land.

The *Mining Act, 1992* must be administered in accordance with the *Native Title Act, 1993*. The primary effect of the *Native Title Act, 1993* on exploration and mining approvals is to provide Native Title parties with 'Rights to Negotiate' about the grant and some renewals by Governments of exploration and mining titles.

The *Native Title Act, 1993*, where applicable, would be complied with in relation to the renewal of any necessary mining tenements for the Project.

4.6 ENVIRONMENTAL PLANNING INSTRUMENTS

4.6.1 State Environmental Planning Policies

The following SEPPs are relevant to the Project:

- State and Regional Development SEPP;
- Mining SEPP;
- *State Environmental Planning Policy (Infrastructure) 2007*;
- *State Environmental Planning Policy No.33 – Hazardous and Offensive Development* (SEPP 33);
- *State Environmental Planning Policy No.44 – Koala Habitat Protection* (SEPP 44); and
- *State Environmental Planning Policy No.55 – Remediation of Land* (SEPP 55).

Relevant provisions and objectives of the above SEPPs are considered in Attachment 7.

4.6.2 Local Environmental Plans

The Development Application Area is within the Muswellbrook LGA (Figure 1-1), and is covered by the Muswellbrook LEP.

The aims of the Muswellbrook LEP and special provisions are discussed in Attachment 7.