

Notice of Modification

Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning and Public Spaces, I approve the modification to the development consent referred to in Schedule 1, subject to the conditions in Schedule 2.



Dan Simpkins

**Director
Hunter and Central Coast**

Sydney

18 September 2023

SCHEDULE 1

The development consent (DA 106-04-00) for the operation of Drayton Rail Loop and Antiene Rail Spur, granted by the Minister for Urban Affairs and Planning on 2 November 2000.

SCHEDULE 2

1. Delete all conditions, including the Figures and Annexures, and replace with the following:

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DEFINITIONS

Adaptive Management	Adaptive management includes monitoring environmental impacts and environmental effects to ensure that the effects, impacts and/or associated environmental consequences remain within predicted and designated ranges and in compliance with the conditions of this consent
Antiene Rail Spur	The rail spur shown on the Development Layout in Appendix 2.
Applicant	Maxwell Ventures (Management) Pty Ltd, or any person carrying out any development under this consent
Conditions of this consent	Conditions contained in Schedule 2
Council	Muswellbrook Shire Council
Decommissioning	The deconstruction or demolition and removal of works installed as part of the development
Demolition	The deconstruction and removal of buildings, sheds and other structures on the site
Department	NSW Department of Planning and Environment
Development	The development described in the documents listed in condition A2(c), as modified by the conditions of this consent
Drayton Rail Loop	The rail loop shown on the Development Layout in Appendix 2 (now known as the Maxwell Rail Loop).
EIS	The Environmental Impact Statement dated March 2000, prepared by Umwelt (Australia) Pty Limited, submitted with the application for consent for the development, including the Response to Submissions, dated August 2000 and the additional information dated 15 June 2000, 5 July 2000, 20 July 2000.
Environment	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPL	Environment Protection Licence under the POEO Act
Feasible	Means what is possible and practical in the circumstances
Incident	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance
Land	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act, except for where the term is used in the noise and air quality conditions in PART B of this consent where it is defined to mean the whole of a lot, or contiguous lots owned by the same landowner, in a current plan registered at the Land Titles Office at the date of this consent
Material harm	<p>Is harm to the environment that:</p> <ul style="list-style-type: none"> • involves actual or potential harm to the health or safety of human beings or to the environment that is not trivial, or • results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000 (such loss includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment) <p>This definition excludes “harm” that is authorised under either this consent or any other statutory approval</p>
Maxwell Project	The Development approved under SSD 9526.
Maxwell Rail Loop	The rail loop shown on the Development Layout in Appendix 2 (formerly named the Drayton Rail Loop).
Minimise	Implement all reasonable and feasible mitigation measures to reduce the impacts of the development
Minister	NSW Minister for Planning and Public Spaces, or delegate
Mitigation	Activities associated with reducing the impacts of the development

Mod 1	The modification to the development as described in Modification Report (Mod 1)
Modification Report (MOD1)	The Modification Report titled “ <i>Antiene Rail Spur Life Extension Modification: Modification Report</i> ” prepared by Maxwell Ventures (Management) Pty Ltd, dated May 2023, including the associated report titled “ <i>Antiene Rail Spur Life Extension Modification: Submissions Report</i> ” dated August 2023
Negligible	Small and unimportant, such as to be not worth considering
Non-compliance	An occurrence, set of circumstances or development that is a breach of this consent
Planning Secretary	Planning Secretary under the EP&A Act, or nominee
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
Privately-owned land	Land that is not owned by a public agency or a mining, petroleum or extractive industry company (or its subsidiary or related party)
Public infrastructure	Linear and related infrastructure that provides services to the general public, such as roads, railways, water supply, drainage, sewerage, gas supply, electricity, telephone, telecommunications, etc.
Reasonable	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements
Rehabilitation	The restoration of land disturbed by the development to a good condition, to ensure it is safe, stable and non-polluting
Remediation	Activities associated with partially or fully repairing or rehabilitating the impacts of the development or controlling the environmental consequences of this impact
Residence	Existing or approved dwelling at the date of grant of this consent
Resources Regulator	NSW Resources Regulator
RFS	NSW Rural Fire Service
Site	The land defined in Appendix 1 and identified in the Development Layout in Appendix 2.

SCHEDULE 2

PART A ADMINISTRATIVE CONDITIONS

OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In addition to meeting the specific performance measures and criteria established under this consent, the Applicant must implement all reasonable and feasible measures to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development, and any rehabilitation required under this consent.

TERMS OF CONSENT

- A2. The development may only be carried out:
- (a) in compliance with the conditions of this consent;
 - (b) in accordance with all written directions of the Planning Secretary;
 - (c) generally in accordance with the EIS and Modification Report (Mod 1); and
 - (d) generally in accordance with the Development Layout in **Error! Reference source not found.**
- A3. Consistent with the requirements in this consent, the Planning Secretary may make written directions to the Applicant in relation to:
- (a) the content of any strategy, study, system, plan, program, review, audit, notification, report or correspondence submitted under or otherwise made in relation to this consent, including those that are required to be, and have been, approved by the Planning Secretary; and
 - (b) the implementation of any actions or measures contained in any such document referred to in condition A3(a).
- A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and any document/s listed in condition A2(c). In the event of an inconsistency, ambiguity or conflict between any of the document/s listed in condition A2(c), the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

LIMITS OF CONSENT

Operations

- A5. Product coal must only be transported by rail.
- A6. Rail activities may be carried out along the Maxwell Rail Loop and Antiene Rail Spur until 30 June 2047.
- A7. The Applicant must restrict coal transport on the Maxwell Rail Loop to a maximum of:
- (a) 7 million tonnes of product coal per annum; and
 - (b) 12 train movements a day.
- A8. The Applicant must restrict coal transport on the Antiene Rail Spur to a maximum of:
- (a) 20 million tonnes of product coal per annum; and
 - (b) 30 train movements a day.

Hours of Operation

- A9. The Applicant may undertake activities 24 hours a day, 7 days a week.

COMBINING STRATEGIES, PLANS OR PROGRAMS

- A10. With the approval of the Planning Secretary, the Applicant may combine any strategy, plan or program required by this consent with any similar strategy, plan or program required by an adjoining mining consent or approval, in common ownership or management.

PROTECTION OF PUBLIC INFRASTRUCTURE

- A11. Unless the Applicant and the applicable authority agree otherwise, the Applicant must:
- (a) repair, or pay the full costs associated with repairing, any public infrastructure that is damaged by carrying out the development; and
 - (b) relocate, or pay the full costs associated with relocating, any public infrastructure that needs to be relocated as a result of the development.

OPERATION OF PLANT AND EQUIPMENT

- A12. All plant and equipment used on site, or in connection with the development, must be:
- (a) maintained in a proper and efficient condition; and
 - (b) operated in a proper and efficient manner.

DEMOLITION

- A13. All demolition must be carried out in accordance with *Australian Standard AS 2601-2001 The Demolition of Structures* (Standards Australia, 2001).

COMPLIANCE

- A14. The Applicant must ensure that all of its employees, contractors (and their sub-contractors) are made aware of, and are instructed to comply with, the conditions of this consent relevant to activities they carry out in respect of the development.

APPLICABILITY OF GUIDELINES

- A15. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of inclusion (or later update) in the condition.
- A16. Notwithstanding Condition A15, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, in respect of ongoing monitoring and management obligations, agree to or require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

PART B SPECIFIC ENVIRONMENTAL CONDITIONS

NOISE

Noise Criteria

The Applicant must ensure the noise generated by the Maxwell Rail Loop and Antiene Rail Spur does not exceed the criteria in Table 1 at any residence on privately-owned land.

Location	Noise Limits in dB(A)		
	Day	Evening	Night
	L _{Aeq} (15 Min)	L _{Aeq} (15 Min)	L _{Aeq} (15 Min)
Any privately-owned residence	40	40	40

Noise Operating Conditions

B1. The Applicant must:

- (a) integrate the noise management and monitoring system for the Maxwell Rail Loop and Antiene Rail Spur with the Maxwell Project noise management and monitoring system;
- (b) implement best noise management practice, which includes implementing all reasonable and feasible noise mitigation measures to minimise rail noise; and
- (c) take all reasonable steps to minimise the noise impacts of the development in noise sensitive areas during the evening and night.

AIR QUALITY

Odour

B2. The Applicant must ensure that no offensive odours, as defined under the POEO Act, are emitted from the site.

Air Quality Operating Conditions

B3. The Applicant must:

- (a) integrate the air quality management and monitoring system for the Maxwell Rail Loop and Antiene Rail Spur with the Maxwell Project air quality management and monitoring system
- (b) take all reasonable steps to:
 - (i) minimise odour, fume and particulate matter (including PM₁₀ and PM_{2.5}) emissions of the development, paying particular attention to minimising coal dust emissions associated with train movements;
 - (ii) minimise any visible off-site air pollution generated by the development; and
 - (iii) minimise the extent of potential dust generating surfaces exposed on the site at any given point in time; and
- (c) make all reasonable efforts to co-ordinate air quality management on the site with the air quality management at nearby mines to minimise cumulative air quality impacts.

WATER

Water Supply

B4. The Applicant must ensure that it has sufficient water for all stages of the development, and if necessary, adjust the scale of the development to match its available water supply.

Note: Under the Water Act 1912 and/or the Water Management Act 2000, the Applicant is required to obtain the necessary water licences for the development

Water Pollution

B5. The Applicant must ensure that the development does not cause any water pollution, as defined under Section 120 of the POEO Act.

Operating Conditions

B6. The Applicant must:

- (a) integrate the water management and monitoring system for the Maxwell Rail Loop and Antiene Rail Spur with the Maxwell Project water management and monitoring system;

- (b) manage stormwater and general surface runoff to ensure separate effective management of clean and dirty water;
- (c) minimise any soil erosion and control sediment generation;
- (d) ensure that construction, operation, upgrading or decommissioning of the development has appropriate drainage and erosion and sediment controls designed, installed and maintained in accordance with the relevant requirements in the *Managing Urban Stormwater: Soils and Construction* (Landcom, 2004) manual, or its latest version;
- (e) ensure infrastructure is designed, constructed and maintained to reduce impacts on surface water and localised flooding; and
- (f) ensure infrastructure is designed, constructed and maintained to avoid causing any erosion on site

VISUAL

Visual Amenity and Lighting

- B7. The Applicant must:
- (a) take all reasonable steps to minimise the visual and off-site lighting impacts of the development; and
 - (b) ensure that all external lighting associated with the development complies with relevant Australian Standards including the latest version of *Australian Standard AS4282 (INT) 1997 – Control of Obtrusive Effects of Outdoor Lighting*.

WASTE

- B8. The Applicant must:
- (a) take all reasonable steps to minimise the waste generated by the development;
 - (b) classify all waste generated at the site in accordance with the *Waste Classification Guidelines* (EPA, 2014); and
 - (c) remove all waste from the site as soon as practicable, and ensure it is reused, recycled or sent to an appropriately licensed waste facility for disposal.

BUSHFIRE MANAGEMENT

- B9. The Applicant must:
- (a) ensure that the development:
 - (i) provides for asset protection in accordance with the relevant requirements in *the Planning for Bushfire Protection* (RFS, 2006) guideline; and
 - (ii) ensure that there is suitable equipment to respond to any fires on the site; and
 - (b) assist the RFS and emergency services to the extent practicable if there is a fire in the vicinity of the site.

REHABILITATION

Rehabilitation Objectives

- B10. Following cessation of rail movements under this consent, the Applicant must rehabilitate the site to comply with the objectives in Table 2.

Table 2: Rehabilitation objectives

Feature	Objective
Site	<ul style="list-style-type: none"> • Safe, stable and non-polluting • Fit for the intended post-mining land use/s
Surface infrastructure	<ul style="list-style-type: none"> • To be decommissioned and removed within 5 years of cessation of rail movements, unless the Planning Secretary agrees otherwise
Community	<ul style="list-style-type: none"> • Ensure public safety at all times

PART C ENVIRONMENTAL MANAGEMENT, REPORTING AND AUDITING

ENVIRONMENTAL MANAGEMENT

Environmental Management Strategy

- C1. The Applicant must prepare an Environmental Management Strategy for the development to the satisfaction of the Planning Secretary. This strategy must:
- (a) be submitted for approval within 6 months of the approval of Mod 1;
 - (b) provide the strategic framework for environmental management of the development;
 - (c) identify the statutory approvals that apply to the development;
 - (d) set out the role, responsibility, authority and accountability of all key personnel involved in the environmental management of the development;
 - (e) set out the procedures to be implemented to:
 - (i) keep the local community and relevant agencies informed about the operation and environmental performance of the development;
 - (ii) receive record, handle and respond to complaints;
 - (iii) resolve any disputes that may arise during the course of the development;
 - (iv) respond to any non-compliance and any incident;
 - (v) respond to emergencies; and
 - (f) include:
 - (i) references to any strategies, plans and programs approved under the conditions of this consent; and
 - (ii) a clear plan depicting all the monitoring to be carried out under the conditions of this consent.

Adaptive Management

- C2. The Applicant must assess and manage development-related risks to ensure that there are no exceedances of the criteria and performance measures in this consent.

Where any exceedance of these criteria or performance measures has occurred, the Applicant must, at the earliest opportunity:

- (a) take all reasonable and feasible steps to ensure that the exceedance ceases and does not recur;
- (b) consider all reasonable and feasible options for remediation (where relevant) and submit a report to the Department describing those options and any preferred remediation measures or other course of action; and
- (c) implement reasonable remediation measures as directed by the Planning Secretary.

REVISION OF STRATEGIES, PLANS AND PROGRAMS

- C3. Within three months of:
- (a) the submission of an incident report under condition C5 or C6;
 - (b) the submission of an Independent Environmental Audit under condition C7; or
 - (c) the approval of any modification of the conditions of this consent (unless the conditions require otherwise);
- the suitability of existing strategies, plans and programs required under this consent must be reviewed by the Applicant.
- C4. If necessary, to either improve the environmental performance of the development, cater for a modification or comply with a direction, the strategies, plans and programs required under this consent must be revised, to the satisfaction of the Planning Secretary. Where revisions are required, the revised document must be submitted to the Planning Secretary for approval within six weeks of the review.

Note: *This is to ensure strategies, plans and programs are updated on a regular basis and to incorporate any recommended measures to improve the environmental performance of the development.*

REPORTING AND AUDITING

Incident Notification

- C5. The Applicant must immediately notify the Department and any other relevant agencies immediately after it becomes aware of an incident. The notification must be in writing via the Department's Major Projects Website and identify the development (including the development application number and name) and set out the location and nature of the incident.

Non-Compliance Notification

- C6. Within seven days of becoming aware of a non-compliance, the Applicant must notify the Department of the non-compliance. The notification must be in writing via the Department's Major Projects Website and identify the development (including the development application number and name), set out the condition of this consent that the development is non-compliant with, why it does not comply and the reasons for the non-compliance (if known) and what actions have been, or will be, undertaken to address the non-compliance.

Note: A non-compliance which has been notified as an incident does not need to also be notified as a non-compliance.

Independent Environmental Audit

- C7. Within one year of approval of Mod 1, and every three years after, unless the Planning Secretary directs otherwise, the Applicant must commission and pay the full cost of an Independent Environmental Audit of the development. The audit must:
- (a) be led by a suitably qualified, experienced and independent auditor whose appointment has been endorsed by the Planning Secretary;
 - (b) be conducted by a suitably qualified, experienced and independent team of experts (including any expert in field/s specified by the Planning Secretary) whose appointment has been endorsed by the Planning Secretary;
 - (c) be carried out in consultation with the relevant agencies;
 - (d) assess the environmental performance of the development and whether it is complying with the relevant requirements in this consent, water licences and mining leases for the development (including any assessment, strategy, plan or program required under these approvals);
 - (e) review the adequacy of any approved strategy, plan or program required under the abovementioned approvals and this consent;
 - (f) recommend appropriate measures or actions to improve the environmental performance of the development and any assessment, strategy, plan or program required under the abovementioned approvals and this consent; and
 - (g) be conducted and reported to the satisfaction of the Planning Secretary.
- C8. Within three months of commencing an Independent Environmental Audit the Applicant must submit a copy of the audit report to the Planning Secretary, and any other NSW agency that requests it, together with its response to any recommendations contained in the audit report, and a timetable for the implementation of the recommendations. The recommendations must be implemented to the satisfaction of the Planning Secretary.

Monitoring and Environmental Audits

- C9. Any condition of this consent that requires the carrying out of monitoring or an environmental audit, whether directly or by way of a plan, strategy or program, is taken to be a condition requiring monitoring or an environmental audit under Division 9.4 of Part 9 of the EP&A Act. This includes conditions in respect of incident notification, reporting and response, non-compliance notification, compliance report and independent audit.
- C10. For the purposes of this condition, as set out in the EP&A Act, "monitoring" is monitoring of the development to provide data on compliance with the consent or on the environmental impact of the development, and an "environmental audit" is a periodic or particular documented evaluation of the development to provide information on compliance with the consent or the environmental management or impact of the development.

ACCESS TO INFORMATION

- C11. Within 3 months of the approval of Mod 1, until the completion of all rehabilitation required under this consent, the Applicant must:
- (a) make the following information and documents (as they are obtained, approved or as otherwise stipulated within the conditions of this consent) publicly available on its website:
 - (i) the documents listed in condition A2(c) of this consent;
 - (ii) all current statutory approvals for the development;
 - (iii) all approved strategies, plans and programs required under the conditions of this consent;
 - (iv) a summary of the current phase and progress of the development;
 - (v) contact details to enquire about the development or to make a complaint;
 - (vi) a complaints register, updated monthly following the receipt of any complaints;
 - (vii) audit reports prepared as part of any Independent Environmental Audit of the development and the Applicant's response to the recommendations in any audit report;
 - (viii) any other matter required by the Planning Secretary; and
 - (b) keep such information up to date, to the satisfaction of the Planning Secretary.

APPENDIX 1 SCHEDULE OF LAND

<i>Lot</i>	<i>DP</i>
44	241179
45	241179
46	241179
6	701496
1	752486
180	812852
5	1140127
3	1188871
30	1193296
29	1193296
28	1193296
27	1193296
1	532672
Public Road, 2.92 km East along Hebdan Road from Intersection of New England Highway and Hebdan Road	
Antiene Railway Station Road, 2.5 km East along Hebdan Road from Intersection of New England Highway and Hebdan Road	
New England Highway, 0.58 km North Along New England Highway from Intersection of New England Highway and Hebdan Road	
Crown Road, 0.12 km Southwest along Maxwell Access road from intersection of Thomas Mitchell Drive and Maxwell Access road	

APPENDIX 2 DEVELOPMENT LAYOUT

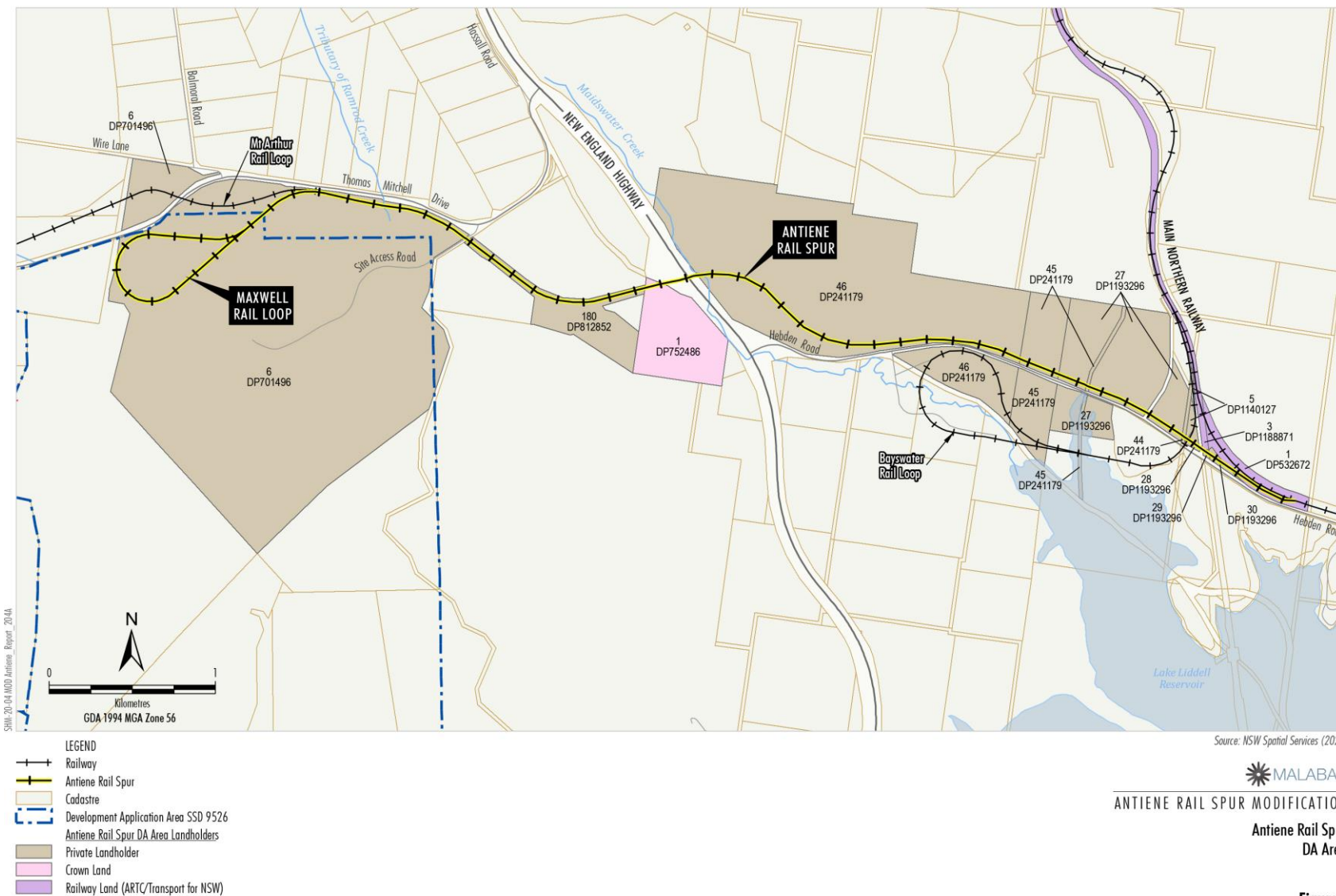


Figure 4