



EPBC 2018/8287
ANNUAL COMPLIANCE REPORT
2023

MAXWELL UNDERGROUND MINE

Annual Compliance Report 2023

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1 INTRODUCTION

Maxwell Ventures (Management) Pty Ltd (Maxwell), a wholly owned subsidiary of Malabar Resources Limited (Malabar) owns and operates the Maxwell Underground Mine (the site). The site is in the Upper Hunter Valley of New South Wales (NSW), east-southeast of Denman and south-southwest of Muswellbrook. The site is approved to extract a maximum of 8 million tonnes of run-of-mine coal per year over a period of 26 years.

The site consists of the following areas:

- Underground area comprising the area of underground mining operations and the mine entry area (MEA) to support underground mining and coal handling activities and provide for personnel and materials access;
- Maxwell Infrastructure (formerly Drayton mine) comprising previous open cut mining areas, coal handling and preparation plant (CHPP), train load-out facilities and rail loop, Antiene rail spur and other infrastructure and services; and
- Transport and services corridor between the MEA and Maxwell Infrastructure comprising the site access road, an overland conveyor (to be constructed), power supply and other ancillary infrastructure and services.

Construction of the Maxwell Underground Mine commenced in May 2022. First workings commenced in the Whynot Seam in March 2023 and first coal was produced from the bord and pillar operation at the end of March 2023.

This annual compliance report has been prepared to address Condition 17 of EPBC Approval 2018/8287 (as varied) issued under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) held by Maxwell.

2 COMPLIANCE TABLE

In accordance with Condition 17 of EPBC Approval 2018/8287 this report provides a statement of compliance against the approval conditions.

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
<p>Part A – Conditions specific to the action.</p> <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>			
1	<p>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>	Compliant	<p>The Maxwell Underground Mine Water Management Plan (Water Management Plan) has been developed to address these conditions.</p> <p>The 2023 Annual Review, produced as a requirement of Condition E11 of State Significant Development Consent (SSD 9526) and available via the Malabar Resources website, demonstrates with evidence that the performance measures have been achieved and are being maintained.</p>
2	<p>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 and 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>	Compliant	<p>The Water Management Plan has been developed to address these conditions.</p> <p>The 2023 Annual Review, produced as a requirement of Condition E11 of SSD 9526, demonstrates with evidence that the performance measures have been achieved and are being maintained.</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
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.	Non-compliant	<p>The Water Management Plan was revised in February 2023 following the approval of Modification 2 of SSD 9526. Maxwell did not provide the Department with the final version of the Water Management Plan within two days of its approval by the NSW Planning Secretary.</p> <p>On 24 March 2023, Maxwell became aware of the abovementioned oversight and a copy of the revised Water Management Plan was provided to the Department promptly on the same day.</p> <p>The Water Management Plan was further revised in December 2023. Maxwell provided the Department with the approved revised Water Management Plan (on 25 January 2024) within two days of its approval by the NSW Planning Secretary (23 January 2024).</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
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.	Non-compliant	<p>The Water Management Plan was revised in February 2023 following the approval of Modification 2 of SSD 9526. Maxwell did not provide the Department with the approved revised Water Management Plan within two days of its approval by the NSW Planning Secretary.</p> <p>On 24 March 2023, Maxwell became aware of the abovementioned oversight and a copy of the revised Water Management Plan was provided to the Department promptly on the same day.</p> <p>The Water Management Plan was further revised in December 2023. Maxwell provided the Department with the approved revised Water Management Plan (on 25 January 2024) within two days of its approval by the NSW Planning Secretary (23 January 2024).</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
5	<p>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> <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>	Compliant	<p>a) The 2023 Annual Review provides details of the network of groundwater monitoring bores across the Development Application Area which has been designed to detect changes in groundwater levels. These bores were installed many years ago, prior to the commencement of the action (commencement of action notified to the Department as being 16 May 2022).</p> <p>b) Groundwater levels in each bore are monitored at least once every 3 months, in accordance with the Water Management Plan.</p> <p>c) All groundwater monitoring data from all bores, updated at least once every 3 months, is published on the Malabar Resources website in the form of Quarterly Environmental Monitoring Data Reports. Reports include hydrographs for all monitoring bores and an explanation of what the data means in relation to the groundwater performance measures specified in SSD 9526.</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
6	<p>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, the approval holder must notify the Department of the exceedance within 10 business days of detecting or predicting the exceedance.</p>	Not triggered	As detailed in the 2023 Annual Review, no exceedances of any performance measures (including any trigger levels) have occurred during the reporting period.

7	<p>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> <ul style="list-style-type: none"> a. be prepared by a suitably qualified water resources expert b. describe all potential and actual impacts to water resources arising from the exceedance c. include conceptual modelling, as well as a review of all historical monitoring data to determine the stress or 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 	Not triggered	N/A
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Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
	<p>h. provide justification for how the proposed mitigation and management measures will achieve and maintain the requirements of condition 1, and</p> <p>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> <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>		
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.	Not triggered	N/A

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
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.	Not triggered	N/A

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
10	<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> <p>a. 12.1 hectares of the Central Hunter Valley Eucalypt Forest and Woodland EPBC Act listed ecological community.</p> <p>b. 139 hectares of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland EPBC Act listed ecological community.</p> <p>c. 38.7 hectares of Pink-tailed Legless Lizard (<i>Aprasia parapulchella</i>) habitat.</p> <p>d. 157.1 hectares of Striped Legless lizard (<i>Delma impar</i>) habitat.</p> <p>e. 22.2 hectares of Regent Honeyeater (<i>Anthochaera phrygia</i>) habitat.</p> <p>f. 25 hectares of Swift Parrot (<i>Lathamus discolor</i>) habitat.</p>	Compliant	<p>At the end of the reporting period, Maxwell had cleared the following areas within the Development Application Area:</p> <ul style="list-style-type: none"> a) 5.8 hectares of the Central Hunter Valley Eucalypt Forest and Woodland EPBC Act listed ecological community. b) 91.2 hectares of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland EPBC Act listed ecological community. c) 20.1 hectares of Pink-tailed Legless Lizard (<i>Aprasia parapulchella</i>) habitat. d) 102.5 hectares of Striped Legless lizard (<i>Delma impar</i>) habitat. e) 14.1 hectares of Regent Honeyeater (<i>Anthochaera phrygia</i>) habitat. f) 17.1 hectares of Swift Parrot (<i>Lathamus discolor</i>) habitat.

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
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).	Compliant	All conditions listed were complied with during the reporting period. The 2023 Annual Review, produced as a requirement of Condition E11 of SSD 9526, demonstrates with evidence that the performance measures have been achieved and are being maintained.
Part B – Administrative Conditions			
12	Notification of date of commencement of the action 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.	Compliant	Maxwell letter dated 20 May 2022 provides notification to the Department of the date of commencement of the action (the action commenced on 16 May 2022).
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.	Not triggered	N/A
14	Compliance records The approval holder must maintain accurate and complete compliance records.	Compliant	Maxwell maintains accurate and complete compliance records.

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
15	<p>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>	Compliant	<p>On 19 December 2023, the Department requested timeframes for retiring biodiversity offset credits. Maxwell provided a response on 19 December 2023.</p> <p>On 19 December 2023, the Department requested information regarding vegetation clearing. Maxwell provided a response on 22 December 2023.</p> <p>On 31 January 2024 (outside the reporting period), the Department requested information from Maxwell relating to the non-compliance of Condition 2, 11, 17, 18 and 19. Maxwell provided a response on 7 February 2024.</p> <p>On 18 March 2024 (outside the reporting period), the Department requested an update on the retirement of biodiversity offset credits. Maxwell provided a response on 18 March 2024.</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
16	<p>Submission and publication of plans</p> <p>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; 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. 	Compliant	<ul style="list-style-type: none"> a. Maxwell acknowledges that its Water Management Plan was revised in August 2022 in accordance with Condition E7 of SSD 9526. The plan was further revised in February 2023 following the approval of Modification 2 of SSD 9526. On 24 March 2023, a copy of the revised Water Management Plan (incorporating changes from August 2022 and February 2023) was provided to the Department (see comments for Conditions 3 and 4). b. <ul style="list-style-type: none"> i. All management plans are published on the Malabar Resources website within 20 business days of the date the plan is approved. ii. The Water Management Plan was published on the Malabar Resources website within 20 business days of the date the plan was approved. iii. No sensitive ecological data. iv. All plans required are present on the website.

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
17	<p>Annual compliance reporting</p> <p>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 accordance with an annual date that has been agreed to in writing by the Minister. The approval holder must:</p> <ul 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>	Compliant	<ul style="list-style-type: none"> a. The Annual Compliance Report for calendar year 2023 will be published on the Malabar Resources website by no later than 31 March 2024. b. An email compliant with paragraph (b) will be emailed to the Department within 5 business days of the publication of the Annual Compliance Report. c. All compliance reports retained on website. d. No sensitive ecological data – not triggered. e. No sensitive ecological data – not triggered.

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
18	<p>Reporting non-compliance</p> <p>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> <ul style="list-style-type: none"> a. any condition which is in breach, b. a short description of the incident and/or non-compliance, <p>and</p> <ul style="list-style-type: none"> 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. 	Non-compliant	<p>Maxwell did not report non-compliance against Conditions 3 and 4</p> <p>In relation to Condition 3, in February 2023 the Water Management Plan was revised and approved by the NSW Planning Secretary and Maxwell failed to provide that version of the Water Management Plan to the Department within 2 business days of its approval. On 24 March 2023, Maxwell recognised its oversight and a copy of the revised Water Management Plan was provided to the Department on 24 March 2023.</p> <p>In relation to Condition 4, Maxwell failed in February 2023 to notify the Department within 2 business days of proposed changes to the final version of the Water Management Plan. That revised Plan was approved by the Planning Secretary in February 2023 and Maxwell did not provide the approved revised Water Management Plan to the Department within 2 business days of its approval by the Planning Secretary. On 24 March 2023, Maxwell recognised its oversight and a copy of the revised Water Management Plan was provided to the Department on 24 March 2023.</p>

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
19	<p>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> <p>a. any corrective action or investigation which the approval holder has already taken or intends to take in the immediate future,</p> <p>b. the potential impacts of the incident or non-compliance,</p> <p>and</p> <p>c. the method and timing of any remedial action that will be undertaken by the approval holder.</p>	Non-compliant	<p>Maxwell did not report non-compliance against Conditions 3 and 4.</p> <p>In relation to Conditions 3 and 4, upon recognising on 24 March 2023 that it was non-compliant with Conditions 3 and 4, it promptly provided the Department with a copy of the revised Water Management Plan by email on the same day. Maxwell acknowledges that it did not adequately notify the Department of the non-compliance in that it did not specify in that email which condition might be in breach or provide a description of the non-compliance or any timeframes.</p>
20	<p>Independent audit</p> <p>The approval holder must ensure that independent audits of compliance with the conditions are conducted as requested in writing by the Minister</p>	Not triggered	N/A

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
21	<p>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. 	Not triggered	N/A
22	<p>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>	Not triggered	N/A
23	<p>Completion of the action</p> <p>The approval holder must comply with condition A6¹ in Schedule 2 of the State development consent.</p>	Not triggered	N/A
24	<p>Within 30 days after the completion of the action, the approval holder must notify the Department in writing and provide completion data.</p>	Not triggered	N/A

Condition Number	Condition	Compliant/ Non-Compliant/ Not Triggered	Evidence/ Comments
25	<p>Changes to State development consent</p> <p>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>	Compliant	No changes to SSD 9526 during the reporting period.
26	<p>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>	Compliant	<p>SSD 9526 Modification 1 was approved 19 November 2021. Notification was made to the Department on 22 November 2021.</p> <p>SSD 9526 Modification 2 was approved on 20 October 2022. Notification was made to the Department on 21 October 2022.</p>

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

3 NEW ENVIRONMENTAL RISKS

No new environmental risks from the Project were identified during the reporting period.

4 DECLARATION OF ACCURACY

In making this declaration, I am aware that sections 490 and 491 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) make it an offence in certain circumstances to knowingly provide false or misleading information or documents. The offence is punishable on conviction by imprisonment or a fine, or both. I declare that all the information and documentation supporting this compliance report is true and correct in every particular. I am authorised to bind the approval holder to this declaration and that I have no knowledge of that authorisation being revoked at the time of making this declaration.

Signed: 

Full name: Wayne Seabrook

Position: Chairman – Malabar Resources Ltd

Organisation: Maxwell Ventures (Management) Pty Ltd, ACN 002 028 257.

Date: 26/03/2024

EPBC 2018/8287. Annual Compliance Report 2023. Appendices.

Appendix 1. Additional information required by *Section 3.8 Correcting non-compliances of Annual Compliance Report Guidelines 2023*, as required by the *Definitions* attached to approval for EPBC 2018/8287.

Condition Number	Additional information required by <i>Section 3.8 Correcting non-compliances of Annual Compliance Report Guidelines 2023</i>
3 and 4	<p>Who detected the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>Who (the actual person completing the correction) was/is responsible for correcting the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>What measures have been/ will be taken to avoid recurrence:</p> <p>To mitigate a recurrence of such incidents, Maxwell will use the site action tracking database to assign two actions to the HSEC Manager at the commencement of any review of the Water Management Plan. The actions will be to notify the Department within two business days of any proposed changes to the final version of the Water Management Plan and to provide the Department with the approved revised Water Management Plan within 2 business days of its approval by the NSW Planning Secretary. This will ensure that the notification and provision of the plan will be undertaken in accordance with the conditions of the EPBC Approval.</p>
18	<p>Who detected the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>Who (the actual person completing the correction) was/is responsible for correcting the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>What measures have been/ will be taken to avoid recurrence:</p> <p>To mitigate a recurrence of such an incident, Maxwell will:</p> <ul style="list-style-type: none"> i) develop an EPBC Approval Reporting Protocol which will include details of notifying the Department of any incident, non-compliance with the conditions of the EPBC approval or non-compliance with the commitments made in the management plans; and ii) update the site's Pollution Incident Response Management Plan to include details of reporting an incident in accordance with Condition 18 of the EPBC approval.
19	<p>Who detected the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>Who (the actual person completing the correction) was/is responsible for correcting the non-compliance: Donna McLaughlin, HSEC Manager</p> <p>What measures have been/ will be taken to avoid recurrence:</p> <p>To mitigate a recurrence of such an incident, Maxwell will develop an EPBC Approval Reporting Protocol which will include details of the information required when notifying the Department of any incident, non-compliance with the conditions of the EPBC approval or non-compliance with the commitments made in the management plans, in accordance with Condition 19.</p>

Appendix 2. *Schedule of all plans prepared and in existence in relation to the conditions during the relevant 12-month period. As required by the Definitions attached to approval for EPBC 2018/8287.*

1. Water Management Plan. Version 3. Effective 13/12/2023. Including:

- Appendix 1 – Site Water Balance and Salt Balance
- Appendix 2 – Erosion and Sediment Control Plan
- Appendix 3 – Surface Water Management Plan
- Appendix 4 – Groundwater Management Plan

2. Biodiversity Management Plan. Version 4. Effective 2/11/2023.