



APPROVAL

Maxwell Coal Mine, Hunter Valley, NSW (EPBC 2018/8287)

This decision is made under sections 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*. Note that section 134(1A) of the EPBC Act applies to this approval, which provides in general terms that if the approval holder authorises another person to undertake any part of the action, the approval holder must take all reasonable steps to ensure that the other person is informed of any conditions attached to this approval, and that the other person complies with any such condition.

Details

Person to whom the approval is granted (approval holder)	Maxwell Ventures (Management) Pty Ltd
ACN of approval holder	002028257
Action	To develop and operate an underground mining operation and utilise the existing Maxwell Infrastructure in the upper Hunter Valley, New South Wales [See EPBC Act referral 2018/8287 and variation request dated 14 June 2019].

Approval decision

My decisions on whether or not to approve the taking of the action for the purposes of each controlling provision for the action are as follows.

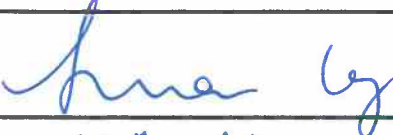
Controlling Provisions

Listed Threatened Species and Communities	
Section 18	Approve
Section 18A	Approve
Coal seam gas or large coal mining development impact on water resources	
Section 24D	Approve
Section 24E	Approve

Period for which the approval has effect

This approval has effect until 30 June 2057.

Decision-maker

Name and position	The Hon Sussan Ley MP Minister for the Environment
Signature	
Date of decision	10 th March 2021

Conditions of approval

This approval is subject to the conditions under the EPBC Act as set out in ANNEXURE A.

ANNEXURE A – CONDITIONS OF APPROVAL

Part A – Conditions specific to the action

Water Resources

The objective of conditions 1 to 9 is to minimise the impacts of the **action** on a **water resource**.

1. The approval holder must ensure there is no **adverse effect** on the **function** of a **water resource** as a result of the action.

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.

2. For the protection of **water resources**, the **approval holder** must comply with conditions B27, B28, B35, B36, B37, B38, B39, B40, B41, B42, B43 and B44 of Part B and C1, C2, C8 and C10 of Part C of the **State development consent** (to the extent the conditions in Part C relate to a **water resource**).
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.
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.
5. In addition to the Groundwater Management **Plan** monitoring requirements specified in condition B42 of the **State development consent**, the **approval holder** must:
 - 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**.
 - 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
 - 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**.
6. If, at any time until the end date of this approval:
 - 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

- 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.

- 7. If the **approval holder** detects or predicts an exceedance as described in condition 6, the **approval holder** must publish on the **website** an Impact Response **Plan** that has been **peer reviewed**. Each Impact Response **Plan** must:
 - 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 stressor-response relationships for any potential **GDEs** and consideration of potential contributing activities
 - d. include local scale numerical modelling with consideration of potential contributing activities
 - e. derive a scientifically-robust rectification strategy based on multiple lines of evidence and field data to support the assessment of the **environmental value** of **water resources** (including the groundwater-dependence of any potential **GDEs**) within the predicted impact area
 - f. identify if any further investigations are required to be undertaken to determine the cause of, and/or corrective actions, for the exceedance
 - g. include the mitigation and management measures that the **approval holder** has taken and/or proposes to take to reverse the exceedance, including data demonstrating the effectiveness of the mitigation and management measures
 - h. provide justification for how the proposed mitigation and management measures will achieve and maintain the requirements of condition 1, and
 - i. include a peer review, to be undertaken by an independent suitably qualified water resources expert, that including details of how the approval holder has addressed any inadequacies raised in the peer review.

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.

- 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**.
- 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.

Listed threatened species and ecological communities

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.

- 10. Within the **Development Application Area**, the **approval holder** must not clear more than:
 - a. 12.1 hectares of the Central Hunter Valley Eucalypt Forest and Woodland EPBC Act listed ecological community.

- b. 135.2 hectares of the White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland **EPBC Act** listed ecological community.
 - c. 38.7 hectares of Pink-tailed Legless Lizard (*Aprasia parapulchella*) habitat.
 - d. 152.8 hectares of Striped Legless Lizard (*Delma impar*) habitat.
 - e. 22.2 hectares of Regent Honeyeater (*Anthochaera phrygia*) habitat.
 - f. 25 hectares of Swift Parrot (*Lathamus discolor*) habitat.
11. The **approval holder** must comply with conditions B47, B48, B50, 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**).

Part B –Administrative conditions

Notification of date of commencement of the action

12. The **approval holder** must notify the **Department** in writing of the date of **commencement of the action** within 10 **business days** after the date of **commencement of the action**.
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**.

Compliance records

14. The **approval holder** must maintain accurate and complete **compliance records**.
15. If the **Department** makes a request in writing, the **approval holder** must provide electronic copies of **compliance records** to the **Department** within the timeframe specified in the request.

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.

Submission and publication of plans

16. The **approval holder** must:
- 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.

Annual compliance reporting

17. The **approval holder** must prepare a **compliance report** addressing compliance with each of the conditions of this approval, including implementation of any management **plans** and strategies from the **State development consent** that are referred to in this approval, every calendar year, or otherwise in accordance with an annual date that has been agreed to in writing by the **Minister**. The **approval holder** must:
- 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.

Note: **Compliance reports** may be published on the **Department's website**.

Reporting non-compliance

18. The **approval holder** must notify the **Department** in writing of any: **incident**, or non-compliance with the conditions, or non-compliance with the commitments made in **plans**. The notification must be given as soon as practicable, and no later than two **business days** after becoming aware of the **incident** or non-compliance. The notification must specify:
- a. any condition which is in breach,
 - b. a short description of the **incident** and/or non-compliance, and
 - c. the location (including co-ordinates), date, and time of the **incident** and/or non-compliance. In the event the exact information cannot be provided, provide the best information available.
19. The **approval holder** must provide to the **Department** the details of any **incident** or non-compliance with the conditions or commitments made in **plans** as soon as practicable and no later than 10 **business days** after becoming aware of the **incident** or non-compliance, specifying:
- a. any corrective action or investigation which the **approval holder** has already taken or intends to take in the immediate future,
 - b. the potential impacts of the **incident** or non-compliance, and
 - c. the method and timing of any remedial action that will be undertaken by the **approval holder**.

Independent audit

20. The **approval holder** must ensure that **independent audits** of compliance with the conditions are conducted as requested in writing by the **Minister**.
21. For each **independent audit**, the **approval holder** must:
- 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.
22. The **approval holder** must publish the audit report on the **website** within 10 **business days** of receiving the **Department's** approval of the audit report and keep the audit report published on the **website** until the end date of this approval.

Completion of the action

23. The **approval holder** must comply with condition A6¹ in Schedule 2 of the **State development consent**.
24. Within 30 days after the **completion of the action**, the **approval holder** must notify the **Department** in writing and provide **completion data**.

Changes to State development consent

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

Part C - Definitions

Action means the Maxwell Coal Mine, Hunter Valley, NSW (EPBC 2018/8287) as described in the NSW State Assessment Report, the referral under the EPBC Act and the variation request dated 14 June 2019.

Adverse effect means the failure to achieve and/or maintain a **performance measure** specified in Table 4 of the **State development consent** and as defined in the Water Management **Plan** approved by the NSW Government as a result of the action.

Approval holder means the person to whom the approval is granted as identified on the approval notice for EPBC 2018/8287, or to whom the approval is transferred under S145B of the **EPBC Act**, or a person who may take the **action** in accordance with section 133(2A) of the **EPBC Act**.

Associated user(s) means groundwater supply bores, **aquatic GDEs**, **terrestrial GDEs** and **subterranean GDEs**.

Aquatic GDEs means groundwater dependent ecosystems dependent on the surface expression of groundwater, including:

- river baseflow systems, aquatic and riparian ecosystems that exist in or adjacent to streams (including the hyporheic zone (subsurface interface between surface and groundwater bodies)) which are fed by groundwater; and
- **wetlands** (aquatic communities and fringing vegetation dependent on groundwater-fed lakes and **wetlands**), including palustrine (non-tidal **wetlands** dominated by vegetation) and lacustrine (lake) **wetlands** that receive groundwater discharge, and can include spring and swamp ecosystems.

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

Business day means a day that is not a Saturday, a Sunday or a public holiday in the state or territory of the **action**.

Clear means the cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting, or burning of vegetation.

Commencement of the action means the first instance of any specified activity associated with the action including clearing of vegetation and construction of any infrastructure. **Commencement of the action** does not include minor physical disturbance necessary to:

- i. undertake pre-clearance surveys or monitoring programs;
- ii. install signage and /or temporary fencing to prevent unapproved use of the **Development Application Area**;
- iii. protect environmental and property assets from fire, weeds and pests, including construction of fencing, and use/or maintenance of existing surface access tracks;
- iv. install temporary site facilities for persons undertaking pre-commencement activities so long as these are located where they have no impact on the **protected matters**.

Completion data means an environmental report and spatial data clearly detailing how the conditions of this approval have been met. The **Department's** preferred spatial data format is **shapefile**.

Completion of the action means the time at which all activities associated with the action have ceased.

Compliance records means all documentation or other material in whatever form required to demonstrate compliance with the conditions of approval in the **approval holder's** possession or that are within the **approval holder's** power to obtain lawfully.

Compliance report(s) means written reports:

- i. providing accurate and complete details of compliance, **incidents**, and non-compliance with the conditions and the **plans**,
- ii. consistent with the **Department's Annual Compliance Report Guidelines (2014)**,
- iii. including a **shapefile** of any clearance of any **protected matters**, or their habitat, undertaken within the relevant 12 month period, and
- iv. annexing a schedule of all **plans** prepared and in existence in relation to the conditions during the relevant 12 month period.

Department means the Australian Government agency responsible for administering the **EPBC Act**.

Development Application Area means the area shown marked with brown shading and labelled as 'Development Application Area' at Annexure 1 to this approval.

Environmental value means a quality or physical characteristic of the associated user that is conducive to ecological health, public amenity, or safety.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

EPBC Act listed threatened species and communities: Pink-tailed Legless Lizard (*Aprasia parapulchella*), Striped Legless Lizard (*Delma impar*), Regent Honeyeater (*Anthochaera phrygia*), Swift Parrot (*Lathamus discolor*), Central Hunter Valley eucalypt forest and woodland ecological community, White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

First workings means development of main headings, longwall gate roads, related cut throughs and other workings for mine access and ventilation. **First workings** does not include the extraction of coal made accessible by the **first workings**.

Function means the ecosystem components, processes and benefits or services that characterise the **associated user** including support for biological diversity or species composition.

GDE means a groundwater dependent ecosystem.

Incident means any event which has the potential to, or does, impact on one or more **protected matter(s)** other than as authorised by this approval.

Independent audit means an audit conducted by an independent and suitably qualified person as detailed in the *Environment Protection and Biodiversity Conservation Act 1999 Independent Audit and Audit Report Guidelines* (2019).

Independent suitably qualified water resources expert means a person with at least a postgraduate degree (or equivalent) in a relevant discipline (such as hydrology or hydrogeology) and a minimum of 10 years relevant experience in water resources assessment, include at least one year of experience in Australia, who is independent of the **suitably qualified water resources expert**.

Minister means the Minister administering the **EPBC Act** and includes any delegate of the Minister.

Peer-reviewed means a review carried out by a person who meets the criteria for an **independent suitably qualified water resources expert** and who is independent to any other **suitably qualified water resources expert(s)** used under the requirements of condition 7.

Performance measures means the water management performance measures specified in Table 4 and Table 9 of the **State development consent**.

Plan(s) means any of the documents required to be prepared, and/or implemented by the **approval holder** and published on the **website** in accordance with these conditions (including those **plans** required by the **State development consent** and required under the **EPBC Act** conditions).

Protected matters means a **water resource** and, the following **EPBC Act listed threatened species and ecological communities:** Pink-tailed Legless Lizard (*Aprasia parapulchella*), Striped Legless Lizard (*Delma impar*), Regent Honeyeater (*Anthochaera phrygia*), Swift Parrot (*Lathamus discolor*), Central Hunter Valley eucalypt forest and woodland ecological community and White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland ecological community.

Sensitive ecological data means data as defined in the Australian Government Department of the Environment (2016) *Sensitive Ecological Data – Access and Management Policy V1.0*.

Shapefile means location and attribute information of the **action** provided in an Esri shapefile format. Shapefiles must contain '.shp', '.shx', '.dbf' files and a '.prj' file that specifies the projection/geographic coordinate system used. Shapefiles must also include an '.xml' metadata file that describes the shapefile for discovery and identification purposes.

State development consent means the State development consent for application number SSD-9526 approved on 22 December 2020.

Subterranean GDEs means groundwater dependent ecosystems partially or completely dependent on aquifer ecosystems, including stygofauna.

Suitably qualified water resources expert means a person with at least a postgraduate degree (or equivalent) in a suitable discipline (such as hydrology or hydrogeology) and a minimum of 10 years relevant experience in water resources assessment, include at least one year of experience in Australia.

Terrestrial GDEs means land-based groundwater dependent ecosystems that are partially or wholly dependent on the subsurface presence of groundwater.

Trigger level means a trigger level specified in the approved Groundwater Management **Plan** or Surface Water Management **Plan** (including the trigger action response plans) required by condition B42 of the **State development consent** that relate to exceedance of the performance measures in Table 4 or remedial action and not early-warning triggers.

Water Resource means surface water or groundwater; or a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource), as defined in the *Water Act 2007* (Cth).

Website means a set of related web pages located under a single domain name attributed to the **approval holder** and available to the public.

Wetland/s means land intermittently or permanently inundated with water that is usually slow moving or stationary, shallow, can be fresh, brackish or saline, and where the inundation affects the plant and animal communities present and the type and productivity of soil.

