

9 June 2020

Lauren Evans

Team Leader, Energy and Resource Assessments
NSW Department of Planning, Industry and Environment
GPO Box 39
Sydney NSW 2001

By email: Lauren.Evans@planning.nsw.gov.au

Dear Lauren,

**RE: RESPONSE TO DPIE – WATER AND NRAR COMMENTS ON THE MAXWELL PROJECT
(SSD-9526) SUBMISSIONS REPORT (MAY 2020)**

I refer to the supplementary comments received from the Department of Planning, Industry and Environment – Water (DPIE – Water) and the NSW Natural Resources Regulator (NRAR) regarding the Maxwell Project (SSD 9526) (dated 28 May 2020).

DPIE – Water and NRAR have provided the following residual comments:

1. *Water take estimates: The proponent should update their water take predictions to consider all active and passive water take.*
2. *Water licensing: The proponent should prepare a strategy to show the project could proceed compliant with the legal requirements under the Water Management Act 2000. The strategy must be supported by detailed information such as the water balance model, and must demonstrate either held licences, or agreements in place with third parties (e.g. a retainer or similar) for the provisional transfer of units to account for the predicted take of the proposed underground workings.*
3. *Groundwater Dependent Ecosystems The proponent should commit to Groundwater Dependent Ecosystems floristic condition monitoring along Saddlers Creek.*

Malabar's position remains that these comments can be addressed through the requirements of the *Water Management Act 2000* and a condition requiring a Water Management Plan under the Development Consent. Notwithstanding, further clarification is provided below.

Water Take and Licensing (Items 1 and 2)

Malabar currently holds the following entitlements under the *Water Sharing Plan for the North Coast Fractured and Porous Rock Groundwater Sources 2016*:

- 860 units of New England Fold Belt Groundwater Source licences associated with the former Drayton Mine voids.

- 527 units of Sydney Basin-North Coast Groundwater Source licences associated with the former Drayton Mine voids.
- 132 units of Sydney Basin-North Coast Groundwater Source licences acquired by Malabar to address future licensing requirements of the Maxwell Underground.

Licensing at the Maxwell Infrastructure (former Drayton Mine voids)

DPIE Water and NRAR's interpretation regarding the application of the *Water Management Act, 2000* to licensing of flows between in-pit spoil and the final voids differs from Malabar's interpretation.

Notwithstanding, as described in Malabar's previous letter (dated 30 April 2020), the maximum current groundwater licensing requirement under DPIE Water/NRAR's current interpretation would be 2.1 ML/day (766 ML/year). This is inclusive of all groundwater inflows to the voids (i.e. inclusive of external groundwater inflows and water flowing from the in-pit spoil) and remains well within the existing entitlement associated with the voids (1,387 units).

Groundwater inflow rates to the voids will continue to decrease as the water level in the pit shell approaches the surrounding groundwater level (HydroSimulations, 2019).

Malabar accepts DPIE Water and NRAR's position that any transfer or use of any licence entitlement held for the former Drayton Mine voids would need to follow due process and the requirements of the Aquifer Interference Policy and *Water Management Act, 2000*, including a hydrogeological study that demonstrates that the volume of water to be traded out is no longer being nor will be taken.

Malabar also accepts DPIE Water and NRAR's position that any groundwater take that occurs as a result of active transfers of water pumped from Maxwell Infrastructure voids (e.g. groundwater inflows induced by a reduction in water level in the voids) would need to be appropriately licensed prior to, and if, any transfers occur (for example, if Malabar and BHP reach commercial terms to transfer water between the Project and BHP's Mt Arthur Mine in the future). It is anticipated that any active transfers of water would occur in accordance with an approved Water Management Plan, prepared in consultation with DPIE Water and NRAR.

Licensing at the Maxwell Underground

The maximum predicted water take for the Maxwell Underground is 1,096 ML/year, which equates to a maximum licensing requirement of 846 units, based on predicted annual water take and carry over provisions for the Sydney Basin-North Coast Groundwater Source. The predicted groundwater inflows in the first three years of mining are summarised in Table 1.

Malabar's recently acquired 132 units of Sydney Basin-North Coast Groundwater Source licences would be sufficient for the first three years of the Project's operation (i.e. prior to longwall mining commencing in the Woodlands Hill Seam). These licences are separate to, and in addition to, the licences held for the former Drayton Mine voids.

As outlined in the subsection below, Malabar would acquire any additional licences required for the Project in accordance with its obligations under the *Water Management Act, 2000*.

Table 1
Summary of Water Licensing Requirements for
First Three Years of Maxwell Underground Operation

Project Year	Groundwater Inflow (ML/year)
1	7
2	51
3	58

Licensing Strategy and Acquisition of Licences

Section 3.2 of the NSW Aquifer Interference Policy states (emphasis added):

*In practice this means the assessment and subsequent advice will be based on the proponents' ... ability to demonstrate that **they have the ability to obtain** the necessary licences in order to account for the take of water from any relevant water source.*

Further, Section 3.2.3 of the NSW Aquifer Interference Policy states (emphasis added):

*... if a development consent under Part 4, Division 4.1 or Part 5.1 of the EP&A Act has been granted or for any approved mining or CSG production activity that was not subject to the Gateway, the **NSW Office of Water will recommend that a condition of approval require that the maximum of the predicted annual water quantities are to be licensed from the commencement of the activity** regardless of when water will actually commence to be taken. This is required to eliminate any risk of there being insufficient market depth from which to obtain the necessary water entitlements at any point in time in the future. The proponent should therefore demonstrate during the planning assessment process that these licences can be acquired if development consent is granted;*

DPIE Water and NRAR's position that Malabar "must demonstrate either held licences, or agreements in place with third parties (e.g. a retainer or similar) for the provisional transfer of units to account for the predicted take of the proposed underground workings" prior to development consent goes beyond the requirements of the NSW Aquifer Interference Policy and standard practice.

Section 60A of the *Water Management Act, 2000* makes it an offence for a person to take water without appropriate water access licences. Accordingly, Malabar's view is that the water licensing requirements for the Project are already adequately addressed under the provisions of the *Water Management Act, 2000* and NSW Aquifer Interference Policy.

In addition, Malabar considers the consent authority has sufficient certainty regarding Malabar's ability to comply with the *Water Management Act, 2000* in future:

- The maximum remaining licences required for the Maxwell Underground (assuming no transfer of licences from the existing voids) represent less than 1% of the total water access licences (aquifer category) in the Sydney Basin-North Coast Groundwater Source and there are no relevant trading restrictions. Therefore, the consent authority can have confidence there are sufficient licences available for the Project.
- The following volumes of water access licences have transferred in the Sydney Basin-North Coast Groundwater Source in the past three water years:
 - Current water year (2020 – 2021): 5,034 units.
 - 2019 – 2020 water year: 11,149 units.
 - 2018 – 2019 water year: 1,050 units (likely to be low due to issues with the transition of historical *Water Act, 1912* licences following commencement of the water sharing plan).

The maximum remaining licences required for the Maxwell Underground (714 units) are well within historic annual trading volumes. Therefore, the consent authority can have confidence there is a reasonable prospect that Malabar can obtain sufficient licences for the Project.

- Malabar has already successfully reached agreement for the transfer of 132 units for the Maxwell Underground, which are sufficient to allow for bord and pillar mining at the Project.

To provide additional certainty, Malabar would accept a Development Consent condition that requires Malabar to hold sufficient water access licences under the *Water Management Act, 2000* for the duration of mining and for any post-mining take prior to the commencement of longwall extraction.

Groundwater Dependent Ecosystem (Swamp Oak) Monitoring

Section 6.1.6 of the *Maxwell Project Submissions Report* stated the following:

Malabar would implement a monitoring program for the riparian vegetation along Saddlers Creek, which would include:

- *monitoring of the shallow, alluvial bores in the Saddlers Creek alluvium (MW1, MW2, MB2-Alluvial and MB3-Alluvial); and*
- *annual Swamp Oak health inspections on Saddlers Creek and Saltwater Creek.*

This commitment was reiterated in Malabar's letter response to the DPIE Water and NRAR's supplementary submission (dated 28 February 2020).

As per DPIE Water and NRAR's recommendation, Malabar is prepared to accept a condition requiring this ongoing environmental monitoring as part the Water Management Plan.

Please do not hesitate to contact the undersigned should you wish to discuss.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Bill Dean', with a long horizontal flourish extending to the right.

Bill Dean
General Manager – Projects
Malabar Coal Limited