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STATEMENT OF ENVIRONMENTAL EFFECTS

Development application for

Subdivision (Boundary Adjustment & Consolidation)

Lot 321 DP625513 Lots 1 & 2 DP 1095515, Lot 1 DP 1158700 Lot 2 DP
1193252 Lot 2 DP 774681

New England Highway Muswellbrook

Prepared on behalf of AGL Macquarie

October 2023

This submission has been prepared by

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Director



| Author | Version | Date |
|--------|---------|------------|
| SF | 1 | 05/10/2023 |

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1. Introduction

This Statement of Environmental Effects has been prepared by Orbit Planning to support a development application for a consolidation and boundary adjustment of Lot 321 DP625513 Lots 1 & 2 DP 1095515, Lot 1 DP 1158700 Lot 2 DP 1193252 Lot 2 DP 774681 New England Highway Muswellbrook.

The proposed subdivision is limited to a consolidation and boundary adjustment only to enable AGL Macquarie to transfer land currently occupied by Maxwell Ventures to Maxwell Ventures. No other development is proposed as part of the consolidation and boundary adjustment. The ongoing activities of AGL Macquarie and Maxwell Ventures on the land is separately authorised under existing planning approvals and no changes to these activities are proposed as part of this development application.

The proposal is illustrated in the plan prepared by Tony Mexon & Associates that accompanies the application.

1.1 The Proposed Development

| | |
|-----------------------------------|---|
| Proposal: | Subdivision consisting of consolidation and boundary adjustment to create three lots. |
| Site: | Lot 321 DP625513 Lots 1 & 2 DP 1095515, Lot 1 DP 1158700 Lot 2 DP 1193252 Lot 2 DP 774681 New England Highway Muswellbrook. |
| Environmental Assessment: | General Development, Part 4 of the Environmental Planning and Assessment (EP&A) Act 1979. |
| Consent Authority: | Muswellbrook Council. |
| Main Planning Instruments: | Muswellbrook Local Environmental Plan 2009. |

2. Site Analysis

2.1 Site Location and Description

The legal description of the subject site is Lot 321 DP625513 Lots 1 & 2 DP 1095515, Lot 1 DP 1158700 Lot 2 DP 1193252 Lot 2 DP 774681 New England Highway Muswellbrook. The sites are irregular in shape and have a combined area of 2035 hectares.

The development site consists of three allotments and three closed paper roads. The lots that form the proposed subdivision are currently used as part of the separately authorised Bayswater Power Station and the Maxwell Underground Mine Project. There are no physical works to be undertaken as a result of this proposal which is limited to a bare subdivision only to enable a transfer of legal ownership to occur.

The site comprises a mix of vegetated land, cleared mined land and land used for the power station. Overall the site is predominately disturbed land used for mining or associated industries. The site is surrounded by mining leases with Mount Arthur Mine located to the west, Liddell Power Station and Lake Liddell to the east and agricultural land to the north and south.

The location of the subject site is shown in **Figure 1**.

An aerial view of the site and surrounds is provided in **Figure 2**.

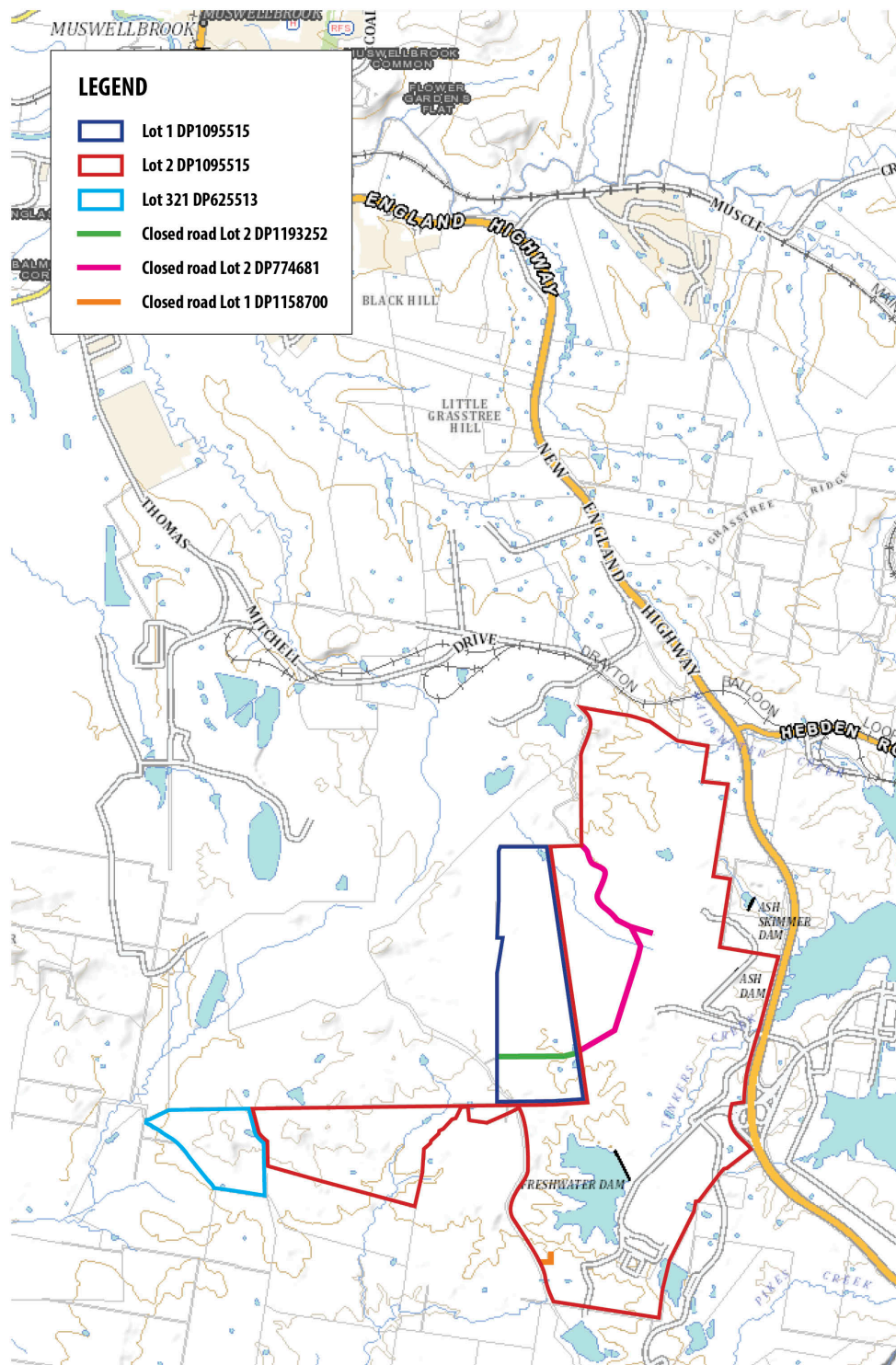


Figure 1 Locality Plan

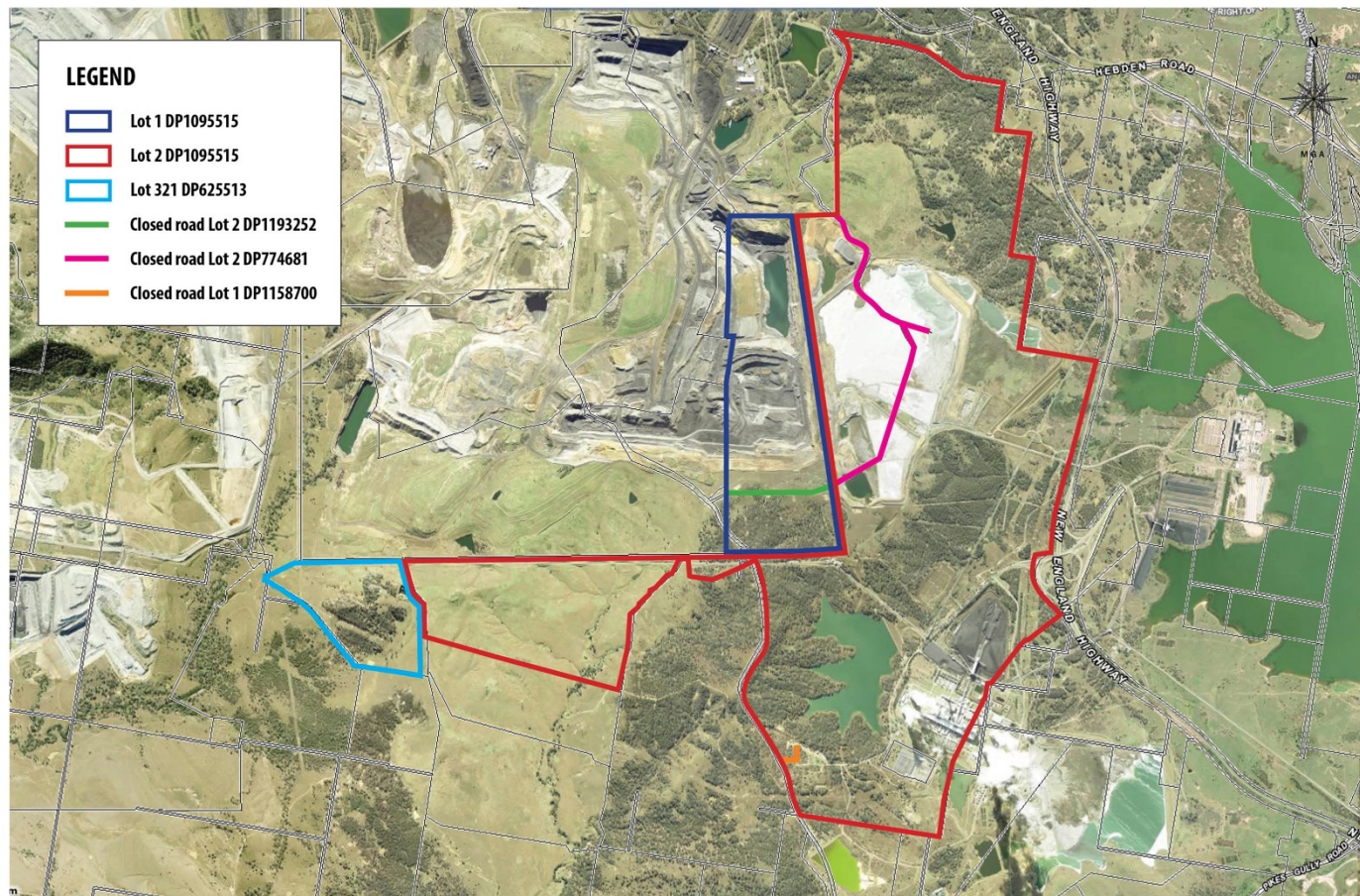


Figure 2 Aerial View of Site and surround

2.2 Utilities and Services

Existing services supplied to the lots will remain and will not be impacted by the proposed subdivision.

2.3 Access and Parking

The sites are currently accessed by vehicle utilising private access roads constructed through the Bayswater Power Station or the Maxwell Underground Mine Project. There are no changes to the vehicle access arrangements.

3. Description of the Proposed Development

The development application seeks consent for a subdivision – boundary adjustment of Lot 321 DP625513, Lots 1 & 2 DP1095515 and consolidation with closed roads being Lot 1 DP1158700, Lot 2 DP1193252 & Lot 2 DP774681 comprising:

- Proposed lot 1 – 115 hectares
- Proposed lot 2 – 210 hectares
- Proposed lot 3 – 1710 hectares

The proposed lot layout is shown in **Figure 3** below.

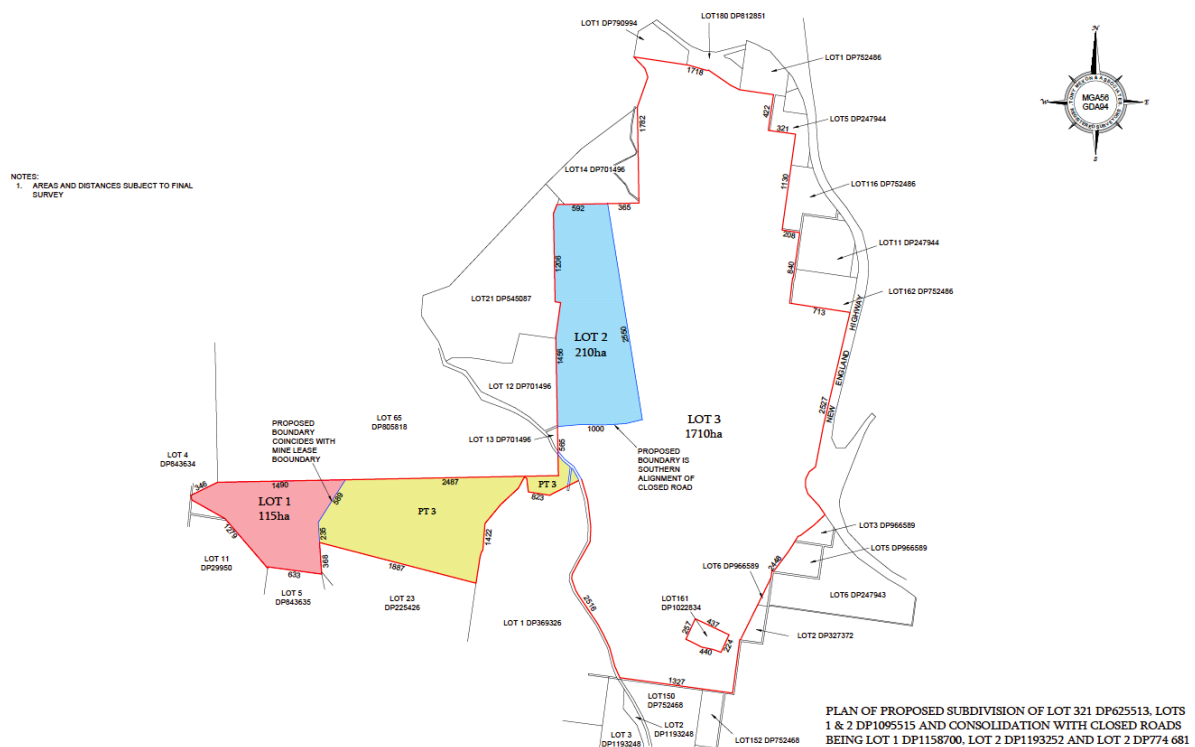


Figure 3 Proposed Lot Layout

The proposed subdivision is limited to a consolidation and boundary adjustment only to enable AGL Macquarie to transfer land already separately approved for mining uses to Maxwell Ventures. No other development is proposed as part of the consolidation and boundary adjustment the subject of this development application. The ongoing activities of AGL Macquarie and Maxwell Ventures on the land are already separately authorised under existing planning approvals and no changes to these activities are proposed as part of this development application.

The map displays the Modified Maxwell Underground Mine Project area. Key features include:

- Infrastructure:** Maxwell Infrastructure, CHPP (Central Hydro Power Plant), Substation, Water Treatment Plant, Liddell Ash Dam, Bayswater Liddell Freshwater Dam, Bayswater Power Station, and Hunter Valley Operations North.
- Leases and Boundaries:** Sublease CL 395, Sublease CL 396, Sublease CL 229, ML 1531, and the Mining and Coal Lease Boundary.
- Geographical Features:** Ramrod Creek, Saltwater Creek, Plashett Reservoir, and the Hunter Valley.
- Transportation:** Product Stockpile Extension, Transport and Services Corridor, and the New England Highway.
- Other Features:** East Void, Liddell Ash Dam, and the Bayswater Liddell Freshwater Dam.

LEGEND

- Railway
- Mining and Coal Lease Boundary
- Proposed Ausgrid 66 kV Power Supply Extension #
- Approved Maxwell Underground Mine
- Development Application Area
- Indicative Extent of Underground Development
- Indicative Surface Development Area
- CHPP Reject Emplacement Area
- 66 kV Power Supply
- Proposed Modification
- Modified Indicative Extent of Underground Development
- Indicative Modification Surface Development Area


Subject to separate assessment and approval.

Source: NSW Spatial Services (2022); MSEC (2021)
Orthophoto Mosaic: 2020, 2019

MALABAR

MAXWELL UNDERGROUND MINE PROJECT

Modified Maxwell Underground Mine

 **MALABAR**
MAXWELL UNDERGROUND MINE PROJECT
Modified Maxwell Underground Mine

4. Environmental Planning and Assessment Act, 1979

As development consent is required for the proposed boundary adjustment and lot consolidation, the proposal is to be assessed under the provisions of Part 4 of the Environmental Planning and Assessment (EP&A) Act, 1979.

The proposed development is deemed “general” pursuant to the provisions of the EP&A Act, 1979.

4.1 Section 1.7 Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

The Biodiversity Conservation Act 2016 (BC Act 2016) establishes a regulatory framework for assessing and offsetting biodiversity impacts on proposed developments.

Section 7.7 of the BC Act 2016 requires that applications for development consent be accompanied by a biodiversity assessment report if the proposed development is likely to significantly affect threatened species.

Section 7.2 of the BC Act 2016 states:

Development or activity “likely to significantly affect threatened species”

- (1) *For the purposes of this Part, development or an activity is likely to significantly affect threatened species if:*
 - (a) *it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or*
 - (b) *the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or*
 - (c) *it is carried out in a declared area of outstanding biodiversity value.*
- (2) *To avoid doubt, subsection (1) (b) does not apply to development that is an activity subject to environmental impact assessment under Part 5 of the Environmental Planning and Assessment Act 1979.*

Section 7.3 of the BC Act 2016 states:

- 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats*
- (1) *The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:*
 - (a) *in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,*
 - (b) *in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:*
 - (i) *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - (ii) *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,*
 - (c) *in relation to the habitat of a threatened species or ecological community:*
 - (i) *the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and*
 - (ii) *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and*
 - (iii) *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,*
 - (d) *whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),*

- (e) *whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.*
- (2) *The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.*

The proposed development is limited to a 'bare subdivision' consisting of a boundary adjustment and lot consolidation and does not include any works or vegetation clearing. Accordingly, the proposed development will have no impact on any threatened species, Endangered Ecological Community, critical habitat, or endangered populations and there is no requirement under the BC Act 2016 for the proposed development to be accompanied by a biodiversity assessment report.

4.2 Section 4.15 Evaluation

Section 4.15 of the EP&A Act, 1979 sets out the matters a consent authority must take into account when determining a development application. These include: -

- (1) *Matters for consideration general. In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*
 - (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*
 - that apply to the land to which the development application relates,*
 - (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
 - (c) *the suitability of the site for the development,*
 - (d) *any submissions made in accordance with this Act or the regulations,*
 - (e) *the public interest.*

The proposed development is assessed against the Section 4.15 evaluation criteria in Section 4.3 of this report below.

4.3 State Environmental Planning Policies

4.3.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in non-rural areas

The aims of this chapter are:

- (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

No physical works or vegetation clearing are proposed as part of the proposed development. Accordingly, this SEPP has no application to the proposed development.

4.4 Muswellbrook Local Environmental Plan 2009

The site is zoned RU1 Primary Production and SP2 Special Infrastructure pursuant to the provisions of Muswellbrook Local Environmental Plan 2009 (MLEP 2009). Proposed Lot 1 will be wholly contained within the SP2 zone, Proposed Lot 2 will be wholly contained within the RU1 Primary Production zone and Proposed Lot 3 will be partially zoned SP2 and partially zoned RU1 (consistent with the current arrangement).

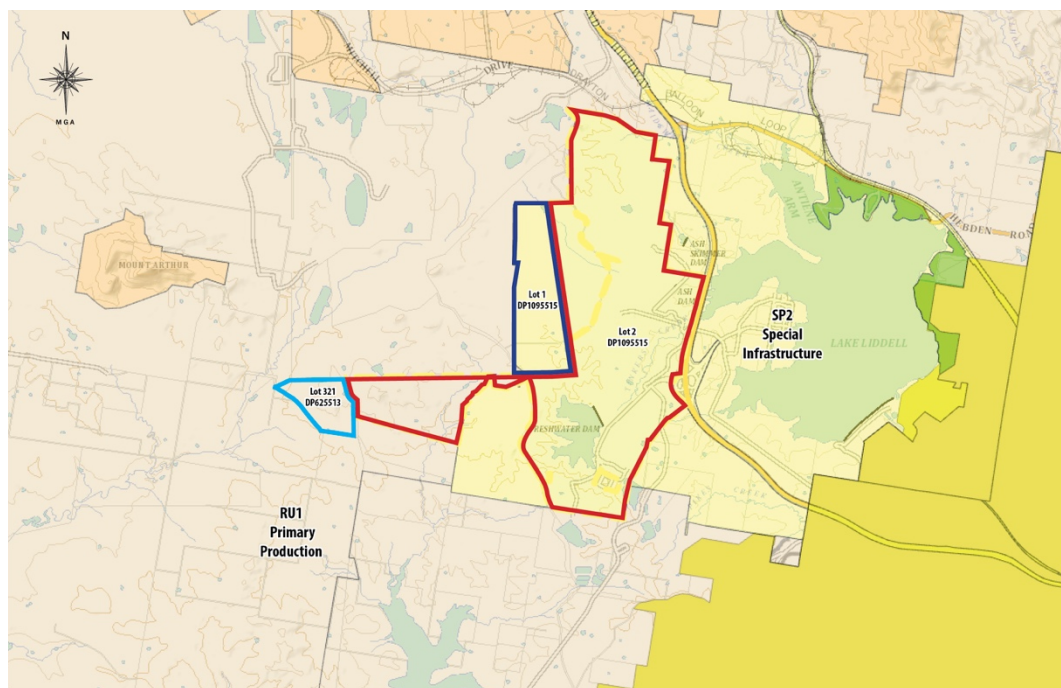


Figure 5 Zoning Map

4.4.1 Clause 2.3 Zone objectives and land use table

This clause requires that the consent authority must have regard to the objectives for development in a zone when determining a development application. The objectives of the RU1 Primary Production zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To protect the agricultural potential of rural land not identified for alternative land use, and to minimise the cost to the community of providing, extending and maintaining public amenities and services.
- To maintain the rural landscape character of the land in the long term.
- To ensure that development for the purpose of extractive industries, underground mines (other than surface works associated with underground mines) or open cut mines (other than open cut mines from the surface of the flood plain), will not—
 - (a) destroy or impair the agricultural production potential of the land or, in the case of underground mining, unreasonably restrict or otherwise affect any other development on the surface, or

(b) detrimentally affect in any way the quantity, flow and quality of water in either subterranean or surface water systems, or

(c) visually intrude into its surroundings, except by way of suitable screening.

- *To protect or conserve (or both)—*

(a) soil stability by controlling development in accordance with land capability, and

(b) trees and other vegetation, and

(c) water resources, water quality and wetland areas, and their catchments and buffer areas, and

(d) valuable deposits of minerals and extractive materials by restricting development that would compromise the efficient extraction of those deposits.

The proposed development has regard to the objectives as follows:

The subdivision will facilitate the transfer of land from AGL Macquarie to Maxwell Ventures to align with the mine lease boundary as required for the approved Maxwell Underground Mine Project. The portion of land required to be transferred to Malabar Resources contains mining infrastructure including a Water Treatment and Transport and Service Corridor. The subdivision also includes the consolidation of three closed roads within the land to be retained by AGL Macquarie. The subdivision will enable the transfer to Maxwell Ventures of the land already separately approved for mining uses as part of the Maxwell Underground Mine Project under State significant development consent SSD 9526. The subdivision will accordingly ensure the efficient extraction of mineral deposits as approved by the Independent Planning Commission of NSW. The proposed subdivision does not seek approval for any physical works on the site, so there will be no impact to the character of the area or the visual nature of the locality. The proposed subdivision proposes to create three allotments that each meet the minimum lot size obligations for the RU1 zoned land.

The objectives of the SP2 Special Uses zone are:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To recognise existing railway land and to enable future development for railway and associated purposes.*
- *To prohibit advertising hoardings on railway land.*
- *To recognise major roads and to enable future development and expansion of major road networks and associated purposes.*
- *To recognise existing land and to enable future development for utility undertakings and associated purposes.*

The proposed development has regard to the objectives as follows:

The portion of the land zoned SP2 Special Infrastructure will continue to be utilised for ongoing power station uses unchanged by the proposed subdivision. The subdivision will result in the land transfer for a portion of the land owned by AGL Macquarie to Maxwell Ventures to align with the mine lease boundary for the approved Maxwell Underground Mine Project.

4.4.2 Clause 2.6 Subdivision consent requirements

The clause provides that land to which this Plan applies may be subdivided, but only with development consent.

4.4.3 Clause 4.1 Minimum subdivision lot size

The objectives of this clause are:

- (a) to protect the productive capacity of agricultural land by minimising potential land use conflicts,*

- (b) to maintain viable farm sizes to promote agricultural production,
- (c) to ensure that subdivision does not unreasonably impact on the natural and environmental values of the area and will not lead to the fragmentation of natural areas,
- (d) to encourage social and economic diversity by providing a range of lot sizes in residential areas.

The revised lot boundaries proposed as part of this boundary adjustment and consolidation application remain compliant with the minimum lot sizes in accordance with the [Lot Size Map](#) specified in Clause 4.1(3) as outlined in the table below:

| Lot size requirement | Proposed lot size | Compliance |
|--|--------------------------------|------------|
| 80 hectares for RU1 zone | Proposed lot 1 – 115 hectares | Yes |
| No Min lot size requirement for SP2 Zone | Proposed lot 2 – 210 hectares | |
| | Proposed lot 3 – 1710 hectares | |

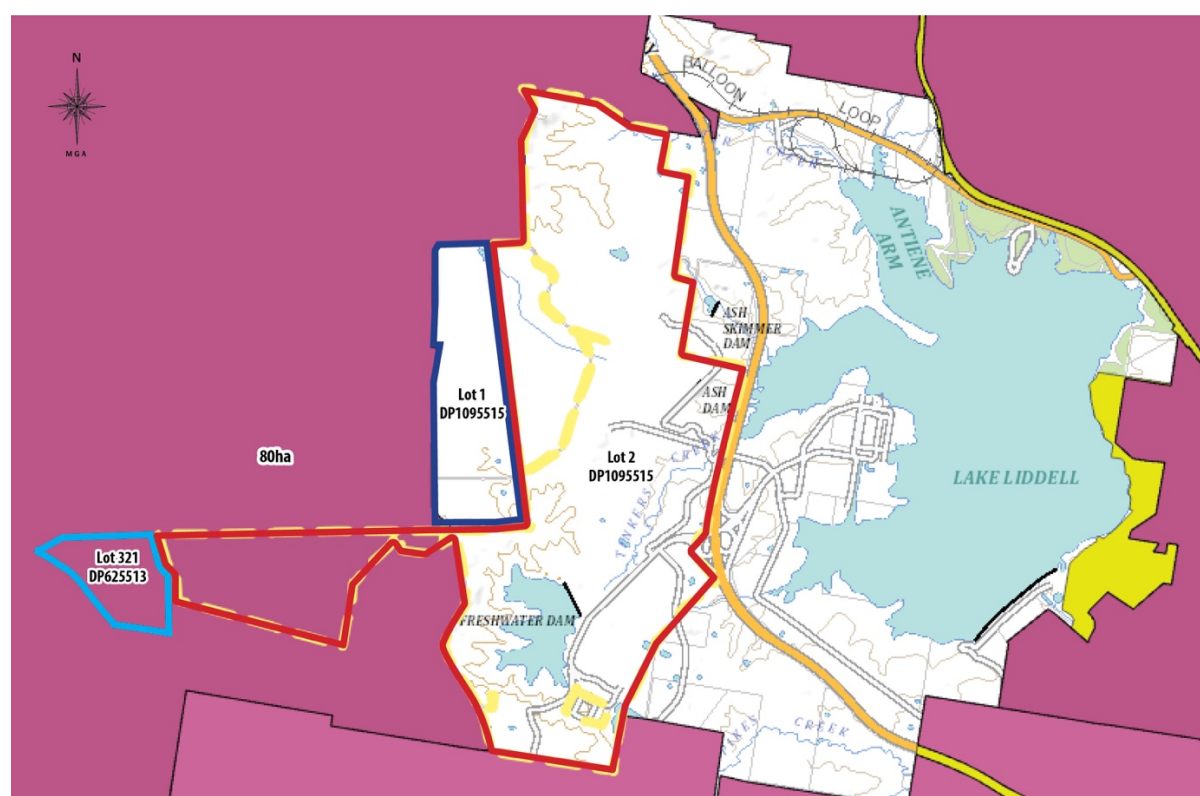


Figure 6 Lot Size Map

4.5 Muswellbrook Development Control Plan

The following elements under Muswellbrook DCP are relevant to this application.

Section 5 - Subdivision

4.5.1 Clause 5.4.1 Lot Size and Shape

The objective of this clause is:

- (a) To ensure that proposed lots appropriately respond to existing site conditions, and are practical.*

The proposed development has regard to the objectives of this clause as follows:

The proposed boundary adjustment is required to facilitate the transfer of land from AGL Macquarie to Maxwell Ventures for the purposes of facilitating the separately approved Maxwell Underground Mine Project. The revised lots appropriately respond to the separately authorized uses of the site and are practical for this purpose. The application also includes consolidation of three closed roads on land retained by AGL Macquarie. The subdivision will create three allotments suitable for their intended use.

4.5.2 Clause 5.4.4 Soil and Water Management

The objectives of this clause are:

- a) The quality of runoff water from the subject land is the same or better than the quality of water prior to the subdivision taking place.*
- b) Drainage from proposed lots is consistent with the pre-development stormwater patterns and flow regime.*

The proposed development has regard to the objectives of this clause as follows:

The proposed subdivision does not seek consent for any physical works on the site. The subdivision is limited to a paper subdivision intended to ensure the separately approved Maxwell Underground Mine infrastructure is located wholly within land owned by Maxwell Ventures and will also consolidate the already closed former 'paper' roads with land retained by AGL Macquarie. The proposed subdivision will not have any impact on soil and water management.

4.5.3 Clause 5.4.6 Flora and Fauna

The objectives of this clause are:

- a) To ensure that existing vegetation is retained unless it is demonstrated that this is impractical in the circumstances*
- b) To ensure that impacts of subdivisions on existing flora and fauna is minimised.*

The proposed development complies with this clause as no works or vegetation removal is proposed as part of the proposed development.

Based on the above it is submitted that the proposed subdivision will not have any significant impact on flora and fauna.

4.5.4 Clause 5.4.7 Visual Amenity

The objectives of this clause are:

- a) Subdivision proposals are designed so that subsequent development will have minimal impact on significant views and vistas.*
- b) Subdivisions are designed to complement the landscape rather than altering the landscape to suit a subdivision layout.*
- c) Subdivision proposal is compatible with the cultural and landscape characteristics of the locality or region.*

The proposed development has regard to the objectives of this clause as follows:

The proposed subdivision does not seek consent for any physical works on the site, so there will be no impact to visual amenity, views or vistas. The proposed subdivision will result in three allotments that meet the minimum lot size of the RU1 Primary Production Zone and SP2 Special Infrastructure Zone and are compatible with the separately approved works on the land and the resulting landscape characteristics.

4.6 The Likely Impacts of the Development

4.6.1 Bushfire Assessment

The development site is identified as bushfire prone land. No works are proposed as part of the subdivision and the sites will be used as part of the approved Maxwell Underground Mine Project. Given there will be no residential use of the site there are no provisions of Planning for Bushfire Protection 2009 that apply.

4.6.2 Economic and Social Impacts

The proposed subdivision will facilitate a transfer of land from AGL Macquarie to Malabar Resources as required for the separately approved Maxwell Underground Mine Project. It is expected that the underground mine will generate \$55 million in annual wages, 350 new direct employment opportunities and \$500 to \$700 million in annual export income to NSW. Overall, it is considered that the subdivision to facilitate the Maxwell Underground Mine Project will have a positive social and economic impact on the local community.

4.6.3 Heritage

No works are proposed as part of the proposed boundary adjustment and lot consolidation. Accordingly, the proposed development will not result in any heritage impacts, including to any Aboriginal objects.

4.7 Suitability of the Site

The proposed subdivision is permissible in the zone and is fully compliant with Muswellbrook LEP 2009 and Development Control Plan. This application demonstrates that the proposed lots are of suitable size to support the existing mining and power station uses. The proposed development is limited to a 'paper' subdivision which will not result in any environmental impacts or impact on the amenity of any adjoining landholders. The development, as proposed, is considered to be suitable for the site.

4.8 Public Notification

As specified by Council's Community Participation Plan it is understood that Council does not require notification to be undertaken for boundary adjustments. The proposed subdivision does not create any additional allotments and does not include any physical works.

4.9 The Public Interest

A thorough assessment of this development has been undertaken in accordance with the requirements of the Environmental Planning & Assessment Act 1979.

The interest of the wider public has been considered in this assessment and the positive benefits to the local community can be summarised as follows:

- Ongoing and new employment opportunities for local residents by facilitating the separately approved Maxwell Underground Mining Project;
- Resulting financial and employment flow on into the local community.

It is considered that the merits of the proposal are such that it would be in the interests of the local and wider public for Muswellbrook Council to grant consent to the proposed development.

5. Conclusion

A thorough assessment of the proposed application has been undertaken and it is considered to be acceptable having regard to the matters for consideration under Section 4.15 of the EP&A Act 1979.

The proposed subdivision is permissible pursuant to Muswellbrook LEP 2009 and complies with all applicable requirements. The proposed subdivision has been designed in accordance with the on-site requirements and is not inconsistent with any Council's requirements.

Support for this application will ensure the orderly and economic use of the land by facilitating the carrying out of separately approved Maxwell Underground Coal Mine Project. The proposed development will be able to be conducted without any adverse effects on the environment, while meeting the objectives of the EP&A Act, 1979.

Orbit Planning respectfully request that Muswellbrook Council grant consent to the development detailed within the development application and supporting documentation.