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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-965009

INDEPENDENT PLANNING COMMISSION

MEETING WITH DEPARTMENT OF PLANNING AND ENVIRONMENT

RE: UNITED WAMBO OPEN CUT COAL MINE PROJECT

PANEL: **TONY PEARSON**
DR PETER WILLIAMS
PROF ALICE CLARK

ASSISTING PANEL: **DAVID KOPPERS**
ALANA JELFS

**DEPARTMENT OF
PLANNING AND
ENVIRONMENT:** **MATTHEW SPROTT**
MEGAN DAWSON

LOCATION: **IPC OFFICE**
LEVEL 3, 201 ELIZABETH STREET
SYDNEY, NEW SOUTH WALES

DATE: **8.34 AM, THURSDAY, 6 DECEMBER 2018**

MR T. PEARSON: So there's some prepared remarks that I will step through and then we will begin the meeting. Good morning and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal People. I would also like to pay my respects to their elders, past and present,
5 and to the elders from other communities who may be here today. Welcome to the meeting today. United Collieries Proprietary Limited, the applicant, is seeking to expand open cut mining operations at the existing Wambo Coal Mine and United Colliery to allow for the extraction of an additional 150 million tonnes of run of mine coal over a period of 23 years.

10 The project comprises two open cut mining components. The first component involves minor extensions to Wambo Coal Mine's existing open cut mining area, including a material increase in the depth of mining to allow for the extraction of deeper coal seams that underlie the approved Montrose Pit. The second component
15 involves the development of a new open cut mining area on the site of the former United Colliery and underground mine operating until 2010. My name is Tony Pearson. I am the chair of this IPC panel. Joining me are my fellow commissioners, Dr Peter Williams and Professor Alice Clark. The other attendees on our side are David Koppers from the Secretariat, and we will be joined shortly by Alana Jelfs
20 who is, unfortunately, just running a little bit late.

In the interests of openness and transparency, and to ensure the full capture of information, today's meeting is being recorded and a full transcript will be produced and made available on the Commission's website. This meeting is one part of the
25 Commission's decision-making process. It is taking place at the preliminary stage of this process and will form one of several sources of information upon which the Commission will base its decision. It is important for the commissioners to ask questions of attendees and to clarify issues whenever appropriate. If you are asked a question and you are not in a position to answer, please feel free to take the question
30 on notice and provide any additional in writing, which we will then put up on our website.

One thing I would ask, for the benefit of the individual recording the session, is that if you could – the first time you speak, just announce your name so the microphones
35 can then obviously continue to detect you or detect who is speaking throughout the meeting today. So if that's okay, we might just start off. What I thought would be really useful for us is – we've been through all the materials, but what would be really useful, I think, is, at a very high level, if you could perhaps walk through your assessment of the project and the process that you went through, but I guess
40 particularly focusing on those issues that you thought were finely balanced and that you might like to highlight to the Commission's attention.

MS M. DAWSON: Sure. So just by way of introduction, I'm Megan Dawson, a team leader at the Department of Planning in the resource assessments team. I've
45 really taken over the project from Matthew Sprott who did the preliminary assessment and I manage the final assessment, so post the IPC merit review.

MR PEARSON: Yes. Okay.

MR M. SPROTT: So I'm Matthew Sprott. I am a team leader at the Department of Planning. I undertook the preliminary assessment of the United Wambo Project and, following moving roles, Megan has taken over the final assessment for the department.

MR PEARSON: Okay. Thank you.

MS DAWSON: Sure. So I guess, just in the way of background, the department finished its preliminary assessment this time last year and it was referred to the IPC for the merit review. That was finalised in March and, after that, the applicant provided a response in July, which we've relied on for most of our final assessment. The way we formatted our report is really by recommendation. We've tried to include what the recommendation was and then a summary of our response. And you can see the way we've done that then is we had a really brief – short executive summary. Sure. So if we would just like to - - -

MR PEARSON: Okay.

MS DAWSON: - - - step through maybe the higher level of points, like you mentioned.

MR PEARSON: That would be great. Yes. Yes. Just taking a few minutes too, I think what we're really keen to hear is those issues that you thought were particularly challenging from a kind of assessment point of view - - -

MS DAWSON: Sure.

MR PEARSON: - - - and that you – you know, that you thought might be finely balanced - - -

MS DAWSON: Yes. That's great. I've actually - - -

MR PEARSON: - - - in that assessment process.

MS DAWSON: - - - flagged four things already.

MR PEARSON: Okay. Great.

MS DAWSON: So are we not going to follow the strict agenda?

MR PEARSON: We will. So what I would like to do is just kind of get that overview - - -

MS DAWSON: Sure.

MR PEARSON: - - - to – it assists us certainly in framing our questions, but then we have some specific subject matter areas that we would like to step through and there’s a range of questions that we have sitting behind those. So once you’ve kind of provided that brief introduction, we might dive into the Q and A if that’s okay.

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MS DAWSON: Sure.

MR SPROTT: Yes. So I will just make one quick comment. There were a few issues in the preliminary assessment, which I’m sure, having read the document, you would be aware were flagged by the department at the time as being requiring resolution prior to the determination. So there were a few matters flagged there around the final landform, around the biodiversity, around the noise modelling, that required finalisation, notwithstanding that the preliminary assessment could be undertaken based off the information that we had at the time.

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And so those matters have been now addressed in the final report, taking into consideration the Commission’s review recommendations, as well as the additional information that has come up, but that is one that I suppose, when you’re talking about an overview of issues that have been, I suppose, a longer assessment process, those issues were part of that longer and more time-consuming aspect of the project.

20

MS DAWSON: Yes. So probably where we focused a lot of our time in the final assessment was on four aspects. It was the transitional noise, so during this interim period when the project would commence, but the joint venture wouldn’t commence yet. So it’s this period when Wambo was running in parallel to Glencore commencing the United pit, so that took a lot of efforts, a lot of discussions with the EPA. The second matter that we focused a lot of efforts and liaised with OEH on was the credit requirements, and the staging of disturbance, and the equivalent credits and when they needed to be retired.

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The third matter that we focused a lot of attention on was the final landform and the final void study. This was really the – in the applicant’s response, this is really the key area where they actually provided additional studies, so we focused a lot of our time on that section. And the fourth matter that we really spent a lot of time on was the framing of the conditions and the transition to that joint venture. So making it very clear on the three, because we have got now three consents, one for the new SSD, Wambo mine and the Wambo rail. So just trying to write very clear conditions and ensure that it can be regulated and that there’s a clear – everyone understood who is doing what and when and whose obligation – who is responsible for what.

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MR PEARSON: Yes. Okay. Okay. No. That’s good.

MS DAWSON: Those are the four points.

45 MR PEARSON: No. That’s helpful.

MS DAWSON: Yes.

MR PEARSON: That's very helpful. So – and I think a lot of that follows some of the agenda that we've prepared, so - - -

MS DAWSON: Great. Okay.

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MR PEARSON: What I might do is start on – I believe you have the agenda, so - - -

MR SPROTT: Yes.

10 MR PEARSON: - - - the first sort of subject that we wanted to touch on was the noise vibration and blasting, including the operation of the VLAMP. And I guess what I was interested to understand was – one of our recommendations – I think it was recommendation 1 – was around assessing the project against both the NPFI and the INP and what impacts might have come out of that assessment that might have
15 been different. So – and I note in the review that – in the response to recommendation 1, that you've indicated that the INP is the instrument that should prevail.

20 I would be interested to understand, as a result of that process, noting that several receivers ceased to be eligible for acquisition in mitigation rights, receivers 50A, 50B, 56, 133, 44, for mitigation, and 43 and 50C for acquisition – I would be interested to understand a bit more about how that process evolved and what changed in terms of the assessment back then and now, given that it's the same policy, and what has changed that has led to those receivers being treated differently.

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MS DAWSON: Sure. So I guess we've – there were two matters. One was whether to consider the new policy or not and the effect that that might have.

MR PEARSON: Yes.

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MS DAWSON: So I just suggest that we maintained that under the EPAs transitional arrangements that the project should continue to be assessed under the INP, and if it were to be assessed under the new policy, there would actually be five receivers that would fall out of acquisition rights for mitigation.

35

MR SPROTT: That's due to daytime noise levels.

MS DAWSON: Correct. And then another aspect of the noise criteria was – the applicant, in their response, they provided additional information on the background
40 noise – the limits at Moses Crossing. So, in our preliminary assessment, we highlighted – we raised a concern that they – with the measurement of background noise monitoring and we used the conservative limit to establish the PSNLs in the preliminary assessment. The applicant subsequently took additional monitoring to clarify what that background noise limit should be, which the new PSNL one.
45 So that's where we see the changes, if I - - -

MR SPROTT: So that was – I will just jump in.

MS DAWSON:

MR SPROTT: So that was part of the preliminary assessment. In the Moses Crossing area, the applicant had two noise monitoring locations. One of them was
5 located closer to the mine and was a more long term monitoring station and they had a second monitoring location which they ran monitoring for a few weeks at to ascertain the influence of mining noise and road noise. That monitoring station actually had a slightly lower background level than the long term monitoring records but the company had taken the long term monitoring records as being a more
10 representative suite of noise monitoring results. So when the Department did its assessment based off the information we had available at the preliminary stage, we took a conservative approach and adopted the short term – valid monitoring but the short term monitoring as the representative background - - -

15 MR PEARSON: Yes.

MR SPROTT: - - - for the area which differed from the company's EIS assessment. So it was part of its response to our preliminary assessment and response to the IPCs review, it undertook additional monitoring in the Moses Creek – sorry, Moses
20 Crossing area. It undertook it at the long term station, as well as other locations. And that monitoring actually validate – or correlated more closely to the long term monitoring and that was used to basically provide a more robust assessment - - -

25 MR PEARSON: Right.

MR SPROTT: - - - of three different locations, confirming that the long term data is an appropriate suite - - -

30 MR PEARSON: Okay.

MR SPROTT: - - - of noise monitoring to use. Because of that – because PSNLs are based off an assessment of the background noise levels - - -

35 MR PEARSON: Yes.

MR SPROTT: - - - that influences acquisition rights for residents in the local area.

MR PEARSON: Yes. Okay. That makes sense. And this issue wasn't encountered at the other areas – I mean, area 5 is the Moses Crossing area, but the other areas –
40 there was not similar short term and long term - - -

MR SPROTT: No. So this was – there are other areas where there are multiple monitors but the monitors were closer together and so the actual limits were the same
- - -

45

MR PEARSON: Yes.

MR SPROTT: - - - for most of those monitors. In this particular circumstance, there were some – what is most likely topographical differences - - -

MR PEARSON: Yes.

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MR SPROTT: - - - between the two locations and a few other influences that did result in some - - -

MR PEARSON: Yes.

10

MR SPROTT: - - - slightly different levels at the two monitors and so the additional monitoring was done to validate and support the use of an appropriate background level.

15 MR PEARSON: Okay. That was all I had on - - -

MR SPROTT: Does that - - -

MR PEARSON: - - - noise - - -

20

MR SPROTT: - - - assist?

MR PEARSON: No, that's very useful. I mean, one other question which you've answered as well was around the change in the RBLs for area 5, Moses Crossing, and whether that was what led to the adjustment - - -

25

MR SPROTT: So, yes, that's correct.

MS DAWSON: That was it

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MR PEARSON: Okay. That was all I had on noise. Were there other questions that you might have on noise, Peter and Alice?

DR WILLIAMS: Not related to noise, no. Yes, that was the main one.

35

MR PEARSON: Okay. We might move on to air quality. So I guess the issue I was just trying to understand here was around greenhouse gas emissions and the reduction measures that the applicant has indicated are not technically feasible and financially – this is recommendation 17. The applicant has indicated that it has considered all measures that are technically feasible and financially reasonable – are any of the GHD reduction measures that the applicant has indicated – are not – if I can use the negative, are not technically feasible and not naturally reasonable – are those used – are you aware of whether those measures are used on any other sites in the Hunter Valley?

40

MS DAWSON: I couldn't answer that question at the moment. I would have to look in - - -

45

MR PEARSON: We're happy to take that on notice if you - - -

MS DAWSON: Yes.

5 MR PEARSON: - - - want. Yes.

MR SPROTT: We will take that one on notice.

10 MR PEARSON: I guess for us, we just wanted to look at whether there were - - -

MS DAWSON: Yes.

15 MR PEARSON: - - - in the suite of measures that have been provided into those two categories, are those measures that are deemed not financially – well – I'll get the words up – financially reasonable and technically feasible – are they used at other sites within the Glencore group.

MR SPROTT: Yes. So we will have to have a look at the full suite - - -

20 MR PEARSON: No, that's fine.

MR SPROTT: I believe their main concern is around the commercial availability of some of the actual technology in Australia at this stage.

25 MR PEARSON: Okay.

30 MR SPROTT: So that aspect relates largely to the Tier 4 engines which are not currently used in Australia – they're not commercially available yet. However, we will have to take it on notice looking at the full suite and providing a more detailed response.

35 MR PEARSON: Thank you. And then recommendation 20 – we talk about mine owned residences and the ability of tenants to withdraw from those mine owned residences in certain circumstances. The Commission, in its review, sought additional information around whether the ability of a tenant to exit a lease was an at-will ability. And I just wanted to try and unpack that a bit given the applicant's response. So you've indicated that you're comfortable that the right is an at-will right. And if I take you to the applicant's response on page 35 of their response to the IPC review, it mentions that:

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...if the tenant has lodged a written complaint with the landlord about the unacceptable impact of the mining operation, the mining effects or other mining operations and the landlord has been unable to resolve that complaint within 14 days, the tenant may terminate the tenancy penalty-free any time during the tenancy with no early termination penalty by giving 14 days written notice –

45

I haven't seen the agreement, so I don't know what the capitalised terms – how they're defined but I wonder whether that actually is an at-will right or it's a right that's only available in very – certain specific circumstances on the part of the tenant? And, again, that may be a question you need to take on notice? I'm not sure.

5

MS DAWSON: Yes. I can answer from the perspective of our conditions.

MR PEARSON: Yes.

10 MS DAWSON: So we – one of our conditions.

MR PEARSON: Yes.

15 MS DAWSON: So we – one of our conditions, B27, relates to mine owned land
- - -

MR PEARSON: Which one?

MS DAWSON: B27.

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MR PEARSON: Yes.

MS DAWSON: And in that, I draw your attention to paragraph (b). We give the requirement that the tenant at any – of any land owned by the applicant:

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...can terminate their tenancy agreement without penalty at any time, subject to giving reasonable notice –

I note that that relates to the applicant's land because we can only give - - -

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MR PEARSON: Correct.

35 MS DAWSON: obligation on them, but I do note that the surrounding mines, Hunter Valley Operations, Warkworth – they all have a similar condition, the surrounding mines, and could – and we've imposed the same one on Wambo

MR PEARSON: Okay. Thank you.

MS DAWSON: So that would address all the tenants in the region.

40

MR PEARSON: Okay. Thank you. Great. And that's – that reasonable notice might be 14 days, is it, based on - - -

MS DAWSON: It sounds like – yes – Glencore

45

MR PEARSON: 14 days. Okay. Okay. Great. Okay. Thank you. That's good. Should that go in as a – shall we make it – or is that implicit from the agreement itself that it's – is that stated in agreement it's 14 days?

5 MR SPROTT: So I think 14 days may be Glencore's agreements - - -

MS DAWSON: Correct.

MR PEARSON: Right.

10 MR SPROTT: We can't speak today to what would be on the agreements of the other mines. So I would have to look in to that on notice, so – 14 days is not in our conditions.

15 MR PEARSON: Right.

MR SPROTT: It's reasonable notice.

MR PEARSON: Right. Okay.

20 MR SPROTT: So that would come down to the actual notification process for each of those mines.

DR WILLIAMS: Yes. I just thought whenever it was possible if we could actually give a - - -

25 MS DAWSON: Qualify it

DR WILLIAMS: - - - quantify wherever possible - - -

30 MR SPROTT: Yes.

DR WILLIAMS: - - - but if it's not possible - - -

35 MR SPROTT: Yes.

DR WILLIAMS: - - - or it's – if it pulls up the agreement that's fine but I just thought wherever possible it's good to either quantify or refer to something that does quantify because there have been cases where the courts have had to determine what's a reasonable period - - -

40 MR SPROTT: Yes.

DR WILLIAMS: - - - and you don't want – yes.

45 MS DAWSON: Yes. We can get back to you on that.

DR WILLIAMS: Yes. Thanks.

MS DAWSON: We will probably have to ask Glencore what their existing - - -

5 DR WILLIAMS: Yes.

MS DAWSON: - - - agreements state. If they all state 14 days, then that shouldn't be an issue, but - - -

10 MR PEARSON: Rehabilitation and biodiversity is probably the next topic. I guess – I was interested to know whether you – whether the department has seen examples of rehabilitation used as an offset in practice and how that has actually – how that rehabilitation has actually performed.

15 MS DAWSON: I can't speak personally from this if – unless you've got a - - -

MR SPROTT: We would have to look into some specific cases for you.

MR PEARSON: Okay.

20 MR SPROTT: I know that it is something that has been proposed before, but I'm not off the top of my head aware of the current state - - -

MR PEARSON: Yes.

25 MR SPROTT: - - - of those rehab proposals.

MR PEARSON: Okay. Well, if you could, that would be helpful.

30 MS DAWSON: Yes.

MR PEARSON: And in terms of the rehab used as an offset, I assume that at the end of the first stage, there would be some sort of assessment of that rehabilitation to be used as offset and to – yes – there would be criteria and that - - -

35 MS DAWSON: Yes.

MR PEARSON: - - - if those criteria weren't being met, based on my reading of the way the conditions operate, that the applicant would then not be entitled to continue on to stage 2.

40 MS DAWSON: Stage 2 is expected to start seven to 14 years and at that time, they may not be able to – the rehab may not be complete enough. So we haven't linked not commencing the next stage - - -

45 MR PEARSON: So how do you know that the rehab is actually working before, given the size of the offsets that - - -

MR SPROTT: Yes.

MR PEARSON: The rehab that are being used as offsets, how do you know that, at the end of year 7, those offsets are actually going to work in permitting stage 2 then to take – to continue – or to take place?

MS DAWSON: Yes. There is an element of uncertainty in there within the rehab management plan. Let me just find - - -

MR SPROTT: So I suppose what I will clarify is there is an important differentiation between the rehab management, and monitoring and the offset credits. So the rehab provides the offsets by proposing that a certain percentage of the mine site go back to rehab. That provides the company with the offset credits upfront and then the actual rehabilitation and achievement of that offset – or of the quality committed to is undertaken under the – I believe it's a Biodiversity Stewardship Agreement; am I correct in saying that? So under the endorsed OEH offsetting mechanisms.

So because rehabilitation takes a prolonged period of time to establish and demonstrate that it is trending in achieving the outcomes, the credits are initially provided and then the company has an obligation to achieve the outcome committed to. If it fails, as you say, to meet that, then it's under that agreement that it needs to make good.

MR PEARSON: But I guess – I'm just trying to unpack this. So if the point at which we know that it is failing to achieve those outcomes isn't in years 1 to 7, it's possibly a time period that's further out than year 7.

MR SPROTT: Yes.

30

MS DAWSON: Yes.

MR PEARSON: But, at that point, they have already been granted – the applicant has already been granted approval to commence stage 2 in year 8; is that right? Is that my understanding?

35

MS DAWSON: Yes. So we have – I guess there's a contingency. If they're not able to achieve the completion criteria, they have to find additional offsets, so they have to find another means to offset those impacts. So, essentially, if they can't demonstrate they have met the completion criteria, they have to retire the credits elsewhere.

40

MR PEARSON: Right. And so - - -

MS DAWSON: And that may not be decided, as you've pointed out, until later in the piece.

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MR PEARSON: Okay. And so for the impacts that are not related to the EPBC impacts, that that could potentially involve a payment into an accredited fund.

MR SPROTT: Yes. That's correct.

5

MR PEARSON: And then if – is there any rehabilitation – I need to refresh my memory actually – you might – the commissioners might know the answer to this – is there any rehabilitation used as an offset for EPBC impacts?

10 MR SPROTT: The rehab proposed for the United Wambo project?

MR PEARSON: Yes. Or is it all – is all that being offset by biobanking?

MR SPROTT: No. There is a component for the CEC.

15

MS DAWSON: In this project, yes, but are you asking if there's examples elsewhere?

20 MR PEARSON: No, no, no. So what I'm asking is, is there – is the rehabilitation used exclusively to offset non-EPBC impacts, or is it used to offset both EPBC impacts and non-EPBC impacts?

MS DAWSON: It's both.

25 MR SPROTT: It will be both.

MS DAWSON: It's both.

30 MR PEARSON: Both. So I guess just exploring this further, if the impact – if the rehabilitation fails and it's the result of – and that rehabilitation is for an EPBC offset, there isn't the ability to pay into an accredited fund at that point. How does that – what happens then?

35 MS DAWSON: They would have to pursue another suitable land base offsite, unless the Commonwealth endorses the fund in the meantime.

MR PEARSON: Right.

40 MR SPROTT: Or continue to invest in bringing the rehabilitation up to the level necessary to meet - - -

MR PEARSON: To achieve the offset that – yes.

MR SPROTT: - - - the CEC requirements.

45

MR PEARSON: Okay. Okay.

MR SPROTT: So we can probably provide some more clear written advice on this.

MR PEARSON: Yes.

5 MR SPROTT: There are a range of mechanisms around how the rehabilitation functions - - -

MR PEARSON: Yes.

10 MR SPROTT: - - - and how those aspects will play out in the credit space.

MR PEARSON: Yes. Okay.

MR SPROTT: So we will provide a bit more of a detailed rundown on that.

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MR PEARSON: That would be useful. What would be really helpful too, I think, is if you could highlight to us the areas where there is risk. So I think what we've started to hear here is that there are certain outcomes where there is risk around certain outcomes being achieved, if you like, one of which sounds like it could be around the EPBC. So I think, for us, what would be really helpful is if you could highlight where there are areas of risks or gaps, if you like, in terms of the different steps that can be taken.

20

MR SPROTT: Yes. We can provide some detail around those areas - - -

25

MR PEARSON: Okay.

MR SPROTT: - - - and around the mechanisms in place to manage that.

30 MR PEARSON: Okay. Does the department have a view on what could, or might, or should happen if the applicant is unable to acquire land-based offsets to – so if the EPBC arrangement doesn't evolve to allow for payment into a fund – an accredited fund – does the department have a view around how the applicant is likely to offset its stage 2 and stage 3 biodiversity impacts that are relevant to the EPBC requirements?

35

MS DAWSON: I don't know if I can speak on behalf of the department, but they would have to pursue additional land-based offsets, I guess, with the guidance that we would give them.

40

MR PEARSON: And so the project would pause at that point, presumably, until those additional land-based offsets were secured by the applicant.

45 MS DAWSON: The way we've drafted the conditions to date, there is no – it wouldn't cause – it wouldn't - - -

MR PEARSON: So my – again, correct me if I’m wrong, my understanding is, reading the conditions, the way that the project is structured, the ability to progress to stage 2 is contingent on having secured the offsets for stage 2 - - -

5 MS DAWSON: Correct.

MR SPROTT: Correct.

MR PEARSON: - - - prior to commencing stage 2.

10 MS DAWSON: Yes. Yes.

MR SPROTT: Yes.

15 MR PEARSON: So if the EPBC impacts had not been offset as at the date on which the applicant wished to proceed with stage 2, then, presumably, stage 2 would be delayed until such time as those offsets had been identified and secured.

MS DAWSON: We haven’t made that contingent. So if – are you asking if they haven’t demonstrated that they have met the stage 1 requirements?

20 MR PEARSON: No. Stage 2.

MS DAWSON: Stage 2.

25 DR WILLIAMS: Stage 2 and 3. Stage 2 and 3.

MS DAWSON: Yes. So that - - -

30 MR PEARSON: So when they get to the end of stage 1 - - -

MS DAWSON: Yes.

MR PEARSON: - - - as I understand the way that this project has been structured, the stage-2 offsets need to have been offset – or a strategy for their offsetting needs to have been identified. If – I guess what I’m asking is what happens if the applicant has not identified suitable arrangements to offset the EPBC, is the project paused at that point?

35 MS DAWSON: Yes.

MR PEARSON: That’s - - -

MS DAWSON: Yes.

45 MR PEARSON: Okay.

MR SPROTT: Yes.

MS DAWSON: They can't just do any disturbance associated with that stage 2.

5 MR PEARSON: Okay.

MR SPROTT: And that will be something that also comes through in the Australian Government's assessment. So once there is a referral to the Australian Government, if they have requirements around that as well, then that will also be reflected from their perspective on the EPBC, but as far as the species are concerned, or the communities are concerned, that community is also protected through the condition in the recommended conditions requiring that that community is not disturbed in stages 2 and 3 - - -

15 MR PEARSON: Okay.

MR SPROTT: - - - until such time as offsets are appropriately identified.

MR PEARSON: Okay.

20

MR SPROTT: So there's two levels of protection on that.

MR PEARSON: Okay. And what are stewardship arrangements? I - - -

25 MS DAWSON: It's the new – so, previously, they were biobanking agreements - - -

MR PEARSON: Agreements. Okay. Yes.

MS DAWSON: - - - and, now, under the new Biodiversity Conservation Act, they're called Biodiversity Stewardship Agreements.

30

MR SPROTT: So they're the mechanism.

MR PEARSON: Okay. What do you expect the cost of retiring ecosystem credits by making payment into the New South Wales Government's BCF to be and how does this cost – and this may need to be taken on notice, but - - -

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MS DAWSON: Yes.

40 MR SPROTT: Yes.

MR PEARSON: And how does this cost compare with the costs associated with biobank sites and/or rehabilitated sites?

45 MR SPROTT: That is one that we will have to take on notice.

MR PEARSON: Need to take on notice. Yes.

MS DAWSON: Yes.

MR SPROTT: I can't, off the top of my head, tell you the exact numbers.

5 MR PEARSON: It would just be helpful to understand the relativities in terms of the financial impact of pursuing the different strategies available to the applicant.

MR SPROTT: Yes.

10 MR PEARSON: So acquiring biobank sites, rehabilitation as a source of offset and then paying into the BCF, and just what the kind of different economic drivers are around each of those different strategies. That was all I had on rehab and - - -

15 PROF A. CLARK: Just one question. You mentioned, I guess, the Federal Government's regulations that come into there. Are there any overlaps or inconsistencies between the two that we should be aware of that you're aware of? So there's two levels of protection and I understand that that applies, but sometimes you get areas where there's gaps or inconsistencies in there. Is there anything that you're aware of along those lines?

20 MR SPROTT: We would probably have to take that on notice. I do know that the Commonwealth Government has endorsed the biodiversity assessment methodology used in the - - -

25 PROF CLARK: So I think you've just answered my question there. Okay.

MR SPROTT: So as far as the actual assessment of credit requirements required - - -

30 PROF CLARK: Yes.

MR SPROTT: - - - the Commonwealth Government and OEH have worked quite closely - - -

35 PROF CLARK: Thank you.

40 MR SPROTT: - - - on that. As far as the conditions are required, the Commonwealth Government will consider the conditions that we've looked - to recommend. And the Commonwealth Minister will make a call on whether they believe that those conditions are appropriate and would be endorsed from a Commonwealth perspective as well.

45 PROF CLARK: So it's more a question of precedence, if there is conflict - which one would take precedence. Thank you.

DR WILLIAMS: Okay. So as you - - -

MR SPROTT: Can I just note that?

5 DR WILLIAMS: I've got a few questions on offsetting and biodiversity, if you don't mind. One of the questions – Tony has developed a lot of it with you already, but just one further point from that. Just, once again, getting back to the EPBC and the Biodiversity Conservation Fund. Could you just explain – the fact that the conservation fund isn't presently accredited – so it's not endorsed by the Commonwealth.

10 MR SPROTT: Yes.

15 DR WILLIAMS: That, necessarily, doesn't preclude the applicant from still contributing into the fund and providing offset through the fund; it just means that it's not accredited. So what that would mean is, then, there would have to be an assessment done by the Commonwealth.

MS DAWSON: They would have to – for the state purposes, they could pay into the fund. And then they would have to offset for the Commonwealth separately.

20 MR SPROTT: So they can – from a New South Wales perspective, they can still use the fund.

DR WILLIAMS: Yes.

25 MR SPROTT: But if - - -

DR WILLIAMS: But it won't satisfy the Commonwealth. That's - - -

MR SPROTT: But it won't satisfy the Commonwealth.

30

DR WILLIAMS: Commonwealth.

MR SPROTT: So the credits required from both authorities would be the same number of credits. But if they use the fund - - -

35

DR WILLIAMS: Yes.

MR SPROTT: - - - then, they may not be able to count that towards the Commonwealth consent.

40

DR WILLIAMS: Okay. Which means the Commonwealth would have to do a separate assessment.

MS DAWSON: Not a separate assessment - - -

45

MR SPROTT: May require a - - -

MS DAWSON: - - - they just - - -

MR SPROTT: - - - company to provide additional - - -

5 DR WILLIAMS: Okay.

MR SPROTT: - - - offsets.

DR WILLIAMS: Okay.

10 MR SPROTT: So those - - -

MR PEARSON: Could I just pick up on that?

15 MR SPROTT: That accreditation - - -

MR PEARSON: So you used the word “may”. Is that – I thought it was an absolute obligation. There is not, currently, the ability to pay into the fund, so the Commonwealth would require an alternative offset. I - - -

20 MR SPROTT: Sorry. I say “may” due to the timing of - - -

MR PEARSON: Okay.

25 MR SPROTT: - - - when this could occur, which, with stage 2, is six years in the future.

MR PEARSON: Okay. Okay.

30 MR SPROTT: So if there is no accreditation at that - - -

MR PEARSON: Yes. Okay.

MR SPROTT: - - - time, then, yes, the Commonwealth would - - -

35 MR PEARSON: Yes.

MR SPROTT: - - - require additional offsets. But I say “may” because - - -

40 MR PEARSON: Yes. And I accept – yes.

MR SPROTT: - - - there is a period of time before that would be required to - - -

MR PEARSON: Yes.

45 MR SPROTT: - - - be pursued. But at that time, the company would need to make sure it satisfies both pieces of legislation.

DR WILLIAMS: Yes. Great. No, thanks for that. So just bear with me for a moment. I've got some detailed questions – they might have been put on notice, I'm not sure.

5 MS DAWSON: That's okay.

DR WILLIAMS: But on table 6, on page 30 of your final assessment report, opposite, you've got all – the bulk of the rehab has been deferred to stage 2 and 3. And I presume that's because, well, you really can't start rehabilitating stage 1 until
10 it's completed or close to completion. Most of the rehab – there's very little rehab occurring in stage 1; it's all, basically, pushed back to stages 2 and 3. What happens if the mine stops or closes for a while? What happens with the required rehab? Is there a condition in there that still require the rehab to continue, even at stages 2 and
15 – the plan for stage 2 and 3 – if stage 2 and 3 are delayed or put on hold, does the rehab still continue?

MR SPROTT: Meg, do you want to answer?

MS DAWSON: Unless you - - -
20

MR SPROTT: So the requirements of the consent still continue, regardless of whether mining is occurring. So I don't have the consent on me, but there is a requirement in schedule 1. Sorry, bear with me here.

25 MR PEARSON: That's all right. No.

DR WILLIAMS: No. No. No, I'm sorry.

MR PEARSON: It's a big document.
30

DR WILLIAMS: It's why I said it's a - - -

MS DAWSON: It's now A.

35 DR WILLIAMS: As I said, they're very specific questions, so the – so I think they might have to be put on notice.

MR SPROTT: Yes. So the limitations on the consent under condition A9 permit mining operations to be carried out until 31 December 2041. So that is specifically
40 mining operations, which is defined in the consent document. The obligations for rehabilitation continue even beyond that date, until those obligations are satisfied. So if the project didn't continue to stage 2 and 3, from a biodiversity clearance perspective, that would not nullify the requirement to rehabilitate the site up until the point that it is closed. So those obligations do continue on. And the rehabilitation
45 would still be required for the areas that had been disturbed to date.

DR WILLIAMS: All right. And that's all in condition A9?

MR SPROTT: So A9 is - - -

DR WILLIAMS: Yes.

5 MR SPROTT: - - - permitting the actual mining operations to continue.

MS DAWSON: There's a note.

MR SPROTT: The note to that refers to - - -

10 DR WILLIAMS: Okay. That's a note to A9. Okay.

MR SPROTT: So the note to A9 is referring to the fact that the other conditions, notwithstanding the mining operations, may cease.

15 DR WILLIAMS: Yes.

MR SPROTT: The other conditions do continue to apply.

20 DR WILLIAMS: Good. That's good. Okay. That's clear. Thank you very much for that. That's fantastic. Thanks, Matthew. Just related to that also, how much are the proposed rehabilitations to occur on the mine site itself and how much on biodiversity sites? I mean, at page 31 and elsewhere, it refers to a figure of 878 hectares of native vegetation communities as part of ecological mine rehabilitation, which is to be part of the stage 1 biodiversity strategy, yet table 6 on page 30 only refers to 483 hectares that's planned for stage 1 rehabilitation. So I'm just wondering where this figure of 878 hectares for ecological mine rehabilitation could be reconciled with the figures in table 6. I mean, I can't see what the 878 has - - -

25

30 MR SPROTT: Yes.

DR WILLIAMS: - - - come from.

MR SPROTT: Yes.

35 DR WILLIAMS: I'm sorry about that. I just can't see it.

MR SPROTT: No. No, that's okay.

40 MS DAWSON: No, that's fine.

DR WILLIAMS: All right.

MR SPROTT: So that's to do the staging. So the way that table 6 is depicted, the credits are provided separate to the rehabilitation column. So the rehabilitation to be undertaken on the project – the 878 is a subset of the total site.

45

DR WILLIAMS: Right.

MR SPROTT: So what the company has committed to is that of its total offset – my apologies, let me correct that – of that is total rehabilitation – 878 hectares will be put
5 back to rehabilitation for the purposes of offsetting that community.

DR WILLIAMS: And that's on the mine site itself?

MR SPROTT: That's on the mine site - - -
10

DR WILLIAMS: Mine site.

MR SPROTT: - - - itself.

15 DR WILLIAMS: All right. Thank you.

MR SPROTT: The credits are provided, as I mentioned before, as – by committing to undertaking that rehabilitation, the credits are afforded for stage 1. The rehabilitation – because rehabilitation can only occur once the land is available, the
20 rehabilitation will be spread across the stages. And 878 hectares of the rehabilitation to occur across the various stages will be attributed to achieving the credits that have been committed to - - -

DR WILLIAMS: Okay. Thanks.
25

MR SPROTT: For stage 1.

DR WILLIAMS: Thanks, Matt. Sorry, I've just got one more question, if that's
30 - - -

MR SPROTT: Yes.

DR WILLIAMS: - - - okay. It just relates to additional – recommendation 29 from the earlier report from the commission – their review talked about additional
35 ecological mine rehabilitation. It was asking whether any additional credit-generating rehabilitated woodland could be provided on the mine site itself. And the department came back and said that most of the it had already been diverted towards Wambo's existing offset obligations. I just – on page 43, there's figure 7. And what I'm looking at there is – the conceptual or ecological mine rehabilitation is shown in
40 the yellow outline. And, then, in the red outline we've got the actual project area. What I'm getting at there – and following on from recommendation 29 – can the – or is it possible, feasible, just impossible for the ecological mine rehabilitation to extend into the total project area? In other words, the area – the difference between the yellow and the red outlines?

45 MS DAWSON: So the yellow outline are lines for the disturbance areas.

DR WILLIAMS: Yes.

MS DAWSON: So they're not actually approved to disturb anything outside that yellow - - -

5 DR WILLIAMS: Right.

MS DAWSON: Therefore, they have no obligation to rehabilitate there.

10 DR WILLIAMS: Okay. But if they could rehabilitate it, wouldn't that be to their advantage?

MR SPROTT: It - - -

15 DR WILLIAMS: I don't know what the - I haven't seen the site yet - - -

MR SPROTT: Yes. So - - -

DR WILLIAMS: - - - so I don't know what's probably - - -

20 MR SPROTT: So those areas are non-disturbed.

DR WILLIAMS: Right.

25 MR SPROTT: So rehabilitation primarily relates to disturbed land.

DR WILLIAMS: Yes.

MR SPROTT: It is possible for companies to regenerate - - -

30 DR WILLIAMS: Yes. That's what I'm getting at and that - - -

MR SPROTT: - - - on other areas, and that is something that can be done, but for this particular project, the proposed rehabilitation is focusing on the disturbed areas of land. There are some regeneration activities proposed in the off-site biodiversity offsets - - -

35 DR WILLIAMS: Yes, yes, yes.

40 MR SPROTT: - - - to help bring the quality of those offsets up - - -

DR WILLIAMS: Yes.

MR SPROTT: - - - and there's where the regeneration efforts will be focused.

45 DR WILLIAMS: Yes. I was just wondering whether the same couldn't have been done here, which might help them in terms of their - the credits they require and also

I'm just looking at a response to recommendation 29 from the earlier report and just whether that might have contributed to finding some of the additional – through regeneration on – around the mine site – the ecological mine site itself but still within the project area – might have assisted – that's all.

5

MR SPROTT: Yes. So I think that the areas they have identified for regeneration in the offsets is how they've tried to achieve that - - -

DR WILLIAMS: Yes.

10

MR SPROTT: - - - additional regeneration, to achieve the credits that they need.

DR WILLIAMS: Yes.

15 MR SPROTT: It is an option that they could potentially pursue prior to stage 2, for instance, if they needed that but it is one of a number of options available and it would depend on the assessment at the time of what is the most appropriate mechanism to achieving the credits. So there is other land-based offsets available in the region and that may be a more appropriate mechanism if that land use is deemed to be appropriate. So it's not something that can't be done. But it's not something that is required - - -

20

DR WILLIAMS: Yes.

25 MR SPROTT: - - - for stage 1 and so it's one of the suite of options they have.

DR WILLIAMS: Okay. That's fine.

MR PEARSON: Thanks.

30

DR WILLIAMS: Thanks, mate.

MR PEARSON: We might move on to final landform, water resources and visual mitigation. And I just wanted to unpack the one void, two void, no void kind of discussion that took place in the applicant's response and your assessment. And I – if we set aside the economic impact, does the Department have a view on whether a one void solution – and I imagine it's a one void by eliminating the Wambo void, not the United void – but does the Department have a view on whether a one void solution is more desirable from an environmental final landform perspective than a two void solution? So set aside the economic impact, just from a – sort of an environmental impact, if you like, an environment, sort of, landform benefit perspective and weighing those two up, does the Department have a view around that issue?

35

40

45 MR SPROTT: The views the Department expressed in its preliminary report and have reflected here is that the elimination of one of the voids and the original querying by various government agencies over the ability to merge those two voids

in some manner – that was largely driven by the hypersaline nature of the Wambo void, not exclusively, but it was a large consideration. That void originally was, I believe, 11 times saltier than the ocean and was - - -

5 MR PEARSON: Yes. Well, that was an error, I think, though - - -

MR SPROTT: - - - was – yes - - -

MR PEARSON: - - - in the applicant’s assessment process.

10

MR SPROTT: And that was something that was identified as a substantial environmental issue at the time. And that was one of the drivers around seeking to identify how the two voids would interact and how the two voids could be planned. The revised salinity levels that have been reassessed and provided through are much closer and so the actual benefits that you would achieve by merging those two water bodies to allow the water to dilute between the two are not as great as they once would have been. There would still be benefits, but relative to the previous EIS proposal, those benefits aren’t as high. From a land use perspective, if they did eliminate a void, they would be able to put more land back to biodiversity or agricultural use. I believe the Wambo void - - -

15

20

MR PEARSON: I’m trying to remember the size of that - - -

MR SPROTT: 24 hectares, I believe, but I will confirm that - - -

25

MR PEARSON: I need to make sure I get my voids the right way around but the Wambo void – the environmental – there are significant – as I understood, there are significant environmental impacts of filling the Wambo void in that if that was filled, it would allow discharge into the Wollombi Brook – it’s - - -

30

MR SPROTT: The United.

MS DAWSON: Yes – that’s United – yes - - -

35

MR PEARSON: Sorry, the United void – sorry. That’s right. Sorry. You’re right. That’s right. And it’s Wambo that could be filled without having flow-on impacts into Wollombi Brook, correct, yes.

DR WILLIAMS: That’s 24 hectares, the Wambo void - - -

40

MR SPROTT: Yes, I thought it was - - -

DR WILLIAMS: - - - and I think the United one is 87 hectares.

45

MR SPROTT: Thank you. So the United void is a larger void. It is a deeper void. And it would provide more of a groundwater sink for capturing saline groundwater on-site than the Wambo void. Both would function to capture saline groundwater

but backfilling of the United void in the additional assessments that we've been provided in the response to the IPCs review – backfilling the United void or both voids would result in potential off-site – or would result in off-site migration of salts to Wollombi Brook. So it's – the United void is more critical - - -

5

MR PEARSON: Yes.

MR SPROTT: - - - in the sense of on-site saline capture but both voids serve a function in that respect - - -

10

MR PEARSON: But my understanding of the report was that the – that function can be performed by the United void on its own - - -

MR SPROTT: Correct.

15

MR PEARSON: - - - with the Wambo void filled in, but not the other way around. So it's possible from a, sort of, external off-site impact point of view, if Wambo is filled and United is not filled, there's unlikely to be off-site impacts but it was the other way around or if you filled both, then the modelling shows that there's likely to be off-site impact particularly on saline discharges into Wollombi Brook.

20

MR SPROTT: That's my understanding - - -

MS DAWSON: Yes.

25

MR SPROTT: - - - but we can confirm that - - -

MS DAWSON: Yes.

30

MR PEARSON: So I guess what I'm just trying to understand is if – I guess the assessment, sort of, walks through what's the economic impact of filling the Wambo void and what I'm asking is setting that aside - - -

MR SPROTT: Yes.

35

MR PEARSON: - - - is there a – is it more desirable from an environmental, ecological final landform etcetera perspective to retain the Wambo void and, obviously, you're – there's some prolonged disturbance associated with that, as well, that you would need to move some dirt around and possibly some

40

MR SPROTT: Yes.

45

MR PEARSON: But then there's clearly a benefit, I guess, as well, in terms of the increased land area that can be used for other purposes – offsetting and the return of land to agriculture and so. Has the Department got a view around, setting aside the economic impact, what the outcome of that balancing between those environmental and final landform benefits and impacts might be?

MS DAWSON: I'm happy to provide more information.

MR PEARSON: Yes.

5 MS DAWSON: Take that one on notice.

MR PEARSON: Okay. Sure. Yes. Okay.

10 MR SPROTT: Yes. There would be an environmental benefit, but it's balanced within the overall and so the preliminary assessment – one of the big focuses was on treatments that could be undertaken, ways that the project could be - - -

MR PEARSON: Yes.

15 MR SPROTT: - - - reviewed - - -

MR PEARSON: Yes.

MR SPROTT: - - - to achieve a more beneficial - - -

20 MR PEARSON: Yes.

MR SPROTT: - - - outcome - - -

25 MR PEARSON: Yes.

MR SPROTT: - - - and we believe the outcome was acceptable - - -

MR PEARSON: That was when it incorporated economic impact, though.

30 MR SPROTT: Yes.

MR PEARSON: So I think what I'm trying to understand is setting the economic - - -

35 MR SPROTT: Yes.

MR PEARSON: - - - impact aside - - -

40 MR SPROTT: Yes.

MR PEARSON: - - - what's the kind of final landform – because, you know, is it – for example, is it possible to design a mine plan that means that there's no re-disturbance of areas to backfill a void or – that's one end but - - -

45 MR SPROTT: Yes.

- MR PEARSON: - - - the other end might be that you have to disturb 400 hectares to
- - -
- MR SPROTT: Yes.
- 5 MR PEARSON: - - - fill a 20 – you know, 24 hectare void.
- MR SPROTT: Yes.
- 10 MR PEARSON: I – I guess – what I – I don't know the answer to those questions
and so I'm - - -
- MR SPROTT: Yes.
- 15 MR PEARSON: - - - wondering whether the Department investigated that to that
- - -
- MR SPROTT: Yes. We can get back to you on those.
- 20 MR PEARSON: Yes. That would be helpful. And does the Department have a
view around what the economic impact of filling the void is, outside of – just the
discounted \$176 million? Is there any economic impacts on the applicant other than
that?
- 25 MS DAWSON: We haven't done our own separate modelling – our submissions
- - -
- MR SPROTT: So we haven't commissioned separate economic assessments - - -
- 30 MR PEARSON: No, I'm not asking whether – but are there – is the Department – is
the applicant likely to incur any other economic impacts other than the costs they've
indicated in their response to fill the void, which they've indicated was in
undiscounted terms \$176 million?
- 35 MS DAWSON: Not that I'm aware of.
- MR SPROTT: No that I'm aware of.
- MR PEARSON: Okay.
- 40 MR SPROTT: I understand that the response to the Commission's review was more
detailed in the company's consideration of its costs - - -
- MR PEARSON: Yes.
- 45 MR SPROTT: - - - and from the response we received, it does appear that they have
factored in their costs associated - - -

MR PEARSON: Yes. Okay.

MR SPROTT: - - - with undertaking that activity.

5 MR PEARSON: Okay.

MR SPROTT: So I do not believe that there would be substantial additional costs, if any.

10 MR PEARSON: Okay. I guess what I'm getting at is, you know, if there's disturbance, for, instance, of rehabilitation used as an offset or, you know, are there other kind of economic – or is all of that kind of included in that \$176 million dollars? If you don't know or if you need to take it on notice, then please do.

15 MS DAWSON: My understanding is that they've included all costs.

MR PEARSON: Okay. I also wouldn't mind understanding if you have any insight into the rationale for the applicant's selection of the four per cent discount rate, and also what your reasons were for using a different discount rate in assessing the present value of the void filling option.

MS DAWSON: I will just have to check. We're talking about the seven per cent versus the four per cent?

25 MR PEARSON: The four per cent, correct. So the applicant – one of the recommendations in the IPC review was to provide the costs of backfilling the voids in both future dollar terms, but also in terms of dollars of today, so that we - - -

MR SPROTT: Yes.

30

MR PEARSON: You know, it's possible to actually assess what the economic cost of filling those voids is, because the numbers become very large the further out you go.

35 MS DAWSON: Yes.

MR PEARSON: The applicant provided a response, which was good, and in selecting a discount rate, it elected to choose a four per cent discount rate, so I'm just wondering if you're aware of the reasons behind the applicant's choice of that discount rate, and I'm also eager to know why the department elected not to use that and ask for – or, I think, remodelled the numbers based on a seven per cent discount rate.

45 MR SPROTT: So my understanding is that the company provided the seven per cent and the - - -

MS DAWSON: Yes, my understanding is the Deloitte assessment was based on seven per cent.

MR SPROTT: So the numbers – the seven per cent discount numbers were
5 provided as part of that. I believe the company may have - - -

MR PEARSON: Yes.

MR SPROTT: - - - proposed a four per cent as their preferred, but the seven per
10 cent discount rate is consistent with New South Wales Government - - -

MS DAWSON: Economic guidelines.

MR SPROTT: - - - guidelines.
15

MR PEARSON: Okay.

MR SPROTT: So we've adopted the seven per cent. They're consistent with
20 Treasury guidelines on discount rates.

MR PEARSON: Do you know why the applicant elected to use a discount rate that
wasn't in conformance with the guidelines?

MR SPROTT: We would have to look into that to be certain.
25

MR PEARSON: Okay. That's all right. We have a meeting with the applicant. We
can ask the applicant in that meeting.

MR SPROTT: Okay.
30

MR PEARSON: So - - -

MS A. JELFS: I've asked them to cover that.

MR PEARSON: Okay. Thank you.
35

MR SPROTT: Yes.

MR PEARSON: That was all I had on the void, sort of, final landform issue. I
40 might, sort of, ask if Peter or Alice - - -

DR WILLIAMS: No, you've covered that.

MR PEARSON: Do you have other questions on that?
45

PROF CLARK: Not on the landform one. Under the biodiversity, I did have one
about the stygofauna, but - - -

MR PEARSON: Yes. Go for it. No, no - - -

MS DAWSON: Yes, we can - - -

5 MR PEARSON: - - - we can cover that off now.

PROF CLARK: Yes. Okay. We will do that now. I just flicked away from my page here for a second. So let me find it again. Sorry. So I'm just trying to find the recommendation number. There it is. It was - - -

10

MS DAWSON: 42?

PROF CLARK: Yes, 42, that's right. So I think they recognise that there's a fairly low chance of the stygofauna being impacted, and what they said when they've come back is that they will be doing regular monitoring of it, and if they notice in the three-year monitoring that there's going to be - that there's any impacts that they pick up in the data, that they will do more monitoring. When you get into the detail of your report there, there's a comment made that it will be possible to rectify this, but no one actually says that they're going to if they pick that up in the sampling. It was just a question around that. Is there a link between the two, so that if they do actually notice that this is being impacted, that they will be rectifying it? It's just not clear in the documents that that's an actual outcome of picking that change up in the data.

15

20

25 MS DAWSON: Just give me a sec. I'm re-reading - - -

PROF CLARK: No worries. So in your report there, it's page 50, section 2 of 5.5. It's the last sentence of that first paragraph.

30 MS DAWSON: So this is the monitoring of stygofauna.

MR PEARSON: That's right.

MS DAWSON: Yes.

35

MR PEARSON: And they've indicated that:

If the groundwater monitoring indicates impacts are greater than predicted on the shallow alluvial aquifers surrounding the project area, more regular monitoring will be triggered.

40

It doesn't actually say that if there ends up being a problem that they will fix it. I'm sure there might be more data somewhere else.

45 MR SPROTT: So that would come to the management plans and the consent.

PROF CLARK: Okay.

MS DAWSON: Yes. So within the management plan, we've included the monitoring of stygofauna, and they have generic management plan requirements about having TARPs, so the trigger action response plans and contingency plans. So they come out of our generic requirements, but if a significant impact is identified in the monitoring - - -

PROF CLARK: Yes.

MS DAWSON: - - - we would expect the management plan to then spell out what they're doing.

PROF CLARK: It kicks in.

MS DAWSON: Yes.

PROF CLARK: Okay. Thank you. That was all.

MR PEARSON: Yes. I've got - Okay. Peter?

DR WILLIAMS: Yes, that's fine. Thanks, Tony.

MR PEARSON: We might want to transition to the joint venture. There's a bunch of recommendations in there. So my only question on this area was what happens - so I guess there's an expectation that the transition will take somewhere 12 and 18 months and, if it's approved, we would all hope that that's what happens. Has the department considered what happens if the project is substantially delayed? So if, for instance, coal prices render the project uneconomic during the transitions period, what, sort of, happens then? Do we just have an extended transition that - - -

MS DAWSON: Like, say, if the 15 months turns into a few years?

MR PEARSON: Or turns into a decade or - - -

MS DAWSON: Yes.

MR PEARSON: What happens then?

MS DAWSON: The main scenario that we conditioned for in the Wambo was in the event that it didn't proceed to phase 2, or was appealed and - - -

MR PEARSON: Yes.

MS DAWSON: - - - there was a delay, and, in that case, in the Wambo consent, we've included a condition that would say Wambo would almost revert back to business as usual - - -

MR PEARSON: Yes.

MS DAWSON: So that at least they would continue mining.

MR PEARSON: Well, they operate under their own consents, as I understand it, during the transition, and there's a monitoring regime, and there's accountability. I
5 can't remember the page number, but it's - - -

MR SPROTT: Yes.

MR PEARSON: - - - you know – I guess in the, sort of, ideal world, that the
10 transition has very clear delineations around who's responsible for what and where
and - - -

MR SPROTT: Yes.

MR PEARSON: - - - so on, and the two consents continue to operate independently
15 of each other until such time as coal is brought from the United pit to the CHPP, at
which point the two are fused and it becomes one consent, and then Glencore
operates the whole open pit site.

MS DAWSON: Correct. Yes.

MR PEARSON: I guess, my question is if, for whatever reason, the project is
delayed indefinitely, and that coal – that chunk of coal never works its way to the
CHPP, what happens? Is it just that these two consents operate in parallel for as long
25 as their lives permit? Is that - - -

MS DAWSON: Yes, they both have rehab obligations. So if they stop in phase 1
- - -

MR PEARSON: Okay.

MS DAWSON: - - - they will be responsible for rehabilitating and closing the
mines.

MR SPROTT: So they would, in that case, operate as two – essentially two
35 neighbouring mines, albeit, the only way for that situation to occur is if the United
mine doesn't operate. So if they never take coal to the CHPP, they would have to
rehabilitate any disturbance undertaken to date.

MR PEARSON: Right. Okay.

MR SPROTT: But the only way that – the two mines would never be able to
operate side by side, because United would not be able to get coal to market.

MR PEARSON: Yes, that's right. Yes.

MR SPROTT: So the only way that – if the situation occurred where the transition was extended, it would be because Wambo is continuing to operate.

5 MR PEARSON: Yes. And United has just elected to cease continuous construction.

MR SPROTT: And United’s construction has slowed.

MR PEARSON: Yes. Okay.

10 MR SPROTT: It doesn’t mean that United can’t continue at a later date - - -

MR PEARSON: Yes.

15 MR SPROTT: - - - but as soon as that coal goes to the CHPP, the - - -

MR PEARSON: Yes.

MR SPROTT: The - - -

20 MR PEARSON: Two consents merge.

MR SPROTT: - - - consents would merge.

25 MR PEARSON: Yes.

MR SPROTT: So that’s why the stages are based off activities and based off areas.

MR PEARSON: Yes. I thought that that was very well explained in the report, so –

30 it was an area, I think, in – and you can see by the questions that came out in the review, I think, that was a little bit unclear I guess, initially, but certainly - - -

MS DAWSON: Yes.

35 MR PEARSON: - - - the way that the transition is managed is a lot clearer. That was all I had on transition, but Peter and Alice - - -

DR WILLIAMS: On transition, no, that’s fine.

40 MR PEARSON: Okay.

DR WILLIAMS: We thought that was handled pretty well, in that report.

PROF CLARK: Nothing on transition. Something on air quality.

45 MR PEARSON: Go for it. No, no. Go for it.

PROF CLARK: Just in terms of blast fume, and I've got – I'm not sure where it is in your report because I picked it up in the company's report, but they talk about a – an assessment of – and monitoring of blast fume and using some quite new technology in there which is commendable. One of the questions I had was the
5 assessment trial would be completed within two years of the commencement of mining activities, and any proposed changes to fume monitoring resulting from this trial would be implemented at the same timeframe. There's no problem with that. My question reflects what the rock characteristics are during that two-year period and do those same rock characteristics continue on afterwards. So blast fumes and
10 dust exhalants from that period changed dramatically with different rock types. I wasn't able to find any information in the reports of so far – if there's somewhere else, please point me to it – that just talks about the representivity of that two-year period.

15 MR SPROTT: Of the measures.

PROF CLARK: We – did you guys look at that?

20 MR SPROTT: We will need to look into that and get back to you.

MS DAWSON: We noted that they recommended that length of period to get a representation, but you raise a good point of whether that is actually a depth.

25 PROF CLARK: Is it representative of the - - -

MS DAWSON: The depth. Yes, yes.

PROF CLARK: - - - rest of it.

30 MR PEARSON: The VPAs – so there's, I guess, two more topics you wanted to cover, the VPA - - -

MS DAWSON: Yes.

35 MR PEARSON: - - - and conditions of consent. We saw some correspondence last night on the VPA.

MS DAWSON: Yes.

40 MR PEARSON: So it seems like GLN has identified its preferred solution as between the applicant and the council. I guess it would be our expectation that that – that the information in that report, or whatever you want to call it, would work its way into an offer from Glencore and then would work its way into the consent, and then that consent could be assessed, and I think there was a condition in the consent
45 that - - -

MS DAWSON: Yes. We haven't filled it in

MR PEARSON: There's the appendix, and then there was a condition in the consent that made VPA – the PA, sorry – condition – yeah – and that with that information in there, I guess that condition could operate effectively. Is that - - -

5 PROF CLARK: Yes. We - - -

MR PEARSON: Does that cover the latest on the VPA?

10 PROF CLARK: We – yes. We've made good progress. We wrote to both – we shared the report with both council and the applicant, and based on the council's last meeting of the year, they needed to have the offer and to be able to table it at that meeting, I think, today, or tomorrow. So we can be – we're - - -

15 MR PEARSON: Okay. So has Glencore made that offer? Are you aware?

PROF CLARK: They should be able to – I'm aware that they were preparing it, but they should be able to provide you a – an update today.

20 MR PEARSON: Well, we can ask them as well. Okay.

PROF CLARK: Today, yes.

MR PEARSON: So – but from your perspective, it seems like barring any unforeseen issues that the planning agreement issue is - - -

25 PROF CLARK: Yes. It should be resolved.

MR PEARSON: - - - capable of being resolved pretty quickly.

30 PROF CLARK: Yes, yes.

MR PEARSON: Okay. Yes. All right.

35 DR WILLIAMS: Sorry. Just on that – can I ask – that condition A18, is that a standard condition that the department would put into any consents requiring VPAs, or - - -

MS DAWSON: Yes. It's our standard indicator - - - V

40 DR WILLIAMS: Sorry. PAs now.

MS DAWSON: Yes.

45 DR WILLIAMS: Have you ever thought of doing this as a deferred commencement consent, or deferred commencement condition?

MS DAWSON: No. I haven't seen any that have had a deferred commencement of – with a VPA.

5 DR WILLIAMS: In other words, that the consent commences once the VPA has been - - -

MS DAWSON: We generally don't link commencement of – if it's reliant on a third party. So if there's delays in an agreement with an agency or a council or a landowner, we usually include some flexibility in case the negotiations are delayed.

10 DR WILLIAMS: Okay.

MR SPROTT: And further aspects like advertising - - -

15 DR WILLIAMS: What – okay. But what happens if six months expires, and then you go to the secretary, and there's a – and the secretary gives a timeframe. I presume – what happens then? Their consent – they're in breach of consent, and the development stops.

20 MS DAWSON: I guess at this stage of the assessment, we try and get it to a point where, like, terms are agreed, and all it is, is the formality of agreeing to the – to the likelihood of there being major delays. We hope that we've reduced that risk by having terms agreed now.

25 DR WILLIAMS: I guess at the end of the day, it depends whether you see it's a – almost a condition precedent on the consent operating whether it needs to be deferred commencement. Arguably, it's not, but at the end of the day, what it means is they're – you're still not tying up a loose end which could be tied up, if it was deferred commencement.

30 MS DAWSON: I have to get back to you.

DR WILLIAMS: Yes.

35 MS DAWSON: There are some additional clauses in our VPA about - - -

DR WILLIAMS: Yes, sure.

40 MS DAWSON: - - - not withholding commencement or determination based on a VPA.

DR WILLIAMS: Yes, sure. Yes, yes. I – and I understand that. Yes, yes.

45 MS DAWSON: So I – that might be why the framing is as such.

DR WILLIAMS: Yes. No. That's all right. No. As I said, I'm not saying what's correct, or incorrect in that sense.

MS DAWSON: Yes.

5 DR WILLIAMS: I'm just wondering – it's just a standard way that you incorporate conditions with VPAs still outstanding, or – and, indeed, any other matter that needs to be - - -

10 MR PEARSON: And so I think with the VPAs, the timeframe agreed by the secretary provides the management of risk of it – any risk of it not occurring because the secretary can impose a timeframe on when it needs to be done by.

DR WILLIAMS: Yes.

15 MR PEARSON: The implications of not – of a deferred commencement could be quite substantial, and while that is necessary for some aspects, Aboriginal heritage impact permits being a perfect example, in this circumstances, the deferred commencement may have a – an associated cost which doesn't necessarily provide – doesn't necessarily warrant the additional management of that risk. Whereas, the timeframe agreed by the secretary is something that then can provide flexibility to both the council and the applicant to reach that agreement.

20 DR WILLIAMS: And if the agreement isn't reached?

MR PEARSON: The minimum terms of the offer have to be included in the consent.

25 MS DAWSON: I guess we have the compliance enforcement provisions, if it could never be agreed.

DR WILLIAMS: Okay. Thanks.

30 MR PEARSON: Are you okay with that, Peter, or do you need me to ask - - -

DR WILLIAMS: Yes, yes. No. I was just wondering what was standard practice with the department and - - -

35 MR PEARSON: Yes. Okay. Yes.

40 DR WILLIAMS: - - - as I said, I see what you're getting at too Matthew, if it's not in a sense of what's called a condition precedent, it doesn't necessarily need to be a deferred commencement condition, but I – it's just asking what happens if there isn't an agreement reached within six months or a time indicated by the secretary. What happens then?

45 MR SPROTT: Yes. And I believe that that is then – like, there is the ability to issue directions, or to mediate the outcomes, but there is – as Megan pointed out, there is also if it's because of the applicant's unwillingness to follow through the condition, then that would become a compliance matter. If it's because of a timing issue with

the negotiations, that becomes an issue for the secretary's consideration of whether that timeframe is reasonable.

DR WILLIAMS: And the council doesn't accept it.

5

MR SPROTT: That would become something for the mediation.

MS DAWSON: I guess the key thing of having the VPA tabled at the council meeting is to have a - - -

10

DR WILLIAMS: An agreement.

MS DAWSON: An agreement. Like, an in-principle endorsement before determination is made.

15

DR WILLIAMS: Yes, yes. That's good. That's good. Yes. No. That's good. No. That's fantastic. No. Thanks. That's great. Thank you.

20

MR PEARSON: The last topic, conditions of consent. So I guess – and call it other as well, actually. So I've got two more questions. One is you provided the applicant with the draft – final draft conditions of consent on November 1. I'm just interested to know whether the department – the applicant accepted those conditions of consent, or whether they provided any comments or requested any changes to those conditions of consent.

25

MS DAWSON: They accepted them. I – it's in an email correspondence, but yes. They're happy with the final conditions.

30

MR PEARSON: Okay. So they didn't request any changes to the draft conditions you proposed. Okay.

MS DAWSON: We did do three rounds of consultations. So – but they're - - -

35

MR PEARSON: Okay. Right. And what sort of feedback were that providing through that consultations on the conditions. Would you be able to come back to us with maybe a table or something that indicates kind of what they - - -

MS DAWSON: Yes, sure. If they had any major concerns. Yes.

40

MR PEARSON: Yes, yes.

MS DAWSON: Of course. Yes.

45

MR PEARSON: That would be helpful. Yes. So if you could take that on notice.

MS DAWSON: The first – the reason for 3 – we don't normally do 3, but was really getting the transitional – those things correct rather than - - -

MR PEARSON: No. I appreciate it. It's a very – yes.

MS DAWSON: - - - addressing issues.

5 MR PEARSON: And I saw the correspondence with the EPA. So obviously in a very complex area. So - - -

MS DAWSON: Yes, yes.

10 MR PEARSON: Yes.

MR SPROTT: It's usually around the operational implications.

MR PEARSON: Yes.

15 MR SPROTT: Just to make sure that the intent of the condition remains but - - -

MR PEARSON: Yes.

20 MR SPROTT: - - - but if there is an unintended - - -

MR PEARSON: Yes. Operational. Yes. Yes.

MR SPROTT: - - - operational implication, we can address it.

25 MR PEARSON: Yes. Okay.

MR SPROTT: But if it's an intended operational implication, the condition remains the same, but it's just to allow for that understanding of whether there are, especially with three consents.

30 MR PEARSON: Yes. Okay. Well, I mean, anything that was material through that process - - -

35 MS DAWSON: Sure.

MR PEARSON: - - - if you could just provide that.

MS DAWSON: Yes.

40 MR PEARSON: If it is as you say, that it's really kind of ensuring that there are no unintended consequences to a condition, then I don't think we need to hear about that, but, certainly, we would be interested in hearing about any more meaningful feedback that the applicant provided on the conditions.

45 MS DAWSON: Sure. I will go back through my correspondence and just confirm.

MR PEARSON: Thank you. Yes. And then the other question I had was around the project assumptions. I noticed – it appeared to me that none of the project assumptions have been updated. So things like FX rates and coal price assumptions haven't been updated. Did the applicant or the department consider whether
5 assumptions such as those, or other assumptions, ought to have been updated as part of the final assessment process?

MS DAWSON: Due to the length of the assessment period?

10 MR PEARSON: Yes. Yes.

MS DAWSON: So it's two years that have passed.

MR PEARSON: Yes. And, you know, we've seen oil prices, for instance, go from
15 US\$100 a tonne to – a barrel to under \$60 a barrel in the last two months. So there have been some pretty significant changes in spot commodity prices.

MS DAWSON: Yes.

20 MR PEARSON: That may not have changed views around long-term commodity price assumptions, but I'm just wondering whether those types of issues, in terms of updating project assumptions, economic or otherwise, were considered either by the applicant or by the department.

25 MS DAWSON: We didn't go back to the applicant asking them to update or question the assumptions.

MR SPROTT: Yes. So we had previously reviewed the assumptions, but we have not – based on spot price, we were comfortable with long-term. Based off the spot
30 price fluctuations, we were not – well, we did not go back over those - - -

MR PEARSON: Okay.

MR SPROTT: - - - but the majority of our considerations would have been around
35 the long-term - - -

MR PEARSON: Of course. Of course.

MR SPROTT: - - - making sure that those long-term assumptions are correct. It is a
40 long-term project.

MR PEARSON: Yes.

MR SPROTT: And while there's short-term fluctuations with coal prices going up
45 or down - - -

MR PEARSON: Okay.

MR SPROTT: - - - it's those long-term – the accuracy of the long-term - - -

MR PEARSON: Okay.

5 MR SPROTT: - - - that is most likely to cause those influences.

MR PEARSON: Okay. So – but – so just so I'm clear then, because I just heard slightly different answers there. So just so I'm clear, it was considered – the project assumptions that we used in the PAR process were considered in terms of their
10 relevance to the assessment process - - -

MR SPROTT: Yes. So we - - -

MR PEARSON: - - - and the decision you reached - - -

15 MR SPROTT: - - - engaged an economic reviewer.

MR PEARSON: Okay. And the decision you reached this time was that there was no need to update the project assumptions as between the PAR and the AR; is that
20 - - -

MS DAWSON: Correct. We didn't see a need to update them.

MR PEARSON: So – okay. Right. Great. Okay. Thank you. That was all I had
25 on that. I might ask Peter or Alice if you had other questions.

DR WILLIAMS: So, Tony, I think you asked whether Glencore and Peabody had seen the draft conditions. Has council had a chance to see them yet?

30 MS DAWSON: Yes. Yes.

DR WILLIAMS: And they're happy, as far as you know?

MS DAWSON: We – yes – they had really good suggestions on the final land use
35 strategy - - -

DR WILLIAMS: Right.

MS DAWSON: - - - and also the comments in the BPA.
40

DR WILLIAMS: Right. Right. And relevant state agencies, have they got to see at least relevant conditions as well?

MS DAWSON: Yes. Yes. Yes.
45

DR WILLIAMS: Yes. Okay.

MS DAWSON: So we had sent out all agencies with – back and forth with the EPA, and even Heritage and RMS, about fine-tuning the conditions.

DR WILLIAMS: Right. Good. Thank you for that.

5

MR PEARSON: You're all good?

PROF CLARK: I'm all good.

10 MR PEARSON: Okay. No. Great. Alana, did you have anything you wanted to jump in with?

MS JELFS: No. Not at this stage.

15 MR PEARSON: Okay. David, anything from you?

MR D. KOPPERS: No. Nothing.

20 MR PEARSON: Okay. Well, that's – I think that draws an end to this meeting. I wanted to thank you for – I know these sort of meetings can be quite stressful, so I wanted to thank you for the very open and transparent way that you've approached the meeting and also for the work that you've put into the assessment report. It's very much appreciated by us and the Commission. So thank you and I will close the meeting.

25

MR SPROTT: Thank you.

MS DAWSON: Thanks. Thank you.

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[9.48 am]