



4 March 2020

Glendell Coal Mine MOD 4 (DA 80/952)

1 INTRODUCTION

1. On 29 November 2019, the NSW Department of Planning and Environment (**Department**) referred a modification application (**Application**) from Mt Owen Pty Ltd (**Applicant**), a subsidiary of Glencore Coal Pty Limited (**Glencore**) to the NSW Independent Planning Commission (**Commission**) for determination. The Application seeks to modify the existing project approval (DA 80/952) (**Existing Approval**) for the Glendell Coal Mine (the **Project**) under section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
2. The Project is taken to be an approval under the former Part 3A of the EP&A Act for the purpose of modification only, due to the operation of clause 8J(8)(a) in Schedule 4 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017* (**STOP Reg**). Nonetheless, the former section 75W of the EP&A Act does not apply to the Application as the request for the Application was received after the cut-off date of 1 March 2018 per clause 3BA in Schedule 4 to the STOP Reg. Accordingly, the Application is made under section 4.55(1A) of the EP&A Act with the Minister for Planning and Public Spaces as consent authority. The Commission is the delegate of the Minister in respect of the determination of this Application, under delegation dated 14 September 2011.
3. The Commission agrees with the Department's assessment (paragraphs 11 and 12 below) and is of the view that the Project as modified would remain substantially the same development and that the modification is within the scope of section 4.55(1A) of the EP&A Act.
4. Professor Mary O'Kane AC, Chair of the Commission, nominated Mr Stephen O'Connor (Chair), Professor Zada Lipman, and Professor Chris Fell AM to constitute the Commission determining the Application.

2 THE APPLICATION

5. The Department's Assessment Report (**Department's AR**) dated November 2019 describes the site (the **Site**) and locality of the Project in sections 1.2 and 1.3.
6. A summary of the three previous modifications to the Existing Approval is set out in Table 1 of the Department's AR.
7. The Department's AR states that the Application seeks approval for:
 - "a minor extension of the Barrett Pit to extract an additional 1.97 million tonnes (Mt) of ROM coal, an
 - approximate increase of 4 % of the total approved resource; and
 - an additional 12 hectares (ha) of surface disturbance to facilitate the pit extension."
8. A comparison of the approved and proposed activities is set out in Table 2 of the Department's AR.
9. The Applicant's Statement of Environmental Effects (**SEE**) prepared by Umwelt (Australia)

Pty Limited (**Umwelt**) dated 12 November 2018 sets out the rationale for the Application in section 5.0 of the SEE.

3 THE DEPARTMENT'S CONSIDERATION OF THE APPLICATION

10. The Department received the Application in November 2018.
11. Paragraph 18 of the Department's AR stated that "*The Department has reviewed the scope of the modification application and considers that it would result in minimal environmental impacts and that the development, as proposed to be modified, would remain substantially the same development as last modified by the former Planning Assessment Commission in 2016.*"
12. Paragraph 19 of the Department's AR stated that "*the Department is satisfied that the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and can be assessed and determined accordingly*".
13. The Department's engagement and exhibition process is set out in section 4 of the Department's AR.
14. In response to the submissions received during exhibition of the Application, the Applicant submitted its Response to Submissions (**RtS**) prepared by Umwelt dated May 2019, including a revised air quality and Aboriginal cultural heritage assessment.
15. The Department's AR identified air quality, groundwater, Aboriginal heritage and rehabilitation as the key impacts associated with the Application.
16. The Department's AR states that the Application will generate:
 - *"continued employment for 300 people; and*
 - *\$6.3 million net present value (NPV) in additional royalties for the State of NSW"*.
17. The Department's AR concluded that the "*socio-economic benefits of the modification outweigh the incremental impacts associated with the continuation of mining for a further 8-month period, and that therefore the proposed modification is in the public interest and is approvable*".

4 THE COMMISSION'S CONSIDERATION

4.1 The Commission's Meetings and Site Inspection

18. As part of its determination, the Commission met with various stakeholders as set out in Table 1. All transcripts, meeting material and site inspection notes were made available on the Commission's website.

Table 1 – Commission's Meetings

Meeting	Date of Meeting	Transcript/Notes available on
Department	23 January 2020	3 February 2020
Applicant	23 January 2020	3 February 2020
Singleton Shire Council (Council)	5 February 2020	7 February 2020
Site Inspection	5 February 2020	7 February 2020
Public Meeting	6 February 2020	14 February 2020

4.2 Public Comments

19. All persons were offered the opportunity to provide written submissions to the Commission within 7 days after the public meeting.
20. The Commission received a total of 133 written submissions on the Application. The Commission notes that of the 133 submissions, 33 were made in relation to the Glendell Continued Operation Project which is currently being assessed by the Department. The Commission has no involvement in the Glendell Continued Operations Project at this stage and, as such, did not consider submissions in relation to the Glendell Continued Operations Project that did not relate to the Application.

4.3 Material considered by the Commission

21. In this determination, the Commission has carefully considered the following material (**material**):
 - previous modifications as referenced in paragraph 6;
 - the Applicant's SEE dated November 2018 and prepared by Umwelt, and its accompanying appendices;
 - all submissions made to the Department in respect of the proposed Application during public exhibition, from 22 November 2018 to 6 December 2018;
 - the Applicant's RtS dated May 2019 prepared by Umwelt, and its accompanying appendices;
 - all Government Agency comments on the RtS;
 - the Department's AR, dated November 2019;
 - the Department's clarification letter, correcting two errors in the Department's AR, dated 21 January 2020;
 - the Applicant's response to questions on notice, dated 3 February 2020;
 - the Department's response to questions on notice, dated 4 February 2020;
 - the Applicant's response to the site inspection questions on notice, dated 7 February 2020;
 - all speaker comments made to the Commission at the public meeting held on 6 February 2020 as well as material presented at that meeting;
 - Council's comments to the Commission, dated 12 February 2020;
 - all written submissions received by the Commission up until 13 February 2020; and
 - the Department's response to the Commission, dated 27 February 2020.

4.4 Mandatory considerations

22. In determining this application, the Commission has taken into consideration the following relevant mandatory considerations, as provided in s 4.15(1) and s 4.55(3) of the EP&A Act (**mandatory considerations**) as are relevant to the Application:
 - the provisions of all:
 - environmental planning instruments (**EPis**); and
 - proposed instruments that are or have been the subject of public consultation under the EP&A Act and that have been notified to the Commission (unless the Secretary has notified the Commission that the making of the proposed instrument has been deferred indefinitely or has not been approved); and
 - development control plans; and
 - planning agreements that have been entered into under s 7.4 of the EP&A Act, and draft planning agreements that a developer has offered to enter into under s 7.4;
 - the *Environmental Planning and Assessment Regulations 2000* (**Regulations**) to the extent that they prescribe matters for the purposes of s 4.15(1) of the EP&A Act;

- that apply to the land to which the Application relates;
- the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality;
- the suitability of the site for development;
- submissions made in accordance with the EP&A Act and Regulations;
- the public interest; and
- the reasons given by the consent authority for the grant of the Existing Approval.

4.5 Additional Considerations

23. In determining this Application, the Commission has also considered the:
- *Approved Methods and Guidance for the Modelling and Assessment of Air Pollutants in NSW 2016 (Approved Methods 2016)*; and
 - Voluntary Land Acquisition and Mitigation Policy (**VLAMP**);

4.6 Environmental Planning Instruments

24. The Commission has taken into consideration the following EPIs which apply to the Site:
- *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*;
 - *SEPP (Mining Petroleum Production and Extractive Industries) 2007 (Mining SEPP)*;
 - *SEPP No. 55 – Remediation of Land (SEPP 55)*;
 - *SEPP No. 33 – Hazardous and Offensive Development*;
 - *SEPP No. 44 – Koala Habitat Protection*;
 - *Singleton Local Environment Plan 2013 (SLEP)*;
 - *Upper Hunter Strategic Regional Land Use Plan 2012*; and
 - *Upper Hunter Regional Plan 2036*.
25. The Commission agrees with the Department’s assessment of these EPIs as set out at paragraph 25 of the Department’s AR that the “*modification can be carried out in a manner that is consistent with their aims, objectives and provisions*”.

4.7 Development Control Plans

26. The Commission has considered the Application with regard to the Singleton Development Control Plan (**DCP**) 2014. The Commission finds that the Application aligns with the intent of the DCP because the Site is currently an operational coal mine and its continued use is an orderly and economic use of the land and is consistent with the aim to provide for the orderly and economic use and development of land in Singleton local government area (**LGA**).

4.8 Planning Agreements

27. The Commission understands that there are currently no planning agreements entered into for either the Project or the Application under s 7.4 of the EP&A Act.

4.9 The Suitability of the Site for Development

28. Paragraph 23 of the Department’s AR states that “*Given the modification is of minimal impact compared to the approved project, key relevant matters for consideration, such as site suitability remain consistent with original approval and subsequent modifications*”.
29. The Commission agrees with the Department’s assessment as set out in paragraph 28. The Commission finds that the land use is acceptable and the site is suitable for mining because the works proposed in the Application occur wholly within an approved, and already

disturbed, mining area.

4.10 Likely impacts of the development on both natural and built environments

30. The Department has assessed the likely impacts of the development in section 5 of the Department's AR. The Commission has considered the key issues relating to the Application as set out below.

4.10.1 Air Quality

Public Comments

31. The Commission heard concerns from speakers at the public meeting and received written submissions regarding the impact of the Application on air quality. Members of the community raised concerns regarding the health impacts of dust that is a result of mining activities.

Applicant's Consideration

32. An Air Quality Review Report prepared by Jacobs Group (Australia) Pty Limited (**Jacobs**), dated 31 October 2018 was submitted with the Applicant's SEE. The Air Quality Review Report stated that the "*Project Modification will be minor in nature and that there will not be an increase in the potential air quality impacts, over and above that currently approved. Activities and emissions associated with the extraction of the additional 2.5 Mt ROM coal and additional eight months duration of mining will however need to be managed in accordance with current air quality management practices.*"

33. An Air Quality Assessment (**AQA**) prepared by Jacobs, dated 9 May 2019 was submitted with the RtS at the request of the Department. The AQA concluded that:

"emissions for the Proposed Modification are expected to be within maximum levels estimated for the Approved Operations".

"the Proposed Modification will be minor in nature and there will not be an increase in the potential air quality impacts, over and above that currently approved".

"The predicted maximum contributions of the Proposed Modification to air quality are less than the predicted maximum contributions of the Approved Operations at all private sensitive receivers".

Department's Assessment

34. Paragraph 42 of the Department's AR stated that "*community submissions raised concerns that air quality impacts were not considered against the most contemporary air quality standards set by the National Environment Protection (Ambient Air Quality) Measure (NEPM) and EPA' s 2016 Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (Approved Methods 2016).*"
35. The Department's AR assessed the predicted air quality impacts of the Application at paragraphs 64 and 65. The Department's AR stated that the AQA showed that the Application would not materially alter particulate matter (PM) compared to the approved operations with only minor variations in the predicted modelled air quality contours.
36. Paragraph 65 of the Department's AR noted that the annual average contour shown in the Applicant's air quality modelling is the Approved Methods 2016's reduced criterion of 25 µg/m³. The Department concluded that "*the results support the qualitative assessment*

conclusion that there is minimal change to approved dust impacts”.

37. The Department’s AR assessed the predicted cumulative air quality impacts at paragraphs 66 to 73. The Department’s AR states that *“there is minimal change in the predicted PM₁₀ and PM_{2.5} dust contours comparing the approved operations to the proposed modification, with some minor changes to the predicted contour close to Camberwell (moving away from the residences)”*.
38. In relation to cl 12A of the Mining SEPP and the VLAMP, paragraph 73 of the Department’s AR states that *“as the modification does not involve an increase to the approved dust impacts, the Voluntary Land Acquisition and Mitigation Policy 2018 (VLAMP) also does not apply and no mitigation or acquisition rights are recommended”*. The Department concluded that all receivers likely to experience an exceedance of the air quality criteria would be appropriately considered under the various mining consents in this area.
39. The Department, in its response to the Commission dated 27 February 2020 stated that:
“Existing condition 20 requires that Glencore comply with the air quality criteria at any residence on privately-owned land, except for those residences listed in Table 1, who are eligible to request mitigation and/or acquisition. If the annual PM₁₀ air quality criterion was revised to 25 µg/m³ Glencore would be unable to comply with this limit and would automatically be in noncompliance at four receiver’s located in middle Falbrook area (ie these receivers are located between the predicted 25 µg/m³ and 30 µg/m³ PM₁₀ contour, see Attachment A) because they have acquisition rights for air quality from other nearby mining operations but not under the Glendell Mine consent.”
40. The Department stated that the EPA did not raise any concerns with the AQA and did not recommend any changes to existing conditions (see paragraph 63 of the Department’s AR).

Commission’s Findings

41. The Commission agrees with the Department’s assessment that the Application would result in minimal change to the approved Project’s dust impacts and predicted PM₁₀ and PM_{2.5} dust contours as stated in paragraphs 34 to 37.
42. The Commission acknowledges the concerns raised by the community in paragraphs 31 and 34 in relation to the potential air quality impacts of the Project and that initially the air quality impacts were not considered against the most contemporary air quality standards (being the air quality standards set out in the Approved Methods 2016 and reflected in the VLAMP and cl 12AB(4) of the Mining SEPP). The Commission noted that an updated air quality assessment was undertaken by the Applicant.
43. The Commission wrote to the Department on 18 February 2020 seeking comment on the workability of a new condition 20A, lowering the existing annual average PM₁₀ criterion for the Application from 30 µg/m³ to 25 µg/m³ in accordance with the *Approved Methods 2016*. The Commission agrees with the Department’s response in paragraph 39 that the 2018 revision of the VLAMP does not apply as the modification does not involve an increase to the approved dust impacts. The Commission notes that the 2018 revision of the VLAMP applies to *“modification applications that involve increases to the approved dust or noise impacts of a development”* (pg4). The Commission therefore finds that the 2018 revision of the VLAMP does not apply and that the conditions as recommended by the Department are appropriate.

4.10.2 Greenhouse Gas Emissions

Public Comments

44. The Commission heard concerns from speakers at the public meeting and received written submissions regarding the impact of the Project's Greenhouse Gas (GHG) emissions. Concerns were raised regarding the cumulative impact of coal mining activities on climate change. Concerns were also raised in relation to intergenerational equity, noting that additional coal mining activities will result in short term benefits, where the environmental costs will be borne by future generations.

Applicant's Consideration

45. The Applicant's SEE states that *"in order to manage the potential greenhouse gas emissions associated with the Proposed Modification Glendell Mine will continue to operate in accordance with the existing Greenhouse Gas and Energy Efficiency Plan"*.
46. The Applicant, in its response to the Commission dated 3 February 2020, stated that *"with regards to greenhouse gas emissions from Glendell, calculation and reporting of emissions is undertaken in accordance with the requirements of the National Greenhouse and Energy Reporting Act 2007 (NGER Act) as administered by the Department of Environment and Energy (DoEE)"*. The Applicant also stated that *"there is no requirement or obligation under Australian law to report Scope 3 emissions, as Scope 3 emissions will be captured by the controlling corporations directly responsible for generating emissions (i.e. [in their] Scope 1 emissions)"*.
47. The Applicant, in its response to the Commission dated 3 February 2020, provided further information in relation to the Application and Glencore's global cap for GHG emissions:

"Last year, Glencore announced an annual coal production cap. This cap applies to Glencore's global coal production and not greenhouse gas emissions. Coal production from Glendell, including the coal that would be produced if Mod 4 is approved, is included within this cap and meets an established global demand for thermal coal. In 2017, Glencore announced a target of reducing Glencore's greenhouse gas emissions intensity by 5% by 2020 compared to a 2016 baseline. We are currently on track to meet this target."
48. The Applicant, in its response to the Commission dated 7 February 2020, provided further information in relation to how the Safeguard Mechanism baseline value was derived for Glendell. The Applicant stated that:

"The current Safeguard Mechanism baseline value, which is used for current Energy Efficiency Rating (EER) reporting, was set by the Clean Energy Regulator and is based on the highest level of annual reported emissions for Glendell between the period 2009/10 to 2013/14. The value determined at that time was 448,015 CO₂-e when the Safeguard Mechanism commenced 1 July 2016."

Department's Assessment

49. Paragraph 46 of the Department's AR stated that *"submitters raised several concerns about greenhouse gas emissions and anthropogenic climate change"*.
50. The Department's AR assessed the impacts of Scope 1 and 2 GHG emissions at paragraphs 76 to 79. In relation to the Application's Scope 1 and 2 GHG Emissions, the Department concluded that *"this is a minor incremental increase that represents a very small percentage of NSW and Australia's global contributions"*. In relation to Scope 3 emissions, the Department stated that the *"modification represents a very small increase when compared*

to the global total’.

51. Paragraph 79 of the Department’s AR recommended that that the existing Greenhouse and Energy Efficiency Plan condition be replaced with an Air Quality and Greenhouse Gas Management Plan condition which requires implementation of best practice management measures to minimise greenhouse gas emissions and improve energy efficiency.
52. The Department, in its response to the Commission dated 3 February 2020, revised its recommended Air Quality and Greenhouse Gas Management Plan condition to incorporate additional aspects (at Condition 53 of Schedule 3) which require the Applicant to include a program to monitor GHG emissions and energy use generated by the Application.

Commission’s Findings

53. The Commission notes the Applicant’s statement in paragraph 47 that Glencore has committed to an annual thermal coal production cap for its global operations and that coal produced under this Application will be included in that cap. The Commission also notes that Glencore has announced a target of reducing Glencore’s greenhouse gas emissions intensity by 5% by 2020 compared to a 2016 baseline. The Commission understands that Glencore are on track to meet this target as set out in paragraph 47.
54. The Commission acknowledges the concerns raised by the public in paragraph 44. However, the Commission is of the view that the minor extension of the Barrett Pit and extraction of an additional 1.97 Mt of ROM coal over an 8 month period will result in a minor increase in GHG emissions which are accounted within the reduction strategy Glencore has in place for its global GHG emissions.
55. The Commission finds that the conditions recommended by the Department in paragraph 51 and 52 will assist in ensuring that best practice management measures are adopted to monitor and minimise GHG emissions and energy use resulting from the Application.

4.10.3 Aboriginal Heritage

Applicant’s Consideration

56. An Aboriginal Archaeological Due Diligence Assessment (**AADDA**) undertaken by OzArk Environmental and Heritage Management Pty Limited (**OzArk**) dated November 2018 was submitted with the SEE.
57. The SEE stated that based on the recommendations from the AADDA, the following mitigation measures will be implemented:
 - the Mount Owen Complex Aboriginal Cultural Heritage Management Plan (**ACHMP**) will be updated;
 - the collection of surface artefacts should follow the procedure set out in the ACHMP; and
 - updates to the ACHMP will include consultation with the Aboriginal community.
58. The Applicant’s RtS stated that at the request of the Office of Environment and Heritage (now Environment, Energy and Science), an Aboriginal Cultural Heritage Assessment Report (**ACHAR**) was prepared in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents so that the cultural values of the Proposed Disturbance Area could be identified. The Applicant stated that Registered Aboriginal Parties (**RAPs**) were consulted however, no feedback was received.
59. The Applicant’s RtS stated that “*the existing Mount Owen Complex ACHMP will be updated*”

to include the management and mitigation measures recommended in the ACHAR (refer to Appendix 1), in consultation with the Mount Owen Complex Aboriginal Cultural Heritage Working Group”.

Department's Assessment

60. Paragraph 52 of the Department's AR stated that “submitters raised concerns over the Applicant's assessment of impacts on Aboriginal heritage, including that the registered Native Title parties were not consulted, a heritage protection application by the PCWP under section 9 and section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) was not discussed and that the assessment did not consider recent information from an article in the Newcastle Herald on a historic massacre of Aboriginal people in the area.”
61. The Department undertook an assessment of Aboriginal heritage at paragraphs 103 to 115 of the Department's AR.
62. Paragraph 114 of the Department's AR stated that the “BCD (now Environment, Energy and Science) advised the Department that it was satisfied that the Applicant's RTS adequately addressed its concerns regarding Aboriginal cultural heritage”.
63. Paragraph 115 of the Department's AR concluded that “there would be minimal impacts on Aboriginal cultural heritage as a result of the proposed modification” and that the existing conditions of consent remain appropriate.

Commission's Findings

64. The Commission agrees with the Department's assessment as set out in paragraphs 62 to 63 that there will be minimal impact on Aboriginal cultural heritage as a result of the Application. However, the Commission has updated Schedule 3 - Condition 44 as set out below, in order to ensure that new items that were unknown as of April 2008 will be considered in the ACHMP:

ABORIGINAL CULTURAL HERITAGE

Aboriginal Cultural Heritage Management Plan

44. *The Applicant must prepare an Aboriginal Cultural Heritage Management Plan to the satisfaction of the Secretary. This plan must:*
 - (a) *be prepared in consultation with BCD and the Registered Aboriginal Parties;*
 - (b) *be submitted to the Secretary for approval by the end of April 2008 prior to the disturbance of any Aboriginal object or site; and*
 - (c) *include a:*
 - *management plan for all Aboriginal sites and potential archaeologically sensitive areas within the development disturbance area;*
 - *detailed description of the measures that would be implemented to protect Aboriginal sites and potential archaeologically sensitive areas outside the development disturbance area;*
 - *description of the measures that would be implemented if any new Aboriginal objects or skeletal remains are discovered during the development; and*
 - *protocol for the ongoing consultation and involvement of the Registered Aboriginal Parties in the conservation and management of Aboriginal cultural heritage on the site.*

The Applicant must implement the approved plan as approved from time to time by the Secretary.

4.10.4 Rehabilitation, Mine Closure and Final Void

Council Comments

65. The Council, in its submission to the Commission dated 12 February 2020, raised concerns regarding mine closure stating that *“the Glendell Mine is within five years of closure, in that it does not have an approval to operate beyond 2024 with production scheduled to cease in 2023. As such, detailed mine closure planning should have commenced in accordance with its obligations under its existing development approval and Mining Lease”*.
66. The Council recommended that the conditions related to mine closure be revised by the Commission to require the Applicant to develop a detailed mine closure plan commencing immediately. The Council stated that these actions should be undertaken in consultation with the Council.
67. The Council also provided suggested wording for the development of a detailed final land use strategy. The Council stated that *“the development of a final land use strategy is essential in providing confidence to the community that mine closure is being adequately planned for throughout the life the mine”*.

Applicant’s Consideration

68. The Applicant in its SEE states that *“progressive rehabilitation is undertaken at the Glendell Mine in accordance with the Mount Owen Complex Mining Operations Plan (MOP) and the Mount Owen Complex Biodiversity and Offset Management Plan (BOMP). The Proposed Modification does not alter the broad mine closure and rehabilitation commitments and practices currently implemented at Glendell Mine.”*
69. The Applicant’s SEE also states that *“the key final landform design parameters relate to the establishment of a natural undulating landform and meeting the rehabilitation objectives relevant to the Approved Operations. There are no additional voids within the final landform as part of the Proposed Modification.”*
70. In relation to mine closure, the Applicant’s SEE stated that a Mine Closure Plan for the Project has been prepared in accordance with Condition 42 of the Existing Approval as modified before the Application. The Applicant stated that *“the conceptual mine closure plan will be refined through additional analysis and assessment and confirmed prior to closure”*.
71. In the RtS, that Applicant stated that the *“Proposed Modification would result in only very minor changes to the approved final landform and maintains the commitments and strategies developed for the approved operations to maximise the visual and ecological benefits of the rehabilitation. It is considered that a minor modification of this extent does not warrant significant change to the approved final landform. No additional voids are proposed as part of the Proposed Modification.”*

Department’s Assessment

72. Paragraph 44 of the Department’s AR stated that *“some submitters were concerned that a final void would be retained after mine closure and that the agricultural land class would be lowered, reducing land value and productivity for future use. Submitters argued that if it is uneconomic to backfill a mining void, the project must not be financially viable, and it should not be approved.”*
73. The Department undertook an assessment of the rehabilitation and final void impacts at paragraphs 116 to 122 of the Department’s AR. The Department concluded in paragraph 112 of the Department’s AR *“that the scale of changes to the conceptual landform are minor*

compared to the approved landform, which includes an approved final void, and notes that the Resources Regulator did not raise any issues regarding the proposed final landform". The Department also stated that the "modification would have a minimal impact on rehabilitation outcomes at the site. The Department has recommended the conceptual final landform diagram is updated in the development consent to reflect the modification."

74. The Department, in its response to the Commission dated 27 February 2020 stated that:

"A standalone Landscape Management Plan (including a Mine Closure Plan and Final Void Plan) was last approved for Glendell Mine by the Department in 2014, prior to being combined with other Complex wide management plans".

"Existing conditions of consent for Glendell Mine require management plans to be reviewed and updated within three months of a modification. Therefore, Glencore would be required to review and update the MOP (and other relevant management plans) should the modification be approved."

"The Department notes that it is generally accepted that detailed mine closure planning would occur within five years of scheduled closure and agrees with Council's comments that should this modification be approved Glencore must provide a more detailed mine closure plan for Glendell Mine, regardless of the proposed Glendell Continued Operations Project."

75. The Department, in its response to the Commission, stated that:

"it is the Department's view that the existing conditions of consent for rehabilitation and mine closure planning for the Complex are comprehensive and any additional conditions, such as the one proposed by Council, would duplicate existing requirements".

"Council is required to be consulted on any revisions to the relevant management plans. The Department considers that Council's advice would be considered in subsequent revisions of the relevant plans should the proposed modification be approved."

Commission's Findings

76. The Commission agrees with the findings of the Department as set out in paragraph 73, that the Application will have a minimal impact on the conceptual landform and rehabilitation outcomes for the Site.
77. The Commission acknowledges Council's concerns and recommendations set out in paragraph 65 and 66. The Commission wrote to the Department on 18 February 2020 seeking comment on Council's recommendations to consider a new condition of consent requiring the development of a Final Land Use Strategy as Glendell Mine is within five years of mine closure. The Commission notes the Department's response in paragraph 74 that the existing conditions of consent for Glendell Mine require management plans to be reviewed and updated within three months of a modification and that the Applicant would be required to review and update the Mine Operations Plan (and other relevant management plans) should the modification be approved.
78. The Commission also notes that the Department generally accepts that detailed mine closure planning would occur within 5 years of scheduled closure. The Commission agrees with the Department's and Council's comments that should this modification be approved, Glencore must propose a more detailed mine closure plan (see paragraph 74).
79. The Commission is therefore of the view that the existing conditions of consent for rehabilitation and mine closure planning recommended by the Department are suitable and that Council will be consulted on any revisions to the management plans as stated by the

Department in paragraph 75.

4.11 Other

Groundwater

80. The Department undertook an assessment of the groundwater impacts in section 5.2 of the Department's AR. The Department's AR concluded that *"The proposed modification represents an incremental change to the existing approved mining operations. The Department considers that the proposed modification would not have an impact greater than that already approved for the existing operations, and that no additional conditions are required."*
81. The Commission agrees with the Department's assessment in paragraph 80 and is of the view that the existing conditions are appropriate in managing groundwater impacts.

Impacts on Rainwater Tanks

82. The Commission heard from speakers at the public meeting who raised concern regarding the impacts of dust on rainwater tanks. Concerns were raised regarding the contamination of water as a result of dust from mining operations.
83. The Department undertook an assessment of impacts of deposited dust on rainwater tanks in paragraph 74 and 75 of the Department's AR. The Department's AR stated that *"in response to submitter's concerns about impacts of dust on rainwater tank quality, the Applicant confirmed that DA 80/952 has no existing requirement to inspect and if necessary clean rainwater tanks"*.
84. The Department's AR concluded that *"The Department does not consider a condition requiring inspection and/or cleaning of rainwater tanks necessary given the scale of this modification and as the existing obligation under the Mount Owen consent would generally encompass receivers close to Glendell Mine"*.
85. The Commission acknowledges that there is no existing requirement under DA 80/952 for the Applicant to inspect and clean rainwater tanks. The Commission agrees with the Department's assessment in paragraphs 83 and 84 and finds that a condition requiring the inspection and/or cleaning of rainwater tanks is unnecessary given the Mount Owen consent generally encompasses privately owned receivers in the vicinity of the Project and there is evidence of Glencore being approached and subsequently cleaning a rainwater tank.

4.12 Objects of the Act

86. The Department has undertaken an assessment of the Application against the relevant objects of the EP&A Act at paragraphs 26 and Table 3 of the Department's AR.
87. The Commission agrees with the Department's assessment referred to in paragraph 86 and is of the view that the Application is consistent with the relevant objects of the EP&A Act.

4.13 The public interest

88. The Department's AR states that *"The Department considers that the socio-economic benefits of the modification, including continued employment of the Glendell workforce and about \$8.5 million of additional royalties to the NSW Government, outweigh the incremental impacts, and that therefore the proposed modification is in the public interest and is approvable."* (pg iii).

89. The Commission agrees with the Department's assessment in paragraph 88 and is of the view that the Application is in the public interest as it is consistent with the relevant objects of the EP&A Act and on balance the benefits outweigh the costs of the Application.

5 CONCLUSION: THE COMMISSION'S FINDINGS AND DETERMINATION

90. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process) as outlined in paragraphs 31, 34, 44, 49, 60 and 82. The Commission carefully considered all of these views as part of making its decision. The way in which these concerns were taken into account by the Commission is set out in section 4 above.

91. The Commission has carefully considered the Material before it.

92. For the reasons set out in this Statement of Reasons, the Commission has determined that the Application should be granted consent subject to conditions which have been designed to:

- prevent, minimise and/or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the on-going environmental management of the development.

93. The reasons for the Decision are given in this Statement of Reasons for Decision dated 4 March 2020.



Stephen O'Connor (Chair)
Member of the Commission



Professor Zada Lipman
Member of the Commission



Professor Chris Fell AM
Member of the Commission