



Environmental Defenders Office

Our Ref: S3052

22 April 2022

Ms Dianne Leeson
Panel Chair
Independent Planning Commission

C/O:
Mr Stephen Barry
Planning Director
Independent Planning Commission



Dear Chair

Glendell Continued Operations SSD 9349 & SSD 5850 MOD 4– additional material and correction of errors

1. We refer to the statement released by the Commission on 13 April 2022, advising of the reopening of public submissions for the Glendell Continued Operations SSD 9349 & SSD 5850 MOD 4 (**Project**) with respect to four pieces of new material. On behalf of our clients, Wonnarua traditional owners Mr Scott Franks and Mr Robert Lester, we thank the Commission for the opportunity to make a submission in relation to this new material.
2. We set out below submissions on behalf of our clients with respect to the additional material. As a preliminary matter, we note certain factual errors or misunderstandings of our clients' evidence made by the proponent in its response to our clients' evidence.

Factual errors including transcription errors in relation to, and misrepresentation of, our clients' evidence in the proponent's April 2022 submission

3. We acknowledge the note in the 13 April statement that:

The Commission has reviewed Glencore's submission, dated April 2022, responding to the Environmental Defenders Office's Submission to the IPC and is of the opinion it presents no materially new information requiring further submissions. As such, the Panel is not seeking comment on the Glencore submission.

4. We note, however, that the submission in question (**Response**) contains material factual errors and misrepresentations of our clients' evidence, which affects the relevance of the

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April 2022 submission provided by the proponent and the weight that should be afforded to the affected portions of this submission.

A/Prof Draper's evidence of "raids and reprisals", not "graves and reprisals"

5. The Response devotes a great deal of attention to one phrase purportedly used by Associate Professor Neale Draper at the public hearing,¹ and uses that phrase to characterise A/Prof Draper's other evidence.
6. In fact, Attachment 2 to the Response a letter from Mr Ben Churcher of OzArk Archaeology dated 1 April 2022, is entirely devoted to responding to this phrase.
7. However, the critical word upon which this characterisation is based –“graves”- was not used by A/Prof Draper, **and is a transcription error**. The actual word used by A/Prof Draper was “raids”. This is apparent when considered in context.
8. A/Prof Draper indicated at the start of his presentation to the Commission that it was essentially a summary of the brief expert opinion he had provided to EDO,² which was subsequently provided to the Commission on 4 April 2020. That material does not contain the phrase “conflict graves and reprisals” but does state:

It is a central place in the colonial invasion and associated conflict and violence that resulted from the establishment of this and other estates in the 1820s, that lead to the deaths of many Wonnarua people, as well as some colonists. Numerous *conflict raids and reprisals*, with accompanying fatalities in most cases, took place on the Ravensworth estate, which had two main roads passing through it and was one of the earliest and largest of such enterprises in the Hunter valley in the 1820s and 1830s. (emphasis added)

9. It is clear from reading both the transcript and the A/Prof Draper's reports, that the word “grave” included in the transcript is an error. The Commission should therefore place very little weight on material responding to the incorrect phrase.

28 March 2022 Meeting between Commission, Heritage Council and Heritage NSW

10. The Commission has requested public submissions in relation to the transcript of its meeting of 28 March 2022 with representatives of the Heritage Council and Heritage NSW. In this meeting, the Panel requested guidance from those bodies on intangible cultural heritage and on apparently conflicting views amongst registered Aboriginal parties (**RAPs**) as to significance of the site.
11. At that meeting, the Panel Chair asked the Heritage NSW and Heritage Council representatives about the consideration of apparent differences of opinion on the cultural heritage significance of the Project area:

“I think what I'm interested in is, you know, if you've had examples of sites or areas that have actually been contested amongst different Aboriginal groups themselves and how you've managed to sort of work your way through those”.

¹ See Response at pp 1, Attachment 2.

² Day 2 Transcript, p 13.

“...[I]n this instance we appear to have conflicting views among registered Aboriginal parties about the significance of the precinct...”

The Leo Report would clarify the Commission’s questions in relation to purported disagreement

12. The report prepared by the independent anthropologist appointed by the Federal Minister for the Environment under s 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), Daniel Leo, (**Leo Report**) would greatly assist the Commission with this particular concern, as well as the Commission’s questions around intangible heritage values. The Leo Report comprehensively analysed and made findings on the evidence on the cultural significance of the area in question, which includes the Ravensworth Estate – in relation to submissions made by our clients, the proponent of the Project, and other relevant stakeholders including Mr Perry of WNAC.
13. It would, as we have previously submitted on behalf of our clients, be open to the Commission to commission its own report from an independent expert anthropologist which considers submissions from various parties, takes oral evidence from traditional owners, and synthesises and analyses the evidence on the cultural significance of the area, however given the timeframes within which the Commission’s decision-making is expected to be conducted we understand that this may be unachievable in a tight timeframe. In this circumstance, the Leo Report provides the means by which the Commission may have recourse to a comprehensive and independent assessment of Aboriginal cultural heritage values of the project area including independent findings on the significance of the site including an evaluation of the range of views held by various Aboriginal stakeholders including RAPs.

Understanding of significance requires identification of knowledge-holders - not all RAPs are knowledge-holders

14. It is important for the Commission to appreciate that Aboriginal cultural heritage values of a place are multifaceted and complex, and the assessment of these values for a particular place, is a qualitative, not quantitative process. This is clear from relevant NSW Government guidance and other guidance material specified in the Project SEARs.
15. For instance, Fact Sheet 1 to the *Consultation requirements for proponents* (a guidance document required by the SEARs) states that (our emphasis):

Notably, specific details and aspects or areas of cultural knowledge are generally held and maintained by individuals or within particular family groups. Although the broader community may be aware of the general features or elements of that knowledge, it is not a common practice within Aboriginal society for detailed cultural knowledge to be vested in the broader community or within Aboriginal community organisations, although it is these organisations that often defer to particular individuals or family groups as being the knowledge-holders of particular sets of cultural knowledge about places or the environment.

16. That is, not all Aboriginal people in an area will necessarily have knowledge of the cultural significance of places. **It does not follow that because some RAPs do not hold particular cultural values in relation to a place, that such values in relation to that place do not**

exist at all. As A/Prof Draper put it, where no cultural values were expressed by a particular RAP in relation to a place, this was “because they did not have any knowledge of or connections to the place, and not because such values are absent.”

17. The *Consultation requirements for proponents* notes the importance of the involvement of relevant knowledge holders in the consultation process (our emphasis):

Proponents must provide the opportunity for Aboriginal people *who hold cultural knowledge relevant to determining the significance of Aboriginal objects and/or places as relevant to the proposed project area* to be involved in consultation

18. It is also important to understand that there are different kinds of cultural knowledge, and those who are holders of some types of knowledge (e.g. derived from historical connection) may not hold cultural knowledge of another type (e.g. traditional cultural knowledge, or knowledge derived from different historical connections). This is recognised in the *Consultation requirements for proponents*:

“3.3.1 Who can provide this information?”

Aboriginal people who can provide the information outlined in 3.3 above are, based on Aboriginal lore and custom, the traditional owners or custodians of the land that is the subject of the proposed project. Traditional owners or custodians with appropriate cultural heritage knowledge to inform decision making who seek to register their interest as an Aboriginal party are those people who:

- continue to maintain a deep respect for their ancestral belief system, traditional lore and custom
- recognise their responsibilities and obligations to protect and conserve their culture and heritage and care for their traditional lands or Country
- have the trust of their community, knowledge and understanding of their culture, and permission to speak about it.

In some cases, the information required for decision making will be held by Aboriginal people with statutory recognition for certain lands:

- Aboriginal owners in accordance with the NSW ALR Act and/or
- Native title holders or registered native title claimants in accordance with the Native Title Act 1993 (Cth) and NSW Native Title Act 1994

It is acknowledged that Aboriginal people who, through a historical presence in a particular area, may have developed cultural knowledge relevant to the Aboriginal objects and/or places based on knowledge passed down to them by Aboriginal people with a traditional connection to Country. DECCW respects the rights of Aboriginal people with a historical connection to Country to, with their permission, act on behalf of Aboriginal people with a traditional connection to Country. *DECCW acknowledges that in some cases it will only be Aboriginal people with a historical connection to an area who have the knowledge to inform the assessment of cultural significance of certain objects/places; e.g. on Aboriginal reserves and missions.”*

19. Under the regulatory framework governing protection of Aboriginal cultural heritage in NSW, there is no requirement for RAPs to have a cultural association (traditional or

otherwise) with the place an assessment is being carried out over. This is a matter of some frustration for those with cultural knowledge (traditional, historical or other), and is a systemic issue in the application of the regulatory framework concerning consultation on Aboriginal cultural heritage. Mr Franks and Mr Perry have expressed to the Commission.³:

Mr Franks noted that “[w]e’ve seen, in my time as the chairperson, I seen five Registered Aboriginal Parties evolve to date to 110 Registered Aboriginal Parties and the reason that’s happening is because, as a Registered Aboriginal Party, Glencore Coal, and I’m not speaking for any other groups, but they will pay me as a RAP \$800 a day.”⁴

Mr Perry noted that “...it’s frightening to see that the wealth being made by mining companies is being made, and the Aboriginal people get consulted on one, one development consent after another to basically, to engage, and that’s because you’re engaging under the Act to consult. The consulting process doesn’t mean employment. There’s over a hundred Aboriginal Registered Parties underneath the consultation process, which is totally ridiculous, and it needs to be fixed up.”⁵

The PCWP are Traditional Owners and have associated knowledge

20. Our clients and the PCWP families are traditional owners for the Project area.
21. They are recognised by the applicant as one of two knowledge holder groups registered as RAPs for the Project.
22. The Commission heard from Mr Franks of his family’s traceable and continued connection with the area, and how it was that this connection was able to be maintained, as well as interactions with other groups of Aboriginal people with different connection to country (e.g. those families whose primary connection with the area is the St Clair mission).⁶
23. By way of example, our clients and, we are instructed, the PCWP families do not consider the St Clair mission site of especial cultural significance to their families, however do not deny that it is a site of heritage significance for other Aboriginal families in the area with historical connection to that site, such as those associated with WNAC. Similarly, although Mr Perry asserted that WNAC families do not have any oral history relating to any “massacres at Ravensworth”, this does not undermine oral history of other family groups who have a connection to the Estate and who do have family knowledge of atrocities committed against Aboriginal people on and from the Estate.
24. Our clients are of the view, as the Commission has heard,⁷ that the current WNAC families are peoples associated with the St Clair mission and who therefore have not had the continuous and ongoing traditional cultural connection to the broader area that the PCWP families have, including the Project area, and therefore are unlikely to have cultural knowledge arising from before the establishment of the mission.

³ See, for example IPC meeting with Mr Franks, Transcript pp 3-8

⁴ IPC meeting with Mr Franks, Transcript p 13

⁵ IPC meeting with Mr Perry, Transcript pp 5-6

⁶ See, for example IPC meeting with Mr Franks, Transcript pp 3-8.

⁷ See, for example, Draper 2020, p 53; IPC meeting with Mr Franks, Transcript p 13.

25. In contrast, our clients and the PCWP families have placed evidence before the Commission⁸ that their cultural knowledge includes traditional knowledge and knowledge of the role of the Ravensworth Estate in the dispossession of the Wonnarua people.
26. The Commission heard from Mr Franks in its 8 March meeting about his family's continuing connection with the area, and the passing down of traditional cultural knowledge to him.⁹ Material already before the Commission documents the longstanding position of the PCWP families that the Ravensworth Estate was a significant place associated with deaths of their ancestors, and of cultural practices associated with that. For example:
- a. "Maria Stocks was told by her mother, Barbara Foote that terrible things happened at Ravensworth in the early colonial years. She was told that Aboriginal men were buried out there in shallow graves. She was told a lot of younger Aboriginal boys were decapitated and buried there they had not been initiated into adulthood through the Bora ceremonies (Maria and David Stocks Interview 18/02/2020, Draper 2020: 66)."¹⁰
 - b. "[Maria Stocks and David Foot's] parents also told them that the 'old people' camped near Ravensworth homestead, but they didn't recall any further details. David Foot said that a lot of their relatives were born around Camberwell, near Ravensworth. Pop was born at Garangula. They were born all along Glennies Creek. David said his Dad took him to Ravensworth town site, but not to the homestead. (ND&A 2020: video0022)."
 - c. "There is one remarkable exception to the avoidance of Ravensworth by recent generations of this family. In the mid-1970s when Maria was about 13-14 years old, her mother took her to attend a smoking ceremony near the creek (York Creek), close to Ravensworth homestead. There were other women there and other girls too, including Wilma, Barb's sister and Maria's cousin Gail (mother's sister's daughter). There were no men present. The women collected pampas grass from the Ravensworth front garden, with the big "tails", and laid it on the ground in a star pattern. There was a small, smoky fire going. Maria doesn't know what the purpose of this was. Her grandmother was sitting, rocking back and forth and humming. A few of the older women did that, but not her mother or Wilma. She wasn't allowed to stand close, and with Gail had to stand back. The adult women painted their fingertips white, and put scented oil on their foreheads. Maria was not told the purpose of this ceremony at Ravensworth. It was most unusual, because otherwise they always stayed away from the place. It was some kind of Women's business, and she was not told more about the meaning of the event, and was told not to talk about it probably because she was too young to be told. This was during the time when the Marshalls still owned the homestead, but she doesn't know them and there were no white people present (Maria and David Stocks Interview 18/02/2020, Draper 2020: 66)."¹¹

⁸ See Tocomwall PCWP Values Report, Draper Reports, IPC meeting with Mr Franks.

⁹ See IPC meeting with Mr Franks, Transcript p 13.

¹⁰ Draper 2020, p 42.

¹¹ Draper 2020, p 52.

- d. “Maria Stocks spoke of her grandmother, Alma Shearer, who told them that when her mother was still alive (Maria’s GGM) they were near Bowman’s Creek, with a group of relatives, fishing at some fish traps. They saw horsemen coming. Troopers with guns and swords. Alma’s mother’s sister was there with her children, and they ran away to hide. There were half a dozen mounted troopers, who chased them. In the pursuit. Two small children were shot, and Alma’s mother was grabbed by horsemen and stabbed. Others hid up in the gullies near Bowman’s creek. Another, pregnant woman was chopped with a sword and disemboweled. (Maria and David Stocks Interview 18/02/2020, Draper 2020: 66). To the best of my knowledge, there is no written historical record of this event.”¹²

“Majority rules” is not an appropriate metric for assessment of Aboriginal cultural heritage

27. We note Dr Shaun Canning’s letter to the applicant dated 30 March 2022 in relation to our clients’ evidence on heritage values, at Attachment 1 to the Response. This letter evidences a fundamental error in the approach taken by the applicant (through its consultants):

- a. Dr Canning repeatedly implies that the assessment of Aboriginal cultural heritage significance of the site should be determined by a “majority rules” approach.¹³ This is at odds with prescribed guidance material such as the *Consultation requirements for proponents* and the *Australia ICOMOS Cultural Heritage Assessment Practice Notes* which emphasise that cultural knowledge may be held by only a small number of people or families and therefore the importance of identifying cultural knowledge holders/traditional owners.
- b. Dr Canning says that “All concerned should understand presenting hearsay as fact does not make it so.”. For the author of the Project cultural heritage assessment to describe oral history of traditional and cultural knowledge as “hearsay” is extremely concerning.¹⁴ The importance of oral history in understanding Aboriginal cultural heritage is fundamental. This is recognised by NSW and Commonwealth uniform evidence legislation, see for example sections 72 and 78A of the *Evidence Act 1995* (NSW) for special laws recognising the importance of oral history in the giving of evidence by Aboriginal witnesses.
- c. Again, the focus of this document is on “massacres”, which misunderstands the site’s significance as a central to a theatre of war between the Wonnarua and the European colonisers.

¹² A/Draper notes that this oral history is a “concatenation of generations and individuals” and is likely to refer to the generation of Mary Shoe, Alma’s great-great grandmother. A/Prof Draper notes that “[i]t is quite common for oral history passed down in families to undergo this kind of concatenation after three or four generations, in terms of the attribution of the original participants or witnesses at the origin of the story. In this case, we are looking at six or seven generations, and a time period of approximately 200 years. This does not invalidate the content of the story, which may persist for many generations (though probably in increasingly attenuated form), long after the correct genealogical association has been lost.” – Draper 2020, p 42.

¹³ See, for example, Dr Canning’s statement that “Where there is such fundamental disagreement of fact, the weight of opinion and knowledge of the many (the individual RAP’s and the large numbers represented by WNAC) should outweigh the scientifically and historically unsubstantiated views of a few (the members of the smaller PCWP group).” Response at pp 17.

¹⁴ Response at pp 16.

Juukan Gorge Inquiry discussed conflict around who can speak for country

28. The Chair asked the Heritage Council and Heritage NSW representatives about apparently conflicting views amongst RAPs about significance.
29. The complicated and sensitive matter of identifying knowledge-holders in the context of over 200 years of State-sanctioned dispossession was identified by the Juukan Gorge Inquiry as a significant issue across Australian jurisdictions:

Currently no heritage framework successfully grapples with how to identify the correct Aboriginal and Torres Strait Islander group/s to speak with about heritage sites. The recognition of traditional owners is complicated by a long history of state-sanctioned disconnection of Aboriginal and Torres Strait Islander peoples and their lands and compounded by complicated legislative frameworks at multiple levels of government.¹⁵

...

Identifying appropriate and representative spokespeople is more problematic in areas where there is no clearly defined entity with statutory responsibility. However, many of the disputes about overlapping claims or entitlements to speak for country are a product of divisions caused by colonisation and Anglo-Australian laws. Native Title Law has unfortunately seen division and counter claims between applicants and respondents within Aboriginal and Torres Strait Islander people contending for Native Title recognition over claimable land.¹⁶

30. The Inquiry noted that this is an issue that proponents of development proposals, including developers of mining projects, have sought to exacerbate for their own benefit:

The Committee heard examples where dissent has been fostered and exploited by proponents, such as FMG's [Fortescue Metals Group] funding of Wirru Murra and the Yindjibarndi having to fight for their exclusive claim to native title.

Similarly the contention within the Waanyi community over Magazine Hill in Queensland demonstrates the conflict between the use of Queensland Heritage Laws rather than the Commonwealth Native Title Act which, one Waanyi group claims, exposes Magazine Hill to destruction that could be prevented by applying terms under the Native Title Act.¹⁷

31. It also noted that, contrary to the approach advocated for by the Project proponent, identifying cultural knowledge is not a matter of majority rules:

The recognition of who should speak for country is further complicated by the fact that customary law and decision making processes are not necessarily democratic in the sense that this concept is understood by a western world view. For example, customary law gives weight to the views of those with cultural responsibility, not necessarily all members of a group.¹⁸

¹⁵ Juukan Gorge Inquiry Final Report at [7.38]

¹⁶ Juukan Gorge Inquiry Final Report at [7.40]

¹⁷ Juukan Gorge Inquiry Final Report at [7.41]-[7.42]

¹⁸ Juukan Gorge Inquiry Final Report at [7.45]

There is agreement that the site is significant for its cultural values

32. It is significant that, although other RAPs are not, in our clients' view, knowledge holders in relation to "traditional" cultural values or the values associated with the early period of dispossession and colonisation in the Hunter Valley, the cultural values associated with the Project area have nonetheless been recognised by all RAPs.
33. There is, in fact, broad agreement amongst the registered Aboriginal parties consulted for the Project that the Project area is significant, for both "traditional" cultural values and cultural values associated with the post-colonial/invasion events. This is demonstrated by a range of comments from various RAPs, including WNAC, in Aboriginal Cultural Heritage Assessments for the Project specifically and the projects in the Mount Owen Complex and surrounds.
34. The *Glendell Continued Operations Project Aboriginal Cultural Heritage Assessment Report (Project ACHAR)* (in spite of its flaws - as set out in our clients' previous submission dated 4 April 2022 and in the work of A/Prof Draper) contains evidence of this:
 - a. It notes that "[m]any of the RAP's present commented that they considered the former Ravensworth Estate to be significant to Wonnarua people as it was the location of both co-existence and conflict between Wonnarua people and the early settlers of the Hunter Valley"¹⁹
 - b. It details over 100 archaeological sites within the Project area, as well as a scarred tree, an 'art (engraved)' site, and a 'quarry' near Bowmans Creek;
 - c. It notes that "[a]lmost all the RAPs expressed strong connections to the archaeological sites which occur throughout the Project Area"²⁰
 - d. In its Executive summary states that "[t]he predicted direct and indirect impact on the Aboriginal cultural heritage values of the Project Area add to the cumulative impact of mining development on the cultural heritage resources of the Upper Hunter Valley."
 - e. At cultural values workshops with the WNAC, the heritage significance of the Project area, including but not limited to the Ravensworth Homestead, was raised:
 - i. WNAC elder James Wilson Miller noted in a cultural values workshop that the Ravensworth Homestead "is a sacred site of significance for indigenous men and women....it is significant to them even though it's not indigenous heritage";²¹
 - ii. Rhoda Perry "added that they know the people who worked there [the Homestead] and lived there";
 - iii. "it was stated that in 1904, people from St Clair Mission worked at the Homestead and therefor there is over 100 years of aboriginal history associated with the Homestead. [Rhoda Perry] added that they used to go to the surgery in Singleton in the 1940's which shows the connection with the Bowman's"
 - iv. James Wilson Miller "added that indigenous cultural heritage to the Homestead needs to be maintained as it is part of their story";

¹⁹ Project ACHAR, p 54.

²⁰ Project ACHAR, p 52.

²¹ Project ACHAR, p 177.

- v. “WNAC members agrees that the preservation of the homestead is important – would rather it be moved than be destroyed by leaving it in situ for destruction by dust and vibration”²²
 - f. At cultural values workshop with “unaligned” (ie not members of the two knowledge-holder groups: PCWP or WNAC) RAPs, the significance of the Project area and Homestead was noted:
 - i. Noel Downs (of Wanaruah LALC) “added that the archaeological area surrounding the Homestead is significance and the buildings represent what happened to Aboriginal people”
35. Questionnaire responses from “workshop 2” with WNAC and “unaligned” RAPs (not PCWP) contains a table of questionnaire responses from that workshop²³ and shows that these non-PCWP participants expressed a range of cultural values associated with the Project site:
- a. In relation to the question “Do you or your family have any specific cultural knowledge or values that you would like to share regarding the GCOP Additional Project Area (e.g. cultural values, historic values, scientific and/or aesthetic values)? “:
 - i. “My family's connection to this land goes back many generations. The land is the lifeblood of all of us and flows through us”
 - ii. “As part of my role as an Aboriginal site worker, to me cultural values are high, same with the historic values.”
 - iii. “We do have cultural knowledge and connections to this area. Our families lived and worked on this land.”
 - iv. “As you should know land is very important as we believe we belong to the land. Changes to the land is changes to our culture. My great great grandmother walked the land free.”
 - v. “Eatens Family. Mainly song line.”
 - vi. “Extended family knowledge passed down from elders. The edge of song line.”
 - b. “What are the most important parts of the landscape to Aboriginal people?”
 - i. “Being able to walk over, around, the land is a very important part of our real connection to land and our families.”
 - ii. “All the landscape including flora and fauna, mother earth and water.”
 - iii. “The whole its our land and its going to be torn up for money not for the betterment of Wonnarua families.”
 - iv. “Water ways, sites of significance land/water ways.”
 - v. “All of it. Mostly those where people hunter gathered, slept, educated and entertained. Water ways and habitat for staples, e.g. possum, eels, water rush, grasses.”
 - vi. “The whole landscape is important to us it holds spiritual and cultural connections. It leaves behind our ancestors' artefacts that therefore show connection of them being on the landscape. It plays hand in hand with the associated cultural landscape that overall tell the story of the landscape.”
 - c. “Are postsettlement/European heritage places important to you? If so, how?”

²² Project ACHAR, p 178.

²³ Project ACHAR, pp 180-183.

- i. “Yes! Many post contact, culture clash buildings do have special significance with certain Indigenous groups, not all, i.e. Bowman's Cottage, St Clair Mission, church, school, etc.”
 - ii. “No Europeans don’t hold our culture to any value, and they should. Only place our ancestors used e.g. Ravensworth Homestead.”
 - iii. “Yes, some areas such as homestead hold importance to us as it is connected to our stories of the land, oral history, etc.”
 - d. “Can you tell us what you think the cumulative impacts of this project might be?”
 - i. “Destruction of our land mass. But there is still cultural values associated with this land.”
 - ii. “Loss of country. Loss of wildlife. Loss of connection to country.”
 - iii. “Trying to employ Aboriginal workers. Pay WNAC. Infighting of Wonnarua people and non Wonnarua people.”
 - iv. “Further destruction and impact to the cultural landscape.”
 - v. “Mainly environmental for animals and local communities health wise. Culturally the whole Project has significantly destroyed a large part of the cultural landscape.”
 - vi. “Broken spiritual connection, sadness seeing the process happen.”
 - vii. “Our culture is inextricably linked to the environment and that any impact to our cultural sites and landscape is like taking a page out of oral history stories.”
 - e. Responses to other questions on cultural values included:
 - i. “There are many cultural knowledge holders whose knowledge of history, heritage and cultural value vary. Please be aware of these concerns.”
 - ii. “Most of our Wonnarua people/families and some have more knowledge, e.g. Jimmy can speak our language in its true form, others know of sites.”
 - iii. “Yes. Because it is a part of our cultural history, destroying the cultural heritage sites would be equivalent to burning history textbooks. It would be erasing our cultural history of these sites are destroyed.”

36. Further, for instance, in a 2013 Cultural Heritage Report for the Mount Owen Continued Operations project (**MOC ACHAR**),²⁴ the Wonnarua Traditional Custodians stated they “see the area as a crime scene and any massacre site should be preserved” and “feel that the area is very important to them as ‘sorry business’ has occurred in the region, and the settlers were known to be cruel and there was numerous unreported and reported killings of Aboriginal people by white settlers.”²⁵

37. The MOC ACHAR also noted that “there were comments made by the RAPs about the potential for human remains to be present”, and that “one knowledge holder group holds the belief that a massacre site exists outside the Project Area, on Bowmans Creek, as advised by their Elders.”²⁶

38. The Aboriginal Cultural Heritage Management Plan for Glencore’s **Mount Owen Complex** also evidences the views of the RAPs consulted of the significance of the area:

²⁴ Available at

<<https://majorprojects.planningportal.nsw.gov.au/prweb/PRRestService/mp/01/getContent?AttachRef=SSD-5850%2120190227T045959.556%20GMT>>

²⁵ MOC ACHAR, p 51.

²⁶ MOC ACHAR, p 67.

- a. it details 380 archaeological sites identified across its study area;
 - b. it notes that the project area and its immediate surrounds comprise a “complex, multi-layered cultural landscape”
 - c. it notes that “RAPs have identified concerns” that the project “poses a significant threat to Aboriginal cultural heritage values” and “continues to cause fragmentation to the cultural, spiritual and historic[al] values of the cultural landscape including degradation to important waterways”.
39. The 2018 Aboriginal Cultural Heritage Management Plan for Glencore’s **Ravensworth Surface Operations** notes the significance of the area, as expressed by RAPs for that project:
- a. “[the] association of the local area with early conflict is felt strongly by the local Aboriginal community and is worth noting in this plan” “Aboriginal ...comments on the cultural significance of the Ravensworth area... which identify that the local area contains many significant places, including women’s places, men’s places, bora grounds, the reported engraving site on Bowman’s Creek and places to source ochre nearby. Bowman’s Creek was identified to be of particular significance, with an identified association with a song line and its connectivity to other culturally significant areas within the valley lowlands, with the potential for scarred trees to add to the Wonnarua people’s story”
 - b. “The physical evidence of Aboriginal life throughout this country is pervasive”
 - c. “A prevailing view throughout the Aboriginal community is the importance of all physical evidence of Aboriginal life to current Aboriginal communities. Aboriginal sites provide a tangible connection to pre-European Aboriginal land use. Aboriginal sites are valuable in sustaining contemporary Aboriginal identity through opportunities for teaching and engagement with heritage in field investigations.”⁴⁴
 - d. RAPs have “a common view... that there may be potential for burials associate[d] with Bowmans and Emu creeks”

Protecting the cultural significance of the estate in the context of a Project approval

- 40. Our clients’ position is that the Project should be refused due to its unacceptable impacts on Aboriginal cultural heritage and historical cultural heritage (amongst other things, including its climate change impacts).
- 41. We note the discussion at the 28 March meeting of the Commission, Heritage Council and Heritage NSW discussed the possibility of conditions of consent aimed at preserving the heritage value of the Homestead.
- 42. Our clients unequivocally object to and oppose the Project in the strongest terms and for the reasons set out in this submission and their submission of 4 April 2022. However, in the event the Commission is minded to grant consent to the Project, our clients consider that protection of the Homestead and surrounds, as well as waterways in the Project area, with a specifically identified curtilage to protect both areas from vibration and dust would be essential. For clarity, our clients do not consider that the relocation of the Homestead is acceptable.
- 43. We hope that the above assists the Commission in relation to some of the questions raised in its meeting with Heritage NSW and the Heritage Council.

Applicant's 23 March 2022 response to questions taken on notice

Safeguard Mechanism and Coal Quality

44. The proponent in its response to the IPC questions makes several misleading and/or irrelevant statements about the safeguard mechanism and coal quality.
45. In Professor Sackett's opinion, the current 'Safeguard Mechanism' as it applies to the Project would not reduce, or even curtail, GHG emissions from Glendell Mine. This is because:
 - a The baseline only applies to the Mt Owen Glendell Complex, and the applicant has stated that the Project is designed to keep coal production constant, production at Glendell will increase to offset declines at other mines within the Complex.
 - b The Production Adjusted Baseline to come into effect in 2023 does not limit emissions, but rather rises and falls with production.
 - c Even if the baseline were to be exceeded, there is no mechanism in place to reduce future emissions.²⁷
46. In Professor Sackett's view the the Australian Safeguard Mechanism does not act to reduce emissions.²⁸ Climate economists have indicated that the baselines are far too high to achieve that aim, and that exemptions are often given, resulting in emissions above the baselines.²⁹
47. The proponent's suggestion that 15% less CO₂ would be generated per tonne of CO₂ burnt if customers switch to Ultra-Supercritical Boiler or IGCC Power Plants is misleading. As Professor Sackett highlights, unless the applicant is restricting the sale of its coal to customers who will use such technology, this statement is irrelevant.³⁰
48. The proponent has not placed any evidence before the IPC that demonstrates coal from the Project will only be sold to customers that utilise such technology. If the proponent chooses to put on such evidence now, the public should be afforded the opportunity to respond to that new material.
49. Rather in Professor Sackett's opinion, the correct and relevant response to the Commission's question is less than half that amount being approximately 7% reduction in CO₂ per unit of electricity generated.³¹
50. In any event, it is our clients' position that the quality of the coal does not militate the impact the Project will have on the NSW environment via its GHG emissions. Such information is not relevant nor helpful to the Commission when undertaking its assessment. On the contrary it is highly speculative. As previously outlined in extensive

²⁷ Dr Penny Sackett, "Response to Additional Material" (22 April 2022) page 3 [8].

²⁸ Penny Sackett, "Response to Additional Material" (22 April 2022) page 3 [9].

²⁹ Penny Sackett, "Response to Additional Material" (22 April 2022) page 3 [9].

³⁰ Penny Sackett, "Response to Additional Material" (22 April 2022) page 4 [10].

³¹ Penny Sackett, "Response to Additional Material" (22 April 2022) page 4 [10].

detail at [4.2] of our clients' previous submission, unabated climate change is the greatest threat to the environment and people of NSW and this Project is inconsistent with limiting global warming to the agreed limit of well below 2 degrees Celsius.³²

Project Economics are uncertain, risky and at worst overstated by the Proponent

51. The proponent's position that there are no viable alternative mine designs demonstrates there is no economically feasible way of carrying out the Project that avoids the unacceptable cultural heritage and environment impacts caused by its preferred Project Mine Plan (**PMP**) assessed in its EIS.
52. The proponent in its assessment of alternative mine designs seeks to maximise the recovery of the coal resource and has not sought to avoid or minimise to the greatest extent possible the significant impact the Project will have on cultural heritage and the NSW environment.
53. The proponent says that the construction activities and capital costs 'necessitates the development of the full coal resource within the proposed mining footprint to ensure the Project is economically viable'³³ and "the best economic outcome is a key consideration in the commercial viability" of the proposed layout.³⁴ It is evident that main reason for rejecting the alternative mine designs that may have a lesser impact on social and cultural values is because they are not financially viable.
54. Our clients maintain their position that there is also significant uncertainty as to the financial viability of the proponent's proposed PMP.
55. A key objective of the review by Minecraft was to examine and report on the changes in total coal recovery and the relative rate of return to the State of NSW using independent coal pricing assumptions and including analyses of sensitivity to coal pricing.³⁵ The Minecraft Review found:
 - a the capital expenditure of the Project is comparatively high and that the return on investment is dependent on the prevailing coal price,³⁶ and
 - b at the time the review was undertaken, the Net Present Value (**NPV**) for every alternative mine design including the PMP would most likely be negative.³⁷
56. The Minecraft report also states that it was difficult to do an exact comparison of the NPV as EY "only reported key assumptions and selective results in the EIS".³⁸

³² Written Submissions for Scott Franks and Robert Lester at [141]-[142].

³³ Glencore letter to Office of the Independent Planning Commission dated 23 March 2022 page 4 ('**Glencore Letter**').

³⁴ Glencore Letter page 1.

³⁵ Minecraft Report page 8.

³⁶ Minecraft, "Review of Glendell Continued Operations Project Mine Plan and Mine Plan Options" (October 2020) page 19 ('**Minecraft Report**').

³⁷ Minecraft Report, page 21.

³⁸ Minecraft Report, page 21.

57. Minecraft says if the current coal prices persist, the proponent may experience a significantly reduced return on the capital invested, in which case the Project benefits may be limited to Glencore employees and the state of NSW (from royalties and payroll tax).³⁹
58. Minecraft notes that the indicative NPV for the PMP is \$849 million for the continuing operations increment⁴⁰ using the EIS coal prices.⁴¹ But if applying the coal pricing at the time the Minecraft Report was produced, the Project revenue is reduced to \$2,165 million.⁴² Not the \$1.149 billion NPV indicated by the proponent.
59. As set out in our clients' previous submission at [4.3], the independent review undertaken by the Centre for International Economics (**CIE**) found the Project's financial benefits stemming from royalties and income tax payments are dependent on coal price. As Dr Alistair Davey highlights, it is far more likely in the future than not, coal prices will fall given structural changes in the demand for thermal coal that are likely to occur due to net zero emissions commitments from countries such as China, Japan, Taiwan and South Korea.⁴³ A recently published study has found China's thermal and coking coal imports will contract by at least a quarter over the next five years.¹²
60. The Commission should reject the proponent's argument that Minecraft's finding that the NPV of the proposed PMP may in fact be negative is only indicative of short-term price fluctuations.⁴⁴ As previously highlighted, the proponent has not adequately reflected long-term coal prices in its analysis unlike the World Bank forecasts which account for the expected decrease in coal demand.⁴⁵ The proponent's argument is misconceived and the evidence before the Commission supports a finding that the economic benefits are at best uncertain.
61. The CIE review also found that there was no evidence to support any payroll tax benefits, rather there is likely to be no net impact on the NSW economy from payroll tax due to offsetting reductions applied by the proponent.⁴⁶
62. The Minecraft review provides further evidence that the economic benefits of the Project are at best uncertain, at worst, substantially overstated by the proponent. If anything, the Minecraft Report highlights coal price volatility and the significant risk to the state of NSW particularly when it is reasonably foreseeable that coal

³⁹ Minecraft Report, page 22.

⁴⁰ Minecraft Report, page 21.

⁴¹ Minecraft Report, page 24.

⁴² Minecraft Report, page 24

⁴³ Dr Alistair Davey, "Review of the Economic Impact Assessment of the Glendell Continued Operations Project" (2022) pages iv and 8 at [4.2].

⁴⁴ Glencore, "Response to Minecraft Report – Glendell Continued Operations Project Final (August 2021) page 16 ("Glencore Response to Minecraft Report").

⁴⁵ CIE Report page 1.

⁴⁶ The Centre for International Economics, 'Review of economic impact assessment supporting the Glendell Continued Operations Project' (30 November 2021) pages 2. ("CIE Report")

pricing will be impacted as countries transition away from fossil fuels in line with any net zero by 2050 commitments.

63. Given the uncertainty of the Project's economic impact assessment, on which the proponent relies when determining its preferred PMP is the most viable option, it is evident that any financial benefit of this Project proceeding is shrouded in uncertainty.
64. Where the economic benefits of the Project are uncertain, and the significant cultural heritage and environment impacts of the Project are certain, any refusal of the Project is reasonable and justifiable in the circumstances.
65. On reviewing the proponent's response to the Minecraft report it is evident that the proponent has had little regard to the mitigation or reduction of the social and environmental impacts of the Project but is firmly focused on maximising the resource recovery. The Commission should reject any suggestion by the proponent that the PMP or options 6 and 7 includes consideration of costs of all environmental impacts.⁴⁷
66. Professor Sackett advises that it is simply not credible that all environmental costs, including those from climate change resulting from the GHG emissions of the Project have been given appropriate consideration.⁴⁸
67. As provided in our clients' previous submission at [4.3], the costs associated with the Project's Scope 3 emissions are not accounted for in the proponent's CBA⁴⁹ and they should be because all GHG emissions from the Project will impact the NSW environment. Nor has the proponent correctly calculated the price of the Project's Scope 1 and 2 emissions.⁵⁰ Therefore, the proponent has not adequately considered the environmental impact costs, particularly when the public interest requires the consideration of the polluter pays principle and that the costs associated with increased GHG emissions will be borne by future generations.
68. Professor Sackett reiterates both the independent CIE economic analysis and her own (under)estimate of climate costs based on the scientific literature yield costs to NSW that are 900 to 4000 larger than EY's estimate.⁵¹ In Professor Sackett's opinion, with respect to reasonable estimates of the true climate costs to NSW deriving from Project emissions, Glencore's submissions are untenable.⁵²
69. Professor Sackett says that the proponent's assumptions that there is a long-term market for coal and its pricing will remain at long-term rates ignores the global call

⁴⁷ Glencore Response to Minecraft Report page 18.

⁴⁸ Dr Penny Sackett, "Response to Additional Material" (22 April 2022) page 6 at [19].

⁴⁹ Written Submission to IPC for Scott Franks and Robert Lester at [292].

⁵⁰ Written Submission to IPC for Scott Franks and Robert Lester at [281].

⁵¹ Dr Penny Sackett, "Response to Additional Material" (22 April 2022) page 7 [20]. Also see Section 9.2 of Penny Sackett's March 2022 Report.

⁵² Dr Penny Sackett, "Response to Additional Material" (22 April 2022) page 7 [20].

to end reliance on coal, not just from scientists or the United Nations, but from organisations like the International Energy Agency, which has advocated no new coal developments or extensions in its net-zero roadmap for the global energy sector.⁵³

70. Furthermore, it's our clients' position that even option 7, which is determined by Minecraft to be the "maximum mining scenario that would have minimal impacts on the heritage values of the homestead" does not adequately address the impacts on cultural heritage. The proponent itself acknowledges that the intangible impacts to Aboriginal cultural heritage are not considered in the Cost Benefit Analysis.⁵⁴
71. Despite this the proponent concludes the PMP provides the best balance between mine planning, economic, environmental and social outcomes.⁵⁵ The evidence before the Commission does not support such a finding. Without adequately addressing the significant impact the proposed PMP will have on cultural heritage and the environment it is not possible to arrive at such a conclusion.⁵⁶
72. The proponent goes on to say that option 7 will have slightly reduced capital requirements compared to it PMP because there is no requirement to relocate the Homestead but because of the reduced yield this option presents significant financial risk to Glencore.⁵⁷ This means also, such an option would be a significant financial risk to the NSW. Glencore goes as far to say it would not proceed with the Project if an approval for a restricted mining footprint were granted.⁵⁸ Evidently, there is no viable alternative mine design or economically feasible way of carrying out the Project while avoiding the unacceptable cultural heritage and environment impacts.
73. As previously elaborated in extensive detail, it is our clients' position that the proponent's PMP also presents a significant financial risk to NSW because of its uncertainty. In such circumstances, any decision to refuse the Project is justifiable when the loss of cultural heritage and impact on the NSW environment are significant. Full development of the coal resource increases the likely impacts on the NSW environment as a result of the increased GHG emissions, such an impact is not adequately addressed by the proponent in its alternative mine design comparison. Full development of the coal resource also has the maximum impact on cultural heritage values.
74. In Minecraft's opinion of Option 1 – No Project, it essentially says that such an option is included as a reference case to the preferred case to demonstrate that

⁵³ Dr Penny Sackett, "Response to Additional Material" (22 April 2022) page 6 at [17].

⁵⁴ Glencore Response to Minecraft Report page 18.

⁵⁵ Glencore Response to Minecraft Report page 18.

⁵⁶ Glencore Response to Minecraft Report page 18.

⁵⁷ Glencore, Glendell Continuing Project EIS Appendix 1.

⁵⁸ Glencore Letter page 5.

incremental benefits and it usually dismissed as an option.⁵⁹ Minecraft goes on to say that due to the relatively high capital cost and project ranking process, the PMP ranking would likely change based on the coal sale price forecasts.⁶⁰ If such a future were to eventuate, which our clients' say is more likely than not, then the Minecraft Report is essentially saying that the preferable option may be the Project does not to proceed beyond its current end date. This is because there is no other financially viable option available except for the PMP.⁶¹

75. It is our clients' position that the proponent has failed to demonstrate the Project is in the public interest. The evidence shows rather, the economic viability of the Project is uncertain. The impact on cultural heritage and to the NSW environment will be significant and as demonstrated by the Minecraft Review, there are no viable alternatives. If anything, the Minecraft Review demonstrates the impacts of the Project have not or cannot be mitigated or minimised to the greatest extent possible. Rather the so-called financial viability of the Project has been prioritized and potentially overstated by the proponent.

76. It is our clients' position, based on the facts before the commission, the preferable option is option 1 - No Project, not the PMP advanced by the proponent.

77. To take Justice Preston's words in *Rocky Hill*, the Glendell mine expansion is in the wrong place at the wrong time:

Wrong place because an open cut coal mine in this scenic and cultural landscape, proximate to many people's homes and farms, will cause significant planning, amenity, visual and social impacts. Wrong time because the GHG emissions of the coal mine and its coal product will increase global total concentrations of GHGs at a time when what is now urgently needed, in order to meet generally agreed climate targets, is a rapid and deep decrease in GHG emissions. These dire consequences should be avoided. The Project should be refused.⁶²

78. Accordingly, it is our clients' position that the evidence before the Commission supports that the development consent for the project should be refused.

79. Thank you for your consideration of the above. Should you have any further questions, please do not hesitate to contact us.

Yours faithfully
Environmental Defenders Office



⁵⁹ Minecraft Report, page 24.

⁶⁰ Minecraft Report, page 24.

⁶¹ Minecraft Report, pages 25, 27, 28,

⁶² Gloucester Resources Limited v Minister for Planning [2019] NSWLEC 7 [699].

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Attachment

Dr Penny D Sackett Expert Report to the NSW IPC on the Greenhouse Gas and Climate Implications of the Glencore Glendell Continued Operations Coal Project- Response to Additional Material