



IPC agrees to maintain confidentiality of material on Aboriginal heritage

10 October 2022

The Independent Planning Commission (**IPC**) Panel appointed to determine the Glendell Continued Operations Project (SSD 9349) has agreed with the Commonwealth Department of Climate Change, Energy, the Environment and Water (**DCCEEW**)'s request to not publish certain confidential materials provided to the IPC. The IPC has determined that it is not in the public interest for these materials to be published.

The confidential materials relate to a report on Aboriginal heritage that was prepared by Mr Daniel Leo under section 10(4) of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**ATSIHP Act**) for the Commonwealth Minister's consideration (the '**Leo Report**').

The confidential materials comprise the Leo Report itself (in the form it was provided to the IPC) along with other documents that may disclose the content of the Leo Report, being:

- an assessment of the Leo Report carried out by the NSW Department of Planning and Environment (**DPE**) on behalf of the IPC
- submissions and correspondence received from the following parties in relation to the Leo Report:
 - Glencore (the applicant for the Glendell Continued Operations Project),
 - the Environmental Defenders Office (as the representatives of the applicants under the *ATSIHP Act*); and
 - the Commonwealth Department of Climate Change, Energy, the Environment and Water (**DCCEEW**).

The IPC notes that the Leo Report and the assessment carried out by the NSW DPE on behalf of the IPC have been made available to the three parties listed above and all three parties have had an opportunity to make submissions to the IPC regarding those confidential materials.

In determining that the materials should remain confidential, and that it is not in the public interest that they be published, the IPC Panel notes that:

- the Leo Report was prepared for the consideration of the Commonwealth Minister in determining an application under the *ATSIHP Act* – a process that does not involve the IPC
- the Commonwealth Minister's deliberations on the application under the *ATSIHP Act* is still underway and has not been completed
- the Leo Report was provided to the IPC by the Commonwealth DCCEEW subject to a requirement imposed by the Commonwealth that the Leo Report is '*a confidential document that is not to be released to any unauthorised third parties, including the public or the media*'
- the IPC does not wish to prejudice relations between the State of NSW and the Commonwealth by breaching the requirement imposed by the Commonwealth DCCEEW
- the publication of the confidential information would result in the disclosure of information provided to the IPC in confidence

- the publication by the IPC of a report commissioned by the Commonwealth government for the purposes of a Commonwealth government process may prejudice the deliberative process the Commonwealth Minister is engaged in under the ATSIHP Act.

Although one of the IPC's core objectives is to operate with openness and transparency, the Panel acknowledges that on this occasion the public interest is best served by agreeing to the Commonwealth's request for confidentiality.

END OF STATEMENT