

Mr Stephen Barry  
 Planning Director - Independent Planning Commission  
 Via email: [REDACTED]

17 March 2023

**McPhillamys Gold (SSD 9505)  
 Response to Request for Comment - Recommended Conditions of Consent**

Dear Mr Barry

I refer to your letter dated 10 March 2023, seeking the Department’s advice on the proposed conditions of consent for the McPhillamys Gold Project (project) for consideration of the NSW Independent Planning Commission (Commission), should it determine to approve the project.

As requested by the Commission, the Department has considered workability, enforceability and any potential unintended consequences of the proposed conditions, and provides the following advice:

| Proposed condition | Summary of the Commission’s comment  | Department’s response  |
|--------------------|--|--|
| A9                 | Condition A9 added to limit the total extraction amount to 60.8 million tonnes of ore only for clarity.  | Not recommended, as this was a probable resource estimate and does not preclude identification of more resource at a later stage. Therefore, it may have the unintended consequence of ore not being recovered. Furthermore, it is not consistent with other mining consents.  |
| A10                | <u>Question to the Department:</u><br>Where does the maximum annual figure of 8.5 Mt come from? How can the Commission ensure that ore isn’t left in the ground? Please advise | This is defined in the EIS. Please refer to the <a href="#">original EIS (main report)</a> and Table A.1 in <a href="#">Appendix A of the 3<sup>rd</sup> Amendment Report</a> . The economic grade of ore may change over the life of the project; hence some lower grade ore may be left in-situ.                   |
| B3                 | Inclusion of ‘or activities’ and ‘B2’ in condition requirements.   | Inclusion of ‘activities’ and inclusion of ‘B2’ in condition B3 is not consistent with, and overrides the intent of condition B2 in that an Out of Hours Work Protocol prepared to the satisfaction of the Planning Secretary would not be required if the applicant demonstrates that B2 requirements could be met. |
| B4                 | <u>Question to the Department:</u><br>Is this condition required given condition B1?   | Yes, it is required – condition B1 only sets operational hours while condition B4 sets noise limits consistent with the ICNG.  |
| B7                 | <u>Question to the Department:</u><br>In the event that construction works are still taking place when this condition comes into force (after six months), can                 | Correct – construction activities would still be required to be undertaken but managed under operational noise limits.   |

| Proposed condition | Summary of the Commission’s comment  | Department’s response   |
|--------------------|--|---|
|                    | construction works still take place but must comply with these noise limits?   |   |
| Table 1            | <p><u>Question to the Department:</u></p> <p>The Commission notes that this table covers most, but not all Kings Plains residents. R26 and R28a, which seem to be two of the closest residents, aren’t specifically identified. Is there an agreement between the Applicant and R28a and R26? If not, please comment on why they haven’t been included.</p>  | <p>R26 should be included in the 41, 37, 37 row –</p> <p>R16, R25, R26, R28, R29, R33</p> <p>R28A was a vacant block and has been acquired by Regis</p>   |
| B11                | Change from ‘B4 and B9’ to ‘B4 to B9’  | Should retain ‘B4 and B9’. Table 1, conditions B4 and B9 are the conditions that set noise limits – condition B11 is in reference to noise criteria (that is noise limits). By including B4 to B9 it would then reference conditions that do not impose noise limits and therefore would not be workable in the context of the condition.   |
| B12                | <p><u>Question to the Department:</u></p> <p>Is this a standard timeframe?</p>   | Yes – this is consistent with contemporary consents and provides a 3-year rolling period for all equipment to be tested.  |
| B14                | <p><u>Comment to the Department:</u></p> <p>This figure has been referenced in the AR. The Commission Panel intends to give effect to this limit due to submissions heard at the PH regarding impacts to livestock. The Panel notes this lower limit sets the maximum for all land uses near agricultural uses. The Panel is seeking advice from the Department on this matter (including the allowable exceedance).</p> | The proposed addition of blasting limits for agricultural uses within 2 km of the site is not workable and would be difficult to enforce. The issue of blast impacts on livestock has been extensively considered in Hunter Valley coal mines (including on the nearby thoroughbred industry) with no alternative limits imposed for livestock on any mines in NSW. The proposed blast overpressure and vibration levels are predicted minimum levels that are below the recommended acceptable levels based on the ANZECC guideline “ <i>Technical Basis for Guidelines to Minimise Annoyance Due to Blasting Overpressure and Ground Vibration</i> ”. Similarly, to the approach on noise limits, if the predicted level is below the recommended acceptable level, the predicted level should not be used to set the limit, rather the recommended acceptable limit should be applied. The use of “agricultural uses within 2 km of the site” is also not clear, for example this could include bees foraging within the development site – which would be unworkable. |
| B14                | <p><u>Question to the Department:</u></p> <p>Please confirm these two fields were intended to be left blank?</p>   | Correct.  |
| B19                | <p><u>Note to the Department:</u></p> <p>Words added to this condition to be consistent with B21.</p>  | Condition B19 is intended for establishing baseline for properties within 2 km while B21 relates to damage claims made following blasting activities. The inclusion of ‘or any other landowner where the Planning Secretary is satisfied an investigation is warranted’ in condition B21 is appropriate if for  |

| Proposed condition | Summary of the Commission’s comment   | Department’s response  |
|--------------------|---|--|
|                    |   | example there was a blast event that exceeded criteria and therefore potential for some structural damage supported by evidence. However, the baseline assessment should be restricted to a reasonable extent with 2 km considered appropriate and consistent with other mining consents based on potential for blast damage.  |
| B26                | Removing ‘mine’ from ‘the mine site and’  | The Department suggests that the recommended wording be retained. Any significant noise and blasting impacts for the pipeline would only occur during the construction stage of the project. Noise and blasting impacts during the water supply pipeline construction is covered in condition C1.  |
| B34(c)(ii)         | Added word: ‘continuously’  | Inclusion of ‘continuously’ may be difficult to enforce and interpret as it would need to be demonstrated daily, without interruption – whereas energy efficiency measures may be applied periodically, e.g. installation/ upgrade of equipment with higher energy efficiency.   |
| B37                | Added condition and if the Asbestos Management Plan be prepared in accordance with SafeWork NSW requirements.   | The new condition B37 duplicates condition B35 and matters related to Work Health and Safety legislation is administered by the Resources Regulator and not the Department. This includes review and approval of an Asbestos Management Plan, which is regulated under the <i>Work Health and Safety Regulation 2017</i> , and is referenced on the SafeWork NSW website. The Air Quality and Greenhouse Gas Management Plan would however need to include management of asbestos as it is referenced in B34c(ii).   |
| B49                | <u>Question to the Department:</u><br>Should there be a separate condition which specifically provides for entering into a compensatory water agreement?  | No, similarly to noise agreements it should be negotiated between the applicant and third party. If there is no negotiated agreement then the other compensatory water conditions would apply which provides a process incorporating the Planning Secretary.   |
| B51`               | <u>Question to the Department:</u><br>Should there be a condition that requires the water supply pipeline to be constructed, and by a certain stage of the project (i.e. what is the timing)? The Commission is of the view that operations cannot occur before construction of the pipeline is complete. | Mining operations is defined as “the carrying out of mining and mining related activities, including extracting, transporting, processing, handling and storing ore material on-site and the associated removal and emplacement of waste rock and storage and/or emplacement of tailings material.” Some of these activities are proposed to be carried out during water supply pipeline construction – eg. removal and emplacement of some waste rock prior to ore extraction occurring to construct amenity bunds (see Figure A.4 3 <sup>rd</sup> Amendment Report – Updated Project Description Oct 2022). The Department suggests a condition to give the Commission’s recommendation effect is to link this to the commencement of ore processing – for example. Ore processing cannot commence until the Water Supply Pipeline is operating. This could be included under Limits of Consent in Part A. |

| Proposed condition | Summary of the Commission’s comment   | Department’s response   |
|--------------------|---|---|
| Table 5            | <p><u>Question to the Department:</u><br/>The Panel is of the view that use of water from the water supply pipeline should be prioritised. Can the Department please advise how this should most practicably be incorporated.</p> | <p>This may lead to perverse outcomes in that if it is required that water from the water supply pipeline be prioritised over other sources – for example over leachate return from the TSF or poor water quality from mine infrastructure area runoff then this may lead to increased storage in the TSF and mine water dam and increase risk of discharges. The water balance undertaken for Amendment 1 (page 56 identifies that:</p> <p><i>“The operational water system also includes external water supply imported to site via the imported pipeline supply however runoff from the mine development would be used as a priority over imported water to reduce the likelihood of spill from the storages within the operational water system. The risk of spill and other key results are simulated using the operational water balance model.</i></p> <p>The Department’s recommended general water performance measures reflect the proposed hierarchy of use.</p> |
| Table 5            | Insertion of “Continuously identify ...   | Similarly to advice above – there may be enforceability issues around ‘continuously’.   |
| Table 5            | <p><u>Question to the Department:</u><br/>Is ‘chemical and hydrocarbon’ an appropriate catch-all? Does it include cyanide?</p>  | Correct, this would include cyanide, noting also that there are additional specific conditions around storage and handling of cyanide in the Hazardous Materials Management Plan requirements.  |
| B54                | <p><u>Question to the Department:</u><br/>Should DPE Water be consulted as well? Please advise.</p>   | This condition is more about liner integrity and construction which is more in regulatory control of EPA and Dams Safety NSW. However, DPE Water could be explicitly included, noting that they are required to be consulted on the Water Management Plan as a whole, including sub-plans. Note that WaterNSW explicitly requested to be consulted on this sub-plan.  |
| B65                | Added wording of ‘(including scanning)’.  | <p>The use of the word scanning by OLALC is in relation to using ground penetrating radar (GPR) to assist in identifying potential burial sites. If there is a suspected burial site, this is a useful method to use without invasive excavation. However, it is not generally undertaken across an entire development site, only if there is some suspicion that there could be a burial eg. from cultural knowledge – which currently there is no suspected burial locations within the development footprint. The Cultural Heritage Impact Assessment undertaken by Landskape did consider use of GPR concluding that <i>Ground imaging devices (including Ground Penetrating Radar) would be unsuitable and impractical to detect burials in the shallow soils of the project area.</i></p> <p>The use of scanning in relation to condition B65 does not really work. It would work better to reference this under the Heritage</p>                                     |


| Proposed condition | Summary of the Commission’s comment   | Department’s response  |
|--------------------|---|--|
|                    |   | <p>Management Plan B67c(iii) which is related to potential burials. Reference could be made as follows in B67c(iii):</p> <p>“manage the discovery of suspected human remains <b>or burial sites</b> and any new Aboriginal objects or Aboriginal places, <b>including the use of scanning technologies such as ground penetrating radar to inform management measures for suspected burial sites.</b></p> <p>This would meet the intent of OLALC’s submission to the Commission.</p> |
| Table 8            | Maximum storage quantities of dangerous goods and combustible materials within the mine site.   | Hazard assessment is based on these tonnages and the Department’s Hazard team recommended incorporating these limits into the conditions.  |
| B92                | <p><u>Question to the Department:</u></p> <p>Why was every five years selected? The Commission understands that this would result in two audits during the life of the mine (incorporating a review of the site safety management system and incident register). Would every three years be more appropriate, or is this a standard timeframe? Please advise.</p> | <p>The timeframe was recommended by the Department’s Hazards Team which is its standard timeframe for this type of audit. However, aligning the time frame to a 3-year time period with the standard audit timetable would also be appropriate.</p>  |
| B93                | <p><u>Question to the Department:</u></p> <p>Is it envisaged that this would include the use of water from the water supply pipeline for bushfire management?</p>   | <p>Yes. As defined in the Definition Table, the ‘development’ includes the mine and water supply pipeline components.</p>  |
| B95                | <p>Added condition <i>The Applicant must not commence mining operations until the Bushfire Management Plan is approved by the Planning Secretary.</i></p>   | <p>The Department purposefully did not include that this management plan be required to be approved by the Planning Secretary as long as consultation is undertaken with RFS. The Department considers this management plan is a lower risk for the development and can be managed if required by applying condition A3 where the Planning Secretary can make written directions in relation to plans/ strategies submitted as a requirement of the consent.</p>                     |
| B96                | <p>Added wording of ‘, in consultation with RFS’.</p>   | <p>Not workable and enforceable it is unclear how the plan can be implemented in consultation with the RFS. It would be better to include that the Bushfire Management includes a requirement for ongoing engagement with RFS and then this would then be implemented – the Department suggest including under the Bushfire Management Plan</p> <p>(f) engagement strategy for ongoing consultation with RFS during the implementation of the Bushfire Management Plan</p>           |

| Proposed condition | Summary of the Commission’s comment  | Department’s response   |
|--------------------|--|---|
| Table 9            | Advice on an additional row item with the mine site rehabilitation objectives for the river diversion. | The following are recommended as a new row for ‘Clean water diversion system’ under the ‘Final landform’ row: <ul style="list-style-type: none"> <li>Engineered to be hydraulically and geomorphologically stable</li> <li>Achieve a natural geomorphologically stable watercourse with riparian vegetation corridor along the diversion consistent with appropriate reference reaches within the catchment and guided by A Rehabilitation Manual for Australian Streams (Rutherford, Jerie and Marsh 2000) or current best practice natural channel design guidance</li> </ul> |
| B98                | Added condition about an appropriate alternative use for the water supply pipeline post-mining.        | The Department recommends removing this condition and incorporating it into condition B101 (Rehabilitation Strategy) under B101(i) as a new subpoint after B101(i)(iii)<br><i>‘includes alternative use for the water supply pipeline’.</i><br><br>As the Rehabilitation Strategy requires a 3 yearly review, this would then allow alternative uses of the water supply pipeline to be considered throughout the life of the project in consultation with the relevant councils.   |
| D1                 | Added wording of ‘or any other landowner the Planning Secretary is satisfied warrants notification,’   | See comments above in relation to condition 19. The Department suggests this should not be included.  |
| General            | Defined abbreviations in the Definition Table are re-defined in the main body.                         | Suggest using the abbreviation only where included in definitions table.  |

The Department has no comment on the Commission’s other proposed changes to the Department’s recommended conditions of consent.

If you have any questions, please contact me on [REDACTED] or at [REDACTED].

Yours sincerely,



Steve O’Donoghue  
**Director Resource Assessments**