



Mr Stephen Barry
Planning Director
NSW Independent Planning Commission

Attention: Phoebe Jarvis (via email: [REDACTED])

8 March 2023

Dear Mr Barry

Bowdens Silver Project (SSD 5765) Request for Information

I refer to your letter dated 1 March 2023 concerning the Independent Planning Commission's (the Commission's) consideration of the Bowdens Silver Project.

Please find below the Department's response to the 6 items referenced in your letter. Summaries of the Commission's requests are reproduced in bold italics for reference.

Harvestable Water Rights

1. ***Given the requirement for the retention of contaminated water on-site, can the Department confirm the following:***
 - (a) ***whether this water would be subject to the "harvestable rights" provisions under the Water Management Act 2000, and if so, to what extent (in ML/yr over the life of the Project)?***

The Department consulted with DPE Water to assist with the response to the Commission's questions on harvestable water rights. DPE Water's advice is attached for information (see **Attachment A**).

The requirement for retention of sediment-laden and mine water (contaminated) water on site is separate to harvestable rights provisions under the *Water Management Act 2000* (WM Act).

Retention of contaminated water is exempt from the requirement for a water access licence (WAL) as an 'excluded work' under Clause 3, Schedule 1 of the *Water Management (General) Regulation 2018*. This exemption is subject to certain requirements, including that such dams are kept as small as practicable and are located on minor streams. Further details are provided in DPE-Water's *Interpreting Excluded Works Dams Fact Sheet* (see link in **Attachment B**).

Harvestable rights are provided under the WM Act, and allow landholders in applicable rural areas to collect up to 10 percent of the average regional rainfall for their landholding in dams without requiring a licence. Harvestable rights dams must be located off-stream or on a minor stream and capture rainfall runoff.

A summary of the exemptions and harvestable rights provisions is outlined in Bowden's Surface Water Assessment (WRM, Feb 22, see sections 8.1.1 and 8.1.2).

- (b) if, as per (a) above, this water is subject to the “harvestable rights” provisions, will take of this water be exempted from requiring a Water Access Licence (WAL)?**

As outlined above, the contaminated water is not subject to harvestable rights provisions, and is exempted from requiring a WAL (subject to certain requirements including those outlined above).

It is noted that some contaminated surface water, such as that captured in the Tailings Storage Facility (TSF) (which is not located on a minor stream), is not exempt from requiring a WAL, and has been addressed in the water licencing requirements for the project (see para. 139 and Table 6 of the Department’s assessment report).

- (c) if, as per (b) above, take of this water is exempted from requiring a WAL, how will any WAL exemptions be dealt with under the relevant Water Sharing Plan?**

Excluded works dams are exempt from requiring a WAL, and are therefore not addressed in the relevant water sharing plan, which in this case is the *Water Sharing Plan for the Macquarie Bogan Unregulated and Alluvial Water Sources, 2012* (Lawsons Creek Water Source) (the WSP).

Whilst exempt from requiring a WAL under the WSP, the potential impacts associated with the removal of this water from the catchment is required to be considered as part of the development application, and has been assessed by the Department in its consideration of the project (see below).

- (d) If, as per (a) above, this water is subject to the “harvestable rights” provisions, will those harvestable rights result in a reduction to the Long Term Annual Average Extraction Limit, and therefore Available Water Determinations / WAL allocations under the relevant Water Sharing Plan? If so, to what extent (in ML/yr over the life of the Project)?**

As outlined above, contaminated water retention is separate to the harvestable rights provisions, and is exempted from requiring a WAL (subject to certain requirements including those outlined above).

It is noted that water for basic landholder rights, including domestic and stock rights and harvestable rights, is addressed in the WSP and considered in the setting of Long Term Annual Average Extraction Limits (LTAAEL). If a dam satisfies the harvestable rights provisions, this volume has been considered in the WSP development and therefore the LTAAEL and Available Water Determinations should be unaffected.

- (e) Finally, and in the context of the above, can the Department clarify whether, and if so, how, the requirement for the retention of contaminated water on-site has been factored into the assessment of water impacts in relation to downstream users?**

The Department confirms that the retention of contaminated water on site has been factored into the water assessments, including the impacts on downstream water users.

In this regard, for the purposes of assessing impacts on downstream flows, Bowdens' water assessments have conservatively assumed that all contaminated water would be retained on site. In practice, as outlined in the Department's assessment report (see para. 142), Bowdens would release some sediment-laden water if water quality monitoring indicates that the water is suitable for discharge.

The water assessments indicate that the project would not result in any significant impact on downstream water users. As outlined in the Department's assessment report (see paras. 122-132), the project would not result in significant reductions in downstream flows in Hawkins Creek and Lawsons Creek, or significant changes to low or no-flow conditions.

Aboriginal Heritage

2. Can the Department clarify how significant archaeological deposits in relation to the rock shelter on site, should any be discovered, are proposed to be appropriately managed?

The *Aboriginal Cultural and Historic Heritage Assessment* (Landskape 2020) prepared for the EIS identified the rock shelter in the proposed footprint of the TSF as a Potential Archaeological Deposit (AHIMS site number 36-6-0894 (site ID BL44)).

Section 8.7 of Landskape 2020 recommended:

Potential archaeological deposits at rock shelter site BL44 should be test excavated by a suitably qualified archaeologist and representatives of the local Aboriginal community, and if they are shown to contain Aboriginal objects, deposits should be fully excavated, recorded and salvaged. These items should be properly curated and stored in an on-site "Keeping Place".

The Department's recommended condition B57(c) requires Bowdens to prepare and implement a comprehensive Heritage Management Plan (HMP), including the following measures should test excavations uncover significant deposits:

- (ii) *protect, monitor and/or manage identified Aboriginal objects (including proposed archaeological investigations and salvage of objects within the approved disturbance area) in accordance with the commitments made in the document/s listed in condition A2(c);*
- (iii) *manage the discovery of suspected human remains and any new Aboriginal objects or Aboriginal places;*
- ...
- (vi) *undertake the care, control and storage of Aboriginal objects salvaged on the site, both during the life of the development and in the long term; and*

The HMP is required to be prepared in consultation with the Registered Aboriginal Parties and Heritage NSW. This will give these stakeholders the opportunity to provide input into the proposed investigation, salvage and relocation and ongoing management measures.

3. Is there any reason why a condition should not be imposed to require the archaeological investigations as described in recommended condition B57(c) to be carried out prior to the commencement of works on site?

Recommended condition B57 requires the HMP to be prepared prior to commencing construction of the project. Condition D5 requires the preparation of management plans to be in accordance with the recommendations of the reports included with the EIS. In this regard, Landskape 2020 (s.8.5) states:

Based on the results of these discussions with representatives of the registered Aboriginal stakeholders, it is recommended that Bowdens arrange for the salvage of the Aboriginal objects prior to the commencement of site activities.

Therefore, the recommended conditions already require the archaeological investigations to occur prior to commencing construction. Nonetheless, the Department does not see any reason why the relevant condition could not be amended to clarify that the required archaeological investigations are carried out prior to the commencement of works on the site.

4. Is there any reason why a detailed cultural heritage assessment of land subject to the relocated Maloneys Road (and not previously assessed) should not be required prior to the commencement of work on the site?

Landskape 2020 recommended that these investigations occur prior to disturbance of the areas identified. Section 8.6 of Landskape 2020 recommended the procedures for investigation of the previously unassessed areas of the project and actions to take in the event of the discovery of previously unidentified items.

As noted previously, recommended condition D5 requires the preparation of management plans in accordance with the recommendations of the reports included with the EIS.

Nonetheless, the Department does not see any reason why the relevant condition could not be amended to clarify that the detailed cultural heritage assessment is to be carried out prior to the commencement of works on the site.

5. Concerns have been raised by Wellington Valley Wiradjuri Aboriginal Corporation that consultation with Aboriginal groups has not been completed in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010. This was raised in WWAC's submission to the Commission and at the Public Hearing.

In light of Wellington Valley Wiradjuri Aboriginal Corporation's concerns, can the Department clarify the process by which the Applicant has consulted with Aboriginal groups and elaborate on how the Commission and other stakeholders can be satisfied that the consultation process has been completed in accordance with the Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010?

The Department understands that concerns were raised that Bowdens did not adhere to the consultation guidelines, particularly in relation to not providing the RAPs with the opportunity to review the preliminary draft survey report. Bowdens stated in its Submissions Report (s.5.2.8) that:

The draft Aboriginal Cultural Heritage Assessment report for the entire project was provided to all registered Aboriginal stakeholders for review and input on 2 August 2019 in accordance

with Section 4.4 of the Aboriginal Cultural Heritage Consultation Requirements for Proponents (DECCW 2010a). This report collated the results of all relevant surveys.

Heritage NSW reviewed the Aboriginal Cultural Heritage Assessment (ACHA), which includes a discussion about the consultation that was undertaken during the preparation of the report, and in its advice on the EIS it stated:

HNSW has not identified significant issues and is satisfied with the adequacy of the ACH assessment in regard to the Secretary's Environmental Assessment Requirements (SEARs). HNSW is particularly satisfied with the Aboriginal consultation and the proposed mitigation actions to be further developed post project approval for the Heritage Management Plan process.

The Department is satisfied that consultation with the RAPs for the ACHA was undertaken in accordance with the consultation guidelines. Recommended condition B57 further requires that the Aboriginal Cultural Heritage Management Plan for the project is prepared and implemented in consultation with the RAPs.

Relocation of Maloneys Road

6. The Commission notes the Department's recommended conditions related to the Maloneys Road relocation (B61 and B62). Is there any reason why the relocation of Maloneys Road should not be required to be completed prior to the commencement of any works on the site?

To assist with the response to this question, the Department requested additional information from Bowdens on the implications of requiring the relocation of Maloneys Road prior to the commencement of any other works on the site (see **Attachment C**).

As outlined in the EIS and in Bowdens' response, Bowdens is proposing to commence construction of the Maloneys Road realignment at the start of project construction (in Month 2), and anticipates that the relocation will conclude in Month 6 of the construction program.

Other proposed construction activities at the mine site during the first 6 months – which would occur concurrently with the road realignment works – involve the initial site preparation activities including vegetation clearing, soil stripping, site earthworks, and preliminary construction work (footings for buildings). These activities are unlikely to involve significant volumes of traffic using Maloneys Road, Lue Road and Pyangle Road.

In this regard, traffic assessment for the project estimates that the increase in traffic on Lue Road during the early construction phase (i.e. prior to the relocation of Maloneys Road) would be low relative to the existing traffic passing through Lue (ie. up to 10% of existing traffic at the peak). Heavy vehicle traffic generation during this period would include approximately:

- 4 shuttle bus movements (2 inbound, 2 outbound) per day;
- 32 heavy vehicle movements (16 inbound, 16 outbound) per day; and
- occasional oversize or overmass vehicles, which would be managed on a case-by-case basis.

Bowdens estimates that delaying initial site works until after the relocation of Maloneys Road would substantially delay the project and its benefits, and would have material impacts to project financial planning (with a two month delay costing approximately \$1.5 to \$2 million).

Bowdens also notes that its proposed upgrade to the intersection of Lue Road and Pyangle Road would not be required if the Maloneys Road relocation is required prior to any construction on site, and as such, the benefits of this upgrade would be lost.

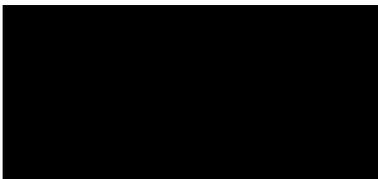
The Department considers that requiring the relocation of Maloneys Road prior to any other construction is not necessary or warranted, given the low traffic generation on local roads (including Lue Road) during this period, and given that the concurrent works are unlikely to result in any significant traffic or other environmental impacts.

Preventing the start of any works on the site until completion of the Maloneys Road realignment would also delay the commencement of preliminary site construction activities and prolong the duration of construction activities, and increase the costs of the project.

The Department's recommended conditions require Bowdens to relocate Maloneys Road prior to commencing any mining operations (condition B61), and to prepare a detailed Traffic Management Plan, in consultation with Council and Transport for NSW, prior to any construction (condition B64). This plan would describe the traffic controls to be implemented during the construction of the project, including the period when project-related vehicles would use the existing alignment of Maloneys Road.

The Department trusts that this information addresses the Commission's request. Should you have any further enquiries in relation to this matter, please do not hesitate to contact me on [REDACTED] or via email at [REDACTED].

Yours sincerely



Steve O'Donoghue
Director
Resource Assessments

Attachments:

- A DPE Water Advice on Harvestable Water Rights
- B Interpreting Excluded Works Dams Fact Sheet
- C Bowdens Advice on Maloneys Road Relocation Timing