



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: clientservices@auscript.com.au

W: www.auscript.com.au

TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-1395657

INDEPENDENT PLANNING COMMISSION

**PROJECT: MANGOOLA COAL CONTINUED OPERATIONS
SSD 8642**

MUSWELLBROOK SHIRE COUNCIL MEETING

IPC COMMISSIONERS: **PROFESSOR SNOW BARLOW
PETER COCHRANE**

**OFFICE OF THE
COMMISSION:** **BRADLEY JAMES**

COUNCIL MEMBERS: **CRAIG LEGGAT SC
JIM GRIFFITHS
FIONA PLESMAN
DEREK FINNEGAN
SHARON POPE
DEPUTY MAYOR COUNCILLOR ROB
SCHOLES**

DATE: **10.05 AM, WEDNESDAY, 24 FEBRUARY 2021**

PROF BARLOW: Thank you. Let me begin, and good morning and welcome. Before we begin here, if I can get it up. Yes. I would like to acknowledge the traditional owners of the land from which – the lands from which we meet today and I pay my deepest respects to their elders past, present and emerging. Welcome to the meeting today to discuss the Mangoola Coal Continued Operations Project, a State Significant Development that has been referred to the Commission by the Minister.

The Mangoola Mine is an existing open cut mine 20 ks from western Muswellbrook in the Upper Hunter. The project involves the extraction of an extra 52 million tonnes of run of the mine coal by establishing a new open cut mining area known as the northern extension. My name is Professor Snow Barlow, and I'm the chair of this IPC panel that has been appointed to determine this project. With me today is my fellow commissioner, Peter Cochrane. Joining me from the office of the Commission is Brad James and Steven Barry. I don't know whether Steve is there, is he, Brad?

MR JAMES: Steve sends apologies. No.

PROF BARLOW: Yes. Okay. So we could now move to Fiona. If you could introduce your team, and then I'll finish the statement after that. Fiona. Can you hear me?

MS PLESMAN: good morning, everyone, and at Muswellbrook Shire Council today we have our deputy mayor, councillor Rob Scholes, we have the deputy general manager, Derek Finnegan, and the executive manager environment and planning, Sharon Pope, and myself, Fiona Plesman, general manager Muswellbrook Shire Council.

PROF BARLOW: Yes. And we see we have Jim online now. Can you hear us, Jim? Can you unmute?

MR LEGGAT: Jim's sitting next to me and he has his thumbs up.

MR GRIFFITHS: I'm unmuted now. Thank you.

PROF BARLOW: And, Jim, what's your position in this? Are you - - -

MR GRIFFITHS: I'm the lawyer for Muswellbrook Shire Council.

PROF BARLOW: I see. Yes. And Craig, of course, is presenting the submission and representing the council. Well, thank you for that. Just to tell you the way – wait a minute. I just lost you for a moment. Can you hear me?

MR LEGGAT: Yes, Professor Barlow, I can.

PROF BARLOW: I just have got to get back to the video. Here we go. In the interest of openness and transparency and to ensure the full capture of information today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website. This meeting is one part of the
5 Commission's consideration of this matter and will form one of several sources of information upon which the council will base its advice.

It is important for the commissioners to ask question of attendees and to clarify issues whenever it's considered appropriate. If you are asked a question and are not
10 in a position to answer, please feel free to take that question on notice and provide any additional information in writing, which we will then put up on our website.

Furthermore, I request all members today to introduce themselves before speaking for the first time and for all members to ensure that they do not speak over the top of
15 each other to ensure the accuracy of the transcript. We can now begin, and I would ask Craig to make your presentation and, if you don't mind – will it interrupt you too much, Craig, if there are points we want a little bit of clarification on the way through or you would prefer to do it straight and then we'll ask questions afterwards. What suits you?

20

MR LEGGAT: Jim, my preference would be for the latter - - -

PROF BARLOW: Yes.

25 MR LEGGAT: - - - if that's all right with you. That is to let me have a clear run at it and then we can circle back.

PROF BARLOW: Okay. Please proceed.

30 MR LEGGAT: Thank you. The agenda circulated by the IPC provided a list of six items. I'm going to address each of those items, although it's going to be in a different order, and I'm going to add in five more topics. So there will be a total of 11 topics; however, the starting point is to state clearly right at the beginning that the Muswellbrook Shire Council opposes the grant of development consent to the
35 Mangoola Coal Continued Operations Project. Now, I'm going to refer to that project as the Continued Operations Project.

The starting point is opposition to the grant of development consent. Now, Muswellbrook Shire Council has a history of working collaboratively with coal
40 mines in its local government area, and it's done that to achieve community outcomes that are beneficial to the community; however, the time has been reached, in the opinion of the council, with the Continued Operations Project that enough is enough. What I mean by that is council does not want the Continued Operations Project to proceed. Council wants the IPC as the consent authority to refuse to grant
45 consent to the Continued Operations Project.

Now, the main reason for council's concern and council's opposition has been set out very, very well, in my respectful submission, by Dr Cherie McCullough. Now, the agenda identifies Dr McCullough's topic in the third dot point: rehabilitation, final landform and mine closure planning; however, council places that agenda dot point at the top of the list of council's opposition. Dr Cherie McCullough would be known to the Commission as one of, if not the, top experts in the world in relation to problems with projects such as the Continued Operations Project.

Now, as is apparent from Dr McCullough's work history she has provided, and continues to provide advice to Glencore in relation to many of its international mines. Dr McCullough says that the Continued Operations Project assessment by Glencore to date is uncharacteristically poor. Usually Glencore has what I would describe as a proud and enviable reputation for carrying out the required assessments for projects like the Continued Operations Project; however, uncharacteristically for Glencore, that has not yet occurred on the Continued Operations Project.

Now, Dr McCullough accuses Glencore of providing mere generalities of high level information. Dr McCullough's view is that the generalities are sadly lacking in the necessary and required depth of detailed assessment and depth of considered reasoning. Now, Dr McCullough says that's unlike Glencore, and she doesn't know why Glencore is taking that uncharacteristic approach to the Continued Operations Project.

Now, the IPC has been provided with a copy of Dr McCullough's review, which I would describe as a scathing review. The point that's continually made by Dr McCullough is that the Continued Operations Project is characterised by brevity of consideration, by an absence of any reasoning process to support the selection of options, and Dr McCullough describes that approach as a "trust us" approach. Now, in appropriate circumstances, when dealing with a reputable operator like Glencore a "trust us" approach can be entirely appropriate; however, Dr McCullough's view is that this Continued Operations Project is not one that ought to be treated by a "trust us" approach.

Dr McCullough in her review says that the correct approach which should be taken, which hasn't been taken, is for Glencore to descend from high level generalities to detailed assessment. Now, Dr McCullough describes in detail, chapter and verse, in her review lack of demonstrability, lack of sufficient detail, lack of evidence. Now, to give just one example out of potentially hundreds of examples recorded by Dr McCullough in that review, there's been no assessment of the nature and extent of potential contaminants for the water and waters associated with the continued operations project.

Now, there's a geochemical risk to waters that has simply not been the subject of assessment. Contaminants from arsenic onwards, alphabetically, haven't been the subject of the necessary assessment and consideration. Now, that is a geochemical risk that's vital. It's a geochemical risk that has not been assessed or considered. Now, Dr McCullough says this is very surprising, because usually Glencore carries

out such an assessment of chemical risk when doing activities like the Continued Operations Project, but for some inexplicable reason to date that hasn't occurred.

5 Now, Dr McCullough's review provides something of a checklist that Glencore can use to identify chapter and verse these accusations of Dr McCullough as to the nature and the extent of the absences or the superficialities of which she is so critical and which is so uncharacteristic of Glencore.

10 Now, another matter of historical record when dealing with mine rehabilitation is the danger associated with the void. The void has very steep sides, they're collapsing inwards and, as is acknowledged in the relevant literature, that aspect of the void presents dangers to human lives and limbs. Now, there's a – any quick Google search of key words like Collie Mine drownings will provide a detailed example of human tragedy as a matter of historical record in recent time.

15 Now, let me digress just very briefly. There's a story about the board of directors of a coal mine visiting a rehabilitated mine site, and this is a story. The members of the board accidentally start sliding down the void wall towards the water hundreds of metres ago. Now, as luck would have it, the way the story goes, there was a single
20 pink orchid – pink donkey orchid growing out of the very steep side of the void wall and the board members manage to cling onto the pink donkey orchid, and they notice there was this pungent smell of arsenic wafting around them and they called out in unison, they went, "Is there anybody there who can help us?" and then, the way the story goes, there's a divine voice answered and it said, "I am the rehabilitation expert
25 who designed the void. Trust me, you are safe. The void uses existing techniques recognised as industry leading practice. Trust me, you're in good hands". The board members then looked at each other and they cried out together in unison, "Is there anybody else up there?"

30 Now, that story demonstrates many things. One thing, for present purposes, is that pink Dr McCullough's point that Glencore's approach of, "Trust me, we've done this before", needs to be backed up by a site specific, demonstrable set of evidence. There needs to be an assessment of evidence, rather than this present approach of, "Trust us. All will be well".

35 Now, as night follows day, Dr McCullough's comments about the final landform, the voids, mine closure planning, unassessed geotechnical contaminants, those are also relevant to biodiversity, flora and fauna, and that's the second concern of Muswellbrook Shire Council. So we're now onto the second concern, biodiversity,
40 flora and fauna. Now, the problems that have been identified by Dr McCullough identifying the shortcomings, those shortcomings exacerbate the problems that Ziggy Andersons has identified in what I'd call a blistering review.

45 In fact, I'll go further. I'd say it's a blistering and scathing review by Ziggy Andersons. Now, the IPC has been provided with Ziggy's review. In a nutshell – or perhaps a pink donkey orchids labellum, the scathing criticism of Ziggy Andersons can be summarised in a sentence. The sentence is, "Inadequate survey effort for

reptiles and orchids”. Now, the Ziggy’s – my one sentence summary of Ziggy Andersons concern, “Inadequate survey effort for reptiles and orchids”.

5 Now, the nature and extent of that inadequacy of the survey effort Ziggy has set out in detail. One of the points of the inadequacy is the inappropriate timings of the surveys. Now, of great concern, or it should be of great concern to Glencore, and it will be of great concern to the Commission, is the way that the inadequacy of the Glencore surveys has been demonstrated by the EIS for Mount Pleasant. This recent EIS for Mount Pleasant includes the work of Colin Driscoll, which work revealed
10 delma impar up the road, so to speak.

Now, that finding by Colin Driscoll in relation to delma impar in the relevant locality contained in the EIS for Mount Pleasant demonstrate Ziggy’s point about how inadequate the survey effort was, at least for delma impar – at least being
15 demonstrated objectively by delma impar. Now, Ziggy Andersons review, of course, doesn’t only go to delma impar, but also the pink-tailed worm lizard. Now, Ziggy makes the point that one can look in vain through the Glencore assessment for the words “delma impar”. They’re just not there.

20 You have to go to the Biodiversity Conservation Act, or the Environment Protection and Biodiversity Conservation Act’s list of threatened species if you want to read about delma impar and its importance to biodiversity, because it simply hasn’t been dealt with in the Glencore assessment. Glencore’s failed to discuss or even consider delma impar, and that is uncharacteristic, but it’s inexcusable, in our respectful
25 submission. An inexcusable failure by Glencore, and quite an uncharacteristic one.

Now, as a matter of law and jurisdiction, the failures identified by Ziggy Andersons in his review, particularly in relation to cumulative impacts, including cumulative impacts on the reptiles and the orchids that are the subject of the survey’s
30 shortcomings, that may demonstrate a failure to address the SEARs in the manner required by law.

Now, I’m not going to go into great detail about the law in relation to prerequisites to the exercise of jurisdiction, as I’m sure that the IPC will have its lawyers investigate
35 the issue, particularly where, as here, it’s been flagged on behalf of the Muswellbrook Shire Council as an objector in a submission made at a public hearing of the IPC. So the flora and fauna concerns identified by Ziggy Andersons there, the second matter that I raise on behalf of the Shire Council.

40 The third matter that we raise relates to roads. Now, there is a legal issue that is far from straightforward for the IPC and Glencore to resolve. In relation to the manner in which Glencore seeks to address traffic and transport impacts by – and in the Continued Operations Project. Now, of course, Glencore’s entitled to formulate its project as it sees fit; however, there may be legal consequences for Glencore arising
45 from those choices. Now, without seeking to tell Glencore how to do its job when it comes to roads, Glencore and IPC will, with respect, need to consider very carefully whether the proposal by Glencore to close Wybong Post Office Road is an

application that can be considered by and granted by the IPC in the present Continued Operations Project application.

5 Now, the assessments by Glencore to date have yet to address the legal consequences of seeking to close Wybong Post Office Road as part of the continued operations project. Now, merit consideration, so moving from that point that I've just raised to what I might describe as merit considerations relevant to road and traffic impacts, they've been set out comprehensively by Ms Sharon Pope, the executive manager of environmental planning services in the letter dated the 10th of February 2020 to the
10 department, particularly at page 12 and following.

Now, the merit considerations have been set out by Sharon in a way that I describe as clear and terse and in a manner that I can't improve on, so I'm not going to try. Those submissions speak for themselves in relation to road and traffic impacts. Page
15 12 and following, 10 February 2020.

The fourth matter of concern to council is in the current agenda, described as current and potential social impacts on the proposal. That's the fourth dot point on the Commission's agenda. The specific concerns of council have been addressed by
20 Sharon on page 2 and following of the letter that I've made reference to. The main concerns about current potential social impacts, as have been set out by Sharon in her letter relate to what I'd call inadequacy of consideration in the social impact assessment.

25 Now, the inadequacy of consideration, that arises from, as is set out by Sharon in her letter, the failure to ask survey participants about the Continued Operations Project itself. So as Sharon provides, specificity about the inadequacies in the letter. Now, of course, even if such inadequacies were to be addressed, then there will arise a
30 necessity to impose conditions of consent, as have been identified by Sharon in the letter, in relation to a number of matters.

I'll identify five of them. One's replacement housing in the vicinity of Wybong – all of these are in Sharon's letter, but I just want to emphasise them. Replacement housing in the vicinity of Wybong Hall, number 2, specific Indigenous employment
35 programs (3) resolution of the inherent conflict between the community's ability to access and enjoy Manobalai Nature Reserve and the large Crown Land holding southbound reserve on the one hand, and on the other hand, the blast risks, including noise that are going to occur during the mine blasting program, number 4, there
40 needs to be a program of community building activities and (5) replenishment of dwelling house stock in the Muswellbrook Shire Council's local government area.

Now, those matters haven't yet been dealt with adequately in the conditions of consent for the reasons that Sharon sets out. So that's concern number 4. Concern number 5 relates to heritage matters. Now, again, Sharon's letter deals with those at
45 pages 11 and following, and unless I stand corrected, my understanding is that council would concede that conditions of consent can deal with heritage issues, but yet the appropriate condition of consent, for example, in relation to archival

recordings and the like, they haven't yet been formulated, but as I said right at the outset – and this is not to move away one centimetre from that position – council opposes the grant. So when we're talking about conditions and the content of conditions it's in the context of a starting point which is fundamental opposition, and
5 then we move to the without prejudice conditions. So that was number 6.

Seven, concern number 7, is visual impact. Ms Pope's letter deals with that at 13 and following. The visual bunding usually dealt with by an appropriate worded of consent – worded condition of consent is probably one way of dealing with that
10 matter. Council has bigger fish to fry, so to speak. The next concern, concern number 8, relates to greenhouse gas emissions. Now, Sharon's letter deals with that at page 17 and following. In that, Sharon suggests a condition of consent consistent with the Paris agreement, as foreshadowed by Sharon, can be a way of dealing with that as a without prejudice condition of consent.

15 Now, there's a matter that I've left nearly to the end, and that – this is a matter that is really, really important. So even though it's coming in as matter number 9, it's highly relevant to the first and second matters that I've described earlier, and I'm going to use this word hydrology just to capture the topic of matter number 9. Now,
20 in relation to hydrology, there are three subpoints. So matter number 9 is hydrology. There are three subpoints. The first hydrology subpoint is that when one looks at the SEARs, they – the SEARs require mapping and assessment of all of the surface water features so that there can be assessment of impact on all the watercourse and riparian land.

25 Now, we've done a careful audit of the documents, including, specifically, appendix 11, section 2.3, section 2.6.3 and appendix A, and we are satisfied that an examination of that material demonstrates that there has not been carried out the requisite assessment – and when I say requisite, required by the SEARs. Now, figure
30 10, appendix 11 shows the watercourses within the project area, three tributaries and Big Flat Creek have been identified and assessed; however, there are two tributaries shown on figure 10 that haven't been assessed.

35 Now, that's apparent from table 12. So in summary, it's objectively accurate to say that not all watercourses have been assessed or considered in the project area. Now, in such circumstances it's arguable, and council makes this submission, that there has been a failure to bring into existence a matter which needs to exist before the IPC can deal with an assessment of the merits of the Continued Operations Project.

40 Now, putting that another way, not all watercourses in the project area have been assessed. The SEARs required all watercourses in the project area to be assessed. Now, in those circumstances, it's submitted respectfully, that there's been a failure to address part of the SEARs. Now, in circumstances – in those circumstances, it's submitted that the IPC cannot determine the merits of the Continued Operations
45 Project. Now, there's an alternative submission, and I now make the alternative submission, if the failure to comply with the SEARs does not amount to a failure to establish a prerequisite for the exercise of the jurisdiction of the IPC, then as a matter

of merit, the failure to assess all of the watercourses ought, as a matter of merit assessment, give rise to the rejection of the Continued Operations Project.

5 Now, the second hydrology point, so we're on matter number 9, the hydrology point, and I'm dealing with the second aspect of the hydrology point. It's this: the SEARs require flood impacts to be assessed. Appendix 11, figure 12 show that only Big Flat Creek and tributary 1 were assessed in relation to flood impacts. There's been a failure to assess four other tributaries that are known to be located on the project area, and on the area shown in figure 10, appendix 11. Now, in such circumstances, 10 the assessment required by the SEARs hasn't been provided. now, the legal consequences arising from this second hydrology point are the same as I've made for the first hydrology point. I now move onto the third hydrology point.

15 MR JAMES: Hi, Craig. I'm very sorry to interrupt. Snow, Peter, we have someone in the waiting room, Kelly Scholes. Fiona, are they from council? I just want to check first.

MR LEGGAT: We have a Rod Scholes, the deputy mayor.

20 PROF BARLOW: No, it's Kelly Scholes.

MS PLESMAN: No. The deputy mayor is here. Kelly Scholes is in the waiting room. I don't think it's necessary. She – yes. I think that's an accident.

25 MR JAMES: Sure.

MS PLESMAN: She doesn't necessarily need to come into the meeting. I didn't indicate that she was included.

30 MR JAMES: Yes. Not a problem. Snow, Peter, you're happy to continue?

PROF BARLOW: Thank you. Please proceed, Craig. How long – how close are you to finishing?

35 MR LEGGAT: Professor Barlow, I think I can do it in eight minutes. Is that going to be satisfactory?

PROF BARLOW: Yes. We're – you know, we're well into this.

40 MR LEGGAT: Excellent. All right. So the third hydrology point. The SEARs require a description of the measures proposed to avoid, minimise or offset the likely development impacts. Now, appendix 12, in our respectful submission, addresses the wrong question. Appendix 12 addresses the impacts on groundwater system, but says nothing about the matter raised in and required by the SEARs, namely, a 45 description of measures proposed to avoid, minimise or offset the relevant impacts.

Now, in those circumstances the assessment required by the SEARs, in our respectful submission, has not been provided, and the legal consequences arising from that third hydrology point are the same as for the first and second hydrology points. Now, just really briefly in relation to what I'll call the prerequisite to the exercise of
5 jurisdiction point, the root, of course, is one looks at section 4.12, subsection (8) of the Environmental Planning and Assessment Act:

10 *A development application for State Significant Development or designated development is to be accompanied by an environmental impact statement in the form prescribed by the regulations.*

We go to schedule 2 of the EPA Regulation. The definition in clause 1:

15 *Environmental assessment requirement means the requirements of the planning secretary.*

Part 2 deals with the requirements. Clause 3, subclause (5):

20 *The planning secretary is to notify environmental assessment requirements.*

Clause 3(8):

25 *The responsible person must ensure that an environmental impact statement complies with any environmental assessment requirements.*

Now, clause 3, subclause (8) doesn't use the words "must use best endeavours to comply", doesn't use the word "substantially comply", doesn't use the words "must comply with most of the environmental assessment requirements". It's that there must be compliance with the environmental assessment requirements.
30

Now, the judgement of the New South Wales Court of Appeal Cranky Rock Road v Cowra [2006] NSWCA 339 in the judgment of Justice Tobias, relevantly, at paragraphs 36, 40, 42, 43, 44, particularly 53, 60, 61, 80 and 88 describe the nature of the legal thin ice that Glencore and the IPC are facing as a consequence of the
35 matters that I've identified.

Now, let me move onto matter number 10. Matter number 10 is the VPA. Now, council's starting point is, as I've said on a number of occasions, no approval should be granted. Now, if that occurs, then, of course, there's no need for a VPA.
40

Alternatively – and this is an alternative – if consent is granted over council's fundamental objection for such a grant, then a VPA is required. Now, as at today council has not yet received a VPA that's acceptable to it.

Now, of course, council is prepared to negotiate in good faith as part of the present
45 process to settle the terms of an acceptable VPA, but, as I said, we are not there yet and this is very much a without prejudice type of VPA, because of council's starting point that no approval should be granted.

Now, matter number 11, and this is the final matter, raised the draft conditions of consent recommended by the department. Now, council's approach to draft conditions of consent recommended by the department is that same as the approach that indicated for matter number 10. That's the VPA. Namely, no approval,
5 therefore, no conditions. Alternatively, if consent is granted over council's fundamental objection to such a consent, then conditions, clearly, are required. Now, as at today council has not yet finalised its preferred iteration, version of the form and content of the conditions. Now council will, of course, work with the department and with Glencore to settle without prejudice conditions. Now, those are
10 the submissions of council. Of course, all of us here today representing council are here to help, so if there are any matters upon which any of us can assist the Commission, then we'll do our best to provide that further assistance. Thank you.

PROF BARLOW: Thank you, Craig, and I – let's look at how we're going to deal
15 with your – you've raised some matters – we were going to go through our list, but perhaps we should go to the nub of things here, first, and, I'm sorry, Peter, but if you take your priority list, which is rehabilitation first, do you wish to ask a question, Peter, around rehabilitation, which we see from your submission is largely around the lack of rigour in the assessment, but particularly about heavy metals that – heavy
20 metals and toxic metals that, presumably, you're concerned would end up in the void, but would they be also in the creek systems? I'm sorry, Peter, that's – I'm not asking you that question, I'm actually asking council.

MR LEGGAT: I'm happy for Peter to answer it. I think it'll be the same answer
25 that I'll give, which is yes, Professor Barlow, you've put your finger on it. That's the problem. Definitely it's going to be part of the pathway – there's a geochemical risk that's currently unassessed and we've got pathway receptors that are going to use the void or have contact with it, including the water and the flora and fauna that require the water, so drainage contaminants and the water quality are part of that receptor
30 concern in the absence of studies dealing with that. So we're not talking about inadequacy. We're talking about zero.

PROF BARLOW: Yes.

35 MR LEGGAT: It just – it has not happened.

PROF BARLOW: Thank you.

MR LEGGAT: And Glencore always does it. It's just astonishing that on this
40 occasion that hasn't occurred.

PROF BARLOW: Peter, do you have any further questions about that?

MR COCHRANE: I do. You refer – thank you for your comprehensive input. You
45 referred to Dr Cherie McCullough's submissions. I have not yet been able to find that, so would you mind providing us with a copy of that. That would be very helpful.

MR LEGGAT: Certainly, Mr Cochrane. Yes.

PROF BARLOW: All right.

5 MR LEGGAT: Would you – any benefit in getting that now or – it’s nearly 800 pages long, so I suspect that probably getting it in the remaining 13 minutes is probably not going to be of any assistance.

MR COCHRANE: No. Just for - - -

10

PROF BARLOW: No. We - - -

MR COCHRANE: Yes.

15 PROF BARLOW: We need to be able to study that submission and, also, Peter, have you been able to find Ziggy Andersons submission?

MR LEGGAT: It’s mentioned in the shire’s – the council’s - - -

20 PROF BARLOW: Letter.

MR LEGGAT: - - - letter and submission of September 2019.

PROF BARLOW: Yes. But is - - -

25

MR LEGGAT: Whose submission itself - - -

PROF BARLOW: Are you able to provide that submission, as well.

30 MR LEGGAT: Yes. We’ll get that to you as well, Professor Barlow and Mr Cochrane. We’ll get that to you this afternoon. Both the Ziggy Andersons and the Dr McCullough’s.

PROF BARLOW: Thank you.

35

MR LEGGAT: But they have been provided. We will provide them again.

PROF BARLOW: Right. Fine. Well, we’ll consider those. Peter, have you, you know, any further questions on this rehabilitation question. I think we probably need to consider those submissions first - - -

40

MR COCHRANE: And we may come back to you.

PROF BARLOW: Yes. And we may come back to you with further questions on that.

45

MR COCHRANE: I had one particular one, and that is there is an existing translocation plan for orchids and threatened flora dated 2012 and one of the draft conditions is that the applicant must continue to implement the mitigation and management measures in that. are you able to comment on the – on your – or have
5 any thoughts on the adequacy of that – those measures in that approved plan or is that something I could give you – put you on notice, given the issues raised by yourselves and many others on the question of orchids.

MR LEGGAT: Mr Cochrane, we'd like to do that in two stages. We will take it on
10 notice and provide material to you in addition to what I'm about to say now. So the position, as I understand it, based on Ziggy Andersons' input, is that the translocation attempts have not been successful, and my recollection is that Ziggy Andersons actually says are not capable of being successful. He put it very high in his report, and you'll see that.

15 Now, that's his view. The fundamental problem appears to be a practical one, but is – Mr Cochrane, you may well know about this, but the orchids are not – the orchids are nurtured offsite in a particular potting mix, which is needed for the orchids. The potting mix is like, to use the vernacular, Viagra to the local pig population. The
20 local pigs will track down all of the orchids that have been the subject of the translocation and have the smell of the potting mix and will dig them out.

Now, apparently, statistically, about 50 per cent of the translocated orchids have been dug out by the local pig population, and that's so far. It's not as though the pigs are
25 now satiated and they don't want any more of the potting mix flavoured orchids. Rather, it's just a matter of time before the pigs find them and that, as I understand it, is one of the reasons – only one of the reasons – as to why translocation as has been conditioned in the past is not going to work in the future.

30 MR COCHRANE: Okay. Thank you.

MR LEGGAT: We will – as I indicated, we'll take that on notice and provide you with more professional description of the problem than that which I've just offered.

35 PROF BARLOW: Yes.

MR LEGGAT: But I think I've got to the gist of it.

40 MR COCHRANE: Thanks. That's very helpful.

PROF BARLOW: Yes. Is that in Ziggy Anderson's report?

MR LEGGAT: Ziggy Andersons deals with the inability, but he doesn't deal with the truffle-like problem - - -

45 PROF BARLOW: Okay.

MR LEGGAT: - - - as I understand it, but he will be able to provide the material – that latest material in relation to that pig problem.

5 MR COCHRANE: Okay. Just while – Snow, while we’re on biodiversity. In your submission of September, or the council’s submission of September 2019 you raised concerns about the security of some of the biodiversity offset areas to the north of the proposed extension and pointed out that there was an exploration licence over that – a fair bit of that area. Do you have any more information on that, and can you elaborate on those concerns?

10 MR LEGGAT: Mr Cochrane, what I’d like to do again is to take a two pronged approach to that (1) we’ll take that on notice and provide a written response, secondly, could I invite Sharon Pope to indicate whether there’s anything, Sharon, that you might be able to add in answer to the question raised by Mr Cochrane,
15 please.

MS POPE: Yes. This is Sharon Pope. From viewing the location of the offset sites and comparing it to the exploration licences issued in the area it does seem that some of the offset sites are within the ridge lands environment in exploration leaks, and
20 that some offset areas might actually be in the Giants Creek authority lease area, as well. That one hasn’t been given to a private entity to begin exploration activity. It’s still held by the department, but it is on offer for people to commence exploration for coal in the Giants Creek area where some of those offsets are located.

25 MR COCHRANE: Okay. Thank you.

PROF BARLOW: Thank you. Can we just ask a couple of questions about the VPA, and then we may return to the traffic and transport area. I take it that, you know, without prejudice, that you haven’t negotiated with the council on their
30 proposed VPA as yet? They – you know, they have stated to us that they have, you know, forwarded you a proposed VPA, but there hasn’t been any negotiations on that as yet; is that correct?

MR LEGGAT: Professor Barlow, I would like to pass that question to Ms Plesman or to Ms Pope, please.
35

MS PLESMAN: Fiona Plesman here, and I will answer that. As we usually do, we meet regularly with all mines, indeed, annually around VPAs. We have an existing VPA with Glencore for their current Mangoola Mine. They began introducing
40 discussions around VPAs for the continuation and extension project some time ago, at least 12 months ago. We didn’t encourage those discussions or proceed with any detail at all.

In fact, our view was that we needed a lot more information about the extension, and
45 we were beginning to prepare to get our own expert advice on what the impacts would be as per Mr Leggat’s overview. We were not in a position, as we saw it, to negotiate a VPA, as we suspected, looking at the ongoing cumulative effects of

mining in our area that we may well be in a position where we would be opposing the extension and continuation project. So the VPA discussions were very limited, indeed, and I made it very clear we had no – we had not yet any approved VPA approach from council with Glencore around their extension.

5

PROF BARLOW: Thank you. Thank you for that. Then perhaps let's just pursue this traffic and – as I take it, Craig, your and the council's position is that the redirection – realignment of Wybong Post Office Road is perhaps illegal. Is that too strong a word to use?

10

MR LEGGAT: Professor Barlow, illegal perhaps is too strong. It's a matter that has not yet been explored sufficiently by Glencore as to where the – there has not been identification of the relevant powers, including, of course, section 138 of the Roads Act, which are going to require close consideration when it comes to closing Wybong Post Office Road. Now, I'm not being intentionally vague. I'm flagging an issue, because it has not yet been identified as an issue and, self-evidently, has not, therefore, been addressed by Glencore, and in this iterative process, we are bringing that to the attention of Glencore and to the Commission as a matter which, whilst they can cast their application however they want, there may be consequences from casting it in a particular manner.

15
20

PROF BARLOW: Thank you. Perhaps I could pursue that a little further. Does the council – has the council in those discussions proposed alternatives to closing Wybong Post Office Road?

25

MR LEGGAT: I'd ask Ms Sharon Pope to answer that or Ms Plesman, please.

MR FINNEGAN: Thank you very much. My name's Derek Finnegan, the deputy general manager of Muswellbrook Shire Council. We have had some discussions with Glencore in relation to this. Council has adopted a mine affected network plan which does contemplate the impact on the road network associated with the proposal – the continued operations proposal. In relation to our discussion with Glencore, we have discussed alternatives to closing the road, but they are still in a – they have been a quite truthful discussion, but they're still in a preliminary stage.

30
35

PROF BARLOW: In your view, could there be alternative suggestions that could potentially satisfy the council?

MR FINNEGAN: In the view of council at this point in time, the most effective – we believe the most effective treatment is for the closure of Wybong Post Office Road. Essentially, all of the properties along that road now are consolidated and are owned by Glencore and, therefore, the public benefit is reduced by that in that the road becomes more or less a private road. We have suggested that through the mine affected road network plan that through the closing of Wybong Post Office Road there may be benefits in upgrading Yarraman Road, which is – which provides a similar network efficiency, and that has been the basis of some that discussion with Glencore.

40
45

PROF BARLOW: Thank you. Thank you for that.

MR COCHRANE: And if I could, Snow, the company seems to have indicated that it's open to either alternative and prepared to fund the upgrade of Yarraman Road to the same amount of money as its first alternative. Is that an adequate response in the council's view, Mr Finnegan?

MR FINNEGAN: Thank you very much. Council has indicated to Glencore that the required works to upgrade Yarraman Road will exceed the offering of Glencore. That has been the basis of our discussions to date.

MR COCHRANE: Okay. Thank you.

PROF BARLOW: Okay. Thank you for that. Peter, do you have – I have some other questions. So do you have any other pressing questions at present? But I'd like to just move to the current and potential social impacts of the project, and one of the questions that is really a question for the company, which we have asked to the company, but your views on the employment prospects of and the impacts of this further development on (1) continued employment, but also the level of that continued employment in this particular mine. Do you - - -

MR LEGGAT: Yes. Could I ask Sharon to take that one initially, please.

MS POPE: Sharon Pope again. Council raised concerns that as a region we've become quite dependent on the coal mines for providing employment opportunities, and almost to the point that because so many people see the mines as employment opportunities, other industries have gone into decline through lack of employees, and because of the loss of farming land, some of the – say, the veterinary practices have struggled to maintain clientele, and so their services have shrunk. Likewise, other businesses that might support agriculture, because there's fewer farms operating in the area have also contracted to other locations.

So council's concern is that whilst the mine does provide employment, it is actually going to be for a short to medium term and when the mine closes, we will have a community that actually is no longer functioning in a diverse way and people will suffer from the loss of employment, and there needs to be a lot of planning for the transition to other employment opportunities, but, unfortunately, the person who contributed the comments on jobs and the economy isn't in the room, so I am paraphrasing him to some degree.

PROF BARLOW: Yes. Could I just pursue that a little further. We note this in the existing and we have a question to the company on this. What was the level of apprenticeships supported by the company at present, and how do they compare with other mines in the area?

MS PLESMAN: Fiona Plesman here, and there are a level of apprenticeships that are provided by Glencore, and, indeed, that provides some future, particularly – and

particularly even if mining doesn't continue for Glencore, they may be able to move onto other mining areas, but council is particularly concerned to encourage, wherever we can, diversification and we are, indeed, putting quite a bit of funding into that as a council to attempt to diversify the community. We are very – our economy is very
5 linked to the ups and downs of thermal coal, the thermal coal price, and we – the local population is very aware and, indeed, has suffered the booms and busts that come with coal and is looking to have other industries.

10 So the community will tell you, you know, "Can we have manufacturing? Can we have some other industries that are not going to disappear when the coal runs out?" So we are looking to that, but there is no doubt that our – the economy in the Muswellbrook area is dominated by coal mining, and there, at this stage, are not a lot of other large employers on the size of the coal mines. So, yes, there would be an employment impact should the Mangoola extension not proceed, but there are
15 impacts coming, anyway, that we're preparing for.

Other mines are closing soon. Muswellbrook Coal Mine, Liddell, indeed, and we are working – we are a mature mining community with a number of mines that will reach their end and some, for example, MACH Energy's Mount Pleasant, which will
20 continue for some time, because it's a younger mine. I'd just like to ask Derek Finnegan if he has anything he'd like to add.

MS POPE: Actually, Sharon Pope here, I'll elaborate a little bit. One of the other concerns we have with the mine is the employment that they offer, generally, does
25 target males, and that we've got concerns that the apprenticeship programs, the employment that is offered and the employment that is lost tends to affect females, the Indigenous community and the socially disadvantaged more than it does the males in the area, or the males that are attracted to work in the area, so we feel that there could be a much more inclusive program associated with their employment.
30

PROF BARLOW: Thank you. Can I just pursue that a little further. Is, under the current VPA, any support for Indigenous apprenticeships or Indigenous involvement in the workforce, you know, specifically for the Indigenous community?

35 MS PLESMAN: In our – Fiona Plesman here. In our current VPA with Glencore there's no documented specific request on our behalf for them to employ Indigenous workers. We do, indeed, encourage that, and with our local employment commitments, we always attempt to have a certain percentage of local people employed, particularly Indigenous. We have quite a high Indigenous community.
40 Over 10 per cent of our community is Indigenous, but they also need access to the appropriate training.

PROF BARLOW: Thank you. Thank you.

45 MS PLESMAN: To allow that.

PROF BARLOW: Thank you. Peter, do you have any - - -

MR COCHRANE: I do have a few. Just on your point about – your concerns about diversification of the economy. In your later submission, your response to the RtS, you mention that the appropriate conditions of approval could include the requirement to – for the company to make a contribution towards the diversification of the economy post mining. Would you see that as an element of the VPA or a condition of consent?

MS PLESMAN: We would indeed encourage something along those lines, and are looking as a council at opportunities for levies from mines that would be towards a transition fund. We are a council that did create some years ago a future fund, which we see as a, sort of, superannuation for council in future times, but transition must be high on our radar; however, while those are important, I will reiterate that our concern in relation to the continuation of this Mangoola Mine is that cumulative impact on flora and fauna, impact on the waterways and, indeed, the legacy, the very long legacy that very large contaminated voids leave. We will have quite a few of those in the future, and all indications from our expert advisor, Cheri McCullough, indicates that the legacy from the voids is very highly likely to be contaminated water. We would ask that the IPC considers this.

MR COCHRANE: Yes. Sure. Okay. Thank you. One last one on employment, a major point in the applicant's submission is that this extension would provide for the continuing employment of something like 400 existing employees, reaching a peak of 480, but I think you've raised observations, at least, in your submissions that a lot of those existing employees don't actually live nearby and the benefits to Muswellbrook are not as great as one might assume with that number of employees. Can you elaborate a little bit on that, or do you have any more recent comments and observations to make about those local employment benefits, or disbenefits, because you have raised, certainly, some of the disbenefits of people not living in the Shire and, therefore, there are less people available for some of the volunteer community services that are characteristic of regional areas.

MS PLESMAN: Fiona Plesman here. Thanks, Peter Cochrane. I'll begin and I'll also hand over to Sharon for some comments in relation to this. This is a difficult area, and there's some debate about the level of workers in mines that live locally in Muswellbrook. We do by our physical evidence out on the roads know that we have a high quantity of drive-in, drive-out workers. So the employment impacts would be wide across the Upper Hunter and, indeed, the Lower Hunter. The mines in Muswellbrook attract quite a few workers.

MR COCHRANE: Yes.

MS PLESMAN: Not all of them. Indeed, we don't know exactly how many, but many do not choose to live in the Shire. Many people are happy to work here, but do not wish to live or raise their children where they – particularly in the Muswellbrook Shire. The mines in the Singleton area are more widely spread. In Muswellbrook they're more concentrated around the towns of Muswellbrook and Denman. People are very concerned about the cumulative effects and vote with their feet and live

elsewhere. So that is something we have to take onboard for the future. We do not want, as our thermal coal conditions to other form of energy, become a ghost town. So we are looking to work with other industries, for example, agribusiness to encourage other large employers into the area, for example, intensive poultry, abattoirs, feedlots. We are actively working with alternative industries to replace some employment. I'll hand over to Sharon Pope.

MS POPE: This is Sharon. I note from the information provided by Glencore that their records indicate a lot of people live locally, and we do have some anecdotal evidence that people from within the farming community and within Muswellbrook to look at Mangoola, but we also have knowledge that the rental market in Muswellbrook is incredibly tight, whereas the market for the sale of properties is not so tight. Properties stay on the market for a reasonable length of time, but prices of properties are not as high as you would expect, given the tight rental market.

So we aren't sure if some of the employees at the mine who are giving a Muswellbrook address are, in fact, renting a property, potentially in conjunction with some other people at the mine, and they use it almost as a boarding house, so while they're working on their shift that is where they sleep and eat and when they have a break from their shift they're driving back to the Lower Hunter, to where their family lives. So it's a really fraught one. It's very difficult for us to know exactly what is happening, but we are relying on the evidence that we see through the property rental market that it might not be a case that their families have moved here and are residing in the area, but just that the miner is working and living here while they are on their shifts, and they may not be living here, you know, the days that they're off.

MR COCHRANE: Thank you.

PROF BARLOW: Peter, any more questions?

MR COCHRANE: No. I'm just keen to see those additional submissions that somehow seem to have escaped me.

PROF BARLOW: Yes. And escaped me, as well, of course. Look, that's been very comprehensive. What we would do – and I don't think there have been too many questions that you haven't answered, but any questions that we have raised that you wanted taken on notice, but I don't recall too many, but Brad will send those to you, you know, formally after this meeting and we look forward very much to receiving those submissions, as Peter's just mentioned that we don't have in our knowledge at this point, and considering those, and we may have further questions for you in the council after that and, I guess, can I ask a final question, really. Are – is the council making a presentation to the public hearing? Craig? Sorry.

MR LEGGAT: Ms Plesman, could I – yes.

MS PLESMAN: At this stage we have not planned to make a presentation to the public meeting. That's for discussion at this point.

PROF BARLOW: Okay. And I think, Brad, there's only a couple of days to register, isn't there? Is that correct?

5 MR JAMES: Yes. That's correct. No. Registrations time out 5 pm tomorrow, which is Thursday the 25th.

PROF BARLOW: Yes. And the public hearing is next Wednesday at this point. So do you have any further questions for us, Craig or the council?

10 MR LEGGAT: Not for my part, Professor Barlow. Thank you.

MS PLESMAN: Not from council, either, thank you.

15 PROF BARLOW: Well, may I thank you all for your comprehensive presentation and response to our initial questions, which, of course, was much more than that. So as I've just said, we will consider what you are sending us, and if we have any further questions we'll come back to you.

20 MR LEGGAT: Professor Barlow, thank you very much for that. Just before we finish the transmission, Mr Griffiths has advised me he has just sent an electronic link to Mr Brad James for both Dr McCullough's review and Mr Ziggy Andersons' review. So hopefully that link will now be with you.

25 PROF BARLOW: Thank you very much. Thank you, Craig. Well, thank you all for your participation today. These meetings are incredibly important to the Commission in gathering the information we need to make, you know, the determination, and so we thank you for your participation and we thank you for your cooperation in making – you know, making this a fruitful meeting. So I think I shall declare the meeting closed and we'll proceed from here.

30

ADJOURNED

[11.22 am]