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**MT OWEN / GLENDELL**

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**GLENCORE**

17 February 2022

Joe Fittell  
Team Leader - Resource Assessments  
Department of Planning, Industry and Environment (DPIE)

Dear Joe,

**Glendell Continued Operations Project (GCOP) – Draft Conditions of Consent**

We refer to the draft consent conditions for the Glendell Continued Operations Project (GCOP) and specifically conditions A14, A15 relating to the Planning Agreement, and condition B100 relating to Road Maintenance (as set out below).

*A14. Prior to relocating Hebden Road, or within 24 months of the date of the commencement of mining operations associated with the Glendell Pit Extension (whichever is sooner), the Applicant must enter into a PA with Council in accordance with Division 7.1 of Part 7 of the EP&A Act.*

*A15. If the Applicant and Council do not enter into a PA within the timeframe under condition A14, then within a further 3 months, the Applicant must make a Section 7.11 of the EP&A Act contribution to Council of \$5.15 million as a one off payment. Upon making this payment condition A14 ceases to apply. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of Council's Singleton Community and Economic Development Fund, 2021, or its latest version.*

*B100. Unless road maintenance contributions are included in the PA under condition A14, then the Applicant must:*

- a) prepare a pre-dilapidation survey of Hebden Road (being the section of Hebden Road between the New England Highway and the Mount Owen Access Road Intersection), once the realigned road is commissioned;*
- b) prepare a post-dilapidation survey of Hebden Road every 5 years thereafter, or at intervals agreed to with the relevant roads authority, for the life of the development; and*
- c) following completion of a post-dilapidation survey prepared under condition b), where development -related damage is identified and rectification works are required, the Applicant is to notify the applicable roads authority of the required works and seek an independent costing associated with repairs. Upon acceptance of the independent costings and receipt of invoice from Council, the Applicant is to pay the amount required to undertake the repairs and Council is to complete the repairs.*

*to the satisfaction of the roads authority.*

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For the reasons set out in this letter, we are unable to accept these conditions in their current form. While we appreciate DPIE may elect to include these conditions as currently drafted in its referral of the GCOP to the Independent Planning Commission (IPC), we propose to submit our alternative drafting of these conditions and justification to the IPC for its consideration.

## **Background**

A key requirement of the GCOP is the realignment of a section of Hebden Road to enable progression of the Glendell Pit Extension to the north. There are two components to this realignment:

1. the construction of a new section of Hebden Road at Glendell's cost which will then be transferred to Singleton Council;
2. formal closure of the existing alignment of Hebden Road under Part 4 of the *Roads Act 1993* (NSW) by Singleton Council as the roads authority and the transfer of that closed portion of road to Glendell.

Without these two components, the mining approved by the Project cannot proceed.

Importantly, the old section of road will be used during the high impact construction phase of the GCOP and prior to the opening of the new section of road. Consequently, this will avoid the need for repair of any construction damage to the section of road being closed. Ongoing operations as part of the GCOP will not significantly contribute to dilapidation impacts beyond the fair wear and tear associated with normal road use by employees and suppliers.

Unlike a section 138 Roads Act approval, a decision by Council to close a road under Part 4 of the Roads Act is not an approval, pursuant to the *Environmental Planning and Assessment Act 1979* (NSW), that must be consistent with a State Significant Development approval and is entirely at the discretion of Council. In practice, this gives Council, as the roads authority, a veto right over any road closure.

Glendell has had numerous discussions with Singleton Council regarding the financial arrangements around this road closure and transfer processes however, agreement as to the closure of the road has not yet been reached. We are aware of significant delays for other projects in relation to this matter, both across NSW and in the Singleton LGA. We note that without reaching agreed terms with Singleton Council regarding the closure of Hebden Road the GCOP cannot be commenced.

## **Requested Planning Agreement Condition Amendments**

Given the issues identified above, Glendell is strongly of the view that the Planning Agreement terms (and subsequent payment of the contribution) must be linked to the closure of Hebden Road. Without this there is nothing preventing Council from collecting the Planning Agreement contributions but delaying or preventing the Project by withholding the formal closure of the road. For this reason, the Planning Agreement terms proposed by Glendell cover all aspects of the closure of Hebden Road, the transfer of the closed road to Glendell, the ongoing maintenance of Hebden Road and GCOP generally.

Below is our alternate wording for conditions A14 and A15, which links payment of the contribution to the formal closure of the road. This condition does not fetter the discretion of Council in terms of its responsibilities under the Roads Act however, it does create an incentive for Council to exercise such discretion in a timely manner that is consistent with any decision to approve the GCOP. We also request that a condition be added to provide a resolution pathway should agreement not be reached with Singleton Council.

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## Alternate wording for Planning Agreement Conditions:

- *Within six months of the legal closure of the existing portion of Hebden Road associated with the Glendell Pit Extension, or other timeframe agreed by the Planning Secretary, the Applicant must enter into a PA with Council in accordance with Division 7.1 of Part 7 of the EP&A Act.*
- *If the Applicant and Council do not enter into a PA within the timeframe under condition A14, then within a further 3 months, the Applicant must make a Section 7.11 of the EP&A Act contribution to Council of \$5.15 million as a one-off payment in satisfaction of all the Applicant's contributions for the Development. Upon making this payment condition A14 ceases to apply. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of Council's Singleton Community and Economic Development Fund, 2021, or its latest version.*
- *If there is any dispute between the Applicant and Council in regards to conditions A14 and A15 then either party may refer the matter to the Planning Secretary for resolution.*

Glendell notes that, other than potential road maintenance costs, the GCOP itself will place no additional demand on Council services and as such the quantum of the Planning Agreement offer made by Glendell to Singleton Council significantly exceeds the anticipated additional maintenance costs.

## **Requested Road Maintenance Condition Amendments**

As currently drafted, the proposed road maintenance condition provides an opportunity for Singleton Council to capture additional value from the GCOP on top of the proposed Planning Agreement contribution. Glendell strongly believe that any contribution in relation to road maintenance for the relocated section of Hebden Road should form part of the Planning Agreement contribution, which is in keeping with the original intent of developer contributions (whether imposed under a Contributions Plan or a Planning Agreement) to ensure that Councils can recoup additional capital and maintenance costs they may incur from the developer of the project that gives rise to those increased costs.

We propose the below alternate wording for condition B100:

## Alternate wording for Road Maintenance Condition:

- *The Applicant must:*
  - *prepare a pre-dilapidation survey of Hebden Road (being the section of Hebden Road between the New England Highway and the Mount Owen Access Road Intersection), prior to the commencement of any construction or decommissioning works;*
  - *prepare a post-dilapidation survey of Hebden Road within 1 month of the completion of construction or decommissioning works, or other timeframe agreed by the applicable roads authority, which includes an attribution of road maintenance works associated with other road users; and*
  - *following completion of a post-dilapidation survey, where -construction or decommissioning related damage is identified and rectification works are required, the Applicant is to notify the applicable roads authority of the required works and seek an independent costing associated with repairs which are attributable to the Project. Upon acceptance of the independent costings and receipt of invoice from Council, the Applicant is to pay the amount required to undertake the repairs and Council is to complete the repairs.*  
  
*to the satisfaction of the applicable roads authority.*
- *If the construction and/or decommissioning of the development is to be staged, the obligations in this condition apply to each stage.*

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- *If there is a dispute about the scope of any remedial works or the implementation of the works, then either party may refer the matter to the Planning Secretary for resolution.*

Should you require any further information or clarification on the above then please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Scott', with a long horizontal flourish extending to the right.

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