



Environmental Defenders Office

14 March 2024

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Resource Assessments
Department of Planning and Housing and Infrastructure

Re: Submission on Glendell Mine Modification 5 – Life Extension

1. We make this submission on behalf of our client, Mr Scott Franks, a Wonnarua man and a representative of the Plains Clan of the Wonnarua People.
2. We refer to the application for modification 5 of DA 80/952, which seeks an extension to the life of the Glendell Mine by two years until June 2026 (the **Modification Application**) pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EP&A Act**).
3. The Modification Application should not be approved on the following grounds:
 - a. *Delay tactic*: There is evidence to suggest that the proponent is relying on the 2-year extension proposed by the Modification Application to further delay the closure of the Glendell mine and obtain additional time for a more substantial modification application to be lodged similar to the controversial Glendell Continued Operations Project,¹ which was ultimately refused by the Independent Planning Commission in October 2022 due to “*significant and irreversible*” impacts on the historic Ravensworth Estate.
 - b. *Climate impacts*: The extraction of an additional 1.8Mt coal over the life of the mine will have climate impacts in circumstances where major *reductions*, not *increases*, in emissions will be required post-2030 to stay within the 1.5°C carbon budget.
 - c. *Opportunity cost in extending life of mine*: The further extension of the Glendell mine will result in significant opportunity costs arising from the further delay to the rehabilitation and renewal of the Hunter Valley, and the reduction in greenhouse gas emissions. There is greater economic benefit to be derived from the closure of the mine compared to the limited economic benefit in royalties from the additional 1.8Mt coal proposed to be extracted.

Background

¹ Reference number SSD 9349 and SSD 5850 Mod 4.

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4. Since 2020, there have been significant changes in State and Federal obligations in relation to climate change. The Federal Government has enacted the *Climate Change Act 2022* (Cth), which notes the urgent threat of climate change and legislates Australia's greenhouse gas emissions reduction commitments under the Paris Agreement.² The Federal Government has also become a signatory to the Global Methane Pledge, having pledged to reduce methane emissions by at least 30% below 2020 levels by 2030, highlighting the importance of urgently reducing greenhouse gas emissions.³
5. The NSW State Government has enacted a positive obligation on the whole of the NSW Government to ensure urgent action is taken to reduce greenhouse gas emissions to address the adverse impacts of climate change via the *Climate Change (Net Zero Future) Act 2023* (NSW) (**Net Zero Future Act**).⁴ This action is to be consistent with the right to a clean, healthy and sustainable environment.⁵ The emission reduction targets under the legislation are there to ensure a sustainable and fair future for the people, economy and environment of NSW.⁶ The *NSW State Environmental Planning Policy (Mining and Resources) 2021* (**SEPP Resources and Energy**) was enacted and commenced in 2022, and contains a requirement that a consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.⁷ This would include the *Climate Change (Net Zero Futures) Act 2023* and the Global Methane Pledge discussed above.
6. There has also been considerable development in the judicial recognition of the environmental and social impacts and significance of climate change and the role of climate change when assessing the public interest. The need for decision makers to consider climate change and greenhouse gas emission reduction when determining development applications has been strengthened particularly in relation to coal mines and fossil fuel projects.⁸

² See *Climate Change Act 2022* <https://www.legislation.gov.au/C2022A00037/latest/text>

³ DCCEEW (2022) Australia Joins. Global Methane Pledge. Retrieved from <https://minister.dcceew.gov.au/bowen/media-releases/australia-joins-global-methane-pledge>

⁴ See sections 11 and 3 of the *Climate Change (Net Zero Future) Act 2023*

⁵ See section 8(5) *Climate Change (Net Zero Future) Act 2023*

⁶ See section 3(3) of the *Climate Change (Net Zero Future) Act 2023*

⁷ See clause 2.20(2) of the *State Environmental Planning and Assessment Policy (Resource and Energy) 2021*

⁸ See *KEPCO Bylong Australia v Independent Planning Commission and Bylong Valley Protection Alliance* [2021] NSWCA 216; *Gomerai People v Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd* [2024] FCAFC 26 Retrieved from

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2024/2024fcafc0026>

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A. The Modification Application may be a delay tactic to obtain additional time to secure a more substantial expansion to the mine with significant cultural heritage and climate impacts

7. On 13 March 2023, Glencore publicly made clear⁹ that it remains committed to the Glendell Continued Operations Project (**GCO Project**), which sought to extend mining at Glendell Mine to 2044, extracting an additional 135 million tonnes of coal. This is notwithstanding the decision of the Independent Planning Commission (**IPC**) on 28 October 2022 to refuse consent to the GCO Project, and Glencore's own decision not to seek to appeal that refusal. Our client is concerned that the modification process should not be allowed to circumvent a proper process and be the basis for a further expansion in an area with significant cultural heritage impacts.
8. The key basis for the IPC's refusal of the GCO Project was the "*significant and irreversible impacts on the historical heritage of the Ravensworth Homestead complex*", which contains "*elements of high to exceptional significance*", the removal of which would constitute "*a significant loss to future generations*".¹⁰ The IPC also cited harm to Aboriginal cultural heritage values.¹¹
9. The Project area is of great significance to the Wonnarua people, particularly those families comprising the Plains Clan of the Wonnarua People, whose identified ancestors inhabited the Project area and surrounding plains lands prior to and during colonisation and who have maintained connection with the area since. Should the Modification Application facilitate a further modification to expand mining operations into these areas, there will be significant impacts on the Aboriginal cultural heritage values of the area, which have already suffered damaging cumulative effects from historic mining activities.
10. The GCO project also represented the generation of an additional 227.26Mt CO₂ equivalent in Scope 1, 2, and 3 GHG emissions. The future approval of a similar project would make an unacceptable contribution to climate change in circumstances where major *reductions*, not *increases*, in emissions will be required post-2030 to stay within the 1.5°C carbon budget.
11. The present Modification Application should not be used to facilitate a further expansion to the Glendell mine in circumstances where the above impacts have already been

⁹ SMH, 'Coal mine to 'relocate' historic homestead and Indigenous site for mine' (13 March 2023), <https://www.smh.com.au/national/nsw/coal-miner-to-relocate-historic-homestead-and-indigenous-site-for-mine-20230309-p5cqqi.html>

¹⁰ IPC Statement of Reasons, Glendell Continued Operations SSD-9349 and SSD-5850-Mod-4, i.

¹¹ IPC Statement of Reasons, Glendell Continued Operations SSD-9349 and SSD-5850-Mod-4, i.

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identified by the IPC in relation to the refused GCO Project, and where major reductions in GHG emissions are urgently required.

B. The Modification Application will have climate impacts in circumstances where major reductions, not increases, in emissions will be required post-2030 to stay within the 1.5°C carbon budget.

12. The recently passed Net Zero Future Act contains specific targets to reduce greenhouse gas emissions in NSW by 75% by 2035. A modification of an existing coal mine to allow increased coal production is inconsistent with the objective of the Net Zero Future Act to pursue efforts to limit temperature increases to 1.5°C.
13. Similarly, at the latest international meetings on the Paris Agreement at COP28, countries including Australia have agreed to transition from fossil fuels to ensure global temperatures aim to keep within the 1.5°C carbon budget. The Global Stocktake from COP28 notes that 2023 is set to be the warmest year on record and impacts of climate change are rapidly accelerating.¹² It emphasises “*the need for urgent action to keep the 1.5°C goal within reach and to address the climate crisis in this critical decade*” to address the implementation gap that is discussed below. Further it recognises the need for “*deep, rapid and sustained reductions in greenhouse gas emissions*” including “*accelerating efforts to phase-down unabated coal power*”, and “*transitioning away from fossil fuels in energy systems, in a just and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science.*”¹³
14. The extraction of an additional 1.8Mt coal will increase the Scope 1, 2 and 3 CO₂-e emissions on top of what is already approved.¹⁴ If, as discussed above, the Modification Application will facilitate an additional expansion of similar magnitude as the GCO Project, this will add an additional 227.26Mt Scope 1, 2 and 3 CO₂-e emissions to 2044. Whether considered alone or together, both represent substantial additions at a time when international institutions and agreements, as noted above, have called for decreases in production of fossil fuels every year between 2020 and 2023 to stay within Paris Agreement goals:¹⁵

“To be consistent with limiting warming to 1.5°C, global coal, oil, and gas production would have to decrease by around 11%, 4%, and 3%, respectively, each year

¹² https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf.

¹³ https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf, at 28.

¹⁴ Glendell Mine Modification 5 Modification Report, iii.

¹⁵ SEI, IISD, ODI, E3G, and UNEP, ‘The Production Gap: 2021 Report’ https://productiongap.org/wp-content/uploads/2021/11/PGR2021_web_rev.pdf, 15.

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between 2020 and 2030. However, governments are collectively projecting an increase in global oil and gas production, and only a modest decrease in coal production, from 2020 onwards (as shown by the “countries’ plans and projections” pathways in Figure 2.2). By 2030, this would lead to 240% more coal, 57% more oil, and 71% more gas than consistent with the median 1.5°C-warming pathway, and to 120% more coal, 14% more oil, and 15% more gas than consistent with the median 2°C-warming pathway.”

15. The updated 2023 Production Gap Report¹⁶ states that Governments in aggregate still plan to produce more than double the amount of fossil fuels in 2030 than would be consistent with limiting warming to 1.5°C, highlighting that Australia is increasing its coal production instead of declining. It recommends a total phase-out of coal production and use by 2040 given the risks associated with relying on novel technologies such as carbon capture and storage and carbon dioxide removal.

16. Similarly, the International Energy Agency has recommended in its latest roadmap that more action is needed to limit global warming to 1.5°C.¹⁷ It stated that in updated net zero scenarios, clean energy capacity drives fossil fuel demand 25% lower by 2030 reducing emissions by 35% and by 80% by 2050. As a result, no new coal mines, mine extensions or new unabated coal plants are required. This is consistent with leading climate scientists and policy makers such as Professor Will Steffen and John Hewson AM, who have highlighted the need for fossil fuels projects to be rapidly phased out post-2030, and current net zero targets to be brought forward from net zero by 2050 to net zero by 2035, in order to limit global warming to 1.5°C.¹⁸

Additional information relating to the assessment of GHG emissions is required

17. In addition, the assessment of GHG emissions in the Modification Application notes “*the Modification only facilitates extraction of coal that is already approved for extraction. As*

¹⁶SEI, IISD, ODI, E3G, and UNEP, ‘The Production Gap: 2023 Report’

<https://productiongap.org/2023report/#2023downloads>.

¹⁷ <https://www.iea.org/news/the-path-to-limiting-global-warming-to-1-5-c-has-narrowed-but-clean-energy-growth-is-keeping-it-open>.

¹⁸ Climate Targets Panel, “Shifting the Burden: Australia’s Emissions Reduction Tasks Over Coming Decades” (Report, March 2021),

<https://www.climatecollege.unimelb.edu.au/files/site1/docs/%5Bmi7%3Aui7uid%5D/Climate%20Targets%20Panel%20Report%20-%20March%202021.pdf>; Climate Council, “Mission Zero: How Today’s Climate Choices Will Reshape Australia” (2023)

<https://www.climatecouncil.org.au/resources/missionzero/#:~:text=The%20Climate%20Council%20reaffirms%20that,a%20decent%20chance%20of%20success>; Australian Academy of Technological Sciences and Engineering, <https://www.atse.org.au/news-and-events/article/australias-leading-engineers-and-technologists-call-for-net-zero-by-2035/>.

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such, the Modification will not increase the overall GHG emissions from Glendell. It is moving Glendell's emissions into the period from July 2024 to July 2026".¹⁹ Table 4 outlines the GHG emissions sources and estimation methodologies. Table 5 outlines the estimated Scope 1, 2 and 3 emissions. The total emissions for FY 2025 and FY 2026 (the extension period) combined is 2,710,435 tonnes of CO₂ equivalent. It is noted that these are estimated totals and there is a caveat provided that the run of mine coal extracted from Glendell is processed at Mount Owen and therefore the GHG emissions from the processing are not included in this figure.²⁰ The consent authority is therefore unable to discharge its duties in accordance with the SEPP (Resources and Energy) based on the lack of relevant GHG emission information provided.

C. The further extension of mining operations will come at a significant opportunity cost to the local community and the people of NSW

18. Finally, any further extension to the mining operations at Glendell mine will come at a significant opportunity cost both to the local community and the people of NSW.
19. The limited direct economic benefits to be realised from the extraction of an additional 1.8Mt coal are substantially outweighed by the significant opportunity costs in allowing the continuation of mining operations at the mine, being:
 - a. Further delay to the renewal of the Hunter Valley community and capitalising on economic and social opportunities presented by rehabilitation of mine-affected lands.²¹
 - b. The benefits to the economy, public health, and cultural heritage deriving from the mitigation of additional greenhouse gas emissions. We refer to the recent Federal Court decision in *Gomeroy People v Santos NSW*²² which has reaffirmed that there is a public interest in the mitigation of greenhouse gas emissions. The case considered what must be taken into account when assessing the public interest of a proposal. There, it was found that a consent authority should have taken public interest in the mitigation of climate change and its impacts into account when making its decision. Further, the court found that "*positive and negative matters are, intended by Parliament to form part of the overall assessment by the arbitral body about where there is "any" public interest in the proposed act proceeding, or being done.*"

¹⁹ Glendell Mine Modification 5 Modification Report, p 9.

²⁰ Glendell Mine Modification 5 Modification Report, Appendix A at p 10.

²¹ Hunter Renewal, 'After the coal rush, the clean up: A community blueprint to restore the Hunter' (Report, 2022)

https://assets.nationbuilder.com/lockthegate/pages/8186/attachments/original/1675985437/Hunter_Restoration_Blueprint_FINAL.pdf?1675985437.

²² *Gomeroy People v Santos NSW Pty Ltd and Santos NSW (Narrabri Gas) Pty Ltd* [2024] FCAFC 26.

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