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Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Lauren Evans by email: lauren.evans@planning.nsw.gov.au
Copy to: Mr Howard Reed by email: howard.reed@planning.nsw.gov.au

Dear Ms Evans

**RE Marulan South Limestone Mine Continued Operations Project –
SSD-7009 – formal objection to the Development Application**

1. Letter of objection

Reference is made to the above development application (**application**).

Tomasy Planning has been engaged to submit a formal letter of objection on behalf of Gormen Pty Ltd, the owner of the Glenrock property. Neither our client nor any of its directors has made any reportable political donation during the last 2 years.

2. The notification process

We wish to record the following matters in relation to the notification process.

Brevity of notification period

The application was placed on public exhibition as a State Significant Development on 3 April 2019 for submissions closing 1 May 2019. Given the significance of the proposal, the brevity of the submissions period (at 28 days rather than 40) and the coincidence of that period with gazetted school holidays, Easter and Anzac Day we and our client reserve the right to make further submissions.

Difficulty of access

We also note that access to the documents is very difficult such that review of them by a typical domestic landholder is effectively impossible. Tomasy and our client both operate commercial offices with large scale commercial capacity services and even in our case and despite persistent attempts many of the documents simply fail to load, ultimately requiring access through the planning portal and a degree of technical skill and utilisation which is unavailable to most domestic users.

Inadequate notification and opportunity for submissions

As a separate matter we are aware that despite the significant impact of the application it has not been notified to a substantial number of residents and property owners who are

affected by it in a most serious manner, particularly in relation to the issue of the proposed water storage facility which forms part of the application.

The resultant concern

We and our client are concerned that the combination of the above factors has resulted in a lack of public submissions regarding this application and that a lack of submissions will be wrongly construed as a lack of public objection.

Appropriate and proper notification

We consider, given the significance and magnitude of the application and its attendant impact on not only our client but the wider community, particularly in respect of the water issues detailed below, that it would be appropriate for all property owners whose land is affected by the application to be properly notified and given the opportunity to make submissions.

That would require notification to each property owner:

- (i) on whose land the watercourse from Tallong Dam (including Barber's Creek) runs;
- (ii) whose land is otherwise serviced by water from that watercourse (whether by way of fire fighting resource, irrigation, services or other maintenance); and
- (iii) whose land would be subject to environmental impact by the likely and / or foreseeable effects of the application and, in particular, the likely and foreseeable environmental damage inherent in that part of the application which proposes the new water storage facility.

This would result in a substantially higher number of notifications being sent and, we are quite sure, a substantial community response in the form of a large number of submissions. The feedback received by our client to date is that most property owners who are affected by the application have simply not been notified and have not heard of it.

We consider this a material issue given the fact that the application has wide ranging community impact, far beyond the small number of landholders which have been notified.

Would you please advise whether the Department will be renotifying the application accordingly.

3. The Glenrock property

Glenrock is located at 248 Highland Way, Marulan. It comprises a holding in excess of 1,000 hectares (approximately 2,500 acres) and is located directly north of the Boral property the subject of the application. The Glenrock property comprises the following titles: Lot 204 DP 870194, Lot 1 DP 1174575, Lots 5, 6 and 7 in DP 855762.

The property is a working cattle operation of substantial scale. It is an employer and contributor to the community in the form of:

- (i) the purchase of substantial amounts of local goods and services (of over several million dollars in the last decade or two alone);
- (ii) the operation of an agricultural enterprise, in accordance with the objectives of the applicable land zoning, which produces and runs high quality Angus cattle and which has done so for continuously for a period approaching 200 years;
- (iii) (under the present owner) the meticulous restoration, over a 12 year period, of the historic gardens and the heritage buildings and facilities on the property and the

opening of those buildings and facilities by invitation to selected community groups, historical societies and charities.

The several historical and heritage dwellings and landmarks on the property are both well documented and recognised as being of Commonwealth and State significance. They are listed at the highest level and documented extensively in the architectural and cultural history of Australia. The homestead and associated buildings are equally documented consistently over the last century or more as being among the finest Georgian and Greek Revival structures in the State of New South Wales.

4. Our client's approach and correspondence with the applicant

Our client's desire is to engage collaboratively with Boral on this project. To that effect we have been involved in this matter for some time and first contacted Boral in relation to it some time ago. We did not receive a response from the relevant person within Boral until only a few days ago. That response was sufficiently unsatisfactory (as detailed below) as to have necessitated this letter.

At this time our attempts to engage constructively with the applicant on our client's behalf have resulted in:

- (i) not being answered until several days ago;
- (ii) not being provided with adequate or accurate information; and
- (iii) being provided with assurances which are demonstrably and clearly contrary to the documentation submitted by Boral in support of its application.

The last issue especially is of substantial concern to our client because we consider any application, especially one of this magnitude and significance, should be handled in a forthright and transparent manner in dealings with the public generally and especially with direct neighbours: the Glenrock property is the largest adjoining neighbour and the most directly impacted by the current proposal. We consider this even more appropriate and necessary where the application involves public assets and resources, as this one does.

By way of example of item (iii) above, in recent correspondence from Boral's Planning and Development Manager NSW/ACT the following was stated:

"The pit is to be widened and deepened over time, but only to the south, not to the north and therefore without effect to Glenrock

The primary expansion of the limestone pit is to the west and south. However, there is a minor northern increase in the extent of the pit that can be seen in the proposed stage 1 figure, refer to Figure 4.12 p. 112 in section 4.5.2 of the EIS document. Alternatively for ease of reference I have attached the relevant figures showing Stage 0 - 4 of the proposal.

Approval to use overburden generated at the site to fill the southernmost end of the existing pit

The proposal involves the emplacement of overburden both "in pit" and "out-of-pit". The "out of pit" overburden emplacement will be to the west, south west and north-west of the limestone pits (as set out in response to your query below). "In-pit" refers to the use of overburden within the southernmost portions of the pit. The "in pit" emplacement is confined to the southern portion.

Creating embankments for additional overburden to the west and north-west of the site

As set out above, the project includes the establishment of overburden emplacement areas to the west, north west and the south west. These are

shown in Figures 4.12, 4.14, 4.16 and 4.18. These are attached in chronology for ease of reference.”

The above statements indicating that the subject proposal will not affect Glenrock are just not correct. It is evident from the documentation submitted in support of the application that the area defined as the ‘Northern Overburden Emplacement Area’ will have a significant impact upon the Glenrock property and, equally, that there is a substantial expansion to the north towards the Glenrock property. Even more fundamentally, the proposed new water storage facility would have an enormous impact not only on Glenrock but on the many other properties affected by this application. We detail these matters below.

Separately, until several days ago it had been our and our client’s clear understanding from previous discussions with Boral that the proposed expansion to the existing Marulan South Limestone Mine was to the south and west and **not** in a northerly direction towards Glenrock. It is evident from Figure 4.12 titled ‘The Project – Stage 1 (5 years)’ as well as subsequent illustrations predicting growth of the project beyond 11 years a massive expansion is planned to the proposed new northern overburden emplacement area and that this will continue to encroach on the Glenrock property. It is also noted that the proposed limestone mine pit will be expanded in a northerly direction which is in direct contradiction to previous advice from the applicant.

In view of those matters and the concerns expressed below our client considers that it is not appropriate that we have been advised the proposal is “without effect” to Glenrock. For the reasons detailed below, we and our client are very much of the view that the reverse is the case.

5. Specific grounds of objection

Our client’s specific further grounds of objection are set out below in sections **5.A.** to **5.I.** inclusive.

A. Site analysis

The Environmental Impact Statement (**EIS**) describes the site as follows:

“The mine is separated from the Bungonia National Park (NP) and State Conservation Area to the south by the Bungonia Creek and is separated from the Shoalhaven River and Morton NP to the east by Barbers Creek”.

The above description is accurate in so far as it goes. It is also incomplete and misleading. This site description fails to have regard to the northern boundary and to the Glenrock property, which directly abuts the northern boundary of the applicant’s mining operations.

This starting point of this defective site analysis is the framework through which the entire content of the EIS has been inappropriately skewed in an obvious attempt to minimise even any mention, let alone any proper analysis or discussion, of the application’s impact on the Glenrock property.

We and our client consider it most inappropriate and incorrect that an EIS has been prepared and lodged without:

- (i) any proper consideration or analysis of the impact of the application on the Glenrock property; and
- (ii) any attempt to even discuss the application with our client or this office before, or after, it was lodged. That failure occurred despite the applicant being well aware of

the Glenrock property, its significance, the appointment of this firm and the desire of Glenrock's owner to be appraised of any application beforehand so that constructive discussions can occur in preference to public objections.

It is imperative that Boral take into serious consideration the significance of Glenrock, not only the heritage status of its gardens and buildings but the property as a whole which includes grazing paddocks and dams and an environmentally sensitive and valuable ecosystem. This has not occurred. No regard has been had to impact on the Glenrock property from the proposed application whether in terms of dust or associated pollution, visual or noise intrusion, jeopardy of water supply and water security or any of the other matters detailed below.

The entire EIS is more appropriately described as an exercise in promotional writing and advocacy (which it is) rather than a proper analysis of relevant and legitimate planning considerations (which it is not). It should be rejected by the Department as manifestly inadequate and not only for its omissions in relation to Glenrock, as further detailed below.

B. Water use and management and the proposed new water storage dam

(i) Significance of this aspect of the proposal

The applicant's proposal to construct a new dam for water storage and to fill and maintain that dam by the use of the applicant's existing pipeline from Tallong Dam is the most serious and the most damaging aspect of the application.

The detrimental effect of this aspect of the proposal can hardly be overstated. Our client objects to this aspect of the proposal in the strongest possible terms, not only on its own behalf but on behalf of the hundreds of other residents and properties which will be affected by it.

Not just our client and its property Glenrock, but every property owner who relies on and benefits from the watercourse from and around Tallong Dam, and between Tallong Dam and the applicant's mining operations, will be adversely affected by this aspect of the proposal. This includes all properties and property owners who rely on and benefit from the natural Barber's Creek watercourse, which itself is fed by and entirely dependent on Tallong Dam.

The following considerations demonstrate the seriousness of this aspect of the proposal, the jeopardy to which it exposes our client and the wider community, and the bases on which the application should be rejected either as a whole or, if not as a whole, certainly in respect of the proposal to construct a new dam for water storage.

(ii) The EIS raises its own specific objections

Unusually, the EIS squarely and directly raises its own source of objections. It states the following:

Existing

The main clean water source for the mine is the 'external' source of Tallong dam, an 85ML water storage dam leased from the State Rail Authority and located 10km to the north. Water is transferred to the mine from Tallong Weir via a pipeline. Mine water supply is supplemented by surface runoff collected in water storage dams that is used for dust suppression and two on-site groundwater bores.

An agreement was also in place with a local landholder to supply water from a large farm dam, Glenrock dam, should the site ever reach a minimum onsite supply level. This agreement has never been implemented.

Proposed

Water supply for the project, including dust suppression, processing activities and some non-potable amenities will be from existing and new on-site dams and a proposed 118ML water storage dam on Marulan Creek. This dam will be on Boral's adjoining Tallong water pipeline to transfer water to the mine. This dam will require the purchase of water entitlements.

Mine water demand in the earlier stages of the 30-year mine operations will also be supplemented by Tallong dam via the Tallong water pipeline and the groundwater production wells (WP16 and 17) north of the pit.

Surface water runoff from active mining areas will drain to a network of sediment basins. Water captured in sediment basins will be pumped to the water storage dams to service the mine's water demand and to restore capacity in the sediment basins."

These comments raise a number of matters, each of which forms its own basis of objection. They include:

(a) The applicant's characterisation of Tallong Dam as an 'external' source

The applicant refers to Tallong Dam as "*the 'external' source of Tallong Dam*".

The attribution of inverted commas to the word "external" is clearly intended and deliberate. It implies that the applicant does not consider Tallong Dam to be a truly external resource but rather an 'internal' resource attributable to, and able to be appropriated by, the applicant in the very manner the applicant is now seeking to do through this application. That is manifestly inappropriate: Tallong Dam and the water it contains are public assets, not the private preserve of the applicant for use as it wishes at the expense of the public.

(b) Not use or need – merely "storage"

The EIS and related documentation consistently and clearly refers to the proposed dam as a "water storage dam" and in similar terms, emphasising the role and purpose of the proposed facility is for water **storage**.

Nowhere in the EIS or elsewhere in the documentation provided in support of the application is it suggested that the vast body of water sought to be captured by the applicant is in any way necessary for its ongoing commercial operations. Equally, nowhere in the documentation is there any usage envisaged which justifies the proposed new water storage facility. Nor does the documentation contain any other content suggesting that the existing practice of the applicant piping water through its pipeline without a vast stored body of water will not remain sufficient for operational uses including dust spraying of the overburden.

The above is very significant: in failing to even seek to justify the application on the basis of commercial need the applicant is effectively acknowledging that this vast proposed new facility is not a "need" but merely a "want". It is manifestly inappropriate that a private enterprise be granted a State Government approval which would effectively and immediately confer on it complete control of a substantial publicly owned resource. That inappropriateness is heightened by the fact that the applicant has not suggested, and cannot demonstrate, any legitimate commercial need for this aspect of its proposal.

(c) De facto privatisation

The logical inference from the above to the objective reviewer is that:

- (i) Boral simply wishes to store water, as the application indicates, because water is an increasingly valuable commodity; and
- (ii) the manner in which it is seeking to do so is through what would effectively amount to the transfer to itself, for private gain, of a public asset.

That is a de facto privatisation.

There are no circumstances we can see which justify the public being deprived of an existing valuable community asset and resource merely to enable the applicant to appropriate and hoard that asset and resource for its own private gain.

(d) Use of groundwater production wells (WP16 and 17)

These groundwater production wells are located north of the applicant's mining pit and towards the boundary of the Glenrock property. They form part of the same water table which services Glenrock and its cattle operations.

The applicant has confirmed in the EIS as detailed above that it intends to rely on these groundwater wells. Yet it has not given any indication of the extent to which it intends to do so nor is there any suggestion of any limitation in it doing so.

To the extent the applicant relies on these wells there is a direct correlation with less availability of water to service Glenrock and its cattle operations, as well as the agricultural operations of other neighbouring properties. In addition to this being a further basis on which our client objects to the applicant's proposal, this is also in direct contradiction of the provisions under GMLEP2009 and the objectives of the RU1 zone, as detailed in section **5.G.** below.

The above are the major issues of concern arising from the EIS in this context. They are in addition to the matters detailed in section 5.A. above, which in our opinion render the EIS defective and unable to be relied upon as a legitimate planning document.

Agreement with local landholder referred to in EIS

For completeness we note that the "agreement with a local landholder" referred to by the applicant in the EIS section quoted above is a reference to an agreement which was entered into with our client. That agreement contained a range of sensible and reasonable controls which not only gave Boral the right to draw water from our client's property, but which also ensured the integrity of water supply generally and which also contained safeguards to ensure that the demands placed on the catchment system were not such as to inhibit other properties.

In view of that precedent, Boral's failure to:

- (i) seek to approach this application reasonably and sensibly through discussion with neighbours and stakeholders; and
- (ii) suggest appropriate limits on its ability to draw water, to the benefit and protection of the community of which it forms part,

is very disappointing.

Our client is prepared to assist the Department in by an appropriate briefing of the types of practical safeguards and considerations referred to above if that would be helpful. In any event, the agreement to which Boral refers was never implemented because the preconditions contained in it permitting the drawing of water were never satisfied by Boral. Although that agreement was ultimately terminated by agreement with our client, those preconditions have been embodied in other legal obligations to our client and remain unsatisfied.

(iii) Jeopardy of water security and supply

Tallong Dam, the source from which the applicant seeks to drain water, via pipeline, to fill and maintain a proposed new storage dam, is directly upstream of Glenrock's water supply. Not only is Tallong Dam upstream of Glenrock, it is the direct feeder into Barber's Creek. As such it is the direct and primary source of water to the Glenrock property and it is also Glenrock's only terrestrial (land based) water supply. The same concerns apply to use of water from Tallong Weir as this weir is upstream of Barber's Creek. As mentioned above, this issue is not unique to Glenrock: it affects every landholder and property in the community of the type we consider should be notified as identified in section 2. above. That comprises hundreds of residents.

Therefore, the diversion of a substantial body of water from Tallong Dam – which only has a capacity of some 85ML – to create a new dam of 118ML will have a direct and material impact on the water supply and water security of Glenrock and every other property dependent on Tallong Dam.

The Glenrock property is already severely prone to drought. There have been instances during the last 20 years where the dams on Glenrock have run dry. The financial burden this places on Glenrock is extremely onerous. The new dam for which approval is sought by Boral is proposed to be filled from Tallong Dam, an existing dam with a capacity of only 85ML. Yet the capacity of the resource proposed to be constructed is 118ML.

That means the dam proposed to be constructed is some 1.4 times the capacity of the dam from which it is proposed to be filled and maintained. Or, to put it another way, the entire capacity of Tallong Dam when completely full represents only 72% (not allowing for flow loss and evaporation) of the amount of water required to fill (let alone maintain) the dam Boral wishes to construct.

(iv) Unreasonable nature of proposal

It is manifestly unreasonable to propose:

- (i) the construction and maintenance of a new water resource,
- (ii) in a drought prone area,
- (iii) for no discernible or justifiable purpose other than "storage" (i.e. hoarding the resource);
- (iv) from Tallong Dam, being an existing upstream public water resource;
- (v) in circumstances where the proposed new resource is some 1.4 times the size and capacity of the existing resource.

(v) Unworkable nature of proposal

The proposal to construct a water storage dam of the bulk, scale and size contained in the application is so unworkable that it is difficult to conceive of how it is being seriously proposed. As noted above, the dam proposed to be constructed is some 1.4 times the capacity of the entire capacity of Tallong Dam when completely full.

Basic arithmetic dictates that Tallong Dam will not even be able to provide the supply required to even fill Boral's proposed construction beyond roughly two-thirds (accounting for flow loss and evaporation). The suggestion that Tallong Dam, at just 72% the capacity of Boral's proposed facility when completely full, could fill and maintain Boral's proposed facility is nonsensical.

The result is clearly and foreseeably that Tallong Dam will be exhausted or at best severely depleted and irreparably damaged were approval for the application to be granted. As noted above, that damage will by definition have a domino-like effect to all other properties reliant on Tallong Dam, including but not limited to Glenrock.

Lastly, and in the event the applicant suggests that long established dams are unlikely to run dry, we have noted above occasions when Glenrock's dams have run dry in the past. When that occurred it was without such an enormous burden being placed upon them as the one now proposed by Boral. There is no basis to assume that Tallong Dam will not also run dry if such an enormous burden is placed on it, especially given the increasingly recognised effects of climate change and the impact it is acknowledged to be having in Australia – one need only look to the worsening drought conditions in the immediate area of Glenrock and its neighbours during the last two decades to see that.

(vi) Effect on Glenrock and other properties

The result would be catastrophic: Glenrock's water supply, which our client has built and maintained, for which it has lawfully and properly secured all applicable permits and for which it pays all applicable licensing fees, would be placed in complete control of the applicant and would effectively become non-existent were this proposal were approved in its present form. The same jeopardy applies to all other properties and land owners which are also reliant on Tallong Dam and Barber's Creek.

That is a consequence which would have devastating effects on Glenrock, its business and the environment and ecosystems which it supports and sustains. The damage to Glenrock and the surrounding environment from the approval of the proposal as it presently stands and especially arising from the proposed water storage dam would be beyond measure.

The farming operations of Glenrock have survived continuously for a period approaching some 200 years. They form part of the history and heritage of Australia, as Glenrock's heritage status and its notation on the earliest surviving maps of the region evidence. Those operations continue to survive because the current owners have been willing to continue to fund them despite the high cost of doing so and the lack of financial return they generate. But they cannot survive without water. The surety of future water supply to Glenrock, and other properties in the region, should not be adversely impacted by the Boral operation. That future should certainly not be jeopardised by a private commercial enterprise effectively being gifted a public asset and resource. That is in effect what the application seeks to achieve.

(vii) Community use and reliance

As noted above, a great many properties in the area in addition to Glenrock and between Tallong and Boral's property use and rely on the Tallong Dam supply, whether it be for property maintenance and irrigation, as an essential back-up fire fighting resource or otherwise.

The proposal to construct a water storage dam contained in the application effectively removes from those properties and their owners the ability to continue that use and reliance.

(viii) Community enjoyment and recreation

The Tallong Dam area is accessible to the public and is widely used by members of the public for recreation and enjoyment. This includes swimming, kayaking and canoeing.

None of those activities can occur if the dam is drained to fill and maintain a storage dam 1.4 times its size to enable a private for-profit enterprise to commandeer its contents for its own benefit at public expense.

(ix) The proposed water storage dam

For the reasons articulated above no approval should be granted in respect of the proposed water storage dam and this aspect of the application should be refused in its entirety.

(x) Groundwater

Our client has further concerns regarding the use of bore and underground water supply and its detrimental effect on the water table. We have referred above to groundwater production wells WP 16 and 17 and the silence of EIS on any proposed controls and limits to their or other groundwater use.

Appropriate limits on groundwater use should be required and enforced by the Department if an approval is granted. As noted above, we consider that an approval should not be granted at all in respect of the proposed water storage dam and the increased piping of water from Tallong Dam. If an approval were to be considered for groundwater use it should be subject to specific enforceable conditions and appropriate volume limits to ensure this resource and the water table is maintained for the benefit of all stakeholders, not just Boral. Our client would in that event want the right to be heard on submissions in relation to those matters.

(xi) Separate legal obligations

As a separate matter we note Boral has an existing legal obligation to our client not to draw any water from or within our client's property without our client's prior written permission.

The pipeline through which Boral proposes to draw water to fill and maintain the proposed new storage dam is located within the Glenrock property. Drawing water through that pipeline by definition involves drawing water within our client's land. Any suggestion to the contrary is a nonsense. Notwithstanding that, our client has not been approached with a request to provide its written permission to this aspect of the subject proposal.

We note also the existence of a separate legal obligation between Boral and our client that should a desire to obtain water arise, it is to be the subject of discussion and agreement between them at that time. This recognises that the use of water as a resource is a matter of importance which requires mutual discussion and agreement. Again, we are advised by our client that no such approach has been made.

C. Environmental impact

Glenrock is not only a working cattle property, its dams are a vibrant and varied host to an entire range of native flora and fauna. These include swans, pelicans, fish, native birds and wildlife, turtles, eels and a host of species both animal and plant which rely on Glenrock's water supply for their continued survival. The property contains entire ecosystems which have been painstakingly and assiduously maintained and preserved by the current owners so that they are able to thrive in their natural environment, which they have done.

The effects of permitting the construction of a new water storage resource as outlined above would be devastating to those ecosystems.

Our client considers this aspect of the proposal as a potential existential threat to the business and sustainability of Glenrock as a whole and an actual existential threat to the environment and ecosystems which Glenrock and its present water supply nurtures and protects. It objects to the construction of the proposed new water resource in the strongest possible terms.

D. Dust and colloidal pollution

The proposed new overburden areas to the north, and then to the northwest and west as the project is proposed to be developed, are immense. Overburden by definition results in airborne contaminants and pollutants being conveyed by winds to and across other properties, to the detriment of their occupants, the plant and animal life they sustain and the properties themselves.

The EIS contains no information on how such pollution is to be managed so that contaminants are not conveyed to Glenrock, Boral's main neighbour and the largest adjoining property to Boral's land. The enormous size of the overburden areas, which appear to form the majority of the operational surface area as the project is proposed to mature over the next 11 years, poses a substantial risk to the Glenrock property in terms of the dust and pollutant contamination which will result from them.

Colloidal particle pollution from Boral's existing Peppertree Quarry has already on several occasions exceeded permissible EPA limits and that is with a much smaller and much more closely contained overburden area than what is proposed for Boral's limestone operations in the present application.

The EIS simply ignores this issue.

Our client objects to the application on the basis of dust and other colloidal pollution. Were an approval to be issued our client would wish to be hard in submission on the conditioning of requirements which deliver tangible, clear and measurable safeguards to manage this risk and reduce pollution to below the required EPA levels.

E. Visual impact

The view analysis undertaken as part of the EIS concludes that property 'R13' (the Glenrock property) has potential for a view of some part of the proposed western overburden emplacement and the proposed northern overburden emplacement. That is an understatement: the proposal would have substantial visual impact both during the day and at night given the proposed 24 hour operations and the lighting required to sustain them.

The Peppertree Quarry limestone operations are much less visually impactful and much smaller and are already visible during the day and highly visible at night. The resultant visual and light pollution from the present application would be substantially worse and our client objects accordingly on this basis also.

Photographs taken of the existing view from the Glenrock property towards the existing Boral operation demonstrate that at present there is visual impediment from the mining operation. The proposed northern overburden emplacement shown on figure 4.12 of the application demonstrates that the scale and massing of this component of the mining operation will be of significantly greater bulk, height and scale and this will materially exacerbate the visual impact from Glenrock towards the mining operation. This is especially the case given the topography of the relevant land, which slopes downwards to the north towards the Glenrock property and which therefore accentuates any visual effect from the proposal from the Glenrock property.

It is understood that there will be a rehabilitation program however it is not sufficiently detailed in the EIS or elsewhere to assess its value. Unfortunately, we and our client must therefore assess such a program to be of no value: our client and Boral have discussed for several years the planting by Boral of mature trees along the ridge top that separates the two properties but that has not yet eventuated.

Absent the planting and maintenance of a large number of substantially mature trees it would take many years to successfully camouflage or minimise any visual impact.

If a development of the type proposed in the application were to proceed (minus the proposed water storage dam for the reasons detailed above), it would be appropriate that Boral commit to plant out the ridgeline with a substantial number of appropriate and well advanced mature tree species to provide an effective visual barrier between the Glenrock property and the mining operation.

For the reasons articulated in detail above, we and our client are of the view that there is no basis on which the application should proceed with any approval of the proposed water storage dam or any similar facility.



F. Heritage impact

The EIS makes reference that the Glenrock homestead and outbuildings are listed under the LEP as registered heritage items. In section 16.3.2, the heritage impact assessment makes reference to the Glenrock homestead and outbuildings as follows:

“Glenrock Homestead and outbuildings are approximately 2km form the proposed disturbance footprint and will not be impacted by the project”.

The Glenrock property, which includes the Glenrock homestead and outbuildings, are items of heritage significance and subject to Commonwealth and State listing. The impacts on both the homestead and surrounding buildings together with the property as a whole must be taken into consideration when assessing the environmental and social impacts when determining the current application. That has simply not occurred in any meaningful way and in this respect the heritage impact statement is defective.

The heritage impacts associated with the proposed northern overburden emplacement area must be given due consideration from a dust and visual perspective. That has not occurred. The proximity of the northern overburden emplacement, which appears to comprise a vast area of some 1km by 1.8km is in close proximity to Glenrock's working cattle and grazing areas as well as its listed homestead and associated buildings. This is an inappropriate response to the heritage status and setting of this historic property.

The heritage impact statement attempts only to address heritage impacts associated with the Glenrock homestead and associated outbuildings and it does so in only a cursory manner. It fails entirely to deal with the impact on those buildings of the proposal. It also fails entirely to appreciate the heritage and conservation values of the property as a whole.

Accordingly, our client objects to the application on the basis of the above heritage grounds.

G. Direct conflict with statutory planning provisions under GMLEP2009

The applicable zone

The proposed development is located within Zone RU1 – Primary Production under GMLEP2009. Extractive industries are permissible with the consent of Council and the relevant authorities within this zone.

The application is in direct conflict with, and contrary to, each and every listed objective within the RU1 zone. Our client objects to the application on each of these bases as follows.

The applicable objectives

The objectives of the RU1 zone are to:

- Encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- Minimise conflict between land uses within this zone and adjoining zones.
- Promote the use of agricultural land for efficient and effective agriculture production.
- Avoid or minimise impacts on the natural environment and protect environmentally sensitive land.
- Allow development of non-agricultural land uses which are compatible with the character of the zone.
- Minimise the visual impact of development on the rural landscape.

Conflict with those objectives

In its present form the proposal not only fails to meet the above objectives, it is contrary to them. For the reasons referred to above and with regard to each of the above objectives:

(i) ***Encouragement of sustainable primary industry production by maintaining and enhancing natural resource base***

The proposal would diminish and erode the natural resource base rather than maintain and enhance it. This is especially so in relation to the crucial water resources referred to above and it is simply not credible to suggest otherwise.

(ii) ***Minimising conflict between land uses within the zone***

The applicant runs a substantial commercial mining enterprise. It does so on pristine rural zoned land located in the Southern Highlands of New South Wales, one of the most scenic country areas of the State. The applicant's business in the present location is longstanding and we acknowledge that. But compared to Glenrock and the primary agricultural use of land in the area it is a neophyte.

The applicant's existing presence does not entitle it to continue to expand its operations in a manner which is disruptive to business established long before it and which is invasive, contrary to and in conflict with all other property uses within the area.

The proposal does not minimise conflict between land uses within the zone. It maximises it.

(iii) ***Promotion of agricultural land use for efficient production***

Again, the proposal hinders rather than promotes the use of agricultural land for efficient and effective agriculture production: the proposal if approved would not only adversely effect the present agricultural activities of the Glenrock property, it would substantially reduce and forever remove an area of land which would otherwise be able to be utilised for agricultural production because of the enormous, unreasonable and unjustifiable detriment it would produce detailed above arising from the proposed water storage dam.

Even leaving the proposed storage dam aside, the effect of the massively increased overburden area proposed by the applicant is to forever remove valuable and viable agricultural land from any prospect of efficient agricultural production and instead render it unusable arid contaminated overburden, the waste by-product of the applicant's commercial activities.

(iv) ***Avoiding and minimising impacts on natural environment and protecting environmentally sensitive land***

As detailed in this letter, the proposal neither avoids nor minimises impact on the natural environment nor does it protect environmentally sensitive land. It would have the opposite effect. This is especially so in regard to water use and management and the destruction of Glenrock's and other properties' primary and only terrestrial water source as detailed above.

(v) ***Allowing development of non agricultural land uses compatible with the character of the zone***

The proposed development is not compatible with the character of the zone, it is antithetical to it.

This is not just the case by reference to the character of Glenrock including its heritage status and value. It is also the case by reference to almost every other property and commercial activity in the area, almost all of which are either rural and agriculture in nature or focused on servicing those sectors and those who work in them.

(vi) ***Minimising the visual impact of the development on the rural landscape***

The size of the proposed overburden areas alone demonstrate that this objective is not achieved by the present application.

Similarly, the complete absence of any remedial or visual amenity measures such as the mature tree planting referred to above ensures the visual impact of the proposed development on the rural landscape is maximised rather than minimised.

Failure to meet the objectives

As the determining authority the Department of Planning must ensure that the proposed development meets the above objectives. It does not do so.

Further, and in relation to water use, it cannot do so unless the proposal is amended by removal of the proposed dam construction and otherwise substantially amended to reduce bulk, size and scale and visual, pollutant and other impact.

H. Lack of candour, lack of rigour and lack of merit

Several features of the present application and the manner in which it has been progressed by the applicant, when combined, give rise to serious concerns. They include the following:

- (i) as indicated above the EIS is skewed from even the fundamental starting point of site analysis. It goes on to not only fail to address but to actually ignore many of the relevant and clearly detrimental impacts of the proposal to both our client and the community which we have outlined above. It is not only manifestly defective as a document, it is misleading. It should be rejected as detailed above;
- (ii) the complete absence of consultation with our client, the largest and most direct adjoining landholder and the landholder most directly impacted by the application;
- (iii) the complete absence of community consultation which should have occurred given the detrimental impact of the application detailed above, particularly in regard to the proposed new water storage dam;
- (iv) the fact the applicant's stated purpose for its proposed water storage dam is not commercial or operational necessity but merely the desire to store a valuable public resource; and
- (v) the complete lack of remedial or other measures or safeguards proposed by the applicant in the EIS or anywhere else to even recognise let alone address the matters detailed in this letter.

Our client, and the wider community, is entitled to feel that it has been rather shabbily treated by this application and that it has also been misled in relation to it.

We consider that if the applicant felt its proposal had real merit it would not have sought to advance it in the manner detailed in the immediately preceding paragraphs.

The application lacks merit when weighed against the objectives of the applicable zone, the detrimental effect on adjoining properties and the community and the failure by the applicant to demonstrate any necessity for the proposal's most egregious aspect, being the proposed water storage dam.

I. The application is a request for a de facto privatisation contrary to public policy

The applicant's consideration of the Tallong Dam in its own EIS implies that the applicant does not even consider the Tallong Dam a public resource.

Rather, as detailed in sections **5.B.(ii)(a) – (c)** inclusive of this letter, it implies that Boral considers this valuable public asset a private facility which it is able to appropriate for its own benefit at the expense of the public and the community.

Boral has a lease – and a lease only – over this asset for a fixed term of ten years. The terms of that lease do not grant Boral the ability to plunder the water in the Tallong Dam for its own commercial benefit at the expense of the public, nor does the lease on any construction envisage or justify such an outcome.

The grant of an approval for the construction of the water storage facility sought by the applicant would amount to a de facto privatisation of a public asset in circumstances where the applicant has presumed, without justification, a right and an entitlement over that asset which simply does not exist.

An approval would, for the same and other reasons, be contrary to public policy. The Department of Planning & Environment should not place itself in the position of securing such an outcome.

6. Proposed meeting

We and our client consider the matters detailed in this letter to be of crucial importance to the continued existence of a significant heritage listed property which has been part of Australian history for almost 200 years and which makes a substantial contribution to the community in which it is situated, the environment of which it forms a part and the ecosystems it sustains.

We would like to arrange a meeting with both you and Mr Reed to discuss these matters. A copy of our letter to Boral of today is also **attached** for your information.

Would you please let us know some appropriate times and dates after the close of the submissions period which would suit so that such a meeting may be arranged.

Sincerely,



DENIS SMITH – DIRECTOR
Tomasy Planning