

GLENCORE

25 January 2018

Aboriginal Land Commissioner
Office of the Aboriginal Land Commissioner
GPO 9932
Darwin NT 0801

By Email: AboriginalLandCommissioner@network.pmc.gov.au

Attention: The Hon John Mansfield AM QC

Dear Land Commissioner

Review of detriment issues - McArthur River Region Land Claim No. 184 and part of Manangoora Region Land Claim No. 185

Thank you for your letter dated 15 December 2017 in relation to an invitation to participate in a review of detriment issues for the McArthur River Region Land Claim No. 184 and part of the Manangoora Region Land Claim No. 185, as contained in the Aboriginal Land Commissioner's Report of March 2002 (**Land Claim Report**).

Status

Mount Isa Mines Limited (**MIM**) is now the sole owner of the McArthur River Mine and the McArthur River Pastoral Lease (NT Portion 4319). McArthur River Mining Pty Ltd (**MRM**) operates the McArthur River Mine. Colinta Holdings Pty Ltd (**Colinta**) is the operator of the McArthur River Pastoral Lease. MIM, MRM and Colinta are all wholly owned subsidiaries in the Glencore Group, headed by Glencore PLC. The Glencore Group is one of the largest global diversified natural resource commodity groups in the world.

The McArthur River Mine is the world's second largest zinc resource and produces concentrates which also contain lead and silver. After successfully completing the Phase 3 Development Project, which was approved in 2013 and cost \$360 million, the annual capacity of the McArthur River Mine is 5 million tonnes per annum and the mine life was extended to 2027. In March 2017 MRM submitted the Overburden Management Project Environmental Impact Statement with Territory and Commonwealth authorities. The Project comprises 4 main stages:

1. continued mining operations (2018 – 2037)
2. tailings storage facility re-processing (2038-2047)
3. decommissioning and rehabilitation (2048-2072)
4. ongoing monitoring and maintenance (from 2073)

The Bing Bong Loading Facility, located within Mineral Lease 1126 remains an integral part of the McArthur River Mine and provides the only economically feasible access to markets. The *Aburri*, which loads the concentrate at the Bing Bong Loading Facility and transports the product into the

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Gulf of Carpentaria for transshipping to ocean going vessels, is still owned and operated by Carpentaria Shipping Services Pty Ltd (a joint venture between Mawa Riinbi Pty Ltd, CDC Nominees (McArthur River Shipping) Pty Ltd and P&O Maritime Services Pty Ltd).

Colinta remains the operator of the McArthur River Pastoral Lease.

Intervening factors

Since the Land Claim Report the following intervening factors should be noted:

1. Relevant parties.

The McArthur River Mine and the McArthur River Pastoral Lease remain owned by MIM but MIM is now a wholly owned subsidiary in the Glencore Group and MRM is the operator of the McArthur River Mine.

2. No negotiations or agreement on detriment.

There have been no negotiations or agreement between the NLC and MRM in relation to the land claimed becoming Aboriginal land and how to address the significant issues of detriment to MRM.

3. Bing Bong Loading Facility excision.

At paragraph 142 on page 69 of the Land Claim Report the Land Commissioner stated that "*The question of whether any part of the port facility is land within the claim area involves legal issues which are not within the scope of this inquiry to finally resolve*". MIM maintained that there was no intertidal zone in the Bing Bong Loading Facility and therefore certain areas were unavailable for claim. This issue has not been resolved but we note that MIM's evidence was not contradicted.

4. Bing Bong Loading Facility tenure.

The *McArthur River Project Amendment (Ratification of Mining Authorities) Act* (NT), enacted in 2007, ratified an extension of Mineral Lease 1126 (the Bing Bong Loading Facility) until 4 January 2043.

5. Third party developments at the Bing Bong Loading Facility.

As part of the Roper Bar Iron Ore Project, Western Desert Iron Ore Pty Ltd constructed a wharf and barge loading facilities on the western side of the Bing Bong Loading Facility swing basin, pursuant to Mineral Lease 29628 and Access Authority 29692 under the *Mineral Titles Act* (NT) and an agreement with MRM. That tenure is now held by Brtimar (Aust) Pty Ltd. An aerial photo of the Bing Bong Loading Facility is attached.

Pursuant to clause 10(2) of the McArthur River Project Agreement, between MIM and the Northern Territory of Australia dated 25 November 1992, MIM is the manager of the Bing Bong Loading Facility and is entitled to licence or permit the use of the port or parts of the port by other persons.

6. McArthur River Pastoral Lease native title determination.

Noting that you were the presiding judge, a consent determination was reached in relation to native title rights and interests over the McArthur River Pastoral Lease in 2015 (*Ngajapa v Northern Territory* [2015] FCA 1249). The determination does not extend to the intertidal zone the subject of the Land Claim Report and does not confer rights of exclusivity in the manner that could be granted under the Land Rights Act.

7. Blue Mud Bay decision.

The High Court decision in *Northern Territory v Arnhem Land Aboriginal Trust* (2008) 236 CLR 24 (Blue Mud Bay decision) is inconsistent with some of the views expressed in the Land Claim Report as to rights of third parties (including MIM, MRM and Colinta) to access the waters above the inter-tidal zone. This exacerbates the detriment already asserted by the parties.

8. No confirmation of the extent of the intertidal zone.

At paragraph 32 on page 12 of the Land Claim Report the Land Commissioner noted the uncertainty as to the actual extent of the area of the intertidal zone. MRM is unaware of any mapping of the intertidal zone or the McArthur River Pastoral Lease boundary, which may have changed over time through accretion.

9. Waste Discharge Licence.

MRM holds Waste Discharge License 174-10 which provides for saline water to be passively released across the intertidal flats to the Gulf of Carpentaria via the Bing Bong navigation channel.

MRM maintains that its relationship with claimants and local Aboriginal communities in the claim area is positive as a result of:

- ongoing engagement through daily and weekly communications with MRM's Senior Community Relations Advisor and Environmental Project Manager as well as quarterly open meetings and operational updates in Borroloola which are represented by several members of the mine with the inclusion of interactive displays;
- the provision of community benefits through the McArthur River Community Benefits Trust. MRM has contributed \$14.8 million to the Community Benefit Fund, which has helped 83 projects in the Gulf region over the past 10 years;
- the creation of local employment and contracting opportunities. MRM are at an indigenous employment rate of approximately 20% and have recently brought on an additional 16 trainee positions during 2017; and
- the production of publications such as the quarterly memorandum, the inclusion of community groups in many of MRM's monitoring and environmental activities, school partnerships, involvement in clearing activities and a robust cultural awareness program.

Detriment

The significant detriment issues identified in the Land Claim Report remain and have not been resolved.

Given the materiality of the detriment to MIM, MRM and Colinta, the intervening factors and the unresolved issues MRM wishes to consider further whether there is other significant additional material information that should be provided to you. I propose to provide any such additional information by close of business 15 February 2018.

Thank you for your consideration in this matter.

Yours faithfully

A handwritten signature in blue ink, consisting of the initials 'D.K.' followed by a long horizontal stroke.

David Kerr
General Manager – Legal
Zinc Assets Australia

WASTE DISCHARGE LICENCE (WDL174-10)

Figure 2: Bing bong Loading Facility Authorised Discharge Points

