



28 November 2024

Mr David Gainsford
Deputy Secretary, Development Assessment and Sustainability
Department of Planning, Housing and Infrastructure

By email: [REDACTED]

Dear Mr Gainsford

Bowdens Silver Project

Since the NSW Court of Appeal's judgment in *Bingman Catchment Landcare Group Incorporated v Bowdens Silver Pty Ltd* [2024] NSWCA 205, it has been the shared view of the Independent Planning Commission (**Commission**) and the Department of Planning, Housing and Infrastructure (**Department**) that the development application for the Bowdens Silver Project (**Project**) remains to be determined according to law.

For the application to be properly reconsidered by the Commission, it is appropriate for the Department, as the body vested with statutory responsibility for conducting assessments on behalf of the Commission (per section 4.6(b) of the *Environmental Planning and Assessment Act 1979*), to update its assessment and recommendation to the Commission.

In addition to the Department's statutory responsibility for assessment, this is enshrined in the *Memorandum of Understanding (MoU)* between the Department and the Commission, which provides that:

- the Department will ensure that its assessment is sufficient and appropriate to support the Commission in exercising its functions under the Act (MoU 5.1.2),
- the Department will lead the whole-of-government assessment processes (MoU 5.2.2), and
- the Department carries out assessment as a service to the Commission (MoU 5.4.2).

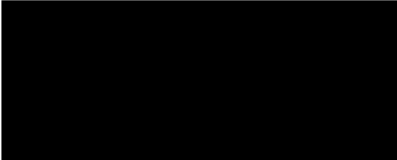
Any reconsideration of the application along with an updated assessment by the Department will depend on whether the applicant presses its application in its current form, or whether it proposes to amend its application, or whether it proposes to update or supplement its environmental impact assessment materials.

Accordingly, the Commission seeks the Department's advice as to whether it will provide updated assessment materials to the Commission (including any updated materials from the applicant) for its consideration in determining the pending application for the Project.

On receipt of any updated assessment, the Commission Chair will appoint a new Panel, constituted by different members to the Panel that made the now voided determination of the application, to redetermine the application according to law.

By virtue of the public hearing already conducted on 15-17 February 2023, such a redetermination of the application for the Project will, for the purposes of section 8.6(3)(a) of the *Environmental Planning and Assessment Act 1979*, be a determination *'that is made after a public hearing by the Commission into the carrying out of that development'*.

Yours sincerely,



Samantha McLean
Executive Director