

Glencore mine's 'deal' with Indigenous owners called into question, documents reveal

Accidentally published government briefings cast doubt on nature of consultations over a sacred sites agreement



Glencore is seeking to raise the height of a waste rock pile at its McArthur river mine in northern Australia. Photograph: Arnd Wiegmann/Reuters

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A purported deal struck between the mining company Glencore and Aboriginal traditional owners has been called into question, accidentally published government documents reveal.

The deal, which seeks to almost double the height of a waste rock pile to 140 metres, forms a significant part of Glencore's proposal to extend its lead and zinc operations in McArthur river in the north-east of the Northern Territory.

Until now the height has been restricted by a sacred sites agreement stipulating the pile go no higher than 80 metres – the height of nearby Mount Stubbs, a Barramundi Dreaming site for local clans.

While McArthur river mine (MRM) has previously told the Guardian it reached an agreement with traditional custodians to go higher, internal government briefings accidentally published last week have cast doubt on whether their efforts were sufficient.

Late on Friday afternoon, amid a crossbench revolt over the cutting back of NT budget estimates hours, the government released a number of early responses to estimates queries.

The media release from the office of the attorney general said the move represented an “unprecedented level of transparency” from an “open and transparent Labor government”.

But internal briefing papers were accidentally attached to some documents.

According to one briefing, the Aboriginal Areas Protection Authority – which issues the legally binding sacred site certificates – has sought legal advice about MRM’s agreement with custodians and is engaged in discussions with the company “in relation to the agreement, to ensure its validity”.

Under the Northern Territory Aboriginal Sacred Sites Act, if a company seeks to vary a certificate, Aapa will consult with custodians and investigate whether they agree to it.

A subsection to the legislation allows for Aapa to simply issue certificates if it is satisfied that “an agreement has been reached between custodians and the applicants”.

The briefing notes suggest MRM originally relied on the subsection but after its consultation process was questioned by Aapa it responded that the statutory body should make its own inquiries.

According to the briefing, Aapa wrote to McArthur river mine seeking further information about the agreement it said it had reached, specifically asking what information was given to custodians about the impact of increasing the waste rock pile. It also requested minutes and recordings of any meetings held.

MRM responded that – in its view – Aapa had to consult with custodians “to determine whether an agreement has been reached or not”.

The revelations raise questions about the nature of consultations with traditional owners, and whether the consent MRM said it had is sufficient to satisfy Aapa. The agreement has reportedly caused rifts among custodians and their families – not all of whom have any say in the process.

In a statement to Guardian Australia, MRM defended its consultation, which it said had been conducted with custodians in “an open and transparent manner”.

It declined to provide details of the agreement, citing confidentiality requests by custodians, but said Aapa now had all the details and was conducting its own assessment before deciding on approval of the varied certificate.

In an environmental impact statement released this year, MRM said it had “received written consent from custodians to build the [waste rock pile] to the height of 140m, and they have maintained the ‘no access’ restriction to the sacred site by any MRM personnel as a condition of their consent”.

A spokesman for the NT environment minister, Lauren Moss, said she was aware Aapa was undertaking statutory duties under sacred sites legislation and the agreement was a matter for that organisation.

Last month the Guardian reported on the divide in the community over MRM's proposed 20-year extension to the mine, and the subsequent rehabilitation plan which would potentially blow out to 300 years.

In 2013 the waste rock pile combusted and the fire sent toxic smoke over the community for more than a year. The blaze – in conjunction with other controversies including contamination incidents – prompted the Environmental Protection Agency to demand a new impact statement if MRM wanted to expand.

Community submissions were finalised in May before the NT and federal governments make their assessments under the NT's Environmental Assessment Act and the commonwealth's Environment Protection and Biodiversity Conservation Act.