



## Decision and Reasons for Decision

---

<b>Citation:</b>	<i>Rural Services of Coast and Country Inc and Department of Environment, Science and Innovation; and Other [2024] QICmr 53 (21 October 2024)</i>
<b>Application Number:</b>	317570
<b>Applicant:</b>	Rural Services of Coast and Country Inc.
<b>Respondent:</b>	Department of Environment, Science and Innovation
<b>Third Party:</b>	Adani Mining Pty Ltd trading as Bravus Mining and Resources (ACN 145 455 205)
<b>Decision Date:</b>	21 October 2024
<b>Catchwords:</b>	<b>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST INFORMATION - research report about the source aquifer for the Doongmabulla Springs Complex - whether disclosure would, on balance, be contrary to the public interest - sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</b>

### REASONS FOR DECISION

#### Summary

1. The applicant applied<sup>1</sup> to the Department of Environment, Science and Innovation (**Department**) under the *Right to Information Act 2009* (Qld) (**RTI Act**) for access to:<sup>2</sup>  
*Adani (2018). Research Study Report – Source Aquifer for Doongmabulla Springs, in relation to Environmental Authority permit numbers EPML01470513 and EPPR00745013.*
2. The Department located a 118 page report (**Report**). It consulted<sup>3</sup> with Bravus Mining and Resources (**Bravus**)<sup>4</sup> and Bravus made submissions objecting to disclosure of the Report.
3. Following consultation, the Department decided<sup>5</sup> to refuse access to the entire Report on the basis that it comprised information the disclosure of which would, on balance, be contrary to the public interest.<sup>6</sup>

---

<sup>1</sup> Application dated 17 November 2022.

<sup>2</sup> The scope was narrowed to this Report on 6 April 2023.

<sup>3</sup> As a relevant third party under section 37 of the RTI Act.

<sup>4</sup> Prior to November 2020, Bravus was known as Adani – see <<https://www.bravusmining.com.au/about/our-history/>>. For convenience and clarity, I will use the name Bravus throughout this decision.

<sup>5</sup> Decision dated 28 June 2023.

<sup>6</sup> Section 47(3)(b) of the RTI Act.

4. The applicant applied for<sup>7</sup> internal review of this decision and the Department affirmed its original decision.<sup>8</sup> The applicant then applied<sup>9</sup> to the Office of the Information Commissioner (**OIC**) for external review of the Department's internal review decision.
5. For the reasons explained below, I set aside the Department's decision and find that disclosure of the Report would not, on balance, be contrary to the public interest. As no grounds on which access may be refused in section 47(3) of the RTI Act have been established regarding the Report, the applicant is entitled to access the Report.<sup>10</sup>

## Background

6. The Doongmabulla Springs Complex (**Springs**) comprise a nationally significant wetland and home to a number of endemic and threatened species.<sup>11</sup> According to the Springs' self-determined group of Traditional Owners, the Springs are a sacred site of Wangan and Jagalingou Ancestor Dreaming, and Mundunjudra (the Rainbow Serpent).<sup>12</sup> As such, the Springs' preservation is of significant environmental and cultural importance to the community generally, and Traditional Owners in particular.
7. The Springs are located in close proximity to the Carmichael Coal Mine (**Mine**). The Mine is owned by Bravus and has been operational since 2021.<sup>13</sup>
8. Before receiving approval, the Carmichael Coal Mine Project (**Project**) went through an Environmental Impact Statement (**EIS**) process. The EIS was approved in May 2014. Following this and a hearing before the Land Court, the Department issued an Environmental Authority (**EA**) to Bravus.<sup>14</sup>
9. The EA included a requirement that Bravus develop and implement a Groundwater Dependent Ecosystems Management Plan (**GDEMP**)<sup>15</sup> for several groundwater dependent ecosystems (**GDEs**), including the Springs.<sup>16</sup> The definition of 'GDEMP' in the EA<sup>17</sup> provided that the GDEMP must include:

- (1) A description and map of each GDE potentially or indirectly impacted by mining activities
  - (2) Detailed baseline monitoring ...
  - (3) Detailed baseline research to establish:
- ...

---

<sup>7</sup> Application dated 26 July 2023.

<sup>8</sup> Decision dated 24 August 2023.

<sup>9</sup> Application dated 20 September 2023.

<sup>10</sup> Excluding personal information of individuals, which the applicant agreed to exclude (as confirmed to the applicant by email dated 5 September 2024).

<sup>11</sup> 'Carmichael Coal Project – Frequently Asked Questions', *Department of the Environment (Cth)* (Fact Sheet) 2015 <<https://www.dceew.gov.au/sites/default/files/env/pages/cb8a9e41-eba5-47a4-8b72-154d0a5a6956/files/carmichael-faqs.pdf>>.

<sup>12</sup> 'About Us', *Nagana Yarrbayn* <<https://standing-our-ground.org/about-us/>>.

<sup>13</sup> Construction started in June 2019, and on 29 December 2021 the first coal shipment from the Mine was ready for export. At 'Carmichael Coal Mine (Adani Mining Pty Ltd, trading as Bravus Mining and Resources)', *Department of Environment, Science and Innovation* (Web Page), <<https://environment.desi.qld.gov.au/management/monitoring/locations-of-interest/adani-carmichael>> ; and Katrina Beavan, 'Adani's first Carmichael Mine coal export shipment imminent after years of campaigns against it', *ABC News*, (online, 29 December 2021), <<https://www.abc.net.au/news/rural/2021-12-29/adani-ships-first-coal/100729834>>.

<sup>14</sup> EA EPML01470513 issued on 2 February 2016. See <[https://storagesolutiondocsprod.blob.core.windows.net/register-documents-ea/EPML01470513\\_20160202.pdf](https://storagesolutiondocsprod.blob.core.windows.net/register-documents-ea/EPML01470513_20160202.pdf)> available at Queensland Government, 'Environmental Protection Act 1994 Public Register' <<https://apps.des.qld.gov.au/public-register/pages/ea.php?id=103853>>. Note – while the EA has been amended six times, including three times before or around the time that the Department received the Report from Bravus (ie on 5 June 2017, 31 January 2019, and 23 September 2019), the definition of 'GDEMP' in Appendix 1 has not been amended, and the conditions regarding the GDEMP have only been amended insofar as they have been renumbered from I10-I13 in the initial EA to I11-I14 in subsequent EAs. For clarity, I will use the latter numbering of these conditions throughout this decision.

<sup>15</sup> Conditions I11 and I12 of the EA.

<sup>16</sup> Condition I13 of the EA.

<sup>17</sup> In Appendix 1 of the EA. Bold is my emphasis.

(b) *the source aquifer(s) for groundwater supply to the GDE ...*

10. In response to this requirement, the Report in issue was provided by Bravus to the Department in November 2018.
11. Prior to approving the GDEMP, the Department considered expert advice from Geoscience Australia (**Geoscience**) and the Commonwealth Science and Industrial Research Organisation (**CSIRO**) on two occasions to help it decide whether to approve the GDEMP.<sup>18</sup> The Department provided the Report to Geoscience and CSIRO when it requested the second advice.<sup>19</sup>
12. Shortly before the Department first approved the GDEMP, seven aquifer and groundwater experts handed a position paper to the then Queensland Minister for Environment and the Great Barrier Reef, which expressed their concerns that the Springs *'face a legitimate threat of extinction due to the ... [P]roject'*.<sup>20</sup> This paper was tabled in Parliament on 11 June 2019.<sup>21</sup>
13. Later in 2019, at the recommendation of the Australian Research Council (**ARC**), the then responsible Commonwealth Minister for Education awarded funding for a three-year research project to six of the seven experts mentioned above, along with others.<sup>22</sup> The purpose of the research was *'to investigate the source aquifer and fate of discharge from the ... Springs'* with results to *'inform spring vulnerability to development pressures and climate effects'*.<sup>23</sup>
14. The Department initially approved the GDEMP on 13 June 2019,<sup>24</sup> subject to additional commitments from Bravus to undertake further scientific work over the next two years *'to improve the understanding of the source aquifers of springs in the locality, particularly the ... Springs'*.<sup>25</sup> The Department approved an updated GDEMP<sup>26</sup> on 17 October 2019.<sup>27</sup>

---

<sup>18</sup> CSIRO and Geoscience Australia (February 2019), *'Carmichael Coal Mine – Advice on Groundwater Management and Monitoring and Groundwater Dependent Ecosystem Management plans to the Department of the Environment and Energy'* <<https://www.dceew.gov.au/sites/default/files/env/pages/cb8a9e41-eba5-47a4-8b72-154d0a5a6956/files/csiro-geoscience-australia-final-advice.pdf>>; and CSIRO and Geoscience Australia (June 2019), *'Carmichael Coal Mine – Advice on Groundwater Dependent Ecosystem Management Plan v11b to the Queensland Department of Environment and Science'* <[https://www.des.qld.gov.au/data/assets/pdf\\_file/0026/81890/csiro-geoscience-australia-gdes-advice-jun2019.pdf](https://www.des.qld.gov.au/data/assets/pdf_file/0026/81890/csiro-geoscience-australia-gdes-advice-jun2019.pdf)>.

<sup>19</sup> See the letter from the Department to Geoscience and CSIRO dated 10 May 2019 published on a Commonwealth disclosure log at pages 2-4 of <<https://www.industry.gov.au/sites/default/files/2022-09/disclosure-log-15.pdf>>, in particular page 4 which confirms that the Department provided the Report along with its letter.

<sup>20</sup> Adrian Werner, Andy Love, Dylan Irvine, Eddie Banks, Ian Cartwright, John Webb, and Matthew Currell (May 2019), *'Position Paper by Concerned Scientists: Deficiencies in the scientific assessment of the Carmichael Mine impacts to the Doongmabulla Springs'* at <<https://fac.flinders.edu.au/dspace/api/core/bitstreams/5fef878f-ffc0-45b9-8bc8-0071b1295922/content>>.

<sup>21</sup> Queensland, *Parliamentary Debates*, 11 June 2019, 1824 (Mr Michael Berkman) at <[https://documents.parliament.qld.gov.au/events/han/2019/2019\\_06\\_11\\_WEEKLY.PDF](https://documents.parliament.qld.gov.au/events/han/2019/2019_06_11_WEEKLY.PDF)>.

<sup>22</sup> Grant LP190100713 — Flinders University, *Australian Research Council* (Web Page) <<https://dataportal.arc.gov.au/NCGP/Web/Grant/Grant/LP190100713>>. See also 'Minister's Approval for 2019 Linkage Projects for Funding Commencing in 2020 Schedule, Australian Research Council' <[https://www.arc.gov.au/sites/default/files/lp19\\_-\\_as\\_of\\_21\\_may\\_2020.pdf](https://www.arc.gov.au/sites/default/files/lp19_-_as_of_21_may_2020.pdf)> at page 30.

<sup>23</sup> Ibid.

<sup>24</sup> I was unable to locate a copy of this GDEMP on Bravus' website. However, I note that the letter from the Department to Geoscience and CSIRO dated 10 May 2019 published on a Commonwealth disclosure log at pages 2-4 of <<https://www.industry.gov.au/sites/default/files/2022-09/disclosure-log-15.pdf>> references version 11b of the GDEMP (19 March 2019), and version 11b is published on another Commonwealth disclosure log at pages 6-346 of <<https://www.agriculture.gov.au/sites/default/files/documents/190415-part1.pdf>>.

<sup>25</sup> 'GDEMP approved', *Department of Environment, Science and Innovation*, 17 October 2019 (Media Release) <<https://www.desi.qld.gov.au/our-department/news-media/mediareleases/2019/2019-06-13-gdemp-approved>>.

<sup>26</sup> Version 12b of the GDEMP (5 August 2019) – see <[https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/gdemp\\_final\\_aug2019.pdf](https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/gdemp_final_aug2019.pdf)> available at <<https://www.bravusmining.com.au/sustainability/environment/environmental-reporting-and-approvals/>>; and <[https://www.desi.qld.gov.au/data/assets/pdf\\_file/0030/95592/gdemp-carmichael-coal-mine-project.pdf](https://www.desi.qld.gov.au/data/assets/pdf_file/0030/95592/gdemp-carmichael-coal-mine-project.pdf)>.

<sup>27</sup> See the Department's media release at footnote 25.

15. To date, an extensive amount of material related to Bravus' GDEMP has been published—for example, in a Planning and Environment Court appeal,<sup>28</sup> on Commonwealth<sup>29</sup> and Queensland<sup>30</sup> disclosure logs, and on Bravus' own website.<sup>31</sup> I also note that scientists who have performed work for Bravus presented the findings of their research focusing on the Springs to an International Association of Hydrogeologists World Groundwater Congress in September 2024.<sup>32</sup>
16. The Report is not among the material published to date.

### Reviewable decision

17. The decision under review is the Department's decision dated 24 August 2023 to refuse access to the entire Report on the ground that its disclosure would be contrary to the public interest.

### Evidence considered

18. Evidence, submissions, legislation and other material I have considered in reaching this decision are disclosed in these reasons (including footnotes and Appendix).

### Information in issue

19. The information in issue is the Report, excluding the personal information of individuals as it appears in the Report.<sup>33</sup>

### Issue for determination

20. The issue for determination is whether disclosure of the Report would, on balance, be contrary to the public interest.

---

<sup>28</sup> Initiated by Bravus regarding an environmental protection order (issued by the Department on 2 March 2023 and varied on review by decision notified on 24 April 2024), following the Department's consideration of a Groundwater Model Review Report provided to it on 23 February 2023 – see

<<https://apps.courts.qld.gov.au/esearching/FileDetails.aspx?Location=BRISB&Court=DISTR&Filenumber=1485/23>>.

The Department's environmental protection order required Bravus to produce a second Groundwater Model Review Report – see varied order available at Queensland Government, 'Environmental Protection Act 1994 *Public Register*' <<https://apps.des.qld.gov.au/public-register/pages/enforcement.php?id=301173>>.

<sup>29</sup> Such as:

<<https://www.agriculture.gov.au/sites/default/files/documents/190415-part1.pdf>>

<<https://www.agriculture.gov.au/sites/default/files/documents/190415-part2.pdf>>

<[https://www.agriculture.gov.au/sites/default/files/documents/190417\\_part1.pdf](https://www.agriculture.gov.au/sites/default/files/documents/190417_part1.pdf)>

<[https://www.agriculture.gov.au/sites/default/files/documents/190417\\_part2.pdf](https://www.agriculture.gov.au/sites/default/files/documents/190417_part2.pdf)>

<[https://www.agriculture.gov.au/sites/default/files/documents/190418\\_0.pdf](https://www.agriculture.gov.au/sites/default/files/documents/190418_0.pdf)>

<sup>30</sup> Such as:

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0004/1578883/19-077a.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0004/1578883/19-077a.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0005/1578884/19-077b.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0005/1578884/19-077b.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0006/1578885/19-077c.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0006/1578885/19-077c.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0007/1578886/19-077d.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0007/1578886/19-077d.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0009/1578888/19-077f.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0009/1578888/19-077f.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0009/1612764/18-503b.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0009/1612764/18-503b.pdf)>

<[https://www.daf.qld.gov.au/data/assets/pdf\\_file/0007/1612762/18-503d.pdf](https://www.daf.qld.gov.au/data/assets/pdf_file/0007/1612762/18-503d.pdf)>

<sup>31</sup> At 'Environmental reporting and approvals', *Bravus Mining and Resources* (Web Page) <<https://www.bravusmining.com.au/sustainability/environment/environmental-reporting-and-approvals/>>.

<sup>32</sup> 'Bravus Mining and Resources groundwater research celebrated at international water conference', *Bravus Mining and Resources* (Media Release) <<https://www.bravusmining.com.au/bravus-mining-and-resources-groundwater-research-celebrated-at-international-water-conference/>> and Ecological Australia Pty Ltd (Linked In) <[https://www.linkedin.com/posts/ecological-australia-pty-ltd\\_ecologicalaustralia-tetrattech-leadingwithscience-activity-7238860921664585728-Penp](https://www.linkedin.com/posts/ecological-australia-pty-ltd_ecologicalaustralia-tetrattech-leadingwithscience-activity-7238860921664585728-Penp)>.

<sup>33</sup> The Appendices to the Report were *not* provided to the Department and therefore do not form part of the information in issue (as confirmed in an email from the Department dated 15 February 2024). A small amount of personal information in the Report, referencing individuals who contributed to its preparation, was excluded from further consideration by the applicant (as confirmed in an email to the applicant dated 5 September 2024).

## Steps taken during the external review process

21. OIC conveyed a preliminary view to the Department that disclosure of the Report would not, on balance, be contrary to the public interest.<sup>34</sup> The Department accepted this.<sup>35</sup>
22. OIC then consulted with Bravus and another third party<sup>36</sup> regarding disclosure of the Report.<sup>37</sup> Bravus and the other third party were invited to apply to participate in the review<sup>38</sup> in the event they objected to disclosure of the Report.
23. The third party advised that it had no objections to disclosure and did not further participate in the review process.<sup>39</sup> Bravus responded by advising that it objected to disclosure of the Report, and that it wished to participate in the review.<sup>40</sup>
24. Significant procedural steps relating to the external review are set out in the Appendix.

## Onus

25. Section 87 of the RTI Act provides that, on external review, the agency that made the decision under review has the onus of establishing that the decision was justified or that the Information Commissioner should give a decision adverse to the applicant.
26. As the Department no longer objects to disclosure of the Report, Bravus – as the only party objecting to disclosure – bears the practical onus of establishing that the Information Commissioner should give a decision adverse to the applicant.

## Relevant law

27. The object of the RTI Act is to give a right of access to information in the government's possession or control unless, on balance, it is contrary to the public interest to give the access.<sup>41</sup> The Act must be applied and interpreted to further this object.<sup>42</sup>
28. Section 23 of the RTI Act gives effect to the Act's primary object, by conferring a right to be given access to documents. This right is subject to other provisions of the RTI Act,<sup>43</sup> including grounds on which access may be refused.<sup>44</sup> One of these grounds permits an agency or Minister to refuse access to a document to the extent the document comprises information the disclosure of which would, on balance, be contrary to the public interest.<sup>45</sup>

---

<sup>34</sup> Email dated 5 February 2024.

<sup>35</sup> Email dated 19 February 2024.

<sup>36</sup> Under section 108(3) of the RTI Act, I must not disclose information claimed to be exempt or contrary to the public interest in reasons for decision. Given this constraint, in the circumstances of this review, I am unable to reveal the identity of the other consulted third party.

<sup>37</sup> Emails dated 15 and 20 February 2024 respectively. As noted at paragraph 2, during the Department's processing of the access application, it also consulted Bravus (on 10 January 2023) and received Bravus' response (on 31 January 2023).

<sup>38</sup> Under section 89(2) of the RTI Act.

<sup>39</sup> Email dated 1 March 2024.

<sup>40</sup> Email dated 23 February 2024 and submissions provided on 14 March 2024.

<sup>41</sup> Section 3(1) of the RTI Act.

<sup>42</sup> Section 3(2) of the RTI Act.

<sup>43</sup> Section 23(1) of the RTI Act.

<sup>44</sup> Section 47 of the RTI Act. The grounds are to be interpreted narrowly (section 47(2)(a) of the RTI Act), and the Act is to be interpreted with a pro-disclosure bias (section 44 of the RTI Act).

<sup>45</sup> Section 47(3)(b) of the RTI Act. The term '*public interest*' refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that, in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests, although there are some recognised public interest considerations that may apply for the benefit of an individual: Chris Wheeler, '*The Public Interest: We Know It's Important, But Do We Know What It Means*' (2006) 48 AIAL Forum 12, 14.

29. The RTI Act requires a decision-maker to take the following steps in deciding the public interest:<sup>46</sup>
- identify any irrelevant factors and disregard them
  - identify any relevant public interest factors favouring disclosure and nondisclosure of the information in issue
  - balance the relevant factors favouring disclosure and nondisclosure; and
  - decide whether disclosure of the information in issue would, on balance, be contrary to the public interest.
30. Schedule 4 of the RTI Act contains non-exhaustive lists of irrelevant factors, and factors favouring disclosure and nondisclosure. I have had regard to schedule 4 in reaching this decision, and disregarded irrelevant factors as set out in schedule 4, part 1 of the RTI Act.

## Discussion

### **Factors favouring disclosure**

31. Bravus has recognised<sup>47</sup> that disclosure of the Report could reasonably be expected to:
- promote discussion of public affairs and enhance the Department's accountability;<sup>48</sup> and
  - contribute to positive and informed debate on important issues or matters of serious interest.<sup>49</sup>
32. Having considered the nature of the Report and the public interest in the preservation of the Springs, I am satisfied that disclosure also could reasonably be expected to:<sup>50</sup>
- reveal the reason for the Department's decision and any background or contextual information that informed the decision<sup>51</sup>
  - inform the community of the Department's operations<sup>52</sup>
  - contribute to the protection of the environment;<sup>53</sup> and
  - contribute to the facilitation of research.<sup>54</sup>
33. The Department discharges, on behalf of the Queensland public, an important regulatory function aimed at protecting the environment from harm. According to the Department's website:<sup>55</sup>

---

<sup>46</sup> Section 49 of the RTI Act.

<sup>47</sup> Submission to the Department dated 31 January 2023.

<sup>48</sup> Schedule 4, part 2, item 1 of the RTI Act.

<sup>49</sup> Schedule 4, part 2, item 2 of the RTI Act.

<sup>50</sup> The phrase '*could reasonably be expected*' requires a reasonable expectation, ie one that is reasonably based, and not irrational, absurd or ridiculous: *Sheridan and South Burnett Regional Council and Others* (Unreported, Queensland Information Commissioner, 9 April 2009) at [189] – [193], referring to *Attorney-General v Cockcroft* (1986) 64 ALR 97 (**Cockcroft**). This test requires a decision-maker to distinguish '*between what is merely possible ... and expectations that are reasonably based*' and for which '*real and substantial grounds exist*': *B and Brisbane North Regional Health Authority* [1994] QICmr 1, a decision of the Information Commissioner analysing the equivalent exemption in the repealed *Freedom of Information Act 1992* (Qld) (**repealed FOI Act**), at [154]-[160]. Other jurisdictions have similarly interpreted the phrase '*as distinct from something that is irrational, absurd or ridiculous*': *Smolenski v Commissioner of Police, NSW Police* [2015] NSWCATAD 21 at [34], citing *Commissioner of Police, NSW Police Force v Camilleri (GD)* [2012] NSWADTAP 19 at [28], *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 at [61] and *Cockcroft* at [190].

<sup>51</sup> Schedule 4, part 2, item 11 of the RTI Act.

<sup>52</sup> Schedule 4, part 2, item 3 of the RTI Act.

<sup>53</sup> Schedule 4, part 2, item 13 of the RTI Act.

<sup>54</sup> Schedule 4, part 2, item 19 of the RTI Act.



*As the environmental regulator, the department's role is to ensure Bravus complies with its environmental obligations in its EA and under the Environmental Protection Act 1994.*

*The department reviews monitoring data, scrutinises management plans and conducts compliance and enforcement where appropriate.*

34. All actions taken by the Department as part of the approval process for the Project have been taken on the public's behalf – including its decisions regarding the GDEMP. The Department's approvals of the GDEMP were significant steps in the approval process for the Project.
35. The Project has, for some time, been the subject of a high level of public interest regarding the extent to which it will impact public affairs, ranging from economic to environmental to social to cultural. There has been significant focus on the Project's contribution to economic development and employment on the one hand, and climate change on the other. Also, relevant to this decision, there has been significant interest in the potential impact of the Project on ecosystems, particular species, culturally significant sites, and the interests of downstream landholders and recreational users. To a considerable degree, the extent of these particular impacts will be determined by the extent to which the Project affects the Springs.
36. Given the potential impact of the Project on a range of public affairs, a high level of accountability attaches to the Department's actions, in this case its assessment and management of uncertainty about the impact of the Project on the Springs. Also, given the Project has and continues to receive significant media coverage regarding interests such as those noted above and is frequently the subject of extensive public debate, it is to the community's benefit that this debate be informed.
37. Bravus provided the Report to the Department in November 2018 in accordance with the EA's requirement that the GDEMP must include baseline research to establish the source aquifer(s) for groundwater supply to GDEs including the Springs. The Department provided the Report to Geoscience and CSIRO on the second occasion when expert advice was sought.<sup>56</sup> Consequently, both the Report itself, and expert advice prepared having taken the Report into account,<sup>57</sup> were considered by the Department when it initially approved the GDEMP on 13 June 2019, and when it subsequently approved the updated GDEMP on 17 October 2019.
38. I consider that disclosure of the Report could reasonably be expected to promote and enhance the accountability of the Department by informing the public of information that was before the Department, and considered by it, when making its decisions to approve the GDEMPs. I consider that there is a strong public interest in disclosing information that informed, or was relevant to, the Department's decisions, so as to allow the public to meaningfully assess the reasonableness or otherwise of the decision to approve the GDEMPs. This is especially important given Geoscience and CSIRO's advice regarding the uncertainty in the geological and groundwater modelling relied on in Bravus' GDEMP.<sup>58</sup>

---

<sup>55</sup> At 'Carmichael Coal Mine (Adani Mining Pty Ltd, trading as Bravus Mining and Resources)', *Department of Environment, Science and Innovation* (Web Page) <<https://environment.desi.qld.gov.au/management/monitoring/locations-of-interest/adani-carmichael#:~:text=Bravus%20commenced%20open%20cut%20mining%20in%202020.%20As,plans%20and%20conducts%20compliance%20and%20enforcement%20where%20appropriate>>.

<sup>56</sup> Above at footnote 19.

<sup>57</sup> Above at footnote 18, CSIRO and Geoscience Australia (June 2019).

<sup>58</sup> Ibid at pages 9-12.

39. Bravus submitted<sup>59</sup> that there is ‘*ample information already available in the public domain which reveals the reason for the Department’s decision to approve the GDEMP – ie the advices prepared by CSIRO and Geoscience Australia*’. Bravus also submitted<sup>60</sup> that the Report itself does not provide any information about the Government’s operations. As explained at paragraph 37, however, the Report was not just considered by the Department. It was also provided to CSIRO and Geoscience in order for them to prepare their second advice to the Department. The fact that one of the two advices prepared by CSIRO and Geoscience was prepared with reference to the Report diminishes Bravus’ assertion that the advices themselves are ‘*ample*’. I am satisfied that disclosure of the Report would provide a more complete picture of the information before the Department (both directly and via CSIRO and Geoscience’s second advice which was informed by the Report) when it decided to approve both the GDEMP and the updated GDEMP.
40. Accordingly, I consider that disclosure of the Report would inform the public of contextual or background information considered by the Department when making its decisions to approve the GDEMPs and that this, in turn, would enable public scrutiny of Government operations—in this case, scrutiny of the Department’s role as an environmental regulator, and in particular, its assessment of Bravus’ compliance with the environmental obligations in its EA and under the *Environmental Protection Act 1994* (Qld). I also consider that disclosure of the Report may prompt further discussion about the environmental approvals process in Queensland generally.
41. Taking the above matters into account, I am satisfied that the factors regarding accountability, informed debate, and informing the community about the Department’s operations and giving context to its decisions are applicable, and each are deserving of significant weight.
42. Bravus also submitted that there is ‘*no evidence to suggest that disclosure of the [Report] can itself reasonably be expected to contribute to the protection of the environment*’;<sup>61</sup> however, in the terms of its submissions regarding prejudice to its commercial affairs, Bravus also observed that there is limited site-specific data in the vicinity of the Springs.<sup>62</sup>
43. The issue of data scarcity in the vicinity of the Springs was also highlighted in research papers from the ARC project mentioned at paragraph 13 above. The most recent paper observes:<sup>63</sup>

*Comprehensive conceptual models of the Galilee Basin (Queensland, Australia) are urgently needed **given that groundwater monitoring is extremely sparse** and the commencement of coal mining in this region with additional coal and gas projects undergoing regulatory approval processes...*

*The Galilee Basin is remote, and until recently its subsurface geology and groundwater system remained largely untouched by anthropogenic activities. As such, existing*

---

<sup>59</sup> Submission dated 14 March 2024.

<sup>60</sup> Submission dated 24 September 2024.

<sup>61</sup> Submission dated 14 March 2024.

<sup>62</sup> Submission dated 14 March 2024.

<sup>63</sup> Robin Keegan-Treloar, Eddie Banks, Ian Cartwright, Dylan Irvine, John Webb, Adrian Werner, Matthew Currell, ‘Using major ions and stable isotopes to improve conceptualisation of a spring-aquifer system in the Galilee Basin, Australia’ (2024) *Hydrogeology Journal* at <<https://ris.cdu.edu.au/ws/portalfiles/portal/112504950/s10040-024-02777-z.pdf>>. For earlier papers, see Robin Keegan-Treloar, Adrian Werner, Dylan Irvine, Eddie Banks EW ‘Application of Indicator Kriging to hydraulic head data to test alternative conceptual models for spring source aquifers’ (2021) *Journal of Hydrology* <<https://www.sciencedirect.com/science/article/abs/pii/S0022169421008581?via%3Dihub>>; and Robin Keegan-Treloar, Dylan Irvine, Adrian Werner, Eddie Banks ‘Identifying groundwater recharge and discharge zones using geostatistical simulation of hydraulic head and its derivatives’ (2023) *Journal of Hydrology* <<https://doi.org/10.1016/j.jhydrol.2022.128993>>.



*knowledge of the hydrochemistry of the basin is based on **limited data**, mostly in the mine lease areas along its eastern boundary...*

[my emphasis]

44. The Report includes onsite investigations, baseline data, and research undertaken by Bravus to identify the source aquifer of the Springs. Bravus submitted<sup>64</sup> that the Report would only be useful in a limited sense because it does not include detailed underlying hydrogeological data from the area. I consider that disclosure of the Report would increase site-specific data availability, and thereby contribute to future geological and groundwater research and modelling. I do note, however, that some information appearing in some of the Report's text, figures, plates, and tables is already publicly available – for example, in Bravus' Groundwater Management and Monitoring Program/Plan (**GMMP**)<sup>65</sup> and/or documents in the Planning and Environment Court appeal process.<sup>66</sup> I cannot be more specific in describing the commonality between information in the Report and the publicly available information, as this would necessarily reveal some of the contents of the Report<sup>67</sup> and obviate this review insofar as it relates to that information. However, taking into account the material before me, I am satisfied that the factor regarding the facilitation of research is relevant despite the apparent degree of commonality, and warrants moderate weight.
45. It follows that this contribution to research will in turn improve knowledge of the regional groundwater flow regime, rivers and streams, and the Springs.<sup>68</sup> I also accept that such improvements in knowledge would benefit informed planning of development in the region, assist in protecting nationally important environments and culturally significant sites, and enable preservation of discharge from the Springs for downstream landholders and recreational users. More generally, I consider that the improvements in knowledge could reasonably be expected to ensure that potential adverse impacts from the Project are more reliably identified before they arise and then avoided or mitigated (depending on legislative requirements and the priorities of the government of the day). Indeed, the information that the Report itself states to be baseline data appears particularly relevant for future monitoring and comparisons regarding the impact of the Project. Accordingly, I am satisfied that disclosure of the Report could also reasonably be expected to contribute to the protection of the environment. Similar to my above reasons for giving the research factor moderate weight, given the extent to which data of the type in the Report is already publicly available, I consider that this factor should be afforded moderate weight.

### **Factors favouring nondisclosure**

46. Bravus' submissions raised<sup>69</sup> several nondisclosure factors, predominately concerning its business and commercial affairs. In particular, Bravus submitted that disclosure of the Report could reasonably be expected to:
- prejudice the business, professional, commercial or financial affairs of entities<sup>70</sup>
  - prejudice security, law enforcement or public safety<sup>71</sup>

<sup>64</sup> Submission dated 24 September 2024.

<sup>65</sup> Version 11a of the GMMP (24 May 2021) – [s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/gmmp\\_ccp\\_v11.a\\_25052021\\_final\\_appnd\\_web\\_upload.pdf](https://s3-ap-southeast-2.amazonaws.com/awsfiles-232340950/bravus/documents/gmmp_ccp_v11.a_25052021_final_appnd_web_upload.pdf) available at <<https://www.bravusmini.ng.com.au/sustainability/environment/environmental-reporting-and-approvals/>>. See also a report which appears to be version 7 of the GMMP (15 March 2019) on Commonwealth disclosure log commencing at page 467 of <<https://www.agriculture.gov.au/sites/default/files/documents/190415-part1.pdf>>.

<sup>66</sup> Above at footnote 288.

<sup>67</sup> Section 108(3) of the RTI Act.

<sup>68</sup> Grant LP190100713 - <https://www.nature.com/articles/s41893-020-0527-4>.

<sup>69</sup> Submission to the Department dated 31 January 2023 and to OIC dated 14 March 2024.

<sup>70</sup> Schedule 4, part 3, item 2 of the RTI Act (**Business Affairs Prejudice Factor**).

<sup>71</sup> Schedule 4, part 3, item 7 of the RTI Act (**Security Factor**).

- prejudice trade secrets, business affairs or research of an agency or person.<sup>72</sup>
47. Bravus also relied on some harm factors. It submitted that disclosure of the Report could reasonably be expected to cause a public interest harm because it would disclose:
- information that has a commercial value to an agency or another person and could reasonably be expected to destroy or diminish the commercial value of the information<sup>73</sup>
  - information concerning the business, professional, commercial or financial affairs of an agency or another person and could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of this type to government<sup>74</sup>
  - the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished and could reasonably be expected to have an adverse effect on the agency or other person by whom, or on whose behalf, the research is intended to be, is being, or was, carried out.<sup>75</sup>

### **Making information with commercial value available to competitors**

48. Information has commercial value if:<sup>76</sup>
- it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged (for example, because it is important or essential to the profitability or viability of a continuing business operation, or a pending 'one-off' commercial transaction); or
  - a genuine arms-length buyer is prepared to pay to obtain that information from that agency or person, such that the market value of the information would be destroyed or diminished if it could be obtained from a government agency which has possession of it.
49. Bravus submitted<sup>77</sup> that the Report contains:
- information about underlying geology, groundwater and water quality that is relevant to the Mine and its surrounds; and
  - scientific methodologies, sampling locations, site-specific data, interpreted data and the conclusions reached as a result of the research,
- and that this information is critical to its business operations as it is required to comply with the approved GDEMP and EA.
50. Bravus also submitted<sup>78</sup> that a genuine, arms-length buyer (another entity holding an overlapping or adjacent exploration or production permit) would pay for the Report. It submitted<sup>79</sup> that disclosure could reasonably be expected to destroy or diminish the value of the Report because it would allow other competitor resource companies to use

<sup>72</sup> Schedule 4, part 3, item 15 of the RTI Act (**Research Prejudice Factor**).

<sup>73</sup> Schedule 4, part 4, item 7(1)(b) of the RTI Act (**Commercial Value Harm Factor**).

<sup>74</sup> Schedule 4, part 4, item 7(1)(c) of the RTI Act (**Business Affairs Harm Factor**).

<sup>75</sup> Schedule 4, part 4, item 7(3) of the RTI Act (**Research Harm Factor**).

<sup>76</sup> *Cannon and Australian Quality Egg Farms Limited* (1994) 1 QAR 491 (**Cannon**) at [54]-[55], considering section 45(1)(b) of the repealed FOI Act, a similar exemption to the Commercial Value Harm Factor. The information must have a commercial value at the time that the decision is made; information which was once valuable may become aged or out-of-date such that it has no remaining commercial value (*Cannon* at [56]).

<sup>77</sup> Submission to the Department dated 31 January 2023.

<sup>78</sup> Submission to the Department dated 31 January 2023.

<sup>79</sup> Submission to the Department dated 31 January 2023 and to OIC dated 14 March 2024.

it, at no charge, to better plan for, and operate, competing mining activities in the area. It would also allow these other resource companies to more quickly and easily address similar requirements thereby giving them a commercial advantage. Bravus also submitted<sup>80</sup> that disclosure could reasonably be expected to destroy or diminish the value of the Report because:

- other resource companies would not purchase it from Bravus
- the Report is not publicly available; and
- the information in the Report is up to date.

51. Bravus identified<sup>81</sup> its competitors as companies which hold or have applied for resource tenements in the direct vicinity of the Mine, including:<sup>82</sup>

- Mining Lease Application 700031 submitted by Waratah Coal Pty Ltd (**Waratah**) and Mining Lease Application 700074 submitted by MacMines Austasia Pty Ltd (**MacMines**)
- Exploration Permits 1080, 1105, 1157 and 1288 held by Waratah, 1663 held by MacMines and 1802 held by Blackwood Exploration Pty Ltd (**Blackwood**).

52. Waratah's proposed Alpha North Coal Project (MLA 700031) is also located in the Galilee Basin, however, it is not in close proximity to the Mine, has an initial export capacity half that of Bravus<sup>83</sup> (despite covering a larger area), and Waratah has stated that it does not intend to start mining until 2030.<sup>84</sup> In relation to the other proposed mine by MacMines (MLA 700074), I understand that plans for this were terminated in 2019.<sup>85</sup>

53. In terms of the exploration permits, I note that two of Waratah's are pre-requisite permits related to MLA 700031. I also note that generally, exploration permits do not permit mining or guarantee that approval to mine will be granted; rather, they allow the permit holder the ability to prospect, conduct geographical surveys, drilling, sampling, and testing of materials.<sup>86</sup>

54. Accordingly, in terms of whether disclosure of the Report *may* provide some benefit to a competitor, I note that, among the competitors nominated by Bravus, only one Mining Lease Application – Waratah's – is on foot. If at some point this lease is granted, the nominated start date of 2030 appears increasingly optimistic, considering the extent of works that would be required to achieve this. Further, if mining commences, Waratah's approved export capacity is presently half of Bravus'. Nevertheless, I accept that Waratah may be a potentially viable competitor. I also accept that, although less likely, MacMines and Blackwood could also possibly be considered competitors. However, I also consider that Bravus has not explained precisely how the Report could be used by competitors.

---

<sup>80</sup> Submission to the Department dated 31 January 2023.

<sup>81</sup> Submission to OIC dated 14 March 2024.

<sup>82</sup> Resource authority public reports for each interest are available at <<https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/online-services/searches>>.

<sup>83</sup> For export capacities, see project overviews for Bravus at <<https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects/completed-projects/carmichael-coal-mine-and-rail-project>> and Waratah at <<https://www.statedevelopment.qld.gov.au/coordinator-general/assessments-and-approvals/coordinated-projects/completed-projects/alpha-coal-project>>.

<sup>84</sup> See:

<<https://www.waratahcoal.com/alpha-north-coal-project/>>

<[http://epbcnotices.environment.gov.au/\\_entity/annotation/5ddacf12-5e44-e811-ad33-005056ba00a7/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1524384187991](http://epbcnotices.environment.gov.au/_entity/annotation/5ddacf12-5e44-e811-ad33-005056ba00a7/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?t=1524384187991)>

<sup>85</sup> <https://www.abc.net.au/news/2019-05-23/macmines-abandons-mining-lease-applications/11138310>.

<sup>86</sup> <https://www.resources.qld.gov.au/mining-exploration>.

55. Bravus has expressed concern that disclosure of the Report will allow competitors to use its contents, at no charge, to better plan for, and operate, competing mining activities in the area. I consider that there is no evidence before me which indicates the precise nature of the prejudice and/or adverse effect that Bravus claims would flow from disclosure nor how competitors would be in a position to use the Report to their advantage (or any disadvantage to Bravus), despite Bravus being invited to provide such evidence on external review.<sup>87</sup> At most, it seems possible that information in the Report could become one among multiple sources of information (the others being publicly available) used to inform a competitor's applications, management plans or programs.
56. In this regard, I note that:
- as stated above at paragraph 44, some information appearing in some of the Report's text, figures, plates, and tables is already publicly available<sup>88</sup>
  - more generally, there is a significant amount of publicly available information about the Project and the Springs including groundwater data, water quality data, and information about the geology of the Mine and its surrounds<sup>89</sup>
  - while Bravus has submitted that the information in the Report is up to date, for the most part information in the Report comprises summaries or averages rather than raw data,<sup>90</sup> and it appears reasonable to expect that these summaries and averages could be updated so that they take into account the additional groundwater monitoring and geological research performed by Bravus in accordance with the GDEMP and its GMMP over the now more than five years that have passed since the Report was completed.
57. In the circumstances, while I consider that disclosure of the Report would somewhat increase the availability of site-specific data, I consider that the extent to which this would be the case, the value of the data, and the possibility of competitors interested in it, could all reasonably be expected to be less than Bravus has asserted. Accordingly, I am not satisfied that the Report possesses any significant commercial value within the meaning of the Commercial Value Harm Factor. I have therefore afforded the Commercial Value Harm Factor low to moderate weight. For the same reasons, while I also consider that the Business Affairs Prejudice Factor and the Business Affairs Harm Factor are relevant to these concerns, I consider that the prejudice to or adverse effect on Bravus' business affairs would not be significant. I therefore consider that these nondisclosure factors warrant only low to moderate weight insofar as they relate to such concerns.

### **Prejudicing future supply of information**

58. The Business Affairs Harm Factor will also apply where disclosure could reasonably be expected to prejudice future supply of like information to government. It has previously been held in relation to infrastructure developments that developers may be discouraged from communicating with agencies at an early stage of their projects if they believe their correspondence might be subject to disclosure under the RTI Act.<sup>91</sup> Similarly, I consider that companies applying for mining leases (such as Bravus) may be concerned about providing a full range of information to the Department in support

<sup>87</sup> Letter to Bravus dated 15 February 2024.

<sup>88</sup> Again, due to section 108(3) of the RTI Act, I cannot be more specific in describing the commonality between information in the Report and the publicly available information.

<sup>89</sup> See the range of documents noted in the 'Background' section of this decision.

<sup>90</sup> As noted at footnote 33 above, the Department has confirmed that the Appendices to the Report—some of which *may* have included raw data—were not provided to it.

<sup>91</sup> *Straker and Sunshine Coast Regional Council; NBN Co Limited (Third Party)* [2016] QICmr 44 (28 October 2016) (**Straker**) at [91]. I note, however, that unlike this matter, the relevant information in *Straker* was covered by a confidentiality agreement.

of their application if they believe that this information may be disclosed. Accordingly, I am satisfied that the Business Affairs Harm Factor applies.

59. However, in terms of the weight to be attributed to this factor, I do not consider that the flow of information to government will be impaired to any great extent. Entities provide information to the Department because they are required to do so in order to apply for mining leases, or they consider it supports their application. Given the Department's role in approving mining lease applications, any failure to provide information would be likely to prejudice their operations to a far greater extent than the disclosure of information submitted to the Department under the RTI Act. Accordingly, in relation to future supply of information to government, I have afforded the Business Affairs Harm Factor only low weight.

**'Triggering' action by 'Activist Groups'**

60. Bravus also submitted<sup>92</sup> that the Report contains highly sensitive, confidential information about the Project, including the geographic location of particular bores and the identity of particular contractors. It referred to a history of third-party interference with the Project and stated that it was reasonable to expect that release of the Report *'will trigger further action from Activist Groups'*. It defined *'Activist Groups'* as protestors, opponents and activists and submitted that, given their past behaviour, this expectation was reasonably-based and not merely speculative. The following examples of action taken by Activist Groups was provided:

Date	Action
September 2019	Members of an Activist Group assaulted a contractor involved in the Mine's rail corridor works, while another member of that same activist group locked on and impeded the operation of machinery.
	Operational information and plans were used by an Activist Group to engage in extended trespass on land owned by Bravus.
September 2021	Members of an Activist Group interfered with water infrastructure at the Mine, giving rise to security and operational concerns.

61. Bravus stated that there have been other incidents where activists had locked on to machinery and infrastructure and where information had been used to impede ingress and egress from the Mine. Bravus also advised that it commenced litigation against an activist in the Queensland Supreme Court in 2020.<sup>93</sup>
62. Bravus submitted that the Report would be used by Activist Groups to plan and engage in action that would *'actively interfere with Bravus' activities and contractors'*. Bravus further submitted that the action by Activist Groups would:
- prejudice the safety of its infrastructure, and the personal health, physical safety and security of its employees and contractors, and therefore the Security Factor was relevant
  - necessitate *'a need to respond ..., the process of engaging with law enforcement to respond and pursuing civil remedies via litigation ... and have a direct commercial impact on Bravus' business'*, and therefore the Business Affairs Prejudice Factor and the Business Affairs Harm Factor were relevant.

<sup>92</sup> Submission to the Department dated 31 January 2023.

<sup>93</sup> See *Adani Mining Pty Ltd & Anor v Pennings* [2020] QSC 249, *Adani Mining Pty Ltd & Anor v Pennings* [2020] QCA 169; and *Adani Mining Pty Ltd & Anor v Pennings* [2021] QSC 343

63. The Mine is controversial—it is the largest coal mining project approved in Australia and has raised concerns from Traditional Owners and the public (including experts) about the impact of mining activity on wetlands that are considered to be sacred and nationally important. It should be contemplated from a project of this scale and size that there will be action by activists. Bravus has described one serious incident in September 2019 and other more minor action including trespass and protest; however, they do not explain *how* disclosure of the above information in the Report<sup>94</sup> could reasonably be expected to ‘trigger’ action by activists.
64. In terms of Bravus’ particular mention of bore holes and its contractors, I note that:
- considerable information has been released by Bravus and the Department about the Project, including a map of all bores sampled in the baseline program;<sup>95</sup> and
  - the involvement of the particular contractors referred to by Bravus in the Project is public knowledge.
65. More generally, I again note:
- as stated above at paragraph 44, some information appearing in some of the Report’s text, figures, plates, and tables is already publicly available;<sup>96</sup> and
  - there is a significant amount of publicly available information about the Project and the Springs including groundwater data, water quality data, and information about the geology of the Mine and its surrounds<sup>97</sup> – including the GDEMPs approved by the Department.
66. Bravus has not established *how* disclosure of the *Report* in particular could reasonably be expected to have the adverse effects contended, given the extent of information that is already in the public domain. On the material before me, I do not accept that there are reasonable grounds for expecting that disclosure of the Report would necessarily ‘*trigger further action from Activist Groups*’, as submitted by Bravus. Given I am unable to discern the necessary connection between disclosure of the Report and such action, it follows that I do not accept that disclosure could, via such action, prejudice the safety of Bravus’ infrastructure, employees or contractors, or impact its business affairs. Accordingly, I am satisfied that the Security Factor, Business Affairs Prejudice Factor and Business Affairs Harm Factor do not apply in relation to these concerns. Even if these factors could be considered applicable, for the abovementioned reasons, I consider that they should be afforded no more than low weight.

## Research

67. Bravus submitted<sup>98</sup> that the Report reveals the purpose and results of baseline research to establish the source aquifer for the Springs, including the results of research by a third party on behalf of Bravus, and that disclosure of the Report could reasonably be expected to have an adverse effect on Bravus and cause a public interest harm. Other than referring to submissions it made in respect of the other public interest factors above, Bravus did not explain *how* disclosure of the Report could reasonably be expected to prejudice or have an adverse effect on it.

---

<sup>94</sup> That is, the location of particular bores and the identity of Bravus’ contractors.

<sup>95</sup> Noted in the GMMP.

<sup>96</sup> Again, due to section 108(3) of the RTI Act, I cannot be more specific in describing the commonality between information in the Report and the publicly available information.

<sup>97</sup> See the range of documents noted in the ‘Background’ section of this decision.

<sup>98</sup> Submission to the Department dated 31 January 2023.



68. During the external review, we consulted with the third party, and it did not raise any objection to disclosure of its research.
69. Taking the third party's position into account and again considering the following:
- as stated above at paragraph 44, some information appearing in some of the Report's text, figures, plates, and tables is already publicly available<sup>99</sup>
  - more generally, there is a significant amount of publicly available information about the Project and the Springs including groundwater data, water quality data and information about the geology of the Mine and its surrounds;<sup>100</sup> and
  - while Bravus has submitted that the information in the Report is up to date, for the most part information in the Report comprises summaries or averages rather than raw data,<sup>101</sup> and it appears reasonable to expect that these summaries and averages could be updated so that they take into account the additional groundwater monitoring and geological research performed by Bravus in accordance with the GDEMP and its GMMP over the now more than five years that have passed since the Report was completed,

I am not satisfied that disclosing the Report, and more specifically, the information noted at paragraph 67, would cause any substantial prejudice to the research undertaken by Bravus or the third party; or cause an adverse effect on Bravus. Accordingly, I have afforded low weight to the Research Prejudice Factor and the Research Harm Factor.<sup>102</sup>

#### **Other factors**

70. Given the appeal on foot in the Planning and Environment Court,<sup>103</sup> I have considered whether disclosure of the Report could impede the administration of justice or otherwise prejudice these proceedings in some way.<sup>104</sup> The appeal relates to the Department's decision not to approve a March 2023 Groundwater Model Review Report, produced some four and a half years after the Report in issue, in which Bravus reviewed its groundwater modelling. Bravus has appealed the Department's decision to instead issue an environmental protection order requiring Bravus to produce a second Groundwater Model Review Report. I have noted that the parties to the appeal are the Department and Bravus, who are both already in possession of the Report. I have also noted that the Report in issue could feasibly provide relevant background to observers of the proceedings – but so too could many other documents of a similar nature already in the public domain. In the circumstances, on the information available to me, I cannot see how disclosure of the Report could prejudice the proceedings and, therefore, consider this factor does not apply.
71. I have also considered other factors favouring nondisclosure and harm factors in schedule 4 of the RTI Act and more generally, but cannot identify any further factors relevant to the circumstances of this review.

---

<sup>99</sup> Again, due to section 108(3) of the RTI Act, I cannot be more specific in describing the commonality between information in the Report and the publicly available information.

<sup>100</sup> See the range of documents noted in the 'Background' section of this decision.

<sup>101</sup> As noted at footnote 33 above, the Department has confirmed that the Appendices to the Report—some of which *may* have included raw data—were not provided to it.

<sup>102</sup> Schedule 4, part 3, item 15 and schedule 4, part 4, item 7(3) of the RTI Act.

<sup>103</sup> Noted at footnote 28 above.

<sup>104</sup> In this regard, I have noted the factors in schedule 4, part 3, items 8 and 9 of the RTI Act, and also the public interest in avoiding prejudice to court proceedings (which could also be considered given the lists of factors for deciding the public interest set out in schedule 4 of the RTI Act are not exhaustive).

### ***Balancing the public interest***

72. I have taken into account the general pro-disclosure bias which is to be applied when deciding access to documents.<sup>105</sup> I also consider there are very strong public interest considerations in favour of disclosure. The Mine is the subject of considerable public debate, and the Report was provided to the Department in support of Bravus' GDEMP, in compliance with the EA. I am satisfied that disclosure of the Report would significantly advance accountability and transparency, and that related public interest factors should therefore be afforded significant weight. I also consider that the public interest in protecting the environment and facilitating research both warrant moderate weight.

In terms of making information with commercial value available to competitors, I consider that the Commercial Value Harm Factor, Business Affairs Prejudice Factor and Business Affairs Harm Factor are relevant, and should be given low to moderate weight. I have afforded the Business Harm Factor low weight insofar as disclosure of the Report may prejudice the future supply of information to the Department. In relation to Bravus' concerns about disclosure 'triggering' action by 'Activist Groups', I do not consider that the Security Factor, Business Affairs Prejudice Factor or Business Affairs Harm Factor are relevant – however if they were taken to be relevant, I consider they should be given low weight. Finally, insofar as Bravus has raised concerns regarding research, I have afforded low weight to the Research Prejudice Factor and the Research Harm Factor.

73. After evaluating and balancing the weight I have attributed to each of the above public interest factors, I am satisfied the factors favouring disclosure outweigh the factors favouring nondisclosure in this case. Accordingly, I am satisfied that disclosure of the Report would not, on balance, be contrary to the public interest.

### **DECISION**

74. I set aside the Department's decision and find that disclosure of the Report would not, on balance, be contrary to the public interest. As no grounds on which access may be refused in section 47(3) of the RTI Act have been established regarding the Report, the applicant is therefore entitled to access the Report.
75. I have made this decision as a delegate of the Information Commissioner, under section 145 of the RTI Act.

---

A Rickard  
**Assistant Information Commissioner**  
**Date: 21 October 2024**

---

<sup>105</sup> Section 44 of the RTI Act.

## APPENDIX

### Significant procedural steps

Date	Event
20 September 2023	OIC received an application for external review from the applicant. OIC requested preliminary documents from the Department
10 October 2023	OIC received the preliminary documents from the Department.
23 October 2023	OIC advised the applicant that the application for external review had been accepted and conveyed a preliminary view.  OIC advised the Department that the application for external review had been accepted.
6 November 2023	OIC received the information in issue (Report) from the Department.
5 February 2024	OIC conveyed a preliminary view to the Department.
15 February 2024	OIC received confirmation from the Department that the Appendices to the Report were not provided to it. OIC consulted with Bravus under section 37 of the RTI Act.
19 February 2024	OIC received a response from the Department.
20 February 2024	OIC consulted with another third party under section 37 of the RTI Act.
7 March 2024	OIC received a response from the third party.
14 March 2024	OIC received a response from Bravus.
6 June 2024	OIC received information from the Department about court files and exhibits available online relating to Land Court Appeal (1485/23).
18 August 2024	OIC requested further information from the Department.
26 August 2024	OIC received further information from the Department.
5 September 2024	OIC requested and received confirmation from the applicant that it did not wish to pursue access to the personal information of individuals appearing in the Report.
10 September 2024	OIC wrote to Bravus about some public interest factors and gave Bravus the opportunity to make final submissions.
24 September 2024	OIC received a response from Bravus.