

Our ref: BJT:11355

19 May 2017

The Chair
NSW Planning Assessment Commission
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Dear Chairperson,

RE: BYLONG COAL PROJECT – SUBMISSION BY LOCAWAY PTY LTD

We refer to the Notice of Public Hearings (Notice) issued by the Planning Assessment Commission (PAC) for the Bylong Coal Project (Project). The Notice requires written submissions by 5pm 19 May 2017. This letter is a submission by Locaway Pty Ltd (Locaway) the registered proprietor of Cherrydale Park.

Nothing in this submission derogates from the fundamental matters raised in our correspondence to the PAC on 18 May 2017.

Time

To put the PAC process in context, it has been an enormous task to cover the material that was published on the PAC's website around 5 April 2017. This has included DPE's Assessment Report, recommended conditions of consent, two responses to submissions from KEPCO Bylong Australia Pty Ltd (**KEPCO**), peer review reports and further advice from government agencies. None of these documents have been previously been released to the public.

Allowing 6 weeks to make a submission about these documents is entirely inadequate and fails to constitute proper public consultation. We also question how the PAC could reasonably be across such a significant volume of material to carry out its review in the 12-week timeframe.

Factual background

Locaway is the registered proprietor of Lot 1 DP 421103 (commonly known as Cherrydale Park) and Lot 31 DP 598162 (previously commonly known as Bimbal Park). These two parcels of land are operated as a single enterprise known as Cherrydale Park (collectively the **Property**).

Locaway is also the holder of Water Access Licence WAL 177718 for 860 units and Water Access Licence WAL 17728 for 5 units both being aquifer licences in the Bylong River Water Source (**Bylong**

Water Source) under the *Water Sharing Plan for the Hunter Unregulated and Alluvial Water Sources 2009* (collectively **Locaway's Water Rights**).

The Property is operated as a commercial agricultural operation comprising:

1. beef cattle farming with a carrying capacity of approximately 300 head of breeders and calves;
2. 120 hectares of irrigated farm land including growing lucerne to support the beef cattle operations and for the production and sale of hay;
3. a large facility for the storage of hay;
4. a station manager's residence identified in the Environmental Impact Study (EIS) for the Project as Receiver 56 and comprising a 3 bedroom dwelling; and
5. significant associated farming infrastructure including a grassed airstrip, workshops, sheds, dams, pumps and water reticulation.

In addition to Receiver 56, significant residential improvements also exist at the Property (identified in the EIS as Receivers 57A, 57B and 57C) including:

- A. 3 bedroom homestead with office and separate gym and library;
- B. substantial landscaped gardens adjoining the main homestead; and
- C. a separate 3 bedroom guest accommodation.

A significant portion of the Property has been identified as biophysical strategic agricultural land (BSAL) under the *Upper Hunter Strategic Regional Land Use Plan*.

Despite contrary assertions, the agricultural operations at the Property are carried out in a genuine and businesslike manner.

Consultation

The EIS and the DPE's Assessment Report has given either no or very minimal consideration to the environmental, social and economic impacts of the Project on the Property. Although the EIS does not make any statement in relation to the position of Locaway or the Property, it is considered that the glaring omissions in the EIS concerning the Property are based upon the mistaken assumption by KEPCO in preparing the EIS that Locaway is a mine related company.

It is assumed that this has occurred based upon the fact that Locaway had entered into an option agreement with the proponent of the (former) Mt Penny Coal Project. If that option had been exercised it would have led to the Property and Locaway's Water Rights being owned by a coal mining company. That option agreement was terminated in 2015.

It is therefore considered that KEPCO has adopted the position that any impacts from the Project were either not relevant or were not required to be considered in the preparation of the EIS. However, as is well known, Locaway has not been associated with any coal mining entities including the Mt Penny Coal Project since 2014. That position was communicated to KEPCO.

The level of consultation afforded by KEPCO to Locaway is and continues to be unsatisfactory. Locaway is committed to maintaining an open dialogue however it appears that KEPCO is not committed. It is peculiar that KEPCO have carried out extensive consultation with a vast range of people but not with the Obeid family.

The PAC should require KEPCO to properly consult with Locaway on the basis that Locaway is a large rural enterprise on the boundary of its affectation zone (we say within) and not as an adjoining coal miner. We look forward to hearing from KEPCO.

Formulation of the Study Area and Project Boundary

The Project Boundary for the Project is largely (but not completely) in accordance with the boundary of the land owned by KEPCO. That is largely unsurprising. However, what is unacceptable is the use of the Study Boundary. This is a concept used by KEPCO to determine where consideration of the impacts from the Project can stop. An example of this the EIS's consideration of BSAL. It does not consider at all any impacts of the Project of BSAL outside of the Study Area.

KEPCO should be required to prepare an EIS in accordance with the Secretary's Environmental Assessment Requirements (**SEARs**) and not be permitted to itself determine where the impacts from the Project do and do not warrant a detailed investigation and consideration.

Gateway Certificate

Pursuant to clause 50A *Environmental Planning & Assessment Regulation 2000 (EP&A Regulations)* the development application for the Project must be accompanied by a 'current gateway certificate in respect of the proposed development.' That is currently not the case.

On 15 April 2014, the Mining & Petroleum Gateway Panel issued a Conditional Gateway Certificate in respect of development described as 'The Bylong Coal Project proposes to development an open-cut and underground mining complex to recover about 121 million tonnes of Run-of-Mine (ROM) coal over a period of up to 29 years.'

The Gateway Certificate then certified that in the opinion of the Gateway Panel with respect to the criteria proposed in clause 17(h)(4) of *State Environment Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* the proposed development as complying with one criteria and not complying with the remaining eleven.

On 23 June 2014, Secretary's Environmental Assessment Requirements (**Original SEARs**) were issued in respect of development relevantly described as '[T]he Bylong Coal Project, which includes: developing new open cut and underground mining operations on the site to extract up to 6 million tonnes of coal per year over a period of 29 years.'

One of the General Requirements of the Original SEARs was the requirement that the EIS must comply with the requirements in the Mining & Petroleum Gateway Panel's Conditional Gateway Certificate.

On 20 October 2014, KEPCO lodged a letter with DPE informing them of some 'minor amendments' to the Project and (purportedly) seeking concurrence that these 'minor amendment' would not require amendment to the SEARs and the Gateway Certificate for the Project.

Those 'minor amendments' are then described in shorthand as a revised project layout but when in fact they constitute:

- (a) an increased production rate;
- (b) a change in the open cut mining schedule;
- (c) an increase in longwall panel widths from 250 metres to 350 metres;
- (d) the recovery of an additional 2.8 MT from the open cut area;
- (e) a reduction in the overall life of the Project;
- (f) a revised footprint for the rail loop and CHPP; and
- (g) a revised mine water system.

KEPCO then assert that the environment impacts of these changes 'will overall result in less impact and as a consequence have no such consequence for the SEARs that have been issued for the Project.' KEPCO then ask for written confirmation that the SEARs and the Gateway Certificate do not require amendments. The letter was copied to the Gateway Panel Secretariat.

Clearly DPE didn't agree with KEPCO's assertion that the SEARs did not require amendment as on 11 November 2014 the SEARs were amended to reflect the revised proposed development (**Revised SEARs**). There is no record of the Gateway Certificate also being amended.

In these circumstances, there is no current gateway certificate in respect of the Project as KEPCO changed the project following the issue of the original gateway certificate. It is irrelevant that KEPCO or DPE considers that the changes are minor and the environmental impact less. There is no scope to unilaterally change the proposed development without a consequent change to the gateway certificate.

Accordingly, the development application for the Project does not comply with clause 50A EPA Regulations and the development application should be immediately rejected as an invalid application. Alternatively, KEPCO should be required to seek an amended gateway certificate before any further steps in the assessment process are undertaken.

Agricultural

The EIS fails to undertake any assessment of the impacts from the Project on the Property's BSAL land. As the Gateway Panel determined, 'indirect impacts on potential BSAL adjacent to the Project Boundary area have not been assessed and are potentially significant.' The Revised SEARs require KEPCO to address this issue in respect to the Property. That has not occurred in the EIS.

Locaway submits that the Project will have a significant and unacceptable impact on the BSAL land on its Property and in the broader Bylong Valley.

Air quality

In respect to air quality, the assessment report is limited in being able to provide an accurate assessment of impacts due to the incomplete background dust monitoring data. The lack of a complete set (one or more complete years) of suitable data is not unusual, but is increasingly less common for significant coal mine projects.

This limitation also affects the period chosen for the modelling, in this case the period with the most complete data set was selected. However, this coincides with a period of generally higher than typical rainfall levels, and may thus slightly underestimate dust levels which may occur under typical rainfall conditions.

The EIS contains very little information on the parameters of the model which would allow for a full examination of whether the model is an accurate representation of the Bylong Valley. Neither is there an assessment of whether more than 25% of the contiguous area of the Property will exceed the relevant air quality criteria. That should be undertaken.

According to KEPCO, Receivers 56, 57A and 57C are predicted to experience dust levels of approximately 8 to 12 $\mu\text{g}/\text{m}^3$ as a result of the Project. Whilst this is an impact, it is noted that this impact is within the currently acceptable range. Despite this it is considered that further mitigation measures could be applied.

A predictive air quality management system can significantly reduce short term dust impacts, which is the key potential issue for the Project. The DPE's Assessment Report indicates that only reactive management based on dust levels and pro-active management based on forecast weather conditions is proposed.

This falls short of the claimed best practice mitigation that would be installed, and given the situation is one of complex, convoluted terrain the proposed approach is not supported. For example, in this area the winds will at times be in different directions and at different speeds in various parts of the proposed mine site, and a prediction system based on weather parameter triggering will mean that the mine cannot perform at best practice levels at the critical times.

It is therefore recommended that a comprehensive dust (and other parameters) predictive system is implemented. A best practice, comprehensive predictive system can control blast fume, dust, overpressure and vibration impacts, along with operational dust and noise, blast and many other such factors, and should be implemented as part of best practice management for a new mine. These systems have proven to be effective when well designed and set up. This requirement should be reflected in a condition of consent.

Furthermore, the DPE Assessment Report states that KEPCO has committed to maintain 80% control levels on the haul roads and that this is best practice. However, this is not consistent with the KEPCO modelling and assessment, where emissions from haul roads appear to be the largest dust source at the site.

The 80% control level that has been committed to would result in approximately 33% more dust compared with the modelled haul roads. This is significant to the overall assessment and has the potential to alter the findings. It is noted that the main haul roads on coal mines can be controlled to levels of 90% in practice, and smaller temporary roads can be controlled to levels of 75% to 85%,

meaning that in practice overall average control levels of 85% are achievable. Thus, it is recommended that the average control level across all haul roads be maintained at 85%, not 80% and that this is reflected in a condition of consent.

Noise

Locaway is concerned about the unassessed and significant impacts from noise on the Property. Statements by the DPE in their Assessment Report that the Noise and Blasting Impact Assessment (**NBIA**) complies with the Industrial Noise Policy (**INP**) is incorrect. The NBIA does not comply with the INP.

There are three residences on the Cherrydale Park property, denoted R56, R57A and R57C in EIS. Background noise monitoring conducted in the local vicinity of Cherrydale Park by Proponent established a night time background noise level of 24 dB(A), L90. Background noise monitoring conducted at a Cherrydale Park residence in 2011 established a night time background noise level of 21 dB(A), L90. Under provisions of the INP a default minimum background noise level of 30 dB(A) was adopted in the EIS.

Based on the adopted default minimum background noise level, a noise criterion of 35 dB(A), Leq (15min) was adopted for day, evening and night. This is the “background + 5dB” intrusiveness criterion.

The worst case predicted operational noise level at Cherrydale Park is 37 dB(A), Leq (15min). This has been considered a “marginal” (1-2 dB) exceedance within the NBIA and in the agency responses. This is in line with definitions in the DPE Voluntary Land Acquisition and Management Policy (**VLAMP**) which is a formalisation of the historically applied concepts of noise management, mitigation and acquisition zones. However, in this case KEPCO has provided insufficient justification for the establishment of a Project Specific Noise Level (PSNL) above 35Db(A).

This is particularly so where the NBIA may not have adequately considered the extreme temperature inversions in the Bylong Valley and accordingly the marginal 1-2 dB noise exceedance could easily increase to 3 to 4 dB noise exceedance at Cherrydale. Under the recommended conditions of consent, the Proponent is given a waiver as the noise limits don't apply under extreme inversion conditions. This is unacceptable. This fact is not appreciated until one turns to page 53 of the recommended conditions being Appendix 5. Condition 1 of Appendix 5 should be deleted.

Noise – low frequency sound

There has been a great deal of discussion surrounding the issue of low frequency noise.

The INP requires that if the C-weighted noise level (measured or predicted) from a noise source under investigation exceeds the A-weighted level (both quantities are an Leq(15min) value) by 15 dB or more then + 5dB modifying factor correction is added to the predicted A-weighted noise level.

The worst case predicted C-weighted noise level for a “Cherrydale Park” residence is 52 dB(C) (reference Appendix D.1 and D.2 NBIA 2015). This is 15 dB greater than the A-weighted level of 37 dB(A) and an application of the INP methodology requires the predicted 37 dB(A) to be reported as 42 dB(A). This is 7 dB greater than the criterion of 35 dB(A) and under the provisions of the VLAMP acquisition rights apply to Receiver 56.

Accordingly, Receiver 56 should be afforded acquisition rights under the recommended conditions of consent.

The NNIA however, adopted the Broner criterion that has been applied by DPE in recent years despite the express provisions of INP. The Broner criteria of 60dB(C) (recommended) and 65 dB(C) (maximum) were adopted as assessment criteria. As the Broner low frequency criteria were not exceeded at the property, the +5dB modifying factor was not applied and the three residences on Cherrydale remained as “marginally” impacted.

The EPA initially rejected the use of the Broner criteria in its submission, noting that assessment of low frequency noise against INP criteria was required in the SEAR’s for the Project. DPE discussed with EPA the fact that there are low frequency criteria, modified for exterior application from the internal criteria developed by DEFRA (UK), incorporated in the EPA’s Draft Industrial Noise Guideline (**ING**). Consequently, the EPA agreed that the modified DEFRA criteria are “consistent with modern science” and agreed that these criteria should be applied to the project.

The adoption of the modified DEFRA criteria raises the problem that there has been no meaningful low frequency noise assessment conducted for the Project. Agreement between DP&E and EPA on the suitability of the modified DEFRA criteria as detailed in the draft ING for application to the Project means that the CadnaA (CONCAWE) model cannot conduct a low frequency assessment of the proposal. Of the thirteen third-octave bands from 10Hz to 160Hz included in the DEFRA method, only two bands, being 63Hz and 125Hz, can be modelled by CONCAWE.

These matters must be addressed by KEPCO and Receiver 56 should be granted acquisition rights consistent with the SEARs and the INP.

Water impacts

According to the DPE’s Assessment Report, the DPE accept that ‘the project is unlikely to result in any significant impact to groundwater users in the locality.’

Cherrydale Park is heavily reliant on groundwater from the Growee River alluvium for irrigation with seven shallow alluvial wells located within the Property and a licence for 865 ML/yr.

Figure 7.21 of AGE (2015) is a graphical representation of the conceptual hydrogeology. It is therefore an important figure. Page 74 provides a narrative on the conceptual hydrogeology, including the relationship between surface water and alluvial groundwater, groundwater in the deeper coal seams and a perched groundwater system above basalts, recharge and discharge.

Figure 7.21 indicates that the coal seams dip and, as a result, the coal seams proposed to be mined outcrop (the formations hosting the coal seams are marked ‘Pi’ in Figure 5.15) or sub-crop to the east of Cherrydale Park.

Figure 7.8, indicates a regional groundwater system that follows the patterns of surface water drainage and is consistent with Figure 9.4, a model-predicted map. Groundwater flow, perpendicular to the contours of Figure 9.4, is to the north and groundwater in the Growee River alluvium and that in the Bylong River Alluvium will merge, just like the surface waters do. It follows that groundwater in the Growee River Alluvium and those in Lee Creek and Bylong River Alluvium are connected.

The key question for the Project is the ability to extract 100% of the allocated licences. This issue is highlighted by the Proponent's own modelling that refers to model testing indicating that many wells are unable to produce the full quantity of groundwater of entitlements because of the limited saturated thickness of the alluvial aquifer. Consequently, AGE used 30% of the entitlements in the model (page 81 AGE 2015). In our view, AGE should be required to model extraction rates of 100% of entitlements in the Bylong Water Source and model the Project on the basis that its bores can only extract 30% of the entitlement.

A likely consequence is that KEPCO will be forced to put down more bores to extract the required water as each bore may only achieve 20 - 30% extraction. To ensure that there is no impact on privately owned bores we suggest a condition that any change to the current bore field layout requires a modification of the development consent or, if that is not agreed, that any bores for the Project must not be located in the Growee River aquifer. In addition, we consider that a limit on daily water take should be implemented consistent with the EIS predictions.

We also submit that the specific impacts in Table 9 on the Alluvial Aquifers should be listed. For instance, KEPCO's EIS states that there will be no impact on the Growee River alluvial aquifer. The consent should state this. As presently drafted, the only requirement is for there to be no impact over what is predicted in the EIS. Once you read the definition of EIS in the recommended conditions of consent you will see that the EIS consists of at least 3 lengthy documents. This would allow any person to cherry pick the best parts of the consent and lead to a dispute about compensatory water supplies. The consent conditions should state the performance measure that there will be no impact on the Growee River alluvial aquifer.

Water licensing

KEPCO made an application for a very significant bore licence under the *Water Act 1912* for underground mine dewatering for the water sources not covered by the *Water Sharing Plan for the Hunter Unregulated and Alluvial Water Source 2010*. Those waters are all water other than surface water and water in the Bylong River alluvium.

Since the proclamation of the *Water Sharing Plan for the North Coast Fractured and Porous Rock Ground Water Sources 2016 (North Coast Groundwater WSP)* on 1 July 2016 rather than requiring a bore licence under the *Water Act 1912*, KEPCO require a water access licence under the *Water Management Act 2000*. The Project is within the Sydney Basin – North Coast Groundwater Source.

The PAC should note that the obtaining of a water access licence is one of the very limited authorisations or licences that is not excluded from being required or which must be granted consistently with any development consent under sections 89J and 89K EP&A Act. That is, the State significant development provisions do not override the requirements of the *Water Management Act 2000* to hold a water access licence for take of water. Consequently, the obtaining of this water access licence is of principal importance.

Currently, as the DPE note, KEPCO only has a valid application for 2000 ML. The use of the word valid denotes no importance. They have an application only. They have not demonstrated that a water access licence for more than 4000 ML could be granted or is available. That is 4000 ML of licences which KEPCO do not currently have.

We know of no other mining project in New South Wales has been granted such a significant water licence. It is similar in many respects to the unrestricted ground water licence granted for the Adani Coal Project in Queensland.

In our submission, condition 26 of Schedule 4 should be amended to require KEPCO to hold all the licences it needs prior to commencement of construction. The existence and grant of this licence is of fundamental importance and KEPCO should demonstrate it holds the licences in the North Coast Groundwater Source WSP.

Workforce accommodation facility

The PAC should be under no doubt that it is approving the workforce accommodation facility. Under the draft conditions, there is no requirement for a modification or to lodge a new application before the facility is built. The PAC is approving it. We recommend that to bring finality and certainty to the consent that the workforce accommodation facility is prohibited as this seems to be preferred position of many.

EPBC

We recommend the PAC look closely at the consideration and requirements of the Independent Expert Scientific Committee (including in respect to the water trigger) under the *Environmental Protection and Biodiversity and Conservation Act 1999* to ensure that committee's requirements have been appropriately considered.

Economic assessment

We note that the independent economic assessment of the Project commissioned by DPE determined that the Project would (at a minimum) have a net economic benefit to State of New South Wales of \$177M. Over a 25-year mine life that is a net benefit of a little over \$7M per annum. Overwhelmingly the economic benefits of the Project flow to the shareholders of KEPCO most of whom would be residents of the Republic of Korea. The Proponent's grand suggestion of massive economic benefits flowing from the Project needs to be seen in this light.

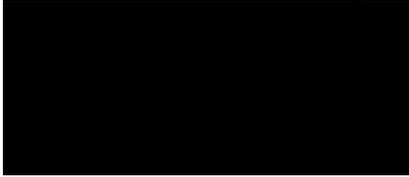
Conclusion

Locaway objects to the Bylong Coal Project because of the unacceptable impacts of the Project and the EIS's significant failure to properly (or at all) consider the impacts of the Project on the Property.

Locaway reserves it right to ensure that the PAC process complies with the relevant laws and requirements including the application of the Industrial Noise Policy.

A summary of our suggested amendments to the recommended conditions and a summary of the suggestion actions required from KEPCO are set out in Appendix A and B respectively.

Yours faithfully,
NEXUS LAW GROUP



Brendan Tobin
Consulting Principal



Schedule A - Proposed conditions of consent

We suggest the following conditions for inclusion in the recommended conditions of consent:

Condition no	Change	Reason
Schedule 2		
Workforce accommodation facility	Delete the condition and replace with "The Applicant shall not construct the WAF."	To bring finality and certainty to any consent.
Schedule 4		
Condition 1 Acquisition upon request	Add Receiver 56 to Table 3 with an acquisition basis of noise	Assessment of low frequency sound in accordance with the SEARS and INP
Condition 4 Noise Criteria	The evening and night time noise criteria for Receivers 56, 57A and 57C are set to 35 Bb(A). In the alternative, add to Table 4, Receivers 57A and 57C in condition 3.	KEPCO has provided insufficient justification for the setting of a PSNL above 35Db(A).
	Delete the entire sentence "Appendix 5 sets out..."	The Proponent should be required to comply with the noise limits and not be given an exclusion in temperature inversions.
Condition 5	Delete the entire sentence beginning with "Appendix 5 sets out..."	The Proponent should be required to comply with the noise limits and not be given an exclusion in temperature inversions.
Condition 7	Delete the words 'unless the Secretary agrees otherwise' in the opening line.	The Noise Management Plan should not be at the discretion of the Secretary.
Condition 22	Require the Air Quality Management Plan to include a comprehensive predictive dust and blast fume system.	To ensure best practice mitigation measures are applied to manage short term dust impacts.
Condition 22	Require the Air Quality Management Plan to include a requirement to meet an average dust control level on all haul roads of 85%.	The haul roads are the major source of dust for the Project and a control level of 85% is achievable and should be reflected in a condition of consent.
Condition 26	Amend condition to require that licences are held prior to the commencement of construction.	The grant of licences under the water sharing plans for underground mine dewatering is of fundamental importance and should be obtained prior to the commencement of construction.
	Delete the words 'to the satisfaction of the Secretary'	The compliance with the stated performance measures should be

	in the opening line of condition 29.	strict and not at the discretion of the Secretary.
Condition 27 Compensatory Water Supply	The note referring to 'trigger levels' should incorporate what the trigger levels are not allow it to be set in the Water Management Plan. The trigger level is <u>nil impact</u> as this is the Applicant's position.	Avoid a dispute and bind KEPCO to their own EIS.
Condition 28 Water Performance Measures Table 9 General	Delete the words 'to the satisfaction of the Secretary' in the opening line of condition 29.	The compliance with the stated performance measures should be strict and not at the discretion of the Secretary.
	That any change to the current bore field layout requires a modification of the development consent or that any bores for the Project must not be located in the Growee River Aquifer.	To ensure there is no impact from additional bores needed as consequence of the Proponent not being able to pump 100% their allocation from the bore field and to protect those privately owned bores on the Growee River aquifer.
	A limit on daily take should be implemented consistent with the EIS predictions	
Condition 30 Water Management Plan	Last dot point – specify the trigger level as being nil impact.	Avoid a dispute and bind KEPCO to the EIS predictions.
Condition 50	Delete the words 'unless otherwise agreed by the Secretary.'	
Conditions 61 and 62	Delete.	We don't understand there to be any application to carry out exploration on the 'site'. This condition is a complete approval to explore and should be deleted as any prospecting should be carried out in accordance with the <i>Mining Act 1992</i> .
Schedule 6		
Condition 15	Delete the words 'a comprehensive summary of...' in the 4 th dot point.	
Appendix 5	Delete condition 1.	
	Amend condition 6 to define excessive noise.	
	In respect to condition 6 the Applicant should be required to carry this out prior to the	

grant of development
consent.

Schedule B – Request of KEPCO

KEPCO undertake the following:

1. carry out in good faith consultation with Locaway about the impacts of the Project on the Property and the effect on Locaway's Water Rights;
2. Carry out an assessment of whether more than 25% of the contiguous area of the Property will exceed the relevant air quality criteria;
3. model extraction rates of 100% of irrigation entitlements in the Bylong Water Source and model the Project on the basis that its bores can only extract 30% of the entitlement; and
4. demonstrate that a water access licence more than 4000 ML could be granted or is available under the *Water Sharing Plan for the North Coast Fractured and Porous Rock Ground Water Sources* 2016.