



Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
Sydney NSW 2000

2 August 2019

RE: KEPCO CONDITIONAL GATEWAY CERTIFICATE EXPIRY

Dear Commissioners,

From KEPCO's own written response to the IPC: *"On 15 April 2014, KEPCO obtained a gateway certificate (the Gateway Certificate) in respect of the Project from the Mining and Petroleum Gateway Panel (the Gateway Panel) under Div 4 of Part 4AA of the Mining SEPP. The Gateway Certificate was expressed to remain current for 5 years from the date of issue. The certificate ceased to have currency on and from 15 April 2019."*

KEPCO has reacted to the lapsing of its own Conditional Gateway Certificate by deflecting accountability towards the IPC. Further in its response to the IPC, the Project proponent has complained about the length of time taken to make a determination. The proponent should be reminded that it has no authority to seek to influence or dictate determination deadlines to the IPC.

It is my understanding that it is the Planning Secretary who is identified as the regulatory agent responsible for oversight of the Gateway Certification process, not the IPC. It is worth noting that on 14 April 2019, the date of the lapse in currency of KEPCO's Conditional Gateway Certificate, the current Planning Secretary had only been in his office of duty for less than 14 days. Given the time sensitive nature of this matter, perhaps the previous Planning Secretary could have given KEPCO due notice. Regardless, KEPCO is ultimately responsible for its own Development Application and therefore should be held ultimately accountable and liable for the matter. Nobody can reasonably complain about being booked by the police for driving on an expired NSW drivers licence!

In points 37 and 38 of KEPCO's response, KEPCO's legal advisors acknowledge that their legal interpretation is subjective and open to debate. In other words, the requirement for currency of the Conditional Gateway Certificate may be argued one way or the other. There are many ifs, buts and maybes throughout their argument.

I would counter that the Conditional Gateway Certificate must be current for a determination to be made, because the Gateway Certificate serves a substantive function in evaluating environmental circumstances and requirements that may change over time and should be periodically reviewed, with 5 years being highly lenient for the proponent.

In any case, there is no scope for misinterpretation in terms of the Commission performing its statutory duty. Therefore it is prudent and fair for the IPC to call upon the proponent to seek renewal of its Conditional Gateway Certificate, prior to any final determination being made. I imagine that the new Planning Secretary would be amenable and supportive of this process following its due course.

Why should the proponent be worried about this reasonable request? Perhaps it is because addressing the relevant criteria under the Conditional Gateway Certificate appears implausible, if not impossible. The relevant criteria pursuant to KEPCO's Conditional Gateway Certificate includes the following items:

“(a) in relation to biophysical strategic agricultural land – that the proposed development will not significantly reduce the agricultural productivity of any biophysical strategic agricultural land, based on a consideration of the following:

- (i) any impacts on the land through surface area disturbance and subsidence,*
- (ii) any impacts on soil fertility, effective rooting depth or soil drainage,*
- (iii) increases in land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or significant changes to soil pH,*
- (iv) any impacts on highly productive groundwater (within the meaning of the Aquifer Interference Policy),*
- (v) any fragmentation of agricultural land uses,*
- (vi) any reduction in the area of biophysical strategic agricultural land,*

(b) in relation to critical industry cluster land – that the proposed development will not have a significant impact on the relevant critical industry based on a consideration of the following:

- (i) any impacts on the land through surface area disturbance and subsidence,*
- (ii) reduced access to, or impacts on, water resources and agricultural resources,*
- (iii) reduced access to support services and infrastructure,*
- (iv) reduced access to transport routes,*
- (v) the loss of scenic and landscape values.”*

It would seem far-fetched to any ordinary and reasonable person that the above criteria could ever be favourably addressed, under any condition, with an open cut coal mine. For a very good reason, no open cut mining has ever been approved on Biophysical Strategic Agricultural Lands (BSAL) - so the best intentions for rehabilitation signalled by the proponent remain untested in the real world, and cannot be held as adequately fulfilling the conditions as prescribed in the Conditional Gateway Certificate.

In all truth, it was relatively unfair to the proponent, as well as to the public, that a Conditional Gateway Certificate was ever issued and authorised. The Gateway Panel, for their part, failed the Project on 11 out of 12 relevant criteria and assessed the Project as largely non-compliant in the conclusion of their scathing report, available here:

<https://majorprojects.accelo.com/public/2164b53682b8ec82874c0a635d19c6d7/Mining%20and%20Petroleum%20Gateway%20Panel%20Report%20on%20Bylong%20Coal%20Project%2015April14.pdf>

It has been widely publicised that the proponent has since spent over \$700 million on the Project, as if this should be of any significance or relevance to the determination by the

Commission. This is not the case, how much a proponent spends on their Development Application should hold no bearing on any determination decision. Under simple examination, the reality is that a South Korean mining giant has wagered over \$400 million on an unpopular exploration licence (extended by Eddie Obeid and Ian Macdonald) that cost the previous owner just \$1 million. A few hundred million more was spent on gagging the local community and depopulating the valley, with most of the rest handed over to its expensive consultants. There can be little to boast about this manner of wanton spending.

Additionally, what were the conditions for consent required in the original Foreign Investment Review Board (FIRB) decision? These are widely referenced but appear to be unavailable for public scrutiny. Cockatoo Coal, the original enabling Australian partner to this Project, appears to have fallen by the wayside and KEPCO Australia is operating as a wholly owned subsidiary of its South Korean parent company. Reference:

<https://www.asx.com.au/asxpdf/20100707/pdf/31r6sr8sj4wfp0.pdf>

Recently, remnants of the proud Bylong community gathered for a stirring outdoor concert at the Bylong showground, set against the beautiful backdrop of Mount Penny. Despite a decade of uncertainty and traumatic experiences due to proposed mining projects, they were able to let their hair down, kick up their heels and dance together one more time - this is what true community grit and resilience looks like!



Thank you for considering this response.

Kind Regards,

Peter Dowson
Director
Friendly Farms

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