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Our ref: 21460

9 April 2019

Mr Gordon Kirkby
Chair of Bylong Coal Project IPC Panel
Independent Planning Commission
Level 3, 201 Elizabeth Street
Sydney NSW 2100

By email: ipcn@ipcn.nsw.gov.au

Dear Mr Kirkby

Bylong Coal Project SSD 14_6367

We refer to our letters to the IPCN on behalf of the Lock the Gate Alliance in relation to this matter, dated 7 December 2018 and 7 March 2019.

We note that we are yet to receive a substantive response to the letters.

In those letters, we raised with the IPC the issue of the proper interpretation and application of the NSW Aquifer Interference Policy ("AI Policy") and clauses 12AB and 17 of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*.

We noted in our 7 December 2018 letter that the advice which had to that point in time been provided to you by the Department about the aquifer impacts of the Bylong Coal Project appeared to improperly distinguish between land owned by KEPCO, and "private" land, when assessing aquifer impacts. A number of examples were given in paragraph 8 of that letter.

It appears that the matter raised in our 7 December 2018 letter has been raised with the proponent. At paragraph 22 of our 7 March 2019 letter, we noted KEPCO's invitation to the IPC to "*assess the Project on the assumption that the minimal impact considerations in the AIP do apply to water supply works, even if they are owned by KEPCO.*"

It is the obligation of the IPC to ascertain what the law is and obey it, in the event that there is doubt about that matter (*P & C Cantarella Pty Ltd v Egg Marketing Board for the State of New South Wales* [1973] 2 NSWLR 366 at 383).

We are instructed to request your response, as a matter of priority, about whether

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- (a) the IPCN's view is in fact that the AI Policy requirements apply to any water supply work, including (in the context of the Bylong Coal Project) those owned by KEPCO.
- (b) any additional studies (as referred to on page 13, and Note (5) to Table 1 on page 21, of the AI Policy) have been provided to the IPCN for the assessment of the impacts of the Bylong Coal Project.

Yours faithfully,
CHALK & BEHRENDT



James Walkley
Director



11 April 2019

Mr James Walkley
Director
Chalk & Behrendt
Level 9, Clarence House
2 Hunter Street
SYDNEY NSW 2000

Dear Mr Walkley

Thank you for your letter, dated 9 April 2019, in relation to the Bylong Coal Project (SSD14_6367).

Your correspondence has been sent to the Panel appointed to determine this case: Mr Gordon Kirkby (Panel Chair), Ms Wendy Lewin and Mr Stephen O'Connor.

The Panel is continuing its deliberations and will make a determination in due course.

I note the matters raised in your letter; however, it would be inappropriate for the Commission to provide comment on specific issues, including pertaining to the NSW Aquifer Interference Policy, prior to determination.

As you're aware, the Commission will publish a Statement of Reasons at the time of determination. That Statement of Reasons will include the Panel's reasons for decision and how the community's views were taken into account in reaching its decision.

Yours sincerely

Sam McLean
Executive Director - Secretariat

(cc Mr Gordon Kirkby)