

Reply to: Georgina Woods
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9 April 2019

To:
Gordon Kirkby, Stephen O'Connor and Wendy Lewin
IPC Commissioners
via email: ipcn@ipcn.nsw.gov.au

RE: Unresolved matters regarding the Bylong coal mine

Dear Commissioners

We write seeking urgent clarification from the IPC as to its consideration of the Bylong coal project and outstanding matters that we believe have not been addressed by the proponent and the Department of Planning.

We note that the Planning Assessment Commission, in its review of this project, highlighted a number of issues of concern some of which it deemed essential to be resolved or clarified prior to the project being determined, and others which it indicated may need resolution.

We seek urgent advice from the IPC as to how each of the outstanding matters identified in the PAC review has been addressed prior to a final determination being made on the project.

1. Issues that the Commission considered *must* be resolved before determination

a) Make good provisions

In its review of the Bylong Coal project in 2017, the Commission recognised “the relationship between the management of impacts to groundwater resources and the retention of agricultural productivity.” The review concluded that “This relationship makes **the establishment of an effective water sharing and compensation program, including appropriate make good components, essential to limiting the impacts of the project on agricultural enterprises**” (PAC Review Report page 15)

At the time of the review, KEPCO had, in the Commission’s words, “acknowledged there may be conditions, described as ‘severe’, where the proposed bore field is unable to provide make-up water” (PAC Review Report page 6) and the Commission was “mindful of the risk profile of the applicant’s water make-up contingencies” (page 7). It was suggested that KEPCO identify “a non-alluvial make up water source” (7)

Our review of the material and responses provided by KEPCO since indicates that its response has not addressed this lack and its compensatory water strategies continues to rely on the Bylong water source.

b) Permian water entitlements

The Commission said it was “not yet persuaded that the adequacy of the applicant’s water holdings is exclusively a commercial risk for the applicant” and did not consider that “an assessment of the matters required to obtain shares in the Permian resource can be deferred until after a decision is made about the project” (PAC Review Report page 8)

Assurances from the Department of Industry Water that there “is sufficient depth in the market” to allow KEPCO to acquire more shares in the Sydney Basin-North Coast Groundwater Source on the market had already been given by this stage and was therefore not considered by the Commission to answer this need.

The proponent’s response to the Commission anticipated there would be a controlled allocation order for this water source that would allow KEPCO to obtain the entitlements it needs. In reality, it is unclear if there will be any unassigned water in this water source, which is the only water that can be released through a controlled allocation. At the time the Water Sharing Plan for the North Coast Fractured and Porous Rock commenced in July 2016, there was only 3,453ML of unassigned water in the source, but the Department of Industry Water noted that there were pending applications, including by KEPCO, when granted would reduce this volume by an unknown amount. The Department of Industry Water clarified that “Controlled Allocations for this water source may not be available in the future to account for the Permian water required for the project.” (February 2018 DOI advice on response to PAC Review). The question appears to remain unresolved.

c) “Required” detailed evaluation of proponent and Department’s claims

The PAC Review report listed a range of water resource impacts where it considered “detailed evaluation” of the Department’s claims was “required” before any decision about the project. These included assertions there would not be a significant impact on catchment hydrology of Lee Creek and Bylong and Growee Rivers, that there would not be a significant impact on Dry Creek from subsidence cracking, that salt loads exported from the site are not expected to result in significant impacts on catchment water quality and that stygofauna species present are not endemic.

KEPCO’s response to this gap was to reiterate where it had previously addressed these issues in its EIS, Supplementary EIS and Response to submissions. Since all of this material was available to the Commission for its review, it clearly still found further evaluation was required. We do not believe this has occurred.

2. Issues that *may* need resolution before determination

a) Risks of water accumulation

The Commission was “reluctant to accept” that the probability of extreme wet years and their consequences was “remote or trivial” (PAC Review Report page 9). There had been superficial assurances before that time that there would be adaptive management strategies but the commission thought it “may” be necessary for detailed clarification of “the ways in which the mine might *adapt its operation* to solve the problem of potential water accumulation” before a decision was made (PAC Review Report page 9). Some possible contingency measures have since been provided by the proponent but it is not clear how or if they would be incorporated into the project’s designed.

b) Social impacts

The Commission's review found "several inadequacies in the social impact assessment of the project, and as a consequence, the severity of the social impact cannot be adequately determined. In the absence of this information, any future evaluative judgement on the social benefits and social costs of the project will be impaired" (PAC Review Report page 18)

c) Downplaying of impact on agricultural land

The Commission was concerned that the proponent's commitments to maintain agricultural production were generic and non-binding (PAC review report page 13). The Review concluded that "the Commission has not been provided with sufficient evidence to be satisfied that sustainable rehabilitation to the BSAL-equivalent land will be achieved" (PAC review report page 14)

The review report states that "...detailed information may be necessary to provide an appropriate degree of confidence" (14).

d) Aboriginal heritage

The Commission review found that "further investigation remains to be completed to properly assess the expected impacts to Aboriginal cultural heritage" (PAC Review Report page 26). It did not specify that this further investigation must be completed prior to determination, but it seems logical that it should. Aboriginal cultural heritage is among the matters to be weighed up by the Commission and if the impact on the mine on these values has not been "properly assessed," the Commission cannot make an informed decision to approve the mine.

Given the intense and broad public interest in this project and the fact that the public's opportunity to seek review of the merits of the Commission's decision has been taken away, we hope you will see fit to provide substantive answers to these questions prior to making your determination.

We believe that failing to address matters from the Review report, and effectively allowing subsequent non-statutory departmental advice in an assessment report to override the statutory advice contained in a review report, will raise genuine legal issues for the Commission.

Therefore, we strongly encourage you to address each of the matters clearly prior to making a determination.

Yours sincerely,

Georgina Woods