



12 November 2018

**Attention: Commissioners
Independent Planning Commission
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000**

Dear Commissioners,

Bylong Coal Project (Application No. SSD 14_6367) – Written Submissions

Council refers to the above matter and to the meeting between the Independent Planning Commission (**IPC**) and Muswellbrook Shire Council (**Council**) representatives on 12 November 2018.

Council wishes to thank the members of the IPC and staff for their time and for the opportunity to make the written submissions herein.

Council also relies on the oral submissions made during the above-mentioned meeting.

Council's written submissions focus on Bylong Valley Way and are as follows:

1. Residential Demographics and Movements

- 1.1 Council is of the firm view that, should the proponent's application be granted, the majority of the mine's workforce is not likely to reside in the Mid-Western Regional Council (**MWRC**) Local Government Area but instead reside in the Hunter Valley. The habits of existing mine workers indicate that they will board temporarily in close proximity to the mine then travel to their permanent residence using the Bylong Valley Way and the Golden Highway.
- 1.2 It is asserted in the Department of Planning and Environment's Final Assessment Report (**FAR**) that the "RtPR Report" concludes that "only 5-7% of the workforce would reside and commute from the local area from Bylong Valley Way to the east, in Denman/Sandy Hollow" (p.79).
- 1.3 Council submits that the workforce will predominantly be sourced from the existing mining workforce in the Hunter Valley. If this assessment is correct, this will fundamentally change the various impact assessments, including the social and traffic assessments, relied on by the Department and before the Commission for consideration.
- 1.4 On that basis, Council submits that the Commission should refuse the proponent's application.

- 1.5 Council notes the following assertion in the FAR:
"It is also clear that KEPCO and MWRC are committed to utilising existing accommodation, mining services, the existing employment pool from MWRC, and initiatives to encourage employees to relocate to the area" (p.79).
- 1.6 This assertion is made in apparent justification for the reliability of the proponent's traffic assessment and/or the likely traffic impact on Bylong Valley Way. The Department has answered Council's legitimate concerns with nothing more than good intentions.
- 1.7 There is no evidence that the proponent's and MWRC's commitment has any real efficacy.
- 1.8 Even if the proponent's assertions are correct with respect to the workforce likely to commute using the Bylong Valley Way, any percentage, *however small*, still represents an intolerable risk to human life. The casualties likely to ensue were the project to be approved in its current form or without significant road safety upgrades to Bylong Valley Way, in our submission, render the project repugnant to any approval.
- 2. Road and Workforce Safety**
- 2.1 The Department asserts in the FAR that "For workforce safety reasons, KEPCO is *targeting* its workforce to reside within a 1 hr drive from the project, identified as the local area" (p.79) (our emphasis added).
- 2.2 This "target" is not embodied in an enforceable undertaking, condition of consent, or otherwise. With respect, workforce and road safety must be predicated on more than mere targets.
- 2.3 Council submits that the proponent has consistently understated the use of the Bylong Valley Way by mine traffic associated with the project.
- 2.4 Council remains unconvinced that the Bylong Valley Way is sufficiently safe for use by mining traffic which could reasonably be anticipated to stem from the project during construction, operation and any decommissioning. This traffic is included but not limited to the project's workforce, suppliers and mining support services.
- 2.5 In Council's submission the Bylong Valley Way would require significant upgrades and regular maintenance in order to render it safe for such traffic.
- 2.6 Council notes that condition 49 of Schedule 4 of the Department's recommended conditions of consent (Recommended Conditions) do not reflect the FAR. The proponent's most recent offer to Council in respect of road safety upgrade funding (Appendix E9-1 of the FAR) was "\$267,700, subject to CPI...indexed from 2016 to 2018.": p.2. This is noted in the FAR (p.79) but is not reflected in the relevant item in the table in condition 49.
- 2.7 Council does not submit that the project should be approved in its current form; however, if the IPC is minded to grant consent, then Council submits that condition 49 should be amended as set out in the **attached** Minute of Proposed Amendments (**Minute**) to reflect that the proponent's contribution be indexed annually.

- 2.8 Moreover, in Council's submission the payment anticipated in condition 52 of the Recommended Conditions is inadequate to address the ongoing use of Bylong Valley Way during the life of the project, including but not limited to the use of it by heavy vehicles and the concomitant impact on Council's road infrastructure.
- 2.9 Council submits that the proponent should be required to not only "[r]ehabilitate and/or make good any development-related damage identified in the post-dilapidation survey" but to also contribute to the ongoing maintenance and upkeep of Bylong Valley Way for the reasons set out in these submissions. This is consistent with the obligations of the proponent in respect of road contributions to MWRC as set out in condition 52.
- 2.10 In any event Council submits that condition 52 simply invites the proponent to prepare a post-dilapidation survey of Bylong Valley Way which does *not* identify all development-related damage, without consequence. Council submits that the IPC amend condition 52 as set out in the **attached** Minute to ensure that the contemplated surveys are legitimately prepared and accurate.

3. Heavy Vehicle Movements on Bylong Valley Way

- 3.1 Council maintains the view that heavy vehicles will inevitably use Bylong Valley Way to travel to and from the mine should the project be granted consent.
- 3.2 This is particularly clear in light of the location of the likely sources of the project's anticipated workforce, suppliers and support services.
- 3.3 Council firmly believes that condition 51 of Schedule 4 of the Recommended Conditions will be honoured with breach. Conditions such as these cannot be conceived in a drafting vacuum – they must be cognisant of enforcement in a real-world context.
- 3.4 Given that condition 51 is unenforceable and the IPC is the only authority empowered to decide whether the project is granted approval, that decision and the consequences thereof is the sole responsibility of the Commission.
- 3.5 Any heavy vehicle movements along Bylong Valley Way have the potential to result in fatalities. For example, in 2010, Mr Dave Patten was killed on Wybong Road when his vehicle collided with a prime mover and trailer heading towards the Mangoola Mine. The prime mover, at its broadest, was 3.4 metres wide – the road was a mere 5.35 metres wide.
- 3.6 In Council's view the risk of a similar event occurring on Bylong Valley Way should the project be approved is not insignificant.
- 3.7 Unless the IPC is comfortably satisfied that no heavy vehicle movements will occur on Bylong Valley Way and condition 51 is effective to ensure this for the life of the project, it must refuse the application.
- 3.8 If the IPC is minded to grant consent to the application, Council respectfully submits that the proponent should be required to monitor Bylong Valley Way and to maintain and report on records of heavy vehicle movements on Bylong Valley Way for the life of the project. This would, in Council's submission, provide both a

measure of accountability and enforceability of which condition 51 is currently devoid.

3.9 Accordingly, Council submits that condition 51A is inserted in any conditions of consent as set out in the Minute.

4. Other Amendments to the Recommended Conditions

4.1 Council submits that the following of the Recommended Conditions be modified if the IPC is minded to grant the project approval sought by the proponent:

- (a) **Condition 52A** – insert this condition because Council cannot retrospectively remedy road impacts attributed to demonstrated non-compliance in the event that traffic monitoring identifies additional mine-related heavy vehicles using BVW. The bank guarantee amount is predicated on 2 years' road maintenance costs calculated by Council and previously provided to KEPCO.
- (b) **Condition 53** – include the words “annual and independent” to ensure the monitoring program contemplated by the condition is regular, robust and impartial.
- (c) **Condition 53A** – Insert a requirement for the Applicant to ensure that Journey Management Plans be independently reviewed annually.

Your consideration of Council's submission and proposed conditions of consent is appreciated.

Yours faithfully



Fiona Plesman
GENERAL MANAGER

BYLONG COAL PROJECT

APPLICATION NUMBER: SSD 14_6367

MINUTE OF PROPOSED AMENDMENTS

**SCHEDULE 4
ENVIRONMENTAL PERFORMANCE CONDITIONS – GENERAL**

Roadworks – Upgrade and Safety Measures

“49. The Applicant must...

Road Safety Upgrades – Bylong Valley Way east (within MSC area)	Funding provided prior to commencement of construction	\$267,700 (ex GST) funding to Roads Authority for road safety upgrades <u>CPI or PPI (whichever is the greater) indexed annually from the 2015/2016 financial year.</u>	MSC
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Heavy Vehicle Access Restriction – Bylong Valley Way

“51A. The Applicant must at its sole cost and to the satisfaction of MSC, monitor heavy vehicle traffic related to the development that uses any section of BVW in the Muswellbrook Shire to access the site and:

- (a) keep accurate records of such traffic;
- (b) provide these records to MSC at least annually or otherwise on request by MSC;
- and
- (c) include a summary of these records in the Annual Review.”

Road Maintenance Contributions

"52. The Applicant must...

<p>MSC</p>	<p>Prepare to the <u>satisfaction of MSC</u> a pre-dilapidation survey of Bylong Valley Way within the MSC local government area prior to the commencement of any construction or decommissioning works.</p> <p>Prepare to the <u>satisfaction of MSC</u> a post-dilapidation survey of Bylong Valley Way within the MSC local government area within 1 month of the completion of construction or decommissioning works, or other timing as may be agreed by MSC.</p>	<p>Rehabilitate and/or make good any development-related damage identified in the post-dilapidation survey within 2 months of completing the post-dilapidation survey, or other timing as agreed by MSC, to the satisfaction of MSC.</p> <p>If the construction and/or decommissioning of the development is staged, the obligations apply to each stage.</p> <p>If there is a dispute about the scope of any remedial works or the implementation of the works, then either party may refer the matter to the Planning Secretary"</p>
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"52A Prior to carrying out any development under this consent, the Applicant must provide a bank guarantee in favour of MSC that is:

- (a) for an amount equivalent to \$40,000.00;
- (b) unlimited in time; and
- (c) issued by a bank licensed to carry out business in Australia.

To be applied to fund road maintenance pavement rehabilitation works between the construction and decommissioning period identified in Schedule 4, Condition 49.

Traffic Management Plan

"53. Prior to carrying out any development under this consent...

- (d) include an annual and independent monitoring program for:
 - heavy vehicle traffic movements, including monitoring heavy vehicle access restrictions;
 - vehicle numbers and traffic routes against predictions in the EIS, including providing data for pre and post dilapidation surveys of the Bylong Valley Way within the MSC local government area during construction and decommissioning stages; and
 - utilisation rates of shuttle buses and car-pooling during construction and operations.

"53A The Applicant must ensure that an annual independent review of Journey Management Plans (JMP) is undertaken to update the Traffic Management Plan (TMP) to inform road safety improvement priorities and initiatives during the life of the mine".