

Our ref: 11355
Your ref:

4 November 2015

Mr Stephen O'Donoghue
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Dear Sir,

RE: SUBMISSION IN RESPECT TO THE PROPOSED BYLONG COAL PROJECT

This submission is made on behalf of Locaway Pty Ltd (**Locaway**) in relation to state significant development application no SSD14_6367 lodged by KEPCO Bylong Australia Pty Ltd (**KEPCO**) for the proposed Bylong Coal Project (**Project**).

A. Factual background

1. 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**).
2. 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 – Hunter Unregulated and Alluvial Water Sources* 2009 (collectively **Locaway's Water Rights**).
3. The Property is operated as a commercial agricultural operation comprising:
 - beef cattle farming with a carrying capacity of approximately 300 head of breeders and calves;
 - 120 hectares of irrigated farm land including to grow lucerne to support the beef cattle operations and for the production and sale of hay;
 - a large facility for the storage of hay;
 - 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

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- significant associated farming infrastructure including workshops, sheds, dams, pumps and water reticulation.
4. In addition to Reviver 56, significant residential improvements also exist at the Property (identified in the EIS as Receivers 57A, 57B and 57C) including:
 - 3 bedroom homestead with separate office and separate gym and library;
 - substantial landscaped gardens adjoining the main homestead; and
 - a separate 3 bedroom guest accommodation.
 5. A significant portion of the Property has been identified as biophysical strategic agricultural land (**BSAL**) under the *Upper Hunter Strategic Regional Land Use Plan*. Locaway proposes to commence the process for that land to be verified as BSAL land.
 6. Despite contrary assertions, the agricultural operations at the Property are carried out in a genuine and business like manner. Further, the rural lifestyle afforded by the Property is genuine and a valid consideration for the owners.

B. Legal background

B1. Treatment of Locaway and the Property in the EIS

7. The EIS has given either no or very minimal consideration to the environmental, social and economic impacts of the Project on the Property.
8. 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.
9. It is assumed that this has occurred based upon the fact that Locaway had entered into an option agreement with the proponent of the 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.
10. 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.
11. Examples in relation to omissions concerning Locaway include:
 - failure to consult with Locaway in relation to the impacts on the Property during the preparation of the EIS;
 - failure to present noise impact results in the Main Text of the EIS as it relates to the Property where there are exceedances of the Project Specific Noise Levels (**PSNL**);

- failure to include any discussion on whether the various buildings at Receiver 57 are affected above the PSNL despite the PSNL noise contour passing immediately through the receivers;
 - failure to include any discussion of impacts on the Property's BSAL either during the Gateway Certificate process or the EIS; and
 - failure to identify the likely impact from the Project on the very significant water licences through which water is extracted under Locaway's Water Rights.
12. Accordingly, it is unacceptable and legally invalid for Locaway to be treated as a mine related company. The Department of Planning & Environment (**DOPE**) should require KEPCO to carry out proper consultation with Locaway and provide a detailed assessment of the likely impact from the Project on the Property.

B.2 Formulation of the Study Area and Project Boundary

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

B.3 Gateway Certificate

15. 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.
16. 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 develop 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.*'
17. 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.
18. 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.'
19. 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.

20. On 20 October 2014, KEPCO lodged a letter with DOPE 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:
- an increased production rate;
 - a change in the open cut mining schedule;
 - an increase in longwall panel widths from 250 metres to 350 metres;
 - the recovery of an additional 2.8 MT from the open cut area;
 - a reduction in the overall life of the Project;
 - a revised footprint for the rail loop and CHPP; and
 - a revised mine water system.
21. 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 the Gateway Panel Secretariat.
22. Clearly DOPE 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.
23. In the current circumstances, there is no current gateway certificate in respect of the proposed development as KEPCO changed the project following the issue of the original gateway certificate. It is irrelevant that the proponent or DOPE considers that the changes are minor and the environmental impact less. There is no scope to unilaterally change the proposed development with a consequent change to the gateway certificate.
24. 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.

C. Merit issues

C.1 Agricultural

25. The EIS fails to undertake any assessment of the impacts from the Project on the Property's BSAL land. Locaway is currently actioning the necessary steps to have this land verified as BSAL. 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.
26. 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. KEPCO should address this aspect before any further steps in the assessment process are undertaken

C.2 Air quality

27. The air quality assessment appears to be significantly underestimating the likely air quality impacts of the Project. For instance, according to Figure 54 it appears that any air quality impacts from the western out of pit emplacements are almost fully contained to the project disturbance boundary.
28. DOPE should have significant concerns in relation to the acceptability of the air quality model due to the availability of meteorological data representative of the Bylong Valley, its inability to include areas to the west and documented issues with the reliability for lengthy periods of the Bylong TEOM.
29. 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.
30. 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.
31. There is no doubt that the Property will experience air quality impacts from the Project particularly in relation to PM_{2.5} impacts. This impact is not sufficiently or properly dealt with in the EIS. KEPCO should address this aspect before any further steps in the assessment process are undertaken.

C.3 Noise

32. The assessment of the noise impacts is misleading and fails to provide a proper representation of the noise impacts on the Property.
33. According to Figure 55 of the Main Text of the EIS, part of the Property is within the 35 dB(A) worst case predicted noise contour and therefore exceeds the identified Project Specific Noise Levels (PSNL). Receiver 56 is clearly within the contour. However, the contour passes through Receivers 57A, 57B and 57C. It is therefore difficult to discern from the Main Text of the EIS whether the buildings on Lot 1 DP 421103 (that is Receivers 57A, 57B and 57C) are within the 35 dB(A) contour or not. There is no discussion about the issue.
34. Table 59 titled '*Predicted Noise Levels in Exceedance of PSNL at Private Receivers*' provides no assistance. Indeed, according to this table, there is an exceedance of the PSNL at Receiver 56 during the evening/night in PY3 and PY5 and at 57A and 57B in PY5 evening /night. No other exceedances are identified.
35. However, the Noise and Blasting Impact Assessment prepared by Pacific Environment Limited (NBIA) at page 43 states "*Land affected by operational noise was assessed using the contours predicted for mitigated noise levels presented in Appendix E.*" According to Appendix E the receivers identified as 57A, 57B and 57C are clearly within the 35 - 40 dB(A) Noise Level Contour under Scenario: 2018 Time Period Evening/Night Conditions: Adverse and Scenario: 2020 Time Period: Day Conditions: Worst-case.
36. That is, in PY3 and PY5 there is an exceedance of the PSNLs at these locations and it is not until a reading of Appendix E of the NPIA that this is stated. That conclusion is not reflected at all in the Main Text of the EIS or the main text of the NBIA. Indeed, it is actually omitted. In our view, the omission of this material from Table 59 of the Main Part of the EIS is misleading.

37. It should also be noted that 2 'workplaces' exists on the Property. Firstly, to the west of Receivers 57 there are substantial workshops and to the east of the buildings is a large agricultural storage facility. None of these are identified.
38. Finally, we note that there has been no assessment of the percentage of contiguous land owned by Locaway which is affected above the PSNL.
39. KEPCO should address these matters before any further steps in the assessment process are undertaken.

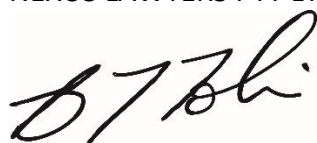
C.5 Water impacts

40. It is clear that the Project will have a significant impact on water availability in the regulated Bylong Water Source and therefore an impact on the Locaway Water Rights and as a consequence the ability to economically farm the Property.
41. Locaway is extremely concerned about the likelihood of a 2 metre drawdown in the regulated Bylong Water Source and KEPCO's intention to seek a very significant licence under the *Water Act 1912* for underground mine dewatering. We know of no other mining project in New South Wales has been granted such a significant water licence.
42. KEPCO has failed to demonstrate how its mining operations would continue to operate in periods of low water availability as required by the Gateway Panel. Indeed, the only way that KEPCO can overcome the significant water requirements for the Project and likely periods of low water availability is via licences which do not currently exist but which KEPCO seek under Part 2 *Water Act 1912*.
43. Before the environmental assessment proceeds further, KEPCO should be required to demonstrate that there will be no unacceptable impact on the already over allocated Bylong Water Source including through any connected drawdowns into the hardrock aquifers and how KEPCO propose to operate the Project in periods of low water availability.

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 trusts that DOPE will require KEPCO to amend the Project to deal with the significant environment impacts from the Project, to undertake proper consultation with Locaway and to undertake and submit sufficient environmental studies about the impact of the Project on the Property before any further step in the assessment process is undertaken.

Yours faithfully,
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