

"Budden", BYLONG
Timnath Pty Limited
[REDACTED]
WENTWORTHVILLE NSW 2145
e-mail: [REDACTED]

18 May 2017

The Chairperson
Planning Assessment Commission
Level 3
201 Elizabeth Street
SYDNEY NSW 2000

By e-mail: pac@pac.nsw.gov.au

Attention: Mr. Brian Gilligan

RE: BYLONG COAL PROJECT

Proposed license conditions to ensure the availability of water

Dear Sir,

Timnath Pty Limited ("Timnath") own the property known as "Budden" located on Bylong Valley Way, BYLONG NSW 2849, approximately 4 km from the hamlet of Bylong, NSW. Ron and Helen Weaver are the Executive Directors of Timnath.

"Budden" has been operated as a beef cattle property by Timnath for over 40 years. Mr. Rick Cook has been employed on "Budden" for 30 years as at November 2017.

Over the last 30 years, Mr. Cook has worked regularly with the water on Budden. When invitations for submissions regarding the Bylong Coal Project were advertised, Mr. Cook expressed specific concerns about the ongoing availability of water on Budden if the mine was approved ("the video").

Mr. Cook's concerns were recorded in a video and saved to a CD-Rom and USB. A copy of the CD-Rom containing the video was included with our initial submissions regarding the Project. A second copy of the CD-Rom was provided to your representative, Mr. Stephen O'Donoghue, later in 2016. A third copy of the video was provided to the Chairperson of the PAC Committee, Mr. Brian Gilligan, on a USB at the Public Hearing held in Mudgee on Thursday 11 May 2017.

The video is important because it explains, in simple words, what we are concerned about. In the video, Mr. Cook describes his experience with the water on Budden over the last 30 years.

At the Public Hearing I appeared on behalf of Timnath and was accompanied by Mr. Rick Cook. I was unable to play the video as the audio-visual equipment could not play sound. Hence, we could see Mr. Cook in the video, but we could not hear what he was saying. Therefore, I gave a copy of the USB containing the video to Mr. Brian Gilligan on the

Timnath Pty Limited ACN 001 411 310

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understanding that the video would be watched by each Member of the PAC Committee when they returned to their Office.

At the Public Hearing, I stated that Timnath is not against the mine. Rather, Timnath wanted to ensure that there would be enough water available for "Budden" and the mine.

Further, I stated that Timnath wanted "specific, certain and enforceable conditions" to be included in the license for the mine to ensure the ongoing availability of water on "Budden". This remains Timnath's position.

Timnath has been careful to draft proposed conditions in a form of words which are "specific, certain and enforceable". The conditions proposed by Timnath are designed to be self-executing, thereby reducing the work by, and liability of, the Planning Assessment Commission ("PAC") and Independent Expert Scientific Committee ("IESC").

Timnath proposes the following "form of words" be included in the license for the Bylong Coal Project, as "Conditions" imposed on the licensee.

CONDITION 1: WATER MANAGEMENT PLAN

- 1.1. No license shall be granted for the Bylong Coal Project, unless and until the proposed licensee has prepared a "Water Management Plan" in accordance with these conditions ("the WMP").*
- 1.2. The existence of a license is conditional on the existence of a WMP.*
- 1.3. A WMP must exist in accordance with these conditions at all times in the life of the mine.*
- 1.4. The use of water on the Bylong Coal Project shall be in accordance with the WMP and not otherwise.*
- 1.5. The WMP shall have a life of 3 years ("the WMP period") and after a life of 3 years the WMP shall no longer apply.*
- 1.6. At the end of each WMP period the licensee shall review and, if necessary, amend the WMP in accordance with these conditions.*
- 1.7. Each WMP shall:*
 - 1.7.1. Be prepared in accordance with Department of Environment ("DoE"), Environment Protection Authority ("EPA") and Department of Primary Industry Water ("DPI Water"), by a suitably qualified and experienced person/s;*
 - 1.7.2. Identify specific Water Management Performance Measures;*
 - 1.7.3. Include detailed performance criteria and describe measures to ensure that the licensee of the Bylong Coal Project ("the licensee") comply with the Water Management Performance Measures;*

1.7.4. Include a **“Site Water Balance”** which includes:

- 1.7.4.1. sources and security of water supply, including contingency supply for future reporting periods,
- 1.7.4.2. water use and management on site;
- 1.7.4.3. Any off-site water discharges; and
- 1.7.4.4. Reporting procedures, including the preparation of a site water balance for each calendar year; and
- 1.7.4.5. Investigates and implements all reasonable and foreseeable measures to minimize water use on site;
- 1.7.4.6. Reporting procedures for the results of the monitoring program;
- 1.7.4.7. A plan to respond to any exceedances of the performance measures, and repair, mitigate and / or offset any adverse impacts of the development, including measures to provide compensatory water supply to any affected upstream and / or downstream water user.

1.7.5. Include a **“Groundwater Management Plan”** which includes:

- 1.7.5.1. detailed baseline data of groundwater levels, yield and quality in the region that could be affected by the development, including licensed privately-owned groundwater bores and a detailed survey / schedule of groundwater dependent ecosystems (including springs and their discharge quantity and quality);
- 1.7.5.2. consultation with DPI Water on the installation of all new monitoring bores, the scheduled sampling and quality determination of parameters for monitoring bores;
- 1.7.5.3. groundwater assessment criteria including trigger levels for investigating any potentially adverse groundwater impacts;
- 1.7.5.4. a program to monitor and report on springs and their discharge quantity and quality, groundwater inflows transferred to the surface water management system, the seepage / leachate from water storages and emplacements;
- 1.7.5.5. the impacts of the development on regional and local (including alluvial) aquifers, groundwater supply of potentially affected land owners and groundwater dependent ecosystems (including rules for the management of groundwater level impacts) and riparian vegetation;
- 1.7.5.6. a program to review and validate the groundwater model for the development, including independent expert review;
- 1.7.5.7. a plan to respond to the exceedances of the performance measures.

1.8. The use of groundwater on the Bylong Coal Project shall be carried out in accordance with the WMP and not otherwise.

1.9. Specific conditions shall be included in the WMP to protect the groundwater available on the property “Budden” and other properties along Bylong Valley Way, BYLONG NSW 2849.

Specific conditions in the WMP to protect the groundwater on the property "Budden"

1.10. Each WMP shall include the following:

- 1.10.1. The location of each operating groundwater bore on the property "Budden" as at 30 June 2017; the term "operating" means currently used to extract groundwater to water stock or for irrigation;
- 1.10.2. In consultation with owner/s of "Budden";
 - 1.10.2.1. The methodology for measuring and recording the flow rate and volume of groundwater extracted at each operating groundwater bore on "Budden";
 - 1.10.2.2. The minimum flow rate and minimum volume of groundwater which must be capable of being extracted in a defined period from each operating bore on "Budden" ("the minimum level");
- 1.10.3. The remedial action to be taken in the event that the flow rate and or volume of groundwater capable of extraction at any operating groundwater bore on "Budden" falls below the minimum level ("the remedial action");
- 1.10.4. The party responsible for delivery of the remedial action;
- 1.10.5. The party responsible for the cost of the remedial action;
- 1.10.6. The maximum time in which the remedial action must be complete ("the specified time");
- 1.10.7. Any procedure which must be employed to deliver the remedial action within the specified time.

CONDITION 2: "STOP PUMPING" ORDER

2.1 Immediately upon the exceedance of the performance measures with respect to flow rate and recovery time arising from Condition 1 and Condition 4 herein the licensee shall:

- 2.1.1 Notify DPI Water in writing of the exceedance/s;
- 2.1.2 Cease all pumping or means of extraction of groundwater until the licensee satisfies DPI Water that it has responded appropriately to any such exceedance/s of the performance measure.

CONDITION 3: NO ADDITIONAL GROUNDWATER ACCESS POINTS

3.1 In the event that the licensee finds that the groundwater on the Bylong Coal Project is insufficient, the licensee is hereby precluded for extracting groundwater in the Growee River aquifer.

3.2 In the event that the licensee finds that the groundwater on the Bylong Coal Project is inadequate, the licensee shall not be permitted to access any additional source of groundwater except by application pursuant to the Environmental Planning and Assessment Act 1979 (NSW).

CONDITION 4: CONTRACT BETWEEN THE LICENSEE AND TIMNATH PTY LIMITED

4.1 No license shall be issued for the Bylong Coal Project unless an agreement (“the contract”) has been made between the licensee of the Bylong Coal Project (“the licensee”) and Timnath Pty Limited (“Timnath”), as owner of the property “Budden”, to the satisfaction of the licensee and Timnath, and which provides for remedial action to be taken by the licensee in the event that groundwater on “Budden” falls below an agreed level during the life of the mine.

RATIONALE FOR THE PROPOSED CONDITIONS

The PAC Committee, chaired by Mr. Brian Gilligan, is entrusted with the statutory duty of assessing the Bylong Coal Project.

The one feature of the Bylong Coal Project which makes it different to any other projects, such as the Airley project, is **the water**.

The experience of Mr. Rick Cook, Manager, “Budden” BYLONG NSW over the last 30 years is that there is not enough water for the mine and for the cattle and / or irrigation on “Budden”. This is evidenced by the video of Mr. Cook and which has already been submitted to and viewed by the PAC Committee.

The function of a statutory decision maker, in this case the PAC Committee assessing the Bylong Coal Project, is to;

*“...give **proper, genuine and realistic consideration** of the merits of the case...”*

as held by Gummow J in *Kahn v Minister for Immigration and Citizenship* (1970) 14 ALD 291 and followed by Basten J in *Resources Pacific Pty Limited v Wilkinson* [2013] NSWCA 33 at [9].

A failure to give proper, genuine and realistic consideration to the merits of the case is a jurisdictional error inviting review by the court, as well as a denial of natural just.

The PAC Committee must consider all relevant material.

The reality is that the WMP is the single most important document in project.

The reality is that the availability of water is uncertain.

Letters by Timnath regarding the water

The reality is that Timnath has written a number of letters to PAC regarding the water on the Bylong Coal Project. All of these letters have been ignored; we have received no reply.

On 6 February 2016, Timnath wrote to Mr. Stephen O’Donoghue, Team Leader, Planning Assessment Commission. A copy of that letter is attached and marked **Annexure A**. The letter requests a specific response to questions regarding the water. The letter in Annexure A was ignored; Timnath did not receive a reply.

On 6 May 2016, Timnath wrote to Mr. Stephen O'Donoghue, Team Leader, Planning Assessment Commission. A copy of that letter is attached and marked **Annexure B**. The letter requests a specific response to questions regarding the water. The letter in Annexure B was ignored; Timnath did not receive a reply.

On 28 July 2016, Timnath wrote to Mr. Stephen O'Donoghue, Team Leader, Planning Assessment Commission. A copy of that letter is attached and marked **Annexure C**. The letter requests a specific response to questions regarding the water. The letter in Annexure C was ignored; Timnath did not receive a reply.

On 27 October 2016, Timnath wrote again to Mr. Stephen O'Donoghue, Team Leader, at the Planning Assessment Commission. A copy of that letter is attached and marked **Annexure D**. The letter requests a specific response to questions regarding the water. The letter in Annexure D was ignored; Timnath did not receive a reply.

Statements regarding the water in the Response by Kepco

Further, in the Response to Submissions by Kepco dated March 2016 there are a number of references which identify that the one real issue for the Bylong Copal Project is **the water**. For example;

- a. At page 206, Kepco states;

"Ultimately, the ability of the bore field to supply supplementary water depends on climatic conditions..."

- b. At page 227, the Independent Expert Scientific Committee ("IESC") state;

"Appropriate management and mitigations measures should be defined as part of the Water Management Plan...Management triggers and subsequent response should be defined before mining commences and should utilize the proponent's existing water monitoring dataset."

- c. At page 227, the IESC state;

"The Water Management Plan should describe how the groundwater monitoring programme will provide assurance that observed groundwater drawdown is consistent with predication, and in cases where groundwater drawdown exceeds predictions, describe how potential impacts will be mitigations"

- d. At page 337, Kepco states specifically in response to a concern raised about the ongoing availability of water on the property "Budden";

"The additional monitoring on the Budden property will be outlined within the Water Management Plan to be developed for the project."

- e. At page 340, Kepco states regarding the uncertainty in the groundwater modelling and predictions;

"It is recognized that hydrogeology is a relatively uncertain science and that when assessing the impacts of mining it is important to acknowledge and quantify the uncertainty as much as possible for decision makers."

- f. At page 343, Kepco states;

"During these extreme drought condition, there may be a need to implement contingency plans to ensure the supply of water for the Project, such as expand the bore field outside the Project Boundary. KEPCO will prepare and implement a WMP for the Project. The WMP will detail a program to monitor water yields and availability from the bore fields, particularly if there are extended periods of drought. The WMP will detail trigger levels to monitor against and, if reached, the Project will implement a contingency plan to ensure the supply of water to the Project. The contingency plan may include the expansion of the bore field (subject to approval), temporarily reducing KEPCO's agricultural activities (and temporarily transferring associated water entitlements to the Project) and in a "worst case" scenario progressively adjusting mining-related activities (such as coal processing) to match the water supplies..."

It is submitted that there is nothing unusual or extreme about the conditions proposed. Based on the written statements by KEPCO to date, it appears that the preparation of a detailed Water Management Plan ("WMP") was always contemplated. All that we seek is that the terms of the WMP be "specific, certain and enforceable" and that the mine not proceed until all protections are in place.

The contract proposed between Kepco and Timnath, regarding remedial action if Budden loses its water, is sought before the license is granted to ensure that there is an equality of bargaining power.

The conditions proposed seek to place the onus on KEPCO to identify the level of groundwater to be extracted throughout the life of the mine and to work with affected landholders to ensure that any exceedances are dealt with immediately, thereby freeing the Commission from any "Gatekeeper" role.

We welcome the opportunity to provide further information, including from Mr. Rick Cook. Should you require further information we request that in the first instance you e-mail your enquiry to [REDACTED]

Yours faithfully,
Timnath Pty Limited

[REDACTED]
John Weaver
Director

TIMNATH PTY LIMITED

ACN: 001 411 310

All correspondence to:

NSW 2145

06 February 2017

The Team Leader
Planning Assessment
22 – 23 Bridge Street
SYDNEY NSW 2000

Attention Mr. Stephen O'Donoghue

RE: BYLONG COAL PROJECT EIS
Follow Up to Timnath Pty Limited Letter dated 03 November 2016

Dear Sir,

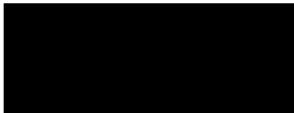
We refer to our letter dated 03 November 2016 and attentioned Mr. Stephen Donoghue as Rejoinder to response by Hansen Bailey Pty Limited dated 1 July 2016, copies of which are attached.

Based on the both obvious and serious concerns raised in our letter, the Company expected a formal response to the matters raised in our letter dated 03 November 2016. To date both the NSW Department of Planning and Environment as well as Kepco Pty Limited has remained silent in terms of formal response. On that basis we request clarification as to when we will receive a written response?

Additionally, we request confirmation as to when the Water Management Plan (WMP) for the project will be provided to the Company for peer review by our hydrological expert. As stated in our letter dated 03 November 2016 the Hansen Bailey submission clearly states it is based upon the correctness of "...the Water Management Plan (WMP) for the project..." which is either yet to be completed or, if it has been completed, has not been provided to the Company for comment.

To the best of the Companies knowledge, no peer review of the modelling of the groundwater for the project has been provided. Unless and until such peer review is provided to the Department, the Company and the Independent Expert Scientific Committee ("IESC") pursuant to provisions of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) the reliability of the ground water modelling cannot be accepted.

Yours Faithfully,
TIMNATH PTY. LIMITED



Daniel Weaver
DIRECTOR

Timnath Pty Limited
ACN 001 411 310
"Budden", Bylong Valley Way
BYLONG NSW 2849
All correspondence to:

[REDACTED]
[REDACTED] NSW 2145

6 May 2016

The Executive Director
Resource Assessments and Business Systems
Department of Planning and Environment

[REDACTED]
SYDNEY NSW 2001

Attention: Mr. Stephen O'Donoghue

**RE: RESPONSE TO SUBMISSIONS ON THE BYLONG COAL PROJECT
REGARDING UNDERGROUND WATER**

Dear Sir,

I refer to the proposal by Kepco regarding the Bylong Coal Project.

I am the Managing Director of Timnath Pty Limited ("Timnath") which is the owner of the Beef Cattle enterprise on the property "Budden" located on the Bylong Valley Way, BYLONG NSW 2849. "Budden" relies heavily on groundwater to water stock and irrigate pastures ("the water"). Without the water, even for a matter of days, "Budden" would cease to operate and stock would die.

I am very concerned about the impact Kepco's of proposed Coal Mining operation on the water at "Budden".

On 4 November 2015, Timnath submitted an objection to the Proposal of the Kepco Coal Project ("the Timnath Submissions"). **Enclosed** is a copy of the Timnath Submissions.

In response to the Timnath Submissions, and submissions by other parties, Kepco produced a "Response to Submissions on Groundwater" ("the Groundwater Response"). The Groundwater Response purports to address the concerns raised in the Timnath Submissions and the submissions of the other parties.

I have read the Groundwater Response by Kepco and compared it to the Timnath Submissions.

The Kepeco Groundwater Response DOES NOT address any of the concerns raised in the Timnath Submissions. Kepeco is silent on the concerns raised by Timnath.

We request that you seek a specific response to the following concerns raised in the Timnath Submissions (“the concerns in the Timnath Submissions”): -

1. At paragraph 12 on page 4 the Timnath Submissions state;

“The EIS, significantly, fails to suggest, inter alia:

- a. what **immediate steps** the proponent would take to provide adequate quantities of uncontaminated water to affected neighbouring landholders in order for them to continue their primary production activities (NB this has been the legal right of the landholders for many years and of Timnath for in excess of 40 years)*
- b. what **medium to long term steps** the proponent would take to rectify the cause(s) of the disturbance to the supply of uncontaminated water to neighbouring landholders in accordance with their entitlements;*
- c. what **medium to long term steps** the proponent would take to remediate any environmental damage resulting from disturbance to the continued enjoyment of existing water entitlements of neighbouring landholders;*
- d. what **compensation for economic and non-economic loss** the proponent would make to the affected landholders resulting from their disturbance of their existing water entitlements, and how such compensation would be assessed, and, in the event of dispute in that regard, determined;*
- e. **how the proponent’s compliance** with each of the above issues would guarantee and secured in the future. **(emphasis added)***

At page 85 of the Kepeco “Response to Submissions on Groundwater” in clause 7.2.1 the proponent states: -

“...Compensatory water supply measures will provide an alternative supply of water that is equivalent to the loss attributable to the mine development. Equivalent water supply will be provided as soon as practicable from the loss being identified as a result of the Project, unless otherwise agreed with the landowner. The Water Management Plan will set out the process by which potential impairment of landholder bores will be assessed and compensatory arrangements in the form of make good agreements.”

There is no reference in the Kepeco Response to where the extra water may be obtained and it is certainly, to my knowledge, not available at the site. Further, Kepeco is not recognising any of the “time factors” involved in negotiating, purchasing, transporting, delivering and storage on site. It must be recognised that at all times live cattle must have water to drink and stock feed must have water to grow. Cattle being without water, even for one day, is catastrophic and the Kepeco Response is silent on this issue.

At page 79 of the Kepco Response to Groundwater” in the last paragraph it states: -

“...there is some uncertainty at a local level due to the groundwater flow being controlled by varying extents by observed intra- and inter-formational heterogeneity in the rock units. Dipping beds, faulting and igneous intrusions influence groundwater and hydraulic gradients.”

The “uncertainty” referred to on page 79 of the Kepco Response causes real doubt as to the practicality of the mine. The “uncertainty” of water is identified over and over in the Kepco Response including on page 67, 79 and 80.

The Kepco Groundwater Response makes a vague reference to “Make Good Agreements” which Kepco proposes to enter into with affected landholders AFTER the mine has been approved (Kepco Groundwater Response at Part 7.2.1 at page 85 – 86). Such a proposal is included at the end of the Kepco Groundwater Response and is without detail.

If the mine is approved, the bargaining power between landholders and Kepco will significantly favour Kepco and the terms of any such agreement are, at this time uncertain. No one could claim that the proposed “Make Good Agreements” do anything to address the concerns raised in the Timnath Submissions (detailed above) because Kepco do not state with any certainty what will occur, and when, if a landholder loses their water.

It should be a requirement that BEFORE the mine is approved that Kepco enter into an enforceable agreement with Timnath and other landholders that specifically address the concerns raised in the Timnath Submissions (detailed above). Specifically, what Kepco will do, and when, if a landholder loses their water at any stage after the mine is approved.

Finally, we note that Kepco state at, Part 7.2.1 on page 85 of the Kepco Groundwater Response, that: -

*“During this consultation, KEPCO has **agreed** to install electronic data loggers to record groundwater levels at surrounding properties including “Budden”...”*

There is no **agreement** between Kepco and Timnath to install electronic data loggers to record groundwater levels at “Budden”. Rather, Timnath has undertaken this work itself without any assistance from Kepco.

Given the above, we request that Kepco be required to address the concerns in the Timnath Submissions, as detailed above, in detail and enter into an enforceable agreement to protect the water on Budden BEFORE the mine is approved.

Yours faithfully,

TIMNATH PTY LIMITED


R.A. Weaver
MANAGING DIRECTOR



From: [REDACTED]
Subject: BYLONG COAL PROJECT - "INTERIM REPORT" ON GROUNDWATER MONITORS INSTALLED ON "BUDDEN",
BYLONG VALLEY WAY, BYLONG NSW 2849
Date: 28 July 2016 at 10:59 AM
To: [REDACTED]
Cc: [REDACTED]

Dear Stephen,

I am writing on behalf of Timnath Pty Limited as owner of the beef cattle property "Budden", BYLONG NSW 2849. You may recall we made a detailed submission on the Bylong Coal Project and identified a real and significant concern about the impact of the proposed mining activities on the groundwater available on "Budden". We included in our submission a DVD interview with Mr. Rick Cook, Manager, "Budden", with his experience of the groundwater on "Budden" over time. Mr. Cooks experience is based of the groundwater is based on 25 years working on "Budden".

As an adjunct to Mr. Cooks experience, Timnath Pty Limited has engaged an Engineer to install and monitor a series of groundwater wells on "Budden" since early 2016 and on an ongoing basis. Our Engineer has prepared an "short form" interim report of his findings regarding groundwater on Budden. Some of the findings are directly relevant to the Kepco proposal and the behaviour of underground water in the vicinity of the proposed mine.

I note that it is common ground between all stakeholders that the effect of the mine proposed by Kepco on the groundwater in Bylong and surround properties is "uncertain".

The monitoring Timnath is carrying out is designed to remove the uncertainty and cause Kepco to put in place measures to protect the groundwater BEFORE the mine is approved.

What is the best way to provide you with the interim report? Could I telephone you to discuss our findings before we provide the report, to ensure that it meets your needs? If so, what is your telephone number?

Yours faithfully,

John Weaver
Director
Timnath Pty Limited

[REDACTED]
BYLONG NSW 2849
ALL MAIL TO:

[REDACTED]
e-mail: [REDACTED]
telephon [REDACTED]

TIMNATH PTY LIMITED
ACN: 001 411 310
All correspondence to:
[REDACTED]
WENTWORTHVILLE NSW 2145

27 October 2016

The Team Leader
Planning Assessment
22 – 23 Bridge Street
SYDNEY NSW 2000

Attention Mr. Stephen O'Donoghue

RE: BYLONG COAL PROJECT EIS
Response to Hansen Bailey Pty Limited
Submissions dated 1 July 2016

Dear Sir,

We refer to the submission of Hansen Bailey dated 1 July 2016 regarding the Bylong Coal Project (a copy of which is attached) and which was received by Timnath Pty Limited ("the Company") on 13 September 2016.

ISSUE 1: REJOINDER

With regard to the last paragraph, the proposition that "...Kepco would therefore be able to appropriately respond to any unforeseen impacts before the bores located on the Budden property are adversely affected..." cannot be accepted by the Company as the Hansen Bailey submission clearly states it is based upon the correctness of "...the Water Management Plan (WMP) for the project..." which is either yet to be completed or, if it has been completed, has not been provided to the Company for comment.

ISSUE 2: REJOINDER

To the best of the Companies knowledge, no peer review of the modelling of the groundwater for the Bylong Coal Project has been provided. Unless and until such peer review is provided to the Department, the Company and the Independent Expert Scientific Committee ("IESC") pursuant to provisions of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) the reliability of the ground water modelling cannot be accepted.

It is again noted that the submission by Hansen Bailey asserts hitherto an unseen and unreviewed Water Management Plan (“WMP”) which *“...will detail the monitoring program to be implemented to identify the impacts of the Project on the regional groundwater regime...”*

With respect to Hansen Bailey, the contentions advanced cannot in these circumstances be accepted by the Company or, it is submitted, by the PAC.

Implicit in the concession in paragraph 3 is that the project would result in water availability within the Bylong Valley being adversely impacted. Rather than justification for the project being approved, that concession supports the Company’s contention that, in observance of the precautionary principles and environmental sustainability, constraints should be placed upon the drawdown of groundwater by the project during periods of drought.

A recurring theme of the Hansen Bailey response is that if, contrary to the assertions by the proponent, the projects groundwater modelling proves not to be accurate the *“...mitigation measures will be discussed with the land holders...”* which *“...may...”* include *“...the implementation of ‘make good provisions’ to compensate for any adverse impacts to neighbouring landholder bores...”* It is patently obvious that such promises are meaningless, at worst, and utterly unenforceable legally, at best.

More concerning is the repeated suggestion that, notwithstanding that it is *“...highly unlikely...”* that such impacts will be experienced, the proponent refuses to offer any meaningful and enforceable safe guards. This implies that, notwithstanding the rhetoric, the proponent itself has reservations about the reliability of its ground water modelling.

ISSUE 3, ISSUE 4, ISSUE 5, ISSUE 6: REJOINDER

The Company repeats the matters articulated above.

ISSUE 7: REJOINDER

The Company repeats the matters articulated above and notes with concern that the response by Hansen Bailey makes no effort to identify and explain the manner in which the proponent’s suggestion (Clause 7.2.1 Kepco response to Submissions on Groundwater) would be implemented in practice. The Company will respond to the WMP when it is made available for that purpose.

With regard to the contention on page 5 of the Hansen Bailey response that *“...KEPCO’s landholdings front a considerable proportion of the Bylong River, Lee Creek and Growee River alluvial aquifers. This affords KEPCO the opportunity to construct additional bores (subject to relevant water licenses)...”* the Company understands that the proponents water licenses for the Bylong Coal Project exceed the volume of water that the proponents own modelling is based on. The Company does not accept that the modelling carried out by the proponent accurately reflects the practical effect of the drawdown of groundwater water on surrounding landholdings, should additional water capacity be required during the life of the project.

In those circumstances, the Bylong Coal Project should not be further considered or evaluated, unless and until, the proponent demonstrates the practical effect on surrounding landholders of maximum water use pursuant to the proponent's water licenses.

The Company restates the fact that the proponent does not explain from where or by how the proposed additional water will be supplied. The proponent remains silent on this issue despite the Company raising the issue in its earlier submission.

It appears that the proponent does intend to pump ground water in excess of the modelling as and when required. It is patently obvious that the proponent drawing the maximum water permitted by the proponent's licenses presents a real risk to the surrounding landholders, which the proponent intends to resolve after the license is granted by "make good agreements". With respect, such "make good agreements" are, at this time, patently uncertain, legally unenforceable and meaningless.

ISSUE 8 & ISSUE 9: REJOINDER

The Company repeats the matters referred to above and notes the repetition of vague and unenforceable representations.

SUMMARY: REJOINER

With regard to point 1 we have not seen any peer review of the ground water modelling, or indication of the review of it by the IESC. The Company expects, as a matter of procedural fairness, that it will have the opportunity to comment on such reports when they are provided.

With regard to point 2, as a matter of procedural fairness, the Company expects that it will have the opportunity to respond to the WMP when it is provided and submits that the proposal could not be given "proper, serious and genuine consideration" in the absence of peer reviews of the WMP and the IESC's review of the WMP.

With regard to point 3, as outlined above this response is, at best, a legally unenforceable proposal and, at worst, meaningless.

With regard to point 4, the response by Hansen Bailey raises serious concerns with respect to the bone fides of the proponent. As noted above, notwithstanding the repeated assertions that the risks to water supplies are minimal, Kepco will not make any commitment to make good agreements which could be conditions of consent approval.

We look forward to receiving a copy of the WMP in due course and making appropriate submissions within time, as a matter of procedural fairness.

Yours Faithfully,
TIMNATH PTY. LIMITED

Daniel Weaver
DIRECTOR