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Independent Planning Commission
By email: ipnc@ipcn.nsw.gov.au

Submission: GML June 2019 heritage report

Thank you for the opportunity to make a submission responding to the report by GML updating its advice to the IPC about the heritage impacts of the Bylong coal project in light of changes to the mine plan.

In our view, this report starkly highlights why the Commission must refuse consent to this coal mine. The weight of historic, natural and cultural heritage presses against marginal considerations in favour of this mining project and we urge the Commission to accept the implicit advice of this report and refuse consent.

The GML report finds that the mine proposal, even as revised *“will permanently change the natural and historic cultural landscape, its agricultural uses and its significant scenic qualities and character that has been shaped by natural and cultural over millennia.”* The uniqueness of these values should not and must not be compromised.

We welcome the reports’ findings that even with the removal of the open cut pits and overburden piles from Tarwyn Park, *“there will be a material impact on the water and soil values of the wider landscape which underpins [natural sequence farming] and the property’s ability to demonstrate the technique.”* The hydrological and landscape function of Tarwyn Park is bound up with the heritage values of the valley as a whole and its integrity and continuity will be irreparably damaged by this coal mine.

The GML report in our view rightly recognises that heritage inheres not just in buildings, properties and items, but in place more broadly and describes the heritage significance of the Bylong Valley as *“an interdependent functional agricultural system that has supported innovation in land management practices and the production of cattle and horses over generations.”*

The report is unequivocal about the impact of the mine on the landscape and its heritage values. The mine will *“distort and irrevocably alter the natural and historical cultural landscape, its agricultural uses and its significant scenic qualities and character”* and it *“will irrecoverably alter the landscape’s scenic picturesque views and visual relationships.”*

Citing the Burra Charter, GML notes that setting and relationships must be retained for the conservation of heritage. The incongruity of an industrial mine site, and all of its associated features, will irreparably mar the setting, the relationships and the expression of natural and cultural heritage at Bylong.

As GML identify, there is concurrence among professionals that Tarwyn Park meets the threshold for state significant heritage under one or more criteria. GML finds that the mine may affect eligibility of Tarwyn Park for listing on the state heritage register.

We note that damage has already been inflicted on the Valley's heritage as a result of the mine proposal. Social and cultural ties and relationships have been strained and broken by the buy-up of the Valley's properties by KEPCO and loss of families from the neighbourhood who carried cultural memory of the valley's history. These social relationships are themselves part of the conservation of heritage, as stories and practices are passed on and a sense of place and community maintained. KEPCO's purchase of Bylong Park in 2012 saw the loss of the valley's only operating thoroughbred stud, putting at risk the continuity of the valley's thoroughbred breeding history. The purchase of Tarwyn Park in 2014 jeopardised the strong and special association of the property with the Andrews family, and the continuity of natural sequence farming practice.

The de-population of the Valley has seen the closure of the school, the end of the celebrated Mouse Races and degradation of buildings and properties. These harms can be amended if the mine is refused and the valley allowed to return to its productive agricultural life.

The proponent and the Department have argued that the impact of the mine will be temporary. GML find that there is still considerable uncertainty about whether the historic use of the place and its cultural significance can be successfully retained or recovered if the mine proceeds. The rehabilitation and restoration plans are experimental and so cannot be relied upon to mitigate the impact of the mine.

Our experience with mine rehabilitation in NSW indicates that it rarely delivers what has been promised. In particular, we believe there is no evidentiary basis for the suggestion that BSAL soils can be replaced or reproduced. If there was a simple or cost-effective way to create BSAL soils, then it would be in use widely to increase arable land. However, there is no such method that is accepted, and agricultural experts advise us that it simply cannot be done. As GML note, *'there are no examples in the Hunter Valley of viticulture and equine capabilities being brought back to pre-mining conditions'* and that NSW has just one example of a successfully relinquished mine site. Therefore, as pointed out by GML, the damage to the unique and high quality agricultural values of the landscape is undoubtedly severe, and undoubtedly irreparable.

It is clear from the GML report overall that the threat to the heritage values and character posed by the Bylong coal mine cannot be 'managed away' or ameliorated if the mine is approved. GML states clearly that if the mine is to proceed, *'complex fundamentals and interrelationships between the natural and cultural landscape will be altered to the degree that Tarwyn Park could no longer evidence the strong association to past practices, processes and systems'*. The report also indicates that *'the mine will irrevocably alter the landscapes scenic picturesque views and scenic relationships'* and that *'sounds and the sensory feel of the landscape will be fundamentally altered.'*

Therefore, it is very clear that the impacts identified by GML on heritage values of Tarwyn Park and Iron Tank and the scenic landscape in which they reside, *cannot* be addressed through conditions on approval or through subsequent management plans. The impacts that have been identified by GML are such that the mine must be refused in order to avoid them.

Implications of the Rocky Hill decision

In *Gloucester Resources Ltd v Minister for Planning*, Chief Justice Preston stated that:

In absolute terms, a particular fossil fuel development may itself be a sufficiently large source of GHG emissions that refusal of the development could be seen to make a meaningful contribution to remaining within the carbon budget and achieving the long term temperature goal. In short, refusing larger fossil fuel developments prevents greater increases in GHG emissions than refusing smaller fossil fuel developments.

In relative terms, similar size fossil fuel developments, with similar GHG emissions, may have different environmental, social and economic impacts. Other things being equal, it would be rational to refuse fossil fuel developments with greater environmental, social and economic impacts than fossil fuel developments with lesser environmental, social and economic impacts. To do so not only achieves the goal of not increasing GHG emissions by source, but also achieves the collateral benefit of preventing those greater environmental, social and economic impacts.

Given that the size of the GHG emissions resulting from the Bylong coal mine is so much greater than the Rocky Hill mine, this new evidence from GML of the severe and irrevocable impacts on cultural heritage warrants rejection of the project on the grounds set out by Justice Preston, because it is a fossil fuel development with substantially greater environmental and social impacts.

Social impacts of heritage impacts

It is important to note that the proponent has not assessed the social consequences of these heritage impacts. The failure to properly consider such impacts was identified by Hedda Askland in her expert submission as a key weakness in the social impact assessment for the project. The fact that GML have now identified such significant heritage impacts makes the failure to consider the social consequences of that even greater.

Current impacts of KEPCO management

There are already genuine concerns about the implications of the KEPCO management of the Tarwyn Park property and natural sequence farming practices. Drone footage of Tarwyn Park late last year has been reviewed by NSF practitioners. It suggests that the property is not being managed in accordance with NSF principles. It reveals that cattle have been tracking up and down the creek, which represents an erosion risk, and in other areas there has been poor grazing management with little rotation. There is also evidence of dead trees and wheel tracks raising concerns about possible use of fertiliser, poison or other chemicals, and signs indicating use of 1080 baiting, all contrary to NSF principles. Notably, since KEPCO purchased Tarwyn Park more than two years ago, there does not appear to have been any substantive contact between KEPCO and recognised practitioners of NSF (as per Duane Norris submission to the IPC). This record is relevant to the Commission's consideration of any commitments KEPCO may be making about management of this unique property and its heritage values.

Aboriginal Cultural Heritage Impacts

We note that the remit of the GML report was to address the impact of the heritage value of Tarwyn Park and the Bylong Scenic Landscape, but there is still outstanding consideration of Aboriginal cultural heritage that remains largely unaddressed. In our view, the cultural heritage of the Wiradjuri people is inextricably bound up with the Bylong Scenic Landscape and its natural heritage values. We would again draw the Commission's attention to OEH's early advice about this mine proposal which made the observation that, *"Notwithstanding the mitigation actions of previous mine projects and those of the proposed Bylong Coal project, OEH is concerned that harm to [Aboriginal cultural*

heritage] is approaching unacceptable thresholds for the region unless adequately balanced with a measured conservation gain. An imbalance of this scale may have permanent intergenerational consequences.”¹ The Commission review found in 2017 that “further investigation remains to be completed to properly assess the expected impacts to Aboriginal cultural heritage” (PAC Review Report page 26), but no further investigation has been undertaken.

Nonetheless, it is not conceivable that further investigation into the impact of the mine on Aboriginal cultural heritage would uncover any reason to grant consent, and we believe that the evidence already before the Commission is sufficiently compelling to refuse consent.

Impacts on adjoining World Heritage Area

Finally, we note the proposed project is located adjacent to the Greater Blue Mountains World Heritage Area. The GML identification of substantial heritage impacts on the scenic landscape, raises further concerns about impacts on the World Heritage landscape. Furthermore, the World Heritage Committee [has recently raised a number of issues](#) relating to mining adjoining, and in the vicinity of, the GBMWA, in its state of conservation report to be considered at the upcoming Committee meeting in July. The draft report concludes, ‘*It is therefore recommended that the Committee request the State Party to undertake an assessment of potential cumulative impacts of existing and planned mining projects in the vicinity of the property*’. The World Heritage Committee meeting in July will discuss and make a decision on this recommendation.

In conclusion, we reiterate how significant the GML report is in finding that the Bylong coal mine will have permanent and irreversible impacts on the state significant heritage values of Tarwyn Park and the Bylong scenic landscape. It is clear from the report that these impacts cannot be ‘managed’ through conditions or management plans, and can only be avoided by rejecting the project in its entirety.

In conclusion, we reiterate how significant the GML report is in finding that the Bylong coal mine will have permanent and irreversible impacts on the state significant heritage values of Tarwyn Park and the Bylong scenic landscape. It is clear from the report that these impacts cannot be managed through conditions or management plans, and can only be avoided by rejecting the project in its entirety.

On that basis, we urge the Commission to refuse consent to this project.

¹ Preliminary Assessment Report Appendix D: OEH comments on response to submissions, 3 May 2016.
<https://majorprojects.accelo.com/public/af8d6bf2f5718d45541f0e932f702545/02.%20Bylong%20Coal%20Project%20-%20Preliminary%20Assessment%20Report%20-%20Appendix%20D.pdf>