

5 August 2019

**BY EMAIL:** [REDACTED]

Samantha McLean  
Executive Director  
Independent Planning Commission NSW Secretariat  
Level 3, 201 Elizabeth Street  
Sydney NSW 2000

Dear Ms McLean

**Bylong Coal Project SSD 14\_6367 – Gateway Certificate under clause 17H of the State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007 (Mining SEPP)**

1. We refer to your letter dated 18 July 2019 and our response of 23 July 2019 in relation to KEPSCO's State Significant Development (**SSD**) application for the Bylong Coal Project (SSD 14\_6367) (**Project**) and the Conditional Gateway Certificate for the Project which was issued on 15 April 2014 (**Gateway Certificate**).
2. In your letter of 18 July 2019, you requested either of the following by 5pm on 26 July 2019:
  - (i) an indication from KEPSCO whether it intends to make a fresh application for a gateway certificate for the Project; or, alternatively,
  - (ii) if KEPSCO disagrees with the Preliminary View, a submission from KEPSCO setting out the reasons for such disagreement.
3. Our letter of 23 July 2019 provided a submission setting out our view why a new Gateway Certificate was not required. Our submission attached advice from Richard Lancaster SC and David Hume outlining the legal basis for this view. There has been no contrary written legal advice provided to us by the IPC to justify its position.
4. KEPSCO has now been informed by media outlets that the IPC have advised them that *'it's up to the Applicant to ensure all relevant certificates are up to date'*, and as a result KEPSCO has been asked to respond.
5. KEPSCO is extremely disappointed that prior to engaging with KEPSCO in respect of its submission on why a Gateway Certificate is required that the IPC would express such a view to media outlets.
6. It is clearly inappropriate that the IPC engages with the media in this way.
7. Once more, for the reasons outlined in our submission of 23 July 2019, the Gateway Certificate is not "invalid" as it does not need to be current at the time of determination and there is no lawful reason why the IPC cannot determine development application SSD 14\_6367.
8. In addition, the only reason such a potential issue has arisen is the significant and unreasonable time the IPC has taken (10 months and counting) to determine the application following the referral of the Project to the IPC on 4 October 2018. We note that the IPC stated in its 2017/2018

Annual Report the Commission's average processing time for determinations with a public meeting was 62 calendar days. This was a reasonable expectation.

9. Again, KEPCO wishes to raise its extreme disappointment that this issue is being raised now and at this very late and critical stage of the assessment process, particularly in circumstances where the Commission is of the view that the Gateway Certificate purportedly 'expired' on 15 April 2019. This issue certainly should have been raised with KEPCO sooner and not three months after the date on which the Commission asserts the Gateway Certificate 'expired'.
10. Since December 2018 KEPCO or its representatives have made a significant number of telephone calls to the IPC regarding matters relating to the determination of the Project, including seeking an indication when the determination was likely to occur and whether additional information was required. At no time did IPC representatives suggest that the currency of the Gateway Certificate was an issue that could potentially impact the IPC's determination of the project. During these contacts there was ample opportunity to raise the matter.
11. We request a written response to our letter of 23 July 2019 and an opportunity to respond to issues raised in any such response. To take an action in respect of development application SSD 14\_6367 without providing such an opportunity to us would be a clear breach of the requirements of procedural fairness. Additionally, we request the ability to respond to submissions received relating to KEPCO's letter of 23 July 2019.

Please do not hesitate to contact me on [REDACTED] if you wish to discuss this matter further.

Yours sincerely



William Vatovec  
Chief Operating Officer  
KEPCO Australia Pty Ltd