

23 August 2019

Independent Planning Commission
3/201 Elizabeth Street
SYDNEY NSW 2000

Attention: Mr Gordon Kirkby

Dear Mr Kirkby,

**Bylong Coal Project
Response to IPC's Meeting with DPIE and DPI-Agriculture**

1. INTRODUCTION

We refer to the meeting between the Independent Planning Commission (IPC), Department of Planning, Industry and Environment (DPIE) and Department of Primary Industry – Agriculture (DPI-Ag) held on the 6 August 2019 in relation to the Bylong Coal Project (the Project). It is understood that the key purpose of the meeting was to discuss the questions raised within the IPC's letter to DPIE dated 22 July in relation to the impacts of the Project on Biophysical Strategic Agricultural Land (BSAL). The transcript of the meeting was available on the IPC website from Monday, 12 August 2018.

We also refer to the IPC letter dated 12 August 2019 sent to DPI-Ag allowing for further information to be provided following their meeting by 5 pm, 19 August 2019. We note the email dated 21 August 2019 from DPI-Ag to the IPC confirming their decision not to provide further information to that already provided.

KEPCO now considers it worthwhile to clarify a number of matters discussed during this meeting for the IPC as provided within this letter.

2. CLARIFICATION OF MATTERS RAISED

2.1 DEFINITION OF BSAL

It is noted that the term BSAL has been used throughout the meeting interchangeably with the term '*prime agricultural land*'. BSAL is defined by the NSW Government guideline documents as "*land that has the best quality soil and water resources and is capable of sustaining high levels of productivity*". The term '*prime agricultural land*' has never been used to describe BSAL in any NSW Government published guideline or policy. The DPI-Ag's *Agricultural Land Use Mapping Resources in NSW - User's Guide* (DPI-Ag 2017) also relevantly states:

"This user's guide also does not specifically refer to prime agricultural land as this is a generic term which is not defined or described by any NSW datasets."

As was pointed out by DPIE during the meeting, the IPC (formerly the Planning Assessment Commission) has previously granted approval for a mining project which had assessed impacts on BSAL and was appropriately conditioned to reinstate BSAL-equivalent soils on the final rehabilitated landform. Accordingly, the IPC's current considerations in respect of the Project's impacts on BSAL are not new.

2.2 CATEGORIES OF BSAL

The IPC's letter dated 22 July 2019 and discussions during the meeting sought advice from DPIE and DPI-Ag in relation to whether the value of BSAL was viewed uniformly or whether some BSAL was viewed more valuable than others. Whilst this was briefly discussed during the meeting, it is important to highlight the information previously presented within the approvals documentation for the Project.

As previously outlined by KEPCO, BSAL which is to be disturbed as a result of the Project has also been mapped to the respective Land and Soil Capability (LSC) criteria in accordance with *The Land and Soil Capability Assessment Scheme, Second Approximation* (OEH, 2012). This mapping illustrates that the best value agricultural land to be impacted by the Project is LSC Class 3. LSC Class 3 land is considered highly capable land. However "*Class 3 land has limitations that must be managed to prevent soil and land degradation*" (OEH, 2012). Therefore the comments by DPI-Ag representatives in relation to LSC Class 3 land being able to be "*continuously cropped*" may not always be the case.

The Project is not proposed to impact any land mapped as LSC Class 1 or 2 which is considered to be superior to LSC Class 3 land. LSC Class 1 or 2 land has fewer limitations to land uses when compared to LSC Class 3 land.

So whilst it is true that the NSW Government guidelines and policies do not specifically classify BSAL to be of different values, this same land has also been mapped according to the LSC criteria (in accordance with an alternate NSW Government guideline).

The LSC mapping across the Project Boundary demonstrates that this land does not comprise the most valuable agricultural land (i.e. land mapped as Class 1 or 2) within the State of NSW. This is also evidenced by the fact that the major land use within the Project Boundary being predominantly grazing activities, with only some minor fodder cropping on the flatter areas of the alluvial floodplains which are not proposed to be mined. It is also important to highlight to the IPC that the BSAL which has been assessed to be impacted by the open cut mine plan itself is located outside of the alluvial floodplain and therefore is not located over the alluvial aquifer.

Whilst the Government has regionally mapped approximately 2.8 Million hectares of BSAL across NSW, Appendix D of KEPCO's Response to the GML Heritage Advice indicated that there have only been 29 site verification certificates issued and eight projects considered (or reviewed) by the Mining and Petroleum Gateway Panel since the introduction of the legislation in October 2013. Based on the experiences associated with the Project (where verified BSAL has been identified external to the alluvial floodplain), KEPCO considers that there is likely to be much more land conforming to BSAL across NSW than is currently regionally mapped based on desktop studies.

2.3 PROJECT IMPACT ON BSAL

During the meeting, there was discussion in relation to the assessed impacts on BSAL as a result of the Project.

Table 10 in DPIE's Final Assessment Report provides an overall summary of assessment impacts for the Project. This table states the Project impacts and/or offsets total approximately 688 ha of BSAL. This includes approximately 400.4 ha of BSAL within the Project Disturbance Boundary and approximately 287.6 ha being located on land to be secured as part of the Biodiversity Offset Strategy for the Project.

It was stated during the meeting that the Project would impact around 13% of BSAL within the Bylong Valley. Meeting representatives rightly pointed out to the IPC that the 13% estimate includes around 287.6 ha of BSAL to be included in Project Biodiversity Offset Strategy which will not be physically disturbed by open cut mining. We note that based on the existing mapped area of BSAL of approximately 2.8 Million hectares, and using the higher number that IPC discussed (i.e. including the BSAL which will not be physically disturbed), the Project will impact around 0.025% of NSW's currently mapped BSAL. Further, it must be noted that KEPCO is committed to recreating the 400.4 ha of BSAL within its mine rehabilitation areas.

Whilst the importance of managing the impacts on BSAL across NSW is acknowledged, KEPCO considers that the extensive commitments that it has made within its approvals documentation (in response to regulatory reviews and feedback) has demonstrated with certainty that it is committed to and is capable of reinstating the BSAL-equivalent soils on its rehabilitation areas. These rehabilitation activities have been described within a draft Rehabilitation Management Plan which will require review and endorsement of DPIE, DPI-Ag and other relevant regulators following any approval for the Project.

2.4 AQUIFER CONNECTIVITY

A query was raised by the IPC in relation to whether the BSAL criteria requires the soil to be connected to a water source or whether this criteria simply relates to being within a moderate rainfall region. The IPC continued to explain that the reason for raising this question was in light of the predicted post-mining impacts of the Project on the regional Permian groundwater regime.

Whilst this query was appropriately addressed by the DPIE representatives, KEPCO is concerned that the IPC is linking the predicted impacts of the Project on the deeper Permian aquifer to surface soils.

Consistent with the DPIE response to this query during the meeting, the predicted impacts of the Project to the alluvial aquifer (predominantly used for agriculture) occur during the term of the open cut mining operations, primarily as a result of the predicted demand of the Project borefield within the alluvial aquifer. Once underground mining commences and the demand for water from the Project borefield reduces, the predicted impacts to the alluvial aquifer materially reduce. The comprehensive groundwater modelling completed for the Project has demonstrated that the longer term impacts predicted upon the Permian aquifer system is unlikely to result in any significant long-term impacts on the alluvial aquifer.

It should again be highlighted, that the proposed open cut mining operations are outside of the alluvial floodplain and as such the verified BSAL to be impacted does not have an alluvial water source underlying them. Hence the BSAL-equivalent rehabilitation activities within the mining areas would similarly not have an alluvial aquifer underlying them.

2.5 REHABILITATION DOUBTS

In response to the IPC's query, DPI-Ag commented that the NSW examples provided within the Supplementary Information Report (Hansen Bailey, 2018) did not fully meet BSAL-equivalent soils and that the mine rehabilitation examples provided are generally utilised for grazing land uses.

As indicated within the approvals documents for the Project, the main reason that there is no current examples of the reinstatement of BSAL-equivalent land on mine rehabilitation is due to there being no disturbance of BSAL undertaken (as a result of mining) since the introduction of the gateway process in October 2013. As such, there has been no opportunity for the mining industry to verify existing areas of mine rehabilitation which would in fact satisfy the relevant BSAL criteria. Accordingly, the examples presented demonstrate the ability to rehabilitate mined landforms to high quality agricultural land which is capable of sustaining intensive grazing and in the case of the HVO Alluvial Lands Project, cropping land uses. DPI-Ag also indicated that there are numerous examples within the United States where high quality agricultural land has been restored within mine rehabilitation areas.

KEPCO acknowledges the DPI-Ag's comments in relation to progressive rehabilitation and monitoring of the BSAL against specific completion criteria over time and as such supports the specific conditions for the Rehabilitation Management Plan as recommended by DPIE in the Draft Development Consent conditions for the Project.

As clarified by DPIE in response to the IPC's query, progressive rehabilitation activities associated with the Project will facilitate the early rehabilitation of areas of BSAL-equivalent land on the rehabilitated mine landforms. This will provide considerable time for these areas to be monitored throughout the life of the underground mining operations associated with the Project.

Whilst an area of the Eastern open cut mining area will be retained for the storage and handling of water and coarse and fine reject materials generated from the longer term underground operations, the remaining areas of the Eastern Overburden Emplacement Area will continue to be progressively rehabilitated throughout these operations. At the completion of underground mining operations, the open cut void will be completely backfilled and rehabilitated to a similar agricultural land capability as that prior to mining.

3. CONCLUSION

We trust that the information presented within this letter assists in clarifying the inquiries from the IPC to DPI-Ag so that they can make an informed assessment of the impacts and mitigations proposed for the Project on BSAL.

Please do not hesitate to contact us should you have any questions or require any further information.

Yours faithfully

HANSEN BAILEY



Nathan Cooper
Principal



James Bailey
Director

CC: Stephen O'Donoghue – NSW Department of Planning, Industry and Environment