



9 August 2019

Independent Planning Commission NSW
Level 3, 201 Elizabeth Street
SYDNEY NSW 2000

By email: ipcn@ipcn.nsw.gov.au

Re: Proposed condition on the United Wambo open cut coal mine project

I am writing to you as the Chief Executive Officer of the Minerals Council of Australia to express concern over the New South Wales Independent Planning Commission's proposed condition as part of its approval determination of the United Wambo Open Cut Coal Mine Project.

The IPC condition is an overreach. The creation of arbitrary conditions on exports and a proposal to require the management of the emissions of foreign sovereign nations would not only undermine good management of Australia's export trade but also represents a serious undermining of the operation of the United National Framework Convention on Climate Change (UNFCCC).

The proposed condition published on the IPC's website on 2 August states:

1. *The Applicant must prepare an Export Management Plan for the development to the satisfaction of the Planning Secretary. This plan must set out protocols that require the Applicant to use its best endeavours to ensure that any coal extracted from the Site that is to be exported from Australia is only exported to countries that are:*
 - (a) *signatories to the Paris Agreement within the United Nations Framework Convention on Climate Change; or*
 - (b) *countries that the Planning Secretary considers have policies for reducing greenhouse gas emissions that would otherwise be similar to policies that would be required of that country if it were a signatory to the Agreement at (a) above; as at the date of export. The purpose of the Export Management Plan is to ensure that all practicable measures are adopted by the Applicant to minimise greenhouse gas emissions identified as Scope 3 emissions in the EIS.*
2. *The Applicant must not commence Phase 1B until the Export Management Plan is approved by the Planning Secretary.*
3. *The Applicant must implement the Export Management Plan as approved by the Planning Secretary for the life of the development.*

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally. It supports the transformation to a low emissions global economy based on a nationally coordinated approach to climate and energy policy. Specifically, the MCA supports the Paris Agreement, its stated climate goal of achieving net zero emissions by the second half of the century, and, more broadly, the United Nation's Sustainable Development Goals.

As a national body, the MCA does not usually comment on individual, state-based approvals. However there are two nationally-related concerns that require comment as the proposed obligations may be both damaging and counterproductive.

First, the Commonwealth makes laws with respect to trade and commerce with other countries. In relation to the economic management of Australia's trade, the MCA asserts that obligations under a state law placing conditions on exports would be inconsistent with the good governance of international trade. This undermines Australia's global trading reputation which delivers jobs and prosperity to regional communities through exports.

Second, the UNFCCC framework (1994) is the world communities' accepted legal vehicle for dealing with the reduction of greenhouse gas emissions and mitigation and adaptation to climate change. The framework – agreed by 197 sovereign countries – provides the means to identify changes in climate, the management (including measurement) by sovereign nations of their national emissions, and a platform for various legal agreements on increasing ambition (the Kyoto Protocol and the Paris Agreement in particular).

The MCA supports the Australian Government's Paris Agreement pledge to reduce emissions by 26 to 28 per cent below 2005 levels by 2030, as well as the Paris Agreement's goal to 'achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty' (i.e. net zero emissions).

State-based policy and regulatory initiatives should seek to complement and contribute to the national effort to meeting Australia's emissions reduction pledges under the Paris Agreement. Only the Australian Government is party to both of these treaties, not sub-national governments or their administrative institutions. Governments and their agencies should be focused on ensuring the current approval and regulatory frameworks are efficient and effective and not introduce measures that undermine this framework, which will ultimately result in poor emission reduction policy, increased regulatory burden and a reduction in Australia's competitiveness.

Further, these international treaty agreements have been successful because they provide all participating nations with a flexible approach to responding to climate change while ensuring economic development. They do this by building on the UNFCCC framework. Again, an international treaty entered into by sovereign nations.

The UNFCCC adopts a production and not a consumption based approach to accounting for a party's emissions. This means that the emissions embedded in exported goods such as coal, which are subsequently released to the atmosphere when combusted within that sovereign nation's border, are attributed in both an accounting and legal sense to the importing nation under the UNFCCC.

The integrity of the multilateral UNFCCC treaty relies on all parties observing its internationally accepted rules based accounting system. This is to avoid double counting. This means that Australia's scope 3 emissions become the legal responsibility of the importing country, and as such are accounted for as their scope 1 emissions. Under the Paris Agreement, they are reconciled for compliance purposes against the importing country's Nationally Determined Contribution emissions reduction pledge. The small number of countries not in the Paris Agreement still comply (except for two) with the UNFCCC's accounting framework, as they are still parties to that legal instrument.

The IPC's proposed condition could potentially serve to undermine the Paris Agreement by distorting the well-established UNFCCC framework that underpins it. Nations have agreed to take responsibility for national emissions. How they do that is a matter for them, taking into account their development needs.

It is neither practical nor plausible for a state government agency to determine or manage the responses of other nations.

The work of the IPC affects public and investor confidence in this vital sector and to ensure and safeguard the credibility of project approval processes, the IPC should not impose conditions such as these on projects in NSW.

Yours Sincerely

A handwritten signature in blue ink that reads "Tania Constable". The signature is fluid and cursive, with a large loop at the beginning.

**TANIA CONSTABLE PSM
CHIEF EXECUTIVE OFFICER**