

9 August 2019

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

By e-mail: [ipcn@ipcn.nsw.gov.au](mailto:ipcn@ipcn.nsw.gov.au)

Dear Sir or Madam

I refer to the Independent Planning Commission's statement dated Friday 2 August 2019 regarding its consideration of the pending State Significant Development Application for the United Wambo Open Cut Coal Mine Project.

In the Statement, the IPC notes it is considering a proposed condition of consent that would require the applicant for the United Wambo Open Cut Coal Mine Project to:

- (i) prepare and implement an export management plan which compels the applicant to use its best endeavours to ensure that any coal extracted from the approved development that is to be exported from Australia is only exported to countries that are (as at the date of export):
- signatories to the *Paris Agreement*, or
  - "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 [*Paris Agreement*]". (the **Condition**).

The IPC has invited feedback on the above condition. Given the extremely short deadline for providing comment, Whitehaven has not been able to obtain legal advice as to whether the IPC could lawfully impose the Condition under the NSW EP&A Act, but has serious doubts over the legality of this unprecedented export control condition.

More broadly, there are important policy reasons why the Condition should not be allowed to proceed.

The Condition seeks to place an obligation on the applicant to minimise scope 3 emissions, despite these emissions being generated in other jurisdictions/countries as scope 1 emissions, and where the proponent has no control. It also would appear to have the effect of influencing where countries **not** party to the *Paris Agreement* procure their coal supplies. This of course could be resolved by procuring the coal supply from a third-party trader. The imposition of this Condition therefore, as a mechanism to regulate the international export of the coal produced by those projects, does not represent a suitable or consistent approach for minimising scope 3 emissions generated in other countries.

The management of the international scope 3 emissions attributable to coal exported from Australia is a policy matter for the governments of foreign countries and, to a limited extent, the Commonwealth Government. The IPC, as a State planning body, requiring the NSW Planning Secretary to address this complex policy issue by way of an arbitrary regime of export management plans made under NSW planning approvals, is a clear case of overreach.

There are significant risks the Condition could put brownfield or greenfield coal projects in NSW at a competitive disadvantage, despite the fact a proponent has no influence or control over the sovereign decision of other countries to manage their domestic greenhouse gas emissions under the *Paris Agreement* framework or otherwise.

The Condition would unnecessarily create sovereign investment risk for major mining projects in NSW (to the advantage of competitor Australian States and foreign countries). In addition, there is no Commonwealth or NSW Government climate change policy which envisages overseas scope 3 emissions associated with Australian mining projects being managed via the NSW planning regime (see, e.g. the *NSW Climate Change Policy Framework*).

Practically, it is unlikely the Condition will have any impact on the scope 3 emissions of NSW mining projects, let alone in mitigating global greenhouse gas emissions. The Condition is inflexible, practically unworkable and could result in regulatory uncertainty that undermines confidence in the State's single largest export industry. For example, the Condition appears to assume that the applicant will sell coal directly to an end customer in a known country. However, if product coal is sold to a third-party trader (who may on-sell the purchased coal), it would not be feasible for the applicant to comply with the Condition.

Finally, the Condition would require the NSW Planning Secretary to consider and approve a detailed export management plan, and the NSW Department of Planning, Industry and Environment to monitor compliance with the approved plan. The control of coal exports to overseas markets is not within the expertise or regulatory ambit of the planning branch of the NSW Government.

Whitehaven is proud of the very high quality coal we produce and of our role in helping to reduce carbon emissions in key customer countries but we strongly object to the Condition and consider exports should continue to be regulated under Commonwealth laws, not by development consents granted by the IPC.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Flynn", with a long horizontal stroke extending to the right.

Paul Flynn  
**Managing Director and CEO**