

9 August 2019

BY EMAIL: ipcn@ipcn.nsw.gov.au

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

Dear Sir or Madam

United Wambo Open Cut Coal Mine Project (SSD 7142) and Associated Modifications (DA 305-7-2003 MOD 16 and DA 177-8-2004 MOD 3) (Wambo Project)

Submission in relation to Proposed Condition relating to Greenhouse Gas Emissions

We refer to the Statement dated 2 August 2019 released by the Independent Planning Commission (IPC) relating to the Wambo Project which sought comments in relation to the following proposed condition relating to greenhouse gas emissions (GHG) by 9 August 2019:

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 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.*

(Proposed Condition).

Bloomfield Collieries Pty Ltd (Bloomfield) thanks the IPCN for the opportunity to provide its comments in respect of the Proposed Condition.

Bloomfield is a coal producer in the Hunter Valley which has open cut coal mining operations at East Maitland and Singleton.

Bloomfield does not support the Proposed Condition.

Bloomfield believes that the Proposed Condition may be tested to understand whether it is, in fact, lawful. This process of challenge and testing would provide a further period of delay and uncertainty for the Wambo United project and also for other projects which are being assessed at this time.

We do not clearly understand what is intended. If the intention is to seek to influence countries to change their attitude to the Paris Agreement, then we believe that the Proposed Condition is attempting to cover areas of responsibility which are squarely the province of the Federal Government. The Federal Government is elected on policy platforms which include its approach to international affairs and its commitment to various global treaties and agreements. Those global treaties include the Paris Agreement within the United Nations Framework Convention on Climate Change.

The reasons underpinning whether a country is or is not a signatory to the Paris Agreement may be complex and include geopolitical as well as environmental considerations. Our view is that each country has to weigh up its responsibilities, consider what is and is not possible and act accordingly. We consider it highly inappropriate that any country should make judgements on the reasons and circumstances behind another country's decision to participate in or withdraw from the Paris Agreement. For instance, it is our understanding that Taiwan, whilst not being a signatory for a number of complex political reasons, has nonetheless adopted strong greenhouse policies. Under 1 b) of the Proposed Condition, the NSW Planning Secretary would determine whether the emission reduction policy commitments of the sovereign country of Taiwan are sufficiently robust to permit the sale, by a NSW private sector producer, of coal to that foreign power.

If the Federal Government were, for a particular reason, to constrain every participant in the Australian Coal industry from exports to one or more jurisdiction, all Australian market participants would be on an equal footing. The Proposed Condition is inappropriate and anti-competitive in that it imposes project specific export constraints on Wambo United whilst other NSW and Australian mines are not so constrained.

If the Proposed Condition flows from a view that Federal Government policy is inadequate in relation to the use of our resources in overseas jurisdictions, we believe that the IPCN should raise this issue with the Federal Government directly, rather than attempt to make policy by proxy through the imposition of the Proposed Condition on Wambo United and potentially on other projects currently seeking determination.

Practical Marketing Problems

Bloomfield believes that there are a number of practical implementation problems with the Proposed Condition in that the identity of the ultimate customer and the ultimate destination country is not always known to the producing mine. Some examples are set out below.

1. Although the majority of the coal produced from a mining operation is allocated to contracts with defined customers who can generally be identified as being from a specific country, there is often a residual amount of coal which falls outside the specification of the contract or which for a variety of other reasons, is sold to another producer or a coal trader.

Established coal trading companies have operated in the Newcastle coal chain for years; they buy and sell coal from different producers at different times. These coal traders perform a valuable role in the export industry as they provide a ready market for coal which does not meet the required specification of the seller's contracted customer base. These coal traders view the detail of their markets and customers as being commercial in confidence and may be prevented from sharing details of ultimate customers and destination countries by their own commercial interests or by contract conditions.

2. The remnant portion of each coal shipment must be disposed of. This remnant is left over after a vessel is filled with coal for a particular customer and is often only a small percentage of the cargo size. Port Waratah Coal Services, since it operates by assembling cargoes in the order that they will be shipped, usually does not

have sufficient stockpile space to allow each exporter to retain coal remnants. As a result the cargo remnants are often sold between coal producers and added into the next appropriate shipment. Despite the individual quantity of each remnant being relatively small, the total volume of remnants is a significant proportion of sales over the course of the year.

3. Newcastle Coal Infrastructure Group (“NCIG”) coal terminal has stockpiles dedicated to individual producers for cargo assembly. This means that producers have permanent stockpiles of coal at NCIG. It is unclear what the status of a stockpile (with a volume of hundreds of thousands of tonnes stockpiled for several vessels sailing to numerous countries) would be after a single producer subject to the Proposed Condition added a trainload (less than 10 thousand tonnes) of coal to it. It seems that a producer could not “ensure” that all coal from the train added to that stockpile was loaded into particular ships destined for customers in an approved country.

4. The globalCOAL trading platform operates to provide a more liquid market for coal trading. The principle is that the two parties on either side of a sale transaction are able to conduct business by framing offers on one side and bids on the other. When the offer and bid are aligned as to value, the sale is executed. The respective identity of buyer and seller is unknown to the other party during the process. The Proposed Condition may not permit any sales from affected projects to be undertaken on the globalCOAL index since the seller cannot know the destination country. Any such inability to access and use the globalCOAL platform would be a significant business impediment to any project or projects subject to the Proposed Condition and would place any such projects at a competitive disadvantage when compared to other NSW, Australian and international coal producers

5. Current contractual arrangements with customers are unlikely to contain references to the Paris Agreement signatory status of the customer’s country. We believe that for any producer on whom the Proposed Condition is imposed, for new contracts with customers a new clause would be required which allows the contract to be voided by the producer, if the customer’s country of residence ceases to be a signatory to the Paris Agreement, or to have emissions reduction policies which satisfy the NSW Planning Secretary. From a customer perspective, any such clause would reduce contractual security of supply and again place the affected producer at a competitive disadvantage compared to producers unconstrained by the Proposed Condition.

For existing contracts, if the customer resides in a country not party to the Paris Agreement and the Planning Secretary should be dissatisfied with that country’s policies, it is unclear how a producer affected by the Proposed Condition could meet both its pre-existing contractual obligations and the requirements of the Proposed Condition and what the commercial, legal and international consequences would be if it could not meet both conflicting requirements.

6. We believe that restricting individual NSW coal producers from:

- selling coal to coal trading companies or other producers,
- trading on the globalCOAL platform,
- dealing effectively with remnants at PWCS,
- selling through terminals with dedicated coal stockpiles, and
- limiting the contractual terms for customers

makes the Proposed Condition unacceptable to producers because of the resultant competitive and discriminatory disadvantages within each of the State of NSW, Australia and the global trade for coal.

Practical Site Operational Problems

Coal produced from different sites, which have different consent conditions, is blended at the mine sites and at the ports. Current infrastructure, at mine sites and ports, may be inadequate to maintain separation of coal by source. Coal blending is essential to the achievement of contractually required market specification. The application of different marketing conditions restrictions on the ability to blend across all products could significantly impact on producers' economic viability.

Finally, in addition to these practical and operational issues, we believe that the Proposed Condition is unreasonable in that it gives the Planning Secretary unfettered powers, impacts the producers' commercial in confidence dealings with customers and leaves no appeal rights for the producer if the Planning Secretary is dissatisfied with the content or implementation of the Export Management Plan.

Conclusion

Bloomfield does not support the Proposed Condition.

We believe that it may be unlawful and subsequently tested in the courts, leading to delays and uncertainty.

We also believe that there are a number of implications for coal marketing and contract performance which will make the Proposed Condition unfairly onerous and lead to commercial disadvantage for individual producers.

If you have any questions in relation to this letter, please contact Geoff Moore at [REDACTED]

Yours sincerely,

THE BLOOMFIELD GROUP



Brett Lewis

Chief Executive Officer