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9 August 2019

Independent Planning Commission
by email: ipcn@ipcn.nsw.gov.au

RE: Proposed Export Management Plan condition for United Wambo

Thank you for the opportunity to comment on the Commission's proposed condition of consent for the United Wambo coal project in response to the issues raised following the Land and Environment Court's judgements in *Gloucester Resources v Minister for Planning* and *Australian Coal Alliance v Wyong Coal Pty Ltd*.

We would be very happy to participate in a meeting with the IPC to discuss these complex issues further should that be useful.

Lock the Gate's comments on this proposal are threefold:

1. Since the proponent's own submission on this matter rests on the assumption that the United Wambo project is part of a global coal and energy scenario over the next two decades that *fails* to meet the temperature goals of the Paris Agreement, it is hard to see how the IPC can grant consent to the project having regard to NSW's *Climate Change Policy Framework*, and sections 14 (1) and 14 (2) of the *State Environmental Planning Policy (Mining, Petroleum and Extractive Industries) 2007* (the Mining SEPP).
2. We nevertheless conditionally support the purpose of the Export Management Plan condition proposed by the Commission and recognise the Commission's efforts to balance competing arguments and considerations in this complex area of policy and law. However,
3. The proposed condition must be amended to ensure it can achieve its purpose over the duration of this project given the dynamic nature of the Paris Agreement. These amendments must include:
 - a. an outline in the condition of the expected contents of the Export Management Plan, as occurs for other Management Plans;
 - b. a review mechanism for the Export Management Plan and the project as a whole in keeping with the five year reviews of nationally determined contributions towards reaching the Paris Agreement goals.

Support the intent behind the proposed Export Management Plan condition

We support the thrust of the Commission's proposal to ensure that the United Wambo project, if approved, has a condition requiring the mine to develop protocols and an Export Management Plan to ensure that all practicable measures are adopted by the Applicant to minimise greenhouse gas emissions identified as Scope 3 emissions in the EIS.

This condition is necessary because the claims made by the proponent in Part D of its submission of 14 April regarding these matters are self-serving, untested and, in places, contradictory. The proponent's argument rests on future coal demand modelled in the *World Energy Outlook 2018* "New Policies Scenario." This scenario is, in the words of international experts on the matter "a business as usual scenario that charts a dangerous course to a world with between 2.7°C and 3°C of warming."¹ It contrasts with the WEO 2018 Sustainable Development Scenario under which greenhouse emissions reduce steeply from this point forward. In other words, the proponent's argument assumes that greenhouse gas emissions will not be "minimised to the greatest extent practicable."

Section 14 (1) of the Mining SEPP clearly enjoins consent authorities to consider imposing conditions of consent on mining developments to ensure "that greenhouse gas emissions are minimised to the greatest extent practicable" and this condition attempts to achieve that purpose. Without this condition, the public and the NSW Government cannot be satisfied that the proponent is taking all practicable measures to minimise greenhouse gas emissions identified as Scope 3 emissions in the EIS. Given the difficulty created by cross-jurisdictional emissions, it is appropriate that responsibility for ensuring that downstream emissions are minimised is partly given to the proponent, with appropriate concurrence of the Secretary of the Department.

The proposed Export Management Plan is a mechanism to ensure the proponent is taking all practicable measures to minimise greenhouse gas emissions identified as Scope 3 emissions in the EIS. However, the condition as it is phrased does not achieve its purpose, and so we urge the Commission to amend it as suggested below.

Amendment proposed to the Export Management Plan condition

Confining the protocol in the Export Management Plan to an affirmation of whether the customer countries consuming coal from United Wambo are signatories to the Paris Agreement does not achieve the purpose of ensuring that greenhouse gas emissions are minimised to the greatest extent practicable. It is not membership of the agreement *per se* that minimises greenhouse gas emissions, but the implementation by each party to the agreement of their nationally determined contributions (NDCs) along with their participation in the ambition mechanism of the Agreement.

Central to the Paris Agreement is a framework conceiving the efforts of parties to the agreement as "a progression over time" (Article 3). That is, being a party to the Agreement means making successive commitments to action that becomes more ambitious over time, reaching towards the goals of the agreement. This is crucial to the agreement's architecture because accepted analysis indicates that current mitigation actions proposed by the parties to the agreement are insufficient to meet the temperature goals of the Paris Agreement.

The Paris Agreement, unlike other international frameworks, establishes a continuous, regular process to escalate mitigation efforts by all countries, known as the "ambition mechanism." This process is comprised of:

- A stocktake of implementation and collective progress every five years;
- Submission of updated nationally determined contributions (NDCs) from each country every five years, informed by the stocktake; and
- Explicit expectation of highest possible ambition in each successive contribution.

¹ "Joint letter to the IEA" 2 April 2019. *Mission 2020*. <http://www.mission2020.global/letter-to-iea/>

The crucial element here is time and the amendment and adjustment every five years of what each country and the collective parties to the Agreement deem to be the greatest extent practicable emissions reductions. It is crucial that the IPC reflect this structure in the Export Management Plan condition.

The first global stocktake was undertaken in 2018 through the Talanoa Dialogue process. The synthesis report from the process acknowledges that, “Reports submitted to the Talanoa Dialogue indicate that the aggregate efforts from existing NDCs fall well short of achieving the long-term goal of the Paris Agreement; their full implementation would lead to a median increase in global temperatures of about 3.2 °C by 2100.”² Following this stocktake, new or updated nationally determined commitments are due to be submitted by all parties in 2020. This will be followed by another stocktake before the submission of the next nationally determined commitments in 2025 and then again in 2030 and so on. Each new round is explicitly about intensifying the scale of emissions reductions. Because the proposed life of this coal mine coincides with a period of uncertainty and escalation of effort towards the Paris Agreement temperature goals, the condition proposed by the IPC will fail in its purpose unless it is amended.

There are two crucial additions needed to the Export Management Plan condition proposed by the Commission.

Firstly, mere membership of the Paris Agreement does not achieve emissions reductions “to the greatest extent practicable.” It is conventional in mining consents for the content and pre-requisites of Management Plans to be outlined in some detail and this is required in this instance. If the applicant were to merely submit a list of countries’ names and an affirmation that those countries were parties to the Paris Agreement, the Planning Secretary would not be able to be satisfied that greenhouse gas emissions were being minimised to the greatest extent practicable. More detail is required in the condition specifying the contents of the Export Management Plan.

Secondly, a time-based review and update mechanism is indispensable to achieving the condition’s purpose of minimising greenhouse gas emissions to the greatest extent practicable. The life of this project, should it be granted consent and proceed to development, will span a period of crucial transition in the implementation of the Paris Agreement, with actions from the participating countries progressively becoming more ambitious, expanding the scale of “greatest extent practicable” emissions reductions. The proponent argues now that there will be coal demand, based on analysis of existing commitments, but these commitments will not remain static. Therefore, the Export Management Plan must be reviewed in 2020, 2025 and 2030 and every five years thereafter for the life of the mine.

Given the scale of environmental and social consequences if the world fails to achieve the temperature goals of the Paris Agreement, it is appropriate that this review mechanism also include a provision for the Planning Secretary to review the consent itself.

In order to properly fulfil its purpose, the Export Management Plan condition should specify that the Export Management Plan must include:

- Description and analysis of the nationally determined commitments of the countries where the coal from United Wambo is to be burnt with reference to whether or not greenhouse emissions are being reduced to the greatest extent practicable;

² Talanoa Dialogue for Climate Action. *Synthesis Report from the preparatory phase*. November 2018. https://img1.wsimg.com/blobby/go/9fc76f74-a749-4eec-9a06-5907e013dbc9/downloads/1cu4u4230_141793.pdf

- A report based on these countries' national communications to the UNFCCC as to their progress in reducing greenhouse emissions in line with their commitments;
- Modelling of projected coal use consistent with meeting the goals of the Paris Agreement and the contribution of NSW coal supply in that global trajectory;
- A protocol for reviewing the mine's Scope 3 emissions in light of the ambition mechanism of the Paris Agreement;
- Independent expert verification of the above provisions.
- A review of the Export Management Plan in 2020 coinciding with the first round of the ambition mechanism, and further reviews of the Plan at five-yearly intervals.

United Wambo in the global carbon budget

Under the Paris Agreement, which has been endorsed by the NSW Government, the nations of the world agree to act together to prevent warming above 2°C, but and committed to look at taking stronger action that might limit warming to 1.5°C.

Clause 14(2) of the Mining SEPP provides:

“Without limiting subclause (1), in determining a development application for development for the purposes of mining, petroleum production or extractive industry, the consent authority must consider an assessment of the greenhouse gas emissions (including downstream emissions) of the development, and must do so having regard to any applicable State or national policies, programs or guidelines concerning greenhouse gas emissions.”

This provision allows the consent authority not only to make conditions to address downstream burning emissions, but to also include these considerations in its determination decision. There are strong arguments against consent being granted for this project if the IPC has regard to applicable State or national policies, programs or guidelines.

The *NSW Climate Change Policy Framework* specifically endorses the Paris Agreement on climate change. That framework also lists among NSW's roles in climate change “Advocate for Commonwealth, COAG and international action consistent with the Paris Agreement.” “Action consistent with the Paris Agreement” means consistent with nationally determined commitments, but also consistent with the goals of the agreement, which are to limit warming to below 2 degree above pre-industrial temperatures and to investigate the more stringent temperature goal of 1.5 degrees warming. The inclusion in the policy of advocacy for “international action consistent with the Paris Agreement” provides the IPC with a basis for considering the adequacy of international action for meeting the temperature goals of the Paris Agreement when making its determination for this project.

Professor Will Steffen has provided expert advice which has been submitted to the IPC on behalf of Hunter Environment Lobby by the EDO. This advice contextualises the greenhouse emissions from this development in the allowable carbon budget for achieving the Paris Agreement goal of limiting global average temperature rise to below 2 degrees Celsius and the safer course of limiting warming to 1.5 degrees. The carbon budget for the latter will be entirely consumed in just fifteen years of emissions at current rates, according to Prof Steffen.

We note that at 2 degrees warming, there will be an 87% chance each year that temperatures in the Coral Sea will be high enough to cause the kind of mass bleaching of the Great Barrier Reef we witnessed in 2016 and there would be a 77% chance each year that we would experience the

extremes of heat that came in the “Angry Summer” of 2012/13.³ At 2 degrees of warming, Australians can expect significant water shortages, reduced agricultural production, significant extinction of wildlife and plants and security challenges from tens of millions of people in our region of the globe being threatened by coastal flooding.⁴

Given this situation, it is incumbent on the IPC to consider whether “the refusal of the project could be seen to make a meaningful contribution to remaining within the carbon budget and achieving the long term temperature goal,” following the *Gloucester Resources* judgement at [554]-[555].

The proponent has submitted material purporting to demonstrate that failure to approve this project will result in a net increase in greenhouse gas emissions, but the argument does not stand up to scrutiny. It begins from the assumption, “That demand for coal will remain irrespective of whether the IPC approves the Project or not and, if the Project is not approved, the demand will simply be met by product coal sourced from elsewhere.” In other words, the proponent’s submission relies on the assumption that greenhouse gases will *not* be minimised to the greatest extent practicable, and that the Paris Agreement temperature goals will not be met.

The proponent’s argument rests on future coal demand models in the *World Energy Outlook 2018’s* “New Policies Scenario.” This scenario is, in the words of international experts on the matter “a business as usual scenario that charts a dangerous course to a world with between 2.7°C and 3°C of warming.”⁵ In other words, the proponent’s arguments in Part D of its 13 April submission relies on the assumption that greenhouse gas emissions will increase to make the argument that this increase will be marginally smaller if this mine proceeds compared to hypothetical other coal mines not within the IPC’s jurisdiction. On the basis of this information, since the proponent has itself made clear that the context for this project is one that assumes failure to meet the Paris Agreement temperature goals with all of the environmental, economic and social harm that entails, it is hard to see how the IPC can justify granting consent to this project.

³ See “Why 2 degrees of global warming is much worse for Australia than 1.5 degrees” <https://theconversation.com/why-2-of-global-warming-is-much-worse-for-australia-than-1-5-77548> based on “Australian climate extremes at 1.5 °C and 2 °C of global warming” published in *Nature Climate Change*, April 2017.

⁴ Climate Institute Fact Sheet, April 2015
http://www.climateinstitute.org.au/verve/resources/TCL_Why_2C_matters_Factsheet_290615.pdf

⁵ “Joint letter to the IEA” 2 April 2019. *Mission 2020*. <http://www.mission2020.global/letter-to-iea/>