

**INQUIRY INTO ENVIRONMENTAL PLANNING AND
ASSESSMENT AMENDMENT (TERRITORIAL LIMITS)
BILL 2019**

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SUBMISSION ON THE ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (TERRITORIAL LIMITS) BILL

The purpose of this Bill is to prevent planning authorities from considering or dealing with environmental impacts that go beyond New South Wales' borders. Such impacts can be significant, and NSW is at least in part responsible. As such we believe the Bill should be scrapped.

The Government introduced this Bill without consulting the public. The contribution of New South Wales coal to climate change is a serious matter of public interest that concerns us all. The Bill is contrary to the spirit of the Environmental Planning and Assessment Act and established case law. It is important to note that Clause 14 (2) of the Mining SEPP has never been the sole reason a coal mine has been refused. The Rocky Hill and Bylong coal projects were both refused primarily because of their local environmental impacts. However, since the Rocky Hill judgement in February, mining companies have been for the first time providing in-depth information about the climate change context of new coal mines. This is information that planning authorities need, and the public needs. Ignoring the climate change impacts of New South Wales coal mines isn't going to stop those impacts occurring and the need to take these matters seriously is becoming urgent.

Schedule 1 of the proposed Bill would make it unlawful to impose a condition on any development for the purpose of achieving something related to impacts occurring outside Australia as a result of the development. In terms of its application to coal mining in NSW, it would be unlawful to require a proponent to be responsible for the impacts of burning the coal outside Australia.

It is indisputable that the purpose of mining coal for domestic use or export is to burn it. The emissions of greenhouse gases are unavoidable and the proponents of mining projects know this. Greenhouse gas emissions generated by coal mined in Australia have a global impact on the climate regardless of where it is burnt. Therefore, any coal that is mined in Australia contributes to the greenhouse gas effect for all countries.

Although Schedule 1 is not about whether a mine should proceed or not, it would prevent a consent authority requiring greenhouse offsets, or payments into adaptation funds, or other climate change related mitigation measures. The mining proponent would be absolved of any responsibility for mining and exporting a product knowing the inevitable global consequences.

Schedule 2 would remove the words "(including downstream emissions)"; words that have been there since the Mining SEPP was created in 2007. The inclusion of downstream emissions in the policy came as a result of a November 2006 Land and Environment Court decision (*Gray v Minister for Planning*) setting aside the Government's assessment of the new Anvil Hill coal mine in the Upper Hunter which found that downstream greenhouse emissions should have formed part of the environmental assessment.

With the removal of these words, consent authorities will no longer be required to consider the impact of downstream emissions when they are deciding whether or not to allow a coal mine or gas field to go ahead. This change would introduce considerable doubt over whether a planning authority should consider climate change in its approval, and may leave them open to legal action by mining companies if they do. There is no reason to remove these words other than to absolve proponents from their responsibility for downstream emissions.

In September 2019, the IPC refused approval for the proposed Bylong coal mine, citing downstream greenhouse gas emissions in its decision. In the wake of that decision, the NSW Minerals Council launched a public campaign to wind back the downstream emissions clause, a measure it had been lobbying for throughout the year. Ministerial diaries show that the Planning Minister met the Minerals Council on 18 September, the same day the Independent Planning Commission published its decision to refuse approval to the Bylong coal mine.

In October, while unprecedented spring bushfires burned in the state's north, the Planning Minister introduced the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019*, to amend the Act and the Mining SEPP to wind back the role of downstream emissions in planning decisions. The apparent bearing of the Minerals Council representations, without consulting the public, is of concern.

The Pacific Islands and many other nations cannot understand why Australia is doing nothing to phase out coal mining, given its destructive impact on the global climate. Here is the chance to maintain the status quo, in favour of the more balanced approach to determining future coal mines and coal mine extensions, that is the current practice.

This submission was compiled by members of Climate Change Australia – led by Mick Lyons. The group can be contacted via Mr Lyons as follows:

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