Submission No 5

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

Organisation: NSW Minerals Council

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ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (TERRITORIAL LIMITS) BILL 2019

LEGISLATIVE COUNCIL INQUIRY - PORTFOLIO COMMITTEE NO. 7 – PLANNING AND ENVIRONMENT

15 December 2019

NSW MINERALS COUNCIL

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Introduction

The NSW Minerals Council (NSWMC) and its members welcome the opportunity to provide a submission to the NSW Legislative Council's Portfolio Committee No. 7 – Planning and Environment which is currently conducting an inquiry into the provisions of the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* (the Bill).

Mining is a $25 billion industry in NSW, and coal is NSW's most valuable export worth $19.7 billion (NSW budget papers 2019). Mining underpins the strength of regional economies across the state and has significant flow on benefits to other industries. The NSW mining industry:

- Is the state's largest export industry by value;
- Directly employs around 40,000 people in NSW, according to the Australian Bureau of Statistics (ABS)[1], and supports the jobs of many thousands more people indirectly;
- Directly spent over $10.7 billion on goods and services, wages and salaries, local government payments and community contributions in NSW during 2017/18[2];
- Supports over 7,135 businesses throughout NSW[3];
- Generated over $2 billion in royalties in 2018-19, with over $8 billion forecast over the forward estimates[4].

The economic contribution of the employment and direct spending is critical to many towns and communities across large parts of regional NSW.

- Far West - 29% of GRP
- Hunter - 18% of GRP
- Central West - 11% of GRP
- North West - 8.5 % of GRP
- Illawarra - 8% of GRP

A stable and responsible regulatory framework will ensure that the NSW mining industry is able to continue to contribute to the economic health of NSW and deliver more opportunities to thousands of mining-related businesses in Sydney and across regional NSW.

[1] Australian Bureau of Statistics -Labour Force Statistics
[2] NSW Minerals Council Expenditure Impact Survey 2017-18
[3] NSW Minerals Council Expenditure Impact Survey 2017-18
[4] 2019 NSW Budget Papers

Intent of the Bill

The purpose of the *Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019* as outlined in Minister Stokes' Second Reading speech is to clarify how conditions of development consent under the State's planning legislation treat impacts occurring outside the territorial limits of Australia.

The Bill does this by amending Part 4 of the *Environmental Planning and Assessment Act 1979* (the Act) and *State Environmental Planning Policy – Mining* (Mining SEPP) created under the Act.

The Minister noted the Bill principally clarifies that development consent conditions can only be imposed if they relate to impacts occurring within Australia or its external territories. This is in response to the Independent Planning Commission (IPC) imposing a condition of consent on the United Wambo mining project which directed the proponent to prepare and comply with an export management plan for the coal that it was extracting. This involved the proponent using all reasonable and feasible measures to ensure the extracted coal is only exported to countries that are signatories to the Paris Agreement within the United Nations Framework Convention on Climate Change, or are signed off by the Secretary of the Department of Planning, Industry and Environment as having similar policies.

The condition highlighted a jurisdictional issue with the *Environmental Planning and Assessment Act 1979*, which does not deal expressly with the extraterritorial impacts of development—that is, impacts of development outside the territorial limits of Australia and therefore outside the territorial capacity of the New South Wales planning system to effectively enforce such conditions.

Accounting for downstream emissions in the NSW planning system

NSWMC opposed the condition imposed on the United Wambo project by the IPC.

The imposition of conditions on exports and a proposal to require the management of the emissions of foreign sovereign nations undermines the operation of the United National Framework Convention on Climate Change (UNFCCC). The UNFCCC framework (1994) is the accepted legal vehicle dealing with the reduction of greenhouse gas emissions and mitigation and adaption to climate change. The framework – agreed by 197 sovereign countries – provides the means for sovereign nations to measure and manage their national emissions.

NSWMC supports the Australian Government's Paris Agreement pledge through its Nationally Determined Contribution to reduce emissions by 26 to 28 per cent below 2005 levels by 2030. Please find attached a copy of the NSWMC Climate Change, Energy and Emissions Policy (Attachment A).

Any State-based policy and regulatory framework should seek to complement and contribute to the national effort to meeting Australia's emissions reduction pledges under the Paris Agreement. State governments and their agencies should ensure the current approval and regulatory frameworks are efficient and effective and not do introduce measures that undermine or conflict with the agreed national framework.

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 goods exported to other countries 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 the accepted rules-based accounting system 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. That is, the operation of the international greenhouse gas accounting framework allocates emissions to the emitting country and not the source of the fuel.

NSWMC supports any policy initiative by the NSW Government that provides clarity and certainty on how downstream emissions are accounted for in the NSW planning system, provided it's consistent with the Nationally Determined Contribution by the Australian Government and the greenhouse gas emissions accounting framework underpinning the Paris Agreement.

Limitations of the Bill

NSWMC and its members are concerned the Bill currently before Parliament falls short of delivering the policy outcomes intended by the NSW Government. Publicly available legal analysis on the Bill confirm the proposed amendments don't remove the legal risk that downstream emissions could be used as a reason to refuse projects in NSW.

Essentially this is because the Bill delivers a partial remedy only without the other necessary component parts to make it explicit that downstream emissions cannot be used to refuse NSW projects.

The issues with the Bill are summarised as follows:

> <u>EP&A Act Amendment</u>
>
> Under the proposed amendment a consent authority can still refuse a development on the basis of greenhouse gas or climate change considerations under the multiple heads of consideration under s.4.15 of the EP&A Act.
>
> The addition of s.4.17A into the EP&A Act (which prohibits conditions relating to impacts in other jurisdictions only, and is not specifically related to scope 3 emissions) without an associated change to other sections of the EP&A Act means the Bill fails to prevent NSW projects from potentially being refused on the basis of scope 3 emissions.
>
> The omission of an associated change to other sections of the EP&A Act potentially leads to greater risk of refusals in the event a consent authority forms the view that without a condition dealing with impacts in other jurisdictions (such as United Wambo) they have no option but to refuse the project.
>
> <u>Mining SEPP Amendment</u>
>
> The amendment to the Mining SEPP which removes "(including downstream emissions)" from clause 14(2) does not remove the general requirement to consider greenhouse gas emissions, which still includes scope 3 emissions.
>
> This means that without scope 3 emissions being specifically exempted from the scope of clause 14(2) and other relevant clauses within the SEPP, the removal of the words as proposed in the Bill doesn't change the existing effect of the clause.

NSWMC and its members have been urging the NSW Government to provide policy certainty on this issue since early 2019 to clarify that downstream emissions cannot be used as a reason to refuse NSW projects, and that any NSW development assessment process relating to greenhouse gas emissions is consistent with the National NDC and Paris Agreement policy frameworks.

ATTACHMENT A

Link: http://www.nswmining.com.au/environment/climate-change,-energy-and-emissions

Climate Change, Energy and Emissions Policy

The NSW Minerals Council acknowledges that sustained global action is required to reduce the risks of human-induced climate change.

The NSW Minerals Council supports a measured transition to a low emissions global economy. This includes participation in global agreements such as the Paris Agreement, which would hold an increase in the global average temperature to well below 2°C above pre-industrial levels.

This will require a policy framework encompassing:

- Australia's participation in global agreements such as the Paris Agreement with greenhouse gas emission reduction commitments from major emitting nations
- A combination of short, medium and long-term market-based policy measures that:
    - Provide for least cost abatement of greenhouse gas emissions
    - Maintain the international competitiveness of Australian industry
    - Minimise adverse social and economic impacts on households
    - Provide industry with policy certainty to make long-term investments.
- Substantial investment in a broad range of low emissions technologies and adaptation measures.

Access to reliable and affordable energy is central to the long term sustainable success of our economy. Policy measures must deliver reliable and affordable energy at least cost while putting Australia on a pathway to meeting its emissions reduction targets. A national coordinated approach to climate and energy policy needs to recognise the energy and resource intensive nature of the Australian economy.

All sectors of the economy have a role to play in meeting the challenge of Australia's emissions reductions targets, including the resources sector. A least cost approach to abatement should include access to international offsets.

The National Electricity Market in Australia is facing serious challenges including the erosion of baseload generation capacity which is already adversely impacting Australia's industrial sector and households through higher prices and reduced reliability.

The NSW Minerals Council believes a technology-neutral approach should be adopted for all low emissions energy technologies where no one technology is favoured to the exclusion of others. Any policy approach should aim to reduce energy costs in Australia and focus on securing reliable lowest cost dispatchable energy supply that is available 24/7, while meeting emissions reduction targets.

The NSW Minerals Council will continue to play a constructive and positive role in the public policy debate, acknowledging the following:

- Australia needs to restore its international comparative advantage of reliable, low-cost energy while meeting its emissions reduction targets.
- Our sector makes a significant socio-economic contribution to NSW. As a large producer and consumer of energy, the sector recognises it has an important role in addressing energy and climate change issues while delivering returns to our stakeholders, including employees, communities and shareholders.
- The global transition to low emissions technologies – including solar, wind, batteries, gas, advanced coal and nuclear energy – depends on the metals and raw materials provided by the minerals sector.

Our members continue to demonstrate their commitment to managing the risks of climate change at their operations through:

- Reducing their own operational greenhouse gas (GHG) emissions
- Using water responsibly, including maximizing water recycling opportunities
- Striving to minimize the footprint and environmental impact of their operations
- Discovering and mining deposits of the metals needed for a transition to a cleaner energy future