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Submission: Discussion Paper, Environmental Impact Assessment Improvement Process

Thank you for the opportunity to comment on this discussion paper outlining the Department's "Environmental Impact Assessment Improvement Project."

The environmental assessment process for state significant development in NSW leaves a great deal to be desired. Action to address this state of affairs would be very welcome to the communities that are suffering the brunt of the impacts of the coal mining industry, but the Discussion Paper released by the Department does not address the problems consistently raised by the public in responding to environmental impact assessments prepared for mines. Not only does the discussion paper fail to indicate that there is improvement on the way, it raises the likelihood that things are in fact going to get much worse.

Before we address the Discussion Paper, we want to outline for the Department why accurate environmental assessment is important.

After the assessment is over, after the determination made, the people who live in mining affected communities, and there are thousands of them, continue to live with the impacts of mining.

If the air quality assessment under-estimates the cumulative impact on particulate pollution, as occurred for the recent United Wambo assessment, the decision to proceed with that mine actually harms people's health. It send children to hospital, it causes pre-mature death for some.

If the noise assessment is tweaked so that it appears the operation will meet the relevant standards even though it won't, people live for decades with grinding noise that keeps them awake at night and makes them ill.

If the water assessment uses parameters that do not accurately predict fracturing of aquifers and lost groundwater the mine will get its approval, and any affected landholder who loses their access to water its thrown into years of protracted financial loss and frustrating action to get or recompense.

If the economic assessment claims there will be buoyant demand for coal for years to come and hundreds of jobs that will bring flow-on social and economic activity to a small community, but this fantasy does not eventuate, it is real people and businesses that suffer the consequences.

The Department's discussion paper identifies a list of "issues" that have been raised by stakeholders and then outlines a series of initiatives that fail to address several of these issues.

In our experience, Environmental Impact Statement prepared for mining projects are overly complex, labyrinthine multi-megabyte multi-volume documents that often fail to actually address the task of objectively and comprehensively outlining the environmental and social impacts of major mining projects. The consequences of this failure are profound for people and the environment. Convoluted assessment materials befuddle the public and disguise and gloss over the damage mines do. EISs are frequently inaccurate or incomplete, but it takes painstaking hours of volunteer community effort to read and reveal these flaws.

In addition to the actual environmental, economic and social harm that inaccurate environmental assessments cause, environmental impact statements that are incomplete or inaccurate are procedurally unfair. The public is routinely cheated of its opportunity to object to or change the mining projects that affect people's lives and livelihoods when the material placed on public exhibition is not accurate and later stages of the assessment process become protracted exchanges of expert peer-review and agency negotiation that are inaccessible to the public at large.

Most fundamentally, the Discussion paper acknowledges that stakeholders have raised the failure of the assessment process to account for and prevent cumulative impacts. It offers no solutions to this problem. It is not "consideration" of cumulative impacts the public needs, but management and prevention of them. Cumulative impacts can be experienced across industries and in industries other than mining, but the concentration of cumulative impacts of the coal mining industry in the Hunter Valley, and its push now into the Gunnedah area, argue for special attention and the creation of a critical zone where the scale of mining can be limited and managed.

For biodiversity, for example, it is known that the Hunter Valley is a heavily cleared landscape, and that 87% of remnants on the floor of the Hunter Valley are <10ha in size, and the median remnant size is 1.6ha¹. Almost all of the vegetation remaining on the Valley floor is one of four ecological communities that are listed as critically endangered nationally. These contexts are rarely if ever mentioned in environmental impact assessments. The clearing and reservation status of vegetation communities are not presented, nor is any information generally provided about recent determinations and their impact on biodiversity.

As shown in Table 1, in the last five years, we estimate that over 8,980ha of native vegetation has been cleared or approved for clearing for coal mining projects in the Hunter Valley. Including approvals given since 2004 takes this total to over 11,900ha. Almost all of this vegetation is either listed endangered ecological communities or provides habitat for threatened wildlife. At least 3,000ha of Regent honeyeater and Swift parrot habitat has been approved for clearing in the last six years. The remnant Box-ironbark forest foraging habitat for the Regent honeyeater in the Hunter

¹ Peake, 2006. "The Vegetation of the Central Hunter Valley, New South Wales. A report on the findings of the Hunter Remnant Vegetation Project." Hunter- Central Rivers Catchment Authority.

Valley is mapped as critical to the survival of that species in its Recovery Plan. Yet this, too, is not mentioned in recent Environmental Impact Statements for mines that propose to clear more of this habitat, despite lengthy and unwieldy biodiversity assessments being produced for them.

Table 1: Vegetation clearing associated with mine projects approved in the Hunter since 2004

Project	Approval year	Total clearing (ha)	Regent honeyeater/Swift parrot habitat
Warkworth Continuation	2015	540	365
Bengalla continuation	2015	881	272
Moolarben Stage 2	2015	1534	
Bulga optimisation project	2014	611	557
Mount Arthur extension	2012	738	738
Mount Pleasant*	2012	2643	623
Ravensworth Operations	2011	559	624
Integra Open Cut	2010	75	
Mount Arthur Open Cut Ext	2010	990	
Ulan mine	2010	409	
Total approved since 2010.		8,980	3,179
Wilpinjong	2006	290	
Mount Owen 2004 Continuation	2004	96	
Mount Owen	1994	240	
Warkworth	2004	305	
Mount Arthur South Pit Ext.	2007	53	
Moolarben	2007	416	
Anvil Hill/Mangoola	2007	1303	
Total since 2004		11,902	Unknown

Information in this table has been drawn from *EPBC Act approvals*, NSW conditions of consent and Environment Assessment Reports for the projects listed.

* This mine was originally approved in the late nineties, but not begun construction, and a modification of it in 2012 updated the consent to current standards.

There are literally thousands more hectares of further clearing intended for the next 25 years and being considered under the Upper Hunter Strategic Assessment. Though the details of the 14 mining areas proposed to be given endorsement under that scheme are not yet public, information we have gleaned so far indicates that some expansion areas, such as the further expansions of Mangoola, Bengalla and Warkworth, and the West Muswellbrook project, will involve extensive further clearing of endangered and critically endangered ecological communities. We know that the Upper Hunter Strategic Assessment does not consider the cumulative impact of the over 11,000ha of vegetation that has been approved for clearing during the last ten years of mining. No environmental impact assessments for mines that we have encountered in the two years since the Upper Hunter Strategic Assessment has been in development have been upfront about the cumulative clearing that has already taken place, or the further clearing that is planned.

The quality of biodiversity assessment for mines in the Hunter and Gunnedah Basin in general is abysmal. Vegetation communities are treated as surrogates for threatened wildlife, and the assessment of impact reduced to a crude calculation of “credits” required to offset the impact. No impact is deemed too great. The rules for offsetting and assessment are a work in progress. If it is

found that the offsetting requirements or criteria are too demanding for the mine companies to meet, the rules are tweaked to accommodate them.

Biodiversity is not the only cumulative impact. For air quality particularly, national standards are being breached and none of the mining companies are being held responsible because the air shed is the shared responsibility of all of them. Nearby residents report that once mines are in operation, the impacts they experience, of both noise and dust, are far worse than assessment materials acknowledge, but no one is held to account for providing information that downplayed the impacts.

For water, the Independent Expert Scientific committee has recommended a cumulative impact assessment of water in the Hunter. In commenting on one mine and one assessment, the IESC noted that a sub-regional groundwater model including all mines and major water users in the vicinity would be better able to assess spatial and temporal cumulative impacts to water resources in the vicinity of that project than an isolated, single-project assessment. But no one has done it, and mine after mine goes through the assessment process pretending it is the first and only mine to impact the creeks, rivers and aquifers of the region. This piece of work is crucial to accurate understanding of the impact of this project and other projects being considered in the area. It is not acceptable for the Department to launch into an EIA improvement process without addressing this and other cumulative impacts.

The coal is not going anywhere, it does not all need to be mined right now in larger and larger quantities creating worse and worse impacts. The region and its industry could be managed as a whole the way that forestry and fisheries are managed, with clear boundaries of the scale of extraction at any one time and pollution and other limits that all companies and contractors are responsible for jointly and severally upholding.

Instead of addressing these matters, the Department is instead making the ambiguous assertion that environmental assessments have a “Lack of focus on the most important issues” and prioritises this among the list of “initiatives” to address. This complaint is not substantiated or explained. What makes an impact “important” in this context? Is it the most severe impact? The highest profile impact? The one that affects the most people or the one that is most pivotal to the success of the project? The Discussion Paper says the initiative to address this problem will “allow EIA to focus on the most important issues as identified during scoping by tailoring the level of examination of an issue to its relative importance” and claims that will “not compromise environmental standards.”

We strongly oppose any move by the Government to narrow the scope of environmental impact assessments and allow any environmental or social matter to be treated in a cursory manner in the assessment process. We believe any such move would in fact be contrary to the *Environmental Planning and Assessment Act*, and runs the risk of lasting environmental and social damage being done. The Discussion Paper’s reference to a “Hierarchy of issues” recalls the notorious clause 12AA of the mining SEPP, now thankfully repealed, which made the “significance of the resource” the principle consideration for determining authorities considering coal mining projects. This clause fatally undermined the balance that has always been fundamental to the success of the *EP&A Act*. Decision-makers about state-significant projects need comprehensive information in order to make a balanced decision. The suggestion by the Department that the scope of the assessment process might be narrowed in early stages of scoping will result in decisions that do harm.

We are aware of multiple instances where the EIS process uncovered matters that were not known to be issues prior to the assessment beginning. This is particularly likely to be the case with Aboriginal cultural heritage, where access to private land may have previously been denied to the Aboriginal community and on-ground surveys of the area in question are made possible for the first time as part of the EIA process. If there were comprehensive baseline public data across the landscape on all environmental and social values, it may be possible to scope issues prior to comprehensive assessment taking place, but this is not now and is unlikely to ever be the case. The process of conducting an environmental impact assessment is itself a process of discovery of what the “issues” are. It is impossible to narrow this process without fundamentally compromising it.

Similarly, we support the need for better and earlier engagement, but it is the *purpose* engagement that has most effect on its usefulness and the satisfaction it provides for the public. The purpose of engagement must be to understand the local constraints and needs that then must inform project design. In mining terms, factors such as hours of operation, final landform, protection of amenity, biodiversity and cultural heritage and integration of the project into the local social fabric should be designed and changed in response to community input.

The Department lists inconsistent quality and accessibility of documentation as one of the problems raised by stakeholders and proposes an initiative to address this. Initiative 5, on improving the accountability of EIA professionals is related to this and is a matter of profound concern to the public. We see the logic for the Department and other agencies in having a consolidated project description. Clear summaries, simplified language and guidance about form, content and quality of information would be welcome, and yet, the guidance that currently exists is not followed and there are no consequences. But there is a more fundamental problem that needs to be addressed. The public has irrevocably lost faith in the process by which proponents commission consultancies to prepare environmental assessment materials and the initiatives outlined in the Discussion Paper do not go far enough to restore that faith.

To improve the consistency, quality and accessibility of EISs the Department needs to uphold basic standards of accuracy and clarity. The first step is data collection. Companies must be required to collect and publish comprehensive data on biodiversity, water and air quality. Data on social issues and cultural heritage require some sensitivity in the publishing, but there are ways to provide the information without compromising privacy or cultural sensitivity. The second stage is analysis of impact. This analysis is rarely undertaken frankly and objectively. The assessment materials read to the public like advocacy documents and too often the Assessment Reports prepared by the Department of Planning also adopt this register, promoting the project rather than objectively assessing its merits. Then comes modelling and finally mitigation proposals, which are also modelled. At each step of this process can be slanted to present the project in a positive light and disguise the damage it does. These problems need to be addressed by the Department or the public will continue to have little to no confidence in the objectivity of the assessment. Fundamentally, it should not follow that because the mining proponents pay for the assessment that they should influence its findings, but this has come to be the case. Only rigorous refusal of the Department of Planning and other public agencies to treat such documents as if they are adequate will change this culture.

There are numerous recent instances of inaccurate information being presented in Environmental Impact Statements or of information required under the assessment guidelines not being provided. Despite these deficiencies, the EISs are accepted for public exhibition by the Department of

Planning, and this is a major problem. The public are then expected to spend hours of volunteer time reading flawed and misleading material, and in many cases actual have to raise their own funds to commission experts to fill the gaps left by the proponent-paid consultants. This is a huge burden on the community, in addition to the stress that mining projects already place upon people affected by them.

For the Bylong project, for example, the The EIS presented misleading statements about alluvial draw down, repeatedly stating that the minimum impact criteria in the Aquifer Interference Policy is less than 2m at “private bores,” and interpreting this as excluding bores owned by the mining company. Using this argument, the company claimed that no private bores would experience more than 2m drawdown as a result of the mine, despite this impact being predicted for 20 or more bores. In fact, Aquifer Interference Policy applies the minimum impact criteria to “any water supply work.” Either this blatant attempt to disguise the impact of the project with semantic tricks was not picked up by the Department of Planning, or it was seen by the Department and the misleading material allowed to be exhibited anyway.

Similarly, the recent Environmental Impact Statement for the United Wambo mine had major gaps in its assessment of biodiversity. One of these was a failure to accurately match one forest community expected to be cleared by the mine to the nationally critically endangered Central Hunter Eucalypt Forest. A decision by the consultant for the company interpreted the listing advice for that community in a way that made the area of it to be cleared appear smaller than it is, because some parts were excluded. This was raised with the proponent prior to the Environmental Impact Statement being placed on public exhibition but not corrected, and so the EIS that the public was given the chance to comment on was not accurate. Similar mapping tweaks were repeatedly used by the consultants engaged by Whitehaven Coal for its Maules Creek project, this time falsely mapping bushland to be protected in offsets as part of a critically endangered community in order to make the offset meet the needs of the project. It took considerable time and effort for community members to engage experts to correct this false mapping, by which time, the process of approving the mine was all but complete.

In another case, social impact assessment consultants contracted by Rio Tinto to gather primary data and assess the social impact of the Warkworth Continuation Project made submissions and sent communication to the Planning and Assessment Commission asserting that the environmental assessment material placed on public exhibition, which was prepared by a different consultancy, contained “problematic inaccuracies” and that there were “significant shortcomings” in the NSW Department of Planning and Environment’s 2014 environmental assessment report on the project. These qualified social impact assessors objected to the project and stated that its social impacts outweighed its benefits. This evidence was brushed aside by the Department of Planning and the Planning and Assessment Commission in its determination of the project. Why would the Department of Planning not treat allegations such as those listed above, of which there are many more examples, as examples of grave abuse of public trust designed to achieve the ends of the coal mining companies by deceiving the community? Why would they not rigorously investigate and correct these slanted environmental assessments and demonstrate to the public that the Department is a fearless and impartial facilitator of this process? The Departments failure to insist on basic accuracy, comprehensiveness and impartiality has eroded the assessment process and that must change as part of this process.

If the Department wishes to improve the quality of environmental impact statements and restore public confidence in them, it needs to include two important reforms within its own operations. Firstly, the Department needs to refuse to place on public exhibition any materials that do not meet the guidelines and standards that are already in place. Secondly, it needs to take seriously allegations by the public or any other agency that data has been manipulated, parameters tweaked and findings detrimental to the case for development suppressed.

In the discussion paper, there are three proposals that are not actually assessment matters but are related more to determination and compliance. These are the changes of projects post-approval, the monitoring, auditing and reporting of compliance and the standard framework for “conditioning projects.” There are huge problems with the decision-making around state-significant projects that must be dealt with. To introduce standard conditions as part of this process without addressing the fundamental failures that see matters of profound public interest regularly sacrificed for the interests of coal companies will only worsen the situation. Recommendations made by Planning and Assessment Commission reviews are not binding and expert analysis painstakingly sought, paid for and presented by community groups is ignored. There are no thresholds laid down in the regulation to guide decision makers about what scale of impacts are unacceptable and for the most controversial projects, the Planning and Assessment Commission reviews regularly hold public hearings, extinguishing the public’s right to third party merits appeal rights, so that evidence cannot be presented and testing in a rigorous court setting. We appeal to the Department and the Government to correct these fundamental problems.

Which brings us finally to initiative 6, on timeframes. This initiative is described in precisely the kind of weasel language that is undermining public trust in the Department of Planning. The Premier has promised the mining industry that assessment timeframes will be halved. The Discussion Paper does not mention this, but instead talks of reducing the “uncertainty” of assessment timeframes. It is true that the current treatment of state-significant mining applications in particular is a complex process with long and uncertain time-frames, but the uncertainty is often a result of the proponents failing to provide accurate and timely information. Why isn’t the Department exerting itself to resolve and reform those parts of the process that are causing anxiety and damage to members of the public? Why has a promise made at the highest level to mining company executives that will lead to a process that is faster but not in any way fairer to the community?

Part of the reason the system has become cumbersome and complex is because the Government has responded to the community’s reasonable demands that the Government protect people’s health, the social fabric, farmland, water and threatened bushland from the impacts of mines not by putting actual restrictions on where and how the industry can operate but by imposing new and toothless “assessments” as a consolation prize to an exasperated public. So, the promise to “protect” our best farmland results in the pointless gateway process. Mines like Bylong can fail every criterion in the gateway assessment and proceed to approval. The promise to “protect” water leads to the Aquifer Interference Policy, which sets a “minimal impact” criteria that does not need to be adhered to. The requirement to “protect” people from noise and health-damaging air pollution becomes a licence to create such pollution and a requirement to empty the surrounding landscape of people. The idea of “protecting” threatened wildlife is replaced by intricate mathematical calculations about the “value” of what is being lost and strange idea that this can be offset by not clearing bush somewhere else that has equivalent value. There are many more examples where additional assessment requirements are imposed because the Government is too in thrall to the

mining industry to simply impose exclusions zonings, air and noise standards and biodiversity red lines, which would save a lot of time, angst and money, not to mention lives, when you consider the appallingly bad air quality in the Hunter.

The public has repeatedly raised the profound injustice that the mere act of the Planning and Assessment Commission holding a public hearing extinguishes the rights of third parties to challenge the merits of the final determination of mining projects in court. Merits review is extinguished by the holding of a public hearing that has no decision-making power over the determination outcome, no interrogation of evidence and no rules of procedure. Of the 38 matters to go to a public hearing since the inception of the PAC, resource projects have been disproportionately represented (with 29 or 76% being for such projects). It is no secret that the mining industry wants to abolish the Planning and Assessment Commission altogether. If this is the Government's intention it could at least have the decency to be upfront about it.

We appreciate the opportunity to make a submission to this process, but as this submission makes clear, we are deeply sceptical about the direction this "reform" is taking. It has failed to take seriously the problems that the public has in dealing with the assessment process and is instead dressing up a narrowing and hastening of the process, with no improvement in rigour, standards, fairness or accountability, as a "reform." We would be very willing to discuss these matters in more detail with the Department if there is a good faith commitment to actually improving outcomes and processes for the people on NSW. That is not currently clear.