

Independent Planning Commission Review Submission

The 2011 ICAC found that “expanding the decision-making role of the PAC would provide an important safeguard against potential corrupt conduct”¹ The ICAC found that, “Referral to the PAC is seen as a safeguard because of its independence. In addition, the opportunity for a person to approach PAC members corruptly is comparatively limited...”

Even given the very limited “independence” of the PAC system from Planning it is the only mechanism available to attempt to curtail the corruption that occurred previously (Obeid McDonald et al)

Since the (almost) unprecedented refusal of two projects; Rocky Hill and Bylong The Minerals Council wish to undermine (no pun) the PAC process and return to the days when even blatant corruption was possible.

The political influence of the mining industry and the access of its lobbyists to cabinet members, in the context of its history of corruption, warrant an arm’s length process. For example, earlier this year, reportedly the mining industry had 188 meetings with NSW Ministers over four years, dwarfing those of community and environment groups. In fact, community groups have very little, or no opportunity to meet with Ministers.

The Department of Planning has repeatedly recommended approval of the most damaging mining projects, including projects such as the Drayton Coal mine, the Bylong coal mine and the Russell Vale coal mine. The Department of Planning has only ever recommended against three coal mines in NSW whilst recommending in favour of many dozens of mines. This Department is captive to the mining industry and is incapable of balance or unbiased assessment and decision-making.

Thus, Communities in mining-affected regions have little trust in the Department of Planning or political representatives to take a balanced approach to managing land use conflict, and rely on the IPC for an independent and objective consideration of highly damaging and controversial mining projects.

The operations of the Commission and skills and expertise

The IPC process stands in the place of the NSW Land and Environment Court by effectively undertaking a merits review after a public hearing has been held on a project, and thus extinguishing merits appeals to the LEC, it is absolutely essential that it has the very highest standards of probity and independence. It should not be tainted by interference from the Department of Planning.

Thus, it is essential that this body is both appointed independently of the Department, has a completely separate Secretariat and is funded independently. The Department is frequently biased and treats economic considerations with greater weight than social and environmental effects particularly effects and impacts upon communities living with those impacts.

It is particularly important that IPC has additional resources to undertake its role and to ensure that it has all the access it needs to scientific expertise. Of even greater import is that **independent** scientific reports are noted and weighed in the balance. In the past we have seen compelling independent reports ignored and biased reports from the proponent’s paid experts given more weight.

The clarity and certainty of policies that inform determinations by the IPC

There is a lack of policy that clearly indicates what level of community impact is deemed unacceptable.

It is particularly concerning that not all impacts such as detrimental health impacts to the community and those costs both to the individual and to the State Revenue be included in an economic analysis.

Equally, the enormous costs associated with rehabilitation particularly infilling voids is not included.

¹ ICAC, 2010. *The exercise of discretion under Part3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Projects) 2005.*

In the case of the Warkworth Mine the proponent was allowed to argue that the cost of infilling the final void was so onerous as to make the project unviable, this point was echoed by the Planning Department. What should have rendered the project uneconomic was therefore totally ignored despite the toxic legacy for future generations. If this cost had been included as it should be, as a cost for the future, the economic assessment would have been unfavourable. All costs should be included and not "externalised". The current "Rehabilitation Bond" is totally inadequate to cover the size of the future problem(s).

For water, biodiversity, cultural heritage and air quality, there is no impact threshold that the proponent or the community has certainty beforehand will not be permitted. We have seen approvals granted only to also see the impacts extend and expand often at the behest of Planning.

Stronger and properly enforceable measures are needed to protect Biophysical Strategic Agricultural Land, water resources and other attributes from unacceptable impacts from mining. It is patently unreasonable for such matters to be left at the discretion of the Commission. They should be enshrined in legislation.

Likewise, the implications of mining upon Climate Change cannot be ignored and MUST be accounted for in all deliberations. The recent decision to limit the application of Scope 3 emissions as part of assessment and dilute it to only Scope 1 & 2 (which are bad enough) is a clear example of how industry has undue influence upon Planning and underlines the need for a more "arms-length" Commission.

More strength and true Independence of the Commission

ICAC has said that *"The limited availability of third-party appeal rights under the EP&A Act means that an important check on executive government is absent"*

Since the (almost) routine of referring all matters to IPC "hearings" which extinguish the right of merit appeal it is particularly critical that all requests for access to hearings be given equal consideration. The Commission staff cannot know ahead of time which of those applications to speak at public hearings are likely to provide information or perspectives that the Commission does not otherwise have access to, thus all inputs should be accommodated.

In essence, I believe it is important that the IPC process be strengthened not weakened.

Commissioners should be more independent and not appointed or remunerated by the Planning Department. Their Secretariat should be totally independent. The current list of potential panellists holds several members with potential conflicts arising from their previous employment by, or their previous business dependence upon mining companies

(We had a recent example where a panellist for Wambo United stood down- after more than a week's hesitation, due to "business conflicts" and the substitute chosen was the former manager of Wambo who also stood down)
What confidence can communities have in the even-handedness of the selection process that led to this situation?

More attention should be given to the selection of Commissioners to eliminate such potential conflict and bias.

The current IPC system even with its' current weaknesses is still superior to the previous system which was clearly shown to be subject to gross corruption. If the current system is strengthened (not weakened) it could be a far fairer system both for Australian communities now and for future generations.

MY SUBMISSION SUPPORTS THE IMPORTANCE OF KEEPING AN "INDEPENDENT" COMMISSION WITH MORE EMPHASIS ON STRENGTHENING AND MAINTAINING INDEPENDENCE.

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