

From: [REDACTED]
To: [NSW Productivity Feedback](#)
Subject: Independent Planning Commission REVIEW
Date: Thursday, 7 November 2019 11:57:25 AM

Dear Sir/Madam,

I have become aware that there is a review of Independent Planning Commissions (IPC) in the context of NSW Planning assessments/approvals. I have not had experience with any IPC, but have had experiences with various earlier PACs in relation to *state significant* coal mining proposals. **I am writing to you today to ask that IPCs are retained and that related processes are strengthened.**

As a NSW resident since 2011, I have become shocked and sickened by the lack of thorough investigation and oversight by NSW Planning in relation to coal mining in particular. I used to trust that governments at all levels were there to protect the best interests of the wider community, but I have lost that trust. For me, the IPC is particularly, a crucial check on *state significant* developments which don't require concurrence from any other agencies or from local government – former concurrence powers that have been removed relate to water use, pollution control, heritage protection, fire risk and biodiversity. In the absence of the Commission, leaving all these considerations with the Department of Planning and Minister vests an inappropriate amount of power in them risks the process leaving out important considerations or treating them superficially. I have seen too many things treated superficially. It is possible it seems for NSW Planning to recommend approval of almost anything and without some independent body, community values (about what is acceptable and what is not) and scientific panel concerns (about what is accurate or misleading or incomplete in proponent EIS reports) are not necessarily considered at all.

I feel very angry as a NSW resident and taxpayer that I have to spend so much time checking details of proponent EISs and Dept Planning reports – and pointing out what seem to be deliberate oversights. This unpaid work is so important, that I do not seek full-time work anymore. Protecting our environment, our water, our water catchments, our air, limiting the extent of climate change – these things are so important because without them, our society, our economy, our culture will cease to exist. I cannot help but wonder at what point will the damage that coal mining does, be enough and Australia and NSW governments start protecting what is left of the systems that support us humans? It is not as if NSW Planning, NSW government or the Australian government are unaware of climate change or devastating impacts of longwall coal mining in our water catchment.

I do not understand why NSW Planning does not itself often throw a proponent's EIS report back at them and demand drastic changes and improvements because their reports are utterly unacceptable to society. I note that the latest NSW government report into mining in the water catchment by the IEPMC quoted from an earlier Bulli Seam Operations PAC (2010 report) in relation to Risk Management Zones that:

there is a problem with allowing the Proponent to assess what is of 'special significance' and what is not. Attribution of special significance to an item or feature carries with it a requirement for a much higher level of scrutiny and consideration of protection and may therefore require changes to the mining proposal. The Panel in the Metropolitan PAC Report noted that there was an element of subjectivity in the allocation of special significance status. The Proponent's subjective view yielded one (possible) item of special significance in the whole 220 km² of the Study Area – the Nepean River. None of the other 46 streams classed as 3rd order and above, none of the 226 upland swamps, none of the 634 cliffs (including Appin Falls) and none of the 632 Aboriginal Heritage Sites in the Study Area succeeded in crossing Proponent's threshold for special significance. This was in stark contrast to the submissions by government

agencies, special interest groups and the public, which identified many such items, usually supported by credible evidence.

This falls so far short of community expectations that NSW Planning should have thrown it out and told the proponent to begin their application process all over again! Instead I have been shocked by what seems to me to be huge bias on the part of NSW Planning in looking at even the limited EIS information provided by proponents and written by consultants paid for by those proponents.

Thankfully recent PACs involved in Wollongong Coal Ltd's recent expansion proposals have heeded information and advice provided by the Independent Expert Scientific Committees. Despite the water trigger in legislation, it is my understanding that knowledgeable community members instigated the relevant input from the IESC rather than NSW Planning itself. NSW Planning continues to fail residents.

I also ask that the IPC should maintain its own independent secretariat, and this should not be devolved to an agency such as the Department of Planning because this would again undermine the independence of the Commission. The Department of Planning does not provide any transparency in relation to the details of meetings with proponents or other government agencies, whilst the IPC provides transcripts of all interactions with proponents and agencies. Given that the IPC frequently 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. I am also concerned about statements made by mining companies or their staff/consultants. Can there be some requirement for truth or questioning of these people at future IPC hearings?

Furthermore, there is a lack of policy that clearly indicates what level of impact is deemed unacceptable in terms of IPC determinations. **For water, biodiversity, cultural heritage, air quality, there is no impact threshold that the proponent or the community has certainty beforehand will not be permitted.** This seems shocking but utterly true from my experiences. Stronger measures are needed to protect agricultural, water resources and other attributes from unacceptable impacts from mining so that it does not have to be left at the discretion of the Commission.

I would like to see IPC processes strengthened. Currently, the IPC's guideline for public hearings does not guarantee any interested member of the public the ability to present to the Commission. Given that these hearings extinguish legal appeal rights, this is a breach of fairness. The ICAC (February, 2012) 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.*" Such rights are routinely and almost invariably extinguished for major resource projects by the holding of IPC public hearings. This places a lot of stress on concerned residents – both to keep on top of NSW Planning processes and IPC timelines and to ensure that they get it right and garner as much support from experts (often pro bono) as possible within limited timeframes. Further, the nomination form to address these hearings asks for detail about whether you have a *Direct and immediate interest*. This is not a concept that has basis in the *Environmental Planning and Assessment Act 1979* nor is it appropriate that certain inputs be prioritised over others. The Commission staff cannot know ahead of time which applications to speak at public hearings are likely to provide information or perspectives that the Commission does not otherwise have access to, so all inputs should be accommodated. Having written that, I do recall at one PAC hearing event some years ago, a local indigenous man turned up wanting to speak and he had not signed up beforehand, and he was allowed to speak. This is only as it should be - that people can turn up on the day if need be, and say their piece and be heard.

Yours sincerely,

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