Review of Independent Planning Commission

[redacted]

I support the retention of the Independent Planning Commission. It offers some semblance of protection for NSW communities against vested interests and short-term politics.

The public interest is best served by retaining the Commission, because:

- It provides an important safeguard against corruption in the planning system which has been recognised by ICAC.
- It helps avoid the serious issue created by the planning 'super agency' which includes industry and which clearly contains significant conflicts within it.
- 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 it was reported[1] that the mining industry had 188 meetings with NSW Ministers over four years, dwarfing community and environment groups.
- The IPC is a particularly crucial check on developments classified as 'state significant' which do not 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.
- 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. We understand the Department of Planning has only ever recommended against three coal mines in NSW whilst recommending in favour of many dozens of mines. The Department of Planning is captured by the mining industry and is incapable of balance or unbiased assessment and decision-making.
- 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.
- Without the IPC, communities would have no chance of combatting final voids, biodiversity loss and aquifer interference, all too common when mines are closed or on-sold to mining minnows as is often the case.

[1] [redacted], *"Mining sector met NSW ministers almost every week over four years"* (The Guardian, March 2019) https://www.theguardian.com/australia-news/2019/mar/22/mining-sector-met-nsw-ministers-almost-every-week-over-four-years

In relation to the operations of the Commission and skills and expertise:

- In 2010, the ICAC recommended giving the Commission quasi-judicial status, that appointment of members be open to public scrutiny and that members be appointed on a full-time basis.[2]
- In terms of expertise and qualifications, there do not appear to be any pre-requisites, but it would be appropriate for the Commission to have quasi-judicial status and for the expertise and qualifications of Commissioners to suit that status.
- The Commission should be provided additional resources to undertake its role and to ensure that it has all the access it needs to scientific expertise.
- The IPC must be free to differ from the Department of Planning's Assessment Reports which are frequently biased and treat economic considerations with greater weight than social and environmental effects.
- 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.

In relation to the clarity and certainty of policies that inform determinations by the IPC:

- There is a lack of policy that clearly indicates what level of impact is deemed unacceptable.
- 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.
- Stronger measures are needed to protect Biophysical Strategic Agricultural Land, 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 the processes of the Commission strengthened as follows:

- Ensure that any interested member of the public can attend and address public hearings where they are held.
- 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.
- I note that the 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*

[2] 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*.

absent."[3] Such rights are routinely and almost invariably extinguished for major resource projects by the holding of IPC public hearings.

- 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.

I write this submission as [redacted]'s grandmother, and her slim chance of growing up on a liveable planet. This precious little baby in our family is 16 months; she has barely begun and predictions for her future are grim. Intergenerational equity will be completely absent if the Mining Industry gets their way and annihilates the IPC and its process, which whilst limited does provide some small chance of protection for our darling granddaughter and everybody's darling granddaughters and grandsons. Please retain the Independent Planning Commission.

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[3] ICAC. February 2012. Anti-corruption safeguards and the NSW planning system.