

SUBMISSION TO NSW PRODUCTIVITY COMMISSIONER'S REVIEW OF NSW INDEPENDENT PLANNING COMMISSION



I have engaged as a community participant with the Planning system on a number of Major Development Projects. Two of these were subject to a Commissions of Inquiry - the Destruction of Hexachlorbenze(HCB) Waste by Orica and the Port Botany Expansion. In both cases the Minister overruled the recommendation of the Commission. In the case of Orica's HCB, another review was established under Tony Wright and then a follow-up review. In the case of the Port Expansion Commissioner Cleland recommended against a third terminal. Other Major Developments include Light Rail, Westconnex, Energy Australia Cable, Desalination, Orora expansion, Vopak expansion, Orica Southlands, Veolia, Enfield Intermodal. I attend Community Consultative Committees for NSW Ports, Orica, Sydney Water Malabar WTP, Orora, Botany Industry Park.

My comments are made in the context of 20 years experience as a community participant and as someone who is interested in improved planning processes that deliver community confidence and better conservation outcomes.

In its [Community Participation Plan](#), the IPC states that it seeks 'knowledge, ideas and expertise' from the community. It is important, therefore, that the IPC's processes and those supporting it within the Planning Department fully facilitate this. And further that both the IPC and Planning demonstrate that they have integrated the knowledge, ideas and expertise into their assessment.

It concerns me that the IPC presents a restricted interpretation of community interest in their participation plan:

The community includes anyone who is affected by a development application or planning matter under consideration by the Commission, including individuals, community or interest groups, indigenous communities, applicants, peak industry bodies, businesses, local councils and State or Commonwealth government agencies.

Many Major Developments negatively impact natural heritage and advocates for that heritage are not necessarily directly 'affected'. I have seen Planning submission reports where submitters have been characterised by their proximity to a development based on address provided (including post box addresses) even where the only impacts being considered are on other species. The IPC's Application to Speak classes environmental advocates (unless amenity is also directly impacted) as 'indirect' – similar for those invoking 'intergenerational equity'.

It is not clear whether the 'knowledge, ideas and expertise' is considered on merit or according to who has produced it. This needs to be clarified.

Turning to the Terms of Reference:

- 1. To recommend whether it is in the public interest to maintain an Independent Planning Commission, considering, where relevant, the experience with similar bodies in other common law jurisdictions;*

I fully support the retention of the IPC. It is important to provide a forum where community can actively participate in the physical presence of other community members and other significant 'players.'

While Planning maintain that they aim for a system that is 'robust, accountable and transparent' it fails to achieve these objectives:

- Community Participants make submissions in isolation. They don't have the benefit of reading submissions from other individuals and agencies to gain a greater understanding of the issues before making their own. They only have access to the SEARs and the proponent's EIS. Consultation is managed by the proponent not a neutral party. The system would be more robust if early access was available to detailed agency advice.
- They are not privy to negotiations on Conditions of Consent which may include a Voluntary Planning Agreement. If they are participating for the first (and usually only) time they are ignorant of what occurs off public record. Their knowledge ideas and expertise are not valued at this point.

- They are not advised of the potential flow-on effects of an approved development. These might be flagged in the EIS. For example, the Port Expansion EIS flagged Westconnex (M4East and expansion of M5) as a required supporting development. The accompanying Railing Port Botany Containers flagged Moorebank. The CSELR was an enabling project for high density development along its route. There need to be alerts available when developments of such magnitude are at SEARs stage so communities likely to be affected as a result of their approval can examine term. There also needs to be information provided on the Planning website to explain the rationale for land use planning. For example, the Port is 'protected' by the 3 Ports SEPP and that is reinforced in the GSC District Plan, INSW 2018-2038 Strategy, and Transport's Freight and Ports Strategy. Yet a proposal for a Cruise Terminal has been made which ignores all this long-term planning (and the risk implications of the 1996 Land Use Study). It is difficult to maintain respect for a Planning system that appears so chaotic.
- There is a lack of accountability. There is no record of how Agency submissions are evaluated and where Planning has determined inadequacies. I quote for example a Major Hazard Facility expansion (Vopak) that was determined late December 2018. <https://www.planningportal.nsw.gov.au/major-projects/project/25121>
The submission from RMS did not include any comment let alone assessment of the carriage of the dangerous goods. RMS personnel were not concerned when I approached them. Bayside Council had submitted a QRA which included both the site and the route. Consent was later delayed after Planning requested a QRA from the proponent for the dangerous goods route affected.
- There is no audit of claims made about the benefits of projects. There is no record on the performance of consultants against the final product. Community are presented with information and often may not continue to participate because they think that the development and/or the offset will be acceptable. Artists' impressions are used to influence. Planning don't attempt to facilitate a level playing field between first-time players and those that are highly experienced and highly resourced.

The above impact the performance of the IPC and public perceptions of its relevance and effectiveness.

2. To make recommendations in relation to the Independent Planning Commission's operations and the mechanisms by which State significant development is assessed and determined

- There is no requirement for the IPC to hold public meetings before determination. This should change so it is mandatory and all meetings should be live streamed. Some Councils live stream their planning panels (they all should). Live-streaming applies also to Public Hearings.

- Site inspections should also be mandatory.
- All documents should be made available on the website.
- There needs to be greater certainty/understanding around whether a Major Project will proceed to an IPC and this should be shown on the Planning website for the particular development. A Council's opposition can be gauged early so the IPC can be flagged from SEARs stage. In cases where it will depend on number of objectors that should be clearly stated also so participants know what is likely to occur next and prepare for it.
- The IPC process should include the opportunity for written questions from and to any parties participating (as per COI).

3. Having regard to the above, identify any proposed changes to the Independent Planning Commission's current functions, processes for making determinations, and resourcing. The issues to be considered include but are not limited to:

- *Thresholds for the referral of matters to the Independent Planning Commission;*

I don't think the number of objectors at 25 should be any higher. There are significant developments which struggle to achieve 25 yet those who have objected may have provided very substantial submissions. And Council may not object because of the S94/7.11 benefits. In contrast a development may attract hundreds of one- line objections. There should be a mechanism for identifying developments that would benefit from the IPC level of public scrutiny based on 'qualitative' interest.

It is also important to consider the value of the public forum for achieving better design and offsets.

- *The clarity and certainty of policies and guidelines that inform determinations;*

The transcripts of meetings on the website is valuable. As noted previously live streaming of meetings would be beneficial.

- *The Commissioners' skills, expertise and qualifications;*

I agree with the 3+3 appointment term. The commissioners are very well qualified. More promotion of the commissioners may add value.

- *The adequacy of mechanisms to identify and resolve any conflicts of interest by commissioners;*

I quote from this submission from Mr Greg Matfin:

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2018/09/casuarina-town-centre-concept-and-project-approval/comments-and-presentations/greg-matfin.pdf>

for the Casuarina Town Centre <https://www.ipcn.nsw.gov.au/projects/2018/09/casuarina-town-centre-concept-and-project-approval>

a) Process. The process doesn't allow the individual (ratepayer) a proper or real chance to air their views. I know most of my neighbours gave up in the very early stages. Since the development was proposed (concept plan) there have been so many changes, years gone by, copious documents and attachments, misinformation from the developer and as such, we effectively need to be a lawyer, engineer, town planner etc, etc to try and get our heads around what is actually happening. It is fair to say we have had no help or guidance with this project (from the department of planning) or has anybody visited us to truly understand our concerns. From the assessment it is obvious there has been considerable consultation with the Council (as there should), but in regard to the individual objectors concerns it appears just random assumptions made, as is evident from the pie charts and commentary provided. Perhaps a closer review and understanding of local resident feeling would have highlighted that - nobody wanted - 4 storeys, or the loss of green space associated with the existing Swale ie the originally promised - 38m corridor.

I think Mr Matfin highlights a standard complaint – no direction from Planning, concerns not accurately recorded and then not checked, a protracted process which appears aimed at exhausting participants through a string of modifications (in this case 10). The strategy appears to be first DA go for maximum impact. Agree changes and most objectors 'leave the ring'. Then put in the first modification and negotiate with remaining. Then subsequent modifications until the development is back to where it began but number of objectors reduced significantly and misleading statements about 'everyone being happy' are made.

- *The Independent Planning Commission's procedures and guidelines;*

I suggest better integration with Planning processes so it is a seamless experience for community members, many of whom will be once only participants.

- *The extent to which the Independent Planning Commission should rely upon the assessment report prepared by the Department of Planning, Industry and Environment, taking into account any additional assessments by other Government agencies;*

This depends on the quality of individual reports and as outlined earlier there are flaws in the system that need to be addressed. The IPC Commissioners are appointed for their expertise. If

they judge a report is inadequate, they should request more information/analysis. They can also randomly audit submissions to ascertain if they have been incorporated into the assessment.

- *Resourcing of the Independent Planning Commission and the mechanism for determining budgetary support; and*

The value of community confidence and social licence should not be underestimated. In cases of Major Development the proponent (and the consultants) are well experienced. If the proponent is a Government Agency the power imbalance is more acute. I would suggest adopting the same customer-centric approach as Service NSW to the community participants who are often engaged for the first (and only) time.

- *Whether the Independent Planning Commission's Secretariat should be employed directly by the Independent Planning Commission or provided by another Government agency, and if so, which agency.*

The Secretariat should be employed directly. The IPC have a customer relations role to fulfil and need continuity to perform to the standard required.

Finally, could COI reports be uploaded to the IPC website. There is a wealth of material in these reports. I sit on a committee that is still monitoring conditions of consent from 2005 and the COI report that was released at the same time as the conditions remains relevant.

It would also be helpful to be able to see at a glance a list of Major Developments in a particular catchment and/or LGA. The old Major Projects site though clunky was at least useful in this regard.

Please contact me on [REDACTED] if you have any questions.

With regards, [REDACTED]