

REVIEW OF THE NSW INDEPENDENT PLANNING COMMISSION

15 November 2019

Introduction

The Association of Mining and Exploration Companies (AMEC) welcomes the opportunity to provide comment to the New South Wales (NSW) Productivity Commissioner to be considered in the review of the Independent Planning Commission (IPC).

About AMEC

AMEC is a leading national peak industry body representing over 275 mining and mineral exploration companies across Australia. Our members are explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. AMEC represents a number of companies exploring, mining and investing in NSW.

NSW needs mining

Mining is a pillar of the NSW economy. Over the four years to 2021-22, the mining sector will deliver nearly \$8 billion royalties revenue to the New South Wales State Budget¹ with an average of \$1.9 billion per year to support the State deliver on its commitments – this equates to double the State's current surplus or the whole of the new spending on drought relief. The strong return mining provides to the community in jobs, revenue and royalties underlines the reliance of NSW on a strong mining sector.

Without ongoing exploration success, the identification of new mineral deposits and the ability to progress these discoveries into productive operating mines there will be a significant reduction in growth, jobs, investment and government revenue delivered by the mining sector. The mineral exploration and mining sector in NSW must be supported and promoted to secure the future of the industry. The mines that secure the economy of tomorrow are found by the explorers of today.

The release of the 2019-20 New South Wales State Budget highlighted the importance of a strong and healthy resources sector with mineral royalties one of the few growth incomes over the last year. With stamp duty and GST income significantly reduced, the expected increase in mineral royalties in NSW is critical to support the State meet commitments and provide a budget surplus.

Treasurer Perrottet noted in the 2020 NSW Budget speech that *"we depend on miners for their contribution to our economy. And just how much they depend on us to do the right thing, with policies that help, rather than hurt"*.

¹ <https://www.budget.nsw.gov.au/>

AMEC supports the review of the Independent Planning Commission

AMEC welcomed the recent announcements by the Deputy Premier and Minister for Resources and Minister for Planning and Public Spaces to review the Independent Planning Commission and provide “*certainty for mining investment*” with a package of regulatory measures.

This review was triggered after the recent controversies including the determinations on the Bylong, Dartbrook and United Wombo projects as well as the administrative issues in the Rix’s Creek South assessment. These issues are not just concerning for the companies that have invested millions of dollars in these projects but also the communities that depend on these projects to support regional NSW. Of broader concern is that these controversies have sparked national and international headlines and provided yet more evidence for the widely held belief that NSW is an unfriendly jurisdiction for mining investment.

The NSW minerals industry needs certainty

AMEC members with metalliferous projects in NSW have recently been refused funding and investment following the uncertainty created by in part by the IPC controversies. Companies with NSW projects have been directly told by investors “*come back when your approvals are in place*”.

The internationally respected Fraser Institute *Annual Survey of Mining Companies 2018*² shows that NSW has struggled to compete with other Australian States and Territories as a preferred investment destination. New South Wales’ score for the Investment Attractiveness Index increased slightly to 65.56 from 62.31 in 2018, but with equivalent ranks (42nd out of the 83 jurisdictions in 2018 to 46th out of 91 jurisdictions in 2017). NSW was well below Western Australia (score 91.47 rank 2nd), Queensland (score 81.67, rank 13th), Northern Territory (score 75.93, rank 23rd) and South Australia (score for 75.46, rank 24th) but just above Tasmania (score 60.31, rank 55th) and Victoria (score 60.74, rank 54th). Internationally, Papua New Guinea ranked just above NSW with Fiji, Mexico and Chile well ahead.

Importantly, NSW was ranked the lowest Australian jurisdiction for the Policy Perception Index (termed the ‘report card for governments’ and assesses the attractiveness of policies) in 2018 with a score of 71.60 and was ranked amongst the lowest jurisdictions internationally for uncertainty concerning administrative and environmental regulations as well as for regulatory duplication and inconsistencies.

This is clearly indicative of investment capital heading to international jurisdictions that have lower cost operating environments with clearer regulatory operations and where the potential returns can be considerably greater than in Australia. Companies and investors are willing to pursue greater returns by investing in projects in locations that, unlike Australia, have significant sovereign risks.

The Independent Planning Commission is “not subject to direction or control”

Planning decisions in NSW are complex, multi-faceted and regularly controversial. The IPC was initiated following corruption allegations of previous Ministers and was established as a standalone agency under Part 2, Division 2.3 of the *Environmental Planning and Assessment Act 1979* on 1 March 2018, with the Planning

² <https://www.fraserinstitute.org/categories/mining>

Assessment Commission previously in place from November 2008. The IPC operates independently of Government departments and is tasked with determining State significant development applications where there is significant opposition from the community (more than 25 objections or the local council has objected or there are reportable political donations); conduct public hearings for development applications and other planning and development matters and to provide independent expert advice on any planning and development matter.

These are heavy tasks undertaken by a panel of one, two or generally three Commissioners appointed by the Minister for Planning and Public Spaces based on their qualifications and expertise for limited terms. The IPC is “not subject to direction or control of the Minister for Planning and Public Spaces nor any Government agency, except in relation to procedural matters as set out under the *Environmental Planning and Assessment Act 1979*.³”

The IPC may be the decision maker for these applications, but the Department of Planning, Industry and Environment separately carries out the administrative arrangements and preparing a report to the Commission about each application. The Department’s report is not binding on the IPC. The Department of Planning, Industry and Environment is the delegated consent authority to make decisions on State significant development applications and modification applications where there are less than 25 objections to the application, local council support, and no reportable political donations.

The IPC’s average processing time for public hearings (the majority of mining applications) in 2018-2019 was 154 calendar days⁴. Effectively, the IPC is adding, on average, over five months to any application.

Recommendations to improve NSW planning

The current NSW planning system is broken. Confidence in decision making has been lost not only by the minerals industry but also, as evidenced by the recent controversies, by the Government and community. Decisions by a few nominated Commissioners on complex planning decisions that do not align with extensive assessments by the Department nor Government policy are not justifiable and run contrary to the supporting evidence presented to the IPC.

AMEC provides the following recommendations to the review of the IPC:

- 1. Limit the IPC to an advisory not decision-making agency** – The IPC was implemented following corruption allegations but the scope and responsibility of the Commission is simply too great. The value of independent oversight for major projects is important to provide community confidence, but final decisions should align with Government policy, be made by elected representatives and take appropriate account of the assessment by the broad Government agencies that provide input to the Department of Planning, Industry and Environment. Decision making in planning matters, just as in many different sectors of Government, should be made the Minister following advice of the Department.

³ <https://www.ipcn.nsw.gov.au/about-us>

⁴ *The Independent Planning Commission Annual Report 2018-19*

<https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/general/ipcannualreport201819finalpages.pdf?la=en&hash=3887CCDA8C28FA0445972483CA4200BE>

2. **Amend the threshold for referral to the IPC** – Currently the Department of Planning, Industry and Environment is the delegated consent authority to make decisions only on State significant development applications and modification applications where there are less than 25 objections to the application, local council support, and no reportable political donations. This means that most applications, especially in the mining sector must go to the IPC. The Department of Planning, Industry and Environment should have the responsibility and capability to most appropriately and consistently assess community and local council support and putting a number on objections can mobilise activist groups. For these reasons, the role of the IPC could be limited to only issues with reportable political donations.
3. **Ensure that the IPC recommendations align with Government policy** – The key role of the IPC should be to provide independent oversight, not government policy. The people of NSW elect a Government to develop and deliver policy through the legislative framework. The key role of the IPC should be to provide independent review and oversight, not Government policy.
4. **Ensure that decision making follows Government advice and considerations** – The role of the substantial Department of Planning, Industry and Environment is to provide considered advice to the Minister, taking into account the assessment of many agencies and other parts of Government. The advice of the Department is multifaceted, developed by hundreds of people and distilled according to Government policy. This advice should be the basis of planning determinations.
5. **Consider overhaul of the NSW planning framework** – The issues noted above flag the critical issues of the NSW planning system. The current planning system is based on a now forty-year-old Act. NSW deserves a system that is consistent, timely and fair and an overhaul of the legislative framework is needed to deliver these outcomes.

The minerals industry welcomes simplified, streamlined and improved regulation to maximise resources for the State of NSW. AMEC would welcome further consultation on this important matter and if you have any queries regarding this submission, please do not hesitate to contact:

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Manager – New South Wales, Victoria & Tasmania
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