

Dear Commissioner,

Thank you for the opportunity to provide input to your review of the Independent Planning Commission. I am [REDACTED] Coal Free Southern Highlands, a community group opposed to the development of the Hume Coal Project in the Sutton forest Area of the Southern Highlands. The comments made here mainly relate to my experience with the IPC regarding this project.

The Department of Planning and Environment (DPE) completed their Preliminary Assessment of this project in early December 2018, recommending that approval should be refused for the project on several grounds, and concluding that it was not in the public interest. The Preliminary Assessment was immediately referred to the IPC, which provided its review at the end of May following consultations with the DPE, the proponent and the community via a Public Hearing process.

In its review, the Hume Project IPC panel, drew attention to a number of potential problems with the proposal, but recommended that both the DPE and the proponent engage additional experts and complete further studies to enable differences to be resolved and some issues clarified. Conservative estimates are that these recommendations, if followed fully, require a further 12 months' work before the DPE was in a position to produce their Final Assessment of the Project and to allow the IPC to move to the determination phase of the project approval process. It should be noted that determination phase for the Bylong Coal Project took just a few weeks short of 12 months, mainly a result of the panel for that project commissioning additional expert reports.

It has not come as a surprise that the Planning Minister has called for this review of the workings of the IPC. The IPC organisation was set up with the best of intentions – to take the politics out of planning decisions – and it remains a valuable component of the NSW planning process. The Commissioners that have been appointed are highly qualified with a wide range of expertise. The IPC's commitment to transparency regarding the submissions they receive is commendable, and as far as we can see, is consistently applied.

However, from my experience with the Hume Coal Project, the current IPC arrangements require the appointed panel to absorb massive amounts of data from a standing start and limit the range of interaction the panel has with the principal participants. Difficulties in appropriately dealing with uncertainty and a lack of focus on 'show-stopper' issues have led to extended delays in project determination and significantly increased costs.

For the Hume Project, the IPC panel has, with the best of intentions, developed a response to the DPE Interim Assessment that is more of a 're-do' than a 'review'. It had been presented with diverging expert views that were difficult to reconcile, and the process adopted proved to be unhelpful in that regard. The objective of this submission is to suggest some changes that may improve the effectiveness of the IPC process, but with the understanding that difficult decisions will still need to be made with imperfect information.

Comments on the IPC process.

A difficulty with the IPC process is that its review follows receipt of the DPE Assessments, when the selected IPC panel see details of the project for the first time. The DPE work, especially for the Interim Assessment, takes place over a considerable period: in the case of the Hume Project the timeline was as follows:

- Receipt of the EIS – March 2017 - Submissions on EIS in by June 30, 2017
- Response to Submissions received from the proponent June 2018
- DPE Interim Assessment December 4, 2018

Throughout this 20 month period, the DPE assessment officers met with the proponent and community groups, engaged their own experts and worked through many complex issues in detail. In contrast the Hume IPC panel completed their work in just over 5 months and had limited interaction with the parties involved. The panel appeared to be perplexed by the differences in the views of the proponent and the DPE, and between experts, on a number of critical issues, and recommended even more experts (independent, of course) be engaged to resolve the uncertainties created.

The reality is that the planning approval process has to deal with the fact that experts will disagree, particularly in areas where uncertainty abounds, and groundwater analysis, geology and mining engineering surely fall into this category. More experts will not necessarily provide clarity, a call must be made based on the assessment of the uncertainties.

The other aspect of the IPC procedures that should be a cause for concern is the lack of iterative interaction between the proponent, the DPE and community interests. In the case of the Hume Project the IPC panel was tasked with absorbing a huge amount of material in a short time, before it conducted 2 hour briefing sessions with the proponent, the DPE and our organisation, Coal Free Southern Highlands, as we were the principal source of technical input from the community. These meetings took the form of a presentation followed by limited Q&A. When transcripts were made available, we saw that many questions that should have been asked were not and the value of these sessions was poorer as a result.

The Public Hearing, conducted over 2 days by the panel was very effective in assessing the feelings of the local community, but as no questions were allowed from the floor, and only limited questioning from the panel, the effectiveness of this hearing in resolving differences in views was very limited, but perhaps that was the intention

If the interface between the IPC panel and the principal parties was an iterative process of several stages, with the later stages benefitting from the knowledge of the material raised earlier, the panel may be able to develop more incisive questions to probe the most critical issues with a more effective examination of a proposal being the result. With current procedures, the IPC response is developed predominantly from written material and the

critical analysis that would come from more extensive and targeted interrogation is largely absent.

Prioritization of Issues

The initial IPC review of the Hume Project would have benefitted from a greater focus on the issues that are 'show-stoppers' as far as the approval of this project is concerned. This was in effect the approach taken by the DPE in their Interim Assessment, where a concentration on mine safety, groundwater and economics issues allowed them to efficiently reach their conclusions.

The IPC review was critical of the fact that a wider range of issues was not covered more comprehensively by the DPE assessors. They recommended a considerable work be undertaken in a number of important but less critical areas, for example photo montages of the site facilities and further heritage analysis.

In contrast their review covered the critical make-good issue with less than a page of discussion and did not seem to appreciate the rationale behind the approach taken in the DPE Assessment. A great deal of work that has been requested from the proponent and the DPE will be redundant if the DPE conclusions on the critical issues are upheld.

The IPC review did raise a number of matters, particularly in the area of planning regulations that were a useful contribution. However the structure that the IPC works under, at least in resource projects, where the assessment work is done initially by one group, the DPE, and then by another, the IPC, followed by a lengthy period of rework which may or may not be necessary, does not impress an example of process efficiency.

The acceptance of new material

In the case of the Hume Project, the proponent put forward proposals dealing with aspects of the contentious groundwater make-good obligations that were not part of the Hume EIS or the subsequent RtS and therefore were not considered in the DPE Interim Assessment. Details of these proposals were not even fully available at the time of the Public Hearing and there could not be properly addressed by the community and its experts.

Further, the new issues raised by the proponent, the 'reasonableness' of make-good obligations and the application of VLAMP legislation to groundwater, were not addressed in any way in the IPC report back to the DPE, and the community remains in the dark as to whether the mechanisms put forward by the proponent, which involve legislative changes and profound difficulties from a landowners viewpoint, are being seriously considered.

It is likely that the proponent withheld this information in the hope that it may get more favorable consideration than it may have received from the DPE assessors. However, the effectiveness of the overall approval process is diminished by this gaming of the system. At the very minimum this material should have been referred back to the DPE for their input. The iterative consultation process with the principal parties that was suggested earlier, or something similar, would have been helpful in overcoming difficulties of this kind.

The Commissioners skills, expertise and qualifications

There is no shortage of skills and expertise in the current batch of commissioners, but selection of the appropriate commissioners for a particular project requires close consideration. It is tempting to pick commissioners with a compatible skill for a particular project, but that runs the risk that a commissioner, based on his/her skill background, may be tempted to rework the material under consideration adding more time and more cost.

For any project is essential that a review panel have the necessary understanding of planning regulations to complete their work. For more technical projects such as coal mines, CSG projects etc, specific expertise may be helpful, but the process will only work effectively if the DPE Assessment phase is the principal place for resolution of technical matters. Here a range of experts can be engaged by the DPE, the proponent and the community (if they can afford it), and different perspectives tested through face-to face interaction. If more resources are to be made available for planning approval purposes, I believe that these resources would be best applied within the DPE rather than the IPC.

For the IPC assessment of the DPE work to be effective and efficient, there will be a greater call for the managerial skills needed to focus and contrast the critical aspects of the project that are in dispute and weigh the impact of the uncertainties that are inherent in the proposal. Alongside adequate technical understanding, an ability for incisive and well-informed questioning is also important and ideally each IPC panel should reflect this range of skills.

A further efficiency issue that should be considered is that the longer the time taken for the IPC participation with any project, the greater the chance that the composition of the panel will change. In the case of the Hume project it appears that the groundwater expert on the IPC panel is no longer an IPC commissioner which may cause continuity problems when the panel is reconvened for the determination phase.

Summary

The IPC is an important component of the NSW Planning Process dealing with the larger and more complex projects, but its efficiency and effectiveness is open for debate. In this brief submission it is suggested that the work of the IPC can be improved by clearly defining its role relative to the Assessments group within the DPE and adjusting its procedures to allow greater interaction with the principal participants in the approval process.

In the case of the Hume Coal Project, the questioning by the IPC panel in the private sessions with experts from the principal parties was not particularly effective. While the panel had instructed participants that they should assume that all relevant material had been read by the panel members, this was not at all clear from a review of the transcripts. While the material may have been read, it was not fully absorbed and placed in context, which is understandable given the volume of information involved and its complexity.

This submission suggests that an iterative process, with several rounds of interaction between the IPC panel and the principal participants in private sessions may sharpen the IPC review and accelerate their understanding of the issues involved. Hopefully this would avoid the need to engage additional experts who are more likely to muddy the waters rather than provide clarification.

It is also suggested that with many projects, a focus on the principal 'show-stopper' issues may avoid the need for additional work on the more minor matters. In the case of the Hume Project, groundwater and economics, along with the feasibility of the mine plan, were the critical issues for evaluation. If the proponent failed to convince in any of these areas, refusal would almost certainly follow. If the panel accepted the proponent's positions, then the lesser issues would need to be examined.

In conclusion, the IPC is an important contributor to in the arrangements for planning approvals in NSW, even if some deficiencies have appeared over the short life of this organisation. However, with some adjustments to its procedures and a clearer understanding of its role relative to the DPE, its effectiveness can be improved.

[Redacted]

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Attached: Comments on the IPC report on the Hume Coal Project
Coal Free Southern Highlands Inc.
July 8th, 2019

**Hume Coal Project
Comments on the IPC panel report**

[REDACTED]
Coal Free Southern Highlands Inc.

July 8th, 2019

The report was issued on May 27th, is 122 pages long and reaches no firm conclusions. The Independent Planning Commission (IPC) panel is calling for the Hume and the Department of Planning and Environment (DPE) to undertake yet more analysis, and appoint additional 'independent' experts, or groups of experts, in key areas.

The IPC report concludes that the DPE Preliminary Assessment of the project, and the information it has received from submissions, is insufficient to allow the Commission to adopt a definitive position on the merits of the project as a whole. However, the commission makes a number of observations which give an indication of the hurdles the company faces:

- The Commission considers it possible that the current groundwater model might underestimate the mine water inflow and the impacts on existing groundwater users.
- The Commission is concerned at the level of uncertainty about the extent of groundwater drawdown and the capability of 'making good'. More studies are recommended.
- A concern with the impact of the water table drawdown on gardens and other vegetation was expressed, and more information requested.
- The Commission found that the Hume Project may be incompatible with the preferred land uses as outlined in the Wingecarribee Local Environment Plan. This obstacle can be overcome if the economics benefits of the project are clear and overwhelming. The Commission is not satisfied that this is the case.
- The DPE Preliminary Assessment concluded that the Hume Coal Project was contrary to the public interest, and while the Commission is not satisfied with the extent of the DPE work in this area, they also say that at this stage there is no sound basis for concluding that the project is consistent with the relevant acts and that the conclusion of the DPE regarding public interest may be supportable.

Our biggest disappointment with the Commission's report is their unwillingness to tackle the 'make good' issue in any meaningful way. A great deal of information had been placed before them, by our organisation, local landowners and hydrogeologists supporting the contention that 'make good will prove to be unworkable in this area. Hume has responded saying that if they have the 'support' of the Government and an appropriate test for 'reasonableness' is established then their proposals are workable.

Hume makes it clear in its submission to the IPC that the impact of the mine must be seen in the context of other events, particularly climatic events. This implies, at least for those landowners most affected, that a landowners entitlement to his established water rights must be constantly negotiated, and it may be 'unreasonable' for a landowner to claim 'make good' for water in excess of current use, even if that is less than the entitlement.

Hume has put forward, in a discussion paper prepared by their consultant EMM but submitted to the IPC by one of their associates, the concept that Government should support Hume by what amounts to the confiscation of landowner water rights in situations where 'make good' was unworkable, as it would be for irrigation bores in the mine area. Monetary compensation would be paid by Hume at a level determined by the Government. This arrangement is unfair and would

require new legislation, which would be strongly resisted by the community. Landowners have invested heavily in their properties based on these water rights and are not interested being bought out in this way.

This matter is complex but in our view the IPC panel had sufficient information before it to form a more definitive view. Instead discussion on this critical aspect of the project approval occupied less than a page of their 122 page report.

Hume's response to this report has so far been muted, not surprisingly given the number of issues, that have been raised, many more than listed above, and the work required of them. The DPE has also been requested to provide extensive information, and unless a prioritization of the issues is undertaken, with a focus on the issues that are make or break for this project, then determination of the approval is a long way off.

A summary of the more important issues raised in the report follows.

Mining method and safety.

Faced with conflicting views of the experts from the DPE and Hume, the Commission recommends that 'a new independent expert with experience in innovative coal mining technology' be engaged to assist in resolving ongoing differences of opinion on the safety of the mining method. We doubt that unconflicted experts with this skill are available and question the value of yet another opinion on these subjects. A call must be made on the information available and uncertainty surrounding the mining process is a critical factor in this consideration.

The Commission expressed concern with a general lack of geological information in the mine area and the use of extrapolated data from the Berrima mine. It notes Hume's position that a detailed mine plan is not normally developed at this stage of the project and goes on to say that 'this is a problem that will have to be addressed and resolved'. The report also notes the refusal of adjacent landowners to provide access for exploration purposes (where they are entitled under S31 of the Mining Act) but makes no mention of the fact that Hume is withholding data on over 150 boreholes from public scrutiny on a commercial and confidential basis.

Groundwater

The IPC report examines the groundwater issue at great length, lining up the views of Hume's advisors and the 'independent' DPE expert Middlemis against the strongly adverse views of DI Water and the contribution from our experts. Hume go as far as to question the competence of the DI Water staff in evaluating their analysis but in our view, especially in the light of the thorough response they gave to the questions asked by the IPC, DI Water more than held their own against the continually shifting GW modelling put up by Hume.

The Commission talks at some length of the uncertainties involved in the groundwater modelling and express concern that the current Hume model may underestimate mine water inflow and the impacts on existing groundwater users. They suggest that the DPE request the completion of (yet) another groundwater model that considers more recent input from DI Water and the Hume consultants.

Once again, faced with conflicting views, the Commission suggest that 'the DPE and Hume, together or separately, and in consultation with DI Water, engage a new independent expert' experienced in

groundwater modelling issues to resolve differences of opinion. It will be a minor miracle if a search for an unbiased expert satisfactory to the 3 parties will be successful at this time.

As we have commented earlier, In CFSH's view, the greatest flaw in this report is the weak analysis provided of the make good strategy put forward by Hume. Given the amount of information provided to the Commission and the weaknesses in the Hume position we might have expected a more definitive statement.

Surface Water

The Hume water balance for the mine relies on the ability to store water in the underground voids and avoid any overflow of contaminated water to local streams. This in turn depends on the reliability of the operations within the mine, and whether the solutions proposed work effectively and safely.

The Commission sides with Hume on their ability to manage the water flows, but then goes on to state that it is not satisfied with information provided on the surface water impacts because of disagreement over the acceptability of the mine design and the consequent ability to store water underground.

The Commission recommends that Hume advise whether the provisional water treatment plant is part of the project, and if so some data to allow an assessment of its impacts. Hume was also asked to provide data on the time that would be taken for the Primary Water Dam and the reject stockpile to reach capacity if reject emplacement operations and water impoundment were interrupted for any reason.

Underground reject emplacement

The Commission has basically ignored the submissions put forward by [REDACTED] on our behalf. Hume used a glib piece of laboratory work to declare no problem, the EPA totally abrogated their responsibilities and went along with it and the DPE seemed to take the view that they had enough fights on their hands and gave it a pass. The Commissioners state that they are 'generally satisfied' that the reject emplacement plan is fine. We take the contrary view and will take this matter further if necessary.

Green House Gas Emissions

The Commission has taken a stronger line on this subject than was anticipated, but in view of the Rocky Hill mine decision is understandable. The Commission found that neither the DPE or Hume had appropriately considered or assessed the full impact of emissions as required by the EPA Act and the provisions of the Mining SEPP. At this stage in its process, the Commission is not satisfied with the information it has been provided, particularly relating to Scope 3 emissions (those generated from the consumption of the coal product) nor any proposed mitigation measures.

Historic Heritage

The Commission has linked the heritage issue to the drawdown of the water table as noted in their comments on visual impacts of the mine. It also noted the concerns registered by the Heritage Council of NSW. The Commission indicates that it is not satisfied with the heritage impact information it has been provided, particularly regarding the water table drawdown and its impact on gardens and the cultural landscape.

Economic Issues

The Commission has found that there are numerous problems with the economic assessment of the project and significant differences in the views of the Hume expert and those of the expert commissioned by the DPE. The Commission has found that there are residual uncertainties about the quantum of net economic benefits to NSW that would result for the project. These uncertainties go beyond the usual uncertainties that are part of all mining projects and relate more to the Government guidelines that apply to these projects. Clarification is required.

The Commission also points to the uncertainties around the operating and capital costs of the project which have been hidden behind a veil of confidentiality. They recommend an appropriate confidential peer review. The uncertainties around the costs of make good, legal costs arising from denied access and environmental costs due to reduced water table levels should be resolved before the benefits of the project can be weighed against the impacts of the Project on the environment and the community.

The report would have benefitted from an analysis of the competitive position of the proposed mine and the impact on its operations of a turndown in coal prices. This is a small, greenfields mine with its production split between semi-hard coking coal (1.1 million TPA) and thermal coal, and high operating costs due to its geological setting. It is poorly placed to compete against established coking coal mines like Tahmoor, which has submitted an EIS to increase their production at minimal cost, or the large coking coal mines such as the newly approved 14 million TPA Olive Downs mine.

Social Impact

The Commission is critical of the DPE who have not provided a Social impact Assessment in the information provided to the IPC. The Commission suggests that both the DPE and Hume should provide social impact assessments in accordance with the DPE guidelines – September 2017.

Suitability of the Site

The Commission has given particular regard to the suitability of the site in its assessment of the merits of the project. The Commission has found that matters to do with the protection of the aquifer and the ability of landowners to maintain their access to groundwater are the most important issues for the community.

It criticises the DPE for not providing a more comprehensive assessment on a number of important issues, including economics, social, visual and GHG impacts, and that this is required before a decision about the suitability of the site can be made.

Statutory Environmental Planning Instruments

This section of the report relates to the Commission's conclusions as to how the Hume Project meets the objectives of the two State Environmental Planning Policies, the Mining SEPP and the Drinking Water SEPP.

Without going into details, the Commission is of the view that the project can achieve the objectives of the Drinking Water SEPP, provided no discharge of mine related water occurs to surface waters. Our experts disagree with this position but note that the Commission is open to change this view.

In considering the Mining SEPP, the Commission is required to establish whether or not the mine is likely to have a significant impact on the preferred uses of the land, and the report indicates that they consider the Wingecarribee LEP to be the best guide for what may be considered the preferred uses. The Commission's preliminary finding is that the project may have negative impacts on the preferred land uses. Further information is required before a definitive view can be formed.

The Commission goes on to say that it is not convinced that all the measures proposed to avoid or minimise the impacts of the project, and therefore land use compatibility, have been satisfactorily resolved at this time. It is seeking further information from the DPE and Hume on these matters but has formed the preliminary view that the project may not be consistent with clause 12 of the Mining SEPP.

Public Interest

The Commission's provisional view is that there is no sound basis on which to conclude that the project is consistent with aspects of the EPA Act and the principles of ESD, and therefore may not be in the public interest.

The Commission is not happy with the extent of the information provided by the DPE on this subject and has requested an updated and more detailed assessment of these matters. Hume has also been requested to update its views.

Issues of less concern

The Commission has identified a number of issues that they believe are minor in nature or are such that any problems could be overcome with appropriate conditions of approval. Falling into this category are subsidence, noise, air quality, indigenous heritage, rehabilitation and agriculture. Other less significant issues are visual impact and biodiversity, although the Commission has expressed concern that the drawdown in the water table may have deleterious effects and has asked for more information.

Conclusion

The Commission concludes that the DPE Initial Assessment is incomplete and, along with the other submissions that have been supplied, does not provide it with enough information to reach a final determination. The report identifies a modest number of issues that are of a relatively minor or positive nature that can probably be satisfied by appropriate conditions of approval.

On the other hand, the Commission's report clearly identifies a number of serious matters that affect the viability of the project, where the Commission is unable to support the arguments that have been put forward by the proponent although not totally accepting of the DPE assessment.

CFSH is of the view that there are areas where the Commission had sufficient information before it to draw more definitive conclusions, particularly regarding the 'make good' issue. Additionally, a more detailed focus on the weight of uncertainty surrounding critical aspects of the project and the likelihood of adverse outcomes might have been insightful. These issues now await the next phase of the project evaluation.