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Submission

Review of Independent Planning Commission

The Minister for Planning and Public Spaces has requested a review of the Independent Planning Commission's role and operations (Review).

My comments are below, drawn from my experiences of the Independent Planning Commission and its predecessor, the Planning Assessment Commission.

My comments are organised under the terms of reference for the Review:

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;

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 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 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.

- The Department of Planning using the earlier Planning Assessment Commission, 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. It would appear that the Department of Planning is captured by the mining industry and is incapable of balance or unbiased assessment and decision-making. Examples of this are in the manner commissioners were appointed. Commissioners who did not make rulings favourable to the Government failed to get appointed to any further panels.

- 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. They rely on the IPC for an independent and objective consideration of highly damaging and controversial mining projects.

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

- 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. I would support the general thrust of this while not feeling that every commissioner should necessarily be full time.

- In terms of expertise and qualifications, there don't 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.

Proposed changes to the Independent Planning Commission's current functions, processes for making determinations, and resourcing.

Thresholds for the referral of matters to the Independent Planning Commission;
& The clarity and certainty of policies and guidelines that inform determinations;

- There's a lack of policy that clearly indicates what level of impact is deemed unacceptable before an issue is referred to the IPC.

- 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.

The Commissioners' skills, expertise and qualifications; & The adequacy of mechanisms to identify and resolve any conflicts of interest by commissioners;

- Commissioners do need to be truly independent in the manner commissioners are appointed. My perception of the PAC is that Commissioners who did not make rulings favourable to the Government failed to get appointed to any further panels.

Resourcing of the Independent Planning Commission and the mechanism for determining budgetary support; & 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.

- Resourcing of IPC should be adequately funded. IPC should not draw on staff from DoPIE as those staff have a conflict of interests and allegiances.

Other issues

- It is important to 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.
- 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 absent." Such rights are routinely and almost invariably extinguished for major resource projects by the holding of IPC public hearings.

Thank you for the opportunity to provide comment.

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