

15th November, 2019

Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Email: ProductivityFeedback@treasury.nsw.gov.au

Dear Sir/Madam,

Independent Planning Commission Review

We are a small architectural and urban design practice operating in NSW.

In 2006, our practice, as part of a larger consortium, won an International Design Competition for Barangaroo - a project that was classified State Significant Development. A project that many professionals in the Urban Planning and Architectural fields in NSW consider a serious indictment on the former Part 3A Legislation that controlled the project processes.

The project was highly politicised. It is a matter of history that the fundamental qualities of our proposal were dismantled and our recommendations for planning controls on the site highly edited, or omitted, from future planning documents.

Notwithstanding the nature of that experience, the project was an opportunity for us to experience - first hand - the issues arising when highly politicised and pressured projects do not fall under the remit of an independent statutory body. The State Government was owner and consent authority – an impossible conflict, that has never been managed satisfactorily and has led to a significant loss of public trust and confidence in the NSW Planning system.

As you will be aware – Part 3A was dispensed with, but even Barangaroo's recent history contains cautionary tales that are relevant in the consideration of the primary importance of statutory independence. The NSW Unsolicited Proposals processes have allowed modifications to casino licensing, and subsequent amendments to the Barangaroo Concept Plan, to accommodate the Crown Group's casino and apartment development, with limited procedural transparency.

The casino displaced public parkland and foreshore access. An amendment, which on architectural, urban and social terms is clearly contrary to the public interest – a determination made by the former Planning Assessment Commission (PAC) who rubber stamped the Departmental assessment, imposing no amendments - and who, in media reports from the time, was suggested to have approved 96%¹ of all applications it reviewed.

The absurdity of the planning regime surrounding this site was again illustrated clearly in December 2018, when Crown Resorts and Lend Lease were successful in argument to the NSW Supreme Court that the Barangaroo Delivery Authority had breached its contracts with them, by failing to negotiate 'in good faith' about plans for the central Barangaroo precinct that threatened views from their tower development. This outcome, revealing, that the State Government had effectively contracted away the public interest – ceding control to private interests operating on the site at Barangaroo.

Philip Thalis ARB #6780

Sarah Hill ARB #5285

Nominated Architects

LEVEL 4, 68-72 Wentworth Ave

Surry Hills NSW 2010 Australia

T 02 9211 6276 **F** 02 9281 3171

E admin@hillthalis.com.au

www.hillthalis.com.au

These issues have received considerable public attention at state, and even national level – and serve to demonstrate the reason that the Independent Planning Commission (IPC) was created, superseding the former PAC and addressing claims against that Commission that it lacked independence from both the NSW Planning Department, and proponents.

We have followed the news of recent IPC decisions as interested observers.

The Bylong Valley decision was a strong precedent setting decision – raising critical public conversations about the assessment of climatic change as a component of environmental impact. We noted too, the targeted campaign subsequently launched by the NSW Minerals Council in response to this decision.

We have also noted coverage of the administrative issues surrounding Rix's Creek matter, which are of concern and should be addressed, but are of the level of procedural competence – and in our view, are not matters of sufficient gravity that should call the existence of the IPC into question.

We have been negotiating the planning system in NSW for thirty years of professional practice. The handling of State Significant Development at Barangaroo is, in our opinion, its nadir. The history of decision making and abrogation of public duty on that site significantly impacted public confidence in the independence of Government and its ability to act as an impartial consent authority in planning matters on public land.

The creation of the Independent Planning Commission was a significant step towards rebuilding a considerable deficit of trust.

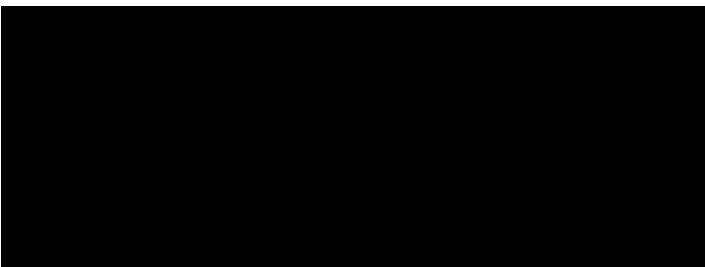
It remains critical that the planning processes for largest and most complex projects in the state are seen to be above reproach and political interference, particularly given the resistance to the implementation of appropriate political donation reform, and history of breaches.

Your decision regarding the future of the IPC will send a strong signal. To undermine the Commission's independence by dispensing with it on the basis of its recent decisions would serve only to confirm where the real power resides in this state.

We urge the review to find that it is unequivocally in the public interest to retain an Independent Planning Commission, that continues to enjoy the contribution of the most skilled and authoritative members of relevant expert disciplines.

Indeed, we urge you to take this opportunity to strengthen the role of the IPC. It is timely that another decisive step is made towards redressing the trust deficit that plagues planning in this state.

Yours sincerely,



Hill Thalis Architecture + Urban Projects

Footnotes

1

<https://www.smh.com.au/national/nsw/why-the-planning-assessment-commission-is-likely-to-approve-james-packers-barangaroo-tower-20160429-gqhzlh.html>