

“Reclaiming our Valley”

Hunter Communities Network

Friday 15 November 2019

Mr Peter Achterstraat AM
Commissioner for Productivity

ProductivityFeedback@treasury.nsw.gov.au

Dear Sir,

Submission to Independent Planning Commission review

Hunter Communities Network (HCN) was established in 2011 to represent communities living near coal mines in the Hunter Region. The ongoing cumulative environmental and social impacts are a result of a major imbalance in decision-making that has increased the disadvantage to remnant communities and isolated private property owners.

We appreciate the opportunity to participate in the current review of the Independent Planning Commission (IPC).

HCN has participated in all the IPC public meetings and consultation processes in the wider Hunter Region since it was established in 2018, after the reform of the Planning Assessment Commission.

While we support the need for the IPC we have had varying experiences in regard to the management of community consultation processes.

We submit the following comments on the Terms of Reference for this review:

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

HCN supports that the maintenance of the IPC is in the public interest. The Department of Planning, Environment and Industry (DPIE) is now a super agency with many internal conflicts of interest. The Independent Commission Against Corruption (ICAC) recommended having a

determining body separate to DPIE and the Minister to safeguard against corruption in the planning system.

The current process extinguishes third party merit appeal rights through the Land and Environment Court, if the IPC is directed to conduct a public hearing. A public hearing into State significant development applications for coal mines is the norm.

Modification applications have merit appeal rights extinguished.

For a brief period of time after the election of the Coalition Government in 2011, third party merit appeal rights were re-instated. This resulted in the over-turning of the Dept of Planning recommended approval of the Warkworth Mine expansion and significant changes to the conditions of approval for the Ashton South-East Open Cut mine, both near Singleton in the Hunter Valley.

The recent Land and Environment Court merit appeal case on the Rocky Hill Mine also resulted in the mine being rejected. This mine proposal is one of the very few examples in NSW where both DPIE and IPC recommended against the approval of a State significant development.

ICAC recommended giving the IPC quasi-judicial status. This has not occurred. It is critical that the final determining body for a State significant development, particularly large coal mines with a complex range of cumulative impacts, have a high level of legal capacity.

The expertise and qualifications of Commissioners must suit that status.

The recent decision by the IPC to reject the Bylong Mine, overturning the DPIE recommendation that this significant land use conflict be approved, demonstrates that the IPC is capable of making an independent merit assessment of a State significant development.

If the review is to recommend alternative arrangements to the IPC, the reinstatement of third party merit appeal rights must be included in the recommendation.

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;

HCN had varying experiences with IPC's operations. A number of problems relate to staffing resources, but also to Commissioner appointments and decision-making.

The improved transparency through publishing meeting transcripts, all correspondence and reports on the IPC website is appreciated and demonstrates good governance. The IPC chair has also conducted meetings with stakeholder groups to get feedback on improvements to process and communication.

A number of disturbing incidents have occurred that have diminished the communities trust in the IPC. HCN provides the following case studies:

a. United-Wambo Coal Mine Public Meeting

Members of the public were invited to attend the determination public meeting for the United-Wambo Coal Mine on 12 December 2018.

The meeting was cancelled on the day because of a conflict of interest of two separate Commissioners appointed to make the determination of this very large new open cut coal mine proposal in the Hunter.

This last minute cancellation caused a significant level of inconvenience to the public, who had rearranged employment commitments, travelled long distances and committed time to preparing information to present to the IPC.

One of the appointed Commissioners had previously been a manager at the Wambo coal mine.

This incident highlights the importance of the process for appointing Commissioners. It is imperative that they have a demonstrated independence and a high level of technical, scientific and legal expertise.

The process for appointing Commissioners must be more transparent and the role must be a full time position.

b. Rix's Creek Coal Mine determination

The determination to approve the Rix's Creek mine expansion near Singleton was released before the deadline for additional public comment on the proposal had closed.

The determination was then pulled and a further week was granted for final comment. Submissions from legal, scientific and economic experts were lodged by the extension date.

The approval of the project was re-released less than 24 hours after the close of submissions, on a Saturday. This process has demonstrated that the consideration of issues raised by the community and independent experts is tokenistic.

Political pressure to have quick decisions on large coal mines with significant cumulative impacts should not influence the determination process.

The State significant designation has removed concurrence powers from any other Government agencies or from local government relating to water use, pollution control, heritage protection, fire risk and biodiversity.

The consideration of cumulative impact is minimal and very poorly assessed. The proposal by DPIE to provide cumulative impact assessment guidelines has not materialized.

It is imperative that a full, independent and detailed merit assessment for a State significant development is undertaken.

There is a pattern of approving the extension of existing mine operations regardless of the cumulative environmental and social impacts.

c. Moolarben Coal Mine modification 14

This coal mine on the headwaters of the Goulburn River, the main westerly rising tributary of the Hunter River has had a significant, unpredicted, unassessed impact on the water source.

A three panel Commission ran a public meeting and site tour, including local community representatives to consider the merit of the 14th modification of this very large open cut and underground mining operation.

Before a determination was made, one of the Commissioners with respected expertise in hydrology and water matters became ill and had to pull out.

It was decided that the final determination would be made by the remaining two Commissioners. There is no evidence in the final report that significant issues raised by community members and water experts were taken into account.

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;

HCN supports that 25 submissions of objection be maintained as the threshold for referring matters to the IPC. Also if donations have been made to the political party in Government by the project proponent.

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

As stated above there is no clear policy in regard to the assessment and consideration of the cumulative impact of large open cut coal mining operations in the Hunter Region.

Guidelines for the assessment of cumulative impact have not been developed by DPIE.

This is particularly notable in regard to declining air quality, impacts on water sources, loss of biodiversity and Aboriginal cultural heritage and land use conflict.

- The Commissioners' skills, expertise and qualifications;

As stated above Commissioners must have a high level of independence, technical and legal expertise. The appointment process must be more transparent and the position a full time role.

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

Any potential conflict of interest must be resolved before the appointment of a Commissioner.

- The Independent Planning Commission's procedures and guidelines;

The IPC's guideline for public hearings contains a breach of fairness in that it does not guarantee any interested member of the public the ability to present to the Commission.

Any interested member of the public should be able to attend and address public hearings where they are held.

The nomination form to address public hearings asks for detail about whether you have a "Direct and immediate interest." This concept has no basis in the *Environmental Planning and Assessment Act 1979*.

Anyone interested in addressing a public hearing into a State significant development should be provided with the opportunity.

Notification of public meetings and meeting schedules need to be provided with longer notice to the public. This will be better managed with increased Secretariat resources.

- 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;

The IPC must have access to independent expert advisors to provide technical reviews of the assessment process. These experts must be provided with all modelling used by the proponent to predict environmental and social impacts.

This is particularly important in regard to water, noise and air pollution predictive models.

Assessment reports prepared by DPIE have demonstrated a strong bias towards the often overstated economic benefits of a project. Other Government agencies have restricted input into the assessment process.

Reliance on Government agency assessments diminishes the independence of the determination.

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

The IPC must be fully resourced to enable efficient operations. The lack of adequate administrative support has caused a number of unfortunate occurrences.

The IPC must be resourced to employ independent expert advisors.

- 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 IPC and its Secretariat must be fully independent of any Government agency.

For more information about this submission please contact:

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Yours sincerely

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