



Hunter Environment Lobby Inc.

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Independent Planning Commission review

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Hunter Environment Lobby (HEL) is a regional community-based environmental organization that has been active for over 25 years on the issues of environmental degradation, species and habitat loss, climate change and effects on ground water and rivers of coal mining in particular.

We have been following the many modifications and expansions of all the coal mines in the Hunter and beyond for many years, and were pleased to see that our concerns had been taken on board, to some extent, at the commencement of the Independent Planning Commissions work.

In our previous voluminous submissions to the IPCN (none of which has been referenced in subsequent missives from the Department of Planning), we have pointed to the many reasons why extensions for all expansions and new mines must not proceed.

In particular, air pollution issues, like those at Camberwell and North West Singleton regularly exceeds the national standards. The assessment of air pollution from Rix's Creek Mine, as an example, has been identified as inadequate by the Department of Planning after the publication of their final assessment report stating the opposite.

We find that this review process has been brought on by pressure from the well financed and very active coal lobby here in Australia – a process which we find depressing and anti-democratic, and one which must not be recognised.

We find the terms of reference are broad and ominous and the review has been initiated at the urging of the NSW Minerals Council after the Commission refused to approve a large new coal mine in the fertile Bylong Valley.

The terms cover whether it is in the public interest to have such a Commission, the threshold for projects to be referred to it, the mechanisms by which state significant development is assessed and determined, the Commission's processes and guidelines, its expertise and resources, whether it should have its own staff and "*the extent to which the Independent Planning Commission should rely upon the assessment report prepared by the Department of Planning, Industry and Environment.*"

HEL feels that in September 2011 the Minister's discretionary power for referring projects to the Commission became an automatic delegation for politically-charged projects in order to keep controversial planning decisions at arm's length from politics.

Determination of state significant development was delegated to the Planning Assessment Commission (PAC) for any project where there has been a political donation, objection by the local council, or more than 25 objections from the public.¹

This occurred following recommendations from the ICAC, which said that "*expanding the decision-making role of the PAC would provide an important safeguard against potential corrupt conduct*"² The ICAC found that, "*Referral to the PAC is seen as a safeguard because of its independence. In addition, the opportunity for a person to approach PAC members corruptly is comparatively limited...*"

HEL maintains that the public interest is best served by retaining the Commission, because of many reasons, including:

- Provides an important safeguard against corruption in the planning system which has been recognised by ICAC.
- Helping 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 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. We feel that the Department of Planning is captured by the mining industry and is incapable of balance or unbiased assessment and decision-making.
- 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, and rely on the IPC for an independent and objective consideration of highly damaging and controversial mining projects.
- We raise the many instances where the IPC or the PAC has raised matters neglected by the Department, like final voids, biodiversity loss or aquifer interference, and which HEL has raised many dozens of times in our voluminous dealings with the Dept.

¹ First introduced by a planning circular, 30 September 2011. <https://www.planning.nsw.gov.au/-/media/Files/DPE/Circulars/planning-circular-determination-of-state-significant-applications-2011-09-30.pdf?la=en>

² ICAC, 2010. *The exercise of discretion under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Projects) 2005.*

In relation to the operations of the Commission and skills and expertise:

- 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.³
- 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.

In relation to the clarity and certainty of policies that inform determinations by the IPC:

- There's a lack of policy that clearly indicates what level of impact is deemed unacceptable.
- 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.

HEL would like to see the processes of the Commission strengthened as follows:


- 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.*"⁴ Such rights are routinely and almost invariably extinguished for major resource projects by the holding of IPC public hearings.
- The nomination form to address these hearings asks for detail about whether you have a "Direct and immediate interest." This is not a concept that has basis in the *Environmental Planning and Assessment Act 1979* nor is it appropriate that certain inputs be prioritised over others. The Commission staff cannot know ahead of time

³ *ibid.*

⁴ ICAC. February 2012. Anti-corruption safeguards and the NSW planning system.

which applications to speak at public hearings are likely to provide information or perspectives that the Commission does not otherwise have access to, so all inputs should be accommodated.

Yours in trust,

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