



Idemitsu Australia Resources Pty Ltd

ABN 45 010 236 272

Level 9, 175 Eagle Street, Brisbane QLD 4000 Australia

GPO Box 301, Brisbane QLD 4000 Australia

Phone: +61-(0)7-3222-5600 Fax: +61-(0)7-3222-5665

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Mr Peter Achterstraat AM
NSW Productivity Commissioner
IPC Review

By email: ProductivityFeedback@treasury.nsw.gov.au

Dear Mr Achterstraat

Thank you for the opportunity to comment on the *Review of the Independent Planning Commission* on behalf of Idemitsu Australia Resources. This submission will address Terms of Reference 2 and 3, drawing upon our company's experience with the Independent Planning Commission (IPC) process from December 2018 to May 2019.

By way of background, Idemitsu Australia Resources (IAR) is a subsidiary of Japanese company Idemitsu Kosan Co Ltd, a diversified energy company with significant interests in Japan, including Wind, Solar PV, Geothermal, Biomass fuels, oil and chemical production. Our Australian business is built on four pillars: mining, fuel, renewables and agriculture. While IAR was established in 2006 to administer Idemitsu's Australian coal operations, the company's involvement and investment in the Australian coal sector dates from the 1970s with Idemitsu, operating as 'Muswellbrook Coal Company' and 'Boggabri Coal' in NSW. IAR also owns 'Ensham Resources' in Queensland, located 40km north-east of Emerald.

IAR would like to draw upon our most recent experience in the NSW approval process that involved modification to the Development Approval of the Boggabri Coal Mine.

Modification 7 (Mod 7) proposed five non-controversial, procedural amendments to the Boggabri Coal Project approval. In summary the five amendments proposed would have permitted Boggabri Coal to:

1. Use an existing coal stockpile area to store Boggabri Coal instead of coal received from a neighbouring Tarrawonga Coal Mine;
2. Undertake exploration activities within the approved exploration areas to inform ongoing mining activities;
3. Transport small amounts of coal by road for testing and marketing purposes, to enable enhanced testing at laboratories where appropriate;
4. Realign a small section of the project boundary to clarify the boundary between Boggabri and neighbouring Tarrawonga Coal Mine; and
5. Permit Boggabri Coal to achieve its biodiversity offsets through alternative mechanisms such as stewardship and conservation agreements, in line with recent changes to legislation.

Significantly, Mod 7 resulted in no change to the coal output as a result of the proposed amendments and no reduction in Boggabri Coal's environmental responsibilities. In fact, the changes included a provision which would help Boggabri Coal to fulfil environmental obligations. All the changes were recommended for approval by the then Department of Planning and Environment (DPE). In his letter to the IPC, Marcus Ray of DPE stated in relation to the modification:

The Department did not seek submissions to the application due to the minimal impact and largely administrative nature of the proposed modification. However, it received 29 representations on the application including 26 objections from the general public. Due to the high level of public interest in the application, the Department considers the Independent Planning Commission should determine its application under the Minister's delegation of 14 September 2011, (See [Referral Letter](#), dated 19 December 2018).

As such, Mod 7 was referred to the IPC on 19 December 2018 and then approved on 27 May 2019.

IAR contends this five month delay was completely unnecessary and only occurred due to the objections of a small number of individuals. The summary provided in DPE's Modification Assessment clearly demonstrates that many of these submissions came from organisations – such as Lock the Gate, the Knitting Nannas and branches of the NSW Greens – who are explicitly opposed to all coal development (see [Modification Assessment](#), dated December 2018).

IAR believes the threshold for referring development applications to the IPC is inappropriate. Currently an application which receives 25 objections must be referred to the IPC for determination. The quantitative threshold can be easily met, as a small number of individuals, aided by social media platforms, can readily achieve this minimum number. There is no focus on the substance of submissions, nor whether the concerns raised reasonably require an independent body assess the application and hear orally from submitters in either a public meeting or public hearing setting, rather than consider written submissions as a consent authority would ordinarily do. In IAR's experience individuals without any connection to the project, who do not necessarily live nearby, including anti-mining activists, are given an avenue to frustrate the planning process and delay projects, which are otherwise assessed as appropriate by technical experts within the Department of Planning, Industry and Environment (DPIE).

In IAR's view the process has been discriminatory against proponents, and has not appropriately balanced the need for community consultation with the need for a streamlined and cost effective planning approvals process.

At Boggabri a simple administrative modification was deemed to reach the threshold based on the "level of public interest". DPE's recommendation was upheld after a full IPC process, the only change resulting



from the IPC involvement, was a 5 month delay in achieving approval. This delay added significant time, resources and costs to the approval process.

From an IAR perspective, the IPC unnecessarily duplicated DPE's assessment processes and in addition held a public meeting which in the context of a simple administrative modification was questionable and incurred unnecessary public expenditure.

The public meeting was addressed by 6 speakers and while they did speak to the Boggabri Coal modification a large part of their submissions were focussed on matters not related to the application before the IPC or issues to do with the planning process generally for assessing modification applications. The speakers used the public meeting as a forum to put on the record their opinions on matters on coal mining more generally, which were unrelated to the specifics of the modification.

In our view, the arbitrary threshold of 25 objections should be removed and an assessment needs to be made about the substantiveness and relevance of all of the objections as well as the nature of the development application or modification and whether it has minimal environmental impact or not.

Composition of the IPC

While we appreciate that IPC members should be free of conflict, we are concerned that some of the IPC members have very little relevant or practical experience when it comes to significant resources and energy projects. There is a wealth of practical and relevant experience sitting within DPIE in the planning divisions and resources and geoscience divisions. We see no reason why senior officers from those areas who have no conflict in relation to the application being assessed could not also be appointed as IPC members so that the decision maker has the requisite experience in the assessment of such applications.

IAR is of the view, based on our Mod7 experience that the IPC process significantly increases uncertainty and investment risk for proponents in NSW when measured against comparable jurisdictions such as Queensland and overseas.

Please don't hesitate to contact myself or my colleague [REDACTED] Group Manager – Stakeholder Relations if you have any questions or concerns about this submission on [REDACTED]

Yours sincerely

[REDACTED]
COO
Idemitsu Australia Resources

