

15 November 2019

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Productivity Commissioner  
NSW Government

Via E-mail: [ProductivityFeedback@treasury.nsw.gov.au](mailto:ProductivityFeedback@treasury.nsw.gov.au)

**Subject: Review of Independent Planning Commission**



**Background**

The Independent Planning Commission (IPC) acts as the consent authority in relation to certain State Significant Development. The Environmental Planning and Assessment Act 1979 allows for State Significant Development to be determined by the IPC instead of the representative of the NSW Government (the Minister for Planning).

The Minister for Planning has requested the Productivity Commissioner to conduct a Review of the IPC. The Review will examine whether it is in the public interest to maintain the IPC in the State's planning framework; to make recommendations on its operation and methods of assessment; and identify any proposed changes.

**Illawarra Metallurgical Coal**

Illawarra Metallurgical Coal (IMC) produces high-quality metallurgical coal primarily used for the production of steel. The coal within the mining leases that IMC operates is considered some of the highest-quality in the world, and there is currently no economically viable alternative to the use of metallurgical coal in the blast furnace method of steelmaking.

The operations are materially important to the Illawarra and Macarthur regions and to New South Wales through significant economic and employment contributions. IMC directly employs 1,800 people, more than 90% of whom live locally. In FY18, IMC spent A\$160 million with locally based suppliers and purchased from around 400 local businesses. The IMC operations generate substantial royalty and tax contributions for the state of NSW.

In addition, IMC is a critical supplier to the BlueScope Steelworks at Port Kembla, supplying approximately 60% of its coking coal requirements. This is the largest steel production facility in Australia and one of only two primary iron and steel making facilities in Australia.

IMC holds mining leases which were in place since the 1950s with plans to continue mining into the future. These long-term plans give IMC, government and the community certainty in mine planning and clearly establish a future for mining in the Southern Coalfield.

## **Need for Reform**

There is a pressing need for the NSW Government to reform the IPC's role and processes through legislation. The current arrangement framework is unable to provide the transparent, consistent and timely decisions that are needed for the state's significant projects – both current and future.

Consistent with other Australian planning laws and jurisdictions, we support the view that the responsibility for planning, policy and decisions should be returned to the elected NSW Government. This is best achieved through the NSW Minister for Planning making determinations based on recommendations from the Department of Planning Industry and Environment (DPIE) and scientific and technical advice from a reformed IPC.

IMC's position is informed by the following considerations:

### **1. The expert role of DPIE must be given appropriate consideration**

There are recent examples where comprehensive assessments of State Significant Development completed by DPIE have not been given appropriate consideration by the IPC. The technical assessments, recommendations, consideration of approvability and draft conditions (where approval is recommended), from DPIE must be given appropriate weight during the project assessment phase.

To strengthen the primacy role of the Planning Secretary, DPIE should make recommendations to the Minister for Planning based on technical advice of the IPC. To avoid duplication, the Secretary should set clear boundaries around the scope of the IPC's technical assessment, with these boundaries set by NSW Government policy. The effect of this would be to provide clear direction for industry, the IPC and other stakeholders.

### **2. Consent authorities must operate within government policy**

Legislative changes are necessary to ensure the IPC, or any other consent authority, is unable to disregard or not apply government policy.

The stated policies of the NSW Government should be the primary factor in project assessment and determination for State Significant Development. It follows that the role of the IPC should be limited to reviewing the DPIE assessment and providing technical advice, and prevented from duplicating or modifying the policy settings of the elected NSW Government.

### **3. Thorough assessment can occur within improved processes and timeframes**

Timeframes for State Significant Development assessments could be reduced by removing duplicated and/or redundant assessment steps, such as multiple IPC public hearings, while still retaining extinguishment of merit appeals.

Reduced timeframes help ensure continuity of employment for existing workforces awaiting project outcomes; increase investor confidence in projects; and are considerate of community, small businesses and other stakeholders who make decisions on the basis of project progression or otherwise.

Ensuring the IPC does not duplicate the comprehensive assessment undertaken by DPIE on behalf of the Planning Secretary will reduce assessment timeframes and complexity. Minor

modifications to approved State Significant Developments could be assessed and determined by DPIE, instead of generating a referral to the IPC.

In addition, reforms should include statutory approval timeframes and clear process guidance. These reforms could consider a reduction in discretion of DPIE on process steps (e.g. variable public display periods and accepting submissions post display period); and a revision to the current thresholds for including the IPC in the approvals process (i.e. 25 objections). The involvement of the IPC in the approvals process should be commensurate with a strong public interest test (i.e. significant community or key Government Agency objection ), to support the considerable time and resources required.

#### **4. Projects should be afforded reasonable certainty if approved**

As part of the review of the IPC, IMC would support a reform that allows DPIE to provide a coordination role ensuring that for State Significant Development approvals, all post-determination requirements are resolved in a timely manner and consistent with the terms of the original approval and NSW Government policy.

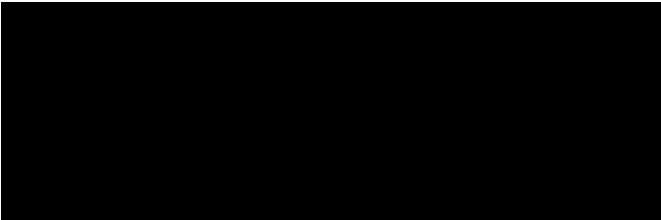
NSW Government Agency requirements should be addressed in a transparent and timely manner; wherein DPIE has a lead role in providing whole of Government coordination in a post approvals environment.

#### **Conclusion**

The IPC is a statutory body whose function is primarily to act as consent authority in relation to certain State Significant Development. Currently, the IPC has limited accountability; complex and unduly lengthy procedures; and has been observed to make determinations contrary to or outside of government policy.

To maintain the IPC in the State's planning framework, legislative reform is needed to ensure:

- The expert role of DPIE is given appropriate consideration in determinations;
- Consent authorities are structured to operate within government policy;
- There are statutory approval timeframes and clear process guidance; and
- There is reasonable certainty for projects once approvals have been determined.



Vice President Operations  
Illawarra Metallurgical Coal