



SUBMISSION

Review of the NSW Independent Planning Commission

1. Introduction

We thank the Productivity Commissioner for considering the submission of the Leard Forest Research Node, a Citizen Science group based in Maules Creek, NSW, which since 2015 is engaged in a range of field studies and desktop research on a range of subjects pertinent to the impacts of coal mining expansion in the Gunnedah Narrabri region, ie the Namoi Valley. This has included field studies and reports on noise pollution, exposure pathways of coal pollution to the Namoi River, biodiversity, to name a few. We have also made many submissions and presented at one hearing being the Vickery Coal mine hearing in Boggabri, February 2019.

This submission draws upon our direct experience with the Independent Planning Commission.

We urge the Commissioner to consider the benefits that the current format of the IPC brings to the assessment of State Significant Developments. No doubt the review will hear opposing views from those who wish to limit the full and transparent assessment of State Significant Developments to avoid public scrutiny. Without knowledge of the inner workings and budget of the IPC, we can't comment on whether it is currently underfunded to fulfil its purpose, however we have one suggestion to make about providing the IPC with sufficient resources not to have to rely on the Department of Planning from where so much misinformation emanates for fact checking and verification. We will provide evidence of this below.

We are not informed precisely of the reasons this Review has been commissioned by the NSW Government. Ostensibly, the Review has been prompted by the debacle of the Rix's Creek mine extension decision which was brought into the public view. Others believe the Review has been instigated by anger of the coal mining industry over the IPC's decision rejecting the Bylong Coal mine. Whatever the motivation of this Review, the importance of the Productivity Commissioner making the right recommendations is paramount.

The integrity of the NSW planning system is at stake. Currently we have grave concerns in our region about the integrity of the system. However, these concerns are not based on the conduct of the IPC, far from it. We believe any investigation should be directed to the conduct of those Planning Officers from DPIE who are in a position to influence, pressure, provide information and delineate the issues. One way in which we have observed this interference occurring is in the provision of incorrect information which misleads and misinforms the IPC. The Review will be deficient if it does not closely examine potential interference in the activities of the IPC by the Department of Planning.

Reliance of the IPC on the DPIE's Preliminary Issues and Assessment reports is a shortcoming of the present system. From all we have observed, the IPC is genuinely attempting to make balanced decisions having regard to all the legislative requirements whereas the Resource Assessments branch is judged by its ability to push through mining projects as quickly as possible, bypassing procedures on the way, and avoiding public exhibition and referral to the IPC wherever possible. We are concerned that the two bodies act in opposition to each other.

The solution is not to abrogate the role of the IPC, but to ensure Resource Assessments operate with probity and accuracy.

We hereby wish to address the Terms of Reference to the extent that our direct knowledge allows, as follows.

2. Thresholds for referring matters to the IPC

One of the matters which provides us with great concern is the manner in which the Department of Planning uses its discretion to denote a Modification as "administrative" or otherwise. There is no transparency around the Department of Planning's discretion, and we have observed serious errors of judgement which have led to Modifications being labelled "administrative", when they in fact proposed material changes to approvals. This practice interferes with the proper threshold for referral to the IPC.

We understand that strong community interest in a Modification can lead to the referral of a project to the IPC. We recommend that the Productivity Commissioner address the way in which Resource Assessments label matters as "administrative" because a case in point, Boggabri MOD7, is a blatant example where a modification which sought approval to conduct exploration drilling outside the Approved Mining Boundary was recommended to be assessed as merely "administrative".

We recommend that the Productivity Commissioner review the determinants that the Department uses to denote a Modification as “administrative” or otherwise, as we believe this discretion is being misapplied by the DPIE.

3. Expertise etc of the IPC Commissioners

From our experience of the IPC Commissioners we have found them to be listening with an impartial ear to the evidence brought before them.

Obviously the Commissioners are highly qualified and skilled individuals who bring this to the table, but every major project has geographical, historical and contextual factors which are most likely unknown to them and which they have to fast track their understanding of. Despite having expertise, the assessment of SSD’s involves a multiplicity of disciplines which no one individual, or even a panel of three, could fully master.

The IPC Commissioners appeared to be reasonably equipped to ask the right questions, but we are not certain as to how well they were able to sift true answers from misleading answers and how well staffed they are internally to conduct fact checking.

What we did find, however, is a disturbingly high level of errors, omissions and false information in the Preliminary Issues reports furnished to the IPC by the Department of Planning. Furthermore, in the case of Boggabri MOD7 the departmental officer replied with a factually incorrect response to a specific question posed by the IPC to the DPIE.

The inaccuracies we refer to are matters where the Department knew or ought to have known that the information they were providing the IPC was wrong.

Although the IPC appears to have had good administrative support, the IPC Review should examine whether the IPC needs sufficient budget to enable them to independently ascertain, eg whether the Boggabri MOD7 exploration drilling was within the Approved Mining Boundary rather than rely on the testimony of a departmental officer.

We believe that the IPC should not have to rely on the Department for clarification, and should have the advantage of independent expert analysis where necessary.

4. Adequacy of mechanisms to identify and resolve any conflicts of interest by commissioners

We do not know of any conflicts of interest apart from the most well known one, being that it is common knowledge that the Chair of the IPC, Professor Mary O’Kane, has a long standing professional relationship with the mining – in particular gas industry, which makes her background

more of an “insider” than independent consultant. This could be damaging to the IPC. This should have been given more careful consideration by the Government, knowing that the most controversial and rejected major project in NSW history (Santos’ Narrabri Gas Project) would be shortly heard by the IPC.

For good reason, we understand that Prof O’Kane has recused herself from the Narrabri Gas Project. This is good. However, we consider it appropriate to outline the extent of Prof O’Kane’s perceived conflicts of interest with the mining industry and pose the question: how much separation does Prof O’Kane have from the workings of individual Committees which are assessing mining (including coal seam gas) projects?

Here are some examples of Prof O’Kane’s relations with the mining industry:

(i) 2001 JULY: ANNOUNCEMENT OF FUNDING FOR SANTOS PETROLEUM SCHOOL AT ADELAIDE UNIVERSITY

“Most recently, Professor O’ Kane was instrumental in securing the Santos sponsorship of the Petroleum Engineering School which will position Adelaide University in the important petroleum engineering sector within the Asia Pacific region”

<https://www.adelaide.edu.au/news/news254.html>

(ii) 2012: O’KANE ACCEPTS ROLE AS NON-EXECUTIVE DIRECTOR OF KUTH ENERGY PTY LTD

This company involved in Geothermal exploration & fracking. Prof O’Kane held a share package which potentially rolled over to **Geodynamics Pty Ltd** on takeover

http://www.delisted.com.au/company/kuth_energy_limited

Prof O’Kane would have been aware of Geodynamics Pty Ltd 2009 Haberno 3 incident

where casing failed under pressure after Production testing (hydraulic) process. Production Test 24 March 2009; High pressure fluids; Well lost containment 24 April 2009. Around the time of her Mitsubishi Lecture on mining damage and deconstruction.

<http://www.drillsafe.org.au/12>

[09_pres/DrillWell_Forum_Dec09_GEODYNAMICS_mike_bill_habanero_3_casing.pdf](http://www.drillsafe.org.au/12_09_pres/DrillWell_Forum_Dec09_GEODYNAMICS_mike_bill_habanero_3_casing.pdf)

(iii) **2013 OCT – NSW ENERGY SUMMIT**

"Key speakers at the summit included **Chris Hartcher** (Minister for Resources and Energy), the **Ian Macfarlane** (Fed. Resources Minister), **Professor Mary O’Kane** (NSW Chief Scientist) and **Martin Ferguson** (Former Resources Minister)"

“A strong pro-development agenda during the summit was clear. Comments focused on the short-term development of the state’s gas resources and the perceived ‘gas crisis’ facing NSW.”

http://cottonaustralia.com.au/news/article/cotton_australia_at_energy_security_summit

http://www.farmweekly.com.au/news/agriculture/general/news/macfarlane_joins_csg_forum/2672651.aspx?storypage=0

(iv) **2014 – RE SANTOS NARRABRI: LETTER FROM O’KANE TO KYLIE HARGRAVES (INDUSTRY KYLIE)**

“The state’s top scientist says she was “startled” and compromised by a government deal to fast track a huge new coal seam gas project in north west NSW that would wrongly imply she backed the controversial venture.”

In an apparent attempt to allay environmental concerns, the deal stated Ms O’Kane would work with Santos to provide baseline monitoring of water quality a highly unusual role for a chief scientist.”

“I wish someone had thought to consult me before this was finalised as it puts me in a very compromising position,” she said.

http://www.smh.com.au/nsw/nsw_chief_scientist_mary_okane_startled_by_pilliga_coal_seam_gas_deal_20140606_39okr.html

(v) **2014 OCT: O’KANE GIVES “GREEN LIGHT” TO CSG.** Prof O’Kane was quoted saying “... *its risks can be managed...*”

http://www.theaustralian.com.au/national_affairs/nsw_chief_scientist_mary_okane_gives_green_light_for_coalseam_gas/news_story/95e780f8ec071a3024c2aeaa2e074a39

With respect, we strongly oppose an individual with a “strong pro development agenda” heading up the IPC. We need impartiality similar to what we would expect from a judicial officer. Prof O’Kane clearly does not have such impartiality.

As recently as 2014, Prof O’Kane still maintained that “its risks can be managed”, presumably a reference to the NSW Gas Plan and the recommendations of the Chief Scientist in the Final Report on CSG, in 2014. However, it is now 2019 and the Chief Scientist’s recommendations have not been implemented and remain unable to be implemented in NSW today.

Therefore, despite Prof O’Kane recusing herself from the Narrabri Gas Project, her role as Chair of the IPC still raises concerns about conflicts of interest and how they could affect the IPC’s decision making, even indirectly.

5. IPC's procedures and guidelines

We believe that the current procedures of the IPC, notably the Multi Stage hearings have introduced a vast improvement in the assessment of major projects. The staged hearings approach enables a deliberative approach to information gathering which is more inclusive, rigorous and transparent than previous assessment regimes.

We do not want any tampering with the planning legislation that would deviate from, or erode, the multi stage hearings.

All hearings are audio recorded, and the recordings promptly added to the IPC website. The website, an important interface between the IPC and all stakeholders, is commendable for its user friendliness, accessibility, and reliability. Documents are able to be linked, downloaded and shared without difficulty.

Communications with IPC planning and administrative officers have been efficient. We, and those stakeholders we have spoken to, have never experienced delays, road blocks and other bureaucratic symptoms when dealing with the IPC.

Therefore, in terms of the operating procedures of the IPC, from the outside we observed a smoothly functioning organisation. This was until the Rix's Creek decision. What happened there is naturally of immense public interest.

6. Extent to which the IPC should rely on DPIE reports

We believe that confidence levels in DPIE reports is overall very low. Experience of the Vickery coal mine assessment is foremost in our minds when we consider the pitfalls of the IPC relying on the DPIE.

The Leard Forest Research Node lodged a submission on the **Vickery Extension Project**, in which we primarily raised issues concerning noise and discovered upon reading the Preliminary Issues Report that its coverage of noise issues did not faithfully represent the issues and was deficient and misleading to the Panel. Note in relation to the following that when we speak of the Vickery project – this is an extension of a project approval that was never commenced. The original approval for a 3.5 MTPA coal mine was warehoused for some years and rebirthed as a 10 MTPA mine hub including a 14 MTPA coal handling and processing plant and rail loading facility. Despite this, the noise impacts of the rebirthed project were modelled to be lower than the 3.5 MTPA which did not include a CHPP nor a rail load out facility.

In the PIR, the Department recognised that:

*“the EPA and some other submitters questioned some of the inputs into the modelling, including the **sound power levels** used in the noise assessment.... Some public submitters also*

questioned why predicted noise and dust levels are lower than the Approved Project, despite the project's increased size and additional infrastructure".

Indeed, when we compared the Vickery extension EIS with the Approved Project, we found that the predicted noise levels at receivers west, south and south east were on average predicted to be 15% lower under the new, much expanded Project.

The PIR states: "The department understands that the differences can be largely attributed the Key Mitigation Measures outlined above..." (p. 29 PIR). The PIR has therefore clearly attributed the reduction in noise of the bigger project to 3 KEY MITIGATION MEASURES, and points to the absence of the Blue Vale pit, the shielding that would be provided by the modified emplacement area or overburden dump, and the adoption of new generation noise attenuated equipment.

The supposed 3 Key Mitigation Measures were pure bunkum, fabrications, puffery, in other words completely false. It appeared that the DPIE had rehashed the supposed Mitigation Measures, seemingly with no independent scrutiny. The inclusion of the mitigation fallacies in the PIR required considerable effort on our part in the face of Departmental opposition.

However, to give the Productivity Commissioner a precis of the fallacies that were republished in the PIR, see the following

(i) Removal of Blue Vale open cut – incorrect

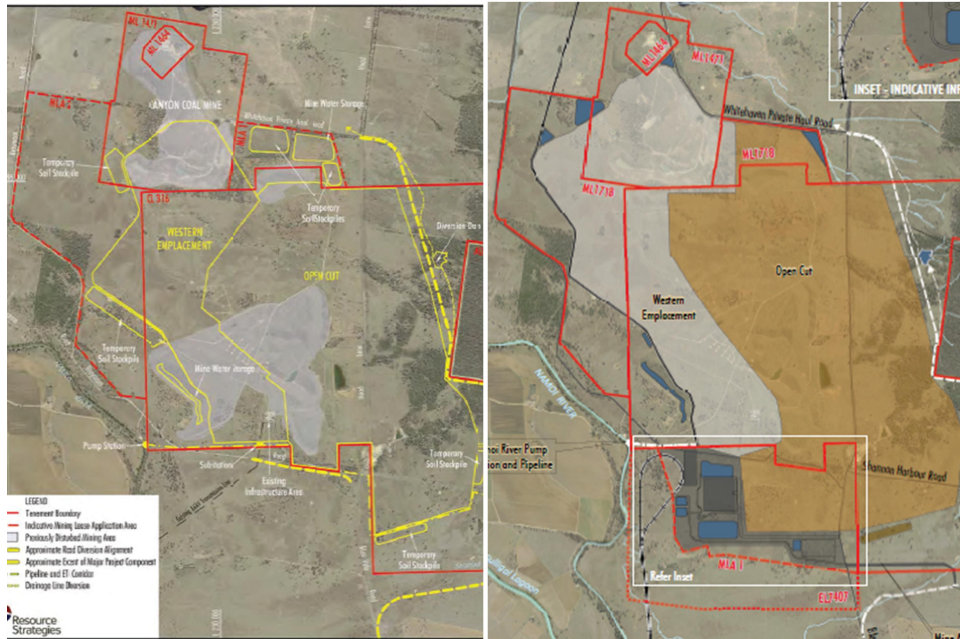
We wish to start by discussing the claim that one of the reasons the 2018 noise modelling is less than 2013 is: "Removal of the Blue Vale open cut from the project. This pit was located in the south west area of the project mining area near off site sensitive receivers, and was initially proposed to form part of the project."

This is INCORRECT. Under the Approved Project, the Blue Vale pit was to be used as a water process storage area to offset some of the reduction in baseflow to the Namoi River. (Source: EPBC Referral of Vickery Extension project). There was no Blue Vale open cut in the 2014 Approved Project. It was concerning that such an obvious error had crept into the PIR, and cast considerable doubt over the reliability of the PIR.

(ii) Overburden would "shield" community from noise - incorrect

The PIR suggested that modified overburden would "shield" communities from noise. However, it was clear that the Western Emplacement area was almost identical in the 2013 EIS (outlined in yellow line) and the 2018 (shaded in grey) version. It cannot be said that the Western Emplacement area is "mitigating" the noise compared with Approved Mine.

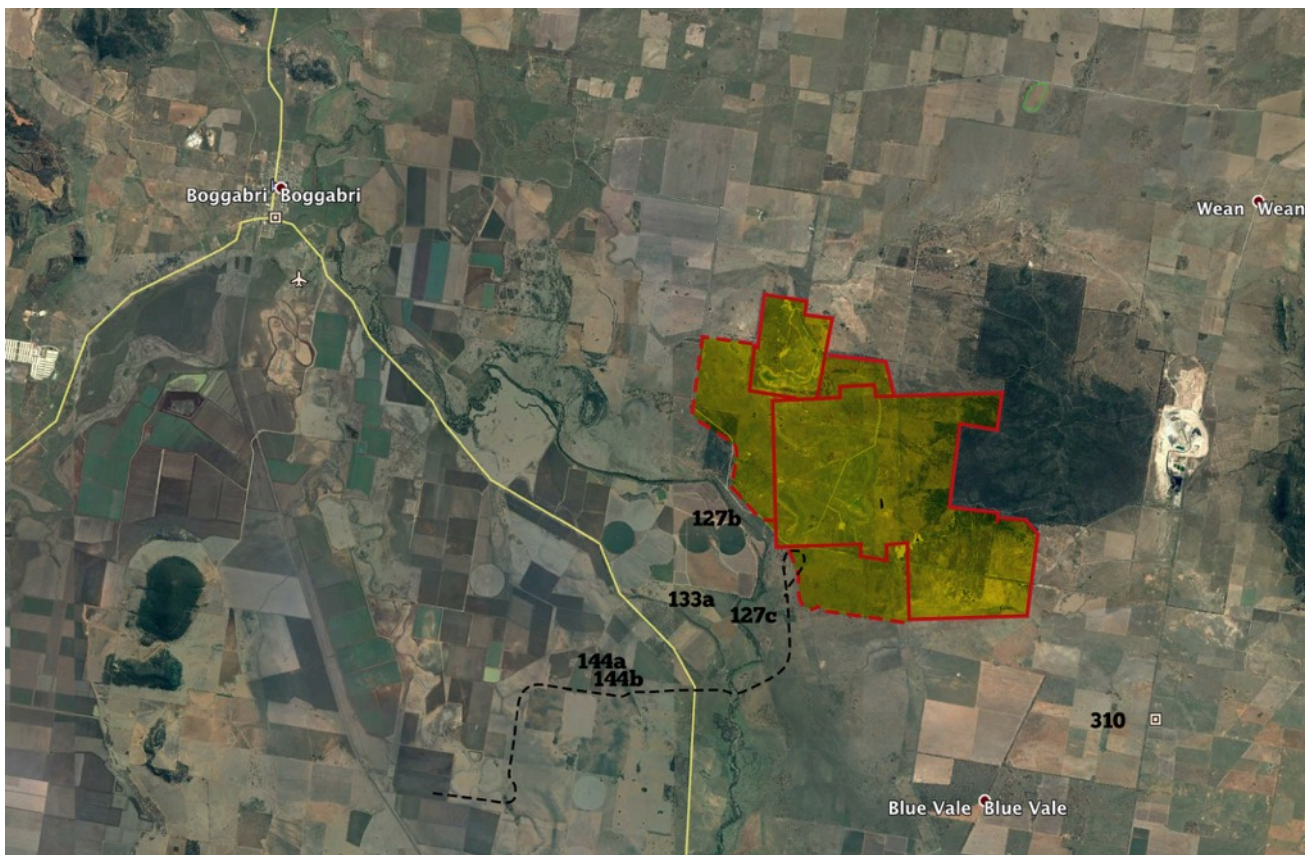
Despite the obviousness of this false claim, the DPIE refused to accept the error in the PIR. See the images below which compare the location of western emplacement area (ie the "modified overburden".



2014 approval for 4.5 Mtpa mine

2018 EIS for 10 Mtpa mine + rail spur + CHPP

There is a high concentration of receivers to the west of the rail loop and CHPP, and it is obvious that they are not shielded from the CHPP by any emplacement. In the 2018 EIS the location of the CHPP and rail spur is marked with a white box (lower bottom half of above figure).



The Western Emplacement provides no shielding (for example) for at least six properties such as:

North West of CHPP

“Mirrabinda” 127b, 127c

West of CHPP and Eastern Pit

“Clinton” 133a

“Merrigle” 144a, 144b

South-East of CHPP and Eastern Pit

“Brolga” 310

This is a significant gap in perceived radius of affectation of nearby properties on account of noise pollution.

Based on our experience of low frequency noise (LFN) from the Maules Creek mine coal handling and processing plant, the Vickery CHPP will shower the town of Boggabri with LFN which will easily traverse the flat land between the mine and the town just 10km away approximately. A South Easterly wind would easily help convey noise direct to Boggabri. This was all waved away with the misleading commentary provided in the PIR.

The western emplacement area as a “Key Mitigation Measure” was unfounded, and the DPIE responsibility was to identify that error, not to repeat it in the PIR. Yet again, here is another example where the IPC should not rely on the DPIE for trustworthy and reliable distillation of the issues.

(iii) Key Mitigation Measure 3 – purported noise attenuation of fleet was highly dubious

Key Mitigation Measure 3 involved the alleged noise treatment of a selection of plant and infrastructure to reduce noise emissions which included “new generation noise attenuated equipment”, referred to as a “low noise fleet”. We are of the view that noise attenuation was overstated and this was not represented in the PIR. The PIR and interview with the Proponent’s noise consultant Mr Wasserman gave attention to mobile fleet and no attention to the CHPP. This was a serious deficiency. From our experience of the Maules Creek CHPP, the coal washery, crusher and rail load out facility have not only regularly exceeded predicted modelling, been the subject of an EPA Mandatory Noise Audit.

In fact, the Mandatory Noise Audit imposed on Maules Creek mine in 2016 found the CHPP was one of the worst drivers of noise exceedances. Specifically, the Maules Creek Mandatory Noise Audit found that the two items most in excess of EA levels were the rail load out transfer station (by 10 dBA) and the coal processing plant (7 8 dBA).

Coal washeries are notorious and known to be one of the most intractable LFN sources from the coal industry. The frequency band of the washeries is also well known (15 45Hz) and can be easily identified. However, the Department did not mention the problems posed by CHPP’s, in particular the washery, crushers and rail load out facility. Despite being fully aware of this, the DPIE failed to flag this issue.

Why is this analysis available to a Citizen Science group and not the DPIE

As for mobile plant and fleet noise modelled in the Vickery extension project, the equipment is a few decibels less, but the number of vehicles is sometimes up to 75% higher! Instead of informing the IPC about the misleading information contained in the proponent's acoustic assessment, the Department did not allude to this in the PIR.

Firstly, the new fleet is not substantially quieter. Here is a Table comparing the 2013 fleet and the 2018 fleet. Items being described as "low noise" are not really low noise, at all, but a reduction from very high noise. Water trucks have actually become louder.

Source of Noise	2013 dBA Predicted	2018 dBA Predicted	Vehicles @ Year 7	Data: New Project	Change in Perceived	Number of Vehicles
Hau Trucks	115	113	31	50	-13%	61%
Dozer 640kw	116	113	4	7	-19%	75%
Dozer 570kw	116	110	7	10	-34%	43%
Dozer L ght duty	114	107	2	3	-38.50%	50%
Excavator Heavy	117	114	4	6	-19%	50%
Excavator L ght	115	113	3	3	-13%	0%
Dr	114	114	4	7	0%	75%
Grader	108	106	4	5	-13%	20%
Water Truck	109	112	4	4	23%	0%
Loader Infrastructure	113	110	1	1	-19%	0%
Loader Waste Rock Removal	113	?	1	?	?	?
Light Plant	104	?	15	?	?	?
Pump	100	?	1	?	?	?

As stated in our original submission on the Vickery Project, we identified absent sound power sources, such as the diesel powered lighting towers which were originally included in the noise impacts of the Approved Mine, but have been dropped from the noise impact assessment of the larger project. In the 2013 EIS, the Table of Equipment Sound Power levels includes up to 15 light plants at 104dB each. Also, an array of pumps was omitted from the modelling.

Note 4 of the Sound Power Level Table stated *"The assessment has considered mine operated routines which dictate that at least 50% of the pit dozers are expected to be stationary during a typical 15 minute period"*. DPIE permits removal of idling noise from the modelling but we believe the noise emissions from idling trucks need to be included in the noise modelling for non Worst Case Scenario. The Proponent should disclose what is the noise produced by idling trucks, and explain if it has been given permission to exclude this noise from the modelling.

We are aware that at other mines in the Hunter Valley, when producing their Worst case Scenario models, all plant is modelled at maximum sound power levels, and assuming all plant operates

continuously and simultaneously. The notes on the bottom of the sound power level table suggests this is not the case in respect of Vickery Extension noise modelling.

The Leard Forest Research Node raised some very serious issues regarding noise, in particular how this much larger Vickery Coal Hub can be quieter than the Approved Mine. The PIR failed to identify these matters which are material to the decision making of the IPC.

The above is just a example of a subject that was very poorly treated in a PIR. It is one of many. This would have a tendency to result in injustice to many, as it also plays a role in the application of the Voluntary Land Acquisition and Mitigation Policy which in turn defines the processes to be followed in relation to the purchasing of mine affected properties.

To conclude, our experience has led us to believe that DPIE cannot be relied on to provide balanced assessment of the issues, and whether by design or lack of suitable expertise, the Department is furnishing the IPC with wholly unsatisfactory reports at every stage of assessment.

7. Resourcing the IPC

The IPC must be adequately resourced. Although we did not notice shortfalls in most obvious aspects of provisioning, we think it would be better if the IPC does not have to rely on the Department of Planning at all times. We have seen and deplore what reliance on DPIE has resulted in.

8. IPC Secretariat

The IPC Secretariat, being evidently providing a high level of support for the IPC, should remain entirely independent of other Government agencies.

We can't imagine what compelling reasons could motivate the Productivity Commissioner to decouple the IPC from its Secretariat, which would seem to be a recipe for inefficiency.

9. Conclusion

We respectfully request the Commissioner to make every effort to determine if the DPIE has exerted undue influence on the IPC, resulting in confusion around the Rix's Creek decision.

The independence of the IPC is something to aspire to, to preserve, and to value highly. Sound planning in accordance with applicable laws is essential, and is at risk from the conduct in particular of the Resource Assessments branch.

We need to see less reliance on DPIE, and accordingly more independence of the IPC.

**Leard Forest Research Node
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