

26 November 2019

Peter Achterstraat AM
NSW Productivity Commissioner
GPO Box 5469
Sydney NSW 2001

Via e-mail: ProductivityFeedback@treasury.nsw.gov.au

Review of the Independent Planning Commission

Dear Commissioner

Malabar Coal welcomes the opportunity to provide a submission to the NSW Commissioner for Productivity on its review of the Independent Planning Commission (IPC).

About Malabar Coal

Malabar is an independent, Australian-owned mining company based in the Hunter. In August this year we lodged our Development Application and Environmental Impact Statement for the Maxwell Underground Project, a State Significant Development (SSD) for an underground metallurgical coal mine located southeast of Denman and southwest of Muswellbrook.

Our view of the IPC

On balance, we believe maintaining the IPC is in the public interest.

The IPC has an important role to play in the planning process. It provides a necessary “check and balance” to Government, particularly where a reportable political donation has been made. The facilitation of public meetings allows community members to have their say on proposals in their local area and the removal of merits appeal rights when a public hearing has been held provides certainty to proponents in what is an already lengthy and costly planning approvals process.

However, we believe the role of the IPC could be refined to deliver better outcomes for the State.

Recommendations

Malabar Coal is a member of the NSW Minerals Council. We note that the Minerals Council has made its own submission to this Review that we support.

We would like to reiterate some of the recommendations made in that submission that we believe to be particularly important:

- **The need for consent authority to return to the Minister for Planning and Public Spaces.** Determinations in relation to SSD's are complex and require the balancing of numerous, often competing priorities. For mining projects, this means weighing the significant and long-term economic benefits to the State and to our local community against a very robust assessment of potential environmental impacts.

This challenge requires the responsibility and accountability of elected Members of Parliament who are experienced in this kind of decision making.

This change would bring New South Wales into line with other States and Territories in Australia, where major projects are determined by elected representatives.

- **The need to reconsider the thresholds for the UPC to consider a SSD.** Currently, the IPC is called to review proposals that attract more than 25 objections, an objection from Council, or where a reportable political donation has been made.

While we accept the need to review projects where a reportable donation has been made, we do not believe that 25 objections represents genuine opposition.

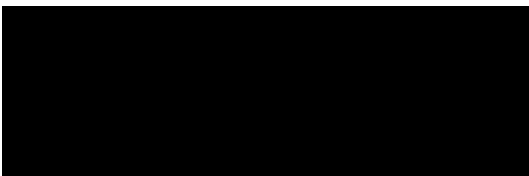
Indeed, our recent experience shows that a good proportion of objections come from urban areas that will not be remotely impacted by our proposal. It is frustrating that these objections receive as much weight as submissions made by members of our local community.

- **Reconsider the need for the IPC to review project modifications.** Under the NSW Environmental Planning and Assessment Act, 1979, modifications to SSDs are required to have either "minimal environmental harm" and / or be "substantially the same" as the approved development. However, these projects are now regularly required to pass a second determination by the IPC. This seems to be unnecessary duplication.
- **Ensure that the IPC more closely considers the advice of the DPIE.** The DPIE has a long track record of carefully evaluating complex mining proposals. When the Department undertakes this important role, it must consider a Proponent's Environmental Impact Statement, public submissions, Federal, State and local agency input and responses to submissions, all of which are publicly available. Its detailed Assessment Report and Draft Conditions are reflective of Government policy. This approach has led to inconsistencies, with certain projects having to meet unique conditions that are out of step with the broader industry.

Further, the rejection of recommendations from the Department appears at odds with the IPC's original purpose to "no longer perform duplicative review functions", as outlined in the EP&A Act.

Thank you for undertaking this important Review.

Should you require any further information or clarification, please do not hesitate to contact me.



Chairman – Malabar Coal Ltd