

The Productivity Commission

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

15 November 2019

Review of Independent Planning Commission

Dear Sir/Madam

The National Parks Association of NSW (NPA) provides the following submission on the review of the Independent Planning Commission (IPC).

About us

NPA was formed in 1957 to campaign for the creation of national parks and a national parks service. Our advocacy saw the passing of national parks legislation in 1967, giving legal protection to NSW first group of parks and establishing the National Parks and Wildlife Service. Six decades later, NPA has a network of 15 branches and over 20,000 members and supporters across NSW, all committed to our goal of protecting nature through community action.

NPA forges personal connections to nature through the nation's largest activity program, delivering more than a thousand walks and other activities to eleven thousand participants each year. Our citizen science programs provide hands-on connection to nature through community events, bio-blitz activities and habitat restoration projects. Our public talks, discussion groups and education offerings engage people with a deeper understanding of our natural world. We are vigorous advocates for the protection of nature, applying deep local knowledge and a rigorously evidence-based approach to park management planning, opposing environmentally inappropriate activity in all tenures and, where necessary, demanding change through community-based conservation campaigns.

Comments

The following comments are provided in reference to the terms of reference for the Review.

To recommend whether it is in the public interest to maintain an Independent Planning Commission, considering, where relevant, the experience with similar bodies in other common law jurisdictions

NPA is of the strong view that the public interest is best served by retaining the IPC for the following reasons:

- It provides an important safeguard against corruption in the planning system that has a regrettable history of the inappropriate exercise of political and individual powers, as recognised by ICAC.
- It reduces the potential for serious conflicts of interest in relation to the dual advocacy and regulatory roles of the Department of Planning, Industry and Environment.

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- The IPC model ensures that transcripts are publicly available for all meetings with industry and Government agencies, in stark contrast to those between mining and other industry lobbyists and Departmental staff, avoiding a potential opportunity for corrupt behaviours.
- The IPC plays a very important role in its consideration of state significant developments that do not require concurrence from any other agencies or input from local government. The Department of Planning does not have the expertise to thoroughly review all issues, whereas a properly resourced and independent IPC would have such capability.
- There is a lack of public confidence in the Department of Planning due to the widespread perception that it is too influenced by mining and other industries. The IPC offers a more objective approach to resolving land use conflicts.

To make recommendations in relation to the Independent Planning Commission's operations and the mechanisms by which State significant development is assessed and determined

The IPC does not independently assess a project, instead relying heavily on assessment reports prepared by the Department of Planning. In 2010, ICAC recommended that the IPC be given quasi-judicial status, with appointments open to public scrutiny and made on a full-time basis. NPA supports the ICAC's recommendations.

NPA recommends that the IPC be provided additional resources to undertake its role and to ensure that it has to appropriate scientific expertise. It should maintain its own secretariat to safeguard independence.

Given that the IPC 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, it is absolutely essential that it maintains the highest standards of probity and independence.

Thresholds for the referral of matters to the Independent Planning Commission; & the clarity and certainty of policies and guidelines that inform determinations;

NPA notes that there no clear guidelines are provided as to what level of potential impact triggers referral to the IPC.

The Commissioners' skills, expertise and qualifications; & The adequacy of mechanisms to identify and resolve any conflicts of interest by commissioners;

NPA recommends that Commissioners be permanently appointed in an open and transparent manner and should not be dismissed without due cause. The expertise that Commissioners have must be made public and the qualifications and experience of Commissioners should also be made public.

Resourcing of the Independent Planning Commission and the mechanism for determining budgetary support; & whether the Independent Planning Commission's Secretariat should be employed directly by the Independent Planning Commission or provided by another Government agency, and if so, which agency.

To maintain its independence, IPC should be adequately funded and should not draw on staff from the Department of Planning, Industry and Environment.

Other issues

NPA recommends that:

- Any interested member of the public should be permitted to attend and address public hearings. Currently, the IPC's guideline for public hearings do not guarantee this right. Given that these hearings extinguish legal appeal rights, this is a serious breach of procedural fairness.
- Public hearings must be held in venues that do not serve alcohol. Any attempt to harass or intimidate a member of the public at a public hearing should result in the person who is harassing or intimidating being excluded from the public hearing.

If you have any questions about these issues I can be contacted at [REDACTED]

Yours sincerely,

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National Parks Association of NSW

protecting nature through community action