

4 November 2019

Peter Achterstraat AM
Commissioner for Productivity
Productivity Commission

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

RE: NEWCASTLE COAL INFRASTRUCTURE GROUP RESPONSE TO TERMS OF REFERENCE FOR REVIEW INTO THE INDEPENDENT PLANNING COMMISSION

Dear Mr Achterstraat

Newcastle Coal Infrastructure Group (NCIG) appreciates the opportunity to provide a submission to inform the Productivity Commission's review into the Independent Planning Commission's (IPC) role and operations.

The NCIG Coal Export Terminal (CET) is located on Kooragang Island in Newcastle, and operates as a highly automated and innovative facility. The dedicated stockyard arrangement at the NCIG CET provides customers with extensive long-term stockpiling capacity at the Port of Newcastle (by comparison to just-in-time export facilities).

The NCIG CET, therefore, serves as critical infrastructure to the NSW coal mining industry, enabling access to global export markets.

In response to the Terms of Reference, NCIG's main concerns relate to the:

1. unpredictability and inconsistency in the decision-making of the IPC, in particular, where these decisions are contrary to government policy, advice and/or precedent; and
2. inefficiency and delay with the IPC's decision-making function.

Unpredictability and inconsistency

A recent example of this is the condition imposed by the IPC for the United Wambo Open Cut Project, requiring the preparation of an Export Management Plan which regulates the countries to which export coal could be sold. The condition was imposed by the IPC panel, notwithstanding the clear written advice of the Secretary of the Department of Planning, Industry & Environment (DPIE) that such a condition should not be imposed for the following reasons:

There is no policy at either the State or Commonwealth level that would support the imposition of conditions on an applicant to minimise the scope 3 emissions of its development proposal.

Any such policy is likely to result in significant implications for the NSW and Australian economy and it is not clear it would have any effect on reducing the global GHG emissions generated by parties in other jurisdictions outside Australia.

Even if such a policy was made, it is likely to be more efficient and equitable to apply it across the board through legislation rather than waiting for individual companies to apply for development consent under the planning system in NSW.

Finally, I wish to confirm that it is not this State Government's policy that greenhouse gas policies, or planning conditions, should seek to regulate, directly or indirectly, matters of international trade.

Matters of international trade are properly regulated by the Commonwealth Government and conditions on NSW planning approvals should address the impact of the subject development rather than trade matters.

The unpredictability in IPC decision-making has been a significant factor in NCIG's consideration of whether or not to pursue modifications to our existing approval that would facilitate the more efficient use of the existing NCIG CET infrastructure, and achieve optimal returns for the initial \$2.5 billion investment made by shareholders in the NCIG terminal.

Inefficiency and delay with the IPC's decision-making function

NCIG respects the importance of the role of independent decision-making, and has no concerns with an independent decision-making body for State Significant Development (SSD) – so long as decisions by the body align with Government policy and precedent, and do not involve protracted delay to assessment timeframes or approval risk.

As an example, the Environmental Impact Statement (EIS) for the United Wambo Open Cut Project was exhibited in August – September 2016. It took approximately 3 years after the EIS exhibition, for the IPC to determine the SSD Development Application.

As an operator of critical infrastructure to the NSW coal mining industry, NCIG considers the current quantitative threshold for a proposal to be referred to the IPC is too low, with the current 25 objection threshold for referral to the IPC not reflective of genuine public or community interest in a project.

The decision to refer an SSD to the IPC should instead be based on a qualitative public interest test at the discretion of the Minister.

Furthermore, modifications to existing SSD approvals, which under the EP&A Act are required to be "substantially the same development" (section 4.55 of the EP&A Act), should no longer be delayed or put at risk by an IPC determination process, and should instead be determined by the Minister or his delegate in the DPIE.

In summary, to improve investment certainty and efficiency of decision-making in NSW for SSD, it is recommended:

1. The IPC must be required to observe and apply NSW Government policy in its decision-making process.
2. For SSD projects with no reportable political donations, the quantitative threshold of 25 objections should be removed and replaced with a qualitative determination by the Minister as to whether the decision-maker for a particular project should be the IPC or the Minister (or his delegate).
3. Section 4.55 Modifications should not be determined by the IPC at all.



If you wish to discuss this submission further, please do not hesitate to contact me on [REDACTED]

Yours sincerely,



CEO
Newcastle Coal Infrastructure Group