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NSW Productivity Commission
NSW Treasury
GPO Box 5469
Sydney NSW 2001

Independent Planning Commission

Submission to Productivity Commission Review

The Upper Hunter Shire Council [UHSC] thanks the Productivity Commission for the opportunity to submit its views on the Independent Planning Commission [IPC].

Background

On 30 September 2011 the NSW Planning Minister's then discretionary powers to refer projects to the Planning Assessment Commission [PAC] became an automatic delegation for politically-charged projects that created controversy in the community, so that these decisions were necessarily made at "arm's length from Government". Determination of state significant development [SSD] projects was delegated to the PAC for any project where there had been a political donation, objection by the local council, or more than 25 objections from the general public.

This change was on the recommendation of the Independent Commission Against Corruption [ICAC], which noted in 2010 –

"expanding the decision-making role of the PAC would provide an important safeguard against potential corrupt conduct".

The ICAC report also found that,

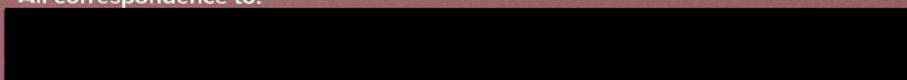
"Referral to the PAC is seen as a safeguard because of its independence. In addition, the opportunity for a person to approach PAC members corruptly is comparatively limited".

The UHSC has previously submitted to and presented at various Planning Assessment Commissions and IPC hearings regarding thermal coal mining development applications and modifications. Namely the Drayton South Project (on each occasion), the Mount Pleasant Modification and the recent Dartbrook Modification.

Council's Position Statement on Coal and Coal Seam Gas permits Council to comment on mining proposals located outside its shire boundary if Council forms the view that the proposal may negatively impact on the Equine Critical Industry Cluster [ECIC], as defined and mapped by the NSW Government's Upper Hunter Strategic Land Use Plan. This cluster is largely contained within the Upper Hunter Shire and is critical to our ongoing economic prosperity and sustainability. Council's Community Strategic Plan [CSP] commits Council to the protection of the Cluster and the agricultural land that underpins it and indeed our other rural enterprises.

Council also opposed the earlier Bickham Coal Project which was located entirely within the shire. The hearings for this project were indeed the prototype for the subsequent Planning Assessment Commission. As such the PAC was conceived in our shire and Council has considerable experience with the workings of both the PAC and IPC models.

All correspondence to:



Council notes that after the Bylong Project, which the UHSC did not comment on, was refused by the IPC, the NSW Minerals Council engaged in a sustained campaign, prosecuted in the media and through advertising, and that shortly thereafter the review now being conducted was announced by the Minister for Planning. Council finds it difficult to believe that the Review is not being conducted at the behest of that mining industry lobby group, although Council notes comments to the contrary from the Minister.

Council Strongly Supports Retention of the IPC

The UHSC strongly supports the retention of the IPC for the following reasons

The Department of Planning, Industry and Environment

1. One alternative to the IPC process is a return to the system wherein the Department of Planning, Industry and Environment [DPIE] resumes a primary decision making function via its advice to the Minister.
2. Council's faith in the ability of the Resources Assessment Division [RAD] of DPIE has been severely impacted by many of the recommendations to the IPC that the DPIE has made. These include recommendations to approve all iterations of the former Drayton South project (which would have had catastrophic consequences for the ECIC), the Mount Pleasant Modification (which is having a majorly deleterious effect on Air Quality in the region) and the recent Dartbrook Modification 7 (which frankly defied any form of logic). Whilst the IPC approved Mount Pleasant, it repeatedly refused the Drayton South project and refused in part the Dartbrook project - and did so correctly in Council's view.
3. Council has formed the view that the RAD of DPIE's assessment process is little more than a box ticking exercise and that little to no rigour is applied in the testing or assessing of proponent's assumptions - most particularly the economic justifications for projects - which routinely overstate the benefits and understate the disbenefits.
4. While this may be an effect of having its primary powers of decision making being delegated to another body, and to an external independent body such as the IPC at that, Council is of the view that the RAD of DPIE routinely recommends approval as a matter of course, is incapable of properly assessing either environmental (cumulative or individual) or economic impacts and that the RAD is systemically and culturally flawed and in urgent need of thorough root and branch review and reform. By way of example, for decades a Cumulative Impact Methodology for the assessment of mining proposals has been promised by the Department, and ever since Council has been calling for the release of that methodology. To no avail.
5. The 636 individual Air Quality alerts issued this year alone in the Upper Hunter by the Hunter Valley Air Quality Network [HVAQN] are a damning indictment of the DPIE's air quality assessment process. We are in an Air Quality Crisis and no one, least of all the DPIE, is acting on it. This horse has already bolted and no one has even noticed it has gone, let alone thought about shutting the gate.
6. The new expanded super-Department which incorporates both Industry and Environment clearly has considerable conflicts of interest within it. Only an external and independent body such as the IPC can adjudicate as to whether the DPIE has adequately managed and balanced those conflicting interests. At present, Industry invariably outweighs Environment.
7. Therefore, a return to the DPIE effectively determining SSD or mining modification Development Application via its advice to the Minister cannot be condoned by Council. Indeed on the specific term of reference "the extent to which the Independent Planning Commission should rely upon the assessment report prepared by the Department of Planning, Industry and Environment", the UHSC might say, "to little extent at all", which is indicative of just how poor the situation within the RAD of DPIE has become.

The Independent Planning Commission

1. Provides individuals, the wider community, Local Government and other otherwise marginalised and less influential stakeholders an opportunity to comment and air their concerns directly to the decision maker in person.

2. It is open, transparent and accountable, with transcripts of all meetings with DPIE, Proponents and stakeholders publicly available. There are no closed doors and no back stage lobbyists and as such the community at large can have faith that these decisions and determinations are indeed made in the public interest - whether they agree with an individual decision or not.
3. Still provides a safeguard against undue lobbying and influence peddling by powerful interests such as the NSW Minerals Council, unseen influence which the community rightly fears and abhors. The very fact this review is being conducted is illustrative of the unequal lobbying power of that particular organisation over the community and an argument in itself for the retention of the IPC.
4. Still provides a critical safeguard against corrupt conduct in decision making. Nothing has changed since the ICAC made that recommendation nearly ten years ago. Enhancing the opportunities for corruption is not good governance, quite to the contrary. Three mining Ministers in succession - from both major parties - Obeid, MacDonald and Hartcher have been found by the ICAC to have engaged in corrupt conduct. Any weakening of resolve against this scourge is undemocratic and will not be well received in the community, particularly if it is perceived to be done at the request of faceless and powerful lobby groups.

Amendments

1. There are separate plans to adjust Mining SEPP Clause 14(c) which states that the decision maker must consider a project's Scope 3 Emissions. Council does not support this, indeed Council believes that Scope 3 Emissions should be given far greater consideration in the determination of thermal coal Mining Applications. It is clear that we are in a climate emergency and entering an era of catastrophic climate change with accelerating feedback loops, and as such it is fundamentally unsound to not consider the global impacts of burning NSW thermal coal, either here or overseas, on efforts to limit global temperature rises to less than 1.5 degrees as prescribed in the Paris Agreement on Climate Change.
2. It would be remiss of Council to not reiterate its call for the release of the oft-promised and long-awaited Cumulative Impact Methodology, and Council does so. Again.
3. Council notes the ICAC has commented that "The limited availability of third party appeal rights under the EP&A Act means that an important check on executive government is absent." Such rights are routinely extinguished for major resource projects by the IPC's holding public hearings. Council notes that opponents of projects can only appeal IPC decisions and determinations on grounds of Procedure, whilst proponents may appeal on grounds of either Merit or Procedure. This is manifestly unjust and favours proponents over opponents legally. This change was made on very little evidence that opponents of projects were tying up approved projects in the court system via so-called "green lawfare". This ignores the fact that few if any in the community can afford or bear the cost of an appeal, successful or otherwise.

Summary

Whilst Council is perhaps not in agreement with every individual decision of the PAC or latterly the IPC, when judged as a whole, those decisions withstand scrutiny and can be supported with confidence. The community is provided an opportunity to contribute to the decision making process - they are heard - and they can be confident that the process is conducted in an independent, open, transparent and corruption-free manner and that these crucially important decisions are made in the public interest, without the undue influence of powerful lobby groups.

The Upper Hunter Shire Council strongly supports the retention of the Independent Planning Commission.

Yours sincerely



GENERAL MANAGER