

[REDACTED]

From: Feedback Assist <support@yourfeedback.nsw.gov.au>
Sent: Wednesday, 23 October 2019 12:04 PM
To: [REDACTED]
Subject: FW: Review of the Independent Planning Commission
Attachments: Ltr to IPC IRW250919.pdf; Ltr to Dep Prem IRW250919.pdf

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From: [REDACTED]
Sent: 22/10/2019 1:14 PM
To: thetreasury@yourfeedback.nsw.gov.au
Subject: Review of the Independent Planning Commission

Attention:

Mr Peter Achterstraat AM

NSW Productivity Commissioner

Dear Mr Achterstrat,

It is understood that you have been commissioned by the NSW government to conduct a review of the Independent Planning Commission and the processes used to make planning determinations.

I have viewed the terms of reference and I attach correspondence, in my personal capacity, with the Deputy Premier, IPC Chair and other Ministers of 25 September 2019, following the Bylong mine decision by the IPC.

Having many decades in project approval in most States and Territories, as well as offshore, I am concerned that any examination of the IPC must also deal with the inadequate assessment of complex environmental and policy matters by government agencies, together with a lack of clear policies and guidelines from government for decisionmakers to make difficult planning determinations.

I also have views on the independence of the Department of Planning, Industry and Environment (DPIE) in reaching conclusions on major projects on merit grounds alone, and not tainted by undue outside influence. This influence can also extend to the way other agencies interact with the DIPE's assessment to 'lead' the IPC to reach a certain outcome, that not only fetters the discretion and independence of the IPC, but is

contrary to the law granting the IPC its independence. If the intention of the legislature is to maintain transparent and independent decision making, then the organisation charged with that duty should be free of undue institutional influence. If that is not the intention, then the legislature should change the law.

Further, I lament the declining level of technical competence of some government agencies, including DPIE, to understand complex technical matters, inhibiting the ability of government to provide proper advice to the IPC. There is a clear case for properly resourcing the assessment and determination process.

I invite you to consider the substance of my correspondence and I am happy to expand on the background to the conclusions reached, together with suggestions on means of improving project assessment, without diminishing transparency around planning decisions and to expand on the Terms of Reference, should an opportunity arise for public comment.

Yours sincerely,

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Contact: [REDACTED]

25th September 2019

The Hon John Barilaro
Deputy Premier, Minister for Regional NSW, Industry and Trade

[REDACTED]

Dear Deputy Premier,

BYLONG MINE REFUSAL – GOVERNMENT’S NEED TO SHARE THE BLAME

As someone who has been intricately involved in resource developments for many years, mining industry reaction to the Bylong mine refusal by the Independent Planning Commission (IPC) needs tempering with reality.

True, the decision has serious ramifications for regional employment, and highlights the undue influence of anti-development activists on assessment of major employment-generating projects.

However, to heap all the blame on the IPC is a little unfair, as governments - Commonwealth and State - are the major contributors to policy negligence, leaving a massive vacuum for decisionmakers to fill.

In the Bylong matter, the IPC wrongly interpreted the Aquifer Interference Policy (AIP), due to government failing to provide clear policy guidelines on how the policy should be interpreted, other than some generic fact sheets. Regarding water ‘make good’ arrangements, there is absolutely no guideline, policy or legislative framework to aid decisionmakers.

The IPC also referred to judgement in the Gloucester Coal case in rejecting the Bylong mine on greenhouse gas grounds. Whilst we all have views on the matter, the IPC was required to apply the Mining SEPP *“to consider an assessment of greenhouse gas emissions (including downstream emissions)having regard to any applicable State or national policies, programs or guideline.”*

Chief Justice Preston of the NSW Land and Environment Court in the Gloucester Coal case had great difficulty determining what applicable State or national policies actually exist, other than Australia’s commitment to the Paris Agreement. There are no clear instruments or guidelines for the Courts or the IPC to follow, leaving a critical vacuum.

Governments must issue directions on ‘State and national policies’ to the IPC, and other decisionmakers, to guide them in the application of policy. Currently, it’s up to the IPC, and others, to second-guess the interpretation of sensitive policies on greenhouse gases and water management.

The future of the economy deserves better than a knee-jerk reaction to blame an independent decision maker. Rather, the focus needs to be directed to government agencies and Ministers to provide leadership on matters of crucial, public economic and environmental interest.

I would be pleased to expand on the matters raised in this letter, including ways to improve the planning approval mechanisms for major job creation projects.

Yours sincerely,



cc. Minister for Planning
Minister for Water, Property and Housing
Minister for Energy and Environment
Member for Wollondilly
Chair, Independent Planning Commission

Contact: [REDACTED]

25th September 2019

Professor Mary O’Kane AC
Chair,
Independent Planning Commission

ipcn@ipcn.nsw.gov.au

Dear Professor O’Kane,

BYLONG MINE REFUSAL – GOVERNMENT’S NEED TO SHARE THE BLAME

I have written to the Ministers (listed below) to express my concern about the campaign being directed at the IPC. As a matter of courtesy, I am providing you with the substance of my comments to the NSW government as detailed in this letter.

As someone who has been intricately involved in resource developments for many years, mining industry reaction to the Bylong mine refusal by the Independent Planning Commission (IPC) needs tempering with reality.

Whilst I do have reservations over some of the Statement of Reasons many critics are missing the essential points.

True, the decision has serious ramifications for regional employment, and highlights the undue influence of anti-development activists on assessment of major employment-generating projects, particularly at a government agency level.

However, to heap all the blame on the IPC is a little unfair, as governments - Commonwealth and State - are the major contributors to policy negligence, leaving a massive vacuum for decisionmakers to fill.

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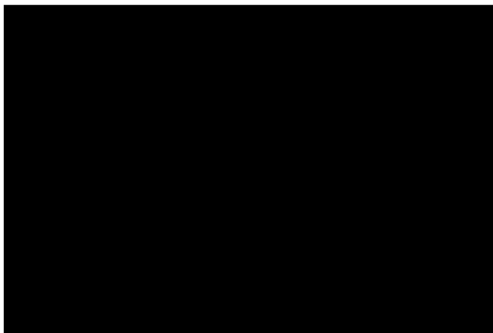
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Yours sincerely,



cc. Deputy Premier, Minister for Regional NSW, Industry and Trade
Minister for Planning and Public Spaces
Minister for Water, Property and Housing
Member for Wollondilly