



**REVIEW OF THE
INDEPENDENT
PLANNING COMMISSION**

15 November 2019

NSW MINERALS COUNCIL



NSW Minerals Council

PO Box H367
Australia Square NSW 1215
ABN 42 002 500 316
E: information@nswmining.com.au

www.nswmining.com.au



Contents

1	Executive Summary	4
2	Recommendations	5
3	Introduction	7
4	Background to role and operation of the IPC	8
5	Response to the terms of reference.....	9
	Attachment – IPC Case Studies	19
	UNITED WAMBO – EXTENSION OF EXISTING MINE.....	22
	BYLONG PROJECT – GREENFIELD MINE.....	25
	RIXS CREEK – EXTENSION OF EXISTING MINE.....	28
	VICKERY EXTENSION PROJECT.....	30
	BOGGABRI COAL MINE – MINOR MODIFICATION APPLICATION (MOD 7)	33
	CLEANTEQ SUNRISE PROJECT (MOD 4).....	35
	RIX’S CREEK – MINOR MODIFICATION APPLICATION TO CONTINUE MINING OPERATIONS (MOD 10)	37
	DURALIE MODIFICATION (MOD 2)	38
	MOOLARBEN MODIFICATION PROJECT (MOD 3 & 14).....	39
	MOOLARBEN MODIFICATION PROJECT (MOD 12)	41



1 Executive Summary

NSW The NSW Minerals Council (NSWMC) and its members welcome the opportunity to provide a submission to the NSW Commissioner for Productivity on its review of the Independent Planning Commission (IPC).

The NSW mining industry has significant first-hand experience with the role of the IPC in the planning system given the IPC is the consent authority for most development applications for mining projects.

Over the last few years mining projects have been subjected to concerning decisions by the IPC which have exposed a range of deficiencies in the IPC's function as a determination body and its administrative processes. This includes decisions made contrary to government policy, projects being refused despite a recommendation from the Department of Planning (DPIE) for approval, minor applications being subject to onerous assessment requirements, and IPC processes contributing to increasing assessment times. A range of case studies of recent mining projects determined by the IPC have been included to detail and highlight these issues and concerns.

Given the ongoing concerning IPC decisions, NSWMC and its members consider it very timely to review the role and function of the IPC.

There are advantages and disadvantages to an IPC as part of the NSW Planning System. However, the current approach where a democratically elected decision-maker has been replaced with an unelected part-time panel has introduced an unacceptable level of risk and uncertainty for State Significant Development projects. This must be addressed. NSW is the only jurisdiction in Australia to outsource its determination role for such projects.

Should the IPC be retained, NSWMC recommends its role be limited to reviewing the assessment undertaken by the Department of Planning. The determination role should be returned to the elected Government through the Minister. Furthermore, it should be made explicit that the reformed IPC should not duplicate the assessment of the Department of Planning, and any of its deliberations or recommendations must be consistent with the public policies of the elected government.

In addition to responding to the Terms of Reference, the NSWMC submission provides a range of recommendations on how the IPC could be reformed. Case studies for recent mining projects have also been included which support the concerns that have been raised.

NSWMC and its members look forward to engaging with the NSW Productivity Commission on this important initiative.

2 Recommendations

The following recommendations for reform of the role of the IPC as it currently exists have been proposed by NSWMC and its members for the consideration of the NSW Productivity Commission.

Supporting information relating to each of the recommendations can be found within the body of this submission and the attached case studies.

Role of the IPC

1. Consistent with other States, return the determining responsibility to the elected government through the Minister, based on recommendations from a reformed IPC and the advice of the DPIE.
2. The stated public policies of the elected government act as the primary factor in project assessment rather than the views of an unelected part-time planning panel. The IPC should avoid making policy themselves or making comments/ recommendations on what Government policy should be.
3. A reformed IPC should not duplicate the comprehensive assessment role undertaken by the DPIE.
4. The assessment, any recommendation made by the DPIE and any draft conditions where approval is recommended should be given proportionally greater weight by the IPC than any other assessment under consideration by the IPC.
5. Where the IPC is retained as the consent authority, the EP&A Act should be amended so the Minister delegates his/her consent authority functions to the IPC for certain SSD applications, rather than the IPC being prescribed as a consent authority in its own right under the EP&A Act/ SRD SEPP.

Review of Decisions

6. Where the IPC is retained as the consent authority, introduce an option for a review of decisions for State Significant Developments – this could be limited to projects that have either been refused, or conditions imposed on grounds that are inconsistent with Government policy and/or the recommendation of the DPIE.

Thresholds for matters referred to the IPC

7. Modification applications for an approved or operating mine site should not be referred to the IPC for either its review or determination given the relatively minor nature of such projects.

IPC Processes & Timeframes

8. Remove duplicated steps such as multi-stage hearing or meeting processes, and ensure public hearings are undertaken earlier in the process.
9. The option of the IPC using Counsel assisting for public hearings and meetings should be removed from IPC policies and procedures.
10. Make it clear in IPC policies that consultation will be limited to particular phases of a planning process (i.e. the DPIE submissions period and a single IPC public hearing submissions period) and that further consultation will only be conducted if there is a change to a project that will have a materially greater impact than the project as originally proposed.

11. The IPC should be held accountable for development assessment timeframes through the imposition of minimum standards for its consideration of development applications (similar to the standards imposed on the DPIE in relation to assessment timeframes and the Resources Regulator in relation to mining tenement applications).

Commissioners Skills and Expertise

12. IPC Commission members should have proven experience, skills and expertise in decision making, not just technical expertise. Commissioners should have proven experience in weighing up issues to inform decisions.

Resourcing of the IPC

13. The IPC should be sufficiently resourced so that it can carry out its prescribed functions as efficiently and capably as possible in a timely manner.

3 Introduction

The NSW Minerals Council (NSWMC) welcomes the opportunity to provide a submission to the NSW Commissioner for Productivity on its review of the Independent Planning Commission (IPC). The purpose of the Review is, amongst other matters, to examine whether it is in the public interest to maintain an IPC, and the operations and processes of the Commission in the State's planning framework.

As the peak state industry body representing around 100 mining and related companies operating in NSW, we commend the NSW Government's decision to review the role and operation of the IPC.

Over the last few years, mining projects have been subjected to concerning decisions by the IPC which have exposed a range of deficiencies in its function as a determination body, as well as its administrative processes. This includes decisions being made contrary to government policy, projects being refused despite the DPIE recommending approval, minor applications being subject to onerous assessment requirements, and IPC processes contributing to increasing assessment times to name a few. The actions and decisions of the IPC have resulted in increased delays, cost and uncertainty in the assessment and determination of State significant development (SSD) applications for important mining projects in this State.

The most damaging recent example is the Bylong Project, where after five years of assessment and a recommendation for approval by the DPIE and 14 separate government agencies, the IPC refused the application.

Given the economic importance of these projects to the State, NSWMC and its members consider it critical that a balanced approach is taken to the assessment and determination of SSD applications, consistent with the policies of the elected government.

The NSWMC and its members have identified the following principles for the reform of the IPC:

1. Consistent with other States, return the determination responsibility to the elected government through the Minister, based on recommendations from a reformed IPC and the advice of the DPIE. The DPIE should be the primary assessment body, with the role of the IPC limited to reviewing the DPIE assessment and its recommendation.
2. The stated public policies of the elected government should act as the primary factor in project assessment rather than the views of an unelected part-time planning panel.
3. A reformed IPC should not duplicate the comprehensive assessment role undertaken by the DPIE.
4. The assessment, the recommendation and any draft conditions where approval is recommended, and any recommendation made by the DPIE on behalf of a reformed IPC should be given proportionally greater weight than any other assessment undertaken by the IPC.

NSWMCs submission responds to each of the Terms of Reference and includes a number of relevant case studies of mining SSD projects that have been either considered or determined by the IPC.



4 Background to role and operation of the IPC

The role and operation of the IPC and its predecessors, the Planning Assessment Commission (PAC) and the Office of the Commissioners of Inquiry for Environment and Planning (COI) has changed materially over time. Prior to the formation of the PAC, the Minister for Planning (Minister) was the consent authority for all State significant development or Part 3A projects (noting that Part 3A has since been repealed). The COI conducted independent public inquiries into certain projects and reported its findings and recommendations to the Minister. The Minister was required to consider the findings and recommendations of the COI before determining a development application.

The PAC was constituted in November 2008 under the Environmental Planning and Assessment Act 1979 (EP&A Act) to determine applications for major developments, to review and carry out public hearings into any planning related matter and to provide independent expert advice to Government on planning and development matters. The PAC was not a consent authority in its own right but acted as the consent authority under delegation by the Minister in respect of a defined category of SSD applications. Those applications that fell outside the scope of the delegated authority to the PAC were determined by officers within the Department of Planning and Environment (now the Department of Planning, Industry and the Environment (DPIE)).

In March 2018 the PAC was replaced by a new independent body, being the IPC. The IPC is just one of a number of independent bodies in NSW performing consent authority functions. The function and operation of the IPC is governed by the EP&A Act and associated Regulation. The functions of the IPC are prescribed in section 2.9 of the EP&A Act and include the functions of a consent authority for certain SSD applications, and to hold a public hearing into any matter at the request of the Minister for Planning and Public Spaces (Minister). This amendment permanently replaced a democratically elected decision maker with an unelected expert panel.

The IPC is now a consent authority in relation to the following SSD applications (or modification applications):

1. development in respect of which the council of the area in which the development is to be carried out has objected to the development;
2. development in respect of which at least 25 persons (other than a council) have objected to the development; and
3. development the subject of a development application made by a person who has disclosed a reportable political donation under section 10.4 to the Act in connection with the development application.

In the context of mining, almost all development and modification applications for mining projects are determined by the IPC. This includes relatively minor modification applications that typically have low levels of impacts, but where objectors will often 'band together' and lodge objections (often being 'form' objections) simply to push an application over the 25 or more-objection threshold.

5 Response to the terms of reference

NSWMC has considered each of the Terms of Reference in the context of mining projects below.

1. *Is it in the public interest to maintain an Independent Planning Commission?*
2. *Recommendations in relation to the Independent Planning Commission's operations and the mechanisms by which State significant development is assessed and determined*

The IPC can provide advantages and disadvantages for the NSW planning system.

Specifically, some of the advantages of the IPC are:

- a) The IPC can provide important checks and balances ensuring the assessment and determination of projects are based on science and evidence, are consistent with government policy, and are free from political interference;
- b) The public hearing process provides a forum for members of the community as well as other stakeholders to express their views in relation to a project and thereby seek to influence an optimal outcome in the final design of a proposed project; and
- c) For applicants, the extinguishment of merit appeal rights if a public hearing has been held provides greater certainty should a project be approved.

However, there are a number of **disadvantages** relating to the current operation of the IPC including:

- a) A number of recent decisions by the IPC in the last 18 months have highlighted the serious deficiencies of the current IPC process and its determination role. In addition to the duplication of assessment, the IPC is making decisions that:
 - i. Are inconsistent with NSW government policy;
 - ii. Are inconsistent with the comprehensive and lengthy DPIE assessment;
 - iii. Ignored recommendations from DPIE and multiple government agencies;
 - iv. Imposed conditions of consent contrary to DPIE advice; and
 - v. Have generated inconsistency of approach taken between project, such as the inconsistent application of conditions of consent on similar projects.

The lengthy and unpredictable nature of the assessment and determination process in NSW is creating significant uncertainty in the mining industry and as a result increased sovereign risk. Recent examples highlighting the risk include:

- **Bylong Project** - after nine years developing the project to a cost of over \$700 million, including over five years of environmental assessment, the IPC determined to refuse the \$1.3 billion project despite the DPIE and 14 separate government agencies recommending the project could be approved.
- **United Wambo Project** - after more than three years of environmental assessment, the IPC approved the application with a condition requiring an Export Management Plan, despite the Secretary of DPIE explicitly advising the IPC in writing the approach being taken was inconsistent with existing government policy.
- **Rix's Creek Project** - This project (over four years of environmental assessment) was approved three months after United Wambo and did not include the same Export Management Plan condition, highlighting the inconsistent approach being taken by the IPC.

- **Dartbrook Project** - Involving recommencing an existing approved mine which has been in care and maintenance for several years. The IPC issued a limited consent which they acknowledged was uneconomic as it did not grant the five-year extension required to make the project viable, which was inconsistent with the DPIE recommendation for full approval. Furthermore, the IPC issued consent imposed new financial liabilities on the proponent, as well as removing elements of the existing approved operation, despite the IPC acknowledging in its media release the applicant may not proceed with the project.

Years of thorough assessment, peer review, compliance with government policy and recommendation for approval from DPIE and multiple government agencies can be, and often is, ignored by the IPC creating uncertainty and sovereign risk. If left unresolved, this will have a lasting, detrimental and damaging impact on NSW's ability to attract investment.

- b) IPC processes are resulting in increases in overall assessment timeframes for all SSD mining related projects, including minor modification applications where the IPC is the consent authority. This is caused by a number of reasons including the duplication of assessment processes between DPIE and the IPC, which includes multi-stage public hearing processes often resulting in additional assessment and information requirements after the comprehensive and lengthy assessment process already undertaken by the DPIE.

In the five years to 2014, five new mining projects had an average assessment time of just over 400 days. In the five years between 2014 and 2019, six new mining projects took over 1000 days on average (see Diagram 1 - and refer to case studies). There have been similar increases in assessment times for extension of existing mining projects and modification applications.

Further, analysis of non-mining projects referred to the IPC for determination over the last 18 months also shows increases in the determination component undertaken by the IPC (see Diagram 2).

- c) Substantial costs and delay being incurred by applicants responding to multiple requests for information from the IPC. These requests are often in the later stages of the assessment process, and after extensive environmental impact statements and responses to submissions documents have already been prepared by the applicant and following the comprehensive and lengthy (often years) assessment of the project by the DPIE.

Whilst the EP&A Act currently outlines the IPC is not constrained by the DPIE's assessment of a project (and is able to conduct further assessment as it considers appropriate) in practice the IPC is effectively duplicating the existing comprehensive and lengthy assessment undertaken by the DPIE (see case studies for multiple examples). This includes engaging independent experts to review technical studies and the DPIE assessment, which is resulting in multiple rounds of consultation late in the process, which subsequently generates further feedback from members of the public, DPIE, other government agencies and the proponent.

Greenfield Mining Application Assessments

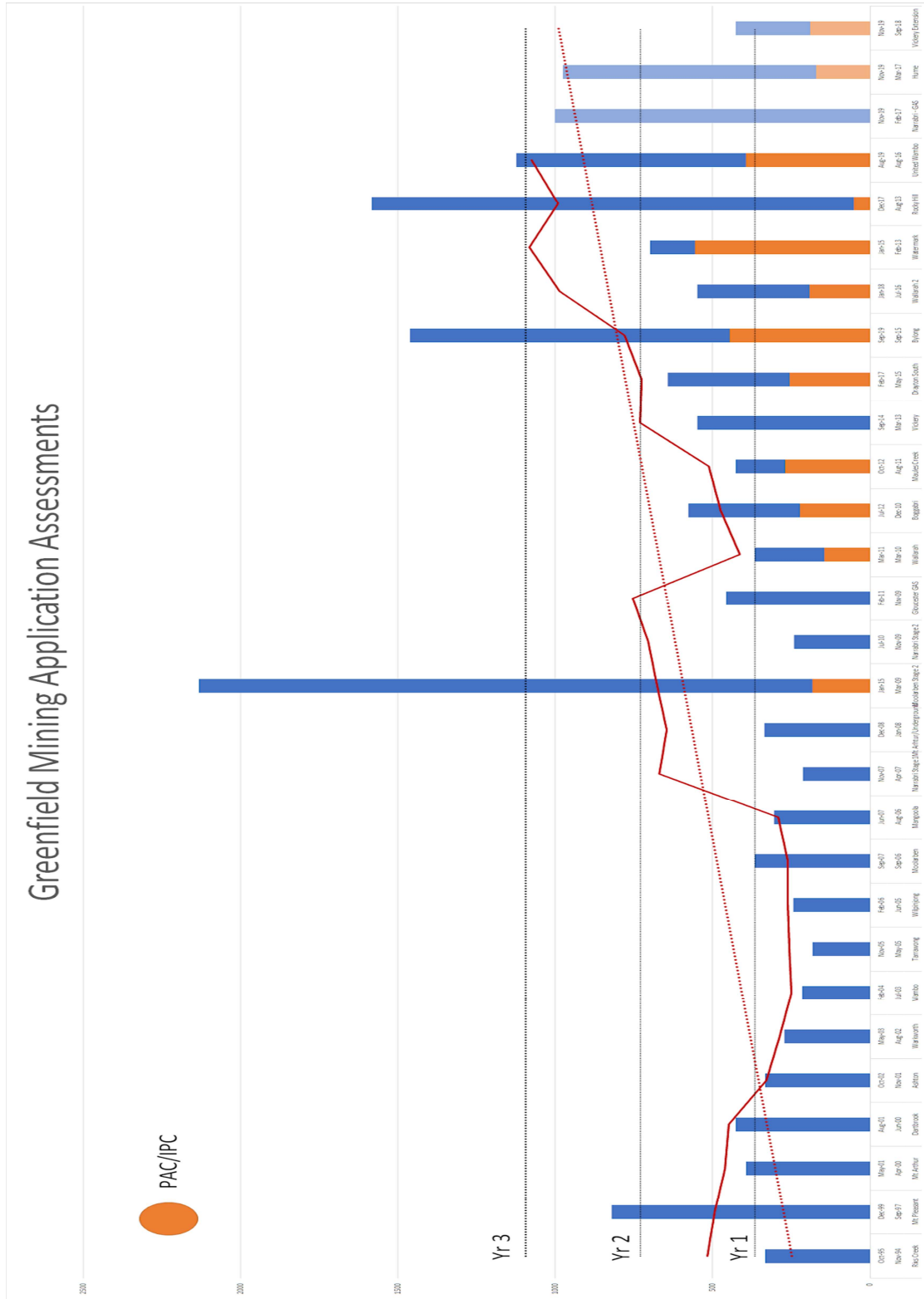


Diagram 1 - Assessment times for new mining projects in NSW

(Source DPIE website & IPC website)



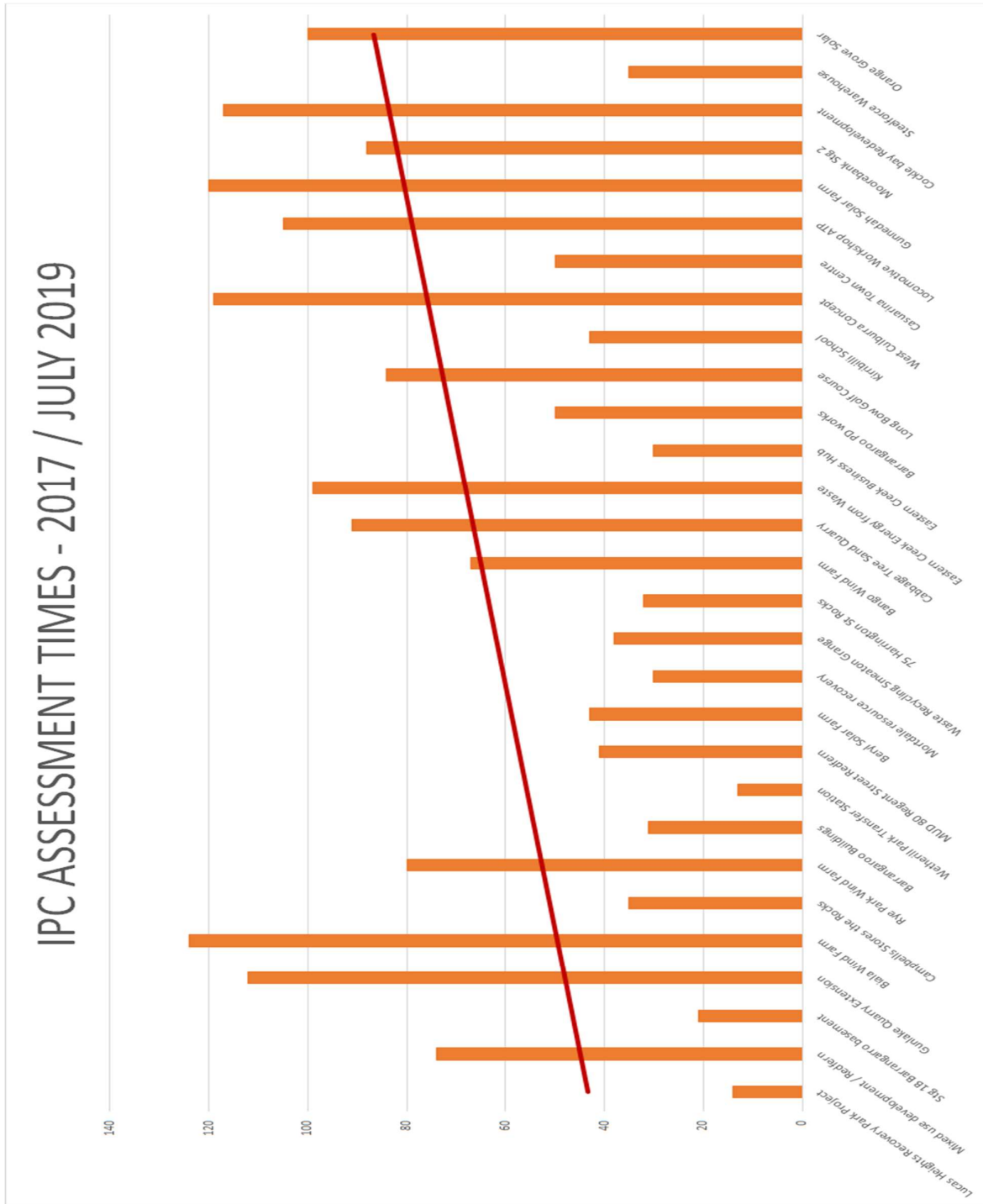


Diagram 2 - IPC Assessment times for non-mining related projects July 2017-July 2019

(Source - IPC Website)



- d) Connected with (c) above, the numerous requests for information and further assessment by the IPC is leading to an almost continual consultation and submissions process where objectors to a project may continually raise new issues or repeat existing issues.
- e) The IPC public hearing and meeting process is increasingly being used as a platform to protest against mining in a politically charged manner, impacting on the ability of the IPC to investigate the local impacts associated with a project. Recent examples include boycotts and protests of IPC hearings at Rix's Creek and Wilpinjong).
- f) The Commissioners, whilst being technical experts in their respective fields, are in many cases failing to evaluate State significant projects as a whole and in the context of the overall benefits of a project to the State. In this regard, the NSWMC notes that the Minister is the consent authority for State significant infrastructure given the importance of these projects to the functioning of the State. SSD projects by their very nature, and in particular mining projects where the resource is owned by the State and companies are essentially extracting the resource on behalf of the State, are similarly as important and therefore any decisions in relation to these projects need to be considered in that context.

The role of the IPC must be reformed in order to improve consistency and efficiency in decision making and improve confidence in the integrity of the planning system.

If retained, the role of the IPC should be to review certain SSD applications and potentially make recommendations to the DPIE and/or the Minister. It should no longer perform a determinative function as a consent authority. This would result in the Minister becoming the consent authority for the majority of SSD applications. The benefits of this approach would be:

- a) Decisions in relation to planning applications relating to projects of importance to the State would be made by an elected member of Government. Given the significance of mining projects to the State of NSW, for reasons including employment and other economic benefits including royalties, it is appropriate that the Minister weigh up the costs and benefits of a proposal for the State in making the ultimate decision as to whether to approve or refuse a project. This balancing exercise has been lacking in a number of recent IPC decisions, which is discussed in further detail below;
- b) The reformed IPC could continue to provide checks and balances to Ministerial decision making, thereby assisting to maintain public confidence in the planning system for State significant projects;
- c) In carrying out its review function, the reformed IPC could continue to hold public hearings (independent from government) which would continue to enable community members to have their say and be heard in relation to SSD proposals. If a public hearing has been held it would be appropriate to continue current provisions of the EP&A Act that prevent merit appeals to be brought by objectors or applicants following the determination of a development application.

The above proposed approach would be consistent with all other Australian States and territories where major projects are determined by elected representatives of Government. Whilst a number of States have a separate body (being for example a Court or another Government agency) performing a review or recommendation function, NSW is currently the only State where the consent authority function is performed by an independent body who is not under the direction or control of the Minister.

The above approach would ensure there is greater consistency between the assessment undertaken by the DPIE (and other Government agencies) and the ultimate decision, as well as a greater likelihood of consistent application of applicable NSW government policies in decision making.

Alternatively, should independent consent authority for certain SSD applications be retained (being those applications meeting one or more criteria in the State Environmental Planning Policy (State and Regional Development) 2011(**SRD SEPP**)), changes should be made to the EP&A Act to ensure that:

- a) The IPC is required to apply the applicable government policies at the time in exercising its functions, and is to avoid making policy itself or making comments/ recommendations on current or future Government policy (such as been the case in mining decisions including on issues such as final voids, land acquisition, ESD principles and greenhouse gas emissions and climate change). It should be made explicit that any consideration, determination, recommendations or conditions of approval must be consistent with the existing policies of the elected government. Under no circumstances should the IPC be allowed to stray outside of existing policy or make its own policy when finalising its position. Where there is policy uncertainty, the IPC would be required to seek advice or confirmation from the Secretary of Planning before it can finalise a determination, including advice or conditions of approval;
- b) The assessment already conducted by the DPIE or other government agencies is not repeated or duplicated;
- c) An appropriate level of weight is given to the assessment carried out of a project by DPIE. Specifically, an amendment could be made to section 4.6 of the EP&A Act to provide that in determining development applications the IPC must consider the DPIE's assessment (undertaken by the Planning Secretary on behalf of the Commission) in priority to, and give greater weight to it than any other assessments that may be under consideration by the Commission;
- d) Timeframes for the determination of development applications are reduced and the IPC are held accountable to some minimum standards for determination of applications (similar to the standards imposed on the DPIE in relation to assessment timeframes and the Resources Regulator in relation to mining tenement applications).

The above reforms to the current planning system would assist in avoiding situations such as the Bylong project, where the IPC effectively ignored the findings of the comprehensive and lengthy assessment by the DPIE and refused the project – refer to the case studies for other examples.

Should the IPC be retained as the consent authority, it's also recommended the EP&A Act is amended so that the Minister delegates his/her consent authority functions to the IPC for certain SSD applications, rather than the IPC being prescribed as a consent authority in its own right under the EP&A Act/ SRD SEPP. This model was in place for the operation of the PAC and provided greater consistency and efficiencies in the coordination of the DPIE and the PAC. As a consent authority in its own right, the IPC appears to be irrationally concerned around the risk associated with its decisions, resulting in over-consultation (refer to case studies where additional information obtained was made available for public comment) and increased administrative burden such as the recording of every single meeting held with applicants. A reversion to a system where the IPC is acting as consent authority under delegation from the Minister would assist with these issues.

Finally, and consistent with legal mechanisms that exist for other forms of development applications, applicants for SSD projects (including modifications) determined by the IPC should be afforded a right of review where it has either been refused or there are onerous conditions of consent. The right of review should be to the Minister and could be limited to circumstances where the IPC has gone against the findings and recommendations of the DPIE in its assessment report (refer to Dartbrook, Bylong, United Wambo case studies). This is particularly important given that applicants do not have merit appeal rights if a public hearing has been held by the IPC, so they currently have no right of review or appeal (other than judicial review). Such a review process would provide the proponent with an opportunity to have an issue reconsidered where the IPC has made a decision that is inconsistent with Government policy and/or the assessment and recommendations of the DPIE and other Government agencies.

3. Having regard to the above, identify any proposed changes to the IPC's current functions, processes for making determinations, and resourcing. The issues to be considered include but are not limited to:

- **Thresholds for referral of matters to the Independent Planning Commission**

As discussed above, the IPC is the consent authority for both SSD applications and modification applications that meet certain criteria, e.g. greater than 25 objections. Groups opposed to mining projects routinely organise/coordinate the required number of submissions (often form letters) to trigger referral of the application to the IPC. This is resulting in large numbers of modification applications for mining projects (some of which are for relatively minor changes to existing approved development) being referred to the IPC for determination (see multiple case studies – Boggabri Mod, Moolarben, Duralie, Rix's Creek Mod amongst others). Once referred to the IPC it results in:

- Additional assessment time and cost for proponents.
- Duplication of the DPIE assessment role including public meetings, additional consultation and requests for additional information.

In many cases, the additional assessment time and cost provides little benefit in terms of improved outcomes given the often relatively minor nature of the modifications.

Should the IPC continue to be a prescribed consent authority under the EP&A Act, its functions should be changed so that it no longer performs the role of the consent authority for modification applications for SSD. This can be achieved by the IPC delegating its consent authority functions in respect of SSD modification applications to the DPIE. This is possible pursuant to the existing section 2.11(4) of the EP&A Act (Miscellaneous provisions relating to Commission) which states that:

'(4) The Independent Planning Commission may, with the approval of the Minister, delegate any function of the Commission under this or any other Act (other than this power of delegation) to any person or body specified in the Minister's approval.'

A redistribution of the function of determining modification applications for SSD would improve the efficiency of the planning system for major projects. It would also alleviate some of the resourcing pressures that the IPC is currently facing in relation to the large volume of applications that it is required to determine.

- **The clarity and certainty of policies and guidelines that inform determinations**

As discussed above, there have been multiple recent examples of inconsistent decision-making by the IPC which in many cases are also contrary to NSW government policy. However greater direction could be provided to the IPC (preferably through statute) requiring the IPC to apply government policy in exercising its functions. Additionally, further clarity should be provided in the EP&A Act to ensure that an appropriate level of weight is given to the assessment carried out of a project by DPIE and other government agencies.

In addition, the extensive (and duplicated) consultation undertaken by the IPC prior to determining development applications is adding substantial time and delay to the planning process for applicants (see the case studies of Vickery, United Wambo, Bylong and Rix's Creek (amongst others)).

Whilst public consultation is an important part of the planning process, consultation should be carried out at clear and segmented times in the planning process. Additional consultation outside of those scheduled consultation phases should only be permitted where there is a proposed change to a project that may increase the impacts of the project. Where a project is not materially changing (and therefore the impacts of a project are not changing), there should be no automatic need for additional public consultation. A change in the IPC's policy in this space would greatly assist in reducing determination timeframes.

- ***The Commissioners' skills, expertise and qualifications***

Currently the IPC comprises 29 Commissioners. For the purpose of exercising any of its functions with respect to a particular matter, the IPC is, subject to any direction of the Minister, to be constituted by one or more members determined by the chairperson of the Commission (section 2.10, EP&A Act). Pursuant to section 2.10(2) of the EP&A Act the Minister may give any of the following directions to the chairperson with respect to the constitution of the Commission for a particular matter or class of matters:

- a) a direction as to the number of members that are to constitute the Commission; and
- b) a direction as to the specified members, or members with specified qualifications or expertise, that are to constitute the Commission.

Currently the members of the IPC are from a broad range of backgrounds, each with technical expertise in specific areas including town planning, architecture, engineering, science, finance and law. Furthermore, under current arrangements IPC members have wide ranging and unfettered discretion in performing their role.

This has resulted in decisions that are:

- Inconsistent with government policy - e.g. United Wambo Export Management Plan condition, Sunrise land acquisition condition; and
- Inconsistent between IPC determinations - United Wambo and Rix's Creek – Export management Plan condition.

Whilst technical expertise is useful in the determination of often very complex SSD projects, given the nature of such projects it is also critical that the members of the IPC are experienced in identifying the real issues in relation to a project (and blocking out any 'white noise'), balancing multiple considerations and weighing up the costs and benefits of a project in the context of the entire State.

Should the IPC be retained as a consent authority, it would be beneficial for the Minister to appoint Commissioners to the IPC who have proven experience in weighing up issues to inform decisions, such as persons which have been in previous judicial positions or positions within government. This would be consistent with a number of local and regional planning panels holding consent authority roles in NSW. By way of example, we note the current Chair of the Ku-ring-gai Local Planning Panel is Justice Robert Neville (Angus) Talbot, a former judge of the Land and Environment Court, and the chair of the Sydney North Regional Panel is Peter Debnam, former member of the NSW Parliament. The addition of similarly experienced members to the Commission would assist in creating a more balanced and holistic IPC who are better equipped to determine matters of State significance.

- ***The adequacy of mechanisms to identify and resolve any conflicts of interest by commissioners;***

The IPC has a conflict of interest policy which identifies the procedures for declaring, recording and handling conflicts of interest. Whilst the NSWMC does not have any concerns in relation to the conflicts policy itself, the implementation of the policy is of concern. The United Wambo and Vickery project case studies highlight where Commissioners declared conflicts of interest, both very late in the planning process. The development application for the United Wambo project was lodged on 11 August 2016, and the matter was referred to the IPC on 12 November 2018. Two separate Commissioners then (within two days of each other) declared a conflict of interest. This change in Commissioners resulted in the scheduled public meeting being delayed for two months from December 2018 to February 2019.

It is important that conflicts of interest are identified by the IPC as early as possible (and well in advance of public meetings and hearings) to avoid delays in the IPC's processes including the holding of public hearings or meetings. Any conflicts of interest should be identified and resolved by the IPC before Commissioners are announced.

- ***The Independent Planning Commission's procedures and guidelines;***

The IPC has a number of policy documents setting out its procedures and guidelines including in relation to public meetings, public hearings, multi-stage public hearings and meeting records.

Both the public meeting and public hearing guidelines state:

The Commission may engage the use of a Counsel Assisting to assist the Commission in the conduct of the public meeting. As part of assisting in the conduct of the public meeting, Counsel Assisting may ask questions or seek clarification from speakers/presenters.

NSWMC understands that in accordance with the above policy statement, Counsel assisting was used in the Rix's Creek public hearing (see Rix's Creek case study). The use of Counsel assisting in public hearings or meetings is concerning as it adds a significant degree of legal formality to the process which may impact on the ability for people to feel that they can speak freely in these forums. It also has the result that applicants, as well as potentially some other stakeholders (including objectors), may feel that they too need to have legal representation at these meetings/ hearings. This in turn leads to slower and more expensive planning processes. NSWMC recommends that as part of the review of the IPC this aspect of the IPC procedures is amended.

There also needs to be further clarification as to the purpose and scope of public hearings (including multi-stage public hearings) and public meetings as well as the process following the hearings/ meetings. Experience has shown there is often confusion around the difference between a public hearing and a public meeting, and there is often extensive consultation undertaken by the IPC following public hearings/ meetings which leads to further delays, additional costs for applicants and uncertainty as to the process.

A public hearing by its very nature is an opportunity for the IPC to hear from people who are either associated with the project (such as the applicant) or are potentially impacted by the project. It should provide a forum for the IPC to examine the key issues of a project and identify any potential gaps in the DPIE's assessment. In the event that any gaps are identified by the IPC, further information or clarification can then be sought from the DPIE (which may in turn require further information from the applicant).

The use of multi-stage public hearings/meetings should be removed (unless there are exceptional circumstances) given its effectively duplication of the same process. This is contributing to confusion around the process and resulting in significant increases in assessment times for SSD projects, particularly where the determination step results in reconsideration of issues by the IPC after years of assessment. Furthermore, the fees payable by applicants for reviews and public hearings by the IPC are substantial, currently being \$56,600, plus an additional amount (being the estimated costs of the Commission undertaking the review) of not more than \$56,600 (clause 245L and 256N of the EP&A Regulation).

Where the IPC obtains additional information from the DPIE when performing its function, the additional information should not be subject to further general consultation outside of the prescribed consultation periods given the project itself is not changing. Unnecessary and duplicated consultation undertaken by the IPC has resulted in increased assessment times (see Bylong and United Wambo case studies). Furthermore, it creates additional administrative processes for the IPC which can lead to unfortunate outcomes such as the 'premature' approval of the Rix's Creek development application – see Rix's Creek case study.

The IPC policies should be updated to make it clear that consultation will be limited to particular phases of a planning process (i.e. the DPIE submissions period and a single IPC public hearing submissions period) and that further consultation will only be conducted if there is a change to a project that will have a materially greater impact than the project as originally proposed.

- ***The extent to which the Independent Planning Commission should rely upon the assessment report prepared by the Department of Planning, Industry and Environment, taking into account any additional assessments by other Government agencies;***

This issue has been addressed in detail above.

The key objective in any reforms of the current IPC roles and processes needs to be to ensure that the IPC operates within the Government's policy framework and does not make decisions, including imposing conditions of consent, that are contrary to policy, convention, precedent and the advice of the DPIE.

The legislation should make it clear that, in exercising its functions, the IPC must apply the relevant government policies at the time and is to avoid making policy themselves or making comments/recommendations as to what Government policy should be (such as been the case in mining decisions including on issues such as final voids, ESD and greenhouse gas emissions and climate change). A very relevant recent example of where the IPC has not followed government policy is the United Wambo project in respect of the imposition of the condition requiring an Export Management Plan. This was a clear contravention of government policy as set out in the letter from Jim Betts, the Secretary of the DPIE to the IPC during the consultation process on this draft condition – see United Wambo case study. This contravention of government policy has resulted in the government introducing the Environmental Planning and Assessment Amendment (Territorial Limits) Bill 2019 into parliament to prevent such a situation from occurring in the future.

Further, amendments should be made to the EP&A Act to ensure an appropriate level of weight is given by the IPC to the assessment carried out of a project by DPIE and other government agencies. This would improve consistency of decision making and avoid unnecessary duplication of assessment processes thereby improving certainty and efficiency in the planning process.

- ***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.***

It's important the reformed IPC is sufficiently resourced so that it can carry out its prescribed functions as efficiently and capably as possible in a timely manner.

Attachment – IPC Case Studies

- DARTBROOK COAL MINE – MODIFICATION APPLICATION (MOD 7)
- UNITED WAMBO – EXTENSION OF EXISTING MINE
- BYLONG PROJECT – GREENFIELD MINE
- RIXS CREEK – EXTENSION OF EXISTING MINE
- VICKERY EXTENSION PROJECT
- BOGGABRI COAL MINE – MINOR MODIFICATION APPLICATION (MOD 7)
- CLEANTEQ SUNRISE PROJECT (MOD 4)
- RIX'S CREEK – MINOR MODIFICATION APPLICATION TO CONTINUE MINING OPERATIONS (MOD 10)
- DURALIE MODIFICATION (MOD 2)
- MOOLARBEN MODIFICATION PROJECT (MOD 3 & 14)
- MOOLARBEN MODIFICATION PROJECT (MOD 12)

DARTBROOK COAL MINE – MODIFICATION APPLICATION (MOD 7)

KEY ISSUES:

- **Determination inconsistent with Department of Planning Assessment/Recommendation** - The determination was inconsistent with the assessment and recommendation from the Department of Planning.
 - By limiting the effective approved mine life to only a further 3 years, financing of any restart to mining operations become extremely problematic.
 - The IPC described the determination as an approval, despite acknowledging in its press release that "AQC has previously stated the proposed five-year extension of the approval period was required to justify the capital expenditure involved in recommissioning the mine".
 - The reasons for not approving the full 5 year extension included (amongst others) "not being in accordance with the principles of ecologically sustainable development".
- **Process/Administration Issues** - The IPC public meeting guidelines outlines written submission will be accepted for 7 days following the public hearing (9 April 2019). The IPC accepted several extensive objections up to 70 days after the public meeting was held.
- **Assessment timeframes:**
 - Total - 18 Months
 - IPC component - 6 months
- **Note:**
 - The determination has resulted in additional liabilities to the mine owner including:
 - Voluntary Planning Agreement payments - \$100K
 - Western roads strategy contribution - \$77K
 - Compulsory acquisition obligations
 - The IPC determination removed the company's right to use the Coal Handling and Preparation Plan (CHPP) for coal mined by bord and pillar (being coal already approved for extraction and washing at the CHPP under the existing 2001 development consent).

IPC LINK: <https://www.ipcn.nsw.gov.au/projects/2019/02/dartbrook-coal-mine-modification-7>

PROPOSAL:

- To modify an approved and previously operating coal mine that has been in "care and maintenance" since 2006.
- The original coal mine was first approved in 1991, and the most recent development consent for the mine was granted in 2001 to allow 6 Mtpa ROM until 2022.
- The modification proposed:
 - Alternative bord and pillar underground mining method (less impact than currently approved longwall mining) within a coal seam already approved for extraction; and
 - An extension of 5 years mining for both forms of mining (presently 2022- proposed 2027)
- 26 Construction jobs, 100 operation jobs
- Capital Investment Value - \$10 Million

ASSESSMENT:

- February 2018 - Modification application lodged.
- July 2018 – Modification application displayed for public comment.
- January 2019 – Department of Planning referred the application to the IPC for determination (+25 submissions trigger) – Recommended full approval subject to conditions.
- April 2019 – Public Meeting held (34 public speakers & numerous written responses).
- May 2019 – IPC requested additional information from Department of Planning.
- June 2019 – Department of Planning responded to IPC request and reconfirmed its assessment approach and that the project could be approved in its entirety subject to conditions.
- August 2019 - IPC determined application approving the alternative mining method (bord and pillar) but removing the right to use the washery for bord and pillar mined coal and refusing the 5-year mine life extension.

UNITED WAMBO – EXTENSION OF EXISTING MINE

KEY ISSUES:

- **Determination inconsistent with Department of Planning Assessment/Recommendation** - Despite the Department of Planning recommending that a condition limiting trade to international countries that are signatories to the Paris Agreement or with similar policies (relating to downstream greenhouse gas emissions) was inconsistent with Government policy and should not be imposed, the IPC ignored the Government advice and included the condition.
 - Consideration and advice inconsistent with Government policy.
- **Duplication of Assessment** - Protracted and duplicated consultation and engagement requirements.
 - Repeated requests for additional assessment information at the tail end of the process.
 - The continued back and forth between the applicant, Department of Planning and the IPC prompted addition information from opponents to the project including the EDO and the HEL.
 - Public notification of a draft condition after years of assessment and issues being addressed through additional information requests.
- **Process/Administration Issues** - Public meeting/hearing deferred with short notice.
- **Assessment Timeframes:**
 - Total - 36 Months
 - IPC component - 12 months (2 x IPC hearing/meeting processes)
 - The IPC determination removed the company's right to use the Coal Handling and Preparation Plan (CHPP) for coal mined by bord and pillar (being coal already approved for extraction and washing at the CHPP under the existing 2001 development consent).

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2017/12/unity-wambo-open-cut-coal-mine-project-mod-3-and-mod-16>

<https://www.ipcn.nsw.gov.au/projects/2018/11/unity-wambo-open-cut-coal-mine-project-ssd-7142>

PROPOSAL

- Extension to the existing Wambo Open Cut and adjacent United underground, near Singleton.
- Significant additional benefits for minimal additional disturbance:
 - recovering an additional 150M ROMt from joint development of lease areas
 - generating additional royalties estimated of \$370 million
 - increased economic activity in NSW equal to \$2.1 billion Gross Regional Product and \$3 billion Gross State Product
- Continued employment for 250 Wambo employees, plus creating 250 additional mining jobs and 120 construction jobs during peak construction
- Utilisation of existing Wambo infrastructure with minimal additional disturbance and no increase in approved annual throughput of CHPP and rail loop

- Contiguous undulating final landform more in keeping with natural topography with the same number of voids as already approved.

ASSESSMENT:

- September 2016 – Application displayed for public comment.
- December 2017 – 1st referral to the IPC (former PAC) where Department of Planning noted in its preliminary assessment report that ‘the benefits of the Project would outweigh its costs’... ‘and is approvable subject to conditions’. The referral requested review by IPC be completed within 12 weeks.
- 8 February 2018 – Public hearing held in Singleton (10 registered public speakers).
- 1 March 2018 – IPC requested 1month extension to complete its final report.
- 27 March 2018 – IPC final report referred back to the Department of Planning for assessment.
 - 47 recommendations were made by the IPC
 - Despite guidelines being adhered to on the Policies as per the SEARs, the Commission recommended use/consideration of newer policy. “The Applicant and the Department should consider the opportunity to adopt...”
 - For example, noise assessment - the INP was appropriately followed, however The Commission sought adoption of the NPI. The proponent’s response showed adoption of the later policy actually provided for less community opportunities for management rights.
- November 2018 – 2nd referral to the IPC from the Department of Planning for its determination. The Department of Planning recommended the Project could be approved subject to conditions.
- December 2018
 - IPC originally scheduled public meeting for 12 December 2018. The IPC postponed the December meeting and publicly notified that it was rescheduling to 7 February 2019. It was also advised submissions would be received up until 14 February 2019.
 - Two Commissioners resigned from the panel with declared conflicts of interest.
- 7 February 2019 – Public meeting held in Singleton (35 registered public speakers).
- In addition to meetings with the Applicant and Department of Planning, the IPC also met with the EDO (5 February) and 4 specialists they had engaged on behalf of the Hunter environment Lobby. The technical reports submitted by the EDO were posted on the IPC website.
- 22 March 2019 - IPC wrote to the Applicant and Department of Planning requesting further information on a range of issues, including scope 3 emissions.
- 15 April 2019 – Proponent responded to IPC with further information and an additional response specific to the Rocky Hill and Wallarah 2 cases on Climate Change and Greenhouse.
- 17 April 2019 – Department of Planning responded to IPC.
- 23 April 2019 - IPC wrote to DPIE requesting further information.
- 15 May 2019 – Department of Planning responded to IPC addressing the issues.
- Note – The continued back and forth between the applicant, Department of Planning and the IPC prompted addition information from opponents to the project including the EDO and the HEL.
- 17 May 2019 – Proponent responded to matters raised by the EDO, HEL and its technical experts.
- 27 May 2019 - Proponent provided further information on Noise modelling.

- Despite having published a notice that a determination was imminent (7 June), The IPC then published a draft condition regarding an Export Management Plan (relating to Scope 3 GHG Emissions, for public comment, 2 months later on 2 August.
- 2 August 2019 – IPC publicly notified a draft condition proposing to limit international trade from the Project to countries that are signatories to the Paris Agreement, or which have similar climate change policies in place.
- August 2019 – Multiple submissions were lodged with the IPC. The Secretary of the Department of Planning in its submission advised the IPC the proposed conditions was not supported by any policy.
- 29 August 2019 - Despite receiving the above advice, the IPC approved the United Wambo project and included the condition (in an amended format) in the Determination on 29 August.

BYLONG PROJECT – GREENFIELD MINE

KEY ISSUES:

- **Determination inconsistent with Department of Planning Assessment/Recommendation** - Despite the Department of Planning and 14 separate NSW Government agencies recommending the Project could be approved, the IPC refused the Project.
 - Determination of the Project was inconsistent with Department of Planning Recommendation.
 - A reason for refusal included downstream greenhouse gas emissions which is not identified or supported by any State or Commonwealth policy.
- **Duplication of Assessment** - Repeated requests for additional assessment information at the tail end of the process.
 - Additional information was separately publicly notified by the IPC on 2 occasions, which was in addition to the public meeting process.
 - IPC engaged its own technical experts to assess elements of the project, directly duplicating assessment already undertaken by the Department of Planning.
- **Commissioner's Skills and Qualifications** - Whilst the Commissioners may have technical expertise in the respective fields, they are not necessarily experienced decision makers where they are required to balance all of the competing interests.
- **Process/Administration Issues** - The IPC was forced to issue media statements on two separate occasions that further public submissions would not be received.
- **Assessment Timeframes:**
 - Total - 48 Months (not including Gateway Assessment Period)
 - IPC component - 15 months (2 x IPC hearing/meeting processes)
 - The assessment period took so long, the Gateway certificate issued 5 years earlier had lapsed, resulting in the IPC questioning its ability to determine the project, and necessitating a change to the Mining SEPP to address the issue.

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2017/02/bylong-coal-project>

<https://www.ipcn.nsw.gov.au/projects/2018/10/bylong-coal-project>

PROPOSAL:

- Greenfield mining project consisting of open cut and underground mining, and rehabilitation post mining.
- Significant additional benefits:
 - recovering an additional 120 Mt of ROM over 23 years
 - generating royalties estimated at \$278 million
 - increased economic activity in NSW equal to \$4.9 billion Gross Regional Income and between \$6.4/\$6.8 billion Gross State Product
- 665 Construction jobs, 450 operation jobs (peak).
- Capital Investment Value - \$1.3 Billion.

ASSESSMENT:

- September 2015 - Application displayed for public comment.
- March 2017 - 1st referral to the IPC (former PAC) where Department of Planning noted in its preliminary assessment report "on this basis, the project is approvable, subject to the recommended conditions". The referral requested review by IPC be completed within 12 weeks.
- March 2017 - IPC engaged heritage consultant to provide advice on the project.
- 11 & 12 May 2017 - Public hearing held in Mudgee (44 registered public speakers and public submissions).
- May 2017 - Heritage consultant finalised advice to the IPC.
- 20 June 2017 - IPC requested extension to complete its final report.
- 23 June 2017 - Department of Planning granted extension of time.
- 26 July 2017 - IPC finalised its Review Report for the Department of Planning.
- October 2018 - 2nd referral to the IPC from the Department of Planning for its determination.
- The Department of Planning recommended the Project on balance could be approved subject to stringent conditions.
- The Department assessment also included referral and consideration by 14 separate Government agencies.
- Note the project was amended to address heritage impact concerns.
- 7 November 2018 - Public meeting held in Mudgee, and interested parties advised submissions could be received up to 1 week after the public meeting (61 persons registered to speak).
- 12 November 2018 - In addition to meetings with the Applicant and Department of Planning, the IPC met with the Bylong Valley Protection Alliance, EDO (5 February) and specialists they had engaged.
- 23 November 2018 - IPC requested additional information from the Department of Planning on water management.
- January 2019 - IPC sought Independent review of groundwater issues.
- 13 February - Department of Planning responded to the IPC request for additional information on water management issues.
- 5 March 2019 - Independent review of groundwater issues commissioned by the IPC received.
- 5 March 2019 - Proponent provided additional information relating to greenhouse gas emissions in response to the rocky Hill Court Decision.
- 1 May 2019 - IPC issued a media statement that as the determination is now pending it would not accept any further comments from stakeholders, including comments from members of the public.
- 12 June 2019 - IPC publicly notified the additional heritage advice they obtained for comment up until 20 June 2019.
- 18 June 2019 - The IPC extended the public consultation period on the heritage advice up until 27 June 2019. In response 28 submissions were received.
- 28 June 2019 - IPC issued a media statement that it would not accept any further comments from stakeholders, including comments from members of the public on the heritage issue.

- 18 July 2019 - IPC advised the proponent it has formed a preliminary view that it cannot determine the application as the Gateway Certificate (obtained on April 2014 with 5 year expiry date) had expired. The proponent had up until 26 July 2019 to respond.
- 22 July 2019 - IPC issued a media statement advising its view was it couldn't approve the Bylong project due to the lapsing of the gateway certificate, and advised the applicant was required to respond.
- 23 July 2019 - Proponent responded advising the IPC had the legal ability to finalise its determination of the project.
- 27 July 2019 - IPC issued media statement advising the applicant had responded and the IPC will accept submissions up until 2 August 2019. In response, 26 submissions were received.
- 18 September 2019 - Despite the Department of Planning and 14 separate government agencies recommending the Project could be approved, the IPC refused the project on grounds that included downstream greenhouse gas emissions, groundwater impacts, heritage impacts and impacts on strategic agricultural land.

RIXS CREEK – EXTENSION OF EXISTING MINE

SUMMARY:

- **Process/Administration Issues** - IPC prematurely notified that the Rix's Creek Continuation of mining project had been approved - only to retract the approval hours later due to an administrative error.
 - Approval of the project was subsequently issued on a Saturday afternoon.
- **Consistency issues** - The approval did not include an Export Management Plan condition which was inconsistent with the Government Policy and should not have been included on the United Wambo determination, a position which is strongly supported by the NSWMC and industry members).
- **Duplication of Assessment** - IPC obtained independent technical advice from two separate consultants.
- **Duplication of Assessment –**
 - IPC obtained independent technical advice from two separate consultants.
 - Without stating that there was anything sub optimal about certain assessments (and after the Department of Planning had already assessed them and found them to be sufficient), the IPC began developing their own plans and seeking their own advice.
 - The IPC used Legal Counsel to interrogate speakers at both the Public Hearing and the Public Meeting for Rix's Creek South Project. This was not the case for other projects.
- **Assessment timeframes:**
 - Total - 47 Months
 - IPC component – 7.5 months (2 x IPC hearing/meeting processes)

PROPOSAL:

- Extension to the existing Rix's Creek mine which has been operating since 1990.
- Continued employment for 300 employees.
- Capital Investment – \$110 Million

ASSESSMENT:

- November 2015 - Application displayed for public comment.
- May 2018 - 1st referral to the IPC where Department of Planning noted in its preliminary assessment report that the Project would be expected to deliver a net benefit, is in the public interest and is approvable subject to conditions.
- 6 June 2018 - Public hearing held in Singleton (11 registered speakers). Interested parties were advised written submissions would be received up until 13 June 2018.
- 25 June 2018 - IPC requested additional information from the Proponent relating to rehabilitation and final landform and advised that independent information would also be obtained.
- 9 July 2018 - IPC obtained independent review of the rehabilitation strategy for Rix's Creek.
- 2 August 2018 - IPC obtained independent review of the mine schedule and final landform.
- July/August 2018 - Additional information received from the proponent and Government agencies.
- 31 August 2018 - IPC finalised its review report.

- 20 June 2019 - 2nd referral to the IPC. The Department of Planning stated that on balance the project is approvable subject to recommended conditions.
- 8 July 2019 - IPC requested further information from the Department of Planning on a range of issues.
- 16 July 2019 - IPC requested two separate meetings with Singleton Council - one with elected officials and one with management.
- 29 July 2019 - Public meeting held in Singleton (37 registered speakers). Written submissions to be received for one week after the meeting.
- July/August/September 2019 - IPC requested additional information (17 July & 10 September), generating numerous e-mails and additional information from the proponent, relevant agencies and the IPC.
- 24 September 2019 - Based on IPC requests for information on 17 July 2019 and 10 September 2019, the IPC publicly notified the additional information received from the Department of Planning and advised it would receive submissions up until 4 October 2019.
- 4 October 2019 - IPC publicly notified (around midday) that it had approved the Rix's Creek Project subject to conditions.
- 4 October 2019 - IPC publicly retracted the approval citing that it was still in the process of receiving written comments up until 5:00pm on 4 October and that submissions would now be received up until midday 11 October 2019.
- 11 October 2019 - Around 25 submissions were received on the 11th October 2019 and posted on the IPC website.
- 12 October - IPC approved the Rix's Creek project.
 - The media statement advising of approval was issued on a Saturday.
 - The Rix's Creek project did not include a condition limiting international trade to countries that are signatories to the Paris Agreement which was inconsistent with the United Wambo determination.

VICKERY EXTENSION PROJECT

KEY ISSUES:

- First and likely last Project to undergo multi-stage public hearing process and associated IPC Issues Report.
- **Process/Administration Issues** - Lack of clarity from the IPC on process, combined with issues with Commission conflicts of interest, has led to a delay of some 6 months to assessment timeframes.
 - The IPC did not immediately accept the Minister's referral of the Project and delayed forming a Commission, despite the Project receiving more than 25 objections.
 - When the Commission formed and Whitehaven had provided its first briefing, the Chair resigned due to conflicts of interest - which could have been resolved if the Commission had formed when requested by the Minister.
 - The originally scheduled Public Hearing was cancelled and rescheduled, resulting in delay.
 - The IPC Issues Report was delivered 17 weeks later than requested by the Minister.
- **Duplication of Assessment** - The IPC Issues Report did not progress assessment of the Project.
 - The Department provided the IPC with a Preliminary Issues Report that focused on 6 key assessment issues in consideration of public, agency and expert peer reviews of the Project.
 - Instead of further refining key assessment issues, the IPC Issues Report expanded this list from 6 to 14 issues.
 - The IPC Issues Report simply listed matters raised, rather than prioritising assessment issues or progressing their resolution.
 - 2nd Public Hearing/Meeting - The IPC will now repeat almost an identical process, which will be over 1 year later, which will likely add further delay and duplication of Department of Planning Assessment.
 - The process to date has provided limited benefit to the Department, the proponent and arguably the community as it effectively duplicates the assessment undertaken by the Department, creating confusion and uncertainty.
- **Commissioner's Skill and Qualifications** - Commission members delved into specifics of assessment issues suited to their particular background/area of expertise.
- This created unnecessary duplication of advice from the Department's expert peer reviewers and agencies.
- **Assessment timeframes** -
 - Total - 426 days (14 months) and counting.
 - IPC component - 6 months (1st stage only - 2nd stage likely to be held some time in 2020)

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2018/11/vickery-extension-project>

PROPOSAL:

- Previous approval granted for Vickery project in September 2014 - project yet to be commenced.
 - 135 MtROM coal over 30 years
 - 4.5 Mtpa

- Associated mine infrastructure
- Updated Project includes:
 - 179 MtROM coal over 25 years
 - Average extraction of 7.2Mtpa (peak production of 10Mtpa)
 - CIV \$607M
 - Jobs: 500 construction + 450 Operational

ASSESSMENT:

- 13 August 2018 - EIS lodged with Department of Planning.
- 6 September 2018 - Minister requests the IPC conduct a public hearing.
- 13 September 2018 - Application displayed for public comment.
- 26 September 2018 - Department of Planning:
 - Convenes public meeting in Boggabri re VEP
 - Advises proponent IPC likely to hold public hearings in late Nov/Dec and deliver report in Jan/Feb 2019.
 - Advises agencies that comments on EIS required by 18 October 2018.
- 23 October 2018 - 1st referral to the IPC - Department of Planning refer Project to IPC for Public Hearing.
- 12 November 2018 - IPC advises tentative dates for WHC briefing, 6 Dec 2018, public hearing, 7 Dec 2018, site inspection, 8 Dec 2018.
- 21 November 2018 - IPC advises that Public Hearing delayed to 18 December 2018.
- 29 November 2018 - Minister requests that IPC process changes to Multi-Stage process and Proponent advised.
- 30 November 2018 - Department of Planning issues Preliminary Issues report to IPC. Note, unlike other reports, no view is provided whether or not the project is approvable.
- 7 December 2018 - IPC Panel member for Project resigns due to possible perceived conflict of interest.
- 13 December 2018 - IPC advises Chair has resigned and new panel members appointed, and notes public hearings scheduled for 18 December 2018 will proceed.
- 14 December 2018 - IPC issues schedule of speakers for 18 December public hearing in Gunnedah.
- 17 December 2018 - IPC advises that public hearing scheduled for the next day is deferred.
- 20 January 2019 - IPC advises that new date for public hearing is 4/5 February 2019.
- 25 January 2019 - IPC requests a two-month extension of time to complete its final report.
- 1 February 2019 - IPC issues speaker schedule for public hearing.
- 4 February 2019 - IPC holds Day 1 Public Hearing in Boggabri (47 registered speakers).
- 5 February 2019 - IPC holds day 2 public hearing in Gunnedah (54 registered speakers).
- 11 February 2019 - Department of Planning advises IPC the extension of time to finalise the report is agreed to.

- 11 February 2019 - IPC advises proponent of date of second IPC briefing- 25 February 2019.
- 20 March 2019 - IPC requests further 1 month extension of time to complete its final report.
- 23 March 2019 - Department of Planning agrees to the further extension of time for IPC to complete its report.
- 30 April 2019 - IPC finalises Issue report to Department of Planning.
- November 2019 - Application still under assessment - 2nd IPC public hearing/meeting likely to be held some time in 2020.



BOGGABRI COAL MINE – MINOR MODIFICATION APPLICATION (MOD 7)

KEY ISSUES:

- **Minor modification application referred to IPC for 25+ submissions** - Referral of minor matter to the IPC based on 25+ submissions.
 - IPC assessment including public hearings and requests for additional information added the significant time to the overall assessment.
 - Boggabri was considered to be largely administrative in nature and was not required to be formally advertised by the Department of Planning given its relatively minor nature.
 - When placed on the Department of Planning website more than 25 persons submitted "letters of interest".
 - In response the Department of Planning referred the matter to the IPC for its consideration, despite the application not being required to be publicly exhibited.
- **Duplication of Assessment** - The IPC requested additional information from the proponent and the Department of Planning.
- **Assessment timeframes:**
 - Total - 9 months (273 days)
 - IPC Component - 5 months

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2019/01/boggabri-coal-mine-mod-7>

PROPOSAL:

- To modify an existing operating mine where the company currently has permission to extract up to 8.6 million tonnes of run-of-mine coal annually until December 2033, and operate a coal train loading facility, handling and preparation plant and rail loop and spur line by seeking to:
 - Secure biodiversity offsets through alternative mechanisms and extend the timeframe for securing the offsets until February 2020
 - Use an approved stockpile area for its product coal
 - Undertake drilling and exploration activities within the approved disturbance area, but not within the designated native vegetation corridor
 - Transport small tonnages of coal by road for testing and marketing purposes, and
 - Realign a small section of the Project boundary.

ASSESSMENT:

- 31 August 2018 - Modification application submitted to Department of Planning
 - No notification required due to minor nature of project
 - Application posted on Department of Planning website
 - More than 25 "letters of interest submitted".
 - The Department of Planning chose to refer the matter to the IPC for assessment.
- 18 December 2018 - Department of Planning referred the matter to the IPC for determination.

- Based on its assessment, the Department stated the modification request is approvable subject to updated conditions.
- 17 January 2019 - IPC requested the Department of Planning provide the proponent with an opportunity to respond to the representations referred to in the Departments report.
- 12 April 2019 - IPC held a public meeting at Boggabri (6 registered speakers) and allowed submissions to be received up until one week after the meeting (over 30 submissions received).
- 14 May 2019 - IPC requested additional information from the Department of Planning.
- 27 May 2019 - IPC approved the minor modification application.

CLEANTEQ SUNRISE PROJECT (MOD 4)

KEY ISSUES:

- **Modification application referred to IPC for 25+ submissions** - Referred to the IPC for its assessment based on 25+ submissions and concerns raised by one local government council.
- **Determination inconsistent with Department of Planning Assessment/Recommendation** - The IPC imposed a land acquisition policy which was inconsistent with Government policy.
 - In response to community concerns and feedback, the Commission reinstated a 'noise acquisition criteria' to the conditions of consent, which was removed by the Department of Planning previously (Modification 3 application) as Government had implemented the Voluntary Land Acquisition Mitigation Policy (VLAMP) that the Department relies upon for noise related management measures, including acquisition, which provided a consistent policy for land acquisition for projects.
- **Duplication of Assessment** - The assessment involved significant consultation and engagement with the community, both by the Department of Planning and the IPC.
- **Assessment timeframes:**
 - Total - 395 days.
 - IPC Component - 85 days.

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2018/09/sunrise-nickel-mod-4>

PROPOSAL:

- The project was originally approved in 2001 and comprises several components in three local government areas including:
 - An open cut mine and processing facility.
 - A limestone quarry and rail siding.
 - A borefield.
 - Ancillary infrastructure including accommodations and a water supply.
- The project was physically commenced but has yet to commence operations.
- The modification application includes:
 - Changes to the minerals processing facility and mine layout.
 - Additional supply of limestone from third party suppliers.
 - Diversification of the mines water supply to include surface water.

ASSESSMENT:

- 24 October 2017 – Application publicly notified.
- March/August 2018 – Department of Planning held information sessions, telephone meetings and community consultative committee meetings with various stakeholders.

- 25 September 2018 – Department of Planning referred the application to the IPC for its determination as it had received more than 25 submissions. The Department noted that the Project is approvable subject to additional conditions of consent.
- 12 October 2018 – Department of Planning provided updated information to the IPC following its meeting.
- 16 October 2018 – IPC held Public Meeting in Parkes (35 registered speakers). Submissions would also be received for one week after the meeting date.
- 31 October 2018 – IPC requested additional information from the Department of Planning relating to noise and blasting and landowner agreements.
- 2 November 2018 – Department of Planning provided its response to the IPC.
- 19 December 2018 – The IPC approved the Project.
 - Note: The media statement advised “Of note, the Commission has reinstated ‘noise acquisition criteria’ to the conditions of consent, giving local landowners the right to request that CleanTeQ acquire their property if noise generated by the mine causes sustained exceedances of the noise criteria.”
 - This clause was removed by the Department of Planning previously (Modification 3 application) as Government had implemented the Voluntary Land Acquisition Mitigation Policy (VLAMP) that the Department relies upon for noise related management measures, including acquisition, which provided a consistent policy for land acquisition for projects.

RIX'S CREEK – MINOR MODIFICATION APPLICATION TO CONTINUE MINING OPERATIONS (MOD 10)

KEY ISSUES:

- **Minor modification application referred to IPC for 25+ submissions** - Referral of minor matter to the IPC based on 25+ submissions
 - Public meeting held
- **Duplication of Assessment** –
 - The IPC requested additional information from the proponent and the Department of Planning
 - Public meeting held
- **Assessment by IPC**
 - This particular example meant a deterioration in the mine plan. Any deterioration of the most efficient mine plan typically has both environmental and economic impacts. It also means otherwise avoidable disruption to the workforce, neighbours and local suppliers.
 - The external costs (consultants etc) associated with this extension of time Modification were fifty thousand dollars. This does not include the costs associated with the IPC public meeting or the internal costs involved with changing a mine plan and developing contingencies. This does not include additional costs associated with IPC liaison with various Government Departments, in addition to the administration of the IPC public meeting.
- **Assessment timeframes:**
 - Total - 106 days
 - IPC Component - 58 days

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2019/04/rixs-creek-coal-mine-mod-10>

PROPOSAL:

- The purpose of the modification was to grant a 9 month extension of operation time for the existing mine to allow the assessment of a larger extension of mine life application for Rix's Creek to be finalised (which subsequently took over 4 years - see separate case study) and to ensure the coal mine can continue to operate and employees are retained.

ASSESSMENT:

- 7 March 2019 - Application publicly notified
- 18 April 2019 - Department of Planning referred application to IPC for consideration and advised that the modification is approvable and in the interests of both the community and the State and that due to the minor nature it should be determined as soon as practicable.
- 8 May 2019 - IPC requested additional information from the Department of Planning.
- 15 May 2019 - IPC requested meeting with Resources Regulator.
- 20 May 2019 - IPC held public meeting at Singleton (12 registered speakers) and advised submissions will be received up until 27 May 2019.
- 12 June 2019 - IPC approved the modification application.

DURALIE MODIFICATION (MOD 2)

KEY ISSUES:

- **Minor modification application referred to IPC for 25+ submissions** - Referral of minor matter to the IPC (former PAC) based on 25+ submissions (38 form submissions).
 - Public meeting held
 - Minor application that should have been determined by the Department.
- **Assessment timeframes:**
 - Total - 153 days.
 - IPC Component - 32 days.

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2014/11/duralie-coal-project-modification-2>

PROPOSAL:

- Minor works to existing approved mine including:
 - Increasing the maximum depth of a pit by 70 metres
 - Increasing the extent of surface disturbance by 2.5 hectares of the mine as a result of:
 - Reducing low wall angles and removing a pillar between pits
 - Relocating the upstream clean water diversion to an alternate location
 - Revising the mine sequence
 - Increasing the height of waste emplacement

ASSESSMENT:

- 16 July 2014 - Application publicly notified.
- 31 October 2014 - Department of Planning referred the application to IPC for determination and advised that the modification is approvable subject to conditions.
- 25 November 2014 - IPC held public meeting in Ward River (9 registered speakers).
- 5 December 2014 - IPC approved the modification application.

MOOLARBEN MODIFICATION PROJECT (MOD 3 & 14)

KEY ISSUES:

- **Modification application referred to IPC for 25+ submissions** - Referral to the IPC (former PAC) based on 25+ submissions.
 - Public meeting held
 - Request for additional information made.
- **Duplication of Assessment** - The IPC requested additional information from the proponent and the Department of Planning.
 - The application was referred to the IPC following extensive work with the Department of Planning and the EPA to develop a collaborative and scientifically robust approach to the controlled release of treated water. The outcomes of this work were recognised in the Department's Assessment Report, which was supported by correspondence from the EPA.
 - The IPC chose to revisit the extensive and robust analysis undertaken by the Department and EPA. This decision implies a lack of confidence by the IPC in the processes undertaken by the other Agencies, and duplicates its work.
 - Ultimately, the IPC did not make a single change to the Department's recommendations for Mod 14. However, the decision to approve the Mod took four and half months. This approach reinforced perceptions around a reluctance to make determinations regarding projects that may be perceived as controversial.
- **Assessment timeframes:**
 - Total - 395 days.
 - IPC Component - 46 days.

IPC LINK:

<https://www.ipcn.nsw.gov.au/projects/2019/02/moolarben-coal-mine-stage-1-and-2-modifications>

PROPOSAL:

- Proposed modification of an existing approved and operating mine complex.
- Modifications proposed:
 - Extend the boundaries of two open cut pits and produce an additional 3 million tonnes of ROM coal each year for open cut operations.
 - Increase the existing coal processing, handling and transportation limits (required to support the increase in ROM).
 - Installation of a reverse-osmosis water treatment facility and associated infrastructure to reduce the salinity of discharged water (Note - water discharge already approved).
 - Minor changes to surface infrastructure that include:
 - The realignment, straightening and widening of an approved haul road
 - increased product coal and construction material stockpiles
 - An upgrade to the rail load-out infrastructure to handle the additional coal produced, and

- The relocation of the existing licensed discharge point and an increase to the volume of allowable water discharges

ASSESSMENT:

- 7 November 2017 - Application publicly notified.
- 7 February 2019 - Department of Planning referred the application to IPC for determination and advised that the modification is approvable subject to conditions (6 weeks prior to NSW elections).
- 2 April 2019 - IPC held Public Meeting at Putta Bucca (14 registered speakers) - Query whether the public meeting was consciously delayed by the IPC until after the election.
- 8 April 2019 - IPC requested additional information around the groundwater model, scope 3 emissions, and salinity from discharges.
- 16 April 2019 - Proponent provided additional information to the IPC in response to its request.
- 30 May 2019 - Proponent provided further additional information to the IPC in response to its request.
- May 2019 - Public submissions received regarding constitution of panel as a result of Panel member stepping down due to illness.
- 19 June 2019 - IPC approved the application subject to conditions of consent.

MOOLARBEN MODIFICATION PROJECT (MOD 12)

KEY ISSUES:

- **Modification application referred to IPC for 25+ submissions** - Referral to the IPC (former PAC) based on 25+ submissions.
 - Public meeting held
 - Request for additional information made.
- **Duplication of Assessment & Determination inconsistent with Department of Planning Assessment/Recommendation** - The IPC requested additional information from the Department of Planning.
 - In a Mod 3 application for the same project, the Department proposed to revise conditions relating to subsidence originally imposed in 2007. Rather than replace the conditions, the IPC took an irrational approach by retaining the existing subsidence conditions as well as adding the Departments recommended conditions. The 2 sets of conditions are inconsistent.
 - In the Mod 12 application the Department of Planning again recommended deletion of the conditions. After further advice was received from the Department of Planning regarding the issue, the IPC finalised its assessment and stated in its report "*The Commission agrees it is logical to have a consistent regime in place to manage standard issues and impacts. Nonetheless, in this instance, the Commission considers that the proposed increased production rate, in close proximity to significant natural features (The Drip and Drip Gorge) warrant an additional level of monitoring, reporting and government oversight. Consequently, while the Commission has agreed to the deletion of conditions 26 to 28 it has also amended the recommended conditions of approval with the inclusion of condition 78A that requires additional reports to be provided prior to the commencement of longwall mining in each of panels.*"
- The IPC imposed an unworkable condition in its determination of Mod 12 that clearly demonstrated a lack of operational understanding about the asset. If this condition is not rectified (via a further timely and costly modification process), it may result in longwall discontinuity at the end of each mining panel and an associated stand down of the underground workforce. The rationale for the condition was not communicated prior to determination.
- This condition was not included in the Department's recommended modified conditions.
- Further it is understood the Department advised the PAC the condition was unworkable.

IPC LINK:

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7095

PROPOSAL:

- Proposed modification of an existing approved and operating mine complex.
- Modifications proposed:
 - Revisions to the layout of UG1 to extract a further 3.7 million tonnes of coal.
 - Increase the maximum extraction rates of the underground mining operations (UG1,UG2&UG4) from 4 to 8 million tonnes of coal a year, and consequential increases to the total extraction rates of the mine complex from 17 to 21 million tonnes of coal a year and total production rates from 14 to 18 million tonnes of coal a year;
 - Changes and upgrades to the approved Stage1 and Stage2 surface infrastructure to facilitate these increases.

ASSESSMENT:

- 7 November 2017 - Application publicly notified.
- 11 February 2016 - Department of Planning referred the application to IPC for determination and advised that the modification is approvable subject to conditions.
- 17 March 2016 - IPC held Public Meeting at Mudgee (12 registered speakers).
- March/April 2016 - IPC sought additional information from the Department of Planning regarding the removal of various conditions.
- 8 April 2016 - Department of Planning responded to the request for additional information.
- 29 April 2016 - IPC approved the application subject to conditions of consent.