

IPC submission: On the new material from the DPIE that relates to ESD and climate change

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1 What I am concerned about

In my previous IPC submission [1] I drew attention to the fact that Section 6.6 of the DPIE’s assessment report [2] seemed to show that the DPIE gave no consideration to climate *science*, but instead based its recommendation for the NGP entirely on climate *policy*. As a physicist,¹ I had thought that basing a project assessment on policy rather than science was such an *obviously stupid* thing to do that if only I could *prove* that this is what the DPIE had done, then their assessment report would be *instantly dismissed* as being unreliable.

It seems I was wrong about the “instant dismissal” bit. The DPIE’s response [3] to the IPC’s question on ESD shows that the DPIE’s decision-making processes and reasoning about climate change (which I had assumed “obviously stupid”) are regarded by the DPIE to be perfectly *reasonable* and *legal*.

I am concerned that the Commissioners of the IPC may not immediately recognise how *unreasonable* and *illegal* the DPIE’s conduct is. So I have been forced to look at planning law in some detail. I am now familiar with:

- Environmental Planning and Assessment Act 1979 (EP&A Act) [4]: 1.3 Objects of the Act; 1.4 How ESD is defined for the Act; 4.15 Evaluation,
- Protection of the Environment Administration Act 1991 [5]: 6(2) Definition of ESD,
- State Environmental Planning Policy (Mining Petroleum Production and Extractive Industries) 2007 (Mining SEPP) [6]: Clause 14(1)(c) and 14(2),
- Appendix B of the additional material from Santos [7], which is opinion given by Richard Lancaster SC (also available as the separate document [8]),
- more judicial and merit reviews of planning decisions than the average citizen should ever have to know about, including, of course, Preston’s Rocky Hill decision [9],
- several interesting papers [11, 12] by Chris Wheeler, a former Deputy NSW Ombudsman, about how to define *the public interest*,
- and the important recent paper [13],

Environmental and Planning Law in the Age of Human Rights and Climate Change,

by former Justice of the High Court of Australia, Hon Michael Kirby, which also relates to the requirement that the DPIE and the IPC *act in the public interest*.

¹My expertise and research background is described briefly in my previous IPC submission [1].

2 The DPIE's problematic conduct

The DPIE's response [3] to the IPC's question about ESD contains a fairly detailed description of the procedure that was followed and the reasoning that was used to come to the DPIE's conclusions. One sees that:

- No carbon budget science [14, 15] has been admitted for consideration.
- The only significant way in which Australian and NSW government climate policy enters into the DPIE's considerations is as a means to *exclude* from consideration any scientific analysis of the carbon budget and to reject the conclusion that follows from such an analysis, which is that *no new fossil fuel production can be approved*.
- The GHG emission reduction targets specified by Australian and NSW government policies play no essential part in the DPIE's assessment process (changing the target levels would lead to the same result from the DPIE). The DPIE sees its job as primarily one of checking that various GHG emissions estimates have been properly calculated. Having determined the GHG emissions, the DPIE simply reports them and declares them to be consistent with government policy.
- The DPIE refuses to acknowledge that Australia has any obligations under the Paris Agreement [16] that go beyond meeting the (inadequate) emission targets specified in Australia's NDC [17]. (In fact, Australia is legally obliged to do its best to limit global warming to 1.5°C.)
- The DPIE also ignores all other international laws and obligations that might block the project's recommendation if the consequences of global climate change were properly considered. E.g., those relating to Human Rights [13] and Crimes Against Humanity [1].

The problem, as I see it, is that the DPIE will not acknowledge the existence of the climate crisis, even in the face of an overwhelming body of scientific evidence.² As to *why* the DPIE will not acknowledge the climate crisis, it could be a mix of possible reasons, e.g., political pressure, departmental/social inertia, scientific incompetence, climate change denialism, or simply the intellectual and emotional difficulty of processing the truth of how bad the climate crisis has become, weighted against the appeal of a "safe" delusion. But we don't need to know why.

Of course, political pressure is a possible reason because acknowledgment of the climate crisis by the DPIE would necessitate the appropriate *emergency response*: automatic rejection of development approvals for new fossil fuel projects, and for extensions to existing fossil fuel projects. That would not likely suit our PM's political ambitions, nor the interests of his gas-stacked Covid Commission [18].

3 Acting in the public interest

It is my opinion that the DPIE has *unreasonably* acted *against* the public interest and therefore *illegally*.

It is also my opinion that for the IPC to act in the public interest, the IPC Commissioners *must* come to the following conclusions:

- The existential threat posed by climate change (the "climate crisis" or "climate emergency") is now a facet of the public interest that, for the purpose of the decision-making process used by the IPC, must be weighted as being overwhelmingly more important than any other facet of the public interest that the IPC is required to consider by the EP&A Act,
- that a proportionate and appropriate response to the climate crisis requires, amongst other things, stopping the expansion of fossil fuel production,
- therefore, to act in the public interest *requires* that the IPC reject any development applications for *new* fossil fuel projects, and reject any development applications for *extensions* to existing fossil fuel projects.

²For a brief introduction/overview to this body of evidence, see Sections 3 and 4 of my previous submission [1] or, preferably, refer directly to the literature: [14, 15, 19, 20, 21, 22, 23, 24] and references therein.

- The climate crisis is a public interest that is picked up (independently of ESD) at 4.15(1)(e) of the EP&A Act, in the same way that historically, ESD used to be picked up before ESD was included as Object (b) of the EP&A Act. The climate crisis is therefore a mandatory independent consideration for the IPC.

I have formed the above opinion based on the following considerations:

- The definition of the public interest [11, 12];
- the scientific evidence for climate change being an existential threat that requires an immediate emergency response;
- the observation that the climate crisis has become a matter of deep concern for many people around the world, especially those of the younger generations;
- the timing for setting a precedent for later IPC decisions. In particular, Preston’s Rocky Hill judgment (Feb. 2019) [9] preceded, for example, the 11 days of Extinction Rebellion protests that shut-down parts of London (Apr. 2109), and the now famous speech given by Greta Thunberg at the UN Climate Action Summit (Sep. 2019) [25];
- and, as I see it, the *proactive duty* of the IPC. The following is a quote from Hon Michael Kirby’s paper [13], page 192:

“The growing sensitivity within diverse societies over the risks of climate change and the existential dangers of global warming have elicited not only the Oslo Principles [26] but also the creation of local initiatives to harness the support of local judges, arbitrators and lawyers. Thus, in France, the Club de Juristes has been formed with relevant objects. It is a professional body of serving judges who have concluded that modern decision-makers, including judges, should find ways to address the dangers to the biosphere, human and other life forms and the global economy that demand more than a passive or formalistic response to problems for the environment, and specifically for global climate change.”

References

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- [20] [The human imperative of stabilizing global climate change at 1.5°C](#), Ove Hoegh-Guldberg, et al., Science, Sept. 20 (2019)
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- [23] [Trajectories of the Earth System in the Anthropocene](#), Will Steffen, et al., PNAS, Jul. 6 (2018)
- [24] [2020 Doomsday Clock Statement](#), Bulletin of the Atomic Scientists, Jan. 23 (2020)
- [25] [Transcript and video: Greta Thunberg's speech at the UN Climate Action Summit](#), New York, September (2019).
- [26] [Oslo Principles on global climate change obligations](#), Global Justice Program website, Mar. 1 (2015)