



## **FURTHER ISSUES RE NORTHBANK PLANNING PROPOSAL**

### **Significance of IPC Process**

The 2 September 2020 letter from Sam McLean, Executive Director of the IPC, states: “...the Commission’s role in a Gateway determination review is advisory only”.

However, the Department’s Tim Hurst 12 August 2020 letter instructing the IPC (“instructing letter”) stated:

“The Commission is requested to review the decision and prepare advice concerning the merits of the request. The advice should include a clear and concise recommendation confirming whether, in the Commission’s opinion, the Department’s decision should stand”.

So the IPC’s role is more than mere advice, it is to review the decision and provide a recommendation. There would be little point in the IPC participating a Gateway Review if it was merely advisory. The IPC is being called upon to make a recommendation.

The IPC advice/recommendation is the foundation upon which the subsequent planning decision is made. Absent a solid foundation the decision will be invalid. Indeed the final decision maker must have a reasonable justification to disregard the IPC advice.

In “Good Conduct and Administrative Practice – Guidelines for State and Local Government (2nd Edition)” NSW Ombudsman sets out guidance to public officials in relation to expected standards of conduct. ([https://www.ombo.nsw.gov.au/data/assets/pdf\\_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf](https://www.ombo.nsw.gov.au/data/assets/pdf_file/0016/3634/Good-Conduct-2nd-edition-amended.pdf))

In particular Clause 5.4.2 states decisions must be made “acting only on the basis of logically probative evidence”. This is a fundamental rule of procedural fairness articulated in by the High Court in ABC V Bond (1990). We submit that the Gateway Determination must be made based on logically probative evidence. “Absent probative evidence, the decision fails to meet the test of reasonableness, logicity and rationality” (Para 52-080 Development and Planning Law in NSW, John Whitehouse). The IPC needs to provide sound advice to allow the Department to make a sound decision.

### **IPC Code of Conduct**

In addition to providing advice/recommendation/s to the Department the IPC is required to act in accord with its own Code Of Conduct. The key provision of the IPC Code of Conduct in relation to decision making process is Clause 4.2.



## 4.2 Fairness and Equity

Commission members must complete duties *consistently*, promptly, conscientiously and fairly. Members must *take all relevant facts into consideration, especially those known or reasonably known to them*. They should display regard to the particular merits of each case, and not include irrelevant matters or circumstances in the decision-making process.

### *Consistently*

We submit that under Clause 4.2 the IPC requirement to “complete duties consistently” requires the IPC to:

- Consider the pre-Gateway reports and information required for other Wentworth Shire Gateway Assessments for other Planning Proposals. In particular the IPC should consider the analogous Jewel Market Planning Proposal at Gol Gol (flood study required but no economic, traffic or infrastructure study required) and Kelly RV Planning Proposal at Trentham Cliffs (no economic, traffic or infrastructure study required before or after Gateway)
- Consider the pre-Gateway reports and information required for other NSW Planning Proposals for tourism
- Ensure the process for considering Northbank is similar to other IPC processes – the Northbank Planning Proposal should not receive a lesser process in terms of inspection, hearing times and consideration than other IPC Gateway Reviews

To reiterate for the Jewel Market and Kelly Planning Proposals traffic or infrastructure or economic studies not required at any stage, before or after the Gateway. Both sites are located on the highway nearby to Northbank.

*take all relevant facts into consideration, especially those known or reasonably known to them*

We don't believe IPC can take all relevant facts into consideration without:

- Inspecting site
- Inspecting District/Shire
- Reading Western Murray REDS and supporting and hearing from authors
- Reading Murray Destination Management Plan and hearing from authors
- Asking Dept Planning about REDS/Dest Man Plan
- Receiving responses to questions taken on notice by Wentworth Shire

It is unclear if the Dept of Planning, Ethos Urban or IPC have read the Western Murray REDS, Western Murray REDS Supporting Information or Murray DMP. These key documents were not mentioned in the meeting between the IPC, Dept Planning and Ethos Urban. The REDS and DMP are large, detailed and significant documents



whereas references to tourism in the Far West Regional Plan and LSPS are only two pages each and contain insufficient detail to base a planning decision on.

While they are public documents we attach copies of the Western Murray REDS, Western Murray REDS Supporting Information and Murray DMP. These documents should receive significant analysis by the IPC. The Guide does not expect the Proponent to recite these documents at the Gateway Stage.

Clearly the Western Murray REDS, Western Murray REDS Supporting Information and Murray DMP are “*known or reasonably known*” to the IPC so should be considered by the IPC.

## **Further comments on lack of site inspection and requirement for pre-Gateway Studies**

The instructing letter to IPC states:

“The Department’s *A guide to preparing local environmental plans* provides advice on procedures for the various stages of the independent review process. The guide is available on the Department’s website at [planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and Zoning /Resources](http://planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Resources)”. (“the Guide”)

We have quoted and highlighted the Guide extensively to show that it states that studies such as the economic, infrastructure and traffic study proposed by Ethos Urban are to be provided after and as a condition of the Gateway rather than before it. The IPC has been instructed to base its decision on processes in the Guide.

The IPC letter states a “site inspection” and “stakeholder meetings” are not required in respect of a Gateway Reviews. While requirements of a Gateway Review are not detailed the process is required to comply with the IPC Code of Conduct. We submit that in the specific circumstances of this Gateway Review require a site inspection to consider the key issues raised by Ethos Urban being the economic context, infrastructure and traffic.

If the Gateway Process is to be so preliminary that a site inspection is not required by neither Mr Kirkby or the IPC then detailed economic, traffic and infrastructure studies should not be required before the Gateway. The Gateway is either an essential process or a gateway process as detailed in the Guide.

We submit it is impossible for the Northbank Planning Proposal to be fairly assessed without the IPC visiting the site in our presence. There are many issues such as traffic, infrastructure, bushfire and koalas that would not be raised in the same way if the cleared site had been viewed. Ethos Urban should also have viewed the site as the only way you can pretend there are traffic or infrastructure issues is not view the site – the highway and infrastructure sticks out visually.



A visit to the Mildura and Buronga Gol Gol region would also allow IPC members to appreciate both the tourism opportunity and the absence of recreation, tourism accommodation and retail activities in Buronga Gol Gol. Someone who knew the

Mildura/Wentworth area well would find the need for further tourism development to be self-evident.

## **Need for presentation or input of Destination NSW and Dept. Premier Cabinet**

We submit the IPC should hear from the NSW Government's own experts in tourism and regional development being Destination NSW and Dept. Premier Cabinet. Both bodies, and their consultants, have spent much more time considering Wentworth Tourism than the Department of Planning. The Department of Planning devotes only two (2) pages to tourism in the whole of its Far West Regional Plan whereas the Murray Destination Management Plan is 100 pages long and the Western Murray REDS is 20 pages long supported by a 66 page Supporting Analysis.

Both the Department of Premier and Cabinet via the Western Murray Regional Economic Development Strategy and Destination NSW via the Murray Destination Management Plan have listed Nortbank as a priority project and this should be a major consideration for the IPC.

Again, the Western Murray REDS, Western Murray REDS Supporting Information and Murray DMP are "*known or reasonably known*" to the IPC.

## **COUNCIL MEETING WITH IPC**

Not a proper transcript but we will base comments on it. We note this was a very brief meeting (approx. 20 mins with at least 5 mins of introductions/formalities) which partly reflects the minimal notice Council received. The Northbank Planning Proposal was unanimously approved by Wentworth Shire at its Council Meeting on 17 May 2017. There has been no contrary or varied consideration of the Northbank Planning Proposal by the Council since.

Council supporting comments from Minutes:

- "noted that infrastructure is currently being developed to the east of the subject site. Identified possibility for Nortbank to hook into sewer"
- "the location of the highway makes the site suited to some form of development which will create traffic"
- "No issue with the scale of the development"

These Council comments counter the Ethos Urban / Department of Planning concerns re economic scale, traffic and infrastructure. At the very least they support our argument that these matters should be reviewed after the Gateway and not before it.



We note “question on whether the Council perceived a need for an economic assessment and other supporting information at the current stage” was taken on notice so IPC and proponent are unaware of response.

## **MEETING DEPARTMENT OF PLANNING AND IPC**

We note the Transcript states the IPC meeting with Department of Planning took 13 minutes and around 5 minutes of that was spent on introductions and formalities. We made detailed submissions in relation to the Guide, LEC decisions re requirements of a Gateway, the Western Murray REDS and Murray Destination Management Plan and none of these were discussed by the Department.

The IPC meeting with the Department did not analyse the Guide’s requirements of the Gateway Process and question the Department as to why Economic, Infrastructure and Traffic Studies are not required after the Gateway as the Guide states. The IPC asked this specific question of Council but not the Department.

In particular the Department did not discuss or explain why Northbank could be a priority project in the Western Murray REDS and Murray Destination Management Plan and the Department not even support the Planning Proposal receiving detailed consideration after the Gateway. The Department did not address that the Far West Regional Plan has a priority action to incorporate Destination Management Plan strategies in Council LEPS.

The main substantive comment from the Department is to refer to the size of the development a number of times in the transcript:

Mr Pfeiffer “...we’ve had the clear position the whole time through on the information needed for a development of this size..”

Ms Gibson “From the department’s perspective, it is a very, very large proposal....”

Mr Kirby “....it’s a big development with a big time scale....”

All these comments refer to or imply a scale of development that does not flow from the rezoning and should not receive much weight in the IPC consideration. The scale of any subsequent development would be relevant to and regulated by a subsequent DA. The tourism could be large area low impact such as golf courses with minimal buildings or involve more density – that would all be worked out in the future and be subject to Council/Dept Planning control.

The key objective of the Planning Proposal is not to gain approval for a particular development but to create an area/zone where tourism is allowable when it is currently prohibited.

While the Planning Proposal seeks to allow tourism in a large area there are many Shire’s in NSW that would not even require a rezoning from RU1 for such tourism activities. For example many Shire’s allow ‘Tourism and visitor accommodation’ in their RU1 zone and such a rezoning would not be required.



**GrandJunction**

Mr Kirkby of Ethos Urban correctly disagreed with earlier Dept Planning assessments relating to matters such as bushfire and biodiversity in his recommendation that they could be dealt with after the Gateway. However he was in error that the matters of socio economic report, traffic report and infrastructure report should be dealt with prior to the Gateway rather than after it.

**The IPC has been instructed to make its recommendation based upon the Guide and the Guide is very clear that the requirement for such Reports is identified by the Gateway but that the actual Reports are conducted after the Gateway.**