



29 October 2019

The Chief Commissioner,
NSW Independent Commission Against Corruption (ICAC),
GPO Box 500,
Sydney NSW
2001.

Dear Commissioner,

This is a submission to ICAC by Groundswell Gloucester Inc, into the regulation of lobbying, access and influence in NSW (Operation Eclipse).

Groundswell Gloucester (Groundswell) is an incorporated community group, based in Gloucester NSW. It was established with the prime purpose of opposing two major resource projects in the Gloucester area. The first was a proposal by AGL Ltd to develop a coal seam gas field consisting on 330 wells in the valley to the south of the town. The second was a proposal by Gloucester Resources Ltd (GLR) to construct a coal mine, known as the Rocky Hill mine, just to the south of the town.

In February 2016 AGL announced that it intended not to proceed with its proposal.

In February 2019 the development application by GRL was dismissed by the NSW Land and Environment Court¹ in a landmark decision based upon the mine's likely social impact, and the mine's potential climate change impacts. Groundswell was a party to that case.

We mention the AGL and the GRL matters because our experience of being involved with both matters very much informs our submissions.

It is apparent that wealthy and well-resourced companies and individuals often are in a better position to obtain greater access to Ministers and other government decision makers than other individuals and community groups. Community groups such as Groundswell are usually poorly resourced and often find it difficult to have their voices heard. A good example is when a company prepares and lodges an environmental statement with a resource application. Such statements are always professionally prepared and are expensive. They are usually very detailed and community groups such as

¹ See Gloucester Resources Limited v Minister for Planning and Anor [2019] NSWLEC 7



Groundswell find it difficult to properly respond because of inadequate resources.

Proponents of major projects often spend large amounts of money advertising the benefits of their proposal which cannot be matched by community groups. Such advertising is clearly designed to ultimately influence the decision makers and should not be permitted. The proponents also often make donations to community groups in an effort to get them on side and to indirectly then influence the decision-making process. In our view this is improper.

During the approval process for major resource projects, Ministers and public servant regularly meet with proponents to discuss issues and community groups opposed to the proposal are usually left in the dark about such discussions.

Put simply, there is not a level playing field and the process is very much in favour of those with adequate resources. Significant reform is needed.

Our particular submissions are as follows:

Political donations

Groundswell submits that political donations should be seen as being part and parcel of the lobbying process.

Corporations and wealthy individuals often make substantial donations to political parties and candidates. In our view this is an insidious practice which requires much greater regulation. Politicians are often heard to say that they are not influenced by such donations, and it is often impossible to establish a direct link between a donation and a particular decision, but a corporation would only make a political donation if it was in the interests of that company to do so. In our view it is fanciful to suggest that large political donations do not affect Government decision making in some way.

During the AGL campaign Groundswell became aware that AGL had been making a series of political donations, and our perception certainly was that this might give them an advantage when dealing with Government. The problem is compounded by the fact that there is no real time reporting of such donations. They are mostly reported to the electoral commission many months after they are made, and the community often only becomes aware of them after major decisions have been made.

In NSW there is an obligation for proponents of projects to disclose donations to the planning authorities, but the Government makes no attempt to police these rules. During the AGL campaign a number of Groundswell members



spent large amounts of time attempting to trace all political donations which had been made by AGL, only to discover that AGL had failed to disclose many such donations to the planning authority. Groundswell reported these discrepancies and AGL was later prosecuted and fined. However, this would never have come to light without a huge effort by Groundswell. The Government seems to carry out no checks of its own.

It is anomalous that in NSW donations by developers are banned and yet major resource companies, whose projects can have huge impacts, are still permitted.

Groundswell submits:

- 1/ that all political donations above a very small amount should be banned. If not, then donations by resource companies should be banned completely.
- 2/ All political donations should be reportable on-line forthwith and available to be seen on an easy to navigate website.
- 3/ Advertising of the so-called benefits of a resource project should be banned until the project has been approved.
- 4/ Payments by project proponents to local community groups should be banned until the project has been approved.

Lobbying of Ministers and Public Servants

During 2013 AGL applied to the NSW Government (Division of Resources and Energy) to drill and frack 4 exploratory wells. Groundswell wrote to the Government indicating that the application was inadequate because of the absence of a full environmental impact statement. This was based upon the wording of the relevant planning instrument, which was State Environmental Planning Policy (State and Regional Development) 2011 (SEPP). For the purposes of this submission it is not necessary to explain in any detail what the legal issues were, however, the submission to Government was sent in December 2013.

Despite attempts by Groundswell to find out whether the Government agreed with Groundswell's submission we were told nothing, and there was no consultation with Groundswell, however in August 2014 the Government announced that it had changed the relevant SEPP so that it could then approve AGL's application which it then did.

What Groundswell later found out was that during the period from December 2013 to August 2014 AGL had been lobbying the Government about the



problem. This included a letter from the CEO of AGL to the then NSW Premier and meetings between AGL and the Department.

During the whole process there was a complete lack of transparency.

When investigating the AGL political donations we became aware that AGL personnel attended dinners with NSW politicians. This seems to be a common practice where informal lobbying no doubt takes place. Ministers must disclose their formal meetings, but what happens at these events never sees the light of day.

Groundswell submits:

1/ Functions where people can pay to have dinner with a Minister or other such social events should be prohibited or if they are not, there should be a public register of such events showing who attended. If a Minister has any discussion with any person about any proposal, then details of such discussions should be on that register. We note that the interim report suggests that knowledge of meetings with Ministers can be obtained through an examination of the Minister's diary or via a GIPA application. The diary does not cover all transactions, and the GIPA process is cumbersome, slow and can be expensive.

2/ Where there is a contested issue, and where the Minister or Public Servants have discussions or receive correspondence on that issue, then that fact should be disclosed immediately to other interested parties.

3/ Registered lobbyists should be required to disclose on-line all communications with Government decision makers. It would not be an undue administrative burden as seems to have been suggested.

Conflicts of interest

During the AGL campaign Groundswell made a submission to Minister Anthony Roberts suggesting that he had grounds to suspend AGL's exploration licence for non-compliance with its licence conditions. The submission was accompanied by over 500 pages of supporting material. The submission was presented to Mr Roberts at a meeting, and he indicated that it would be investigated by an individual who was at that meeting. We later ascertained that this person had a web site indicating that she operated a business providing investigation and management training to the resources sector. It said that she "currently specialises in managing crisis situations... particularly in the mining and resource sector." None of this was disclosed to Groundswell by Mr Roberts, and the information was simply stumbled upon. A complaint to the Department about a perception of a conflict of interest was dismissed.



Eventually Groundswell's submission was dismissed in a letter consisting of one page.

Groundswell submits

1/ That stronger measures should be taken by Government to avoid any perception of a conflict of interest, and that an independent body be established to oversee and to deal with conflict of interest complaints.

Revolving door.

For some time there has been significant cross fertilization between Government Departments and the resource sector where individuals move from corporations to Government and vice versa. This creates an unfortunate perception in the community and needs to be examined in detail and better regulated.

Groundswell submits:

1/ The revolving door issue needs significant and detailed examination. There should be a significant cooling off period in relation to both employment and lobbying.

Thank you for the opportunity to provide these submissions. We are happy to provide further detail if required. We are happy for them to be made public on the Commissions website.

Yours Sincerely,

