



Nature Conservation Council

The voice for nature in NSW

Lynelle Briggs AO
Chair
NSW Government Planning Assessment Commission
Via: pac@pac.nsw.gov.au

30 October, 2017

Dear Ms Briggs,

RE: Reforms to the Planning Assessment Commission process

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing 150 member organisations across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

NCC works closely with communities affected by state significant mining projects and had a deep understanding of the social and environmental costs of many of these projects. We understand there may be an opportunity to improve the Planning Assessment Commission (PAC) process which would be very welcome by us and the broader community. We would like to provide comments under two broad headings:

- Statutory
- Administrative

Statutory

We appreciate that you are not empowered to make changes in these areas, however, many of the concerns about the PAC relate to statutory issues and are worth summarising for your information so you can see the perspective from which we hold our views:

- The PAC was established by the State government via the Environmental Planning and Assessment Amendment (Part 3A Repeal) Bill 2011. The bill was introduced to the NSW Parliament by the then Planning Minister's Second Reading Speech on 16 June 2011.
- When in Opposition, the subsequently elected State Government promised to return third party appeal rights to the community. However, at the same time that the Minister was introducing legislation to set up the Planning Assessment Commission to fulfil the Minister's delegated determination role, the Bill also introduced an amendment to Section 98 of the Environment Planning and Assessment Act (Appeal by an objector) which excluded appeal rights from a determination after a public hearing held by the PAC.
- Section 23F of the Act makes it absolutely clear that there can be no appeals against a decision by the PAC following a public hearing.

A Planning Assessment Commission public hearing with no prospect of appeal is a very poor substitute for a third party appeal to the expert NSW Land and Environment Court. The boycotting of a recent public hearing of a State Significant Development in the Hunter Valley is a reflection of the



disappointment many community members feel at the lack of true independence of the PAC, the lack of third party appeal rights, and the apparent lack of respect shown for communities which are suffering major impacts from State Significant mining developments.

Administrative

In introducing the 2011 Bill which set up the legislative amendments to create the PAC, the Minister stated that:

“The time has come to give planning powers back to communities”

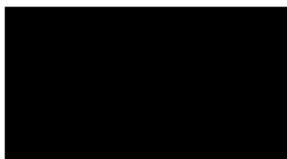
The reality experienced by the community is the reverse – a loss of third party appeal rights to the Land and Environment Court and a PAC process which appears biased towards proponents and the NSW Department of Planning.

NCC believes that there are administrative changes which the PAC can make that will help redress the current imbalance between proponents and communities. The following are some suggestions to improve the process. The ideal PAC public hearing process should be as close as possible to the Land and Environment Appeal process:

- The PAC public hearing could be adjudicated by a genuinely independent judge or scientist with expertise in the relevant mining area. They would need to be demonstrably independent of the Minister, NSW Department of Planning and the proponent for their independence to have public credibility. An independent facilitator would allow more value to be gained from submissions from the floor which at the moment feels of little impact, with no feedback from the Commissioners as to whether the submission is being well received.
- An advocate or ‘friend of the court’ could take a counsel assisting type role to ask questions of presenters from both sides. The PAC should be able to call consultants to the EIS report and associated reports to allow questions to be asked and answered in public.
- Experts who are unable to be present could be available by Skype and be questioned by both sides. Obviously experts should also be able to be questioned at the hearings.
- The process could be significantly enhanced by reintroducing elements of the earlier Commission of Inquiry process – agencies could be available to answer public questions, and the community could ask for written responses from the proponent and/or PAC within a set time frame.
- If the PAC genuinely wants to demonstrate independence, it is essential for the credibility of the process that the PAC meets with the affected community as well as the proponent. The process of the PAC meeting on site with the proponent and then refusing to meet with representatives of the affected community (as has occurred in the past) is very detrimental to any attempt by the PAC to claim independence and balance.
- If the PAC has a meeting at the mine site, representatives from the community should also be present – in a similar way to what happens when a judge of the Land and Environment Court does a site inspection with respect to a development application. Both sides can be present. It should be the same for the PAC.
- Review PAC findings should be binding on the proponent and the Department of Planning. There is no point in going to the trouble and expense of having a public hearing unless the outcomes are binding.
- In a similar way, recommendations from determination PACs should be binding.

Thank you for considering our suggestions, please do not hesitate to contact me on (02) 915 1488 or ncc@nature.org.au if you would like to discuss the issue further. We would appreciate a written response to the opportunities we raise in this letter, at your earliest convenience.

Yours sincerely,



Kate Smolski
CEO
Nature Conservation Council of NSW